

Secretary of State  
Certificate and Order for Filing  
**TEMPORARY ADMINISTRATIVE RULES**  
A Statement of Need and Justification must accompany this form.

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on

February 23, 2016 by the

Department of Human Services, Office of Self-Sufficiency Programs	461
Agency and Division	Chapter Number
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to become effective March 1, 2016 through April 1, 2016.\*

*\*Temporary rules are effective for a maximum of 180 days including the effective date.*

RULE CAPTION

*Expanding pilot project to provide assistance with Social Security disability benefits to eligible clients*

Not more than 15 words that reasonably identify the subject matter of the agency's intended action.

RULEMAKING ACTION

**AMEND:** 461-125-0370

**SUSPEND:** 461-125-0370(T)

ORS 409.050, 410.070, 411.060, 411.070, 411.121, 411.404, 411.706, 411.816, 413.085, 414.685

Stat. Auth.

None.

Other Auth.

ORS 409.010, 409.050, 410.010, 410.020, 410.050, 410.090, 411.060, 411.070, 411.121, 411.404, 411.704, 411.706, 411.816, 413.085, 414.685

Stats. Implemented

RULE SUMMARY

OAR 461-125-0370 about disability as the basis of need is being amended to expand a pilot project to clients served by the Aging and People with Disabilities (APD) offices in Canby or Milwaukie, Oregon. The program allows individuals who meet certain requirements to request assistance from the Department with Social Security disability applications and administrative appeals. Eligible clients must have a disability under OAR 461-125-0370(1)(c), receive SNAP benefits, receive benefits from one of the OCCS Medical Programs, and be served by the APD office in Canby, Estacada, or Milwaukie, Oregon.

Secretary of State  
**STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules must accompany this form.

Department of Human Services, Office of Self-Sufficiency Programs

461

Agency and Division

Chapter Number

In the Matter of: *Temporary amendment of OAR 461-125-0370 and suspension of OAR 461-125-0370(T)*

Rule Caption: *Expanding pilot project to provide assistance with Social Security disability benefits to eligible clients*

Need for the Temporary Rule(s):

Under OAR 410-200-0220, individuals who are receiving medical assistance from an OCCS Medical Program are required to pursue assets to remain eligible for benefits, including applying for Social Security benefits based on a disability and appealing unfavorable decisions. Favorable Social Security decisions provide income for individuals and allow them to move from MAGI to Medicare. Some clients with disabilities may need assistance with the application and appeals process, but there is a lack of experienced advocates to provide assistance without expectation of a fee, particularly in the first two stages of the SSA process. OAR 461-125-0370 was amended by temporary rule on October 5, 2015 to implement a pilot program to assist eligible clients served in Estacada, Oregon, with SSA applications and appeals. This amendment is needed to expand the project to additional locations to provide assistance to more clients and allow the Department to determine the feasibility and effectiveness of the pilot project.

Documents Relied Upon (and where they are available): None.

Justification:

The Department finds that failure to act promptly by amending OAR 461-125-0370 will result in serious prejudice to the public interest, the Department, and clients served in Canby or Milwaukie, Oregon who would be eligible for free assistance under the expanded pilot project. The Department needs to proceed by temporary rule because the public, the Department, and eligible clients will immediately benefit by providing access to free assistance from qualified disability benefits liaisons, which may improve the ability of clients to get favorable Social Security decisions which would provide income for the individuals and allow them to move from MAGI to Medicare.

## Disability as the Basis of Need

- (1) In the OSIP and OSIPM programs (except OSIP-EPD and OSIPM-EPD), an individual meets the eligibility requirement to have a disability if the requirements of one of the following subsections are met:
  - (a) The individual is receiving Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) based on disability. Eligibility continues as long as the individual remains eligible for SSDI or SSI.
  - (b) The individual was eligible for and received Aid to the Disabled benefits in Oregon in December 1973. These grandfathered cases continue to be eligible as long as they are continuously disabled as defined by Oregon requirements that were in effect in 1973.
  - (c) The Department has determined the individual meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2 for SSI; or meets the definition of disability in 20 C.F.R. §§ 404.1505 or 416.905.
  - (d) The Social Security Administration (SSA) has determined the individual meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2; or meets the definition of disability in 20 C.F.R. §§ 404.1505 or 416.905.
- (2) If the Department finds the individual eligible for OSIPM in the absence of a disability determination by SSA, the individual remains eligible, provided that the individual continues to meet the disability criteria for eligibility for OSIPM, until SSA denies the disability claim in a final administrative decision.
- (3) For OSIP and OSIPM, a disability determination made by SSA that is unfavorable to an individual is binding on the Department unless the requirements of at least one of the following subsections are met (see 42 C.F.R. § 435.541(c)(1) and (c)(4)):
  - (a) SSA made the determination for a reason other than disability.
  - (b) The individual alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination.
  - (c) More than 12 months after the most recent SSA determination denying disability, the individual alleges that his or her condition has changed or deteriorated since that SSA determination, and the individual has not made application to SSA based on these allegations.

- (d) The individual alleges less than 12 months after the most recent SSA determination denying disability that the condition which SSA evaluated has changed or deteriorated since that SSA determination; and one or both of the following apply:
  - (A) The individual has requested reconsideration or reopening of the most recent SSA determination denying disability and SSA has declined to consider the new allegations.
  - (B) It is clear that the individual no longer meets SSI eligibility requirements unrelated to disability status but may satisfy comparable Medicaid eligibility requirements.
- (4) If a binding SSA disability determination is not in place, the determination of disability to qualify for OSIPM is made by the Presumptive Medicaid Disability Determination Team (PMDDT), composed of a medical or psychological consultant and another individual who is qualified to interpret and evaluate medical reports, other evidence relating to the individual's physical or mental impairments, and (as necessary) to determine the capacities of the individual to perform substantial gainful activity, as specified in 20 C.F.R. Part 416, Subpart J (see 42 C.F.R. § 435.541(f)(2)).
- (5) The Presumptive Medicaid Disability Determination Team (PMDDT) obtains and reviews medical reports and other non-medical evidence pertaining to the individual and the claimed disability. The medical report and non-medical evidence must include diagnosis and other information in accordance with the requirements for evidence applicable to disability determinations under the SSI program specified in 20 CFR Part 416, Subpart I. The PMDDT then makes a decision about medical eligibility and whether and when a redetermination will be made (see 42 C.F.R. § 435.541(f)(1) and (3)).
- (6) In the OSIP-EPD and OSIPM-EPD programs, an individual is *disabled* (see OAR 461-001-0035) or *has a disability* (see OAR 461-001-0035) if the individual has a physical or mental impairment, or a combination of these impairments, that meets the definition of disability used by SSA when determining eligibility for SSI or SSDI under 20 C.F.R. Part 404. The determination is made as follows:
  - (a) A determination by SSA that the individual is *disabled* or *has a disability* is accepted by the Department.
  - (b) If the individual was determined to have a disability by SSA and lost their SSDI eligibility due to their own income, the SSA determination remains effective for one year from the date that the individual loses eligibility for SSDI.
  - (c) If there is no currently effective SSA determination finding the individual *has a disability*, the case is referred to the Department's central office for a *disability determination* (see OAR 461-001-0035) using the standards of 20 C.F.R. Parts 404 and 416 and considering all relevant medical and vocational information.

- (d) For OSIPM-EPD, an individual is engaging in *substantial gainful activity* (SGA, see OAR 461-001-0035) if the earnings of the individual are at or above the EPD Income Standard.
  - (e) For OSIPM-EPD, any work activity engaged in during the OSIPM-EPD application process or certification period is not evaluated as *past relevant work* (PRW, see OAR 461-001-0035).
- (7) An individual who is served by a *branch office* (see OAR 461-001-0000) and who has been determined by the Presumptive Medicaid Disability Determination Team (PMDDT) to have a disability (see section (1) of this rule) may receive free assistance from the Department with applications and administrative appeals for Social Security benefits based on a disability for purposes including, but not limited to, meeting the requirement to pursue assets under OAR 461-120-0330.
- (8) An individual may receive free assistance from the Department with applications and administrative appeals for Social Security benefits based on a disability for purposes including, but not limited to, meeting the requirement to pursue assets under OAR 410-200-0220 if the individual:
- (a) Is determined to have a disability under subsection (1)(c) of this rule;
  - (b) Receives benefits from one of the *OCCS Medical Programs* (see OAR 461-001-0000);
  - (c) Receives SNAP benefits; and
  - (d) Is served by the Aging and People with Disabilities (*APD*) *branch-office* (see ~~OAR 461-001-0000~~) in Canby, Estacada, or Milwaukie, Oregon.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.121, 411.404, 411.706, 411.816, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.050, 411.060, 411.070, 411.121, 411.404, 411.704, 411.706, 411.816, 413.085, 414.685