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CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILING CAPTION: Changing APD medical program rules

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RULES:

461-001-0000, 461-115-0230, 461-135-0834, 461-135-0950, 461-140-0220, 461-145-0020, 461-145-0025, 461-145-0390, 461-145-0440, 461-155-0670, 461-160-0630, 461-160-0855, 461-165-0200, 461-180-0060, 461-195-0303

AMEND: 461-001-0000

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-001-0000 about definitions for chapter 461 is being amended to indicate that lump-sum income can be earned and that income received less frequently than annually is also considered lump-sum income, clarifying the rule and aligning with Integrated Eligibility.

CHANGES TO RULE:

461-001-0000

Definitions for Chapter 461 ¶¶

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:¶¶

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDSD), or any other agency formerly part of the Department of Human Services means the Department of Human Services (DHS), except:¶¶

(a) The rule in which reference occurs only regulates programs covered by OAR chapter 461.¶¶

(b) OCCS medical program eligibility rules are in OAR chapter 410, division 200.¶¶

(2) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence (see section (25) of this rule), sexual assault, or stalking.¶¶

(3) "Adjusted income" means the amount determined by subtracting income deductions from countable (see section (19) of this rule) income (see OAR 461-140-0010). Specific rules on the deductions are in OAR chapter

461, division 160.¶

(4) "Adoption assistance" means financial assistance provided to families adopting children with special needs. "Adoption assistance" may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.¶

(5) "Assets" mean income and resources.¶

(6) "Basic decision notice" means a decision notice (see section (21) of this rule) mailed no later than the date of action given in the notice.¶

(7) "Blind Work Expenses" has the meaning given in OAR 461-001-0035.¶

(8) "Branch office" means any Department or AAA (Area Agency on Aging) office serving a program covered by this chapter of rules.¶

(9) "Budgeting" means the process of calculating the benefit level.¶

(10) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine eligibility (see section (28) of this rule) and benefit level for the payment month (see section (52) of this rule).¶

(11) "Cafeteria plan" means a written benefit plan offered by an employer in which:¶

(a) All participants are employees; and¶

(b) Participants may choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Service does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:¶

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);¶

(B) Group term life insurance plans (up to \$50,000);¶

(C) Dependent care assistance plans; and¶

(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).¶

(12) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise (see section (45) of this rule), either directly or indirectly. A "capital asset" generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.¶

(13) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child (see section (16) of this rule). The status of "caretaker" ends once the individual no longer exercises care, control, and supervision of the child for 30 days.¶

(14) "Caretaker relative" means a caretaker (see section 13 of this rule) who meets the requirements of one of the following subsections:¶

(a) Is one of the following relatives of the dependent child (see section (23) of this rule):¶

(A) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.¶

(B) Stepfather, stepmother, stepbrother, and stepsister.¶

(C) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.¶

(b) Is or was a spouse (see section (64) of this rule) of an individual listed in subsection (a) of this section.¶

(c) Met the definition of "caretaker relative" under subsection (a) or (b) of this section before the child was adopted (notwithstanding the subsequent adoption of the child).¶

(15) "Certification period" means the period for which an individual is certified eligible for a program.¶

(16) "Child" includes natural, step, and adoptive children. The term "child" does not include an unborn.¶

(a) In the ERDC program, a "child" need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:¶

(A) Under the age of 18; or¶

(B) Under the age of 19 and in secondary school or vocational training at least half time.¶

- (b) In the GA and OSIP programs, a "child" is an individual under the age of 18.¶
- (c) In the OSIPM and QMB programs, "child" means an unmarried individual who:¶
 - (A) Is not considered a decision-maker in the household;¶
 - (B) Is under the age of 18; and¶
 - (C) Has at least one natural or adoptive parent in the same household.¶
- (d) In the REF and REFM programs, a "child" is an individual who is not an emancipated minor and is under the age of 18.¶
- (17) "Community based care" is any of the following:¶
 - (a) Adult foster care - Room and board and 24 hour care and services for the elderly or for people with disabilities 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.¶
 - (b) Assisted living facility - A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.¶
 - (c) In-home Services - Individuals living in their home receiving services determined necessary by the Department.¶
 - (d) Residential care facility - A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.¶
 - (e) Specialized living facility - Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition, or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.¶
 - (f) Independent choices - In-Home Services program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services provided pursuant to a written service plan (see OAR 411-030-0020).¶
- (18) "Continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.¶
- (19) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.¶
- (20) "Custodial parents" mean parents who have physical custody of a child. "Custodial parents" may be receiving benefits as dependent children or as caretaker relatives for their own children.¶
- (21) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.¶
- (22) "Department" means the Department of Human Services (DHS).¶
- (23) "Dependent child" in the TANF program means an individual who has not been legally emancipated and who is one of the following:¶
 - (a) An individual who is not a caretaker relative (see section (14) of this rule) of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or¶
 - (b) A minor parent (see section (46) of this rule) whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.¶
- (24) "Disability" means:¶
 - (a) In the SNAP program, see OAR 461-001-0015.¶
 - (b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining eligibility:¶
 - (A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or¶
 - (B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).¶
- (25) "Domestic violence" means the occurrence of one or more of the acts described in subsections (a) to (d) of this section between family members, intimate partners, or household members:¶
 - (a) Attempting to cause or intentionally, knowingly, or recklessly causing physical injury or emotional, mental, or

verbal abuse.¶

(b) Intentionally, knowingly, or recklessly placing another in fear of imminent serious physical injury.¶

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.¶

(d) Using coercive or controlling behavior.¶

(e) As used in this section, "family members" and "household members" mean any of the following:¶

(A) Spouse;¶

(B) Former spouse;¶

(C) Individuals related by blood, marriage (see section (44) of this rule), or adoption;¶

(D) Individuals who are cohabitating or have cohabited with each other;¶

(E) Individuals who have been involved in a sexually intimate or dating relationship; or¶

(F) Unmarried parents of a child.¶

(26) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.¶

(27) "Electronic application" is an application electronically signed and submitted through the Internet.¶

(28) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.¶

(29) "Equity value" means fair market value (see section (30) of this rule) minus encumbrances.¶

(30) "Fair market value" means the amount an item is worth on the open market.¶

(31) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.¶

(32) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by an individual, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability (see section (31) of this rule).¶

(33) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.¶

(34) "Homeless" in the ERDC program means lacking a fixed regular and adequate nighttime residence and includes living in an emergency shelter, shared housing with others due to loss of housing or economic hardship, staying in motels, cars, parks, public places, tents, trailers, or other similar settings.¶

(35) "Impairment-Related Work Expenses" have the meaning found in OAR 461-001-0035.¶

(36) "Income producing property" means:¶

(a) In all programs except OSIP, OSIPM, and QMB, real or personal property that generates income for the financial group (see OAR 461-110-0530). Examples of "income producing property" are:¶

(A) Livestock, poultry, and other animals.¶

(B) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, and condominiums.¶

(b) In the OSIP, OSIPM, and QMB programs, "income-producing property" means any real or personal property not used in self-employment (see OAR 461-145-0600 and 461-145-0915) that produces income for the financial group. "Income-producing property" includes:¶

(A) Livestock, poultry, or other animals that produce marketable products sold by the financial group.¶

(B) Farmland not excluded under OAR 461-145-0220 that is farmed or rented out by the financial group.¶

(C) Real property other than the home (including vacation homes and condominiums), that is rented out.¶

(c) In the OSIP, OSIPM, and QMB programs, "income-producing property" does not include:¶

(A) Rooms or other space for rent in the home (see OAR 461-145-0220).¶

(B) Livestock, poultry, or other animals kept for resale (see OAR 461-145-0010).¶

(37) "Initial month" of eligibility means any of the following:¶

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.¶

(b) In all programs except the SNAP program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.¶

(c) In the SNAP program:¶

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).¶

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.¶

(d) For a new applicant to the OSIP or OSIPM program applying for care in a nonstandard living arrangement (see section (47) of this rule), for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the individual would have been eligible had it not been for the disqualifying transfer of assets (see section (5) of this rule).¶

(e) For a current recipient of the OSIP or OSIPM program receiving or applying for care in a nonstandard living arrangement, for the purpose of calculating the correct divisor in OAR 461-140-0296, the later of the following:¶

(A) The month the disqualifying transfer occurred.¶

(B) The month of application for long-term care (see section (40) of this rule) services if the individual would have been eligible had it not been for the disqualifying transfer of assets.¶

(38) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).¶

(39) "Legally married" means a marriage uniting two individuals according to:¶

(a) The statutes of the state where the marriage occurred;¶

(b) Except in the SNAP program, the common law of the state in which the two individuals previously resided while meeting the requirements for common law marriage in that state; or¶

(c) The laws of a country in which the two individuals previously resided while meeting the requirements for legal or cultural marriage in that country.¶

(40) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a "life estate" enables the owner of the "life estate" to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A "life estate" is created when an individual owns property and then transfers ownership to another individual while retaining, for the rest of the individual's life, certain rights to that property. In addition, a "life estate" is established when a member of the financial group purchases a "life estate" interest in the home of another individual.¶

(41) "Lodger" means an individual, living with a Department client, who --¶

(a) Is not a member of the filing group (see OAR 461-110-0310) of the Department client; and¶

(b) Pays the filing group:¶

(A) In all programs except the OSIP, OSIPM, and QMB programs, for room and board.¶

(B) In the OSIP, OSIPM, and QMB programs, for room with or without board.¶

(42) "Long term care" means the system through which the Department provides a broad range of social and health services for extended periods of time to eligible adults who are aged, blind, or have disabilities. This includes nursing facilities and the Oregon State Hospital.¶

(43) "Lump-sum income" means earned or unearned income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. "Lump-sum income" includes but is not limited to:¶

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.¶

(b) Income from inheritance, gifts, winnings, and personal injury claims.¶

(c) Income received less frequently than annually.¶

(44) "Marriage" means the union of two individuals who are legally married (see section (39) of this rule).¶

(45) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.¶

(46) "Minor parent" in the ERDC and TANF programs means a parent under the age of 18.¶

(47) "Nonstandard living arrangement" is defined as follows:¶

(a) In the GA, OSIP, OSIPM, and QMB programs, an individual is considered to be in a "nonstandard living arrangement" when the individual is applying for or receiving services in any of the following locations:¶

(A) A nursing facility in which the individual receives long-term care services paid with Medicaid funding, except this subsection does not apply to a Medicare client in a skilled-stay nursing facility.¶

(B) An intermediate care facility for individuals with intellectual disabilities (ICF/ID).¶

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.¶

(D) A community based care (see section (17) of this rule) setting, except a State Plan Personal Care (SPPC) setting is not considered a "nonstandard living arrangement".¶

(b) In all programs except GA, OSIP, OSIPM, and QMB, "nonstandard living arrangement" means each of the following locations:¶

(A) Foster care.¶

(B) Residential Care facility.¶

(C) Drug or alcohol residential treatment facility.¶

(D) Homeless or domestic violence shelter.¶

(E) Lodging house if paying for room and board.¶

(F) Correctional facility.¶

(G) Medical institution.¶

(48) "OCCS" is the Office of Client and Community Services, part of the Medical Assistance Programs under the Oregon Health Authority responsible for OCCS medical program eligibility policy, community outreach, OCCS Medical Program eligibility determinations, and the OHA Customer Service Call Center.¶

(49) "OCCS Medical Programs" refers to programs for which eligibility policy can be found in OAR chapter 410, division 200, and includes CEC, CEM, MAA, MAF, EXT, OHP, Substitute Care, BCCTP, and MAGI Medicaid/CHIP programs, including:¶

(a) MAGI Adult;¶

(b) MAGI Child;¶

(c) MAGI Parent or Other Caretaker Relative;¶

(d) MAGI Pregnant Woman; and¶

(e) MAGI CHIP.¶

(50) "Ongoing month" means one of the following:¶

(a) For all programs except the SNAP program, any month following the initial month (see section (37) of this rule) of eligibility, if there is no break in the program benefit of one or more calendar months.¶

(b) For the SNAP program, any month in the certification period (see section (15) of this rule) following the initial month of eligibility.¶

(51) "Parent" for all programs except JPI (see OAR 461-135-1260) and the SNAP program means the biological or legal mother or father of an individual or unborn. For JPI and the SNAP program, "parent" means the biological or legal mother or father of an individual.¶

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.¶

(b) A stepparent relationship exists if:¶

(A) The individual is legally married to the child's biological or adoptive parent; and¶

(B) The marriage has not been terminated by legal separation, divorce, or death.¶

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a "parent" if both of the following are true:¶

(A) The child lives with the biological parent; and¶

(B) The legal parent has given up care, control, and supervision of the child.¶

(52) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.¶

(53) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and

ending on the 30th day after the date the payment is issued.¶

(54) "Periodic income" means income received on a regular basis less often than monthly.¶

(55) "Primary person" for all programs except the SNAP program, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The "primary person" for individual programs is as follows:¶

(a) In the TANF program, the parent or caretaker relative.¶

(b) In the ERDC program, the caretaker.¶

(c) In the SNAP program, see OAR 461-001-0015.¶

(d) In the GA, OSIP, OSIPM, QMB, REF, and REFM programs, the client or client's spouse.¶

(56) "Qualified Partnership Policy" means a long-term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:¶

(a) Issued while the individual was a resident in Oregon on January 1, 2008 or later; or¶

(b) Issued in another state while the individual was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.¶

(57) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as "real property".¶

(58) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.¶

(59) "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.¶

(60) "Shelter costs" mean, in all programs except the SNAP program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the SNAP program, see OAR 461-160-0420.¶

(61) "Shelter in kind" means an agency or individual outside the financial group provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs (see section (60) of this rule) of the financial group. "Shelter-in-kind" does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.¶

(62) "Sibling" means the brother or sister of an individual. "Blood related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.¶

(63) "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced spouse to a member of the financial group.¶

(64) "Spouse" means an individual who is legally married to another individual.¶

(65) "Stable income" means income that is the same amount each time it is received.¶

(66) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.¶

(67) "Teen parent" means, in the JOBS, REF, REFM, and TANF programs, a parent who is the age of 18 or 19.¶

(68) "Timely continuing benefit decision notice" means a decision notice that informs the individual of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.¶

(69) "Trust funds" mean money, securities, or similar property held by an individual or institution for the benefit of another individual.¶

(70) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.¶

(71) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 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, 411.837, 412.001, 412.006, 412.014, 412.049, 413.085, 414.685

AMEND: 461-115-0230

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-115-0230 about interview requirements is being amended to remove the interview requirement for SSI eligible individuals (receiving SSI or in 1619b status) at initial application in the OSIPM program, unless requesting service, and at annual redetermination. These changes align with Integrated Eligibility.

CHANGES TO RULE:

461-115-0230

Interviews ¶¶

(1) In the REF, REFM, and TANF programs, the Department may conduct a required face-to-face interview by telephone or home visit if an authorized representative (see OAR 461-001-0000 and 461-115-0090) has not been appointed, and participating in a face-to-face interview is a hardship (see section (2) of this rule) for the household.¶¶

(2) For the purposes of this rule, "hardship" includes, but is not limited to:¶¶

(a) Care of a household member;¶¶

(b) An individual's age, disability (see OAR 461-001-0000), or illness;¶¶

(c) A commute of more than two hours from the individual's residence to the nearest branch office (see OAR 461-001-0000);¶¶

(d) A conflict between the individual's work or training schedule and the business hours of the branch office; and¶¶

(e) Transportation difficulties due to prolonged severe weather or financial hardship.¶¶

(3) In the SNAP program:¶¶

(a) An interview must be scheduled so that the filing group (see OAR 461-110-0370) has at least ten days to provide any needed verification before the deadline under OAR 461-115-0210.¶¶

(b) A face-to-face interview must be granted at the applicant's request.¶¶

(c) When an applicant misses the first scheduled interview appointment, the Department must inform the applicant by regular mail of the missed interview.¶¶

(d) An applicant who fails to attend a scheduled interview must contact the Department no later than 30 days following the filing date (OAR 461-115-0040) to be eligible for benefits.¶¶

(e) An adult (see OAR 461-001-0015) in the filing group or the authorized representative of the filing group is interviewed once every 12 months.¶¶

(4) In the ERDC program:¶¶

(a) Except as provided otherwise in subsection (c) of this section, an interview with an adult in the filing group (see OAR 461-110-0350) or the authorized representative of the filing group is required to process an initial application and a renewal of benefits.¶¶

(b) A phone interview is preferred; however, a face-to-face interview must be granted at the applicant's request.¶¶

(c) An interview is not required when the Department has implemented the Child Care Reservation List and it is determined that a decision notice of ineligibility will be sent under OAR 461-115-0016.¶¶

(5) In the OSIPM and QMB programs, the Department must complete an interview ~~face-to-face in the branch office, by telephone, or during a home visit~~ with at least one applicant who is 18 years of age or older or an applicant's authorized representative:¶¶

(a) At initial application:¶¶

~~(b) In the OSIPM program, at for individuals who are not requesting services, and are receiving SSI or are in 1619(b) status.~~¶¶

~~(b) At annual redetermination, except:~~¶¶

~~(A) In the OSIPM program, individuals who are receiving SSI or are in 1619(b) status.~~¶¶

~~(eB) In the QMB program, no interview is required at redetermination (except QMB-DW), if eligibility may be determined by use of electronic information.~~¶¶

(6) In the REF and REFM programs, a face-to-face interview is required.¶

(7) In the TA-DVS program, the Department will conduct a required face-to-face interview with the victim, unless there is a safety concern related to the domestic violence (see OAR 461-001-0000) situation or there is a hardship. An interview due to safety concern or hardship may be completed via phone, home visit, or offsite appointment.

Statutory/Other Authority: ~~ORS 409.050~~, 411.060, 411.404, 411.706, 411.816, 412.049, 414.826, 414.839, ORS 409.050

Statutes/Other Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.839, 411.117

AMEND: 461-135-0834

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-135-0834 about the delivery of required notices to the Estate Administration Unit is being amended to direct a trustee of a "special needs" or "payback" trust to mail notice of termination of a trust to the Estate Administration Unit at an address designated in this rule, and clarify that other notices that the rule already requires to be sent to the Department must be sent to the Estate Administration Unit at the address in this rule. These changes help assure that required notices are sent to the right location, and that the Department is sent notices following the termination of "special needs" or "payback" trusts, required to reimburse the Medicaid programs.

CHANGES TO RULE:

461-135-0834

Delivery of Required Notices to the Estate Administration Unit ¶

(1) A person required by ORS 93.268, ~~113.038~~, 113.145, 114.525, 115.003, 116.093, or 130.370 to send notice to the Department of Human Services or Oregon Health Authority must send or deliver the notice to the Estate Administration Unit, Office of Payment Accuracy and Recovery, Department of Human Services at the address in section (4) of this rule. ¶

(2) If a claim submitted by the Estate Administration Unit is disallowed, the notice of the disallowance, required by ORS 114.540, 115.135, or 130.400, shall be mailed to the Estate Administration Unit at the address in section (4) of this rule, unless the claim directs that the notice of disallowance be mailed to a person or entity other than the Estate Administration Unit. ¶

(3) A trustee of a trust established under 42 USC § 1396p(d)(4) shall mail notice of any termination of the trust or account in a master trust to the address in section (4) of this rule. ¶

(4) The mailing address for the Estate Administration Unit is: ¶

Estate Administration Unit ¶

PO Box 14021 ¶

Salem OR 97309-5024.

Statutory/Other Authority: ORS ~~410.070~~ 9.050, 411.060, 411.070, 413.085, 414.685

Statutes/Other Implemented: ORS ~~93.268~~, 113.145, 114.525, ~~130.370~~ 15.003, 115.135, 116.093, 130.370, ~~130.400~~, 409.010, 411.708, 411.795, 416.350, 42 USC 1396p, 113.038

AMEND: 461-135-0950

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-135-0950 about eligibility for inmates and residents of public institutions is being amended to establish that individuals 65 and older do not have to meet level of care requirements to qualify for non-MAGI Medicaid while residing in the Oregon State Hospital. This amendment aligns the rule with federal policy.

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, 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. 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 individual is no longer a resident, if the 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) R meets the requirements of one of the following subsections:¶~~

~~(a) The individual is 65 years of age or older.¶~~

~~(b) The individual receives a Certificate of Need for Services from the State-authorized agency; and¶~~

~~(c) M meets one of the following:¶~~

~~(A) Is 65 years of age or older;¶~~

~~(B) The individual is under 21 years of age; or¶~~

~~(C) The individual is 21 years of age, and the individual was receiving services in a certified ward received a Certificate of Need for Services from the State-authorized agency, and received those services immediately before reaching age 21. Except as provided for in paragraph subsection (Aa) 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, ORS 409.050, 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: 461-140-0220

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-140-0220 about determining if a transfer of an asset is disqualifying is being amended to reverse a rule amendment effective January 1, 2018 under which ongoing service clients may transfer assets in the amount of the current exclusion allowed under OAR 461-160-0855. Under this amendment, individuals may transfer assets in the amount of the original qualified partnership policies (QPP) amount without serving a penalty. This amendment aligns the rule with Integrated Eligibility. This rule is also being amended to remain consistent with changes to OAR 461-145-0390.

CHANGES TO RULE:

461-140-0220

Determining if a Transfer of an Asset is Disqualifying ¶¶

A transfer of an asset is not disqualifying if the requirements of OAR 461-140-0242 or one of the following sections are met:¶¶

- (1) The asset was excluded as personal belongings as described in OAR 461-145-0390.¶¶
- (2) The asset was sold or traded for compensation equal to or greater than fair market value.¶¶
- (3) The asset was transferred between members of the same financial group, including members who are ineligible aliens or disqualified people.¶¶
- (4) The transfer settled a legally enforceable claim against the asset or client.¶¶
- (5) The amount of the resource was equal to or less than the ~~following amounts excluded under OAR 461-160-0855 due to payments received under a qualified partnership policy (see OAR 461-001-0000):~~¶¶
 - (a) ~~For new applicants, the amount that the Department determines can be amount that was~~ excluded at the initial month (see OAR 461-001-0000) of eligibility (~~see under~~ OAR 461-001-0000).¶¶
 - (b) ~~For ongoing recipients, the amount of the current exclusion allowed under OAR 461-160-0855(2180-0855~~ due to payments received under a qualified partnership policy (see OAR 461-001-0000).¶¶
- (6) In all programs except the OSIP and OSIPM programs, a court ordered the transfer.¶¶
- (7) In the OSIP and OSIPM programs, a court ordered the transfer and:¶¶
 - (a) The transfer occurs more than 36 months or 60 months before the date of request (see OAR 461-115-0030), whichever is applicable under OAR 461-140-0210(5); or¶¶
 - (b) There is an institutionalized spouse, and, after performing the calculations required in OAR 461-160-0580(2), the amount of resources allocated to a community spouse does not exceed the largest of the four amounts set forth in OAR 461-160-0580(2)(f).¶¶
- (8) The client was a victim of fraud, misrepresentation, or coercion, and legal steps have been taken to recover the asset.¶¶
- (9) In the OSIP and OSIPM programs, for a client in a nonstandard living arrangement (see OAR 461-001-0000), the asset is an annuity purchased on or before December 31, 2005, the client or the spouse of the client is the annuitant, and the entire amount of principal and earned interest is paid in equal installments during the actuarial life expectancy of the annuitant. For purposes of this section, the actuarial life expectancy is established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.¶¶
- (10) In the OSIP and OSIPM programs, the client is in a standard living arrangement (see OAR 461-001-0000).¶¶
- (11) In the OSIP and OSIPM programs, for a client in a nonstandard living arrangement (see OAR 461-001-0000):¶¶
 - (a) The asset is an annuity purchased from January 1, 2006 through June 30, 2006, and the client or the spouse of the client is the annuitant.¶¶
 - (b) The asset is an annuity purchased on or after July 1, 2006, and the annuity meets the requirements of OAR 461-145-0022(10).

Statutory/Other Authority: 411.070, 411.404, 411.816, 412.049, 413.085, 414.042, 414.685, ORS 409.050,

410.070, 411.060

Statutes/Other Implemented: ORS 409.010, 410.070, 411.060, 411.070, 411.404, 411.708, 411.816, 412.049, 414.02

AMEND: 461-145-0020

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-145-0020 about annuities is being amended to change the treatment of annuities program for those in a standard living arrangement to align policies in the QMB-DW program with the OSIPM program. This rule is also being amended to remove a redundant section about QMB programs, making the rules easier to understand.

CHANGES TO RULE:

461-145-0020

Annuities; Not OSIPM ¶

(1) For the purposes of this rule:¶

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

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

(c) "Child" means a biological or adoptive child who is:¶

(A) Under age 21; or¶

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

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

(e) This rule does not apply in the OSIPM program. In this rule, "all programs" does not include the OSIPM program. See OAR 461-145-0022 for the OSIPM program.¶

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

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

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

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

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

(a) In all programs except ~~OSIP and QMB~~ the QMB-DW program, annuity payments are counted as unearned income to the payee.¶

(b) In the ~~OSIP and~~ QMB-DW program:¶

(A) For an ~~individual in a nonstandard living arrangement (see OAR 461-001-0000), if an individual or the spouse (see OAR 461-001-0000) of an individual purchases or transfers an annuity prior to January 1, 2006, the transaction may be subject to the rules on asset transfers in OAR 461-140-0210 and following. For an annuity that is not disqualifying or for an individual in a standard living arrangement (see OAR 461-001-0000), the annuity~~ annuity purchased prior to January 1, 2006, the annuity is excluded as a resource and payments are counted as unearned income to the payee.¶

(B) If an individual or the spouse of an individual purchases an annuity on or after January 1, 2006, the annuity is counted as a resource unless it is excluded under paragraph (C) of this subsection.¶

(C) An annuity described in paragraph (B) of this subsection is excluded as a resource if the criteria in subparagraphs (i), (ii), and (iii) of this paragraph are met, except that if an unmarried individual is the annuitant, the

requirements of subparagraph (iv) of this paragraph must also be met and if the spouse of an individual is the annuitant, the requirements of subparagraph (v) of this paragraph must also be met.¶

(i) The annuity is irrevocable.¶

(ii) The annuity is actuarially sound (see subsection (1)(a) of this rule).¶

(iii) The annuity is issued by a business that is licensed and approved to issue commercial annuities by the state in which the annuity is purchased.¶

(iv) If an unmarried individual is the annuitant, the annuity must specify that upon the death of the individual, the first remainder beneficiary is either of the following:¶

(I) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the individual.¶

(II) The child (see subsection (1)(c) of this rule) of the individual, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the individual, in the event that the child does not survive the individual.¶

(v) If the spouse of an individual is the annuitant, the annuity must specify that, upon the death of the spouse of the individual, the first remainder beneficiaries are either of the following:¶

(I) The individual, in the event that the individual survives the spouse; and the Department, in the event that the individual does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the individual.¶

(II) A child of the spouse; and the individual in the event that this child does not survive the spouse.¶

(D) If an annuity is excluded under paragraph (C) of this subsection, annuity payments are counted as unearned income to the payee.¶

~~(c) For OSIPM, see OAR 461-145-0022.¶~~

~~(5) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, only the interest portion of annuity payments is counted as unearned income to the payee.~~

Statutory/Other Authority: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.070, 410.080, 411.060, 411.070, 411.141, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839

AMEND: 461-145-0025

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-145-0025 about the treatment of approved accounts in the OSIPM-EPD program is being amended to clarify that accounts approved and excluded during EPD eligibility remain excluded when individuals lose employment and remain eligible for EPD for up to 12 months. An approved account refers to a segregated account in a financial institution, the purpose of which is to save to use for future disability-related expenses that would increase the individual's independence and employment potential. Also included in this definition are accounts regulated by the Internal Revenue Code and used for retirement planning, such as IRAs, 401(k)s, TSAs, and KEOGHs. This amendment clarifies policy on the treatment of approved accounts after loss of employment.

CHANGES TO RULE:

461-145-0025

Approved Accounts; ~~OSIP-EPD~~ and OSIPM-EPD ¶

In the OSIPM-EPD program:¶

(1) All money in an approved account (see OAR 461-001-0035) is excluded as a resource during the determination of eligibility.¶

(2) Only money from the client's own earned income, or money contributed from an employer based on earnings, may be deposited into an approved account.¶

(3) A retirement-related approved account must be set up in a financial institution and must comply with IRS regulations.¶

(4) An asset purchased with money from an approved account is excluded if the asset is for an employment and independence expense (see OAR 461-001-0035).¶

(5) If money from the approved account is used for a purpose not consistent with the definition of approved account in OAR 461-001-0035, the client will be prohibited from utilizing an approved account for the next 12 months for the purposes of the determination of eligibility.¶

(6) If an individual loses employment (see OAR 461-001-0035) and meets the requirements to remain on OSIPM-EPD under OAR 461-135-0725(2), all money in an approved account held prior to the loss of employment remains excluded as a resource during the period of extended OSIPM-EPD eligibility.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, ~~414.042~~ 1.404, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, ~~411.4.042~~

AMEND: 461-145-0390

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-145-0390 about the treatment of the value of personal belongings in determining eligibility is being amended to clarify the definition of personal belongings. This amendment aligns the rule with federal Medicaid policy.

CHANGES TO RULE:

461-145-0390

Personal Belongings ¶

(1) Personal belongings are such items as household furnishings, clothing, heirlooms, keepsakes, and hobby equipment. For all programs, items needed for maintenance and occupancy of the home and personal items found in or near the home that are used on a regular basis, are ordinarily worn or carried by the individual, or otherwise have an intimate relation to the individual. The value of personal belongings is excluded.¶

(2) Items that otherwise meet the definition of personal belongings but were acquired or are held for their value of personal belongings is excluded as an investment are not personal belongings. The value of such items is counted.

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

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

AMEND: 461-145-0440

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-145-0440 about the treatment of reimbursements in the eligibility process is being amended to establish that reimbursements for expenses covered by Department benefits are excluded for OSIPM and Medicare Savings (QMB) Programs if they are turned over to the Department. This amendment will provide consistency across programs as to the treatment of reimbursements of Medicaid-covered expenses and remove any financial penalty when clients comply with medical assignment requirements.

CHANGES TO RULE:

461-145-0440

Reimbursement ¶

(1) For the treatment of USDA meal reimbursements, see OAR 461-145-0570.¶

(2) The reimbursement (see OAR 461-001-0000) of a business expense for an individual who is self-employed is treated as self-employment income (see OAR 461-145-0910, 461-145-0915, and 461-145-0920).¶

(3) Except as provided in sections (1) and (2) of this rule, a reimbursement is treated as follows:¶

(a) In the ERDC program, a reimbursement is excluded, except that a reimbursement for child care from a source outside of the Department is counted as unearned income.¶

(b) In the SNAP program:¶

(A) A reimbursement in the form of money for a normal household living expense, such as rent or payment on a home loan, personal clothing, or food eaten at home, is unearned income.¶

(B) Any other reimbursement is treated as follows:¶

(i) An in-kind reimbursement is excluded.¶

(ii) A reimbursement in the form of money is excluded if used for the identified expense, unless the expense is covered by program benefits.¶

(iii) A reimbursement is counted as periodic income (see OAR 461-001-0000 and 461-140-0110) or lump-sum income (see OAR 461-001-0000 and 461-140-0120) if not used for the identified expense.¶

(iv) A reimbursement for an item already covered by the benefits of the benefit group (see OAR 461-110-0750) is counted as periodic income or lump-sum income.¶

(c) In the SNAP program, an expenditure by a business entity that benefits a principal (see OAR 461-145-0088) is counted as earned income (see OAR 461-145-0130).¶

(d) In all programs except the ERDC and SNAP programs, a reimbursement is treated as follows:¶

(A) An in-kind reimbursement is excluded.¶

(B) A reimbursement in the form of money is excluded if used for the identified expense, unless the expense is covered by program benefits.¶

(C) A reimbursement is counted as periodic income or lump-sum income if not used for the identified expense.¶

(D) A reimbursement for an item already covered by the benefits of the benefit group is counted as ~~unearned income~~ follows:¶

(i) In all programs except the OSIPM and QMB programs, it is counted as unearned income.¶

(ii) In the OSIPM and QMB programs, it is counted as unearned income unless the payment is turned over to the Department (see OAR 461-120-0315).¶

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

Statutes/Other Implemented: 659.830, 743B.470, 329A.500, ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

AMEND: 461-155-0670

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-155-0670 about special diet allowances is being amended to base the payment on the special diet items being added in context of diet items removed. This amendment requires a dietitian to address the clients actual diet needs by supplying documentation of the specific special diet items needed and the quantity. This amendment also changes the allowance calculation from the total diet cost to the cost of the special diet items only and requires purchase at the lowest cost available for the item. These changes reduce the risk of overpaying diet allowances and make the payments a better match for the need.

CHANGES TO RULE:

461-155-0670

Special Need; Special Diet Allowance ¶

(1) In the OSIPM, REF, REFM, SFPSS, and TANF programs, a client receiving any of the following is ineligible for a special diet allowance:¶

- (a) Room and board.¶
- (b) Residential care facility services or assisted living facility services.¶
- (c) Nursing facility services.¶
- (d) Adult foster care services.¶
- (e) An allowance for restaurant meals.¶
- (f) A commercial food preparation diet.¶

(2) An REF, REFM, SFPSS, or TANF client; ~~or a~~ in the OSIPM program, a client receiving SSI, having an adjusted income less than the OSIPM program income standard under OAR 461-155-0250, or receiving in-home services under OAR 411-030 ~~is~~ is eligible for a special diet allowance if all of the following requirements are met:¶

~~(a) Any special diet to which the client must adhere must be clearly described in writing. The Department must receive verification, as documented by a Department-approved medical authority (see OAR 461-125-0830), and of the written description must be provided to the Department; following:~~ ¶

~~(A) That the individual must adhere to a special diet.¶~~

~~(b) The Department must receive verification that the client would be in an imminent life-threatening situation without the special diet, as documented by a Department-approved medical authority; individual's specific nutritional need (such as low carbohydrates, high protein); and¶~~

~~(C) That the individual would be in an imminent life-threatening situation without the special diet.¶~~

~~(b) A licensed dietitian must provide written documentation of the following, and a copy must be provided to the Department:¶~~

~~(A) The individual's current diet items being replaced or removed, if any;¶~~

~~(e) A licensed dietitian must The special diet items being added, relating to the individual's specific nutritional need described in writing which particular food items required by the special diet are likely to exceed the cost of similar food items included in a regular diet and such a written description must be provided to the Department paragraph (a)(B) of this section; and¶~~

~~(C) The recommended quantity of each special diet item.¶~~

~~(c) The individual requesting a special diet allowance must provide to the Department:¶~~

~~(A) Verification of the monthly cost for any current diet item being replaced or removed; and¶~~

~~(B) The monthly cost of any special diet item being added.¶~~

(3) The amount of a special diet allowance is calculated as follows:¶

~~(a) Except as provided for in subsection (b) of this section, The special diet allowance is the monthly cost of the special diet allowance items, less the amount by which monthly cost of the client's food costs, including the special diet, excurrent diet items being replaced or removed. If no items are being replaced or removed, the one-person SNAP Payment Standard (Thrifty Food Plan) allowance is the actual monthly cost of the special diet items.¶~~

(b) In the OSIPM program, an ~~exceptional amount~~ monthly amount over \$300.00 must be authorized by the APD Financial/Medicaid Eligibility and Waiver Unit.¶

(4) Local management staff must approve or deny any request for a special diet allowance provided under subsection (3)(a) of this rule.¶

(5) Each special diet allowance must be reviewed and reauthorized annually.¶

(6) Special diet items must be purchased at the lowest cost available for that item.

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

Statutes/Other Implemented: ORS 411.060, 411.070, 411.404, 411.706, 412.014, 412.049, 413.085, 414.685

AMEND: 461-160-0630

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-160-0630 about the deduction for maintaining a home for nursing facility care clients in the OSIP and OSIPM programs is being amended to require for the deduction that the client would not be able to afford to keep home without the deduction and require that maintain the home be "consistent with individual's care needs" instead of "essential to the client's relocation to a less restrictive living situation. These changes align with Integrated Eligibility and clarify the rule.

CHANGES TO RULE:

461-160-0630

Deduction for Maintaining a Home; Nursing Facility Care Client ¶

In the OSIP and OSIPM programs:¶

(1) A single ~~client~~individual in a nursing facility is eligible for a home maintenance deduction for up to six months if ~~¶~~

~~(a) all of the following are true:¶~~

~~(a) The individual would not be able to afford to keep the home or rental property without the deduction.¶~~

~~(b) A physician has documented that the ~~client~~individual is likely to return home within six months; and,¶~~

~~(b) The Department determines that maintaining the home is an essential part of a plan for the client's relocation to a less restrictive living situation consistent with the individual's care needs.¶~~

(2) The amount of the deduction is the total of the ~~client~~individual's housing cost, including taxes and insurance, plus the limited standard utility allowance for the SNAP program provided in OAR 461-160-0420.

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

Statutes/Other Implemented: ORS 409.010, 411.060, 411.404

AMEND: 461-160-0855

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-160-0855 about excluded resources for payments received under a qualified partnership policy (QPP) in the OSIPM program is being amended to reverse a rule amendment effective January 1, 2018 under which the amount excluded under these QPPs is reduced by the amount an individual spends or gifts after the initial month of eligibility but not reduced when the value of excluded resources decreases due to no action of the individual's part. In the latter situation, additional assets could be excluded up the entire QPP amount. Under this amendment, the amount excluded under QPPs will remain constant, even if the individual spends or gives away funds. This amendment aligns the rule with Integrated Eligibility.

CHANGES TO RULE:

461-160-0855

Excluded Resources for Payments Received Under a Qualified Partnership Policy; OSIPM ¶¶

In the OSIPM program:¶¶

(1) When a client in a non-standard living arrangement (see OAR 461-001-0000) applies for medical benefits, the Department excludes as a resource an amount equal to the insurance payments received under a Qualified Partnership Policy (see OAR 461-001-0000) as of the initial month (see OAR 461-001-0000) of eligibility, unless the Qualified Partnership Policy was purchased in a state that has elected not to participate in reciprocity.¶¶

(2) The exclusion in section (1) of this rule is subject to all of the following:¶¶

~~(a) It does not apply when home equity exceeds the limit in OAR 461-145-0220(2)(a); and¶¶~~

~~(b) Applies.¶¶~~

(b) It does not apply to all other resources (not covered by subsection (a) of this section), notwithstanding other rules in this chapter of rules that designate the resources as countable (see OAR 461-001-0000); ~~and¶¶~~

~~(c) Is not reduced when the value of excluded resources has decreased due to no action on the individual's part, such as a loss of value due to economic factors. In this circumstance, additional assets may be excluded up to the entire Qualified Partnership Policy amount.¶¶~~

(3) For the amount of resources excluded under this rule, the Department will not establish a claim against the deceased person's estate in accordance with OAR 461-135-0835.

Statutory/Other Authority: 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.708, 414.025, ORS 409.050, 413.085, 414.685

Statutes/Other Implemented: 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.708, 414.025, ORS 409.010

AMEND: 461-165-0200

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-165-0200 about restoring benefits is being amended to indicate that the failure to send a decision notice in error for a denial of benefits is not an administrative underpayment, clarifying the rule.

CHANGES TO RULE:

461-165-0200

Restoring Benefits ¶

(1) A ~~client~~ individual is entitled to a supplemental payment of benefits for the current month or restoration of benefits lost in a previous month if the ~~client~~ individual received a lower benefit than he or she was entitled to for the reasons given in this rule. A ~~client~~ individual may receive a restoration of lost benefits even if no longer eligible. ¶

(2) A ~~client~~ individual may receive a supplemental payment if there was a change in the ~~client~~ individual's circumstances that would cause an increase in benefits, if the report of change was made before the first day of the payment month but too late for the Department to adjust the next payment. ¶

(3) A ~~client~~ individual may receive a supplemental or restorative benefit if the Department caused an administrative underpayment. An administrative underpayment includes, but is not limited to, an underpayment caused by any of the following: ¶

(a) Failure to take action on information reported to the Department. ¶

(b) Use of an incorrect effective date. ¶

(c) Denial, closure or reduction of benefits in error ~~and a f.~~ ¶

(d) Failure to send the ~~client~~ individual a required notice of proposed action decision notice (see OAR 461-001-0000) when benefits are closed or reduced. ¶

~~(d)~~ Making a calculation error. ¶

(4) A ~~client~~ individual is entitled to a restoration of lost benefits if: ¶

(a) The restoration results from a final order in a contested case. ¶

(b) The Department withheld too much of the ~~client~~ individual's grant in the collection of an overpayment. ¶

(c) The restoration results from a court order. ¶

(d) After receiving proper notification, the Department failed to cancel the EBT card of an individual leaving a SNAP program household and that individual continues to access the household's SNAP program benefits in subsequent months. ¶

(5) Restored benefits are added to the benefits of a currently eligible ~~client~~ individual. In the SNAP program, the Department will honor a reasonable request by a ~~client~~ individual to restore benefits in monthly installments. ¶

(6) A ~~client~~ individual who moves from Oregon remains eligible for a restoration of benefits. ¶

(7) Restoration of benefits is limited to the extent provided in OAR 461-180-0130.

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

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

AMEND: 461-180-0060

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-180-0060 about the effective date for denial of benefits is being amended to treat denials when applicants fail to provide requested verification in the same manner as other denials, clarifying the rule and aligning it with Integrated Eligibility.

CHANGES TO RULE:

461-180-0060

Effective Dates; Denial of Benefits ¶

The effective date for denying benefits is the ~~earlier of the following:¶~~

~~(1) The date the decision is made that the client is not eligible; or¶~~

~~(2) The end of the application processing time frame, if the application or required verification is incomplete.~~

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

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

AMEND: 461-195-0303

NOTICE FILED DATE: 01/17/2019

RULE SUMMARY: OAR 461-195-0303 about personal injury claims is being amended to indicate that the Personal Injury Liens program has authority to issue subpoenas and how they are approved. The amendment supports the role of the Personal Injury Liens program to act on behalf of both the Oregon Health Authority and the Department of Human Services to obtain information needed.

CHANGES TO RULE:

461-195-0303

Personal Injury Claim ¶

(1) The Personal Injury Liens ~~Unit~~program is designated and authorized to administer the personal injury lien program for the Oregon Health Authority (the Authority) and the Department of Human Services (the Department) (see OAR 461-195-0301). To administer the program, the Personal Injury Liens ~~Unit~~program is also authorized to:¶

(a) Prepare and file liens;¶

(b) Assign lien authority to a CCO (see OAR 461-195-0301) or a prepaid managed care health services organization (see 461-195-0301) for medical costs paid by a CCO or prepaid managed care health services organization to or on behalf of an applicant (see 461-195-0301) or recipient (see 461-195-0301) arising from any personal injury (see 461-195-0301);¶

(c) Assert any rights or remedies, including filing a complaint in court, arising from an assignment of right to payment acquired by the Authority in accordance with ORS 659.830 and 743.847, from an applicant or recipient; and¶

(d) Assert any rights or remedies granted in ORS 416.580 or 416.610.¶

~~(2e) Issue subpoenas under ORS 411.593 or 413.037.¶~~

~~(2) Subpoenas require approval of an Office of Payment Accuracy and Recovery manager or policy analyst.¶~~

~~(3) An applicant or recipient of medical assistance, as a condition of eligibility, must assign to the Authority any rights to payment from any third party liable for medical costs paid by medical assistance to or on behalf of an applicant or recipient arising from any personal injury.¶~~

~~(34) An applicant or recipient of assistance (see OAR 461-195-0301), except OCCS Medical Programs (see 410-200-0015), must pursue a personal injury claim (see 461-195-0301) in accordance with 461-120-0330 (Requirement to Pursue Assets).¶~~

~~(45) An applicant or recipient of OCCS Medical Programs assistance must pursue a personal injury claim in accordance with OAR 410-200-0220 (Requirement to Pursue Assets).¶~~

~~(56) An applicant or recipient must cooperate with the Personal Injury Liens Unit, CCO, or prepaid managed care health services organization to:¶~~

~~(a) Identify any third party liable or potentially liable for medical costs paid by the Department, the Authority, CCO, or prepaid managed care health services organization to or on behalf of an applicant or recipient arising from any personal injury;¶~~

~~(b) Provide information about liability or other insurance that may cover or pay for medical costs paid by the Department, the Authority, CCO, or prepaid managed care health services organization to or on behalf of an applicant or recipient arising from any personal injury;¶~~

~~(c) Complete a MSC 0451, MSC 0451NV, or similar online form as required by the Personal Injury Liens Unit, CCO, or prepaid managed care health services organization;¶~~

~~(d) Provide other information as required by the Personal Injury Liens Unit, CCO, or prepaid managed care health services organization to assist in pursuing payment from any third party who may be liable for medical costs paid by the Department, the Authority, CCO, or prepaid managed care health services organization to or on behalf of an applicant or recipient arising from any personal injury;¶~~

(e) Appear as a witness in court, administrative hearing, or other proceeding arising from any personal injury; and¶
(f) Pay to the Department any medical damages received by the recipient that are subject to the Department's lien or assignment of rights to payments.¶

(~~67~~) An applicant or recipient of OCCS Medical Programs assistance who fails to comply with section (~~56~~) of this rule is ineligible for benefits until the individual meets the requirements of section (~~56~~) of this rule, or has good cause (see OAR 410-200-0220) not to comply.¶

(~~78~~) An applicant or recipient of assistance, other than OCCS Medical Programs, who fails to comply with section (~~56~~) of this rule is ineligible for benefits until the individual meets the requirements of section (~~56~~) of this rule, or has good cause (see OAR 461-120-0330) not to comply.¶

(~~89~~) For all programs, the existence of a claim for damages for a personal injury does not make an applicant or recipient ineligible for program benefits.

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

Statutes/Other Implemented: 411.630, 411.632, 411.635, 411.640, ORS 411.620, 413.085