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PERMANENT ADMINISTRATIVE RULES

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March 21, 2016 by the

Department of Human Services, Office of Self-Sufficiency Programs
Agency and Division

461
Chapter Number

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to become effective April 1, 2016.

Rulemaking Notice was published in the February 2016 Oregon Bulletin.

Rule Caption: *Amending rules relating to APD (Aging and People with Disabilities) programs*

RULEMAKING ACTION

AMEND: 461-125-0370, 461-135-0750, 461-180-0010, 461-180-0090, 461-180-0140

REPEAL: 461-125-0370(T), 461-135-0750(T), 461-180-0010(T), 461-180-0090(T), 461-180-0140(T)

ORS 409.010, 409.050, 410.070, 411.060, 411.070, 411.121, 411.404, 411.704, 411.706, 411.816, 413.085, 414.685

Stat. Auth.

42 CFR 435.915

Other Auth.

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

Stats. Implemented

Rule Summary

OAR 461-125-0370 about disability as the basis of need is being amended to state that an individual may request free assistance with Social Security disability applications and administrative appeals from the Department when the individual meets the requirements listed below. This will assist these individuals in meeting the requirement to pursue assets under OAR 410-200-0220 and makes permanent temporary changes adopted on October 5, 2015 and March 1, 2016. To qualify for free assistance, the individual must be:

- Determined to have a disability under OAR [461-125-0370](#)(1)(c);
- Receiving benefits from one of the OCCS Medical Programs (see OAR [461-001-0000](#));
- Receiving SNAP benefits; and
- Served by the Aging and People with Disabilities (APD) or Area Agency on Aging (AAA) Office in Albany, Baker City, Bend, Brookings, Burns, Canby, Coos Bay, Cottage Grove, Enterprise, Estacada, Eugene, Florence, Gold Beach, Hermiston, John Day, La Grande, La Pine, Madras, Milwaukie, North Bend, Ontario, Pendleton, Prineville, Redmond, Reedsport, Roseburg, The Dalles, or Toldeo, Oregon.

To align with changes to the State Medicaid Plan, the Department of Human Services is changing the start date for some APD assistance programs as described below. These changes were effective December 1, 2015, and make permanent temporary rules adopted on December 15, 2015 and January 22, 2016.

- OAR 461-135-0750 about Oregon Supplemental Income Program Medical (OSIPM) eligibility for certain individuals in long-term care or home and community based care is being amended to state that OSIPM eligibility is not effective prior to the first day of the month that includes the effective date for long-term care (the effective date for long-term care is determined in accordance with OAR 461-180-0040). Currently OSIPM is not effective until the effective date for long-term care.
- OAR 461-180-0010 about the effective dates for adding a new person to an open case is being amended to state that the date benefits are requested for the individual establishes a date of request (DOR) for the individual and that the effective dates for OSIPM and General Assistance Medical (GAM) eligibility are determined in accordance with OAR 461-180-0090. Currently eligibility is effective on the DOR if all eligibility requirements are met on the DOR, and if they are not eligible on the DOR, eligibility is effective on the date that all eligibility requirements are met.
- OAR 461-180-0090 about the effective date for initial month medical benefits is being amended to state that GAM, OSIPM, and Qualified Medicare Beneficiary Disabled Worker (QMB-DW) medical benefits are effective on the first day of the month that includes the DOR if the individual is eligible on the DOR. If the individual is not eligible on the DOR, but meets all eligibility requirements within the application processing time frames of OAR 461-115-0190, eligibility is effective on the first day of the month that includes the date that all eligibility requirements are met. Limitations and exceptions to this change are included for certain residents of public institutions and state psychiatric institutions, inmates (including inmates with suspended benefits), and individuals moving to Oregon from another state. Currently eligibility is effective on the DOR if all eligibility requirements are met on the DOR, and if all eligibility requirements are not met on the DOR, eligibility is effective on the date that all eligibility requirements are met.
- OAR 461-180-0140 about the effective dates for retroactive medical benefits is being amended to state that for OSIPM the earliest date of eligibility for retroactive medical is the first day of the third month before the month that includes the DOR and, after the earliest date is established, eligibility is determined on a month-by-month basis starting on the earliest date and ending on the last day of the month prior to the month that includes the DOR. Limitations and exceptions to this change are included for certain inmates, and individuals moving to Oregon from another state. Currently the earliest date of eligibility is three months before the DOR.

Rule text showing edits is available below.

Disability as the Basis of Need; ~~OSIP and OSIPM~~

- (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 ~~Disability Insurance (SSD) benefits in order to meet~~ benefits based on a disability for purposes including, but not limited to, meeting the requirements to pursue assets of under OAR 461-120-0330 (Requirement to Pursue Assets).
- (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 AAA (Area Agency on Aging) or APD (Aging and People with Disabilities) office in Albany, Baker City, Bend, Brookings, Burns, Canby, Coos Bay, Cottage Grove, Enterprise, Estacada, Eugene, Florence, Gold Beach, Hermiston, John Day, La Grande, La Pine, Madras, Milwaukie, North Bend, Ontario, Oregon City, Pendleton, Prineville, Redmond, Reedsport, Roseburg, The Dalles, or Toledo, 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, 410.070, 411.060, 411.070, 411.121, 411.404, 411.704, 411.706, 411.816, 413.085, 414.685

461-135-0750

~~Temp. Eff. 12-15-15 through 6-11-16~~

Eff. 4-1-16

Eligibility for Individuals in Long-Term Care or Home and Community-Based Care; OSIPM

An individual who meets the requirements of all of the following sections is eligible for OSIPM:

- (1) Meets the eligibility requirements for the OSIPM program except that income is above the OSIPM adjusted income standard for a one person need group (see OAR 461-155-0250(3)).
- (2) Has *countable* (see OAR 461-001-0000) income at or below 300 percent of the full SSI standard for a single individual; has established a qualifying trust as specified in OAR 461-145-0540(910)(c); or is eligible for the OSIPM-EPD program.
- (3) Meets one of the following eligibility standards:
 - (a) The criteria in OAR 411-015-0100 (except subsection (1)(b)) regarding eligibility for nursing facility care or *home and community-based care* (see OAR 461-001-0030).
 - (b) The level-of-need criteria for an ICF/MR.
 - (c) The service eligibility standards for medically fragile children in OAR 411-350-0010.
 - (d) The service eligibility standards for the CIIS (Children's Intensive In-Home Services) behavioral program in OAR 411-300-0100 to 411-300-0220.
 - (e) The service eligibility standards for the Medically Involved Children's Waiver in OAR Chapter 411, Division 355 ~~of the Oregon Administrative Rules~~.
- (4) Resides in or will reside in one of the following locations for a *continuous period of care* (see OAR 461-001-0030) and is applying for or receiving long-term care services authorized by the Department (eligibility for OSIPM is not effective prior to the first day of the month that includes the effective date for long-term care under OAR 461-180-0040):
 - (a) A Medicaid-certified nursing facility.
 - (b) An intermediate care facility for the mentally retarded (ICF/MR).
 - (c) A *home and community-based care* setting.
- (5) An individual in a *home and community-based care* setting must receive Title 1915(c) waived services.

Stat. Auth.: ORS 411.060, 411.070, 411.404

Stats. Implemented: ORS 411.060, 411.070, 411.404

Effective Dates; Adding a New Person to an Open Case

- (1) In the following programs, the effective date for adding an individual (other than an assumed eligible newborn) to the *benefit group* (see OAR 461-110-0750) is one of the following:
- (a) In the GAM, and OSIPM, ~~and REFM~~ programs, ~~it is whichever occurs first:~~
- ~~(A) The date the client requests benefits, if the client was eligible as of that date.~~
- ~~(B) The date all eligibility requirements are met, the date benefits are requested for the individual establishes a *date of request* (see OAR 461-115-0030) for the individual. The effective date for the individual is determined in accordance with OAR 461-180-0090.~~
- (b) In the REFM program, it is whichever occurs first:
- (A) The date the individual requests benefits, if the individual was eligible as of that date.
- (B) The date all eligibility requirements are met.
- ~~(c)~~ In the SNAP program:
- (A) If adding the individual increases benefits, it is the first of the month after the filing group (see OAR ~~461-110-0310~~ and 461-110-0370) reports the person has joined the *household group* (see OAR 461-110-0210). If verification is requested, the effective date for the change is:
- (i) The first of the month following the date the change was reported if verification is received by the Department no later than the due date for the verification.
- (ii) The first of the month following the date the verification is received by the Department, ~~if received after the verification due date.~~
- (B) If adding the individual reduces benefits, it is the first of the month following the month in which the notice period ends (see OAR 461-175-0050).
- ~~(d)~~ In the GA, OSIP, REF, SFPSS, and TANF programs, it is the date on which all eligibility requirements are met and verified. If benefits have been issued for the month and adding the new person would reduce benefits, the person is added the first of the month following the month in which the notice period ends (see OAR 461-175-0050).

- | (de) In the QMB-BAS and QMB-DW programs, it is the first of the month after the new individual has been determined to meet all QMB eligibility criteria and the Department receives the required verification.
 - | (ef) In the QMB-SMB program, it is the first of the month in which the new individual has been determined to meet all QMB-SMB eligibility criteria and the Department receives the required verification.
 - | (fg) In the SFPSS and TANF programs, for adding a *child* (see OAR 461-001-0000) to be covered by a provider-direct child care payment, it is the first of the month in which the *child* is added to the *benefit group*.
- (2) In the following programs, the effective date for adding an assumed eligible newborn to the *benefit group* is one of the following:
- (a) In the GAM, OSIPM, and REFM programs, it is the date of birth if all the following paragraphs are true. If any of the following paragraphs is not true, the newborn is added to the *benefit group* in accordance with section (1) of this rule.
 - (A) A request for benefits is made within one year of the birth. For purposes of this paragraph, a telephone call from the attending physician, another licensed practitioner, a hospital, or the family is considered a request for benefits.
 - (B) The newborn has continuously lived with the mother since the date of birth.
 - (C) The mother was receiving GAM or OSIPM on the date of birth, even if she is not currently eligible for benefits.
 - (b) In the SFPSS and TANF programs, it is:
 - (A) The date of birth, if all eligibility requirements are met and verified within 45 days after the birth; or
 - (B) The date all eligibility factors are met and verified, if the verification is completed more than 45 days after the date of birth.
- (3) In the ERDC program, the effective date for adding an individual to the *need group* (see OAR 461-110-0630) or *benefit group* is as follows:
- (a) If adding the individual to the *need group* will decrease the copay, the effective date is the first of the month after the client reports the person has joined the household.

- (b) If adding the individual to the *need group* increases the copay--for instance, because the individual receives income--the effective date is the first of the month following the end of the decision notice period (see OAR 461-175-0050).
- (c) The effective date for adding a *child* to the *benefit group*--that is, covering the cost of the child's care--is the earliest of the following:
 - (A) For newborns, the date of birth, if all eligibility requirements are met and verified within 45 days after the birth.
 - (B) For all other children, the first of the month in which the change is reported, if all eligibility requirements are met and verified within 45 days.
 - (C) For newborns and other children, if eligibility cannot be verified within 45 days, the effective date is the first of the month in which all eligibility factors are met and verified.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.049, 414.042
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.049, 414.042

Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

(1) In the GAM, OSIPM, and QMB-DW, ~~and REFM~~ programs:

(a) Except as provided for in subsections (b) to (h) of this section:

(A) If the client meets all eligibility requirements on the *date of request* (see OAR 461-115-0030), it is the first day of the month that includes the date of request. An OSIPM program client who is *assumed eligible* under OAR 461-135-0010(75) meets "all eligibility requirements" for the purposes of this section as follows:

(i) Effective the first day of the month of the initial SSI payment if the client is age 21 or older.

(ii) Effective the first day of the month prior to the month of the initial SSI payment if the client is under the age of 21.

(B) If the client does not meet all eligibility requirements on the *date of request*, but meets all requirements after the date of request, within the application processing time frames of OAR 461-115-0190, it is the first day following the date of request of the month that includes the date that all eligibility requirements are met.

(b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new *date of request*.

(c) Except as provided for in subsections (d) and (e) of this section, for a new applicant who is an inmate (see OAR 461-135-0950) on any day of the month during the month that the applicant is determined to meet all eligibility requirements, the effective date is determined in accordance with subsections (a) and (b) of this section, except that coverage is not in effect for any day during the month that the applicant is an inmate other than the date of incarceration and the date of release.

(d) The effective date for an individual residing in a public institution (see OAR 461-135-0950) meeting the requirements of OAR 461-135-0950 regarding applications received by individuals with a serious mental illness is determined in accordance with OAR 461-135-0950.

(e) The effective date for an individual meeting the eligibility requirements of OAR 461-135-0950 regarding residents of a state psychiatric institution is the date that

all eligibility requirements are met, including other chapter 461 eligibility requirements, if those requirements are met within the application processing time frames of OAR 461-115-0190. Otherwise the requirements of subsection (b) of this section apply.

- (f) The effective date for an *inmate* or a resident of state hospital with suspended benefits that will be reinstated is determined in accordance with OAR 461-135-0950. If benefits will not be reinstated the *inmate* is considered a new applicant and the effective date is determined in accordance with subsection (c) of this section.
- (g) The effective date for a new applicant who is receiving Medicaid in another state on the *date of request*, but meets the requirements of OAR 461-165-0030 regarding receipt of medical benefits in another state is:
 - (A) The *date of request* if all eligibility requirements are met on the *date of request* or after the *date of request*, but during the month that includes the *date of request*.
 - (B) If all eligibility requirements are not met during the month that includes the *date of request* the effective date is determined in accordance with paragraph (1)(a)(B) and subsection (b) of this section.
- (h) The effective date for an applicant receiving Medicaid in another state prior to the *date of request*, but during the month that includes the *date of request*, is the day following the day that Medicaid benefits end in the other state if all eligibility requirements are met during the month that includes the *date of request*. If all requirements are not met in the month that includes the *date of request* the effective date is determined in accordance with paragraph (1)(a)(B) and subsection (b) of this section.

(2) In the QMB-BAS program, it is the first of the month after the *benefit group* (see OAR 461-110-0750) has been determined to meet all QMB-BAS program eligibility criteria and the Department receives the required verification.

(3) In the QMB-SMB and QMB-SMF programs, it is --

- (a) The first of the month in which the *benefit group* meets all program eligibility criteria and the Department receives the required verification; or
- (b) The first of the month in which the Low Income Subsidy (LIS) information is received by the Social Security Administration (SSA), if the SMB or SMF program application was generated by the electronic transmission of LIS data from the SSA and the *benefit group* meets all program eligibility criteria.

(4) In the REFM program:

(a) Except as provided in subsection (b) of this section:

(A) If the individual meets all eligibility requirements on the *date of request* (see OAR 461-115-0030), it is the *date of request*.

(B) If the individual does not meet all eligibility requirements on the *date of request*, it is the first day following the *date of request* that all eligibility requirements are met.

(b) If the individual does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new *date of request*.

(45) Retroactive eligibility is authorized under certain circumstances in some medical programs (see paragraph (1)(a)(A) of this rule, OAR 461-135-0875, and 461-180-0140).

Stat. Auth.: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 413.085, 414.025, 414.231, 414.826, 414.831, 414.685, 414.839

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 413.085, 414.025, 414.231, 414.826, 414.831, 414.685, 414.839

Effective Dates; Retroactive Medical Benefits

- (1) In the OSIPM program:
 - (a) If an applicant requests and is eligible for retroactive medical benefits, the earliest date the applicant may be eligible is ~~three months~~ the first day of the third month before the month that includes the *date of request* (see OAR 461-115-0030). For example, if the applicant requests benefits on July 10th, eligibility may begin as early as April 10.
 - (b) ~~After~~ Except as provided for in subsections (c) and (d) of this section, after the earliest date is established, eligibility is determined on a month-by-month basis. The period starts on the earliest established date and ends on the ~~date the applicant requests benefits~~ last day of the month prior to the month that includes the *date of request*. For example, if the applicant requests benefits on August 10th, the earliest date is May 10. Eligibility is established separately for May 10 through May 31, June 1 through June 30, and July 1 through July 31, ~~and August 1 through August 9~~.
 - (c) Retroactive eligibility is not available for any period that an individual is an inmate (see OAR 461-135-0950) except for the date of incarceration and the date of release, unless coverage would be available under OAR 461-135-0950 while an inmate.
 - (d) The earliest effective date of retroactive eligibility for an individual who was receiving medical benefits in another state during the retroactive period is the day following the date that benefits end in the other state.
- (2) If an applicant requests and is eligible for retroactive QMB-DW, the earliest date the applicant may be eligible is three months before the date of request.
- (3) If a QMB-SMB or QMB-SMF applicant requests and is eligible for retroactive payment of Part B Medicare premiums, the earliest date the applicant may be eligible is three months before the date of request.
- (4) If an applicant applying for REFM is eligible for retroactive medical benefits, the earliest the applicant may be eligible is the most recent of the following--
 - (a) The date the applicant arrived in the United States; or
 - (b) Three months before the *date of request*.

Stat. Auth.: ORS 409.050, 411.060, 411.404

Stats. Implemented: ORS 409.010, 411.060, 411.404