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DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

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CONTACT: Robert Trachtenberg
503-947-5290
robert.trachtenberg@state.or.us

DHS-SSP
500 Summer Street NE, E-48
Salem, OR 97301

Filed By:
Robert Trachtenberg
Rules Coordinator

RULES:

461-110-0210, 461-135-0725, 461-135-0755, 461-135-0950, 461-140-0020, 461-140-0110, 461-140-0120, 461-145-0040, 461-145-0080, 461-145-0089, 461-145-0145, 461-145-0320, 461-145-0330, 461-145-0348, 461-145-0410, 461-145-0435, 461-145-0470, 461-145-0490, 461-145-0510, 461-145-0530, 461-145-0580, 461-155-0250, 461-155-0526, 461-155-0710, 461-160-0540, 461-175-0340, 461-180-0020, 461-180-0083, 461-195-0305

AMEND: 461-110-0210

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-110-0210 about household groups is being amended to cover individuals residing in a 24-hour mental health residential care setting, clarifying how other eligibility rules apply to them.

CHANGES TO RULE:

461-110-0210

Household Group ¶¶

- (1) This rule describes who is included in the household group. The household group generally consists of the individuals who live together with or without the benefit of a dwelling. For homeless individuals, the household group consists of the individuals who consider themselves living together.¶¶
- (2) A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has, separate from any other dwelling, an access to the outside that does not pass through another dwelling, a functional sleeping area, bathroom, and kitchen facility.¶¶
- (3) Each individual in the household group who applies for benefits is an applicant. The household group and applicants form the basis for determining who is in the remaining eligibility groups.¶¶
- (4) For all programs except the SNAP program, a separate household group is established for individuals who live in the same dwelling as another household group, if all the following subsections are true:¶¶

- (a) There is a landlord-tenant relationship between the two household groups in which the tenant is billed by the landlord at fair market value (see OAR 461-001-0000) for housing.¶
- (b) The tenant lives independently from the landlord.¶
- (c) The tenant:¶
 - (A) Has and uses sleeping, bathroom, and kitchen facilities separate from the landlord; or¶
 - (B) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for compensation at fair market value.¶
- (5) Individuals who live with more than one household group during a calendar month are members of the household group in which they spend more than half of their time, except as follows:¶
 - (a) In the ERDC program, if a child (see OAR 461-001-0000) lives with different caretakers during the month, the child is considered a member of both household groups.¶
 - (b) In the TANF program:¶
 - (A) If a parent (see OAR 461-001-0000) sleeps at least 30 percent of the time during the calendar month in the home of the dependent child (see OAR 461-001-0000), the parent is in the same household group as the dependent child.¶
 - (B) A dependent child is included in the household group with the caretaker relative (see OAR 461-001-0000), who usually has the major responsibility for care and control of the dependent child, if the dependent child lives with two household groups in the same calendar month for at least one of the following reasons:¶
 - (i) Education.¶
 - (ii) The usual caretaker relative is gone from the household for part of the month because of illness.¶
 - (iii) A family emergency.¶
 - (c) In the SNAP program:¶
 - (A) The individual is a member of the household group that provides the individual more than half of the individual's 21 weekly meals. If the individual is a child, the child is a member of the household group credited with providing the child more than half of the individual's 21 weekly meals. A household group is credited with providing breakfast and lunch for each day the child departs that group's home for school, even if the child eats no breakfast or lunch at that home.¶
 - (B) During the month in which a resident of a domestic violence shelter (see OAR 461-001-0000) enters the domestic violence shelter, the resident may be included both in the household group he or she left and in a household group in the domestic violence shelter.¶
- (6) In the OSIPM program, individuals who are being evaluated under OAR 461-135-0745; or OAR 461-135-0750, or ~~OAR 461-135-0755~~ who are residing in a 24-hour mental health residential care setting are a household group of one regardless of others living in the individual's dwelling or facility.¶
- (7) Individuals absent from the household for 30 days or more are no longer part of the household group, except for the following:¶
 - (a) In all programs except the OSIPM and SNAP programs, an individual in an acute care medical facility remains in the household group unless the individual enters long-term care (see OAR 461-001-0000).¶
 - (b) In the ERDC and TANF programs:¶
 - (A) A caretaker relative who is absent for up to 90 days while in a residential alcohol or drug treatment facility is in the household group.¶
 - (B) A child who is absent for 30 days or more is in the household group if the child is:¶
 - (i) Absent for illness (unless the child is in a long-term care Title XIX facility), social service, or educational reasons;¶
 - (ii) In foster care, but expected to return to the household within the next 30 days.¶
 - (c) In the ERDC program, an individual in the household group who is:¶
 - (A) Absent because of education, training, or employment, including long-haul truck driving, fishing, or active duty in the U.S. armed forces;¶
 - (B) Absent to care for an emergent need of an individual related to illness, injury, or death; or¶
 - (C) Absent but reasonably anticipated to return within 90 days.¶

(d) In the TANF program, when a filing group (see OAR 461-110-0310 and 461-110-0330) includes more than one caretaker relative, a caretaker relative in the household group who is absent:¶¶

(A) Because of education, training, or employment - including absence while working or looking for work outside the area of the residence of the caretaker relative, such as long-haul truck driving, fishing, or active duty in the U.S. armed forces; or¶¶

(B) For up to 60 days solely due to the regulations of a homeless or domestic violence shelter or other circumstances beyond the individual's control but who would otherwise be included in the household group.¶¶

(e) In the REF and REFM programs, an individual in the household group who was absent:¶¶

(A) For up to 90 days while in a residential alcohol or drug treatment facility;¶¶

(B) To care for an emergent need of an individual related to illness, injury, or death;¶¶

(C) Because of education, training, or employment - including absence while working or looking for work outside the area of the individual's residence, such as long-haul truck driving, fishing, or active duty in the U.S. armed forces; or¶¶

(D) For up to 60 days solely due to the regulations of a homeless or domestic violence shelter or other circumstances beyond the individual's control but who would otherwise be included in the household group.¶¶

(f) In the REF, REFM, and TANF programs, the Department may approve one or more 30-day extensions of this time period if the Department receives sufficient information to assure the Department that the absent individual will return within the extension period.¶¶

(8) In the OSIP-EPD and OSIPM-EPD programs, the household group consists only of the individual applying for or receiving benefits.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.001, 412.006, 412.049, 413.085, 414.685, 414.839

AMEND: 461-135-0725

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-135-0725 about specific requirements for OSIP-EPD and OSIPM-EPD is being amended to clarify that EPD should only be considered when an individual does not qualify for other OSIPM programs for individuals in a standard living arrangement, since that category of OSIPM does not have a participant fee provision. This rule is also being amended to clarify that the 12-month extended EPD eligibility only applies when the individual experiences a loss of employment; all other EPD requirements must be met. This rule is being further amended to remove policies about OSIP-EPD because there is no sub-category of OSIP for EPD recipients. These changes fit the rule to current practices and clarify that workers consider the categories first that are most cost-effective for clients.

CHANGES TO RULE:

461-135-0725

Specific Requirements; ~~OSIP-EPD~~; OSIPM-EPD ¶

(1) To be eligible for the ~~OSIP-EPD and OSIPM-EPD~~ programs, an individual must:--¶

(a) Have a disability, as defined in OAR 461-125-0370;¶

(b) Have adjusted income below the limit provided in OAR 461-155-0250(6);¶

(c) Have employment as defined in OAR 461-001-0035. Once found eligible, a client remains eligible under this subsection for the ~~OSIP-EPD or OSIPM-EPD~~ program while not working if the employer treats the client as an employee, such as when the client is absent from the job under the provisions of the Family Medical Leave Act; and¶

(d) Not be assumed eligible for OSIPM, as defined in OAR 461-135-0010(6);, and not meet one of the following:¶

~~(2A) If an OSIP-EPD or OSIPM-EPD client becomes unemployed and meets all financial and non-financial eligibility requirements for another OSIP or OSIPM sub-program OSIPM except for resources, the client may retain eligibility for OSIP-EPD or OSIPM-EPD for up to 12 months in order to spend down to the OSIP or OSIPM resource limit. The individual must continue to meet all financial and nonfinancial eligibility factors for OSIPM-EPD except employment.~~ The 12-month period begins the first of the month following the loss of employment.

~~(B) The resource limits for OSIPM under section (3)(a) of OAR 461-160-0015.¶~~

~~(2) If an OSIPM-EPD client becomes unemployed and meets all financial and non-financial eligibility requirements for another OSIP or OSIPM sub-program OSIPM except for resources, the client may retain eligibility for OSIP-EPD or OSIPM-EPD for up to 12 months in order to spend down to the OSIP or OSIPM resource limit. The individual must continue to meet all financial and nonfinancial eligibility factors for OSIPM-EPD except employment.~~ The 12-month period begins the first of the month following the loss of employment.

Statutory/Other Authority: ~~ORS 411.060, 411.050, 411.060, 411.404, 413.085, 414.685~~

Statutes/Other Implemented: ~~ORS 411.060, 411.010, 411.060, 411.404~~

AMEND: 461-135-0755

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-135-0755 about OSIPM requirements for individuals residing in a 24-hour mental health residential care setting is being amended to revise the requirements that apply to the income limits, consistent with federal policies about eligibility for this group.

CHANGES TO RULE:

461-135-0755

Individuals Residing in a 24-Hour Mental Health Residential Care Setting; OSIPM

In the OSIPM program, an individual who meets ~~both~~ all of the requirements below is subject to the OSIPM income limit specified in OAR 461-155-0250(6):¶

(1) The individual resides or will reside in a 24-hour mental health residential care setting, ~~such as an adult foster home.~~ For purposes of this rule, only the following types of treatment centers qualify as a 24-hour mental health residential care setting:¶

(a) A mental health adult foster home.¶

(b) A mental health residential treatment home.¶

(c) A mental health residential treatment facility, ~~or a.~~¶

(d) A mental health secure treatment facility.¶

~~(2) The individual does not meet the income requirements for OSIPM~~ is not assumed eligible for OSIPM under OAR 461-135-0010, and does not meet the income requirements for OSIPM for those in a standard living arrangement (see OAR 461-001-0000) under sections (3) or (5) of OAR 461-155-0250.¶

(3) The individual is age 18 or older.

Statutory/Other Authority: ORS 409.050, 411.060, 411.404, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 411.060, 411.404, 42 CFR 435.219, 42 CFR 435.726

RULE SUMMARY: OAR 461-135-0950 about eligibility for inmates and residents of public institutions is being amended to make permanent temporary rule change that add Medicare Savings Programs (QMB programs) to the exception of ineligibility for certain individuals in the state hospital. This rule is also being amended to change the requirements for receiving benefits in a state hospital from 21 or older to 21 or younger and specify that 21-year-old individuals must be receiving services in a certified ward before age 21, not just enter the state hospital prior to age 21. This amendment aligns with federal policy by adding Medicare Savings Programs (QMB programs) to the exception of ineligibility for certain individuals in the state hospital, and by changing the requirements for receiving benefits in a state hospital from 21 or older to 21 or younger and specifying that 21-year-old individuals must be receiving services in a certified ward before age 21, not just enter the state hospital prior to age 21. This rule is also being amended to change the length of time GA recipients who are incarcerated may continue to receive housing assistance benefits from two calendar months following the month of incarceration to one calendar month so the payments not exceed what is needed for transition.

CHANGES TO RULE:

461-135-0950

Eligibility for Inmates and Residents of Public Institutions ¶¶

(1) This rule sets out additional restrictions on the eligibility of inmates and residents of state hospitals for programs covered by Chapter 461 of the Oregon Administrative Rules.¶¶

(2) Definition of an "inmate".¶¶

(a) An inmate is an individual living in a public institution (see section (3) of this rule) who is:¶¶

(A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including an individual being held involuntarily in a detention center awaiting trial or an individual serving a sentence for a criminal offense;¶¶

(B) Residing involuntarily in a facility under a contract between the facility and a public institution where, under the terms of the contract, the facility is a public institution;¶¶

(C) Residing involuntarily in a facility that is under governmental control;¶¶

(D) Receiving care as an outpatient while residing involuntarily in a public institution; or¶¶

(E) In the OSIPM and QMB programs, released from the public institution during a temporary period of hospitalization in a medical institution outside of the correctional facility.¶¶

(b) An individual is not considered an inmate when:¶¶

(A) The individual is released on parole, probation, or post-prison supervision;¶¶

(B) The individual is on home- or work-release, unless the individual is required to report to a public institution for an overnight stay;¶¶

(C) The individual is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual; or¶¶

(D) The individual is in a public institution pending other arrangements as defined in 42 CFR 435.1010.¶¶

(3) A "public institution" is any of the following:¶¶

(a) A state hospital (see ORS 162.135).¶¶

(b) A local correctional facility (see ORS 169.005): a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds individuals for more than 36 hours.¶¶

(c) A Department of Corrections institution (see ORS 421.005): a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.¶¶

(d) A youth correction facility (see ORS 162.135):¶¶

(A) A facility used for the confinement of youth offenders and other individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a

residential academy and satellite, and camps and branches of those facilities; or¶¶

(B) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.¶¶

(4) Definition of serious mental illness. An individual has a serious mental illness if the individual has been diagnosed by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as having dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a substance abuse disorder and other than a disorder that is caused primarily by substance abuse.¶¶

(5) An individual who resides in a state hospital (see subsection (3)(a) of this rule) meets the definition of a serious mental illness (see section (4) of this rule), and applies for medical assistance between 90 and 120 days prior to the expected date of the person's release from the state hospital may be found eligible for medical assistance. If the individual is determined to be eligible, the effective date of the individual's medical assistance is the date the individual is released from the institution.¶¶

(6) In the OSIPM and QMB programs, ~~a client~~except as provided for in section (7) of this rule, an individual who is at least 21 years of age and less than 65 years of age who becomes a resident of a state hospital has medical benefits suspended ~~if the client is at least 21 years of age and under 65 years of age. When a client.~~When an individual with suspended medical benefits is no longer a resident of the state hospital, or when the individual is admitted to a medical institution outside of the state hospital for a period of hospitalization, medical benefits are reinstated effective the first day the ~~client~~individual is no longer a resident, if the ~~client~~individual continues to meet eligibility for the medical program.¶¶

(7) An individual residing in a state hospital may be eligible for OSIPM and QMB program benefits if the individual:¶¶

(a) Receives services on a certified ward;¶¶

(b) Receives a Certificate of Need for Services from the State-authorized agency; and¶¶

(c) Meets one of the following:¶¶

(A) Is 65 years of age or older;¶¶

(B) Is under 21 years of age; or¶¶

(C) ~~Is 21 years of age or older, if the basis of need is disability or blindness; eligibility was determined before the individual reached 21 years of age; and the individual entered the state hospital before reaching 22 years of, and the individual was receiving services in a certified ward immediately before reaching age 21. Except as provided for in paragraph (A) of this subsection, eligibility ends at age 22.~~¶¶

(8) For all programs covered under chapter 461 of the Oregon Administrative Rules:¶¶

(a) Except as provided otherwise in this rule, an inmate (see section (2) of this rule) of a public institution is not eligible for benefits.¶¶

(b) If a pregnant woman receiving medical assistance through the OSIPM program becomes an inmate of a public institution, her medical benefits are suspended. When the Department is informed the woman is no longer an inmate, her medical benefits are reinstated - effective on the first day she is no longer an inmate - if she is still in her protected period of eligibility under OAR 461-135-0010.¶¶

(c) If an individual receiving medical assistance through the OSIPM or QMB programs becomes an inmate of a correctional facility, medical benefits are suspended during the incarceration period.¶¶

(d) In the OSIPM and QMB programs, when the Department is notified that an individual with suspended benefits has been released or has been admitted to a hospital outside of the public institution for a period of hospitalization, medical benefits are reinstated effective the first day the client is no longer an inmate if both of the following are true:¶¶

(A) The client continues to meet eligibility for the medical program; and¶¶

(B) The notification takes place within ten calendar days of the release, or the notification takes place more than ten calendar days from the release date and there is good cause for the late reporting.¶¶

(9) In the GA and SNAP programs, in addition to the other provisions of this rule, an inmate released from a public institution on home arrest, and required to wear an electronic device to monitor his or her activity, is ineligible for

benefits if the correctional agency provides room and board to the individual.¶¶

(10) In the GA program, when an individual becomes an inmate of a public institution:¶¶

(a) Benefits may continue for the two calendar months following the month the Department is notified of the incarceration, if the individual will be released before the end of the second calendar month and the housing arrangement is still available.¶¶

(b) If the individual will be released after the end of the second calendar month following the month of notification, or if the release date is not known, benefits will be closed effective the end of the notice period (see OAR 461-175-0050) for a timely continuing benefit decision notice (see OAR 461-001-0000).

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685, 412.014

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.447, 411.816, 412.014, 412.049, 414.426, 42 CFR 435.1009

AMEND: 461-140-0020

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-140-0020 about availability of resources being amended to state that the limit on resource availability when there is a legal bar to the sale of the resource applies only in the QMB-DW program, not all QMB programs, making this rule consistent with earlier changes to the QMB program rules.

CHANGES TO RULE:

461-140-0020

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 program, 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-DW 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.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Statutes/Other 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

AMEND: 461-140-0110

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-140-0110 about treatment of periodic income is being amended to establish that for OSIPM and QMB programs, periodic income will be averaged for both determining eligibility and calculating client liability, subject to exceptions in the month of the date of request and retroactive months. This amendment also incorporates a monthly \$10 earned and \$20 unearned exclusion of combined periodic and lump-sum income. These changes align the rule with Integrated Eligibility.

CHANGES TO RULE:

461-140-0110

Treatment of Periodic Income ¶

(1) In the SNAP and TANF programs, for a filing group (see OAR 461-110-0330 and 461-110-0370) that includes at least one member who is working under a TANF JOBS Plus agreement, periodic income (see OAR 461-001-0000) is excluded.¶

(2) In the REF, SNAP, and TANF programs, for filing groups not covered under section (1) of this rule, periodic income is averaged over the applicable period.¶

(3) In the ERDC program, periodic income is averaged over the applicable period.¶

(4) In the OSIP-EPDM and OSIPM-EPDQMB programs, all periodic income received in the 12 months following initial approval or periodic income is averaged over the applicable period, except as follows:¶

(a) A new source of periodic income received or expected to be received in any month following the month containing the date of request (see OAR 461-115-0030) is not averaged and counted until the first month it is received following the month containing the date of request.¶

(b) When determining countable (see OAR 461-001-0000) income for retroactive eligibility:¶

(A) Any ongoing periodic income received in a retroactive month is averaged.¶

(B) A new source of periodic income received in a retroactive month is averaged from the most recent redetermination is averaged over the months remaining prior to the next redeterminationnth of receipt forward.¶

(c) When determining countable income for the purposes of eligibility, the following exclusions apply to the total amount of combined periodic income and lump-sum income (see OAR 461-001-0000) received by an individual each month, including non-applying spouses and children:¶

(A) A \$10 monthly exclusion from earned income.¶

(B) A \$20 monthly exclusion from unearned income.¶

(d) For purposes of calculating client liability under OAR 461-160-0620:¶

(A) Any periodic income received in a month prior to the month containing the date of request for services is excluded.¶

(B) Any periodic income received or expected to be received in the month containing the date of request for services, is not averaged and counted until the next time it is received after the month containing the date of request.¶

(C) For purposes of counting periodic income and calculating liability, an individual is not considered to have a break in services when the individual is admitted to a nursing facility or hospital and begins receiving services again upon discharge.¶

(5) In the REFM program, periodic income is averaged over the applicable period if received in the month of application.¶

(6) In all programs not covered under sections (1) to (4) of this rule, periodic income is counted in the month received.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014,

413.085, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 409.610, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

RULE SUMMARY: OAR 461-140-0120 about availability and treatment of lump-sum income is being amended to remove treatment exceptions for EPD, and incorporate a \$10 earned and \$20 unearned monthly exclusion of combined periodic and lump-sum income for QMB programs and all OSIPM programs, including EPD, which was excluded from the existing lump-sum \$20 exclusion. This rule is also being amended to acknowledge that not all lump-sum income is unearned. These changes align the rule with Integrated Eligibility.

CHANGES TO RULE:

461-140-0120

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 OSIP (~~except OSIP-EPD~~), OSIPM (~~except OSIPM-EPD~~), OSIPM, 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; when calculating countable (see OAR 461-001-0000) income for the purposes of determining eligibility and calculating client liability under OAR 461-160-0620;¶~~

~~(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.¶~~

(5c) In the OSIP-EPD and OSIPM-EPD programs, lump-sum income is counted as a resource. When calculating countable income for the purposes of eligibility, the following exclusions apply to the total amount of combined lump-sum income and periodic income (see OAR 461-001-0000) received by an individual each month, including non-applying spouses and children:¶

(A) The first \$10 of earned income received in a month.¶

(B) The first \$20 of unearned income received in a month.¶

~~(65) 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.¶

(c) The following exclusions apply to combined lump-sum income and periodic income received by an individual, including non-applying spouses and children:¶

(A) The first \$10 of earned income received in a month.¶

(B) The first \$20 of unearned income received in a month.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 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

AMEND: 461-145-0040

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0040 about the effect on program eligibility of burial arrangements and burial funds is being amended to clarify exclusions of burial funds in the OSIPM program.

CHANGES TO RULE:

461-145-0040

Burial Arrangements and Burial Fund ¶¶

(1) The following definitions apply to this rule:¶¶

(a) "Burial arrangement" 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 establishes provisions for payment of an individual's 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) "Burial fund" 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 (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 exceeds \$1,000 is counted as a resource.¶¶

(c) In the 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~~ Except as provided in subsections (a) and (c) of this section and for OSIP and OSIPM client, in all programs not covered listed by in 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 generates a cash surrender value to which the owner has access is considered life insurance and is treated in accordance with OAR 461-145-0320 and, as applicable, subsection (b) of this section.¶¶

(f) Burial insurance that does not generate a cash surrender value, or generates cash surrender value to which the owner does not have access, is considered an irrevocable arrangement and treated in accordance with subsection (c) of this section.¶¶

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

(a) In the 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. This does not include term life insurance policies that do not generate a cash surrender value.¶
- (II) The amount in an irrevocable burial trust or any other irrevocable arrangement designated to cover burial costs, including the face value of burial insurance considered an irrevocable arrangement (see subsection (2)(f) of this rule). Burial costs do not include burial spaces or merchandise (see OAR 461-145-0050).¶
- (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.¶
- (c) 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.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839

AMEND: 461-145-0080

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0080 about the effect on program eligibility of child support and cash medical support is being amended to set out the effect of child support paid in arrears on eligibility for the OSIPM and QMB programs, aligning these programs with Integrated Eligibility.

CHANGES TO RULE:

461-145-0080

Child Support and Cash Medical Support ¶¶

(1) Child support and cash medical support paid by a non-custodial parent for a dependent child (see OAR 461-001-0000) or minor parent (see OAR 461-001-0000) in the financial group (see OAR 461-110-0530) are considered income of the dependent child or minor parent, whether the support is paid voluntarily or in accordance with an order to pay child support.¶¶

(2) For the purposes of this rule:¶¶

(a) "Absent parent" means a parent (see OAR 461-001-0000) whose parental rights have not been legally severed or a stepparent currently legally married (see OAR 461-001-0000) to a parent of a child (see OAR 461-001-0000) who does not live in the same household as the child.¶¶

(b) "Disregard" means child support, up to \$50 per dependent child or minor parent per financial group per month and not to exceed \$200 per financial group per month, that is not counted as income of the client. "Disregard" includes current child support only.¶¶

(c) "Pass-through" means child support, up to \$50 per dependent child or minor parent per financial group per month and not to exceed \$200 per financial group per month, that is sent to the client before any remaining amount of current child support is withheld by the State. "Pass-through" includes current child support only.¶¶

(3) In the ERDC program, child support is considered countable (see OAR 461-001-0000) unearned income if it is received by the financial group or is countable under OAR 461-145-0280. Otherwise it is excluded.¶¶

(4) In the SNAP program, child support and cash medical support are treated as follows:¶¶

(a) Child support payments the group receives that must be assigned to the Department to maintain TANF eligibility are excluded, even if the group fails to turn the payments over to the Department.¶¶

(b) Child support payments received by a filing group (see OAR 461-110-0370) with at least one member working under a TANF JOBS Plus agreement are excluded, except:¶¶

(A) It is considered countable unearned income in the calculation of the wage supplement; and¶¶

(B) Any pass-through pursuant to section (2) of this rule is considered countable unearned income.¶¶

(c) All other child support, including any pass-through pursuant to section (2) of this rule, is considered countable unearned income.¶¶

(d) Cash medical support is considered countable unearned income except to the extent it is used to reimburse (see OAR 461-145-0440) an actual medical cost.¶¶

(e) Payments made by a non-custodial parent to a third party for the benefit of the financial group are treated in accordance with OAR 461-145-0280.¶¶

(5) Except as provided otherwise in section (8) of this rule, in the TANF program:¶¶

(a) In determining initial eligibility (see OAR 461-001-0000), except for disregard pursuant to section (2) of this rule, child support received by the Oregon Department of Justice, Division of Child Support (DCS) is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.¶¶

(b) In determining on-going eligibility, except for clients working under a TANF JOBS Plus agreement and except for child support passed through to the client and disregarded pursuant to section (2) of this rule, child support

received by the DCS is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.¶¶

(c) For clients working under a TANF JOBS Plus agreement:¶¶

(A) Child support is excluded in determining countable income.¶¶

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.¶¶

(C) All child support paid directly to the client is considered countable unearned income in the calculation of the wage supplement.¶¶

(d) All other child support payments:¶¶

(A) Paid directly to the financial group that are turned over to the DCS are considered countable unearned income except for any amount of pass-through and disregard pursuant to section (2) of this rule.¶¶

(B) Paid directly to the financial group that are not turned over to the DCS are considered countable unearned income.¶¶

(C) Paid to a third party for the benefit of the financial group are considered countable unearned income. This includes but is not limited to payments made by a non-custodial parent to a third party for rent, mortgage, utilities, or child care.¶¶

(e) Cash medical support is excluded in determining countable income.¶¶

(6) In the OSIP, OSIPM, and QMB programs:¶¶

(a) Child support and cash medical support paid to the financial group are considered countable unearned income, except as follows:¶¶

(A) One-third of all cash child support (including cash medical support) paid to an individual is excluded. This exclusion does not apply to child support paid in arrears.¶¶

(B) All in-kind child support paid to the financial group is excluded.¶¶

(C) Child support collected from an absent parent (see section (2) of this rule) by the State on behalf of a child in the custody of the State of Oregon (such as foster care) that is not given to the child or the custodial parent of the child is excluded. ¶¶

(D) Child support payments collected by the State of Oregon that are given to the individual or to the custodial parent are counted in accordance with paragraph (A) or (E) of this subsection.¶¶

(E) Child support paid in arrears is considered countable unearned income to the individual receiving the payments. If the individual gives the payments to the child, they are countable income to the child.¶¶

(b) Child support and cash medical support paid by the financial group are not deductible from income except as provided in OAR 461-160-0550, OAR 461-160-0551, and OAR 461-160-0552.¶¶

(7) In the SFPSS program, notwithstanding section (5) of this rule, for on-going eligibility and benefit determination:¶¶

(a) Except for disregard pursuant to section (2) of this rule, child support is considered countable unearned income.¶¶

(b) Cash medical support is excluded in determining countable income.¶¶

(c) Payments made by a non-custodial parent to a third party for the benefit of the financial group are considered countable unearned income. This includes but is not limited to payments made by a non-custodial parent to a third-party for rent, mortgage, utilities, or child care.¶¶

(8) For on-going eligibility and benefit determination for TANF clients in a two-parent household:¶¶

(a) Except for disregard pursuant to section (2) of this rule, child support is considered countable unearned income.¶¶

(b) Cash medical support is excluded in determining countable income.¶¶

(c) Payments made by a non-custodial parent to a third party for the benefit of the financial group are considered countable unearned income. This includes but is not limited to payments made by a non-custodial parent to a third party for rent, mortgage, utilities, or child care.¶¶

(d) For a filing group (see OAR 461-110-0330) with at least one member working under a TANF JOBS Plus agreement:¶¶

(A) Child support is excluded in determining countable income.¶¶

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.¶

(C) All child support paid directly to the client is considered countable unearned income in the calculation of the wage supplement.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.816, 412.009, 412.014, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.816, 412.009, 412.014, 412.049, 413.085, 414.685

AMEND: 461-145-0089

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0089 about the treatment of corporations and other business entities in the determination of eligibility for the OSIP, OSIPM, and QMB programs is being amended to clarify the rule by changing "treated" with "counted" and indicating that stock in a corporation owned by individuals with an ownership interest in the corporation but not actively working for the corporation is treated according to the rule on stocks.

CHANGES TO RULE:

461-145-0089

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

In the OSIP, OSIPM, and QMB programs: ¶

(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 ~~treacounted~~ as earned income as provided in OAR 461-145-0130.¶

(b) Dividends or profits are ~~treacounted~~ 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~~ in the QMB-BAS, QMB-SMB, and QMB-SMF programs, 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) 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 ~~treacounted~~ as earned income as provided in OAR 461-145-0130.¶

(b) Dividends or profits are treated as unearned income.¶

(c) Except ~~for~~ in the QMB-BAS, QMB-SMB, and QMB-SMF programs, 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) A non-business expenditure - including, but not limited to, a car or housing payment - paid by a business entity that benefits the individual is ~~treacounted~~ 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 ~~in the~~ in the QMB-BAS, QMB-SMB, and QMB-SMF programs, and except as provided in OAR 461-140-0020, the equity value of an ownership interest in a corporation or business entity, ~~such as~~ other than stock in the corporation, is ~~re~~reaccounted 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 ~~re~~reaccounted as unearned income of the individual.¶

(c) 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 ~~re~~reaccounted as unearned income of the individual.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685, 414.839

AMEND: 461-145-0145

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0145 about the effect of educational accounts on program eligibility is being amended to specify how this asset is treated in the QMB programs.

CHANGES TO RULE:

461-145-0145

Educational Account ¶¶

(1) The Individual Education Account (IEA) is an asset accrued by JOBS Plus participants. The IEA is excluded while it accumulates, while it is saved, and when it is withdrawn for educational purposes.¶¶

(2) For purposes of this rule, "educational expenses" are tuition, fees, and other necessary expenses for education at any educational institution. Examples of other necessary expenses for education include books, laboratory fees, student activity fees, transportation, stationary supplies, technology fees, and impairment-related expenses necessary to attend school or perform schoolwork (such as special prosthetic devices necessary to operate school machines or equipment). "Educational expenses" do not include the cost of shelter.¶¶

(3) In the OSIP, OSIPM, and QMB-DW programs:¶¶

(a) Funds in a Qualified Tuition Programs under Section 529 of the Internal Revenue Code are treated as follows:¶¶

(A) They are a countable (see OAR 461-001-0000) resource to the individual who owns the account.¶¶

(B) They are excluded as a resource for the beneficiary, unless the beneficiary is also the owner.¶¶

(b) Funds in a Coverdell Education Savings Accounts are treated as follows:¶¶

(A) They are excluded as a resource to the designated beneficiary. ¶¶

(B) If the contributor is not a designated beneficiary, funds deposited into the account are no longer the resource of the contributor beginning with the month after the month the cash is transferred. The transfer may be considered a disqualifying transfer of resources by the contributor under OAR 461-140-0210 and 461-140-0220.¶¶

(c) Distributions from a Coverdell Education Savings Account to a designated beneficiary are treated as follows:¶¶

(A) Educational expenses (see section (2) of this rule) are excluded as income in the month of receipt.¶¶

(B) If the excluded distribution is retained into the month following the month of receipt, it is excluded as a resource for nine months beginning with the month after the month of receipt.¶¶

(C) If the beneficiary spends any portion of a distribution for a purpose other than the educational expenses of the beneficiary, or no longer intends to use the funds for the educational expenses of the beneficiary, the non-education portion of the funds is countable as unearned income at the earlier of the following:¶¶

(i) The month the funds are spent.¶¶

(ii) The month the beneficiary no longer intends to use the funds for educational expenses.¶¶

(D) If a countable distribution is retained into the month following the month of receipt, it is a countable resource of the designated beneficiary. See OAR 461-145-0150 for information on other types of educational income.¶¶

(d) Gifts that are set aside to pay educational expenses are treated in accordance with subsection (c) of this section, except that the exclusion does not apply to any portion set aside or actually used for food or shelter. See OAR 461-145-0150 for information on other types of educational income.¶¶

(4) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, ~~distributions from a Coverdell Education Savings Account to a designated beneficiary are treated as follows:¶¶~~

~~(a):¶¶~~

(a) Funds held in a Qualified Tuition Program under Section 529 of the Internal Revenue Code or a Coverdell Education Savings Accounts are excluded as a resource.¶¶

(b) Distributions from a Coverdell Education Savings Account to a designated beneficiary are treated as follows:¶¶

(A) They are excluded as income in the month of receipt.¶¶

(B) If the excluded distribution is retained following the month of receipt, it is excluded as a resource.¶¶

(C) If the beneficiary spends any portion of a distribution for a purpose other than the educational expenses of the beneficiary, or no longer intends to use the funds for the educational expenses of the beneficiary, the non-education portion of the distribution is countable as unearned income at the earlier of the following:

(A) The month the funds are spent.

(B) The month the beneficiary no longer intends to use the funds for educational expenses.

~~(b) All other distributions are excluded as income.~~

(5) In the SNAP program, the value of funds in a qualified tuition program under section 529 of the Internal Revenue Code or in a Coverdell education savings account is excluded.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.404, 411.816, 413.085, 414.025, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.404, 411.816, 413.085, 414.025, 414.685

AMEND: 461-145-0320

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0320 about the effect on program eligibility of life insurance is being amended to set out policy on this topic in the QMB-BAS, QMB-SMB, and QMB-SMF programs.

CHANGES TO RULE:

461-145-0320

Life Insurance ¶¶

(1) Benefits paid on a life insurance policy are counted as unearned income in the month received ~~and a resource if~~ . Except in the QMB-BAS, QMB-SMB, and QMB-SMF programs, any amount retained into the following month is counted as a resource. ¶¶

(a) 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. ¶¶

(b) 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 generates a cash surrender value is treated in the same manner that this rule treats life insurance. ¶¶

(3) When the ownership or beneficiary of a life insurance policy has been irrevocably assigned and designated for burial, it is treated in accordance with OAR 461-145-0040 and is not counted towards the \$1500 life insurance limit. ¶¶

(4) 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 OSIP, OSIPM, and QMB-DW the ERDC, QMB-BAS, QMB-SMB, QMB-SMF, REF, REFM, SFPSS, SNAP, TA-DVS, Pre-TANF, Post-TANF, and TANF programs, the cash surrender value of the life insurance policy is excluded. ¶¶

(c) In the 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 are counted as a resource to the owner of the policies. 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 face value of term life insurance policies excluded under subsection (a) of this section are not counted in determining if the \$1,500.00 life insurance exclusion limit is exceeded. ¶¶

(D) The cash surrender value of a policy acquired through a viatical settlement is excluded.

Statutory/Other Authority: ~~ORS 409.050~~11.706, ~~411.060~~816, ~~412.070~~49, ~~4113.083~~5, ~~411.404~~4.685, ORS 329A.500, 409.050, 411.704~~060~~, 411.070~~6~~, 411.816~~083~~, 412.1.404~~9~~, 413.085, 414.685~~1.704~~

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839, ORS 329A.500

AMEND: 461-145-0330

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0330 about the effect on program eligibility of loans and interest on loans is being amended to add a condition that warrants a disqualifying transfer, clarify that its treatment is not dependent on whether an asset is a disqualifying transfer, and add clarity about how the loan is treated as a resource where that information is currently absent. It is also being amended to clarify how loans and interest on loans are treated in QMB programs. These changes are consistent with federal policy.

CHANGES TO RULE:

461-145-0330

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 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 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 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 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 OSIPMC) All money provided by the lender is excluded as a resource.¶~~

(6) In the OSIPM (except OSIPM-EPD) program, if a client individual or a spouse (see OAR 461-001-0000) of a client individual 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 individual or spouse of the client individual 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 individual or spouse of the client individual within three months of the life expectancy per the actuarial life expectancy of that individual as established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration. If the loan, promissory note, or mortgage are jointly owned by the client individual and their spouse, the requirements of this section are met if the transaction is repaid according to the life expectancy of either the client individual or their spouse.¶

(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, iv) No one other than the estate of the lender is designated as remainder beneficiary. ¶~~

(B) If any of the requirements in paragraph (a)(A) of this section are not met, payments against the principal and interest are treated as unearned income. The outstanding principal balance of the loan is excluded as a resource.¶

(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~~ meets all of the requirements of subsection (a) of this section, the loan is treated as follows:¶

(A) Interest income is treated as unearned income.¶

(B) 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. Payments against the principal are excluded as income.¶

(C) If the loan does not qualify under paragraph (B) of this subsection, payments against the principal are counted as unearned income. The outstanding principal balance of the loan is excluded as a resource.¶

(7) In the OSIP, OSIPM, and QMB-DW programs, if an individual uses funds to purchase a mortgage or to purchase or lend money for a promissory note or loan:¶

(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. Payments against the principal are excluded as income.¶

(c) If the loan does not qualify under subsection (b) of this section, the balance of the loan is excluded as a resource. The payments against the principal are counted as income to the lender.¶

(8) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, if an individual uses funds to purchase a mortgage or to purchase or lend money for a promissory note or loan:¶

(a) Interest income is ~~treacounted~~ counted as unearned income.¶

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

(9) In all programs other than the OSIP, OSIPM, and QMB programs:¶

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

(b) The payment of principal is excluded.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839

AMEND: 461-145-0348

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0348 about the effect of mineral rights on eligibility for the OSIP, OSIPM, and QMB programs is being amended to address how income and resources from mineral rights are treated in the QMB-BAS, QMB-SMB, and QMB-SMF programs.

CHANGES TO RULE:

461-145-0348

Mineral Rights; OSIP, OSIPM, QMB ¶

(1) In the OSIP, OSIPM, and QMB programs:¶

~~(1) M. "mineral rights" represent ownership interest in natural resources such as coal, oil, or natural gas, which normally are extracted from the ground.¶~~

(2) Mineral rightsIn the OSIP, OSIPM, and QMB-DW programs, mineral rights(see section (1) of this rule) are treated as follows:¶

(a) If the individual owns the property to which the mineral rights pertain, the current market value of the property is assumed to include the value of the mineral rights and is treated in accordance with OAR 461-145-0420.¶

(b) If the individual does not own the land to which the mineral rights pertain, the current market value of the mineral rights is counted as a resource.¶

(c) Income received from mineral rights, including compensation paid to the owner for the use or lease of property or natural resources, is considered royalty income and treated in accordance with OAR 461-145-0108.¶

(3) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, mineral rights are treated as follows:¶

(a) Income received from mineral rights, including compensation paid to the owner for the use or lease of property or natural resources, is considered royalty income and treated in accordance with OAR 461-145-0108.¶

(b) Mineral rights are excluded as a resource.

Statutory/Other Authority: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Statutes/Other Implemented: ORS 413.085, 414.685, 414.839, ORS 409.010, 409.050, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.706

AMEND: 461-145-0410

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0410 about the effect of program benefits on the determination of eligibility is being amended to update program names.

CHANGES TO RULE:

461-145-0410

Program Benefits ¶¶

(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) Employment Payments (see OAR 461-001-0025 and 461-135-1270) are treated as follows:¶¶

(a) In the REF, REFM, SNAP, and TANF programs, these payments are counted as unearned income in the month received.¶¶

(b) In all programs not covered in subsection (a) of this section, these payments are excluded.¶¶

(3) Payments from ERDC and TANF child care are excluded unless the client is the provider.¶¶

(4) Payments from the ~~OCCSMAGI~~ MAGI medical programs (including MAGI-CHIP), OSIPM, QMB, and REFM programs are excluded.¶¶

(5) Payments from JPI (see OAR 461-135-1260) are issued as a food benefit and are excluded.¶¶

(6) 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.¶¶

(7) 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.¶¶

(d) 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.¶¶

(e) 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.¶¶

(f) 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 461-135-0210) 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.¶¶

(8) 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.¶¶

(9) 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.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.06083, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.06083, 411.404, 411.700, 411.816, 412.014, 412.049, 7 CFR 273.9

AMEND: 461-145-0435

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0435 about the effect on program eligibility of refunds and rebates is being amended to exclude these items as a resource in the QMB-BAS, QMB-SMB, and QMB-SMF programs. This rule is also being amended to align programs in the treatment of refunds on merchandise, utility, and rental deposits. These changes fit with Integrated Eligibility.

CHANGES TO RULE:

461-145-0435

Refunds ¶¶

(1) In the OSIP, OSIPM, and QMB programs:¶¶

(a) Rebates, refunds, and other returns of money an individual did not already pay are counted as unearned income in the month received.¶¶

(b) Rebates, refunds, and other returns of money an individual already paid are excluded as income.¶¶

(c) Rebates that constitute a return on an individual's investment are treated in accordance with OAR 461-145-0108.¶¶

(d) Income and property tax refunds are treated in accordance with OAR 461-145-0530.¶¶

(2) In all programs ~~except the OSIP, OSIPM, and QMB~~ programs, the Department excludes the following refunds in the month they are received:¶¶

(a) Refunds on merchandise that was purchased or received as a gift.¶¶

(b) Refunds of utility and rental deposits.¶¶

(3) In all programs ~~except the QMB-BAS, QMB-SMB, and QMB-SMF~~ programs, the Department counts any refund amount remaining after the month of receipt as a resource.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

AMEND: 461-145-0470

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0470 about the effect of shelter in-kind income on program eligibility is being amended to state that there must be no option for the value of the shelter-in-kind to be taken in money for the income to be excluded. This aligns with how Integrated Eligibility will operate and clarifies what is already implied in the "acceptance of the shelter as a condition of employment" provision, since if there was an option to accept the value in money, then the accepting-the-shelter-as-a condition of employment condition would not be met (they are mutually exclusive).

CHANGES TO RULE:

461-145-0470

Shelter-in-Kind Income ¶

(1) Except as provided in section (2) of this rule:¶

(a) In the ERDC program, shelter-in-kind (see OAR 461-001-0000) payments are excluded, except earned shelter-in-kind is not excluded in the ERDC program.¶

(b) In the GA program, for the purposes of determining the housing assistance payment (see OAR 461-160-0500), shelter-in-kind in the form of rent or other housing costs paid by a third party is counted as income.¶

(c) In the REF, REFM, and TANF programs, except for child support (see OAR 461-145-0080 and 461-145-0280), shelter-in-kind payments are excluded.¶

(d) In the SNAP program, shelter-in-kind housing and utility payments are excluded (see OAR 461-145-0130 about exclusion of earned in-kind income), except an expenditure by a business entity for shelter costs (see OAR 461-001-0000) of a principal (see OAR 461-145-0088) is counted as income.¶

(e) In the OSIP, OSIPM, and QMB programs:¶

(A) Unearned shelter-in-kind, including payments made to a third party for shelter expenses of the financial group (see OAR 461-110-0530), is excluded.¶

(B) Earned shelter-in-kind income is treated as follows:¶

(i) If shelter is provided on the employer's business premises, living at that location is a reasonable expectation of the job duties, and acceptance of the shelter is a condition of employment with no option to accept the value of the shelter in money, the shelter-in-kind income is excluded.¶

(ii) Except as provided in subparagraph (i) of this paragraph, the fair market value (see OAR 461-001-0000) of the shelter or the amount of any payment made to a third party for shelter expenses of the financial group is counted as earned income.¶

(2) In all programs except the OSIP, OSIPM, and QMB programs, a payment for which there is a legal obligation to pay to a member of the financial group (see OAR 461-110-0530) that is made to a third party for shelter expenses of a member of the financial group is counted as unearned income.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.083, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.083, 411.404, 411.816, 412.014, 412.049, 413.085, 414.042, 414.685

AMEND: 461-145-0490

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0490 about the effect on program eligibility of Social Security benefits is being amended to exclude retroactive Social Security payments from being treated as a resource for the QMB-BAS, QMB-SMB, and QMB-SMF programs. This rule is also being amended to exclude retroactive payments for nine-months after receipt for EPD, aligning OSIPM-EPD with other OSIPM programs for purposes of Integrated Eligibility.

CHANGES TO RULE:

461-145-0490

Social Security Benefits ¶¶

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 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~~), OSIPM, 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) Except ~~for~~in the QMB-BAS, QMB-SMB, and QMB-SMF programs, any remaining amount from a retroactive payment after the month of receipt is excluded 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.

Statutory/Other Authority: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, ORS 329A.500

Statutes/Other Implemented: ORS 409.010, 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839, ORS 329A.500

AMEND: 461-145-0510

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0510 about the effect on program eligibility of SSI payments is being amended to revise how retroactive payments are treated in the QMB programs. This rule is also being amended to add a nine-month exclusion limit for EPD, aligning OSIPM-EPD with other OSIPM programs for purposes of Integrated Eligibility. This rule is being further amended to clarify that SSI payments received by financial group members are counted as unearned income in the month received.

CHANGES TO RULE:

461-145-0510

SSI ¶

(1) In the ERDC and SNAP programs, if 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 program:¶

(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~~), OSIPM, and QMB-DW programs:¶

(a) ~~Except in the QMB-BAS, QMB-SMB, and QMB-SMF programs, a~~ retroactive SSI payment is excluded as a resource 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.¶

(b) All SSI payments received by members of the financial group (see OAR 461-110-0530) are counted as unearned income.¶

~~(4 in the month received.~~¶

(4) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, all SSI payments received by members of the financial group are counted as unearned income in the month received.¶

(5) 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.¶

~~(56)~~ In the SNAP program:¶

(a) A monthly SSI payment is counted as unearned income.¶

(b) A lump-sum SSI payment is excluded.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839

AMEND: 461-145-0530

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0530 about the effect on program eligibility of tax refunds is being amended to exclude federal tax refunds from being counted as income or as a resource in the QMB-BAS, QMB-SMB, and QMB-SMF programs and change how state tax refunds are treated in the QMB programs, consistent with federal policy.

CHANGES TO RULE:

461-145-0530

Tax Refund ¶¶

~~(1) Federal income tax refund~~ In all programs except the QMB-BAS, QMB-SMB, and QMB-SMF programs:¶¶

(a) If received on or after January 1, 2010, federal income tax refunds are excluded from income and resources in the month of receipt and then for 12 full months starting with the month following the month of receipt of the refund or payment. All funds remaining after the 12-month period are counted as a resource.¶¶

(b) If received before January 1, 2010, federal income tax refunds are counted as a resource.¶¶

(2) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, federal income tax refunds are excluded as income and as a resource.¶¶

~~(3) State tax refunds and property tax refunds, including Elderly Rental Assistance (ERA): --¶¶~~

(a) In all programs except the OSIP, OSIPM, and QMB programs, are considered lump-sum income (see OAR 461-001-0000) in the month received, and counted as a resource in the month after the month of receipt.¶¶

(b) In the OSIP, OSIPM, and QMB-DW programs, are excluded as income in the month received. All funds remaining after the month of receipt are counted as a resource.¶¶

~~(3c) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, are excluded as income and as a resource.¶¶~~

(4) The treatment of federal and state Earned Income Tax Credit payments is covered by OAR 461-145-0140.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.816, 412.049~~14, 412.049, 413.085, 414.685~~

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

AMEND: 461-145-0580

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-145-0580 about the effect of veterans benefits on program eligibility is being amended to remove language suggesting the entire VA benefit can be excluded if it includes Aid and Attendance. This change makes the rule consistent with Department and federal practices.

CHANGES TO RULE:

461-145-0580

Veterans' Benefits ¶¶

(1) Veterans' benefits, other than the educational and training and rehabilitation program benefits, are treated as follows:¶¶

(a) Except as specified in sections (2), (5), and (6) of this rule, monthly payments are counted as unearned income.¶¶

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

(2) ~~Veterans' benefits that include a~~Aid-and-attendance and housebound payments are treated as follows:¶¶

(a) For OSIP and OSIPM clients receiving long-term care or home and community-based care (see OAR 461-001-0030):¶¶

(A) ~~When determining eligibility, the entire veterans' a~~Aid-and-attendance and housebound benefit payment ~~is~~ are excluded.¶¶

(B) When calculating monthly service benefits or patient liability, the entire veterans' aid-and-attendance and housebound benefit payment is counted as unearned income.¶¶

(C) Payments for services not covered by the Department's programs are excluded.¶¶

(D) If the client receives a payment covering a previous period of eligibility, the client is required to turn over to the Department the full amount of the payment up to the cost of institutional and home and community-based care provided to the client during the months covered by the payment. A client's failure to reimburse the Department in this instance constitutes an overpayment of public assistance in accordance with OAR 461-195-0501 and 461-195-0521 and ORS 411.640 and 411.690. Any excess veterans' benefit payment made to the client is counted as lump sum or periodic income.¶¶

(b) For all other clients not covered under subsection (a) of this section:¶¶

(A) In the SNAP program, aid-and-attendance payments used to pay for an attendant are treated as a reimbursement and excluded (see OAR 461-145-0440). The remaining benefits, if any, are counted as unearned income.¶¶

(B) In the OSIPM and QMB programs, the aid-and-attendance and housebound payments are excluded. Any remaining veterans' benefits are counted as unearned income unless excluded under another rule or another section of this rule.¶¶

(C) Reimbursements paid to the client for costs and services already paid for by the Department are third-party resources and may be recovered from the client as an overpayment of public assistance pursuant to OAR 461-195-0501, 461-195-0521, and 461-195-0551. Any unrecovered third-party resource or payment above the actual cost is counted as lump-sum or periodic income (see OAR 461-140-0110 and 461-140-0120).¶¶

(3) Educational benefits from the United States Veterans Administration are treated in accordance with OAR 461-145-0150.¶¶

(4) A subsistence allowance from a training and rehabilitation program of the United States Veterans Administration is treated:¶¶

(a) In the SNAP program, as earned income (see OAR 461-145-0130).¶¶

(b) In all other programs, as unearned income.¶¶

(5) The following payments are excluded:¶¶

(a) Payments under 38 USC 1805 to biological children of Vietnam veterans who are born with spina bifida.¶¶

(b) Payments under 38 USC 1815 to children with birth defects born to female Vietnam veterans.¶¶

(6) In the OSIPM and QMB programs:¶¶

(a) Payments made as part of a Veterans Administration vocational rehabilitation are excluded.¶¶

(b) Medal of Honor pension payments are excluded.

Statutory/Other Authority: ORS 414.685, ORS 411.060, 411.404, 411.816, 412.014, 412.049, 329A.500, 413.085

Statutes/Other Implemented: ORS 411.060, 411.404, 411.620, 411.640, 411.690, 411.700, 411.816, 412.014, 412.049, 329A.500

AMEND: 461-155-0250

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-155-0250 about the income and payment standards for the OSIPM program is being amended to identify the newly adopted 150 percent of federal poverty guidelines income standard for individuals residing in a 24-hour mental health residential care setting as an exception to the \$750 income standard. This corrects an omission when this rule was amended as of July 1, 2018 and provides a higher income limit for these individuals. This rule is also being amended to clarify that income must be equal to or below the applicable income standard for OSIPM-EPD and individuals residing in a 24-hour mental health residential care setting.

CHANGES TO RULE:

461-155-0250

Income and Payment Standard; OSIPM ¶

In the OSIPM program:¶

- (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 meeting the requirements of OAR 461-135-0745 or OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in sections (3) or (5) 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 or have established a qualifying trust as specified in OAR 461-145-0540(10)(c).¶
- (3) An individual, other than one identified in sections (1), (2), ~~(5)~~, or ~~(5)~~ of this rule, must have adjusted income (see OAR 461-001-0000) below the standard in this section. [see attached table]¶
- (4) In the OSIPM (except OSIPM-EPD) program, an individual in a nursing facility or an ICF-ID 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, \$61.38 is allowed.¶
 - (c) For an individual identified in subsection (b) of this section with countable income (including any SSI) that is less than \$61.38, the payment standard is equal to the difference between the individual's countable income (including any SSI) and \$61.38. 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.¶
- (5) In the OSIPM-EPD program, ~~an individual must have~~ adjusted earned income limit is equal to or below 250 percent of the federal poverty level for a family of one.¶
- (6) ~~For a~~An individual who meets the requirements of OAR 461-135-0755, ~~who~~ is not assumed eligible, and does not meet the income standards set out in sections (3) or ~~(5)~~ of this rule, ~~th~~must have adjusted income limit is equal to or below 150 percent of the federal poverty level for a family of one.

Statutory/Other Authority: ~~ORS 409.11.0560, 411.070, 411.404, 411.704, 411.706, 413.085, 414.685~~ ORS 409.0650, 411.070, 411.404, 411.704, 411.706

Statutes/Other Implemented: ORS 411.060, ORS 409.010, 411.070, 411.404, 411.704, 411.706

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

In the OSIPM program:

- (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 meeting the requirements of OAR 461-135-0745 or OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in sections (3) or (5) 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 or have established a qualifying trust as specified in OAR 461-145-0540(10)(c).
- (3) An individual, other than one identified in sections (1), (2), (5), or (6) of this rule, must have *adjusted income* (see OAR 461-001-0000) below the standard in this section.

OSIPM Adjusted Income Standards		
Number in Need Group	One	Two
AB/AD/OAA	750.00	1,125.00

- (4) 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, \$61.38 is allowed.
 - (c) For an individual identified in subsection (b) of this section with *countable* income (including any SSI) that is less than \$61.38, the payment standard is equal to the difference between the individual's *countable* income (including any SSI) and \$61.38. 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.
- (5) In the OSIPM-EPD program, an individual must have adjusted earned income equal to or below 250 percent of the federal poverty level for a family of one.
- (6) An individual who meets the requirements of OAR 461-135-0755, is not assumed eligible, and does not meet the income standard set out in section (3) of this rule, must have *adjusted income* equal to or below 150 percent of the federal poverty level for a family of one.

461-155-0250

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Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 413.085, 414.685

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.704, 411.706

AMEND: 461-155-0526

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-155-0526 about special need payments for community transition services in the OSIP and OSIPM programs is being amended to revise the description of the eligibility requirements to clarify who is eligible for these payments and under what circumstances they are eligible.

CHANGES TO RULE:

461-155-0526

Special Need; Community Transition Services; OSIP and OSIPM ¶

~~(1)~~ In the OSIP and OSIPM programs, ~~it~~ ¶

(1) When an individual who has been admitted as an inpatient is leaving a psychiatric hospital or is being transitioned out of a nursing facility: ¶

(a) The Department ~~will~~ may authorize one-time payments for allowable expenses necessary for a client to set up housing in Oregon in the ~~client~~ individual's own home or apartment, or an assisted living facility as long as community-based care facility. ¶

(b) Payments made to a community-based care facility under subsection (a) of this section may only be made if the facility is not required to provide the item covered by the payment by contract or by the administrative rules governing assisted living facilities (OAR 411-054-0000 to 411-054-0300). Payments are allowed only for a ~~client~~ individual leaving a psychiatric hospital or nursing facility and returning to the community if the ~~client~~ individual meets the criteria for one of the service priority levels served by the Department according to OAR 411-015-0015(1). ¶

~~(a2)~~ A client leaving a nursing facility. ¶

(b) A client who has been admitted as an inpatient and is leaving an acute care hospital is individual eligible for transition services under OAR 411-035-0070 is ineligible for payments under this rule. ¶

(23) Examples of allowable expenses are expenses for: moving belongings; housing security deposits; essential furnishings; eating utensils; food preparation items; deposits for utility hook-ups for heat, electricity, and telephone; climate control; and health and safety measures such as pest eradication or allergen control. ¶

(34) Expenses not allowed include: ~~rent for housing or temporary ongoing housing; ongoing utility costs; medical supplies such as lift chairs, reachers, grabbers, wheelchairs, and transfer trays; or payments; and~~ recreational items such as a television ~~or~~ cable television, or internet access. ¶

(45) Payment will be authorized only for the minimum amount necessary to establish the ~~client~~ individual's basic living arrangement.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404

AMEND: 461-155-0710

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-155-0710 about special need payments for diversion and transition services in the OSIP and OSIPM programs is being amended to remove references to "transition" services and revise the description of the eligibility requirements to clarify who is eligible for these payments and under what circumstances they are eligible.

CHANGES TO RULE:

461-155-0710

Special Need; Diversion ~~and Transition Services~~; OSIP and OSIPM ¶

In the OSIP and OSIPM programs:¶

(1) The Department may authorize one-time payments for expenses that the Department has determined are necessary to divert ~~or transition individuals from nursing facility services~~individuals who might otherwise be served in nursing facilities to community based care (see OAR 461-001-0000). Payments are allowed for ~~clients who are receiving or eligible to receive community based care (see individuals who meet the criteria established in OAR 461-001-0000)~~15(1)(a).¶

(2) Payments will be authorized at the lowest possible cost.¶

(3) To be eligible for payment, clients may not be eligible for the item through Medicare, Medicaid, or any other medical coverage.¶

(4) Payment for a household item is not allowed if the community based care facility is required to provide the item by contract or administrative rule.¶

(5) Payment is not allowed if the item or service may be provided under any other special need rule in this division (OAR 461-155-0510 to 461-155-0700).

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404

AMEND: 461-160-0540

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-160-0540 about income eligibility requirements in the QMB and OSIPM programs is being amended clarify that the adjusted income of the financial group must be below the applicable income standard, not the income of the individual.

CHANGES TO RULE:

461-160-0540

Determining Income Eligibility; QMB and OSIPM (except OSIPM-EPD) Living in the Community or Residing in a 24-Hour Mental Health Residential Care Setting ¶

(1) This rule is used to determine income eligibility for the OSIPM (except OSIPM-EPD) and QMB programs for individuals who---¶

(a) Live in the community or a 24-hour mental health residential care setting;¶

(b) Do not receive SSI; and¶

(c) Do not receive home and community-based care (see OAR 461-001-0030).¶

(2) In the OSIPM program:¶

(a) Individuals residing in a 24-hour mental health residential care setting -- such as an adult foster home, residential treatment home, residential treatment facility, or a secure treatment facility -- meet the income requirements if their adjusted income (see OAR 461-001-0000) is equal to or less than the income standard specified in OAR 461-155-0250(6).¶

(b) Except as provided in subsection (a) of this section, individuals meet the income requirements if their adjusted income of the individual's financial group (see OAR 461-110-0530) is less than the OSIPM program adjusted income standard.¶

(3) In the QMB-BAS and QMB-DW programs, an individual meets the income requirements if their adjusted income of the individual's financial group is equal to or less than the QMB program adjusted income standard.¶

(4) In the QMB-SMB and QMB-SMF programs, an individual meets the income requirements if their adjusted income of the individual's financial group is less than the adjusted income standard.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706, 42 CFR 435.219, 42 CFR 435.726

AMEND: 461-175-0340

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-175-0340 about notices issued in response to voluntary actions is being amended to permit the Department to use a voluntary agreement form in response to a withdrawn application in the OSIPM and QMB programs to fit the use of this form in Integrated Eligibility.

CHANGES TO RULE:

461-175-0340

Notice Situation; Voluntary Action ¶¶

(1) Unless the Department chooses to proceed as described in section (2) of this rule:¶¶

(a) For all programs except the SNAP program, if the primary person (see OAR 461-001-0000), another adult member of the filing group, or the authorized representative:¶¶

(A) Makes an oral request to end or reduce benefits, a timely continuing benefit decision notice (see OAR 461-001-0000) is sent.¶¶

(B) Makes a signed, written request to withdraw, end, or reduce benefits, a basic decision notice (see OAR 461-001-0000) is sent.¶¶

(C) Makes an oral request to withdraw an application for benefits, a basic decision notice is sent.¶¶

(b) In the SNAP program, when the filing group (see OAR 461-110-0370) states it wishes to withdraw its benefits request, or states it wishes to reduce or no longer receive benefits:¶¶

(A) If the request is made by phone to end or reduce benefits, a timely continuing benefit decision notice is sent.¶¶

(B) If the request is made in person to reduce benefits, a basic decision notice is sent.¶¶

(C) If the request to reduce benefits is signed by the primary person (see OAR 461-001-0000), another adult member of the filing group, or the authorized representative, a basic decision notice is sent.¶¶

(D) If the request to end benefits is signed by the primary person, another adult member of the filing group, or the authorized representative in the presence of a worker, no notice is required. If it is not signed in the presence of a worker, a basic decision notice is sent.¶¶

(E) If the client withdraws a signed request for benefits, a basic decision notice is sent.¶¶

(2) The Department may reduce or terminate benefits to an individual, and in the OSIPM and QMB programs, an individual may withdraw an application, when the individual completes a voluntary agreement on a Department form used for this purpose.¶¶

(a) The Department provides the individual with a copy of the completed agreement and except to the extent provided by OAR 461-175-0220(4) no other notice is required.¶¶

(b) The individual may request a hearing to set aside this agreement on the grounds of fraud, duress, or reliance on misinformation provided by the Department, subject to the time limits for hearing requests in OAR 461-025-0310.¶¶

(3) In the SNAP program, a timely continuing benefit decision notice is sent if the filing group returns a signed Change Report form with information that requires a reduction or closure of benefits.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.404, 411.816, 412.014, 412.049, 414.042, 414.285, 414.685

Statutes/Other Implemented: ORS ~~183.417, 411.060~~ 329A.500, ORS 183.417, 329A.500, 409.010, 411.060, 411.404, 411.816, 412.014, 412.049, 414.042

AMEND: 461-180-0020

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-180-0020 about the effective date for a change in income or income deductions that cause an increase in benefits is being amended to specify that changes resulting in eligibility for an APD program with a higher benefit level are effective in accordance with the effective dates for initial benefits. This rule is also being amended to specifically address when participant fee or liability decreases take effect in different scenarios. These changes are intended to fill gaps in policy in the rules, clarify the rules, and fit with Integrated Eligibility.

CHANGES TO RULE:

461-180-0020

Effective Dates; Changes in Income or Income Deductions That Cause Increases ¶

For all programs in Chapter 461, except the ERDC program, this rule is used to determine the effective date when a change in income or income deductions causes an increase in benefits. For all changes, the effective date is one of the following:¶

(1) In the GA, REF, SFPSS, and TANF programs, the effective date for an anticipated change reported before the payment month is the first of the payment month in which it will occur. If the change is not reported until the month it occurs or later, the effective date is the first of the month following the month in which the change was reported.¶

(2) In the SNAP program:¶

(a) The effective date when verification is not requested is the first of the month following the date the change was reported.¶

(b) The effective date if verification is requested is:¶

(A) The first of the month following the date the change was reported if verification is received no later than the due date for the verification.¶

(B) The first of the month following the date the verification is received by the Department, if received after the verification due date.¶

(3) In the OSIPM and QMB programs, the effective date for an anticipated increase resulting from reported changes is:¶

~~(a) The first of the month in which~~ determined as follows:¶

(a) If, based on the reported change, the individual is determined eligible for a new program with a higher benefit level, the effective date for the new program is determined in accordance with OAR 461-180-0090.¶

(b) For changes in income that reduce liability or the OSIPM-EPD participant fee:¶

(A) If the change was reported timely, the change is effective the month the change occurs.¶

(B) If the change is was not reported by the 10th day of the month following the month the change occurred; or timely, the change is effective the month it is reported or discovered.¶

(c) For changes in medical deductions that reduce liability:¶

(A) For both ongoing and one-time expenses, the change is effective the month the change occurred, if the change was reported timely.¶

~~(b) 10-day~~ For ongoing expenses that are not reported timely, the change is before effective the month the change is reported, if it is reported after the 10th day of the month follow.¶

(C) One-time expenses that have been paid in full but are not reported timely will not be used.¶

(d) When the decrease in liability is caused by increased deductions due to a change to an individual's marital status or number of eligible dependents, the effective date is:¶

(A) The first of the month the change occurred, if the change was reported timely.¶

(B) The first of the month the change was reported or discovered, if the change was not reported timely.¶

(e) When the decrease in liability is caused by a higher maintenance standard due to a change in service setting, the ~~month the change occurred~~ effective date is the date the individual moves into the new service setting.¶

(f) When a decrease in liability is caused by a change in income and a change in service setting that occurs in the same month, the effective date is the day the individual moves into the new service setting.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049

ADOPT: 461-180-0083

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-180-0083 about the effective date when reported changes, other than changes in income or income deductions, cause an increase in benefits in the OSIP, OSIPM, and QMB benefits is being adopted to set out policy on this topic to fill gaps in policy in the rules, clarify the rules, and fit with Integrated Eligibility.

CHANGES TO RULE:

461-180-0083

Effective Dates; Other Changes That Cause Increases; OSIP, OSIPM, and QMB

(1) In the OSIP, OSIPM, and QMB programs, this rule is used to determine the effective date when reported changes, other than changes in income or income deductions, cause an increase in benefits. See OAR 461-180-0020 for information about changes in income and income deductions that cause increases.

(2) The effective date is determined in accordance with OAR 461-180-0090 if a current recipient of OSIPM or QMB program benefits is determined eligible for a new program with a higher benefit level due to any of the following factors:

(a) Changes to the number in the need group (see OAR 461-110-0630).

(b) Changes to the amount of countable (see OAR 461-001-0000) resources.

(c) Changes to employment status.

(d) Changes to service eligibility.

(3) If a current recipient of OSIPM-CAWEM is determined eligible for the full OSIPM package due to a change in non-citizen status, the effective date is the day the individual reports the change.

(4) If a current OSIPM or OSIPM-CAWEM recipient is determined eligible for a higher benefit level due to pregnancy, the effective date is the date the pregnancy was reported.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 41

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706

AMEND: 461-195-0305

NOTICE FILED DATE: 07/18/2018

RULE SUMMARY: OAR 461-195-0305 regarding liens of the Department, Coordinated Care Organization, or Prepaid Managed Care Health Services Organization is being amended retroactively to restore the policy that existed prior to October 1, 2017, making permanent a temporary rule change. This amendment restores the rebuttable presumption that settlement or judgment proceeds of a Medicaid assistance recipient are first allocated to medical expenses. This amendment places burden to rebut the presumption on the Medicaid assistance recipient by clear and convincing evidence. This amendment addresses the federal Bipartisan Budget Act of 2018 that repealed with retroactive effect federal legislation that had taken effect on October 1, 2017. The 2018 federal legislation effectively reinstated the US Supreme Court decision in *Arkansas v Ahlborn* which limits the personal injury lien program reimbursement to that portion of a personal injury settlement or judgment, of a Medicaid recipient, that is reimbursement for medical damages.

CHANGES TO RULE:

461-195-0305

Lien of the Department, Coordinated Care Organization, or Prepaid Managed Care Health Services Organization ¶

(1) Whenever a recipient (see OAR 461-195-0301) has a claim (see OAR 461-195-0301) for damages for a personal injury (see OAR 461-195-0301), the Department (see OAR 461-195-0301) shall have a lien upon the amount of any judgment (see OAR 461-195-0301) in favor of a recipient or amount payable to the recipient under a settlement (see OAR 461-195-0301) or compromise (see OAR 461-195-0301) as a result of that claim for all assistance (see OAR 461-195-0301) received from the date of the injury to - ¶

(a) The date of satisfaction of the judgment favorable to the recipient; or ¶

(b) The date of the payment under the settlement or compromise. ¶

(2) The person or public body, agency or commission bound by the judgment, settlement, or compromise shall be responsible for immediately informing the Personal Injury Liens Unit (see OAR 461-195-0310 for address) when a judgment has been issued or a settlement or compromise has been reached so that the exact amount of the lien of the Department may be determined. For the purposes of this rule, immediately means within ten calendar days. ¶

(3) The lien does not attach to the amount of any judgment, settlement, or compromise to the extent of the attorney fees, costs and expenses which the recipient incurred in order to obtain that judgment, settlement, or compromise. ¶

(4) The lien does not attach to the amount of any judgment, settlement, or compromise to the extent of medical, surgical and hospital expenses incurred by the recipient on account of the personal injuries for which the recipient had a claim or action (see OAR 461-195-0301). "Incurred" refers only to those medical, surgical and hospital expenses the recipient has paid or is legally obligated to pay at the time of the judgment, settlement, or compromise, excluding any expenses that a third party will reimburse the recipient. ¶

(5) The lien of the Department must be satisfied or specific approval must be given by the Department staff of the Personal Injury Liens Unit before any portion of the claim judgment, settlement, or compromise is released to the recipient. The Department shall have a cause of action against any person, public body, agency, or commission bound by the judgment, settlement, or compromise who releases any portion of the claim judgment, settlement, or compromise to the recipient or the agent of the recipient before meeting this obligation. ¶

(6) This rule applies to any lien assigned by the Department under OAR 461-195-0321. ¶

(7) Notwithstanding any other provision in this rule, there is a rebuttable presumption that the entire proceeds from any judgment, settlement, or compromise are in payment for medical care or services. The presumption may be rebutted only by clear and convincing evidence. This presumption applies to any lien created under ORS 416.540, regardless of whether the lien, judgment, settlement, compromise, or claim occurred before, on, or after October 1, 2017.

Statutory/Other Authority: ORS 409.050, 411.060, ~~416.510 - 416.610~~, 413.085, 414.685

Statutes/Other Implemented: ~~411.060, 416.510 - 416.610, 413.085, 414.685, ORS 409.0~~ORS 659.830, 743B.470, 409.010, 411.060, 413.085, 414.685, 416.351, 416.510 - 416.610