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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 24-2019

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED
12/17/2019 10:46 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Amending a rule regarding Intentional Program Violation Hearings in Self-Sufficiency Programs

EFFECTIVE DATE: 12/17/2019 THROUGH 06/13/2020

AGENCY APPROVED DATE: 12/17/2019

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Filed By:
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NEED FOR THE RULE(S):

OAR 461-025-0316 about Intentional Program Violation (IPV) Hearings in the SNAP program needs to be amended to create clarity for the Office of Administrative Hearings, the Department, and claimants, about how IPV Hearings are handled in the SNAP program and non-SNAP programs. This temporary amendment broadens the rule's provisions to the SNAP, TANF, SFPSS, REF, and REFM programs. The Department intends to make this amendment permanent effective April 1, 2020.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-025-0316 will result in serious prejudice to the public interest, the Department, and claimants defending themselves in a non-SNAP program IPV Hearing. This amendment is needed immediately to create provisions, in rule, that create non-SNAP program IPV hearing procedures and rights and provide guidance to the Office of Administrative Hearings regarding procedures in these hearings.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

No documents relied upon.

AMEND: 461-025-0316

RULE SUMMARY: OAR 461-025-0316 about Intentional Program Violation (IPV) Hearings in the SNAP program is being temporarily amended to broaden the rule's provisions to the SNAP, TANF, SFPSS, REF, and REFM programs. This amendment creates clarity for the Office of Administrative Hearings, the Department, and claimants, about how IPV Hearings are handled in the SNAP program and non-SNAP programs. The Department intends to make this amendment permanent effective April 1, 2020.

CHANGES TO RULE:

461-025-0316

Intentional Program Violation (IPV) Hearings; SNAP, TANF, SFPSS, REF, and REFM programs ¶

Notwithstanding the other rules in this division of rules and the rules at OAR 137-003-0501 and following, this rule governs intentional program violation hearings for the SNAP program. This rule reflects the requirements of the U.S. Department of Agriculture for the SNAP, TANF, SFPSS, REF, and REFM programs. ¶

- (1) An individual accused of an Intentional Program Violation may waive the right to an IPV hearing by signing a waiver on a form prescribed by the Department. There is no further administrative appeal after the individual signs the waiver unless the individual asserts that the signature on the waiver was obtained by fraud or under duress and, within 90 days from the date the waiver was signed, requests a hearing (see OAR 461-025-0310) to prove this. The individual has the burden of proving fraud or duress. If an Administrative Law Judge determines that the signature on the waiver was obtained by fraud or under duress, the waiver may be nullified and the Department may thereafter initiate an Intentional Program Violation hearing. ¶
- (2) If an IPV is not established by waiver or in court, the Department may initiate the IPV hearing. The individual is entitled to an Advanced Notice of Intentional Program Violation Hearing at least 30 days in advance of the scheduled hearing. The notice includes the specific charge(s) alleged by the Department. ¶
- (3) Within 90 days of the date the individual is notified in writing of the disqualification hearing, the Office of Administrative Hearings will conduct the hearing and serve a final order on the individual. ¶
- (4) The individual is entitled to a postponement of the scheduled hearing, if the request for postponement is made at least 10 days before the date of the scheduled hearing. The hearing will not be postponed for more than a total of 30 days, and the Office of Administrative Hearings may limit the postponements to one. ¶
- (5) When the individual fails to appear for the scheduled IPV hearing, the hearing may be conducted without the individual if: ¶
 - (a) The individual refused the notice of hearing; ¶
 - (b) The individual refused to claim the notice of hearing; ¶
 - (c) The individual received the notice of hearing; or ¶
 - (d) The notice of hearing was sent to the address last reported by the individual to the SNAP program Department and was returned as undeliverable. ¶
- (6) An individual who received notice of the scheduled IPV hearing has 10 days from the date of the scheduled hearing to present reasons indicating a "good cause" for failure to appear. An individual who did not receive notice of the scheduled IPV hearing must present reasons indicating "good cause" for failure to appear as part of a petition for reconsideration or rehearing of the final order within 30 days of the date of the final order. ¶
 - (a) For purposes of this rule, "good cause" means the individual was unable to attend the hearing and unable to request a postponement for reasons beyond his or her control. ¶
 - (b) "Good cause" will be determined on the record by the Office of Administrative Hearings. If the individual shows "good cause", the Office of Administrative Hearings will schedule another IPV hearing for the individual. ¶
- (7) The Administrative Law Judge must advise the individual that he or she may refuse to answer questions during the hearing. ¶
- (8) The standard for proving that an individual has committed an Intentional Program Violation is clear and convincing evidence. ¶
- (9) There is no administrative appeal of a final order, except as provided in section (6) of this rule.

Statutory/Other Authority: ORS 411.060

Statutes/Other Implemented: ORS 411.095