

Secretary of State  
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**PERMANENT ADMINISTRATIVE RULES**

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

December 7, 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 January 1, 2017.

Rulemaking Notice was published in the October, November, and December 2016 Oregon Bulletins.

**Rule Caption:**        *Amending rules relating to public and medical assistance programs*

**ADOPT:**        461-145-0035, 461-145-0417

**AMEND:**        461-120-0345, 461-135-0730, 461-135-0780, 461-135-0820, 461-140-0296, 461-145-0005, 461-145-0140, 461-145-0220, 461-145-0550, 461-145-0930, 461-150-0050, 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0580, 461-160-0620, 461-180-0050

**REPEAL:**        461-140-0296(T), 461-145-0184

ORS 316.699, 409.050, 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049

**Stat. Auth.**

P.L. 92-336; 42 USC 1396a(a)(10)(E)(iv); Social Security Administration Program Operations Manual System (POMS): SI 00810.010, SI 00810.030, SI 00830.215, SI 00830.225, SI 00830.730, SI 01130.676, SI 01715.015

**Other Auth.**

ORS 178.380, 409.050, 411.060, 411.070, 411.083, 411.404, 411.816, 412.049

**Stats. Implemented**

**Rule Summary**

OAR 461-120-0345 is being amended to establish in rule that those who are not entitled to no-cost Part A Medicare coverage and, either ineligible for QMB-BAS (which would pay the Part A premium), or do not have a service payment large enough to allow the full premium amount as a deduction, are not required to pursue it. It also establishes in rule that Tri-Care coverage must be pursued.

OAR 461-135-0730 about specific requirements for QMB, SMB, and SMF is being amended to align Oregon policy with federal policy and that of other states by making SMF (QI-1) unavailable to individuals receiving OSIPM.

OAR 461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0580, and 461-160-0620 are being amended to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

OAR 461-135-0820 about OSIPM eligibility for widows and widowers is being amended to include clarification from CMS regarding entitlement for Medicare Part A and the requirement to stay under the income and resource limits for OSIPM in the absence of Title II benefits. (See [SI 01715.015](#).)

OAR 461-140-0296 about the length of disqualification due to a disqualifying asset transfer (transfer of an asset for less than its fair market value to become eligible for program benefits) in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to update the amount used to calculate the number of months of ineligibility due to a disqualifying transfer of assets. This amount is calculated by using the average monthly cost to a private patient of nursing facility services in Oregon. This change was adopted by temporary rule on October 1, 2016.

OAR 461-145-0005 is being amended to state that in the OSIP, OSIPM, and QMB programs, all payments made under the Agent Orange Act of 1991 or from funds established pursuant to Agent Orange product liability litigation are excluded, consistent with [federal guidance](#).

OAR 461-145-0035 is being adopted to state that Black Lung benefits paid to miners or their survivors under the Federal Mine Safety and Health Act are counted as unearned income in the OSIP, OSIPM, and QMB programs, consistent with [federal guidance](#).

OAR 461-145-0140 about the Earned Income (EITC) and Making Work Pay (MWP) tax credits is being amended to remove reference to the MWP tax credit. The MWP tax credit [ended with the 2011 tax year](#) and therefore the Department no longer needs a rule to state how those credits are treated when determining financial eligibility.

OAR 461-145-0184 about how the Department treats payments from the Filipino Veterans Equity Compensation Fund when determining financial eligibility is being repealed. These payments were part of the American Recovery and Reinvestment Act (ARRA) of 2009 and the [deadline to apply](#) was February 16, 2010.

OAR 461-145-0417 is being adopted to state that Railroad Retirement payments made by the Railroad Retirement Board are counted as unearned income in the OSIP, OSIPM, and QMB programs, consistent with [federal guidance](#).

OAR 461-145-0550 about how unemployment compensation benefits are treated when determining financial eligibility is being amended to remove reference to the supplemental payment authorized by the ARRA. Taxpayers are no longer eligible to receive these payments and therefore the Department no longer needs a rule to state how those credits are treated when determining financial eligibility.

OAR 461-145-0930 about the determination of countable self-employment income is being amended to add consistency with language in OAR [461-145-0120](#) by adding mileage reimbursements to what is included in countable income.

OAR 461-150-0050 about prospective eligibility and budgeting in the OSIP, OSIPM, and QMB programs is being amended to state that all income is counted in the month received, not excluded if received prior to application.

OAR 461-180-0050 is being amended to delete an outdated reference to retrospective eligibility and budgeting.

In addition, non-substantive edits were made to: ensure consistent terminology throughout self-sufficiency program rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; improve ease of reading; and clarify Department rules and processes.

## Clients Required to Obtain Health Care Coverage and Cash Medical Support; OSIPM

This rule explains the obligation of clients to obtain health care coverage and cash medical support for members ~~of the benefit group (see OAR 461-110-0750)~~ in the OSIPM program.

- (1) Unless excused from the requirements of this section for *good cause* defined in OAR 461-120-0350, each adult client must assist the Department and the Division of Child Support of the Department of Justice in establishing paternity for each of his or her children and obtaining an order directing the non-custodial *parent* (see OAR 461-001-0000) of a *child* (see OAR 461-001-0000) ~~in the benefit group receiving Medicaid through OHA or DHS~~ to provide:
  - (a) Cash medical support for that *child*; and
  - (b) Health care coverage for that *child*.
- (2) Each adult client must make a good faith effort to obtain available coverage under Medicare. In the OSIPM program, the applicant is not required to enroll in Medicare Part A coverage if all of the following are true:
  - (a) The applicant will incur a cost for the coverage.
  - (b) The applicant is otherwise ineligible for QMB-BAS.
  - (c) The applicant does not have a service liability in excess of the Part A premium.
- ~~(3)~~ Each adult client must make a good faith effort to obtain available coverage under Tri-Care.
- ~~(34)~~ To be eligible for the OSIPM program, once informed of the requirement, an individual who is able to must apply for, accept, and maintain cost-effective, employer-sponsored health insurance (see OAR 461-155-0360). In the OSIPM program, the client is not required to incur a cost for the health insurance.
- ~~(45)~~ An individual who fails to meet an applicable requirement in sections (1), (2), ~~or (3)~~, or (4) of this rule is ~~removed from the need group (see OAR 461-110-0630)~~ ineligible.
- ~~(56)~~ In the case of an individual failing to meet the requirements of section (1) of this rule, the Department applies the penalty after providing the client with notice and opportunity to show the provisions of OAR 461-120-0350 apply.
- ~~(67)~~ The penalty provided by this rule ends when the client meets the requirements of this rule.

Stats. Implemented: ORS 411.060, 411.070, 411.404, 412.001, 412.024, 412.049, 414.025

## Specific Requirements; QMB, SMB, SMF

- (1) The following requirements apply to QMB-BAS:
  - (a) To qualify for QMB-BAS, an individual must be receiving Medicare hospital insurance under Part A. This includes an individual who must pay a monthly premium to receive coverage.
  - (b) A client who qualifies for QMB-BAS is not eligible to receive the full range of the Department's medical services. QMB-BAS benefits are limited to payments toward Medicare cost-sharing expenses. These expenses are---
    - (A) Medicare Part A and Part B premiums; and
    - (B) Medicare Part A and Part B deductibles and coinsurance up to the Department's fee schedule.
- (2) The following requirements apply to QMB-DW:
  - (a) To qualify for the QMB-DW program, an individual must be eligible for Part A of Medicare as a qualified worker with a disability under Section 1818A of the Social Security Act (42 USC 1395i-2a). This is an individual under age 65 who has lost eligibility for Social Security disability benefits because the individual has become substantially gainfully employed, but can continue to receive Part A of Medicare by paying a premium.
  - (b) A QMB-DW client is eligible only for payment of premiums for Part A of Medicare. If the client is eligible for any other medical assistance program the client is not eligible for QMB-DW.
- (3) The following requirements apply to QMB-SMB:
  - (a) To qualify for QMB-SMB, an individual must be receiving Medicare hospital insurance under Part A. This includes an individual who must pay a monthly premium to receive coverage.
  - (b) A client who qualifies for QMB-SMB is not eligible to receive the full range of the Department's medical services. QMB-SMB benefits are limited to payment of Medicare Part B premiums.
- (4) The following requirements apply to QMB-SMF:
  - (a) To qualify for QMB-SMF, an individual must be receiving Medicare hospital insurance under Part A. This includes an individual who must pay a monthly premium to receive coverage.

- (b) A client who is ~~institutionalized (residing in a nursing facility, an intermediate care facility for the mentally retarded (ICF/MR), or a hospital) otherwise eligible for another Medicaid program offered by the Department or the Oregon Health Authority~~ is not eligible for QMB-SMF.
- (c) A client who qualifies for QMB-SMF is not eligible to receive the full range of the Department's medical services. QMB-SMF benefits are limited to payment for Medicare Part B premiums.
- (d) The QMB-SMF program is subject to an enrollment cap based on the federal allocation. If the enrollment in this program exceeds the federal allocation, the program may be closed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

## Eligibility for Pickle Amendment Clients; OSIPM

- (1) An individual is eligible for OSIPM under this rule and the so-called Pickle amendment (Pub. L. No. 94-566, § 503, title V, 90 Stat. 2685 (1976)), if the individual meets all other eligibility requirements, and:
  - (a) Is receiving Social Security Benefits (SSB);
  - (b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and
  - (c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the individual was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB.
- (2) The SSB amount received by the individual when the individual became ineligible for SSI or OSIP is used as the individual's *countable* (see OAR 461-001-0000) Social Security income, for the purposes of the Pickle Amendment. If the amount cannot be determined using the information provided by the SSA, it is calculated in accordance with sections (3) and (5) of this rule.
- (3) Determine the month in which the individual was entitled to Social Security and received SSI in the same month. Use the table in section (5) of this rule to find the percentage that applies to that month. Multiply the present amount of the individual's Social Security benefits by the applicable percentage. This amount, rounded down to the next lower whole dollar, is the individual's *countable* Social Security for purposes of this rule and the Pickle Amendment.
- (4) Add the amount determined in accordance with section (2) or (3) of this rule to any other *countable* unearned income plus adjusted earned income of the individual, and if the total is less than the full SSI income standard for a single individual plus the \$20 unearned income deduction (OAR 461-160-0550), the individual is eligible for OSIPM for purposes of this rule and the Pickle amendment.
  - (a) For spouses in the same *financial group* (see OAR 461-110-0530), determine the spouse's SSB amount in the year the individual stopped receiving SSI or perform the above calculation for the spouse's Social Security benefit using the same multiplier, regardless of whether or not the *spouse* (see OAR 461-001-0000) received SSI, combine the results and add the subtotal to all other *countable* unearned and adjusted earned income.
  - (b) If the total is less than the full SSI standard for a couple plus the \$20 unearned income deduction (OAR 461-160-0550), the couple is eligible for OSIPM for purposes of this rule and the Pickle amendment. All other financial and non-financial eligibility criteria must be met.

- (5) The following guide contains the calculations used to determine the SSB for prior years (use this table only if you cannot determine the prior year's amount using information provided by SSA):

If SSI was Last Received During	Multiply Current SSB by
<u>January 2015 - December 2016</u> .....	<u>.997</u>
January 2014 - December 201 <u>5</u> .....	<u>.983980</u>
January 2013 - December 2013.....	<u>.969966</u>
January 2012 - December 2012.....	<u>.953950</u>
January 2009 - December 2011.....	<u>.919917</u>
January 2008 - December 2008.....	<u>.869866</u>
January 2007 - December 2007.....	<u>.850847</u>
January 2006 - December 2006.....	<u>.822820</u>
January 2005 - December 2005.....	<u>.790788</u>
January 2004 - December 2004.....	<u>.769767</u>
January 2003 - December 2003.....	<u>.753751</u>
January 2002 - December 2002.....	<u>.743741</u>
January 2001 - December 2001.....	<u>.724722</u>
January 2000 - December 2000.....	<u>.700698</u>
January 1999 - December 1999.....	<u>.683681</u>
January 1998 - December 1998.....	<u>.675672</u>
January 1997 - December 1997.....	<u>.661659</u>
January 1996 - December 1996.....	<u>.642640</u>
January 1995 - December 1995.....	<u>.626624</u>
January 1994 - December 1994.....	<u>.609607</u>
January 1993 - December 1993.....	<u>.593591</u>
January 1992 - December 1992.....	<u>.576574</u>
January 1991 - December 1991.....	<u>.555554</u>
January 1990 - December 1990.....	<u>.527525</u>
January 1989 - December 1989.....	<u>.503502</u>
January 1988 - December 1988.....	<u>.484482</u>
January 1987 - December 1987.....	<u>.464463</u>
January 1986 - December 1986.....	<u>.458457</u>
January 1985 - December 1985.....	<u>.445443</u>
January 1984 - December 1984.....	<u>.430428</u>
July 1982 - December 1983.....	<u>.415414</u>
July 1981 - June 1982.....	<u>.386385</u>
July 1980 - June 1981.....	<u>.348347</u>
July 1979 - June 1980.....	<u>.304303</u>
July 1978 - June 1979.....	<u>.277276</u>
July 1977 - June 1978.....	<u>.260259</u>
May or June 1977.....	<u>.245</u>

461-135-0820

~~Eff. 7-1-01~~

Eff. 1-1-17

Eligibility for Widows and Widowers; OSIPM

THIS RULE IS AMENDED IN ITS ENTIRETY

~~A client is eligible for OSIPM if he or she is not entitled to Medicare Part A and became ineligible for SSI because of a mandatory application for, and receipt of, widow's or widower's Social Security disability benefits.~~

A widow or widower receiving Title II benefits from the Social Security Administration claim of a deceased spouse or deceased former spouse is eligible for OSIPM if the individual meets all of the following requirements:

- (1) Is not entitled to premium-free Medicare Part A.
- (2) Received SSI the month before their Title II payments began.
- (3) Would continue to be eligible for SSI benefits in the absence of their Title II benefits.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

461-145-0005

~~Eff. 9-1-16~~

Eff. 1-1-17

Agent Orange Disability Benefits

(1) For all programs except OSIP, OSIPM, and QMB:

~~(1a)~~ Benefits from the Agent Orange Settlement Fund made by Aetna Life and Casualty for settling Agent Orange disability claims are excluded.

~~(2b)~~ Payments made under the Agent Orange Act of 1991, and issued by the U.S. Treasury through the Department of Veterans Affairs, are counted as unearned income.

(2) For OSIP, OSIPM, and QMB, all payments made under the Agent Oregon Act of 1991 or from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation are excluded.

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

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



461-145-0035

Eff. 1-1-17

Black Lung Benefits; OSIP, OSIPM, and QMB

THIS IS A NEW RULE

Black Lung Benefits paid to miners or their survivors under the provisions of the Federal Mine Safety and Health Act are counted as unearned income.

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

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



461-145-0140

~~Eff. 7-1-11~~

Eff. 1-1-17

Earned Income Tax Credit (EITC) ~~and Making Work Pay (MWP) Tax Credit~~

~~(1)~~ There are federal and state earned income tax credit (EITC) programs for low-income families.

~~(a)~~ An EITC may be received in one of two ways:

~~(A)~~ As one annual payment received at the time of the normal income tax returns.

~~(B)~~ As an advance in the employee's paycheck.

~~(b)~~ The EITC is excluded from *assets* (see OAR 461-001-0000).

~~(2) The American Recovery and Reinvestment Act (ARRA) of 2009 created the Making Work Pay (MWP) tax credit. This credit applies to tax years 2009 and 2010. An MWP tax credit is received as one annual payment at the time of the normal income tax returns. An MWP tax credit received as a portion of an individual's federal tax return is excluded from *assets*.~~

Stat. Auth.: ORS 411.060, 411.404, 411.706, 411.816, 412.049, 414.231

Stats. Implemented: ORS 411.060, 411.083, 411.404, 411.706, 411.816, 412.049, 414.231



461-145-0184

~~Eff. 4-1-10~~

Eff. 1-1-17

Filipino Veterans Equity Compensation Fund

THIS RULE IS REPEALED

~~The Department excludes from income a payment received by a veteran or the spouse of a veteran who served in the military of the Government of the Commonwealth of the Philippines during World War II and made under the Filipino Veterans Equity Compensation Fund authorized by the American Recovery and Reinvestment Act of 2009.~~

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049

- (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 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 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, "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~~560,000 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~~560,000 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 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 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

461-145-0417

Eff. 1-1-17

Railroad Retirement Payments; OSIP, OSIPM, and QMB

THIS IS A NEW RULE

Railroad Retirement payments made by the Railroad Retirement Board are counted as unearned income.

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

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



461-145-0550

~~Eff. 4-1-10~~

Eff. 1-1-17

Unemployment Compensation Benefits

In all programs covered by Chapter 461 of the Oregon Administrative Rules, unemployment compensation benefits are treated as follows:

(1) Retroactive payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(2) Disaster Unemployment Assistance is treated as provided in OAR 461-145-0100.

~~(3) — The \$25 supplemental payment authorized by the American Recovery and Reinvestment Act of 2009 is excluded from *countable* (see OAR 461-001-0000) income.~~

(~~3~~) All payments not covered under sections (1) ~~to and~~ (~~3~~2) of this rule are counted as unearned income.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.083, 411.404, 411.070, 411.816, 412.014, 412.049



461-145-0930

~~Eff. 9-1-16~~

Eff. 1-1-17

Self-Employment; Determination of Countable Income

This rule explains how different programs exclude and deduct costs from self-employment gross sales and receipts.

- (1) The Department initially determines gross sales and receipts, including mileage reimbursements, minus any returns and allowances (before excluding or deducting any costs). ~~This rule explains how different programs exclude and deduct costs from self-employment gross sales and receipts.~~
- (2) In the ERDC program, if an individual claims an excludable cost permitted under OAR 461-145-0920, at least 50 percent of gross self-employment income is excluded. The maximum exclusion is the total excludable cost under OAR 461-145-0920.
- (3) In the OSIP, OSIPM, QMB, and REFM programs, all costs permitted under OAR 461-145-0920 are excluded.
- (4) In the REF program, no costs are excluded.
- (5) In the SNAP program, if there are any costs permitted under OAR 461-145-0920, there is a deduction of 50 percent of gross self-employment income.
- (6) In the TANF program:
  - (a) For an individual participating in the *microenterprise* (see OAR 461-001-0000) component of the JOBS program, costs are excluded according to OAR 461-145-0920 and general accounting principles, as applied by a certified public accountant, bookkeeping firm, or other entity approved by the Department.
  - (b) For all other individuals, no costs are subtracted (excluded).

Stat. Auth.: ORS 409.050, 411.060, 411.083, 411.404, 411.706, 411.816, 412.006, 412.009, 412.049, 414.826

Stats. Implemented: ORS 409.050, 411.060, 411.083, 411.404, 411.706, 411.816, 412.006, 412.009, 412.049, 414.826



461-150-0050

~~Eff. 9-1-16~~

Eff. 1-1-17

Prospective Eligibility and Budgeting; OSIP, OSIPM, and QMB

In the 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 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.~~
  - (eb) 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



## Income and Payment Standard; OSIPM

- (1) An individual who is assumed eligible per OAR 461-135-0010 is presumed to meet the income limits for the OSIPM program.
- (2) An individual in a *nonstandard living arrangement* (see OAR 461-001-0000) meeting the requirements of OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in section (4) of this rule, must have *countable* (see OAR 461-001-0000) income that is equal to or less than 300 percent of the full SSI standard for a single individual (except OSIPM-EPD) or have established a qualifying trust as specified in OAR 461-145-0540(10)(c).
- (3) The OSIPM (except OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows:

OSIPM Items of Need				
Adjusted No. in Household	One Person in Need Group		Two People in Need Group	
	One	Two or More	Two	Three or More
Shelter	4501.00	2089.00	5579.00	2067.00
Food	1778.00	1745.670 0	340341. 00	3234.34
Other	106.00	106.00	203.00	204.00

- (4) An individual, other than one identified in section (1), (2), or (6) of this rule, must have adjusted income below the standard in this section. The Department determines the adjusted number in the household under OAR 461-155-0020.

OSIPM Adjusted Income Standards				
Adjusted No. in Household	One Person in Need Group		Two People in Need Group	
	One	Two or More	Two	Three or More
AB/AD/OAA	7335.00	48890.67 00	1,1003.00	7335.34

- (5) In the OSIPM (except OSIPM-EPD) program, an individual in a nursing facility or an ICF-MR is allowed the following amounts for clothing and personal incidentals:

- (a) For an individual who receives a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.
  - (b) For all other individuals, \$60.18 is allowed.
  - (c) For an individual identified in subsection (b) of this section with *countable* income (including any SSI) that is less than \$60.18, the payment standard is equal to the difference between the individual's *countable* income (including any SSI) and \$60.18. For the purposes of this subsection, *countable* income includes income that would otherwise be *countable* for an individual who is assumed eligible under OAR 461-135-0010.
- (6) In the OSIPM-EPD program, the adjusted earned income limit is 250 percent of the federal poverty level for a family of one.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706

461-155-0270

~~Eff. 1-1-15~~

Eff. 1-1-17

Room and Board Standard; OSIPM

For an OSIPM program client in a *community based care* (see OAR 461-001-0000) facility, the room and board standard is \$5701.00. A client residing in a *community based care* facility must pay room and board.

Stat. Auth.: ORS 411.060, 411.070, 411.704, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.704, 411.706

461-155-0300  
Shelter-in-Kind Standard

~~Eff. 1-1-15~~

Eff. 1-1-17

In the OSIP, OSIPM, and QMB programs, the Shelter-in-Kind Standard is:

(1) For a single individual:

(a) Living alone, \$4501 for total shelter or \$2701 for housing costs only.

(b) Living with others, \$2089 for total shelter or \$125 for housing costs only.

(2) For a couple:

(a) Living alone, \$5579 for total shelter or \$3345 for housing costs only.

(b) Living with others, \$2067 for total shelter or \$124 for housing costs only.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

## Excluded Resource; Community Spouse Provision (OSIPM except OSIPM-EPD)

In the OSIPM (except OSIPM-EPD) program:

- (1) This rule applies to an *institutionalized spouse* (see OAR 461-001-0030) who has applied for benefits because the individual is in or will be in a *continuous period of care* (see OAR 461-001-0030).
- (2) Whether a *legally married* (see OAR 461-001-0000) couple lives together or not, the determination of whether the value of the couple's resources exceeds the eligibility limit for the *institutionalized spouse* for the OSIPM program is made as follows:
  - (a) The first step is the determination of what the couple's combined *countable* (see OAR 461-001-0000) resources were at the beginning of the most recent *continuous period of care*. (The beginning of the *continuous period of care* is the first month of that continuous period.)
    - (A) Division 461-140 and 461-145 rules applicable to OSIPM describe which of the couple's resources are *countable* resources, and are applicable to determine whether a community spouse's resources are *countable*, even if the rule only applies to OSIPM clients.
    - (B) The *countable* resources of both spouses are combined.
    - (C) At this point in the computation, the couple's combined *countable* resources are considered available equally to both spouses.
  - (b) The second step is the calculation of one half of what the couple's combined *countable* resources were at the beginning of the *continuous period of care*. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.
  - (c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:
    - (A) The community spouse's half of what the couple's combined *countable* resources were at the beginning of the *continuous period of care*, but not more than ~~\$19,220~~120,900.
    - (B) ~~\$23,844~~24,180 (the state community-spouse resource allowance).
    - (C) A court-ordered community spouse resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term "court-ordered community spouse resource allowance" means a "court-ordered community spouse resource allowance" that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the client became an *institutionalized*

*spouse* on or after February 8, 2006, this resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.

- (D) After considering the income of the *community spouse* (see OAR 461-001-0030) and the income available from the *institutionalized spouse*, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph is the amount required to purchase a single premium immediate annuity to make up the shortfall; and the amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:
- (i) The monthly income allowance computed in accordance with OAR 461-160-0620.
  - (ii) The difference between--
    - (I) The sum of gross *countable* income of the *community spouse* and the *institutionalized spouse*; and
    - (II) The applicable need standard under OAR 461-160-0620(3)(c).
- (d) The fourth step is the determination of what the couple's current combined *countable* resources are when a resource assessment is requested or the *institutionalized spouse* applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.
- (e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined *countable* resources. The resources remaining are considered available to the *institutionalized spouse*.
- (f) The sixth step is a comparison of the value of the remaining resources to the OSIPM resource standard for one person (under OAR 461-160-0015). If the value of the remaining resources is at or below the standard, the *institutionalized spouse* meets this eligibility requirement. If the value of the remaining resources is above the standard, the *institutionalized spouse* cannot be eligible until the value of the couple's combined *countable* resources is reduced to the largest of the four following amounts:
- (A) The community spouse's half of what the couple's combined *countable* resources were at the beginning of the *continuous period of care* (but not more than \$~~119,220~~120,900) plus the OSIPM resource standard for one person.

- (B) \$23,844,180 (the state community-spouse resource allowance), plus the OSIPM resource standard for one person.
  - (C) A "court-ordered community spouse resource allowance" plus the OSIPM resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the "court-ordered community spouse resource allowance".)
  - (D) The OSIPM resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the *community spouse* and the income available from the *institutionalized spouse*, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. This amount is the amount required to purchase a single premium immediate annuity to make up the shortfall. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:
    - (i) The monthly income allowance computed in accordance with OAR 461-160-0620.
    - (ii) The difference between--
      - (I) The sum of gross *countable* income of the *community spouse* and the *institutionalized spouse*; and
      - (II) The applicable need standard under OAR 461-160-0620(3)(c).
- (3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the *community spouse* if those resources are not already in that spouse's name. The *institutionalized spouse* must indicate his or her intent to transfer the resources and must complete the transfer to the *community spouse* within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the *institutionalized spouse* but not transferred out of that spouse's name will be *countable* and used to determine ongoing eligibility.
- (4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the *spouse* (see OAR 461-001-0000) of the client.

## Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM

In the OSIPM program:

- (1) Deductions from income are made for an individual residing in or entering a long-term care facility or receiving *home and community-based care* (see OAR 461-001-0030) as explained in subsections (3)(a) to (3)(h) of this rule.
- (2) Except as provided otherwise in OAR 461-160-0610, the liability of the individual is determined according to subsection (3)(i) of this rule.
- (3) Deductions are made in the following order:
  - (a) One standard earned income deduction of \$65 is made from the earned income in the OSIPM-AD and OSIPM-OAA programs. The deduction is \$85 in the OSIPM-AB program.
  - (b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.
  - (c) One of the following need standards:
    - (A) A \$60.18 personal needs allowance for an individual receiving long-term care services.
    - (B) A \$90 personal needs allowance for an individual receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.
    - (C) For an individual who receives *home and community-based care*:
      - (i) Except as provided in subparagraph (ii) of this paragraph, the OSIPM maintenance standard.
      - (ii) For an individual who receives in-home services, the OSIPM maintenance standard plus \$500.
  - (d) A *community spouse* (see OAR 461-001-0030) monthly income allowance is deducted from the income of the *institutionalized spouse* (see OAR 461-001-0030) to the extent that the income is made available to or for the benefit of the *community spouse*, using the following calculation.
    - (A) Step 1--Determine the maintenance needs allowance. \$2,003 is added to the amount over \$601 that is needed to pay monthly shelter expenses for

the principal residence of the couple. This sum or ~~\$2,980.50~~\$3,022.50 whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420). If an all-inclusive rate covers items that are not allowable shelter expenses, including meals or housekeeping in an assisted living facility, or the rate includes utilities, to the extent they can be distinguished, these items must be deducted from the all-inclusive rate to determine allowable shelter expenses.

- (B) Step 2--Compare maintenance needs allowance with community spouse's countable income. The *countable* (see OAR 461-001-0000) income of the *community spouse* is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.
  - (C) Step 3--If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.
- (e) A dependent income allowance as follows:
- (A) For a case with a *community spouse*, a deduction is permitted only if the monthly income of the eligible dependent is below \$2,003. To determine the income allowance of each eligible dependent:
    - (i) The monthly income of the eligible dependent is deducted from \$2,003.
    - (ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.
  - (B) For a case with no *community spouse*:
    - (i) The allowance is the TANF adjusted income standard for the individual and eligible dependents.
    - (ii) The TANF standard is not reduced by the income of the dependent.
- (f) Costs for maintaining a home if the individual meets the criteria in OAR 461-160-0630.
- (g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private

health insurance premiums of the *community spouse* and the individual's dependent.

- (h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.
- (i) The individual's liability is determined as follows:
  - (A) For an individual receiving *home and community-based care* (except an individual identified in OAR 461-160-0610(4)), the liability is the actual cost of the *home and community-based care* or the adjusted income of the individual, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for *home and community-based care*. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.
  - (B) For an individual who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a mental health facility, there is a liability as described at OAR 461-160-0610.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.706, 413.085, 414.065, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.706, 413.085, 414.065, 414.685

## Effective Dates; Suspending or Closing Benefits and JOBS Support Service Payments

- (1) This rule explains the effective date for closing or suspending benefits for the entire *benefit group* (see OAR 461-110-0750) and the effective date for ending JOBS support service payments.
- (2) In all programs except the ERDC program, when the only individual in a *benefit group* dies, the effective date of the closure is:
  - (a) In the REF, SNAP, and TANF programs, the last day of the month in which the death occurred.
  - (b) In all other programs, the date of the death.
- (3) For all closures and suspensions not covered by section (2) of this rule, the effective date is determined as follows:
  - (a) When prospective eligibility is used, the effective date for closing or suspending benefits is the last day of the month in which the notice period ends.
  - ~~(b) When retrospective eligibility or budgeting is used, the effective date for closing or suspending benefits is the last day of the budget month.~~
  - (eb) For a pregnant female receiving benefits of the OSIPM program, the effective date for closing benefits is no earlier than the last day of the calendar month in which the 60th day after the last day of pregnancy falls, except at the client's request.
  - (dc) For a client who is receiving medical assistance and becomes incarcerated with an expected stay of a year or less, the effective date for suspending medical benefits is the effective date on the *decision notice* (see OAR 461-001-0000).
  - (ed) The effective date for ending support service payments authorized under OAR 461-190-0211 is the earlier of the following:
    - (A) The date the related JOBS activity is scheduled to end.
    - (B) The date the client no longer meets the requirements of OAR 461-190-0211.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049  
Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049