

Secretary of State  
**PERMANENT RULEMAKING**  
A Statement of Need and Fiscal Impact must accompany this form.

**RULEMAKING ACTION**

**ADOPT:** 461-145-0259

**AMEND:** 461-115-0700, 461-140-0020, 461-140-0120, 461-140-0250, 461-145-0010, 461-145-0020, 461-145-0040, 461-145-0050, 461-145-0089, 461-145-0220, 461-145-0240, 461-145-0252, 461-145-0260, 461-145-0310, 461-145-0320, 461-145-0330, 461-145-0360, 461-145-0380, 461-145-0410, 461-145-0420, 461-145-0460, 461-145-0490, 461-145-0510, 461-145-0540, 461-145-0600, 461-150-0050, 461-155-0575, 461-160-0010, 461-160-0015, 461-160-0550, 461-160-0551, 461-160-0552, 461-170-0011, 461-175-0310

ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685

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Stat. Auth.

P.L. 92-336; Section 1902(r)(2) of the Social Security Act and 42 USC 1396a; 20 CFR 416.2099

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Other Auth.

ORS 409.010, 409.050, 410.010, 410.020, 410.070, 410.080, 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 413.085, 414.685, 414.826, 414.839

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Stats. Implemented

**SUMMARY**

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The Department of Human Services is making several changes to Aging and People with Disabilities (APD) medical programs. The changes:

- Remove resource limits for three of the Medicare Savings Programs (QMB-BAS, SMB, and SMF).
- Increase the amount of in-home supplement in Oregon Supplemental Income Program Medical (OSIPM) from \$15 to \$22 per month and clarify the type of income counted in determining eligibility for the special need.
- Clarify that in the OSIPM and QMB programs, when determining adjusted income, the \$20 deduction from unearned income is not taken from income received from a program based on need and that is funded by the federal government or a nongovernmental agency.
- Clarify policy relating to treatment of Indian (Native American) benefits in APD medical programs.

These changes are described in more detail below.

**Remove Resource Limits for QMB-BAS, SMB, and SMF**

The rules below are being amended to reflect that the Department is removing resource limits for three of the Medicare Savings Programs (QMB-BAS, SMB, and SMF), which are currently based on the resource limits of the Medicare Part D Low Income Subsidy (\$7,280 for a need group of one and \$10,930 for a 2-person need group). States are authorized to use flexibility under Section 1902(r)(2) of the Social Security Act for the purposes of simplifying administrative processes. This change will facilitate more timely eligibility determinations for DHS staff as well as make the application and redetermination process less cumbersome for applicants for and recipients of Medicare Savings

Programs. *Note: CMS has clarified that the Department may not eliminate resource limits for the QMB-DW program, and that is reflected in these amendments. Oregon currently has no QMB-DW clients because individuals who would qualify for QMB-DW would also qualify for OSIPM-EPD (in order to qualify for QMB-DW, one must not be eligible for any other Medicaid program).*

- OAR 461-115-0700 about required verifications is being amended to remove QMB-BAS/SMB/SMF programs from the section regarding verifying resources because resources will no longer be an eligibility factor.
- OAR 461-140-0020 about availability of resources is being amended to remove the QMB-BAS/SMB/SMF programs; whether a resource is available will no longer be relevant because resources are all excluded.
- OAR 461-140-0120 about availability and treatment of lump-sum income is being amended to account for the fact that QMB-BAS/SMB/SMF programs will no longer count lump-sum income as a resource in the month after receipt.
- OAR 461-140-0250 about determining the uncompensated value of a transferred asset is being amended to remove QMB programs for two reasons: there is no longer a resource limit and because disqualifying transfers only affect eligibility for long-term-care services, not QMB programs.
- OAR 461-145-0010 about animals is being amended to state that all animals are excluded as a resource in the QMB-BAS/SMB/SMF programs.
- OAR 461-145-0020 about annuities is being amended to state that in the QMB-BAS/SMB/SMF programs, an annuity is not considered a resource, but annuity payments are counted as unearned income to the payee.
- OAR 461-145-0040 about burial arrangements and burial funds is being amended to state that these items are excluded in the QMB-BAS/SMB/SMF programs.
- OAR 461-145-0050 about burial spaces and merchandise is being amended to remove QMB-BAS/SMB/SMF programs from sections that refer to these items as countable resources.
- OAR 461-145-0089 about income and resources for corporations and other business entities in the OSIP, OSIPM, and QMB programs is being amended to remove QMB-BAS/SMB/SMF programs from sections that refer to the treatment of the equity value of an ownership interest in a corporation or business entity.
- OAR 461-145-0220 about the home has been amended to remove QMB-BAS/SMB/SMF programs from sections that refer to the home as a countable resource.
- OAR 461-145-0240 about income-producing sales contracts is being amended to remove references to QMB-BAS/SMB/SMF programs in sections which address these items as countable resources.
- OAR 461-145-0252 about the treatment of income-producing property in the OSIP, OSIPM, and QMB programs is being amended to remove QMB-BAS/SMB/SMF programs from the section about counting the equity value of income-producing property as a resource.
- OAR 461-145-0310 about life estates is being amended to remove QMB-BAS/SMB/SMF programs as life estates are resources and will no longer be an eligibility factor.
- OAR 461-145-0320 about life insurance is being amended to remove QMB-BAS/SMB/SMF programs because life insurance is a resource and will no longer be an eligibility factor.
- OAR 461-145-0330 about loans and interest on loans is being amended to remove references to QMB-BAS/SMB/SMF programs in sections which address loans as a resource and to establish new rules for how to treat payments to both a lender and a borrower.
- OAR 461-145-0360 about motor vehicles is being amended to remove QMB-BAS/SMB/SMF programs because motor vehicles are a resource and will no longer be an eligibility factor.
- OAR 461-145-0380 about pension and retirement plans is being amended to remove QMB-BAS/SMB/SMF programs from sections which refer to these items as countable resources.
- OAR 461-145-0410 about program benefits is being amended to remove associations between QMB-BAS/SMB/SMF programs and benefits that are counted as a resource.

- OAR 461-145-0420 about real property is being amended to remove QMB-BAS/SMB/SMF programs and clarify that real property is excluded in the REF and REFM programs.
- OAR 461-145-0460 about sale of a resource is being amended to establish new rules about how proceeds from a sale are counted, namely that they are not countable as a resource and under what conditions they are counted as income.
- OAR 461-145-0490 about Social Security benefits is being amended to remove the association between QMB-BAS/SMB/SMF programs and circumstances when these benefits are counted as a resource.
- OAR 461-145-0510 about SSI is being amended to remove any association between QMB-BAS/SMB/SMF programs and treatment of SSI as a resource.
- OAR 461-145-0540 about trusts is being amended to state that trust funds are excluded as a resource in the QMB-BAS/SMB/SMF programs and that distributions to or for the benefit of the client are treated as unearned income.
- OAR 461-145-0600 about work-related capital assets, equipment, and inventory is being amended to remove QMB-BAS/SMB/SMF programs.
- OAR 461-150-0050 about prospective eligibility and budgeting is being amended to clarify that certain monies are excluded as income and to remove the association between QMB-BAS/SMB/SMF programs and the resource provisions.
- OAR 461-160-0010 about use of resources in determining financial eligibility is being amended to establish that resources have no effect in determining eligibility for the QMB-BAS/SMB/SMF programs.
- OAR 461-160-0015 about resource limits is amended to state that in the QMB-BAS/SMB/SMF programs, all resources are excluded. (This rule is also amended to move the REF resource limit from the TANF section into its own section. Some of the terminology in the combined section is only applicable to the TANF program. Addressing REF in its own section avoids confusion.)
- OAR 461-170-0011 about changes that must be reported is being amended to state that a change in resources does not need to be reported for the QMB-BAS/SMB/SMF programs.
- OAR 461-175-0310 about the notice situation for asset transfer disqualifications is being amended to remove QMB-BAS/SMB/SMF programs because asset transfers have no effect on eligibility for those programs.

## **OSIPM In-Home Supplement Increase**

OAR 461-155-0575 about the in-home supplement special need in Oregon Supplemental Income Program Medical (OSIPM) is being amended to increase the amount of the payment authorized by the rule from \$15 to \$22 per month. The increase may be adjusted higher or lower depending on spending patterns during the last quarter of 2015. Additionally, the rule is being amended to clarify the type of income counted in determining eligibility for the special need by stating that countable income is used in determining eligibility.

## **OSIPM and QMB Income Deduction**

OAR 461-160-0550, 461-160-0551, and 461-160-0552 about income deductions used to determine countable adjusted income in the OSIPM and QMB programs are being amended to clarify that the \$20 deduction from unearned income is not taken from income received from a program based on need and that is funded fully or in part by the federal government or a nongovernmental agency. OAR 461-160-0552 is also amended to state that the \$20 deduction does not apply to in-kind support and maintenance.

## **Treatment of Indian (Native American) Benefits**

OAR 461-145-0260 about Indian (Native American) benefits is being amended to remove APD medical programs because APD medical policy is no longer aligned with the other programs covered in this rule. A new rule, OAR 461-145-0259, is being adopted to address this topic for APD medical programs.

In addition, non-substantive edits are being made to improve clarity and ease of reading such as updating terminology, alphabetizing programs, correcting and updating statutory and rule references, and correcting formatting and punctuation.

461-115-0700

~~Eff. 10-1-15~~

Eff. 1-1-16

Required Verification; GA, GAM, OSIP, OSIPM, QMB

In the GA, GAM, OSIP, OSIPM, and QMB programs:

- (1) Except as provided in section (2) of this rule, all *eligibility* (see OAR 461-001-0000) factors must be verified at initial application, when there is a change to any factor, and whenever *eligibility* for benefits becomes questionable.
- (2) ~~If~~ In the GA, GAM, OSIP, OSIPM, and QMB-DW programs, if the total reported value of gross "liquid resources" of the *financial group* (see OAR 461-110-0530) is less than \$400, verification of the value of "liquid resources" is only required if questionable. For the purposes of this rule, "liquid resources" include cash as well as other resources that can be converted to cash within 20 business days, except that the cash surrender value of a life insurance policy is not considered a liquid resource.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685, 414.839

## Availability of Resources

- (1) Except as provided in sections (2) to (4) of this rule:
  - (a) In the SNAP program, a resource owned jointly by a client and another individual is available in its entirety to the client.
  - (b) In all other programs, jointly-owned resources are available to members of a *financial group* (see OAR 461-110-0530) only to the extent they own the resource; except that in the OSIPM and QMB-DW programs, jointly-owned "liquid resources" (including bank and other financial institution accounts) are assumed to be available in their entirety to the client. The client has the right to provide evidence rebutting the ownership assumption. For the purposes of this rule, "liquid resources" means cash as well as other resources that can be converted to cash within 20 business days.
- (2) A resource is not available to a client in each of the following situations:
  - (a) The client has a legal interest in the resource, but the resource is not in the client's possession and the client is unable to gain possession of it. In the REF and REFM programs, if a resource remains in the applicant's country of origin, it is not available.
  - (b) The resource is jointly owned with others not in the *financial group* who are unwilling to sell their interest in the resource, and the client's interest is not reasonably saleable.
  - (c) The client verifiably lacks the competence to gain access to or use the resource and there is no legal representative available to act on the client's behalf.
  - (d) The client is a victim of *domestic violence* (see OAR 461-001-0000) and:
    - (A) Attempting to use the resource would subject the client to risk of *domestic violence*; or
    - (B) The client is using the resource to avoid the abusive situation.
  - (e) Except as provided in OAR 461-145-0540, the resource is included in an irrevocable or restricted trust and may not be used to meet the basic monthly needs of the *financial group*.
  - (f) In the OSIP, OSIPM, and QMB programs, there is a legal bar to the sale of the resource.

- (3) A resource is not considered available during the time the owner does not know he or she owns the resource.
- (4) If a resource is subject to an early withdrawal penalty, the amount of the penalty is not available.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839

## Availability and Treatment of Lump-Sum Income

- (1) *Lump-sum income* (see OAR 461-001-0000) is treated as follows if it is received by a member of a *financial group* (see OAR 461-110-0530).
- (2) In the EA, REF, REFM, SNAP, and TANF programs:
  - (a) *Lump-sum income* is a resource.
  - (b) In the EA, REF, REFM, and TANF programs:
    - (A) *Lump-sum income* is considered available to the *financial group* when a member of the group receives the income and until the income becomes unavailable for a reason beyond the group's control.
    - (B) *Lump-sum income* is considered unavailable for a reason beyond the group's control if the member who received the *lump-sum income*:
      - (i) Leaves the *financial group* before spending any of the *lump-sum income*; or
      - (ii) Spends the *lump-sum income* on an immediate basic need or emergency.
- (3) In the ERDC program, *lump-sum income* is excluded.
- (4) In the GA, GAM, OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB\_DW programs, *lump-sum income* is treated as follows:
  - (a) *Lump-sum income* not excluded is unearned income in the month of receipt, and any amount remaining in future months is a resource, except that in the OSIP and OSIPM programs retroactive SSB and SSI payments are treated in accordance with OAR 461-145-0490 and 461-145-0510.
  - (b) The following *lump-sum income* is excluded:
    - (A) The first \$20 received in a month;
    - (B) The income the client turns over to the Department as reimbursement for previous assistance; and
    - (C) The income the client uses to pay for special need items approved by the Department. Special needs are explained at-in OAR 461-155-0500 and following.



(5) In the OSIP-EPD and OSIPM-EPD programs, *lump-sum income* is counted as a resource.

(6) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:

(a) *Lump-sum income* not excluded is unearned income in the month of receipt, except that retroactive SSB and SSI payments are treated in accordance with OAR 461-145-0490 and 461-145-0510.

(b) The following *lump-sum income* is excluded:

(A) The first \$20 received in a month;

(B) The income the client turns over to the Department as reimbursement for previous assistance; and

(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained in OAR 461-155-0500 and following.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839

461-140-0250

~~Eff. 10-1-06~~

Eff. 1-1-16

Determining ~~T~~he Uncompensated Value of a Transferred Asset

- (1) The uncompensated value of a disqualifying transfer of an asset is used in OAR 461-140-0260 to 461-140-0300 to calculate the ineligibility period of the *financial group* ([see OAR 461-110-0530](#)).
- (2) To determine uncompensated value:
  - (a) In the GA, GAM, OSIP, and OSIPM, ~~and QMB~~ programs:
    - (A) The value of the compensation received for the asset is subtracted from the *fair market value* ([see OAR 461-001-0000](#)) of the asset. This result is the uncompensated value, unless the *financial group* had *countable* ([see OAR 461-001-0000](#)) resources of less than the resource limit at the time of the first transfer. If the *financial group* had *countable* resources of less than the resource limit at the time of the first transfer, the remainder is then added to other *countable* resources, and the amount by which the sum exceeds the resource limit in OAR 461-160-0015 is the uncompensated value.
    - (B) For an annuity, unless the client verifies a lesser amount, the *fair market value* is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.
  - (b) In all other programs, the value of the compensation received for the resource is subtracted from the *fair market value* of the resource. The remainder is added to the other *countable* resources at the time of the transfer. The amount by which the sum exceeds the resource limit is the uncompensated value.
  - (c) The compensation received for a transferred asset includes---
    - (A) Encumbrances assumed by the buyer; and
    - (B) Goods or services provided to the client, limited to their true value, if there was a prior agreement to exchange the asset for the goods or services.

Stat. Auth.: ORS [409.050](#), 411.060, [411.070](#), [411.404](#), [411.706](#), 411.816, ~~418.100~~ [412.049](#), [413.085](#), [414.685](#)

Stats. Implemented: ORS [409.010](#), [409.050](#), [410.020](#), 411.060, [411.070](#), [411.404](#), 411.632, [411.706](#), 411.816, ~~418.100~~ [412.049](#), [413.085](#), [414.685](#), [414.839](#)

461-145-0010  
Animals

~~Eff. 10-1-15~~

Eff. 1-1-16

- (1) Animals that are kept as pets or raised as food for the filing group (OAR 461-110-0310) are excluded.
- (2) The treatment of an animal considered *income-producing property* (see OAR 461-001-0000) is covered by the *income-producing property* rules (see OAR 461-145-0250 and 461-145-0252).
- (3) In the OSIP, OSIPM, and QMB-DW programs:
  - (a) The *fair market value* (see OAR 461-001-0000) of animals that are kept or retained for sale or resale is a *countable* (see OAR 461-001-0000) resource.
  - (b) If an animal is a source of both food and income for the filing group:
    - (A) The *fair market value* of the animal remains excluded.
    - (B) The proceeds of any sales of the animal or its products are counted as unearned income.
- (4) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, all animals are excluded as a resource.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839

(1) For the purposes of this rule:

(a) "Actuarially sound" means ~~a commercial annuity~~ ies (see subsection (d) of this section) which that pays principal and interest out in equal monthly installments over the actuarial life expectancy of the annuitant. For purposes of this definition, the actuarial life expectancy is established by the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, and, for transactions (including the purchase of an annuity) occurring on or after July 1, 2008, the payout period must be within three months of the actuarial life expectancy.

(b) ~~For a client, an An~~ annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380.)

~~(c) — The definition of "child" in OAR 461-001-0000 does not apply.~~

~~(dc)~~ "Child" means a biological or adoptive child who is:

(A) Under age 21; or

(B) Any age and meets the Social Security Administration criteria for blindness or disability.

~~(ed)~~ "Commercial annuities" means contracts or agreements (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) ~~An~~ In all programs except QMB-BAS, QMB-SMB, and QMB-SMF, an annuity is counted as a resource if---

(a) The annuity does not make regular payments for a lifetime or specified number of years; or

(b) The annuity does not qualify for exclusion as a resource under ~~subsection paragraph~~ (4)(~~eb~~)(C) of this rule.

(3) If an annuity is a *countable* (see OAR 461-001-0000) resource under this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular payments already received, minus any early withdrawals, and minus any surrender fees.

(4) *Commercial annuities* and payments from such annuities are counted as follows:

- (a) In all programs except OSIP, ~~OSIPM~~, and QMB, annuity payments are counted as unearned income to the payee.
- (b) In the OSIP and QMB-DW programs:
  - (A) For ~~a client an individual~~ in a *nonstandard living arrangement* (see OAR 461-001-0000), if ~~a client an individual~~ or the *spouse* (see OAR 461-001-0000) of ~~a client an individual~~ purchases or transfers an annuity prior to January 1, 2006, the transaction may be subject to the rules on asset transfers ~~at in~~ OAR 461-140-0210 and following. For an annuity that is not disqualifying or for ~~a client an individual~~ in a *standard living arrangement* (see OAR 461-001-0000), the annuity payments are counted as unearned income to the payee.
  - (B) If ~~a client an individual~~ or the *spouse* of ~~a client an individual~~ purchases an annuity on or after January 1, 2006, the annuity is counted as a resource unless it is excluded under paragraph (C) of this subsection.
  - (C) An annuity described in paragraph (B) of this subsection is excluded as a resource if the criteria in subparagraphs (i), (ii), and (iii) of this paragraph are met, except that if an unmarried ~~client individual~~ is the annuitant, the requirements of subparagraph (iv) of this paragraph must also be met and if ~~a the spouse~~ of ~~a client an individual~~ is the annuitant, the requirements of subparagraph (v) of this paragraph must also be met.
    - (i) The annuity is irrevocable.
    - (ii) The annuity ~~must be~~ is *actuarially sound* (see subsection (1)(a) of [this rule](#)).
    - (iii) The annuity is issued by a business that is licensed and approved to issue *commercial annuities* by the state in which the annuity is purchased.
    - (iv) If an unmarried ~~client individual~~ is the annuitant, the annuity must specify that upon the death of the ~~client individual~~, the first remainder beneficiary is either of the following:
      - (I) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the ~~client individual~~.

- (II) The *child* (see subsection (1)(c) of this rule) of the ~~client individual~~, if the Department is the next remainder beneficiary (after this *child*), up to the amount of medical benefits provided on behalf of the ~~client individual~~, in the event that the *child* does not survive the ~~client individual~~.
  
- (v) If ~~a~~ the spouse of ~~a client~~ an individual is the annuitant, the annuity must specify that, upon the death of the *spouse* of the ~~client individual~~, the first remainder beneficiaries are either of the following:
  - (I) The ~~client individual~~, in the event that the ~~client individual~~ survives the *spouse*; and the Department, in the event that the ~~client individual~~ does not survive the *spouse*, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the ~~client individual~~.
  
  - (II) A *child* of the *spouse*; and the ~~client individual~~ in the event that this *child* does not survive the *spouse*.
  
- (D) If an annuity is excluded under paragraph (C) of this subsection, annuity payments are counted as unearned income to the payee.
  
- (c) For OSIPM, see OAR 461-145-0022.

(5) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, annuity payments are counted as unearned income to the payee.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685  
Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.070, 411.060, 411.070, 411.083, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839

## Burial Arrangements and Burial Funds

(1) The following definitions apply to this rule:

- (a) ~~A "burial arrangement" is~~ means an agreement with an entity --- such as a funeral agreement (which means an arrangement made with a licensed funeral provider), burial insurance, or a burial trust designating a funeral director as the beneficiary --- that makes allowance for burial costs. A "burial arrangement" does not include a burial space, which is covered in OAR 461-145-0050, or a *burial fund* (see subsection (b) of this section).
- (b) ~~A "burial fund" is~~ means an identifiable fund set aside for a client's burial costs. A "burial fund" does not include a burial space, which is covered in OAR 461-145-0050, or a *burial arrangement* (see subsection (a) of this section).

(2) Except as provided in subsection (e) of this section, a *burial arrangement* is treated as follows:

- (a) In the ERDC, REF, REFM, SNAP, and TANF programs, the *equity value* (~~defined in~~ see OAR 461-001-0000) of one prepaid *burial arrangement* for each member of the filing group (see OAR 461-110-0310) is excluded.
- (b) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), up to \$1,000 in combined *equity value* of each *burial arrangement* with a licensed funeral director (plus accrued interest) and life insurance policies are excluded. The amount of combined cash and *equity value* of all life insurance and burial arrangements that is over \$1,000 is counted as a resource.
- (c) In the GA, GAM, OSIP, OSIPM, and QMB-~~DW~~ programs, the amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs is excluded.
- (d) In all programs not listed in subsection (a) of this section and for OSIP and OSIPM clients not covered by subsection (b) of this section, a *burial arrangement* is treated in the manner as the program treats a *burial fund* under section (3) of this rule.
- (e) Burial insurance that has cash surrender value is considered life insurance and is treated in accordance with OAR 461-145-0320 and, as applicable, subsection (b) of this section.

(3) A *burial fund* is treated as follows:

- (a) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs:

- (A) A *burial fund* may be established only from financial means such as cash, burial contracts, bank accounts, stocks, bonds, or life insurance policies.
  - (B) A *burial fund* is counted as a resource if it is commingled with assets unrelated to a burial. The amount set aside for burial must be in a separate account to be excluded from resource consideration.
  - (C) A *burial fund* may be established if the *countable* ([see OAR 461-001-0000](#)) resources of a client exceed allowable limits. A *burial fund* is excluded from the resource calculation to the extent allowed in paragraph (D) of this subsection.
  - (D) The following calculation determines the exclusion for a *burial fund*:
    - (i) Up to \$1,500 of a *burial fund* may be excluded from resources for each of the following:
      - (I) The client.
      - (II) The client's spouse.
    - (ii) The amount in subparagraph (i) of this paragraph is reduced by the total of the following amounts:
      - (I) The face value of life insurance policies owned by the client that have already been excluded from resources.
      - (II) The amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs.
  - (E) All interest earned on an excluded *burial fund* or increases in the value of an excluded *burial arrangement* if left in the fund is excluded from income.
- (b) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, a *burial fund* is excluded as a resource.
- ~~(b)~~ In all programs not listed in subsections (a) or (b) of this section, a *burial fund* is counted as a resource.
- (4) There is no overpayment for the time period during which the *burial arrangement* or *burial fund* existed if a client ---
- (a) Cancels an excluded *burial arrangement*; or
  - (b) Uses an excluded *burial fund* for any purpose other than burial costs.



- (5) If an asset originally used as a *burial arrangement* or *burial fund* is converted to other uses, the asset is treated under the other applicable rules.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, [413.085](#), [414.685](#)

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, [413.085](#), [414.685](#), [414.839](#)

461-145-0050

~~Eff. 4-1-15~~

Eff. 1-1-16

Burial Spaces and Merchandise

- (1) Burial spaces include conventional grave sites, crypts, mausoleums, urns, and other repositories that are traditionally used for the remains of deceased individuals. Burial spaces also include headstones and the opening and closing of the grave.
  - (a) In the ERDC, REF, REFM, SNAP, and TANF programs, the *equity value* (see OAR 461-001-0000) of one burial space is excluded as a resource for each member of the *financial group* (see OAR 461-110-0530).
  - (b) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs, the *equity value* of a burial space is excluded as a resource if owned by the client and designated for the client, the *spouse* (see OAR 461-001-0000) of the client, minor and adult children, siblings, parents, and the *spouse* of any of these individuals.
- (2) Burial merchandise includes, but is not limited to, caskets, liners, burial vaults, markers, and foundations. The *equity value* of burial merchandise is excluded as a resource if owned by the client and designated for ---
  - (a) In the ERDC, REF, REFM, SNAP, and TANF programs, a member of the *financial group*.
  - (b) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs, the client, the *spouse* of the client, minor and adult children, siblings, parents, and the *spouse* of any of these individuals.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839

## Corporations and Other Business Entities; Income and Resources, Not Self-Employment; OSIP, OSIPM, QMB

- (1) For purposes of this rule:
  - (a) "Business entity" includes a sole proprietorship, a partnership, and an unincorporated limited liability company.
  - (b) "Principal" means an individual with significant authority in and responsibility for the success or failure of a corporation or "business entity" (see subsection (a) of this section), including:
    - (A) A sole proprietor.
    - (B) A general partner in a partnership.
    - (C) A member or manager of a limited liability company.
    - (D) An officer or stockholder with controlling shares in a closely-held corporation.
- (2) This rule applies to an individual who has an ownership interest in:
  - (a) A corporation; or
  - (b) A *business entity*, but is not considered self-employed (see OAR 461-145-0915).
- (3) For an individual with an ownership interest in and actively working for a corporation:
  - (a) The individual cannot be considered self-employed, regardless of whether or not the individual is a *principal* (see subsection (1)(b) of this rule). Income from actively working for the corporation is treated as earned income as provided in OAR 461-145-0130.
  - (b) Dividends or profits are treated as unearned income.
  - (c) Income not paid to an individual but retained by the corporation is not considered income of the individual.
  - (d) Property and resources owned by the corporation are excluded.
  - (e) Except for QMB-BAS, QMB-SMB, and QMB-SMF, if maintaining an ownership interest in a corporation is required for employment, the *equity value* (see OAR 461-001-0000) of the ownership interest is excluded; otherwise it is counted as provided in subsection (6)(a) of this rule.

- (f) Except as provided in OAR 461-145-0280, a non-business expenditure – including, but not limited to, a car or housing payment – paid by the corporation that benefits the individual is treated as earned income of the individual.
- (4) If the individual has an ownership interest in a *business entity*, is considered a *principal*, and is actively working in the *business entity*, the individual is considered self-employed (see OAR 461-145-0915).
  - (5) If the individual has an ownership interest in a *business entity*, is not considered a *principal*, and is actively working in the *business entity*:
    - (a) The individual’s income, not including dividends or profits from the *business entity*, is treated as earned income as provided in OAR 461-145-0130.
    - (b) Dividends or profits are treated as unearned income.
    - (c) Except for QMB-BAS, QMB-SMB, and QMB-SMF, ~~if~~ maintaining an ownership in the *business entity* is required for employment, the *equity value* of the ownership interest is excluded; otherwise it is counted as provided in subsection (6)(a) of this rule.
    - (d) Except as provided in OAR 461-145-0280, a non-business expenditure – including, but not limited to, a car or housing payment – paid by a *business entity* that benefits the individual is treated as earned income of the individual.
  - (6) If the individual has an ownership interest in a corporation or *business entity*, but is not actively working in the corporation or *business entity*:
    - (a) Except for QMB-BAS, QMB-SMB, and QMB-SMF, and ~~except~~ as provided in OAR 461-140-0020, the *equity value* of an ownership interest in a corporation or *business entity*, such as stock in the corporation, is treated as a resource. See OAR 461-145-0520 for how to treat stock.
    - (b) Except as provided in OAR 461-140-0040, income of the individual from a corporation or *business entity* is treated as unearned income of the individual.
    - (c) Except as provided for in OAR 461-145-0280, a non-business expenditure – including, but not limited to, a car or housing payment – paid by a corporation or *business entity* that benefits the individual is treated as unearned income of the individual.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685  
 Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685, 414.839

- (1) Home defined: A home is the place where the filing group (see OAR 461-110-0310) lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:
  - (a) Land on which the home is built and contiguous property.
    - (A) In all programs except the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, property must meet all the following criteria to be considered contiguous property:
      - (i) It must not be separated from the land on which the home is built by land owned by people outside the *financial group* (see OAR 461-110-0530).
      - (ii) It must not be separated by a public right-of-way, such as a road.
      - (iii) It must be property that cannot be sold separately from the home.
    - (B) In the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the *financial group*.
  - (b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.
- (2) Exclusion of home and other property:
  - (a) For an individual who has an *initial month* (see OAR 461-001-0000) of long-term care on or after January 1, 2006:
    - (A) For purposes of this subsection:
      - ~~(i) — The definition of "child" in OAR 461-001-0000 does not apply.~~
      - ~~(ii) — "Child" means a biological or adoptive child who is:~~
        - ~~(i) Under age 21; or~~
        - ~~(ii) Any age and meets the Social Security Administration criteria for blindness or disability.~~
    - (B) The *equity value* (see OAR 461-001-0000) of a home is excluded if the requirements of at least one of the following subparagraphs are met:

- (i) The "*child*" ([see paragraph \(A\) of this subsection](#)) of the individual occupies the home.
  - (ii) The *spouse* (see OAR 461-001-0000) of the individual occupies the home.
  - (iii) The equity in the home is \$552,000 or less, and the requirements of at least one of the following sub-subparagraphs are met:
    - (I) The individual occupies the home.
    - (II) The home equity is excluded under OAR 461-145-0250.
    - (III) The home is listed for sale per OAR 461-145-0420.
  - (iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than \$552,000 and the individual is unable legally to convert the *equity value* in the home to cash.
- (b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.
- (c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461-145-0420.
- (3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:
- (a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB-DW programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.
  - ~~(b) In the SNAP program, when the *financial group* is absent because of employment or training for future employment.~~
  - (eb) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs, when the individual is absent to receive care in a medical institution, if one of the following is true:
    - (A) The absent individual has provided evidence that the individual will return to the home. The evidence must reflect the subjective intent of the

individual, regardless of the individual's medical condition. A written statement from a competent individual is sufficient to prove the intent.

(B) The home remains occupied by the individual's *spouse*, child, or a relative dependent on the individual for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

(~~c~~) In the REF, REFM, and TANF programs, when all members of the filing group are absent because:

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

(d) In the SNAP program, when the *financial group* is absent because of employment or training for future employment.

Stat. Auth.: ORS [409.050](#), [410.070](#), 411.060, 411.070, 411.404, 411.816, 412.049, [413.085](#), [414.685](#)

Stats. Implemented: ORS [409.010](#), [409.050](#), [410.010](#), [410.020](#), [410.070](#), [410.080](#), 411.060, 411.070, 411.404, 411.816, 412.049, [413.085](#), [414.685](#), [414.839](#)

## Income-Producing Sales Contract

- (1) The *equity value* (see OAR 461-001-0000) of an income-producing sales contract is treated as follows:
  - (a) In the GA, GAM, OSIPM, and QMB-DW programs for contracts originating on or after October 1, 2012:
    - (A) Except for a contract resulting from the sale of a home, that is treated in accordance with paragraph (B) of this subsection, it is a *countable* (see OAR 461-001-0000) resource valued at the outstanding principal balance of the contract unless the individual provides convincing evidence of a lower cash value or there is a legal bar to the sale of the contract. If there is a legal bar to the sale of the contract, the *equity value* of the contract is a transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client) for less than *fair market value* (see OAR 461-001-0000).
    - (B) The *equity value* of a contract resulting from the sale of a home is excluded if the entire principal portion of the payments received from the contract is used to purchase another home within three calendar months of receipt of the payments. Otherwise the *equity value* is treated in accordance with paragraph (A) of this subsection.
  - (b) Except as provided for in subparagraph (a) of this section, it is excluded.
- (2) In all programs, income received from a sales contract is treated as provided in OAR 461-145-0460.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839



## Income-Producing Property; OSIP, OSIPM, and QMB

- (1) This rule does not apply to personal or real property used in self-employment. See OAR 461-145-0915 to determine what constitutes self-employment and OAR 461-145-0600 to determine how to treat real or personal property used in self-employment.
- (2) Income from *income-producing property* (see OAR 461-001-0000) is counted as follows:
  - (a) If a member of the *financial group* (see OAR 461-110-0530) actively manages the property 20 hours or more per week, the income is treated in the same manner as self-employment income (see OAR 461-145-0915, 461-145-0920, and 461-145-0930).
  - (b) If a member of the *financial group* does not actively manage the property 20 hours or more per week, the income is counted as unearned income with exclusions allowed only in accordance with OAR 461-145-0920.
- (3) Except for QMB-BAS, QMB-SMB, and QMB-SMF, the *equity value* (see OAR 461-001-0000) of *income-producing property* is counted as a resource, subject to the following exceptions:
  - (a) Except as provided in OAR 461-140-0020.
  - (b) If the *income-producing property*, including houses or apartments for rent and land other than the primary residence, produces an annual *countable* (see OAR 461-001-0000) income of at least six percent of its *equity value*, the value of the property is excluded up to a maximum of \$6,000.
  - (c) If the annual *countable* income drops below six percent of the *equity value* of the *income-producing property* due to circumstances beyond the client's control, the client has up to 24 months from the end of the tax year in which the earnings dropped below six percent to meet the six percent requirement.
  - (d) The *equity value* of government permits representing authority granted by a government agency to engage in income-producing activity is excluded in its entirety.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, ~~411.400~~, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.070, 411.060, 411.070, ~~411.400~~, 411.404, 411.706, 413.085, 414.685, 414.839

Indian (Native American) Benefits; GA, GAM, OSIP, OSIPM, and QMBTHIS IS A NEW RULE

- (1) In the GA and GAM programs, Indian benefits described in section (2) of this rule are counted as *periodic income* (see OAR 461-001-0000 and 461-140-0110) or *lump-sum income* (see OAR 461-001-0000 and 461-140-0120), unless the individual verifies that such benefits are excluded by the public law for state-funded programs.
- (2) The following Indian (Native American) benefits are excluded from income and resources:
- (a) Indian lands held jointly with the tribe, or land that may not be sold without the approval of the Bureau of Indian Affairs (BIA).
  - (b) Payments made under the Indian Judgment Funds Distribution Act (Public Law 93-134).
  - (c) Distribution of Indian Judgment Funds (Public Law 97-458).
    - (A) Indian judgment funds include interest and investment income accrued while the funds are held in trust.
    - (B) Initial purchases made with distributed judgment funds are excluded from resources.
  - (d) Per capita distributions of all funds held in trust by the Secretary of the Interior to members of an Indian tribe (Public Law 98-64).
  - (e) The following items received from a native corporation are excluded under the Alaska Native Claims Settlement Act (ANCSA) (Public Law 100-241):
    - (A) Cash received from a native corporation, including cash dividends on stock received from a native corporation, to the extent it does not exceed \$2,000 per individual per year.
    - (B) Stock, including stock issued or distributed by a native corporation as a dividend or distribution on stock.
    - (C) A partnership interest.
    - (D) Land or an interest in land, including land or an interest in land received from a native corporation as a dividend or distribution on stock.
    - (E) An interest in a settlement trust.

- (f) Up to \$2000 per year received from payments from individual interests in Trust or Restricted Lands (Public Law 103-66).
- (g) Distribution of Per Capita Funds to the Red Lake Band of Chippewa Indians from the proceeds of the sale of timber and lumber on the Red Lake Reservation (Public Law 85-794).
- (h) Distribution of Per Capita Funds by the Blackfeet and Gros Ventre tribal governments to members, which resulted from judgment funds to the tribes (Public Law 92-254).
- (i) Distribution of Claims Settlement Funds to members of the Hopi and Navajo Tribes (Public Laws 93-531 and 96-305).
- (j) Receipts and distributions derived from lands held in trust for Indian tribes are excluded from the following Indian groups (Public Law 94-114):
  - (A) Seminole Indians.
  - (B) Pueblos of Zia and Jimenez.
  - (C) Stockbridge Munsee Indian Community.
  - (D) Burns Indian Colony.
  - (E) Assiniboine and Sioux Tribe.
  - (F) Bad River Band of the Lake Superior Tribe of Chippewa Indians.
  - (G) Blackfeet Tribe of Montana.
  - (H) Cherokee Nation of Oklahoma.
  - (I) Cheyenne River Sioux Tribe.
  - (J) Crow Creek Sioux Tribe.
  - (K) Devil's Lake Sioux Tribe.
  - (L) Fort Belknap Indian Community.
  - (M) Keweenaw Bay Indian Community.
  - (N) Lac Courte Oreilles Band of Lake Superior Chippewa Indians.

- (O) Lower Brule Sioux Tribe.
- (P) Minnesota Chippewa Tribe.
- (Q) Navajo Tribe.
- (R) Oglala Sioux Tribe.
- (S) Rosebud Sioux Tribe.
- (T) Shoshone-Bannock Tribe.
- (U) Standing Rock Sioux Tribe.
  
- (k) Judgment funds distributed per capita to, or held in trust for, members of the Sac and Fox Indian Nation (Public Law 94-189).
- (l) Judgment funds distributed per capita to, or held in trust for, members of the Grand River Band of Ottawa Indians (Public Law 94-540).
- (m) Judgment funds distributed per capita to members of the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Public Law 95-433).
- (n) Receipts derived from trust lands awarded to the Pueblo of Santa Ana and distributed to members of that tribe (Public Law 95-498).
- (o) Receipts derived from trust lands awarded to the Pueblo of Zia and distributed to members of that tribe (Public Law 95-499).
- (p) Judgment funds distributed per capita or made available for programs for members of the Delaware Tribe of Indians and the absentee Delaware Tribe of Western Oklahoma (Public Law 96-318).
- (q) Funds and distributions to members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians under the Maine Indian Claims Settlement Act (Public Law 96-420).
- (r) Distributions of judgment funds to members of the San Carlos Tribe of Arizona (Public Law 97-95).
- (s) Distributions of judgment funds to members of the Wyandot Tribe of Indians of Oklahoma (Public Law 97-371).

- (t) Distributions of judgment funds to members of the Shawnee Tribe of Indians (Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, and the Cherokee Band of Shawnee descendants) (Public Law 97-372).
- (u) Judgment funds distributed per capita or made available for programs for members of the Miami Tribe of Oklahoma and the Miami Indians of Indiana (Public Law 97-376).
- (v) Distributions of judgment funds to members of the Clallam Tribe of Indians of the State of Washington (Port Gamble Indian Community, Lower Elwha Tribal Community, and the Jamestown Band of Clallam Indians) (Public Law 97-402).
- (w) Judgment funds distributed per capita or made available for programs for members of the Pembina Chippewa Indians (Turtle Mountain Band, Chippewa Cree Tribe, Minnesota Chippewa Tribe, and Little Shell Band of Chippewa Indians of Montana) (Public Law 97-403).
- (x) Per capita distributions of judgment funds to members of the Gros Ventre and Assiniboine Tribes of Fort Belknap Indian Community, and the Papago Tribe of Arizona (Public Law 97-408).
- (y) Up to \$2,000 of per capita distributions of judgment funds to members of the Confederated Tribes of the Warm Springs Reservation (Public Law 97-436).
- (z) Judgment funds distributed to the Red Lake Band of Chippewa Indians (Public Law 98-123).
- (aa) Funds distributed per capita or family interest payments for members of the Assiniboine Tribe of the Fort Belknap Indian Community of Montana and the Assiniboine Tribe of the Fort Peck Indian Reservation of Montana (Public Law 98-124).
- (bb) Judgment funds and income therefrom distributed to members of the Shoalwater Bay Indian Tribe (Public Law 98-432).
- (cc) All distributions to heirs of certain deceased Indians under the Old Age Assistance Claims Settlement Act (Public Law 98-500).
- (dd) Judgment funds distributed per capita or made available for any tribal program, for members of the Wyandotte Tribe of Oklahoma and the Absentee Wyandottes (Public Law 98-602).
- (ee) Per capita and dividend payment distributions of judgment funds to members of the Santee Sioux Tribe of Nebraska, the Flandreau Santee Sioux Tribe, and the Prairie Island Sioux, Lower Sioux, and Shakopee Mdewakanton Sioux Communities of Minnesota (Public Law 99-130).

- (ff) Funds distributed per capita or held in trust for members of the Chippewas of Lake Superior and the Chippewas of the Mississippi (Public Law 99-146).
- (gg) Distributions of claims settlement funds to members of the White Earth Band of Chippewa Indians as allottees, or their heirs (Public Law 99-264).
- (hh) Payments or distributions of judgment funds, and the availability of any amount for such payments or distributions, to members of the Saginaw Chippewa Indian Tribe of Michigan (Public Law 99-346).
- (ii) Judgment funds distributed per capita or held in trust for members of the Chippewas of Lake Superior and the Chippewas of the Mississippi (Public Law 99-377).
- (jj) Judgment funds distributed to members of the Cow Creek Band of Umpqua Tribe of Indians (Public Law 100-139).
- (kk) Per capita restitution payments made to eligible Aleuts who were relocated or interned during World War II (Public Law 100-383).
- (ll) Per capita payments of claims settlement funds to members of the Coushatta Tribe of Louisiana (Public Law 100-411).
- (mm) Funds distributed per capita for members of the Hoopa Valley Indian Tribe and the Yurok Indian Tribe (Public Law 100-580).
- (nn) Judgment funds held in trust by the United States, including interest and investment income accruing on such funds, and judgment funds made available for programs or distributed to members of the Wisconsin Band of Potawatomi (Hannahville Indian Community and Forest County Potawatomi) (Public Law 100-581).
- (oo) All funds, assets, and income from the trust fund transferred to the members of the Puyallup Tribe under the Puyallup Tribe of Indians Settlement Act of 1989 (Public Law 101-41).
- (pp) Judgment funds distributed per capita, or held in trust, or made available for programs, for members of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida, plus any interest and investment income accruing on the funds held in trust (Public Law 101-277).
- (qq) Payments, funds, distributions, or income derived from them under the Seneca Nation Settlement Act of 1990 (Public Law 101-503).

- (rr) Per capita distributions of settlement funds under the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 (Public Law 101-618).
- (ss) Settlement funds, assets, income, payments or distributions from Trust Funds to members of the Catawba Indian Tribe under the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 (Public Law 103-116).
- (tt) Settlement funds held in trust, including interest and investment income accruing on such funds, and payments made to members of the Confederated Tribes of the Colville Reservation under the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103-436).
- (uu) Payments made or benefits granted by the Crow Boundary Settlement Act of 1994 (Public Law 103-444).
- (vv) Per capita distribution judgment funds to members of the Western Shoshone Indians (Public Law 108-270).
- (ww) Payments made or granted to the Aroostook Band of Micmacs under Public Law 102-171.
- (xx) Payments made from the distribution of judgment funds to members of the Confederated Tribes of the Umatilla under Public Law 91-259.
- (yy) Payments from the Tribal Trust Accounting and Management Lawsuits under Public Law 111-291, section 101.
- (3) Bureau of Indian Affairs (BIA) General Assistance payments are federally-funded income based on need and are counted as unearned income, regardless of whether they are paid in cash or in kind. The \$20 per month general income exclusion does not apply to these payments.
- (4) Individual Indian Money (IIM) accounts are treated as follows:

  - (a) For an account that requires BIA Authorization for withdrawal (restricted):

    - (A) A deposit required by the BIA is excluded as income and as a resource.
    - (B) A deposit not required by the BIA is counted or excluded as income in accordance with this chapter of rules based on the source of the deposit. The deposit is excluded as a resource.
    - (C) A withdrawal is treated in accordance with this chapter of rules based on the source of the funds withdrawn. When funds in the account include both excluded and non-excluded funds, the Department presumes that the non-excluded funds are withdrawn first.

(b) For an account that does not require BIA authorization for a withdrawal (unrestricted): Deposits and withdrawals are treated in accordance with this chapter of rules based on the source of the deposit or withdrawal. When funds in the account include both excluded and non-excluded funds, the Department presumes that the non-excluded funds are withdrawn first.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 413.085, 414.685  
Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.070, 411.060, 411.070, 411.083, 411.404, 413.085, 414.685, 414.839



Indian (Native American) Benefits; Not GA, GAM, OSIP, OSIPM, QMB

- (1) The following Indian (Native American) benefits are excluded:
  - (a) Indian lands held jointly with the tribe, or land that ~~cannot~~may not be sold without the approval of the Bureau of Indian Affairs (BIA).
  - (b) Payments to Puyallup Tribe members from the trust funds established under Public Law 101-41.
  - (c) Payments from the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103-436).
- (2) Payments from the BIA are treated as follows:
  - (a) In the SNAP program, payments from the General Assistance program are counted as unearned income.
  - (b) In all programs except the SNAP program, payments from the General Assistance program are excluded.
  - (c) The treatment of educational income is covered by OAR 461-145-0150.
- ~~(3) In the GA and GAM programs, Indian benefits described in sections (4) to (12) of this rule are counted as periodic or lump sum income (see OAR 461-140-0110 and 461-140-0120), unless the client verifies that such benefits are excluded by the public law for state funded programs.~~
- (43) ~~In all programs except the GA and GAM programs,~~ Payments under Public Law 92-203 (Alaska Native Claim Settlement Act) are treated as follows:
  - (a) In the SNAP program, the entire payment is excluded.
  - (b) In all programs except the ~~GA, GAM, and~~ SNAP programs:
    - (A) Only the tax-exempt portion of the payment is excluded.
    - (B) The remainder of the payment is counted as unearned income.
- (54) ~~In all programs except the GA and GAM programs,~~ The following types of distributions provided under Public Law 100-241 (Alaska Native Claim Settlement Act) are excluded:
  - (a) Stock.
  - (b) A partnership interest.

- (c) Land or interest in land.
- (d) An interest in a settlement trust.
- (e) The first \$2,000 of each per-capita payment per year for each member of the *financial group* (see OAR 461-110-0530) who receives the payment. The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as *lump-sum income* (see OAR [461-001-0000](#) and 461-140-0120).

(65) ~~In all programs except the GA and GAM programs,~~ The Department excludes Indian benefit payments when federal law requires an exclusion. These include payments under each of the following federal laws:

- (a) The Aroostook Band of Micmacs under Public Law 102-171.
- (b) Blackfeet, Cherokee, Cheyenne, Chippewa, and Sioux tribes under Public Law 94-114, when the payment is from submarginal land held in trust by the United States.
- (c) Blackfeet Indians under Public Law 92-254.
- (d) Grand River Ottawa Indians under Public Law 94-540.
- (e) Hopi or Navajo Indians under Public Law 93-531.
- (f) Passamaquoddy Tribe and Penobscott Nation, including the Holton Band of Maliseet Indians, under the Indian Claims Settlement Act (Public Law 96-420).
- (g) Umpqua Tribe Cow Creek Band under Public Law 100-139.
- (h) Yakima Nation Confederated Tribes and Bands of the Mescalero Reservation Apache Tribe under Public Law 95-433.

(76) ~~In all programs e~~ Except in the ~~GA, GAM, and~~ SNAP programs, payments received from trust or restricted lands under Public Law 93-134, Public Law 97-458, and Public Law 103-66 are excluded. In the SNAP program, payments received from trust or restricted lands under 25 USC 1408 (Public Law 93-134, Public Law 97-458, and Public Law 103-66) are treated as follows --

- (a) Excluded as a resource.
- (b) The first \$2,000 of each per-capita payment per year for each member of the *financial group* (see ~~OAR 461-110-0530~~) who receives the payment is excluded as income.

(c) The amount over \$2,000 per year paid to any member of the *financial group* is counted as *periodic income* (see OAR [461-001-0000](#) and 461-140-0110).

(~~87~~) ~~In all programs except the GA and GAM programs, p~~Payments to Seminole Tribe members under Public Law 101-277 are treated as follows:

(a) The first \$2,000 of each per-capita payment per year is excluded for each member of the *financial group* who receives the payment.

(b) The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as *lump-sum income* (see OAR 461-140-0120).

(~~98~~) ~~In all programs except the GA and GAM programs, p~~Payments from the distribution of judgment funds to members of the Confederated Tribes of the Umatilla under Public Law 91-259 are treated as follows:

(a) The first \$2,000 of each per-capita payment per year is excluded for each member of the *financial group* who receives the payment.

(b) The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as *lump-sum income* (see OAR 461-140-0120).

(~~109~~) ~~In all programs except the GA and GAM programs, p~~Payments for assets held in trust to the Sac and Fox Tribe of Oklahoma and Sac and Fox Tribe of the Mississippi in Iowa by the Indian Claims Commission under Public Law 94-189, Section 6 (The Sac and Fox Indian Claims Agreement) are treated as follows:

(a) The first \$2,000 of each per-capita payment per year is excluded for each member of the *financial group* who receives the payment.

(b) The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as *lump-sum income* (see OAR 461-140-0120).

(~~110~~) ~~In all programs except the GA and GAM programs, p~~Payments from judgment funds held in trust by the U.S. Secretary of the Interior under Public Law 98-64 are excluded.

(~~1211~~) ~~In all programs except the GA and GAM programs,~~ Indian Child Welfare payments under Public Law 95-608 are excluded.

(~~1312~~) Tribal payments for child care are treated as follows:

(a) Provider-direct payments are counted as the provider's earned income.

(b) All client-direct payments are excluded.

~~(1413)~~ In each program, any Indian benefit payments distributed by the tribe and not excluded for that program by public law are counted as unearned income.

~~(1514)~~ Payments in the tribal-TANF program are counted in the same manner as TANF program payments under OAR 461-145-0410.

~~(16)~~ In the GA, GAM, OSIP, OSIPM, and QMB programs, Individual Indian Money (IIM) accounts are treated as follows:

~~(a)~~ For a restricted account:

~~(A)~~ A deposit required by the BIA is excluded as income and as a resource.

~~(B)~~ A deposit not required by the BIA is counted or excluded as income in accordance with this chapter of rules based on the source of the deposit. The deposit is excluded as a resource.

~~(C)~~ A withdrawal is treated in accordance with this chapter of rules based on the source of the funds withdrawn. When funds in the account include both excluded and non-excluded funds, the Department presumes that the non-excluded funds are withdrawn first.

~~(b)~~ For an unrestricted account: Deposits and withdrawals are treated in accordance with this chapter of rules based on the source of the deposit or withdrawal. When funds in the account include both excluded and non-excluded funds, the Department presumes that the non-excluded funds are withdrawn first.

~~(1715)~~ Payments from the Tribal Trust Accounting and Management Lawsuits under Public Law 111-291 (section 101) are treated as follows:

(a) The payments are excluded as income in the month of receipt.

(b) The payments are excluded as a resource for the 12 calendar months following the receipt of the payment as long as they are not commingled with other funds.

- (1) For all programs except OSIP, OSIPM, and all QMB programs, if a *financial group* (see OAR 461-110-0530) is living in *real property* (see OAR 461-001-0000) while a member holds a *life estate* (see OAR 461-001-0000) in this property, the property is treated as a home (see OAR 461-145-0220). In all other situations, a *life estate* is treated as *real property* (see OAR 461-145-0420).
- (2) In the OSIP, OSIPM, and QMB-DW programs:
  - (a) For purposes of this section and section (3) of this rule, the value of the rights conferred by the *life estate* is established by the Life Estate and Remainder Interest Table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(A).
  - (b) A *life estate* owned by a member of the *financial group* is treated as follows:
    - (A) If a member of the *financial group* is living on the property the value of the *life estate* is treated as a home (see OAR 461-145-0220).
    - (B) If a member of the *financial group* is not living on the property the value of the *life estate* is counted as a resource. The *life estate* is considered unavailable if other parties with an ownership interest in the property refuse to sell their interest or refuse to purchase the *life estate* interest in the property.
- (3) In the OSIP and OSIPM programs:
  - (a) A transfer for less than *fair market value* (see OAR 461-001-0000) in which a member of the *financial group* retains a *life estate* is a disqualifying transfer. A transfer is considered for less than *fair market value* if the *fair market value* of the transferred resource on the day prior to the transfer is greater than the sum of the value of the rights conferred by the *life estate* plus the compensation received for the transfer.
  - (b) If a member of the *financial group* purchases a *life estate* interest in the home of another individual on or after July 1, 2006, the purchase is considered a transfer of resources unless the client resides in this home for at least 12 consecutive months after the date of the purchase. The value of the transfer for a client who does not reside in the home for at least 12 consecutive months is calculated by using the purchase price of the *life estate*.

- (1) Benefits paid on a life insurance policy are counted as unearned income in the month received and a resource if retained into the following month. The Department counts benefits as received when the insured individual dies or when the insured individual is eligible for and receives accelerated payments before death, such as when the insured individual has a terminal illness. When the payment is a lump sum due to the death of the insured individual a deduction is allowed, not to exceed \$1,500, for the cost of the deceased individual's last illness and burial if these costs were not otherwise insured.
- (2) Burial insurance that has cash surrender value is treated in the same manner that this rule treats life insurance.
- (3) The value of a life insurance policy is treated as follows:
  - (a) All term insurance that has no cash surrender value is excluded.
  - (b) In all programs except GA, GAM, OSIP, OSIPM, and QMB-DW, the cash surrender value of the life insurance policy is excluded.
  - (c) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs:
    - (A) For the purposes of this subsection, the following definitions apply:
      - (i) "Cash surrender value" means the equity that the policy acquires over time.
      - (ii) "Dividend" means a payment of surplus company earnings from the insurer.
      - (iii) "Dividend accumulation" means a *dividend* left with the insurer to accumulate interest that may be withdrawn without affecting the policy's *face value* or *cash surrender value*.
      - (iv) "Dividend addition" means the amount of insurance purchased with a *dividend* that increases the policy's death benefit and *cash surrender value*.
      - (v) "Face value" means the amount of the death benefit contracted for at the time the policy was purchased and does not include a *dividend addition* added after purchase of the policy.
      - (vi) "Viatical settlement" means an agreement allowing a third party to acquire a life insurance policy from a terminally ill individual at an agreed-upon percentage of the life insurance policy's *face value*.

- (B) The *cash surrender value* of life insurance policies owned by the *financial group* (see 461-110-0530) is excluded if the total *face value* of all policies for the insured individual is less than or equal to \$1,500. If the total *face value* of all policies for the insured individual is more than \$1,500, the entire *cash surrender value* is counted as a resource to the owner of the policy. The total *face value* does not include any *dividend addition*. A *dividend accumulation* must count as a resource even if the *face value* of the policy that generated the *dividend accumulation* is excluded.
- (C) The *cash surrender value* of a policy acquired through a *viatical settlement* is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049,  
[414.025](#), [413.085](#), [414.685](#)

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816,  
412.049, [414.025](#), [413.085](#), [414.685](#), [414.839](#)

## Loans and Interest on Loans

- (1) This rule covers proceeds of loans, loan repayments, and interest earned by a lender. If the proceeds of a loan are used to purchase an asset, the asset is evaluated under the other rules in this division of rules.
- (2) For purposes of this rule:
  - (a) In the GA, GAM, OSIP, OSIPM, and QMB programs:
    - (A) "Bona fide loan agreement" means an agreement that --
      - (i) Is enforceable under state law;
      - (ii) Is in effect at the time the cash proceeds are provided to the borrower; and
      - (iii) Includes an obligation to repay and a feasible repayment plan.
    - (B) "Negotiable loan agreement" means a loan agreement in which the instrument ownership and the whole amount of money expressed on its face can be transferred from one person to another (i.e., sold) at prevailing market rates.
  - (b) In all programs:
    - (A) "Reverse-annuity mortgage" means a contract with a *financial institution* (see OAR 461-001-0000) under which the *financial institution* provides payments against the equity in the home that must be repaid when the homeowner dies, sells the home, or moves.
    - (B) The proceeds of a home equity loan or *reverse-annuity mortgage* ([see paragraph \(A\) of this subsection](#)) are considered loans.
- (3) For payments that a member of the *financial group* (see OAR 461-110-0530) receives as a borrower to be treated as a loan:
  - (a) In the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, there must be an oral or written loan agreement, and this agreement must state when repayment of the loan is due to the lender.
  - (b) In programs other than the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, there must be a written loan agreement, and this agreement must be signed by the borrower and lender, dated before the borrower receives the proceeds of the loan, and state when repayment of the loan is due to the lender.



- (4) Payments for a purported loan that do not meet the requirements of section (3) of this rule are counted as unearned income.
- (5) When a member of a *financial group* receives cash proceeds as a borrower from a loan that meets the requirements of section (3) of this rule:
  - (a) In all programs, educational loans are treated according to OAR 461-145-0150.
  - (b) In the ERDC, REF, REFM, SNAP, and TANF programs, the loan is excluded. If retained after the month of receipt, the loan proceeds are treated in accordance with OAR 461-140-0070.
  - (c) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs:
    - (A) If the loan is a *bona fide loan agreement* ([see paragraph \(2\)\(a\)\(A\) of this rule](#)), the money provided by the lender is not income but is counted as the borrower's resource if retained in the month following the month of receipt (notwithstanding OAR 461-140-0070).
    - (B) If the loan is not a *bona fide loan agreement*, the money provided by the lender is counted as income in the month received and is counted as a resource if retained in the month following the month it was received.
  - (d) [In the QMB-BAS, QMB-SMB, and QMB-SMF programs:](#)
    - (A) [If the loan is a \*bona fide loan agreement\*, the money provided by the lender is not considered income.](#)
    - (B) [If the loan is not a \*bona fide loan agreement\*, the money provided by the lender is counted as income in the month received.](#)
- (6) In the OSIPM program, if a client or a spouse of a client uses funds to purchase a mortgage or to purchase or lend money for a promissory note or loan:
  - (a) In a transaction occurring on or after July 1, 2006:
    - (A) The balance of the payments owing to the client or spouse of the client is a transfer of assets for less than *fair market value* ([see OAR 461-001-0000](#)), unless all of the following requirements are met:
      - (i) The total value of the transaction is being repaid to the client or spouse of the client within three months of the client's life expectancy per that person's actuarial life expectancy as established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

- (ii) Payments are made in equal amounts over the term of the transaction without any deferrals or balloon payments.
      - (iii) The contract is not cancelled upon the death of the individual receiving the payments under this transaction.
    - (B) If the loan results in a disqualification and the disqualification period has been served, payments against the principal and interest are treated as unearned income.
  - (b) In a transaction occurring before July 1, 2006, or for a transaction occurring on or after July 1, 2006, that does not result in a disqualification in subsection (a) of this section, the loan is treated as follows:
    - (A) Interest income is treated as unearned income.
    - (B) The loan is counted as a resource if:
      - (i) The *financial group* includes a client in a *nonstandard living arrangement* (see OAR 461-001-0000) and the client's spouse;
      - (ii) The transaction is on or after the date of the first *continuous period of care* (see OAR 461-001-0030); and
      - (iii) The amount of the loan plus other resources transferred exceeds the largest amount in OAR 461-160-0580(2)(f).
    - (C) For all other loans:
      - (i) If the loan is both a *negotiable loan agreement* (see [paragraph \(2\)\(a\)\(B\) of this rule](#)) and a *bona fide loan agreement*, the loan is counted as a resource valued at the outstanding principal balance.
      - (ii) If the loan does not qualify under subparagraph (i) of this paragraph, payments against the principal are counted as unearned income.
- (7) In the GA, GAM, OSIP, and QMB-DW programs:
  - (a) Interest income is treated as unearned income.
  - (b) If the loan is both a *negotiable loan agreement* and a *bona fide loan agreement*, the loan is counted as a resource of the lender valued at the outstanding principal balance.
  - (c) If the loan does not qualify under subsection (b) of this section, the payments against the principal are counted as income to the lender.

(8) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:

(a) Interest income is treated as unearned income.

(b) Payments against the principal of all loans are excluded as income.

(89) In all programs other than the GA, GAM, OSIP, OSIPM, and QMB programs:

(a) The interest payment is counted as unearned income.

(b) The payment of principal is excluded.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085,  
414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 412.014,  
412.049, 413.085, 414.685, 414.839

- (1) The value of disability-related apparatus, optional equipment, or low mileage is not considered in determining the *fair market value* (see OAR 461-001-0000) of an automobile, truck, or van. The *fair market value* of an automobile, truck, or van is presumed to be the "average trade-in value" established in the National Automobile Dealers Association's (NADA) Used Car Guide. If the vehicle is not listed in the NADA Used Car Guide, the "average trade-in value" established in the Kelley Blue Book is used. If the vehicle is not listed in the NADA Used Car Guide and Kelley Blue Book, the "average trade-in value" established in a similar publication is used. A client may rebut the presumption with a statement from a car dealer, mechanic, or other reliable source. If the vehicle is not listed in the NADA Used Car Guide, Kelley Blue Book, ~~and-or~~ a similar publication, the estimate of the value by the client may be accepted unless it appears questionable, in which case additional evidence of the value is required.
- (2) Some programs permit an exclusion for a portion of the *equity value* (see OAR 461-001-0000) for any licensed and unlicensed motor vehicles owned by the *financial group* (see OAR 461-110-0530):
  - (a) In the REF, REFM, SNAP, and TANF programs, this exclusion is up to \$10,000.
  - (b) In the GA and GAM programs, this exclusion is up to \$4,500.
  - (c) Any remaining equity in that vehicle and the total *equity value* of all other vehicles is counted as a resource.
- (3) In the EA and ERDC programs, all motor vehicles are excluded.
- (4) In the OSIP, OSIPM, and QMB-DW programs:
  - (a) The total value of a vehicle selected by the *financial group* is excluded if it is used for transportation of the client or a member of the client's household.
  - (b) The total *equity value* of any vehicle not excluded under subsection (a) of this section and all other vehicles is counted as a resource.
- (5) In the OSIP-EPD and OSIPM-EPD programs, if a vehicle was purchased as an *employment and independence expense* (see OAR 461-001-0035) or with moneys from an *approved account* (see OAR 461-001-0035), the total value of the vehicle is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.117, 411.404, 411.704, 411.706, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.117, 411.404, 411.704, 411.706, 411.816, 412.049

## Pension and Retirement Plans

- (1) Pension and retirement plans include the following:
  - (a) Benefits employees receive only when they retire. These benefits can be disbursed in lump-sum or monthly payments.
  - (b) Benefits that employees are allowed to withdraw when they leave a job before retirement.
  - (c) The following retirement plans if purchased by an individual with funds from the plans authorized by section 401 of the Internal Revenue Code of 1986:
    - (A) Traditional Defined-Benefit Plan.
    - (B) Cash Balance Plan.
    - (C) Employee Stock Ownership Plan.
    - (D) Keogh Plan.
    - (E) Money Purchase Pension Plan.
    - (F) Profit-Sharing Plan.
    - (G) Simple 401(k).
    - (H) 401(k).
  - (d) Retirement plans purchased by an individual with funds from plans authorized by section 403 of the Internal Revenue Code of 1986 at subsections (a) or (b).
  - (e) The following retirement plans and annuities if purchased by an individual with funds from the plans authorized by section 408 of the Internal Revenue Code of 1986 at subsections (a), (b), (c), (k), (p), or (q), or at section 408A:
    - (A) Individual Retirement Annuity.
    - (B) Individual Retirement Account (IRA).
    - (C) Deemed Individual Retirement Account or Annuity under a qualified employer plan.
    - (D) Accounts established by employers and certain associations of employees.

- (E) Simplified Employee Pension (SEP).
- (F) Simple Individual Retirement Account (Simple-IRA).
- (G) Roth IRA.
- (f) The following retirement plans offered by governments, nonprofit organizations, or unions:
  - (A) 457(b) Plan.
  - (B) 501(c)(18) Plan.
  - (C) Federal Thrift Savings Plan under 5 USC 8439.
- (g) In all programs except the OSIP, OSIPM, and QMB programs, an annuity purchased by an individual with funds from a plan authorized under subsection (c), (d), or (f) of this section.
- (2) An annuity purchased by the *spouse* (see OAR 461-001-0000) of an individual with funds from a retirement plan described in subsection (1)(e) of this rule is not considered a retirement plan and is treated in accordance with OAR 461-145-0020 and OAR 461-145-0022.
- (3) Benefits an individual receives from pension and retirement plans are treated as follows:
  - (a) Monthly payments are counted as unearned income.
  - (b) All payments not covered by subsection (a) of this section are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).
- (4) In the OSIP, OSIPM, and QMB-[DW](#) programs:
  - (a) Except for an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule:
    - (A) The *equity value* (see OAR 461-001-0000) of a pension or retirement plan is excluded as a resource if the individual is eligible for monthly or periodic payments under the terms of the plan and has applied for those payments. When an individual is permitted to choose or change a payment option, the individual must select the option that --
      - (i) Provides payments commencing on the earliest possible date; and

- (ii) Completes payments within the actuarial life expectancy, as published in the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, of the individual.
- (B) The *equity value* of all pension and retirement plans not covered by paragraph (A) of this subsection that allows an individual to withdraw funds, minus any penalty for withdrawal, is counted as a resource.
- (b) The *equity value* of an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule is excluded as a resource if it meets the payout requirements of OAR 461-145-0022(10)(c). Otherwise, the *equity value* is counted as a resource.
  - (c) For an individual in a *standard living arrangement* (see OAR 461-001-0000), pension and retirement plans owned by a non-applying *spouse* are excluded. Dividends and interest earned on pension funds owned by a non-applying *spouse* are excluded as income.
- (5) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, dividends and interest earned on pension funds owned by a non-applying spouse are excluded as income.
- (56) In the SNAP program, the value of retirement accounts identified in sections 401(a), 403(a), 403(b), 408, 408(k), 408(p), 408A, 457(b), or 501(c)(18) of the Internal Revenue Code, or in a Federal Thrift Savings Plan account are excluded resources.
- (67) In all programs except the OSIP, OSIPM, QMB, and SNAP programs, the *equity value* of a pension and retirement plan that allows an individual to withdraw funds before retirement, minus any penalty for early withdrawal, is counted as a resource.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

- (1) EA and TA-DVS payments are treated as follows:
  - (a) In the ERDC and SNAP programs, a payment made directly to the client is counted as unearned income. Dual payee and provider-direct payments are excluded.
  - (b) In all programs except the ERDC and SNAP programs, these payments are excluded.
- (2) Payments from ERDC and TANF child care are excluded unless the client is the provider.
- (3) Payments from the GAM, OCCS medical programs, OSIPM, QMB, and REFM programs are excluded.
- (4) Payments from JPI (see OAR 461-135-1260) are issued as a food benefit and are excluded.
- (5) SNAP payments are treated as follows:
  - (a) The value of an SNAP benefit is excluded in all programs except the EA program. In the EA program, the value is counted as a resource when determining the emergency food needs of the filing group (see OAR 461-110-0310 and 461-110-0370).
  - (b) OFSET service payments are excluded.
- (6) Benefits from the GA, OSIP (except OSIP-IC), Post-TANF, REF, SFPSS, TANF, and tribal-TANF programs are treated as follows:
  - (a) In the EA program, these payments are counted as unearned income, except that these payments are excluded for a *benefit group* (see OAR 461-110-0750) whose emergent need is the result of *domestic violence* (see OAR 461-001-0000).
  - (b) In the ERDC program:
    - (A) Post-TANF payments are excluded.
    - (B) All other payments are counted as unearned income.
  - (c) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, these payments are excluded.
  - (ed) In the SNAP program:
    - (A) These payments are treated as unearned income.



- (B) An amount received as a late processing payment is treated as *lump-sum income* (see [OAR 461-001-0000](#) and [461-140-0120](#)).
  - (C) Payments made to correct an underpayment are treated as *lump-sum income*.
  - (D) Ongoing special needs payments for laundry allowances, special diet or meal allowance, restaurant meals, accommodation allowances, and telephone allowances are treated as unearned income. All other special needs payments are excluded as reimbursements.
- (de) In all programs except the EA, ERDC, [QMB-BAS](#), [QMB-SMB](#), [QMB-SMF](#), and SNAP programs:
- (A) These payments are excluded in the month received, and any portion remaining following the month of receipt is counted as a resource.
  - (B) Payments made to correct an underpayment are excluded.
- (ef) In all programs:
- (A) JOBS, REF, and TANF JOBS Plus support service payments are excluded.
  - (B) For the treatment of JOBS Plus income, see OAR 461-145-0130.
  - (C) REF and TANF client incentive payments are treated as follows:
    - (i) Except in the TANF program, the cooperation incentive payment (see OAR 461-135-03210) is counted as unearned income.
    - (ii) Progress and outcome incentive payments other than in-kind payments are counted as *lump-sum income* (see OAR 461-140-0120). All other incentives are excluded.
- (7) Payments from OSIP-IC are treated as follows:
- (a) In the SNAP program, these payments are counted as unearned income and assets held in a *contingency fund* (see OAR 411-030-0020) are counted as a resource.
  - (b) In all other programs, these payments and funds held in a *contingency fund* are excluded.
- (8) Pre-TANF program payments are treated as follows:
- (a) In the SNAP program, a payment for basic living expenses, made directly to the client, is counted as unearned income. All other payments are excluded.

(b) In all programs except the SNAP program, these payments are excluded.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.700, 411.816, 412.014, 412.049

- (1) For purposes of this rule, manufactured and mobile homes and floating homes and houseboats are treated in the same manner as *real property* ([see OAR 461-001-0000](#)).
- (2) The applicant has the burden of proof of establishing the *fair market value* (see OAR 461-001-0000) of *real property* (~~see OAR 461-001-0000~~). *Fair market value* may be established by any methodology determined to accurately reflect the *fair market value* of the *real property*, including the provision of an appraisal or comparative market analysis performed by an impartial individual who is certified or licensed in the applicable jurisdiction.
- (3) *Real property* that is not income-producing or the home of the *financial group* (see OAR 461-110-0530) is treated as follows:
  - (a) In the ~~REF, REFM, and~~ TANF programs, the *equity value* (see OAR 461-001-0000) of all *real property* that is not excluded under a TANF Interim Assistance agreement is counted as a resource.
  - (b) In the EA, ~~and~~ ERDC, [REF](#), and [REFM](#) programs, *real property* is excluded.
  - (c) In the SNAP program, *real property* is treated as follows:
    - (A) The *equity value* of *real property* is excluded if the *financial group* is making a good-faith effort to sell the *real property* at a fair market price.
    - (B) The *equity value* of the *real property* is counted as a resource if the *financial group* refuses to make a good-faith effort to sell.
    - (C) The resource is excluded if selling the resource would produce a net gain to the *financial group* of less than \$1,500.
  - (d) In the GA, GAM, OSIP, OSIPM, and QMB-[DW](#) programs:
    - (A) The *equity value* of *real property* that was the home of the *financial group* is excluded if the *financial group* is making a good-faith effort to sell the *real property* at a reasonable price, unless the *equity value* in the home makes the client ineligible under OAR 461-145-0220(2)(a).
    - (B) The *equity value* of all other *real property* is excluded if the *financial group* is making a good-faith effort to sell the *real property* at a reasonable price. The *equity value* is counted after the *real property* is excluded for nine months unless the failure to sell it is for reasons beyond the reasonable control of the *financial group*.

(e) In the REF and REFM programs, the *equity value* (see OAR 461-001-0000) of all *real property*, both foreign and domestic, is excluded.

(4) The treatment of *real property* that is income producing is covered in OAR 461-145-0250.

(5) The treatment of the home of the *financial group* is covered in OAR 461-145-0220.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.049

(1) In the ERDC program, all proceeds from the sale of a resource are excluded as income and as a resource.

(2) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:

(a) For the sale of a resource (except a home) originating prior to October 12, 2012:

(A) All proceeds received on a monthly or other periodic basis are counted as unearned income.

(B) All proceeds received on a lump-sum basis are excluded as income.

(b) For the sale of a home originating prior to October 1, 2012 all proceeds are excluded as income.

(c) For a sale of a resource (including a home) originating on or after October 1, 2012:

(A) The interest portion of proceeds is counted as unearned income.

(B) The principal portion of proceeds is excluded as income.

(23) In the REF, REFM, and TANF programs:

(a) Proceeds from the sale of an excluded resource to the extent reinvested in another excluded resource are excluded as income and as a resource.

(b) All proceeds from the sale of the resource are counted as unearned income, unless excluded in subsection (a) of this section.

(34) In all programs except the ERDC, QMB-BAS, QMB-SMB, QMB-SMF, REF, REFM, and TANF programs, proceeds from the sale of a resource are treated as follows:

(a) Proceeds from the sale of a resource (other than a home) received on a monthly or other periodic basis are counted as unearned income, except that in the OSIPM and QMB-DW programs for a sale originating on or after October 1, 2012 all proceeds that are principal are counted as a resource.

(b) Proceeds from the sale of a resource (other than a home) received on a lump-sum basis are treated as follows, except that in the OSIPM and QMB-DW programs for a sale originating on or after October 1, 2012 all proceeds that are interest are treated as unearned income:

- (A) If the proceeds are from the sale of an excluded resource, the amount reinvested in another excluded resource is excluded, and the remainder is counted as a resource.
- (B) The proceeds from all other sales are counted as a resource. If the proceeds put the *benefit group* (see OAR 461-110-0750) over the resource limit, the proceeds are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).
- (c) Proceeds from the sale of the home of the *financial group* (see OAR 461-110-0530) are excluded for three months if the *financial group* intends to use the proceeds (subparagraphs (A)(i) and (A)(ii) of this subsection set out the scope of use of excluded proceeds in the GA, GAM, OSIP, and QMB-DW programs) to buy another home, except as follows:
  - (A) In the GA, GAM, OSIPM (except for clients eligible under OAR 461-135-0771), and QMB-DW programs for a home sold on or after October 1, 2012:
    - (i) Principal payments, including lump-sum payments, are excluded for three full calendar months from the date of receipt if the *financial group* intends to use the proceeds to buy another home or for associated costs including:
      - (I) Downpayments;
      - (II) Settlement costs;
      - (III) Loan processing fees and points;
      - (IV) Moving expenses;
      - (V) Necessary repairs to or replacement of the new home's structure or fixtures (including roof, furnace, plumbing, built-in appliances) that are identified and documented prior to occupancy; and
      - (VI) Mortgage payments.
    - (ii) For the purposes of subparagraph (i) of this paragraph, funds that are obligated by contract during these three full calendar months are also excluded.
    - (iii) Interest payments are counted as unearned income.
  - (B) For clients eligible for OSIPM under OAR 461-135-0771, the proceeds from the sale of the financial group's home, if the *financial group* intends to use them to buy another home (subparagraphs (A)(i) and (A)(ii) of this subsection set out the scope of use of excluded proceeds), are treated as follows:

- (i) For a home sold prior to October 1, 2012, the proceeds are excluded for 12 full calendar months.
- (ii) For a home sold on or after October 1, 2012:
  - (I) Principal payments, including lump-sum payments, are excluded for 12 full calendar months from the date of receipt.
  - (II) Interest payments are counted as unearned income.
- (d) The proceeds from the sale of a home that are not reinvested in another home are counted as a resource, except as follows:
  - (A) In the GA and GAM programs, if the proceeds put the *benefit group* over the resource limit, they are counted as periodic or lump-sum income.
  - (B) In the GA, GAM, OSIPM, and QMB-DW programs for a home sold on or after October 1, 2012:
    - (i) Principal is counted as a resource, except that in the GA and GAM programs, if the proceeds put the *benefit group* over the resource limit, they are counted as periodic or lump sum income.
    - (ii) Interest payments are counted as unearned income.
  - (C) In the SNAP program, the proceeds are treated as *lump-sum income* (see OAR 461-001-0000) under OAR 461-140-0120.
- (e) In the SNAP program:
  - (A) Interest received monthly or on another periodic basis from the sale of a home is counted as unearned income.
  - (B) If a self-employed client sells a work-related asset, including equipment and inventory, the proceeds of the sale are treated as self-employment income (see OAR 461-145-0910).
- (45) Costs of the type excluded under OAR 461-145-0920 are subtracted from proceeds counted as income under this rule.

Stat. Auth.: ORS [409.050](#), [410.070](#), 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049, [413.085](#), [414.685](#)

Stats. Implemented: ORS [409.010](#), [409.050](#), [410.010](#), [410.070](#), [410.080](#), 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049, [413.085](#), [414.685](#), [414.839](#)

Except for SSI (see OAR 461-145-0510) and death benefits remaining after burial costs (see OAR 461-145-0500), Social Security benefits are treated as follows:

- (1) Monthly payments are counted as unearned income.
- (2) Except as provided in sections (3) and (4) of this rule, all payments other than monthly payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).
- (3) In the SNAP program, the representative payee fee paid by ~~a client~~ an individual who is required by the Social Security Administration to receive payments through a representative payee is excluded. The amount of the exclusion is limited to the amount authorized by the Social Security Administration.
- (4) In the OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and all QMB programs:
  - (a) For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.
  - (b) Retroactive payments are counted as unearned income in the month of receipt except as provided in subsection (c) of this section.
  - (c) When retroactive payments are made through the representative payee of an individual who is required to have a representative payee because of drug addiction or alcoholism, the retroactive payments may be required to be made in installments. If the payments are made in installments, the total of the benefits to be paid in installments is considered unearned income in the month in which the first installment is made.
  - (d) ~~Any~~ Except for the QMB-BAS, QMB-SMB, and QMB-SMF programs, any remaining amount from a retroactive payment after the month of receipt is ~~counted as an~~ as a resource for nine calendar months following the month in which the payment is received. After the nine-month period, any remaining amount is a *countable* (see OAR 461-001-0000) resource.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049, ~~414.042~~ 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, ~~411.700,~~ 411.816, 412.014, 412.049, ~~414.042~~ 413.085, 414.685, 414.839



461-145-0510  
SSI

~~Eff. 1-1-14~~

Eff. 1-1-16

- (1) In the ERDC, GA, GAM, and SNAP programs, if ~~a client~~ an individual is required by law to receive an SSI benefit through a representative payee, the representative's fee is excluded.
- (2) In the ERDC, GA, and GAM programs:
  - (a) A monthly SSI payment is counted as unearned income.
  - (b) Lump-sum SSI payments are counted according to OAR 461-140-0120.
- (3) In the OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB-DW programs, a retroactive SSI payment is excluded for nine months after the month of receipt. After the nine-month period, any remaining amount is a *countable* (see OAR 461-001-0000) resource. For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.
- ~~(34)~~ In the REF, REFM, and TANF programs:
  - (a) SSI monthly and lump-sum payments are excluded if the recipient will be removed from the *financial group* (see OAR 461-110-0530) the month following receipt of the payment.
  - (b) An SSI lump-sum payment is excluded in the month received and the next month.
- ~~(45)~~ In the SNAP program:
  - (a) A monthly SSI payment is counted as unearned income.
  - (b) A lump-sum SSI payment is excluded.
- ~~(5) In the OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB programs, a retroactive SSI payment is excluded for nine months after the month of receipt. After the nine-month period, any remaining amount is a *countable* (see OAR 461-001-0000) resource. For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.~~

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, ~~411.700~~, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, ~~411.700~~, 411.816, 412.049, 413.085, 414.685, 414.839

## Trusts

- (1) This section applies to all *trust funds* (see OAR 461-001-0000) in the REF, REFM, SNAP, and TANF programs. It also applies to GA, GAM, OSIP, OSIPM, and QMB-DW for *trust funds* established before October 1, 1993:
  - (a) *Trust funds* are counted as a resource if the fund is legally available for use by a member of the *financial group* (see OAR 461-110-0530) for items covered by program benefits. In the OSIP, OSIPM, and QMB-DW programs, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.
  - (b) *Trust funds* are excluded if the fund is not available for use by a member of the *financial group*. The *financial group* must try to remove legal restrictions on the trust, unless that would cause an expense to the group.
  - (c) The part of the fund available for use for medical expenses covered by the medical program for which the *financial group* is eligible is counted.
- (2) In the ERDC program, all *trust funds* are excluded.
- (3) In the OSIP, OSIPM, and QMB-DW programs, *trust funds* established on or after October 1, 1993, are treated in accordance with sections (45) to (101) of this rule. In the GA and GAM programs, *trust funds* established on or after October 1, 1993, are treated in accordance with sections (45) to (89) of this rule.
- (4) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:
  - (a) All *trust funds* are excluded as a resource.
  - (b) A payment made from the trust to or for the benefit of the client is counted as unearned income.
- (45) A trust is considered established if the *financial group* used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:
  - (a) The client.
  - (b) The client's spouse.
  - (c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.
  - (d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

- (56) If the trust contains resources or income of another person, only the share attributable to the client is considered available.
- (67) Except as provided in section (910) of this rule, the following factors are ignored when determining how to treat a trust:
- (a) The purpose for which the trust was established.
  - (b) Whether or not the trustees have or exercise any discretion under the trust.
  - (c) Any restrictions on when or if distributions may be made from the trust.
  - (d) Any restrictions on the use of distributions from the trust.
- (78) If the trust is revocable, it is treated as follows:
- (a) In all programs except the QMB-BAS, QMB-SMB, and QMB-SMF programs:
    - (A) The total value of the trust is considered a resource available to the client.
    - (b) A payment made from the trust to or for the benefit of the client is ~~considered unearned~~ excluded as income.
  - (eb) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.
- (89) If the trust is irrevocable, it is treated as follows:
- (a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.
  - (b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.
  - (c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.
  - (d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(910) Notwithstanding the provisions in sections (1), ~~and (3)~~, and (5) to (89) of this rule, the following trusts are not considered in determining *eligibility* (see OAR 461-001-0000) for OSIPM and QMB-DW:

- (a) A trust containing the assets of a client determined to have a disability that meets the SSI criteria that was created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:
  - (A) The client's *parent* (see OAR 461-001-0000).
  - (B) The client's grandparent.
  - (C) The client's legal guardian or conservator.
  - (D) A court.
- (b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:
  - (A) Personal-needs allowance.
  - (B) Community spouse monthly maintenance needs allowance.
  - (C) Medicare and other private medical insurance premiums.
  - (D) Other incurred medical.
- (c) A trust established on or after April 1, 1995 for the benefit of the client whose income is above 300 percent of the full SSI standard and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. The trust contains all of the client's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:
  - (A) Personal needs allowance and applicable room and board standard.

- (B) Reasonable administrative costs of the trust, not to exceed a total of \$50 per month, including the following:
  - (i) Trustee fees.
  - (ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.
  - (iii) Conservatorship and guardianship fees and costs.
- (C) Community spouse and family monthly maintenance needs allowance.
- (D) Medicare and other private medical insurance premiums.
- (E) Other incurred medical costs as allowed under OAR 461-160-0030 and 461-160-0055.
- (F) Contributions to reserves or payments for child support, alimony, and income taxes.
- (G) Monthly contributions to reserves or payments for the purchase of an irrevocable burial plan with a maximum value of \$5,000.
- (H) Contributions to a reserve or payments for home maintenance if the client meets the criteria of OAR 461-155-0660 or OAR 461-160-0630.
- (I) Patient liability not to exceed the cost of *home and community-based care* (see OAR 461-001-0030) or nursing facility services.

(101) This section of the rule applies to a trust signed on or after July 1, 2006.

- (a) Notwithstanding the provisions of sections (1), ~~and (3)~~, and (5) to (89) of this rule, a trust that meets the requirements of subsection (b) of this section is not considered in determining *eligibility* for OSIPM and QMB-DW, except that if the client is age 65 or older when the trust is funded or a transfer is made to the trust, the transfer may constitute a disqualifying transfer of assets under OAR 461-140-0210 and following.
- (b) This section of the rule applies to a trust that meets all of the following conditions:
  - (A) The trust is established and managed by a non-profit association.

- (B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.
- (C) The trust is established by the client, client's *parent*, grandparent, or legal guardian or a court for clients who have disabilities.
- (D) Upon the death of the beneficiary or termination of the trust, the trust pays to the Sstate an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid. The amount paid to the state may be reduced by administrative costs directly related to administering the sub-trust account of the beneficiary.
- (E) The trust contains the resources or income of a client who has a disability that meets the SSI criteria.

(142) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

- (a) The absence of the services requested may result in a life-threatening situation.
- (b) The client was a victim of fraud or misrepresentation.

Stat. Auth.: ORS 411.060, 411.070, [411.083](#), 411.404, ~~411.700~~, 411.816, 412.049, [413.085](#), [414.685](#)  
Stats. Implemented: ORS 411.060, 411.070, [411.083](#), 411.404, ~~411.700~~, 411.816, 412.049, [413.085](#), [414.685](#), [414.839](#)

## Work-Related Capital Assets, Equipment, and Inventory

- (1) As used in this rule:
  - (a) "Inventory" means goods that are in stock and available for sale to prospective customers.
  - (b) "Work-related equipment" means property essential to the employment or self-employment of a *financial group* (see OAR 461-110-0530) member. Examples are a tradesman's tools, a farmer's machinery, and equipment used to maintain an income-producing vehicle.
- (2) A *capital asset* (see OAR 461-001-0000), other than *work-related equipment* (see section (1) of this rule) and *inventory* (see section (1) of this rule), is treated as follows:
  - (a) In the ERDC and GA programs, the *equity value* (see OAR 461-001-0000) of a *capital asset* is treated according to the rules for the asset.
  - (b) In the SNAP program, a *capital asset* used in a business is excluded as follows:
    - (A) Non-farm assets are excluded as long as the *financial group* is actively engaged in self-employment activities.
    - (B) Farm assets are excluded until one year after the date the individual quit self-employment as a farmer.
  - (c) In the REF, REFM, and TANF programs:
    - (A) For a self-employed client participating in the *microenterprise component* (see OAR 461-190-0197) of the JOBS program, the value of a *capital asset* is excluded.
    - (B) For all other clients, the value of a *capital asset* is counted according to the rules in this division of rules.
  - (d) In the OSIP, OSIPM, and QMB-[DW](#) programs, a *capital asset* is excluded.
- (3) *Work-related equipment* is treated as follows:
  - (a) In the EA, ERDC, OSIP, OSIPM, QMB-[DW](#), and SNAP programs, the *equity value* of *work-related equipment* is excluded.
  - (b) In the GA program, the value of equipment needed by an individual who has a disability or is blind to complete a plan for self-support (see OAR 461-135-0708)

is excluded as long as the plan is in effect. For all other equipment, the *equity value* of the equipment is counted as a resource, except as provided at OAR 461-145-0250.

- (c) In the REF, REFM, and TANF programs:
  - (A) For a self-employed client participating in the *microenterprise component* of the JOBS program, the *equity value* of the equipment is excluded.
  - (B) For all other clients, the *equity value* of the equipment is treated as a resource.

(4) *Inventory* is treated as follows:

- (a) In the EA, ERDC, OSIP, OSIPM, QMB-DW, and SNAP programs, *inventory* is excluded as long as the client is engaged in self-employment activities.
- (b) In the GA program, the value of *inventory* needed by an individual who has a disability or is blind to complete a plan for self-support is excluded, as long as the plan is in effect. For all other *inventory*, the *equity value* of the *inventory* is counted as a resource.
- (c) In the REF, REFM, and TANF programs:
  - (A) For a self-employed client participating in the *microenterprise component* of the JOBS program, the wholesale value of *inventory* remaining at the end of the semi-annual period covered in each income statement (see OAR 461-190-0197), less encumbrances, is counted as a resource.
  - (B) For all other clients, the wholesale value of *inventory* remaining at the end of a month, less encumbrances, is counted as a resource.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.117, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839



461-150-0050

~~Eff. 10-1-10~~

Eff. 1-1-16

Prospective Eligibility and Budgeting; GA, GAM, OSIP, OSIPM, QMB

In the GA, GAM, OSIP, OSIPM, and all QMB programs, the Department uses prospective *eligibility* (see OAR 461-001-0000) and *budgeting* (see OAR 461-001-0000) as follows:

- (1) In the GA, GAM, OSIP (except OSIP-IC), OSIPM (except OSIPM-IC), and all QMB programs:
  - (a) For the *initial month* (see OAR 461-001-0000), the Department uses prospective *eligibility* and *budgeting*. Money received from a nonrecurring source before the date of application is excluded as income.
  - ~~(b)~~ Except for QMB-BAS, QMB-SMB, and QMB-SMF, if any money remains from a non-recurring source after the date of application, it is counted as a resource.
  - ~~(b)~~ For each *ongoing month* (see OAR 461-001-0000) the Department uses prospective *eligibility* and *budgeting*.
- (2) In the OSIP-IC and OSIPM-IC programs, the *budget month* (see OAR 461-001-0000) is the *initial month* of eligibility.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 413.085, 414.685  
Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.070, 410.080, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685, 414.839

461-155-0575

~~Eff. 10-1-13~~

Eff. 1-1-16

Special Need; In-home Supplement; OSIPM

In the OSIPM program:

- (1) The Department may provide a monthly supplementary payment for ~~a client~~ an individual who meets the requirements of all of the following subsections:
  - (a) The ~~client~~ individual must receive SSI as his or her only source of countable (see OAR 461-001-0000) income.
  - (b) The ~~client~~ individual must receive *home and community-based care* (see OAR 461-001-0030) in-home services or State Plan Personal Care Services authorized under OAR chapter 411, division 034 ~~of Oregon Administrative Rules~~.
- (2) An individual eligible ~~client~~ (under section (1) of this rule) receives a ~~\$15-\$22~~ monthly payment. The payment is considered reimbursement for uncovered assistance needs.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 413.085, 414.685

## Use of Resources in Determining Financial Eligibility

*Countable* (see OAR 461-001-0000) resources are used to determine *eligibility* ([see OAR 461-001-0000](#)) as follows:

- (1) In the EA program, the *countable* resources of a *financial group* (see OAR 461-110-0530) are used to reduce benefits.
- (2) In the GA, GAM, QMB-~~DW~~, REF, SNAP, and TANF programs, a *need group* (see OAR 461-110-0630) is not eligible for benefits if the *financial group* has *countable* resources above the resource limit (OAR 461-160-0015).
- (3) In the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs, a *need group* (see OAR 461-110-0630) is not eligible for benefits if the *financial group* has *countable* resources above the resource limit.
  - (a) When a *child* (see OAR 461-001-0000) is applying, the *parental resources* ([see subsection \(b\) of this section](#)) are deemed available to the *child*. The amount deemed available to the *child* is the amount the *parental resources* exceed the resource limit (OAR 461-160-0015) of:
    - (A) A one person *need group*, if one *parent* ([see OAR 461-001-0000](#)) lives in the child's household; or
    - (B) A two person *need group*, if two parents (or one *parent* and the *spouse* ([see OAR 461-001-0000](#)) of that *parent*) live in the child's household.
  - (b) As used in this section, "parental resources" means the *countable* resources of:
    - (A) Each *parent* in the child's *financial group*, and
    - (B) Each *spouse* of a *parent* in the child's *financial group*.
  - (c) If more than one *child* is applying, the value of the deemed resources is divided evenly between the applying children.
  - (d) The *parental resources* are not deemed available to an ineligible *child*.
  - (e) The value of the *parental resources* is subject to deeming whether or not those resources are available to the *child*.
- (4) In the OSIP-EPD and OSIPM-EPD programs:
  - (a) A *need group* (~~see OAR 461-110-0630~~) is not eligible for benefits if the *financial group* has *countable* resources above the resource limit (OAR 461-160-0015).

- (b) Any money in an *approved account* (see OAR 461-001-0035) is excluded during the determination of *eligibility*.
- (c) Assets purchased from moneys in an *approved account* are excluded, provided they meet the requirements of OAR 461-145-0025.
- (d) Assets purchased as *employment and independence expenses* (see OAR 461-001-0035) are excluded, provided they meet the requirements of OAR 461-145-0025.

(5) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, all resources are excluded and have no effect on *eligibility* (see OAR 461-160-0015).

Stat. Auth.: ORS 411.060, 411.070, 411.400, 411.404, 411.816, 412.049, 413.085, 414.685  
Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.400, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839

- (1) In the EA program, all *countable* (see OAR 461-001-0000) resources must be used to meet the emergent need.
- (2) In the ERDC and REFM programs, there is no resource limit.
- (3) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:
  - (a) \$2,000 for a one-person *need group* (see OAR 461-110-0630) and \$3,000 for a two-person *need group*.
  - (b) \$1,000 for an OSIP *need group* eligible under OAR 461-135-0771. The total cash resources may not exceed \$500 for a one-person *need group* or \$1,000 for a two-person *need group*.
  - (c) \$5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-001-0035 and 461-145-0025 for funds that may be excluded as approved accounts).
- (4) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, all resources are excluded.
- (45) In the REF and TANF programs, the resource limit is:
  - (a) \$2,500 for any of the following:
    - (A) A new REF or TANF applicant for benefits.
    - (B) REF and TANF need groups which do not have at least one *caretaker relative* (see OAR 461-001-0000) or *parent* (see OAR 461-001-0000) who is receiving TANF.
    - (C) REF and TANF need groups which have at least one JOBS participant who is:
      - (i) Receiving TANF and not progressing in an *activity* (see OAR 461-001-0025) of an open JOBS *case plan* (see OAR 461-001-0025);  
or
      - (ii) Serving a current JOBS disqualification (see OAR 461-130-0330).
  - (b) \$10,000 for a *need group* not covered under subsection (a) of this section.
- (56) In the QMB-DW program, the resource limit is amended in January of each year based on the low income subsidy for Medicare Part D as published by the Health Resources and

Services Administration of the U.S. Department of Health and Human Services. Effective January 1, 2015 the resource limit is \$7,280 for a one-person *need group* and \$10,930 for a *need group* containing two or more individuals.

(67) In the SNAP program, the resource limit is:

- (a) \$3,250 for a *financial group* (see OAR 461-110-0530) with at least one member who is *elderly* (see OAR 461-001-0015) or an individual with a *disability* (see OAR 461-001-0015).
- (b) \$2,250 for all other financial groups.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 414.231  
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 411.837, 412.049, 414.025, 414.231, 414.826, 414.839

461-160-0550

~~Eff. 7-1-14~~

Eff. 1-1-16

Income Deductions; Non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) in the Community When There Are No Children in the Household Group

- (1) For purposes of this rule:
  - (a) ~~A "child" is~~ Child means an unmarried individual, living with a natural or adoptive parent, and is:
    - (A) Under the age of 18; or
    - (B) Under the age of 22 and attending full-time secondary, postsecondary, or vocational-technical training designed to prepare the individual for employment.
  - (b) "Ineligible" means an individual who is not eligible to receive either SSI or TANF benefits.
- (2) This rule is used to determine *adjusted income* (see OAR 461-001-0000) for all individuals in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:
  - (a) Live in the community;
  - (b) Are not assumed eligible (see OAR 461-135-0010);
  - (c) Do not receive *home and community-based care* (see OAR 461-001-0030); and
  - (d) Do not have at least one *child* (see ~~section~~subsection (1)(a) of this rule) in the *household group* (see OAR 461-110-0210).
- (3) For an individual described in section (2) of this rule who is married to a *spouse* (see OAR 461-001-0000) who is *ineligible* (see ~~section~~subsection (1)(b) of this rule), the Department calculates the *adjusted income* of the individual under subsections (4)(a) through (4)(e) of this rule first. If the individual's *adjusted income* is greater than the OSIPM program *adjusted income* standard for a *need group* of one under OAR 461-155-0250, the individual is not eligible for OSIPM.
- (4) To determine *adjusted income* for individuals described in section (2) of this rule, deductions from the *countable* (see OAR 461-001-0000) income of the *financial group* (see OAR 461-110-0530) are made in the following order:
  - (a) One standard deduction of \$20 from unearned income.
    - (A)      This deduction may be taken from earned income if the individual has less than \$20 in unearned income.

(B) This deduction does not apply to a benefit based on need that is totally or partially funded by the federal government or by a nongovernmental agency.

- (b) One standard earned income deduction of:
  - (A) \$65 for OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA clients who are not blind; or
  - (B) \$85 for OSIP-AB and OSIPM-AB clients who are blind.
- (c) An income deduction for documented impairment-related work expenses or blind work expenses.
- (d) One half of the remaining earned income.
- (e) Deductions under a plan for self-support.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.042685

Stats. Implemented: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.042685



Income Deductions; Non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) in the Community When There Are Children in the Household Group

- (1) For purposes of this rule:
  - (a) ~~A "child" is~~ "Child" means an unmarried individual, living with a natural or adoptive parent, and is:
    - (A) Under the age of 18; or
    - (B) Under the age of 22 and attending full-time secondary, postsecondary, or vocational-technical training designed to prepare the individual for employment.
  - (b) "Ineligible" means an individual who is not eligible to receive either SSI or TANF benefits.
- (2) This rule is used to determine *adjusted income* (see OAR 461-001-0000) for clients individuals in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:
  - (a) Live in the community;
  - (b) Are not assumed eligible (see OAR 461-135-0010);
  - (c) Do not receive *home and community-based care* (see OAR 461-001-0030); and
  - (d) Have at least one *child* (see subsection (1)(a) of this rule) in the *household group* (see OAR 461-110-0210).
- (3) For an individual described in section (2) of this rule who is married to a *spouse* (see OAR 461-001-0000) who is *ineligible* (see subsection (1)(b) of this rule), the Department calculates the *adjusted income* of the individual under sections (4)(b) through (f) of this rule first. If the individual's *adjusted income* is greater than the OSIPM program *adjusted income* standard for a *need group* of one under OAR 461-155-0250, the individual is not eligible for OSIPM.
- (4) To determine *adjusted income* for clients individuals described in section (2) of this rule, deductions from the *countable* (see OAR 461-001-0000) income of the *financial group* (see OAR 461-110-0530) are made in the following order:
  - (a) An allocation as described below:
    - (A) When an adult is applying, income is allocated (see paragraph (C) of this subsection) from an *ineligible* spouse included in the *financial group* to each *ineligible child* of the couple.

- (B) When a *child* is applying:
- (i) Income from *ineligible* parents is first allocated to each *ineligible child* in the household.
  - (ii) Second, the remaining income from subparagraph (i) of this paragraph is reduced as provided in subsections (b) through (f) of this section.
  - (iii) Third, the remaining income is reduced by the non-SSI OSIP and OSIPM adjusted income standard of the --
    - (I) Couple if both parents live with the *child*; or
    - (II) Individual if only one *ineligible* parent lives with the *child*.
  - (iv) Fourth, the remainder is deemed equally to each *child* applicant in the *household*.
  - (v) The income deemed to the child is added to the other income of the *child* and deductions are taken as described in subsections (b) through (f) of this section to calculate the child's adjusted income.
- (C) The maximum amount of each allocation under paragraphs (A) and (B) of this subsection is the difference between the couple and the individual SSI Standard. The allocation for paragraphs (A) and (B) of this subsection is reduced by the other *countable* income of each *ineligible child*. An allocation is taken from unearned income first, and any remaining allocation is then taken from earned income.
- (b) One standard deduction of \$20 from unearned income.
- (A) This deduction may be taken from earned income if the ~~client~~ individual has less than \$20 in unearned income.
- (B) This deduction does not apply to a benefit based on need that is totally or partially funded by the federal government or by a nongovernmental agency.
- (c) One standard earned income deduction of:
- (A) \$65 for ~~clients~~ individuals in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs; or
  - (B) \$85 for ~~clients~~ individuals in the OSIP-AB and OSIPM-AB programs.

- (d) An income deduction for documented impairment-related work expenses or blind work expenses.
- (e) One half of the remaining earned income.
- (f) Deductions under a plan for self-support for ~~clients~~ individuals in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs.

Stat. Auth.: ORS [409.050](#), [410.070](#), 411.060, 411.070, ~~414.042~~, [411.083](#), [411.404](#), [411.706](#), [413.085](#), [414.685](#)

Stats. Implemented: ORS [409.050](#), [410.070](#), 411.060, 411.070, ~~414.042~~, [411.083](#), [411.404](#), [411.706](#), [413.085](#), [414.685](#)

## Income Deductions; Qualified Medicare Beneficiaries Programs

- (1) This rule is used to determine *adjusted income* (see OAR 461-001-0000) for the Qualified Medicare Beneficiaries programs: QMB-BAS and QMB-SMB (including SMF) programs.
- (2) To determine *adjusted income*, deductions from the *countable* (see OAR 461-001-0000) income of the *financial group* (see OAR 461-110-0530) are made in the following order:
  - (a) One standard deduction of \$20 from unearned income.
    - (A) This deduction may be taken from earned income if the ~~client~~-individual has less than \$20 in unearned income.
    - (B) This deduction does not apply to in-kind support and maintenance.
    - (C) This deduction does not apply to a benefit based on need that is totally or partially funded by the federal government or by a nongovernmental agency.
  - (b) One standard earned income deduction of:
    - (A) \$65 for ~~clients~~-an individual who ~~are~~-is not blind; or
    - (B) \$85 for ~~clients~~-an individual who ~~are~~-is blind.
  - (c) An income deduction for documented impairment-related work expenses or blind work expenses for ~~clients~~-an individual under age 65.
  - (d) One half of the remaining earned income.
  - (e) Deductions under a plan for self-support for ~~clients~~-an individual less than the age of 65.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, ~~414.042~~, 411.404, 413.085, 414.685  
Stats. Implemented: ORS 409.050, 410.070, 411.060, 411.070, ~~414.042~~, 411.404, 413.085, 414.685, 414.839

## Changes That Must Be Reported

- (1) A change in employment status is considered to occur as follows:
  - (a) For a new job, the change occurs the first day of the new job.
  - (b) For a job separation, the change occurs on the last day of employment.
- (2) A change in source of income is considered to occur as follows:
  - (a) For earned income, the change occurs upon the receipt by the individual of the first paycheck from a new job or the first paycheck reflecting a new rate of pay.
  - (b) For unearned income, the change occurs the day the individual receives the new or changed payment.
- (3) An individual must report, orally or in writing, the following changes:
  - (a) In the ERDC program, an individual must report the following changes within 10 days of occurrence:
    - (A) A change in child care provider.
    - (B) A change in employment status.
    - (C) A change in mailing address or residence.
    - (D) A change in membership of the filing group (see OAR 461-110-0350).
    - (E) A member of the filing group is discharged from the U.S. military and returning from active duty in a military war zone.
    - (F) A change in income above the ERDC income limit as defined in OAR 461-155-0150(5)(b) that is expected to continue.
  - (b) In the SNAP program:
    - (A) An individual assigned to CRS must report any of the following changes within 10 days of occurrence:
      - (i) A change in earned income of more than \$100.
      - (ii) A change in unearned income of more than \$50.
      - (iii) A change in source of income.

- (iv) A change in membership of the filing group (see OAR 461-110-0370) and any resulting change in income.
  - (v) A change in residence and the shelter costs in the new residence.
  - (vi) A change in the legal obligation to pay child support.
  - (vii) When the sum of cash on hand, stocks, bond, and money in a bank or savings institution account reaches or exceeds program resource limits.
  - (viii) Acquisition or change in ownership of a non-excluded vehicle.
- (B) An individual assigned to SRS must report when the monthly income of the filing group exceeds the SNAP *countable* (see OAR 461-001-0000) income limit by the tenth day of the month following the month of occurrence.
- (C) An individual assigned to TBA is not required to report any changes.
- (c) For JPI (see OAR 461-135-1260), an individual must follow the same reporting requirements as a SNAP client assigned to CRS, SRS, or TBA reporting systems (see OAR 461-170-0010).
- (d) In the GA, GAM, OSIP, OSIPM, and QMB programs, an individual must report all changes that may affect *eligibility* (see OAR 461-001-0000) within 10 days of occurrence, including any of the following changes:
- (A) A change in employment status.
  - (B) A change in health care coverage.
  - (C) A change in membership of the *household group* (see OAR 461-110-0210).
  - (D) A change in marital status.
  - (E) A change in residence.
  - (F) [A-Except for QMB-BAS, QMB-SMB, and QMB-SMF, a change in resources.](#)
  - (G) A change in source or amount of income.

- (e) In the REF, SFPSS, and TANF programs, an individual assigned to CRS must report any of the following changes within 10 days of occurrence:
  - (A) Acquisition or change in ownership of a non-excluded vehicle.
  - (B) A change in earned income more than \$100.
  - (C) A change in employment status.
  - (D) A change in membership of the *household group* (see OAR 461-110-0210).
  - (E) A change in marital status or other changes in membership of the filing group.
  - (F) A change in mailing address or residence.
  - (G) A change in pregnancy status of any member of the filing group.
  - (H) A change in source of income.
  - (I) A change in unearned income more than \$50.
  - (J) A change in who pays the shelter costs if the costs will be paid by a non-custodial *parent*.
  - (K) Sale or receipt of a resource that causes total resources to exceed program resource limits.
  
- (f) In the REFM program, an individual must report the following changes within 10 days of occurrence:
  - (A) A change in membership of the *household group* (see OAR 461-110-0210).
  - (B) A change in residence.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.081, 411.404, 411.704, 411.706, 411.816, 411.825, 412.014, 412.049, 413.085, 414.685, 414.82639

## Notice Situation; Asset Transfer Disqualification

- (1) When the Department proposes to disqualify a filing group (see OAR 461-110-0310) because of a disqualifying transfer of assets (see OAR 461-140-0210), the following notice is sent:
  - (a) For new applicants, a *basic decision notice* (see OAR 461-001-0000).
  - (b) For ongoing clients, a timely *continuing benefit decision notice* (see OAR 461-001-0000).
- (2) A notice required by this rule includes the amount of uncompensated value used in the eligibility determination and the period of ineligibility caused by the transfer.
- (3) In the GA, GAM, OSIP, and OSIPM~~and QMB~~ programs, the notice must also include:
  - (a) The action that resulted in the disqualification;<sup>;</sup> and
  - (b) Information that the ~~client individual~~, or the facility in which the ~~client individual~~ resides (on behalf of the ~~client individual~~), may apply for a waiver of the disqualification on the basis of undue hardship.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.816, 418.100, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.070, 411.060, 411.070, 411.095, 411.816, 418.100, 412.049, 413.085, 414.685