



PERMANENT ADMINISTRATIVE ORDER

SSP 21-2020

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

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RULES:

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AMEND: 461-001-0000

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-001-0000 about definitions for Chapter 461 is being amended to add a definition of signature, to amend the definition of caretaker relative, and to change verbiage related to survivors of domestic violence. These amendments bring the rule into alignment with Integrated Eligibility/ONE and remove outdated terminology.

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. Retroactively effective July 6, 2020, 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~~ an individual with whom the dependent child (see section ~~13~~ (23) of this rule) ~~who meets the requirements of one of the following subsections:~~¶

~~(a) Is living, who assumes primary responsibility for the care of the dependent child, and who is one of the following:~~¶

~~(a) A relatives of the dependent child (see section (23) of this rule) as follows:~~¶

~~(A) Any blood relative, including those of half blood, and includ~~ who is a parent (see section (51) of this rule), sibling, first cousins, nephews, or nieces, ~~and individuals; including those~~ 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 dependent child and any individual related to the individual adopting the child, either naturally or through adoption.~~¶

~~(b) Is or was a dependent child.~~¶

~~(b) The spouse (see section (645) of this rule) of an individual listed in relative (see subsection (14)(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) of the dependent child, even after the marriage is terminated by death or divorce.~~

(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 ~~victim~~ survivors of domestic violence. If the facility serves other people, a portion must be used solely for ~~victims~~ survivors 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 victim survivors 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) "Signature" means:¶

(a) For all programs except TA-DVS, any written, electronic, or telephonic signature.¶

(b) For the TA-DVS program, a written or telephonic signature.¶

(64) "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.¶

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

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

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

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

(689) "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.¶

(6970) "Trust funds" mean money, securities, or similar property held by an individual or institution for the benefit of another individual.¶

(701) "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.¶

(712) "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: 461-115-0050

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-115-0050 about when an application must be filed is being amended to eliminate the need to submit an application when adding an individual to the benefit group in the QMB, OSIP, and OSIPM programs. Eliminating the application requirement when adding an individual aligns Aging and People with Disabilities with MAGI, Integrated ONE, and the CFRs.

CHANGES TO RULE:

461-115-0050

When an Application Must Be Filed ¶

Retroactively effective July 6, 2020:¶

(1) An individual must file an application, or may amend a completed application, as a prerequisite to receiving benefits as follows:¶

(a) An individual may apply for the GA program by completing an application for the OSIPM program.¶

(b) An individual may apply for the TA-DVS program as provided in OAR 461-135-1200.¶

(c) In all programs except the TA-DVS program:¶

(A) Except as provided otherwise in this rule, to apply for program benefits, an individual must submit a complete application on a form approved by the Department.¶

(B) An application is complete if all of the following requirements are met:¶

(i) All information necessary to determine eligibility (see OAR 461-001-0000) and benefit amount is provided on the application for each individual in the filing group (see OAR 461-110-0310).¶

(ii) The applicant, even if homeless, provides a valid mailing address.¶

(iii) The application is signed by the individual, the authorized representative (see OAR 461-115-0090) of the individual, or another individual applying for benefits on behalf of the individual, and received by the Department.¶

(I) An individual required but unable to sign the application may sign with a mark, witnessed by another individual.¶

(II) An individual submitting an electronic application (see OAR 461-001-0000) must submit the application with an electronic signature.¶

(2) A new application is not required in the following situations:¶

(a) In the GA program, when an individual is receiving OSIPM on the date of request (see OAR 461-115-0030) for GA.¶

(b) In the SNAP program, when a single application can be used both to determine an individual is ineligible in the month of application and to determine the individual is eligible the next month. This may be done when--¶

(A) Anticipated changes make the filing group (see OAR 461-110-0370) eligible the second month; or¶

(B) The filing group provides verification between 30 and 60 days following the filing date (see OAR 461-115-0040), under OAR 461-180-0080.¶

(c) In all programs except the SNAP program, when a single application can be used both to determine an individual is ineligible on the filing date (see OAR 461-115-0040) or the date of request (see OAR 461-115-0030) as applicable to the term used by the program, and to determine the individual is eligible when anticipated changes make the filing group eligible within 30 days from the filing date or 45 days from the date of request (as applicable to the term used by the program).¶

(d) When the case is closed and reopened during the same calendar month.¶

(e) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.¶

(f) When reinstating medical benefits for a pregnant woman covered by OAR 461-135-0950, notwithstanding subsection (g) of this section.¶

- (g) In the ERDC program, when a case closed during the certification period (see OAR 461-001-0000) and the individual reports a change in circumstances prior to the end of the month following the closure and the reported change will make the individual eligible.¶
- (h) In the OSIPM and QMB programs, when the medical benefits of an individual are suspended because the individual lives in a public institution (see OAR 461-135-0950), if the Department is notified within 10 calendar days of the release.¶
- (i) In the REF, TA-DVS, and TANF programs, when a single application can be used both to determine an individual is ineligible in the month of application and to determine the individual is eligible the next month. This may be done when -¶
- (A) Anticipated changes make the filing group (see OAR 461-110-0330 and OAR 461-110-0430) eligible in the following month; or ¶
- (B) Amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.¶
- (3) When an individual establishes a new date of request prior to the end of the month following the month of case closure, unless the Department determines a new application is required, a new application is not required in the following situations:¶
- (a) In the OSIPM program, when the individual's case closed due to failure to make a liability payment required under OAR 461-160-0610.¶
- (b) In the OSIPM-EPD program, when the individual's case closed due to failure to make a participant fee payment required under OAR 461-160-0800.¶
- (4) A new application is required to add a newborn child (see OAR 461-001-0000) to a benefit group (see OAR 461-110-0750) according to the following requirements:¶
- (a) In the ERDC and SNAP programs, an application is not required to add the child to the benefit group.¶
- (b) In the OSIPM, QMB, and REFM programs, an additional application is not required to add an assumed eligible newborn (see OAR 461-135-0010) to a benefit group currently receiving Department medical program benefits.¶
- (c) In the TANF program:¶
- (A) A new application is not required if the child is listed on the application as "unborn" and there is sufficient information about the child to establish its eligibility.¶
- (B) A new application is required if the child is not included on the application as "unborn."¶
- (d) In all programs other than ERDC, QMB, REF, REFM, SNAP, and TANF, an application is required.¶
- (5) A new application is required to add an individual, other than a newborn child, to a benefit group according to the following requirements:¶
- (a) In the ERDC, ~~QMB, OSIP, OSIPM,~~ and SNAP programs, a new application is not required.¶
- (b) In the REF, REFM, and TANF programs, an individual may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.¶
- ~~(c) In all programs other than the ERDC, REF, REFM, SNAP, and TANF programs, a new application is required.¶~~
- (6) An individual whose TANF grant is closing may request ERDC orally or in writing.¶
- (7) Except for an applicant for the OSIPM, QMB, or SNAP program, an individual may change between programs administered by the Department using the current application if the following conditions are met:¶
- (a) The individual makes an oral or written request for the change.¶
- (b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.¶
- (c) The program change can be effected while the individual is eligible for the first program.¶
- (8) In the OSIP, OSIPM, and QMB programs, a new application is not required to redetermine eligibility if one of the following conditions are met:¶
- (a) The individual is currently receiving benefits from one of these programs and the Department has sufficient evidence to redetermine eligibility for the same program or determine eligibility for the new program without a new application or by amending the current application.¶
- (b) The individual was receiving benefits from one of these programs but was terminated for failure to provide

requested information during a periodic redetermination (see OAR 461-115-0430), if the requested information is received within 90 days of termination.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.025, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.117, 411.404, 411.447, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.041, 414.231, 414.685, 414.839, CFR 435.916

AMEND: 461-140-0220

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-140-0220 about determining whether an asset transfer is disqualifying, is being amended to reflect that in the OSIPM program the transfer of assets between members of the same financial group may be disqualifying. It is also being amended to add an additional requirement that an annuity must meet in order for its transfer not to be disqualifying for certain individuals receiving OSIP or OSIPM. These amendments align rule with Integrated Eligibility.

CHANGES TO RULE:

461-140-0220

Determining if a Transfer of an Asset is Disqualifying ¶¶

ARetroactively effective July 6, 2020, 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~~Except in the OSIPM program, 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~~individual.¶¶

(5) The amount of the resource was equal to or less than the amount that was excluded at the initial month (see OAR 461-001-0000) of eligibility under OAR 461-~~1860~~-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~~individual 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~~individual in a nonstandard living arrangement (see OAR 461-001-0000), the asset is an annuity purchased on or before December 31, 2005, the ~~client~~individual or the spouse of the ~~client~~individual 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~~individual is in a standard living arrangement (see OAR 461-001-0000).¶¶

(11) In the OSIP and OSIPM programs, for a ~~client~~individual 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~~the individual or the spouse of the ~~client~~individual is the annuitant, and the annuity meets the requirements of OAR 461-145-0022(8).¶¶

(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: ORS 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: 461-140-0242

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-140-0242 about having to do with disqualifying transfer of assets in the OSIP and OSIPM programs, is being amended for clarity to add an age restriction to certain transfers of a trust. It is also being amended to correct a rule reference and a defined term and to clarify that the requirements about transfer of a home are not restricted by the transfer of assets section listed earlier in the rule. These amendments clarify Department policy, improve the accuracy of the rule, and align with Integrated Eligibility.

CHANGES TO RULE:

461-140-0242

Disqualifying Transfer of Assets Including Home; OSIP and OSIPM ¶¶

~~For a client~~ Retroactively effective July 6, 2020, for an individual in a nonstandard living arrangement (see OAR 461-001-0000) in the OSIP and OSIPM programs:¶¶

(1) For the purposes of this rule:¶¶

(a) The definition of "child" in OAR 461-001-0000 does not apply.¶¶

(b) "Child" means a natural or adoptive son or daughter who is:¶¶

(A) Under age 21; or¶¶

(B) Any age and has been determined to meet the blindness criteria of OAR 461-125-0330 or the disability criteria of OAR 461-125-0370.¶¶

(2) A transfer of an asset (including a home) by a ~~client~~ individual or the spouse of the ~~client~~ individual is a disqualifying transfer unless the requirements of at least one of the following subsections are met:¶¶

(a) The transfer was made exclusively for purposes other than establishing eligibility or maintaining benefits.¶¶

(b) The title to the asset was transferred to the person's spouse, the person's child who is blind or has a disability under the criteria of the Social Security Administration, or another for the sole benefit of the spouse or a child who is blind or has a disability under the criteria of the Social Security Administration, provided that the transfer is arranged in such a way that no individual or entity except this spouse or child can benefit from the asset transferred in any way, whether at the time of transfer or any time in the future. A direct transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the spouse or child who is blind or has a disability under the criteria of the Social Security Administration is not considered to be established for the benefit of one of those individuals. In order for a transfer or a trust to be considered for the sole benefit of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual based on the life expectancy of the individual.¶¶

(c) The transfer was made to a trust described in OAR 461-145-0540(10), except that a transfer to a trust under OAR 461-145-0540(10)(a) is disqualifying if the ~~client~~ individual is age 65 or older.¶¶

(d) The transfer was made to a trust described in OAR 461-145-0540(11) established solely for the benefit of an individual under 65 years of age who has a disability that meets the criteria of the Social Security Administration, except that a transfer to a trust under OAR 461-145-0540(11) is disqualifying if the individual is age 65 or older. This subsection applies to all transfers made on or after July 1, 2006.¶¶

(e) The transfer is a transfer described in OAR 461-160-0580(~~23~~).¶¶

(f) The resource is transferred by the community spouse after the Department has determined the community spouse's resource allowance in accordance with OAR 461-160-0580 and the resource has not been attributed to the institutionalized spouse. Notwithstanding this subsection, a transfer of a resource by a community spouse who is receiving or applying for benefits remains subject to all rules regarding the transfer of an asset by a ~~client~~.¶¶

~~(3) An individual.~~¶¶

(3) Notwithstanding section (2)(a) of this rule, a transfer of a home by a ~~client~~ individual or the spouse of the ~~client~~ individual is a disqualifying transfer unless the title was transferred to the ~~client~~ individual's;¶¶

(a) Child;¶¶

- (b) Sibling who has equity interest in the home and was residing in the home for at least one year immediately before the ~~client~~individual's admission to long-term care (see OAR 461-001-0000); or¶
- (c) Natural or adoptive son or daughter who meets the requirements of each of the following paragraphs:¶
- (A) The son or daughter resided with the ~~client~~individual in the individual's home continuously for at least two years immediately prior to the ~~client~~individual's admission to long-term care other than an absence from the home that is not intended to, and does not, exceed 30 days.¶
- (B) The son or daughter provides convincing evidence that he or she provided services that permitted the ~~client~~individual to reside at home for at least two years rather than in an institution or long-term care facility.¶
- (C) Without receiving payment from the Department, the son or daughter must have directly provided the services required by paragraph (B) of this subsection as described in both of the following subparagraphs for a total of at least 20 hours per week.¶
- (i) On a daily basis, one or a combination of any of the following activities of daily living, as each sub-subparagraph is further defined at OAR 411-015-0006:¶
- (I) Eating.¶
- (II) Dressing/Grooming.¶
- (III) Bathing/Personal Hygiene.¶
- (IV) Mobility.¶
- (V) Elimination.¶
- (VI) Cognition/Behavior.¶
- (ii) One or a combination of any of the following instrumental activities of daily living, as each sub-subparagraph is further defined at OAR 411-015-0007:¶
- (I) Housekeeping.¶
- (II) Laundry.¶
- (III) Meal Preparation.¶
- (IV) Medication Management.¶
- (V) Shopping.¶
- (VI) Transportation.¶
- (4) Except for a transfer permitted under section (3) of this rule, each of the following subsections applies in determining whether an asset is considered transferred for fair market value:¶
- (a) The compensation received for the asset must be in a tangible form with intrinsic value.¶
- (b) The Department presumes that services provided for free at the time were intended to be provided without compensation, and that a transfer to an individual for services provided for free in the past is a disqualifying transfer of assets. This presumption is rebuttable with convincing evidence. This evidence must also show that there was an express agreement to provide services for compensation at the time the services were provided.¶
- (c) Compensation for services is valued at the average market rate at the time the services were provided, unless the express agreement provides a lower rate.¶
- (5) If a transfer is made for less than fair market value and is not exempt from disqualification under this rule, there is a rebuttable presumption that the asset was transferred for the purpose of establishing or maintaining eligibility and is not exempt under subsection (2)(a) of this rule.¶
- (6) To rebut the presumption in section (5) of this rule, the ~~client~~individual must present evidence other than his or her own statement and must provide to the Department the information it requests for the purpose of evaluating the purpose of the transfer. To meet the burden, it is sufficient for the ~~client~~individual to show one of the following:¶
- (a) The decision to make the transfer was not within the ~~client~~individual's control;¶
- (b) At the time of transfer, the ~~client~~individual could not reasonably have anticipated applying for medical assistance;¶
- (c) Unexpected loss of resources or income occurred between the time of transfer and the application for medical assistance;¶
- (d) Because of other, similarly convincing, circumstances, it appears more likely than not that the transfer was not

made, in whole or in part, for the purpose of establishing or maintaining eligibility for benefits.¶

(7) The fact that a recipient was already eligible for benefits is not sufficient to rebut the presumption in section (5) of this rule because the asset may not always be excluded and if the ~~client~~individual had received full compensation for the asset, the compensation received would have been used to determine future eligibility.

Statutory/Other Authority: ORS 411.060, 411.710

Statutes/Other Implemented: ORS 411.060, 411.710, 414.042

AMEND: 461-140-0250

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-140-0250 about determining the uncompensated value of a transferred asset is being amended to provide that no credit (for the difference between the countable resources and the resource limit) shall be given in the case of transfers made on or after the Date of Request. This change will align the rule with Integrated Eligibility.

CHANGES TO RULE:

461-140-0250

Determining The Uncompensated Value of a Transferred Asset ¶¶

Retroactively effective July 6, 2020:¶¶

(1) The uncompensated value of a disqualifying transfer of an asset is used in OAR 461-140-0260 to 461-140-0300 to calculate the ineligibility period of the financial group (see OAR 461-110-0530).¶¶

(2) To determine uncompensated value:¶¶

(a) In the OSIP and OSIPM programs:¶¶

(A) The value of the compensation received for the asset is subtracted from the fair market value (see OAR 461-001-0000) of the asset. ~~This result is the uncompensated value.~~¶¶

(i) For transfers made on or after the Date of Request for long-term care (see OAR 461-001-0000) or home and community-based care (see OAR 461-001-0030), this result is the uncompensated value.¶¶

(ii) For transfers made before the date of request for long-term care (see OAR 461-001-0000) or home and community-based care (see OAR 461-001-0030), this result is the uncompensated value unless the financial group had countable (see OAR 461-001-0000) resources of less than the resource limit at the time of the first transfer. If the financial group had countable resources of less than the resource limit in OAR 461-160-0015 at the time of the first transfer, In that event the remainder is then added to (the resource limit minus their countable resources, and the amount by which the sum exceeds the resource limit in OAR 461-160-0015 is the uncompensated value.) is then credited by adding it to the other compensation received for the asset. ¶¶

(B) For an annuity, unless the ~~client~~client individual verifies a lesser amount, the fair market 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 monthly payments already received, minus early withdrawals, and minus any surrender fees.¶¶

(b) In all other programs, the value of the compensation received for the resource is subtracted from the fair market value of the resource. The remainder is added to the other countable resources at the time of the transfer. The amount by which the sum exceeds the resource limit is the uncompensated value.¶¶

(c) The compensation received for a transferred asset includes;¶¶

(A) Encumbrances assumed by the buyer; and¶¶

(B) Goods or services provided to the ~~client~~client individual, limited to their true value, if there was a prior agreement to exchange the asset for the goods or services.

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 409.010, 409.050, 410.020, 411.060, 411.070, 411.404, 411.632, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839

RULE SUMMARY: OAR 461-140-0296 about the length of disqualification due to an asset transfer in the OSIP and OSIPM program is being amended to clarify apportionment of disqualification between two transferor spouses, to remove the requirement for both spouses to have made the disqualifying transfer in order for the disqualification to impact both individuals, to cease basing apportionment on a percentage of ownership, and to provide for partial-month disqualifications. The rule is also being changed to remove policy that refers to SSI cash grants, which the Department no longer needs. These changes clarify the rule, and align with current Department practices and Integrated Eligibility.

CHANGES TO RULE:

461-140-0296

Length of Disqualification Due to an Asset Transfer; OSIP and OSIPM ¶

(1) This rule applies to ~~client~~individuals in the OSIP and OSIPM programs who live in a nonstandard living arrangement (see OAR 461-001-0000) and is retroactively effective July 6, 2020.¶

(2) A financial group (see OAR 461-110-0530) containing a member disqualified due to the transfer of an asset is disqualified from receiving benefits. The length of a disqualification period resulting from the transfer is the number of months equal to the uncompensated value (see OAR 461-140-0250) for the transfer divided by the following dollar amount:¶

(a) If the initial month (see OAR 461-001-0000) is prior to October 1, 1998-\$2,595.¶

(b) If the initial month is on or after October 1, 1998 and prior to October 1, 2000-\$3,320.¶

(c) If the initial month is on or after October 1, 2000 and prior to October 1, 2002-\$3,750.¶

(d) If the initial month is on or after October 1, 2002 and prior to October 1, 2004-\$4,300.¶

(e) If the initial month is on or after October 1, 2004 and prior to October 1, 2006-\$4,700.¶

(f) If the initial month is on or after October 1, 2006 and prior to October 1, 2008-\$5,360.¶

(g) If the initial month is on or after October 1, 2008 and prior to October 1, 2010-\$6,494.¶

(h) If the initial month is on or after October 1, 2010 and prior to October 1, 2016-\$7,663.¶

(i) If the initial month is on or after October 1, 2016 and prior to October 1, 2018--\$8,425.¶

(j) If the initial month is on or after October 1, 2018---\$8,784.¶

(3) For transfers by a ~~client~~individual and the spouse of a ~~client~~individual that occurred before July 1, 2006:¶

(a) Add together the uncompensated value of all transfers made in one calendar month; and treat this total as one transfer.¶

(b) If the uncompensated value of the transfer is less than the applicable dollar amount identified in subsections (2)(a) to (2)(j) of this rule, there is no disqualification.¶

(c) If there are multiple transfers in amounts equal to or greater than the applicable dollar amount identified in subsections (2)(a) to (2)(j) of this rule, each disqualification period is calculated separately.¶

(d) The number of months resulting from the calculation in section (2) of this rule is rounded down to the next whole number.¶

(e) Except as provided in subsection (3)(f) of this rule, the first month of the disqualification is the month the asset was transferred.¶

(f) If disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.¶

(g) If both spouses of a couple are in a nonstandard living arrangement ~~and made the disqualifying transfer~~, part of the disqualification is apportioned to each of them, based on their percentage of ownership in the transferred asset couple is serving a disqualification when the other member of the couple begins living in a nonstandard living arrangement, any remaining disqualification is apportioned equally to each member of the couple. If one spouse is unable to serve the resulting disqualification period for any reason, the remaining disqualification applicable to both spouses must be served by the remaining spouse.¶

(4) For transfers by a client individual and the spouse of a client individual that occurred on or after July 1, 2006 and for income cap trusts under OAR 461-145-0540(10)(c) that accumulate funds in excess of the applicable dollar amount identified in subsections (2)(a) to (2)(j) of this rule:¶

(a) If there are multiple transfers by the client individual and the spouse of the client individual, including any transfer less than the applicable dollar amount identified in subsections (2)(a) to (2)(j) of this rule, the value of all transfers are added together before dividing by the applicable dollar amount identified in subsections (2)(a) to (2)(j) of this rule. For an income cap trust, the calculation in section (2) of this rule is performed as soon as, but not before, funds have accumulated to at least the applicable dollar amount identified in subsections (2)(a) to (2)(j) of this rule.¶

(b) The quotient resulting from the calculation in section (2) of this rule is not rounded. The whole number of the quotient is the number of full months the financial group is disqualified. This number might be zero full months. The remaining decimal or fraction of the quotient is used to calculate an ~~additional~~ partial month disqualification, which may be in addition to one or more full months. This remaining decimal or fraction is converted to an ~~additional~~ number of days by multiplying the decimal or fraction by the number of days in the month following the last full month of the disqualification period, if any. If this calculation results in a fraction of a day, the fraction of a day is rounded down.¶

(c) Notwithstanding when the Department learns of a disqualifying transfer, the first month of the disqualification is:¶

(A) For a client individual who transfers an asset while he or she is already receiving Department-paid long-term care (see OAR 461-001-0000) or home and community-based care (see OAR 461-001-0030) in a nonstandard living arrangement, the month following the month the asset was transferred, except that if disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.¶

(B) For an applicant who transfers an asset prior to submitting an application and being determined eligible and for a client individual who transfers an asset while he or she is already receiving benefits in a standard living arrangement (see OAR 461-001-0000), the date of request (see OAR 461-115-0030) for long-term care or home and community-based care as long as the applicant or client individual would otherwise be eligible but for this disqualification period. If the applicant or client individual is not otherwise eligible on the date of request, the disqualification begins the first date following the date of request that the applicant or client individual would be otherwise eligible but for the disqualification period.¶

(d) If both spouses of a couple are in a nonstandard living arrangement ~~and made the disqualifying transfer~~, part of the disqualification is apportioned to each of them, ~~based on their percentage of ownership in the transferred asset~~ couple is serving a disqualification when the other member of the couple begins living in a nonstandard living arrangement, any remaining disqualification is apportioned equally to each member of the couple. If one spouse is unable to serve the resulting disqualification period for any reason, the remaining disqualification applicable to both spouses must be served by the remaining spouse.¶

(5) If an asset is owned by more than one person, by joint tenancy, tenancy in common, or similar arrangement, the share of the asset owned by the client individual is considered transferred when any action is taken either by the client individual or any other person that reduces or eliminates the client individual's control or ownership in the client individual's share of the asset.¶

(6) For an annuity that is a disqualifying transfer under section (11) of OAR 461-145-0022, the disqualification period is calculated based on the uncompensated value as calculated under OAR 461-140-0250, unless the only requirement that is not met is that the annuity pays beyond the actuarial life expectancy of the annuitant. If the annuity pays beyond the actuarial life expectancy of the annuitant, the disqualification is calculated according to section (7) of this rule.¶

(7) If a client individual or the spouse of a client individual purchases an annuity on or before December 31, 2005, and the only requirement that is not met is that the annuity pays benefits beyond the actuarial life expectancy of the annuitant, as determined by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration, a disqualification period is assessed for the value of the annuity beyond the actuarial life

expectancy of the annuitant.¶

~~(8) A single transfer of an asset may cause a disqualification for both a medical assistance program under this rule and the SSI cash grant. The period of the disqualification is likely to be longer for SSI than for the medical assistance program, so a person may be eligible again for the medical assistance program while still disqualified from receiving SSI. The provisions of this rule are applied without regard to the related disqualification for SSI.~~

Statutory/Other Authority: ORS 413.085, 414.685, ORS 409.050, 411.060, 411.704, 411.706

Statutes/Other Implemented: 42 USC 1396p, ORS 409.010, 411.060, 411.704, 411.706

AMEND: 461-145-0020

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-145-0020 about annuities for programs other than OSIPM is being amended to add a prohibition of deferrals and balloon payments and to reference a defined term. These changes add clarity to the rule as well as align the rule with current Department policy and Integrated Eligibility.

CHANGES TO RULE:

461-145-0020

Annuities; Not OSIPM ¶

Retroactively effective July 6, 2020:¶

(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, with no deferral and no balloon payments. 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, measured at the time of purchase.¶

(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, "a" All programs~~ does not include the OSIPM program. See OAR 461-145-0022 for the OSIPM program. This rule does not apply to 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 the QMB-DW program, annuity payments are counted as unearned income to the payee.¶

(b) In the QMB-DW program:¶

(A) For an 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.

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

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-145-0022 about annuities in the OSIPM program is being amended to better define "actuarially sound," explicitly prohibit deferrals and balloon payments, clarify that an annuity that does not make regular payments for a lifetime or specified number of years will not be an excluded resource. The amendments clarify the treatment of annuities purchased by certain married clients, specifies that the Department must be named as the second remainder beneficiary in certain circumstances, and provides that when a non-compliant annuity has been purchased, it will either be a disqualifying transfer, or a countable resource, but not both. These changes align the rules with current Department policy and Integrated Eligibility.

CHANGES TO RULE:

461-145-0022

Annuities; OSIPM ¶¶

~~†Retroactively effective July 6, 2020, in the OSIPM program:¶¶~~

(1) For the purposes of this rule:¶¶

(a) "Actuarially sound" means a commercial annuity which pays principal and interest out in equal monthly installments over the actuarial life expectancy of the annuitant, with no deferral and no balloon payments. 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 12 months of the actuarial life expectancy.¶¶

~~(b) For a client, measured at the time of purchase.¶¶~~

(b) For an individual, 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) The definition of "child" in OAR 461-001-0000 does not apply.¶¶

(d) "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.¶¶

(e) "Commercial annuity" means a contract or agreement (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.¶¶

(2) An annuity that does not make regular payments for a lifetime or specified number of years ~~is a resource.~~¶¶

~~(3) When a client will not be excluded from countable resources under this rule.¶¶~~

(3) When an individual applies for medical ~~benefits~~ assistance, both initially and at periodic redetermination (see OAR 461-115-0050 and 461-115-0430), the ~~client~~ individual must report any annuity owned by the ~~client~~ individual or a spouse of the ~~client~~ individual.¶¶

(4) By signing the application for assistance, a ~~client~~ individual and the spouse of a ~~client~~ individual agree that the Department, by virtue of providing medical assistance, becomes a remainder beneficiary as described in sections (8) and (10) of this rule, under any commercial annuity purchased on or after February 8, 2006, unless the annuity is included in the community spouse's resource allowance under OAR 461-160-0580(2)(c).¶¶

(5) If the Department is notified about a commercial annuity, the Department will notify the issuer of the annuity about the right of the Department as a preferred remainder beneficiary, as described in sections (8) and (10) of this rule, in the amount of medical assistance provided to the ~~client~~.¶¶

~~(6) If a client~~ individual.¶¶

(6) If an individual or a spouse of a ~~client~~ individual purchases or transfers a commercial annuity prior to January 1, 2006, the following applies:¶¶

(a) If the client individual is in a nonstandard living arrangement (see OAR 461-001-0000), the transaction may be subject to the rules on asset transfers at OAR 461-140-0210 and following. For an annuity that is not disqualifying or the disqualification period has already been served, the annuity is not counted as a resource; payments are counted as unearned income to the payee.¶

(b) If the client individual is in a standard living arrangement, the annuity payments are counted as unearned income to the payee.¶

(7) Sections 8 and 9 of this rule apply to a commercial annuity if:¶

(a) The client individual is in a nonstandard living arrangement, and the client individual or the spouse of the client individual purchases an annuity from January 1, 2006 through June 30, 2006; or¶

(b) The client individual is in a standard living arrangement (see OAR 461-001-0000), and the client individual or the spouse of a client individual purchase an annuity on or after January 1, 2006.¶

(8) A commercial annuity covered by section (7) of this rule is counted as a resource unless the annuity is excluded by meeting the following requirements:¶

(a) If an unmarried client married individual is an annuitant, the annuity must meet the requirements of subsection (8)(d) of this rule.¶

(b) If an unmarried individual is an annuitant, the annuity must meet the requirements of subsection (8)(ed) of this rule, and the annuity must specify that upon the death of the client individual, the first remainder beneficiary is either of the following:¶

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

(B) The child of the client individual, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits assistance provided on behalf of the client individual, in the event that the child does not survive the client individual.¶

(~~b~~c) If a spouse of a client individual is the annuitant, the annuity must meet the requirements of subsection (8)(e d) of this rule, and the annuity must specify that, upon the death of the spouse of the client individual, the first remainder beneficiaries are either of the following:¶

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

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

(~~e~~d) An annuity covered by section (7) of this rule may not be excluded unless the annuity meets all of the following requirements:¶

(A) The annuity is irrevocable.¶

(B) The annuity must be actuarially sound.¶

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

(9) If an annuity is excluded as a resource under section (8) of this rule, the annuity payments are counted as unearned income to the payee. If an annuity is a countable resource under section (8) of 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 monthly payments already received, minus early withdrawals, and minus any surrender fees.¶

(10) This section lists the requirements for a commercial annuity purchased by the client individual or the spouse of the client individual on or after July 1, 2006, when a client individual is in a nonstandard living arrangement, and the annuity names the client individual or the community spouse as the annuitant. Annuities that meet all of the requirements of this section are counted as unearned income to the payee. The treatment of annuities that do not meet all requirements of this section is covered in sections (11) and (12) of this rule.¶

(a) The annuity must comply with one of the following paragraphs:¶

(A) The first remainder beneficiary is the spouse of the client individual; the Department is named as the second remainder beneficiary for up to the total amount of medical assistance paid on behalf of the individual; and in the

event that the spouse transfers any of the remainder of the annuity for less than fair market value (see OAR 461-001-0000), the Department is the second remainder beneficiary for up to the total amount of medical ~~benefits~~ assistance paid on behalf of the client individual.¶

(B) The first remainder beneficiary is the annuitant's child, and in the event that the child or a representative on behalf of the child transfers any of the remainder of the annuity for less than fair market value, the Department is the second remainder beneficiary for up to the total amount of medical ~~benefits~~ assistance paid on behalf of the client individual.¶

(C) The first remainder beneficiary is the Department for up to the total amount of medical ~~benefits~~ assistance paid on behalf of the client individual.¶

(b) The annuity must be irrevocable ~~and~~.¶

~~(c) The annuity must be non-assignable.~~¶

~~(d)~~ The annuity must be actuarially sound.¶

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

(11) If the client individual is the annuitant and a commercial annuity does not meet all of the requirements of subsections (10)(a), (10)(d), and (10)(e) of this rule, or the spouse of the client individual is the annuitant and a commercial annuity does not meet the requirements of subsections (10)(a), (10)(d), and (10)(e) of this rule, there is a disqualifying transfer of assets under OAR 461-140-0210 and following. See OAR 461-140-0296(6) and (7) for calculation of the disqualification period.¶

~~(12) Regardless of whether a commercial annuity is a disqualifying transfer of assets, i~~ To the extent to which there is a disqualifying transfer of assets under this section, the annuity is not counted as a resource.¶

(12) If the annuity does not meet all of the requirements of subsections (10)(b) or (10)(c) of this rule, the annuity is counted as a resource with cash value 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 monthly payments already received, minus early withdrawals, and minus any surrender fees.

Statutory/Other Authority: ORS 411.060, 411.070, 411.083, 411.404

Statutes/Other Implemented: ORS 411.060, 411.070, 411.083, 411.404

AMEND: 461-145-0040

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-145-0040 about burial arrangements and burial funds is being amended to define their treatment for non-OSIP and OSIPM programs. It is also being amended to change the treatment of burial insurances that meet specific criteria. These changes bring the rule into alignment with Integrated Eligibility.

CHANGES TO RULE:

461-145-0040

Burial Arrangements and Burial Fund ¶¶

Retroactively effective July 6, 2020:¶¶

(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).¶¶

(c) In all programs except OSIP, OSIPM, and QMB-DW, burial insurance is considered a form of life insurance and treated in accordance with OAR 461-145-0320.¶¶

(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, ~~¶¶~~

(A) The amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs is excluded.¶¶

(d) Except as provided in subsections (b) and (c) of this section, in all programs not listed in subsection (a) of this section, a burial arrangement is treated in accordance with OAR 461-145-0320 and, as applicable, subsection (b) of this section. 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 excluded.¶¶

(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. Except as provided in subsections (b) and (c) of this section, in all programs not listed in subsection (a) of this section, a burial arrangement is treated in accordance with OAR 461-145-0320 and, as applicable, subsection (b) 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: 461-145-0088

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-145-0088 about the income and resources of corporations and business entities in programs other than OSIP, OSIPM, and QMB is being amended to bring the SNAP program into alignment with other programs in its treatment of these assets. The rule is also being amended to correct an incorrect term and to clarify how the income of corporations is treated.

CHANGES TO RULE:

461-145-0088

Corporations and Business Entities; Income and Resources; Not OSIP, OSIPM, or QMB ¶

Retroactively effective July 6, 2020:¶

(1) The value of stocks or other ownership interest in a corporation is a resource.¶

(2) ~~Asset~~Resources of the corporation essential to the employment of an individual are excluded. For instance, if the corporation owns equipment used by the individual to produce income for the corporation, the equipment is an excluded resource. If an individual must own stock in the corporation as a condition of working for the corporation, the stock is an excluded resource.¶

(3) Except as provided in OAR 461-140-0040(2), gross income of a corporation is ~~not~~ income of an individual with an ownership interest in the corporation until the income is distributed to the individual.¶

(4) In the SNAP program:¶

(a) Income from business entities and corporations is treated as follows:¶

(A) If an individual is actively working in a corporation, the income is treated as earned income.¶

(B) If an individual is actively working in an unincorporated business entity, refer to OAR 461-145-0910 to determine if the income is treated as earned or as self-employment.¶

(C) If an individual is no longer actively working to produce the income, the income is treated as unearned.¶

(b) Income from a limited liability company is treated as follows:¶

(A) If an individual is a member or a manager member, the income is treated as self-employment income.¶

(B) If an individual is determined to be self-employment as defined in OAR 461-145-0910(2) and is considered available when the business receives the income. If not self-employment, the income of a corporation is considered income of the business until disa manager but not a member, the income is treated as earned income tributed to the individual.¶

(e4) For an expenditure by a business entity or corporation that benefits a principal such as a car or housing payment:¶

(Aa) The payment is considered available when the expenditure is made.¶

(Bb) For purposes of this rule, a "principal" means an individual with significant authority in a business entity or corporation, including a sole proprietor, a self-employed person (see OAR 461-145-0910), a partner in a partnership, a member or manager of a limited liability company, and an officer or principal stockholder of a closely held corporation.¶

(Cc) See OAR 461-145-0130, 461-145-0280, and 461-145-0470 for the treatment of earned in-kind income.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.816, 412.049

Statutes/Other Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.816, 412.049

AMEND: 461-145-0089

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-145-0089 about non self-employment income and resources from corporations and other business entities for the OSIP, OSIPM, and QMB programs is being amended to amended to add requirements and clarify when an individual is and is not considered self-employed. The changes are part of a group of amendments to rules about assets from and determining treatment of various business entities. The changes will provide greater consistency across programs and aligns the rule with Integrated Eligibility.

CHANGES TO RULE:

461-145-0089

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

†Retroactively effective July 6, 2020, 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) ¶ Unless the individual cannot be meets the specific criteria for self-employment in OAR 461-145-0915, the individual is not 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 counted as earned income as provided in OAR 461-145-0130.¶

(b) Dividends or profits are counted 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 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 counted as earned income as provided in OAR 461-145-0130.¶

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

(c) Except 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 counted 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 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, other than stock in the corporation, is counted 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 counted 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 counted 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: 461-145-0120

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-145-0120 about earned income defined is being amended for all programs to address income earned by a principal working for a corporation. The changes are part of a group of amendments to rules about assets from and determining treatment of various business entities. The changes will provide greater consistency across programs and aligns the rule with Integrated Eligibility.

CHANGES TO RULE:

461-145-0120

Earned Income; Defined ¶¶

Retroactively effective July 6, 2020:¶¶

Earned income is income received in exchange for an individual's physical or mental labor. Earned income includes all of the following:¶¶

- (1) Compensation for services performed, including wages, salaries, commissions, tips, sick leave, vacation pay, draws, or the sale of blood or plasma.¶¶
- (2) Income from on-the-job-training, paid job experience, JOBS Plus work experience, or Welfare-to-Work work experience.¶¶
- (3) In-kind income, when an individual is an employee of the person providing the in-kind income and the income is in exchange for work performed by the individual, or when received as compensation from self-employment.¶¶
- (4) For self-employment, gross receipts and sales, including mileage reimbursements, before costs.¶¶
- (5) In:¶¶
 - (a) The SNAP program, cafeteria plan (see OAR 461-001-0000) benefits, and funds placed in a flexible spending account.¶¶
 - (b) All programs except the SNAP program, cafeteria plan benefits that an employee takes as cash, and funds placed in a flexible spending account.¶¶
- (6) Income from work-study.¶¶
- (7) Income from profit sharing that the individual receives monthly or periodically, except as provided in OAR 461-145-0089 in the OSIP, OSIPM, and QMB programs .¶¶
- (8) The fee for acting as an individual's representative payee, when that individual is not included in the filing group (see OAR 461-110-0310).¶¶
- (9) In the SNAP program, expenditure by a business entity that substantially benefits a principal (see OAR 461-145-0088).¶¶
- (10) The income a principal (see OAR 461-145-0089) earns working for a corporation, unless the individual can be considered self-employed under OAR 461-145-0910 or OAR 461-145-0915.¶¶

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

~~(a) A, a non-business expenditure - including, but not limited to, a personal car or housing payment - paid by an individual's corporation or business entity (see OAR 461-145-0089) that benefits the individual.¶¶~~

~~(b) The income a principal (see OAR 461-145-0089) earns working for a corporation.~~

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

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

AMEND: 461-145-0220

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-145-0220 about home exclusion is being amended to correct a rule reference, to add an additional provision of home exclusion, and to insert defined terminology. It is also being amended to add a provision of exclusion during temporary absence for the OSIP, OSIPM, and QMB programs; if certain criteria are met. These changes are being made to align the rule with Integrated Eligibility.

CHANGES TO RULE:

461-145-0220

Home ¶¶

Retroactively effective July 6, 2020:¶¶

(1) Home defined: A home is the place where the filing group (see OAR 461-110-0310) lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:¶¶

(a) Land on which the home is built and contiguous property.¶¶

(A) In all programs except the OSIP, OSIPM, QMB, and SNAP programs, property must meet all the following criteria to be considered contiguous property:¶¶

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group (see OAR 461-110-0530).¶¶

(ii) It must not be separated by a public right-of-way, such as a road.¶¶

(iii) It must be property that cannot be sold separately from the home.¶¶

(B) In the OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.¶¶

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.¶¶

(2) Exclusion of home and other property:¶¶

(a) For an individual who has an initial month (see OAR 461-001-0000) of long-term care (see OAR 461-001-0000 or home and community-based care (see OAR 461-001-0030)) on or after January 1, 2006:¶¶

(A) For purposes of this subsection, "child" means a biological or adoptive child who is:¶¶

(i) Under age 21; or¶¶

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

(B) The equity value (see OAR 461-001-0000) of a home is excluded if the requirements of at least one of the following subparagraphs are met:¶¶

(i) The child (see paragraph (A) of this subsection) of the individual or relative dependent on the individual for support occupies the home.¶¶

(ii) The spouse (see OAR 461-001-0000) of the individual occupies the home.¶¶

(iii) The equity in the home is \$595,000 or less, and the requirements of at least one of the following subparagraphs are met:¶¶

(I) The individual occupies the home.¶¶

(II) The home equity is excluded under OAR 461-145-02502.¶¶

(III) The home is listed for sale per OAR 461-145-0420.¶¶

(iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than \$595,000 and the individual is unable legally to convert the equity value in the home to cash.¶¶

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.¶¶

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461-145-0420.¶¶

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:¶¶

(a) For the purposes of this section, "evidence" includes a written statement from a competent individual.¶¶

(b) In all programs except the OSIP, OSIPM, and QMB-DW programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.¶¶

(~~b~~c) In the OSIP, OSIPM, and QMB-DW programs, when the individual is absent to receive ~~care in a m~~long-term care or home and community-based ical institution, ~~if re. under one of the following is true~~conditions:¶¶

(A) The absent individual has provided evidence that the individual will return to the home. The evidence must reflect the subjective intent of the individual, regardless of the individual's medical condition. ~~A written statement from a competent individual is sufficient to prove the intent.~~¶¶

(B) The home remains occupied by the individual's spouse, child, or a relative dependent on the individual for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.¶¶

(~~e~~d) In the OSIP, OSIPM, and QMB-DW programs, when the individual is absent due to illness, employment or training for future employment, seasonal employment, or uninhabitability; and both of the following conditions are met:¶¶

(A) The absent individual has provided evidence that the absent individual will return home, and¶¶

(B) The evidence reflects the subjective intent of the individual, regardless of the individual's medical condition.¶¶

(e) In the REF, REFM, and TANF programs, when all members of the filing group are absent because:¶¶

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or¶¶

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.¶¶

(~~d~~f) In the SNAP program, when the financial group is absent because of employment or training for future employment.

Statutory/Other Authority: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 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, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839

AMEND: 461-145-0320

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-145-0320 about life insurance is being amended to create differences in how the OSIP, OSIPM, and QMB-DW programs treat burial insurance compared to other programs and to change how burial insurance not generating a cash surrender is treated. These amendments bring the rule into alignment with Integrated Eligibility.

CHANGES TO RULE:

461-145-0320

Life Insurance ¶

Retroactively effective July 6, 2020:¶

(1) Benefits paid on a life insurance policy are counted as unearned income in the month received. 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) Burial insurance that does not generate a cash surrender value is treated as follows:¶

(a) For all programs except OSIP, OSIPM, and QMB-DW, it is excluded. ¶

(b) In the OSIP, OSIPM, and QMB-DW programs, it is considered an irrevocable burial arrangement and treated in accordance with OAR 461-145-0040. ¶

(4) 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.¶

(45) 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 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 411.706, 411.816, 412.049, 413.085, 414.685, ORS 329A.500, 409.050, 411.060, 411.070, 411.083, 411.404, 411.704

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: 461-145-0433

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-145-0433 about the treatment of recreational vehicles is being amended for the OSIP and OSIPM programs to clarify the treatment of vehicles used for day-to-day transportation or for the OSIPM-EPD program. This change brings the rule into alignment with federal regulations, specifically the SSI POMS.

CHANGES TO RULE:

461-145-0433

Recreational Vehicles ¶¶

Retroactively effective July 6, 2020:¶¶

(1) For purposes of this rule, a recreational vehicle includes both of the following subsections:¶¶

(a) A vehicle (a means for carrying or transporting something) if:¶¶

(A) The vehicle is used primarily for amusement and not for day-to-day transportation; and¶¶

(B) The vehicle cannot be licensed as a motor vehicle for use on a public highway (even if the vehicle is registered or licensed as a non-motor vehicle).¶¶

(b) An ATV, boat, camper, dune buggy, plane, snowmobile, and trailer, unless ~~one of the following applies:~~¶¶

(A) The item qualifies as a capital asset (see OAR 461-001-0000)-or,¶¶

(B) The item qualifies as work-related equipment (see OAR 461-145-0600).¶¶

(2) Except as provided in section (4) and (5) of this rule, for all programs except ERDC, the equity value (see OAR 461-001-0000) of a recreational vehicle is counted as a resource.¶¶

(3) In the ERDC program, the value of a recreational vehicle is excluded.¶¶

(4) In the SNAP program only, the equity value of a recreational vehicle is excluded if selling the vehicle would produce a net gain to the financial group of less than \$1,500.¶¶

(5) In the OSIP and OSIPM programs, items used as a means of day-to-day transportation or used for OSIP-EPD and OSIPM-EPD are treated in accordance with OAR 461-145-0360.

Statutory/Other Authority: ORS 411.060, 411.070, 411.816, 412.049

Statutes/Other Implemented: ORS 411.060, 411.070, 411.700, 411.816, 412.049

RULE SUMMARY: OAR 461-145-0540 about the treatment of trusts is being amended to address the treatment of revocable trusts in the OSIP, OSIPM, and QMB-DW programs; to amend some provisions about how the OSIPM and QMB-DW programs treat certain trusts; and to add additional deductions from income within an income cap trust. These amendments align the rule with Integrated Eligibility.

CHANGES TO RULE:

461-145-0540

Trusts ¶

Retroactively effective July 6, 2020:¶

(1) This section applies to all trust funds (see OAR 461-001-0000) in the REF, REFM, SNAP, and TANF programs. It also applies in the OSIP, OSIPM, and QMB-DW programs for trust funds established before October 1, 1993:¶

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the financial group (see OAR 461-110-0530) for items covered by program benefits. ~~In the OSIP, OSIPM, and QMB-DW programs, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.¶~~

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.¶

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.¶

(d) In the OSIP, OSIPM, and QMB-DW programs, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.¶

(2) In the ERDC program, all trust funds are excluded.¶

(3) In the OSIP, OSIPM, and QMB-DW programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) to (11) of this rule.¶

(4) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:¶

(a) All trust funds are excluded as a resource.¶

(b) A payment made from the trust to or for the benefit of the ~~client~~individual is counted as unearned income.¶

(5) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:¶

(a) The ~~client~~.¶

~~(b) The client~~individual.¶

(b) The individual's spouse.¶

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the ~~client or the client~~individual or the individual's spouse.¶

(d) Any other person, including a court or administrative body, acting at the direction or upon the request of the ~~client or the client~~individual or the individual's spouse.¶

(6) If the trust contains resources or income of another person, only the share attributable to the ~~client~~individual is considered available.¶

(7) Except as provided in section (10) of this rule, the following factors are ignored when determining how to treat a trust:¶

(a) The purpose for which the trust was established.¶

(b) Whether or not the trustees have or exercise any discretion under the trust.¶

(c) Any restrictions on when or if distributions may be made from the trust.¶

- (d) Any restrictions on the use of distributions from the trust.¶
- (8) If the trust is revocable, it is treated as follows:¶
 - (a) In the OSIP, OSIPM, and QMB-DW programs:¶
 - (A) The total value of the trust is considered a resource available to the client individual.¶
 - (B) A payment made from the trust to or for the benefit of the client individual is excluded as income.¶
 - (b) In the ERDC, REF, REFM, SNAP, and TANF programs:¶
 - (A) The total value of the trust is considered a resource available to the client individual.¶
 - (B) A payment made from the trust to or for the benefit of the client individual is considered unearned income.¶
 - (c) A payment from the trust other than to or for the benefit of the client individual is considered a transfer of assets covered by OAR 461-140-0210 and following.¶
- (9) If the trust is irrevocable, it is treated as follows:¶
 - (a) If, under any circumstances, the funds transferred into the trust are unavailable to the client individual and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client individual, the individual is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.¶
 - (b) If, under any circumstances, payments could be made to or on behalf of the client individual, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client individual is considered a transfer of assets that may be covered by OAR 461-140-0210.¶
 - (c) If, under any circumstances, income is generated by the trust and could be paid to the client individual, the income is unearned income. Payments made for any reason other than to or for the benefit of the client individual are considered a transfer of assets subject to disqualification per OAR 461-140-0210.¶
 - (d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client individual, the change is a disqualifying transfer as of the date of the change.¶
- (10) Notwithstanding the provisions in sections (1), (3), and (5) to (9) of this rule, the following trusts are not considered in determining eligibility (see OAR 461-001-0000) for OSIPM and QMB-DW:¶
 - (a) A trust containing the assets of a client individual determined to have a disability that meets the SSI criteria that was created before the client reached age 65, if t, if all of the following are met:¶
 - (A) The trust was established by one of the following and t created before the individual reached age 65:¶
 - (B) The state will receive all funds remaining in the trust upon the death of the client individual, up to the amount of medical benefits provided on behalf of the client assistance provided on behalf of the individual;¶
 - (C) All funding of and transfers to the trust occurred before the individual reached age 65 (if funding or transfers occur after that time, see OAR 461-140-0210 as it may constitute a disqualifying transfer of assets); and ¶
 - (D) The trust was established by one of the following:¶
 - (Ai) The client individual if the trust was established on or after December 13, 2016;¶
 - (ii) The individual's parent (see OAR 461-001-0000);¶
 - (Biii) The client individual's grandparent;¶
 - (Civ) The client individual's legal guardian or conservator; or¶
 - (Dv) A court.¶
 - (b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client individual and containing only the current and accumulated income of the client individual. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client individual up to the amount of medical benefits assistance provided on behalf of the client individual. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:¶
 - (A) Personal-needs allowance.¶
 - (B) Community spouse monthly maintenance needs allowance.¶
 - (C) Medicare and other private medical insurance premiums.¶
 - (D) Other incurred medical.¶
 - (c) A trust established on or after April 1, 1995 for the benefit of the client individual whose income is above 300

percent of the full SSI standard and containing the current and accumulated income of the ~~client~~individual. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the ~~client~~individual up to the amount of medical assistance provided on behalf of the ~~client~~individual. The trust contains all of the ~~client~~individual's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:¶

(A) An earned income deduction of \$65 from earned income.¶

(B) The deductions under the plan for self-support as allowed by OAR 461-145-0405.¶

(C) Personal needs allowance and applicable room and board standard.¶

(B) D Reasonable administrative costs of the trust, not to exceed a total of \$50 per month, including the following:¶

(i) Trustee fees.¶

(ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.¶

(iii) Conservatorship and guardianship fees and costs.¶

(C) E Community spouse and family monthly maintenance needs allowance.¶

(D) F Medicare and other private medical insurance premiums.¶

(E) G Other incurred medical costs as allowed under OAR 461-160-0030 and 461-160-0055.¶

(F) H Contributions to reserves or payments for child support, alimony, and income taxes.¶

(G) I Monthly contributions to reserves or payments for the purchase of an irrevocable burial plan with a maximum value of \$5,000.¶

(H) J Contributions to a reserve or payments for home maintenance if the ~~client~~individual meets the criteria of OAR 461-155-0660 or OAR 461-160-0630.¶

(I) K Patient liability not to exceed the cost of home and community-based care (see OAR 461-001-0030) or nursing facility services.¶

(11) This section of the rule applies to a trust signed on or after July 1, 2006.¶

(a) Notwithstanding the provisions of sections (1), (3) and (5) to (9) of this rule, a trust that meets the requirements of subsection (b) of this section is not considered in determining eligibility for OSIPM and QMB-DW, except that if the ~~client~~individual is age 65 or older when the trust is funded or a transfer is made to the trust, the transfer may constitute a disqualifying transfer of assets under OAR 461-140-0210 and following.¶

(b) This section of the rule applies to a trust that meets all of the following conditions:¶

(A) The trust is established and managed by a non-profit association.¶

(B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.¶

(C) The trust is established by the ~~client~~, ~~client~~individual, individual's parent, grandparent, or legal guardian or a court for ~~client~~individuals who have disabilities.¶

(D) Upon the death of the beneficiary or termination of the trust, the trust pays to the state an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid. The amount paid to the state may be reduced by administrative costs directly related to administering the sub-trust account of the beneficiary.¶

(E) The trust contains the resources or income of a ~~client~~individual who has a disability that meets the SSI criteria.¶

(12) In the OSIP, OSIPM, and QMB-DW programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the ~~client~~individual if, among other things:¶

(a) The absence of the services requested may result in a life-threatening situation.¶

(b) The ~~client~~individual was a victim of fraud or misrepresentation.

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: 461-145-0915

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-145-0915 about self-employment in the OSIP, OSIPM, and QMB programs is being amended to add conditions under which some owners or principals of corporations can be considered self-employed as well as add that filing taxes as self-employed indicates the presence of self-employment. The changes are part of a group of amendments to rules about assets from and determining treatment of various business entities. The changes will provide greater consistency across programs and aligns the rule with Integrated Eligibility.

CHANGES TO RULE:

461-145-0915

Self-Employment; General; OSIP, OSIPM, QMB ¶¶

Retroactively effective July 6, 2020:¶¶

(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 a "business entity" (see subsection (a) of this section), including a sole proprietor, a general partner in a partnership, or a member or manager of an unincorporated limited liability company.¶¶

(2) Notwithstanding any other sections of this rule:¶¶

(a) Homecare workers (see OAR 411-031-0020) paid by the Department are not self-employed.¶¶

(b) Child care providers (see OAR 461-165-0180) paid by the Department, adult foster home providers (see OAR 411-050-0602) paid by the Department, realty agents, and individuals who sell plasma, redeem beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered self-employed.¶¶

(c) Self-employment does not include non-business activities such as property rentals (see OAR 461-145-0252) or renting a room out of the financial group's primary residence (see OAR 461-145-0340).¶¶

(3) Self-employment means active engagement in one's own business, trade, or profession, rather than earning a salary or wage paid by an employer or maintaining a passive ownership interest in a business entity. An individual is considered self-employed if the individual meets the criteria in subsection (2)(b) or section (5) of this rule.¶¶

~~(4) For a principal (see subsection (1)(b) of this rule) of a corporation or incorporated limited liability company, cannot be considered self-employed unless the criteria in either subsection (a) or (b) are met. All other payments for working or performing services for the corporation or holding corporate office are considered wages and counted as earned income (see treated in accordance with OAR 461-145-0089 and OAR 461-145-0130).¶¶~~

~~(5) Except as provided in OAR 461-145-0089(3), an individual is self-employed for the purposes of this division of rules if the individual:¶¶~~

~~(a)¶¶~~

~~(a) The individual files taxes for the incorporated business entity as self-employed on their personal taxes, rather than as a corporation.¶¶~~

~~(b) The individual does not file taxes and meets the criteria in section (5)(c) of this rule.¶¶~~

~~(5) Except as provided in OAR 461-145-0089(3), an individual is self-employed for the purposes of this division of rules if the individual meets the requirements of one or more of (a), (b), or (c):¶¶~~

~~(a) Files taxes as self-employed for their business on their personal taxes.¶¶~~

~~(b) Is considered an independent contractor by the business that employs him or her; or,¶¶~~

~~(b) Meets at least four of¶¶ the following criteria:¶¶~~

~~(A) Is engaged in an enterprise for the purpose of producing income.¶¶~~

~~(B) Is responsible for obtaining or providing a service or product by retaining control over the means and manner of providing the work or services offered.¶¶~~

~~(C) Has significant responsibility for the success or failure of the business operation and has the authority to hire~~

~~and fire employe~~not required by the business to complete an IRS W-4 form;¶

~~(B) Is not required to pay federal income tax or FICA payments from their paycheck(s);¶~~

~~(C) Liability or workers' compensation insurance for the individual is not paid by the business;¶~~

~~(D) Meets at least one of the following:¶~~

~~(i) Creates to perform the labor or services.¶¶~~

~~(D) Is not required to complete an IRS W-4 form for an employer and is not required to have federal income tax or FICA payments withheld from a pay check.¶¶~~

~~(E) Is not covered under an employer's liability or workers' compensation insurance policy or provides the products or services they sell, or¶¶~~

~~(ii) Sets the price for the products or services they sell;¶¶~~

~~(E) Is responsible for the business expenses and losses; and¶¶~~

~~(F) Receives profits from the business.¶¶~~

(6) For a principal or any individual with an ownership interest in a business entity who cannot be considered self-employed using the criteria in this rule:¶

(a) See OAR 461-145-0089 for individuals who are not actively working in the business entity to determine how to treat income and resources.¶¶

~~(b) See OAR 461-145-0130 f~~For individuals who are actively working for the business entity but do not have significant authority or responsibility for its success or failure:¶¶

~~(A) See OAR 461-145-0130 to determine how to treat income and.¶¶~~

~~(B) See OAR 461-145-0089 to determine how to treat resources.¶¶~~

(7) For an individual who is considered self-employed:¶¶

(a) See OAR 461-145-0920 and 461-145-0930 to determine how to treat income from self-employment.¶¶

(b) See OAR 461-145-0600 to determine how to treat resources used in self-employment.

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

Statutes/Other Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.400, 411.404, 411.706, 413.085, 414.685, 414.839

AMEND: 461-155-0660

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-155-0660 about receiving a special need accommodation allowance, is being amended to clarify that the accommodation allowance includes the cost of homeowners insurance, not other types of insurance. This amendment makes the rule more understandable and concise.

CHANGES TO RULE:

461-155-0660

Special Need; Accommodation Allowance ¶

ARetroactively effective July 6, 2020, an OSIPM recipient may receive an accommodation allowance as follows:¶

(1) Temporary absence of individual from home.¶

(a) A temporary accommodation allowance may be authorized if an individual meets all the following requirements:¶

(A) The individual owns, rents or leases a primary residence.¶

(B) The individual leaves his or her home or rental property and temporarily receives services in a hospital, nursing facility, residential care facility, assisted living facility, adult foster home, specialized living facility or state psychiatric institution.¶

(C) Except for a temporary absence from the primary residence, the individual must be eligible to receive in-home services under OAR chapter 411 division 030.¶

(D) The individual cannot afford to keep the home or rental property without the allowance.¶

(E) The individual will be able to return home or rental property within six months of leaving, according to a written statement from a primary practitioner, RN, or PAS (pre-admission screening) RN.¶

(F) The home or rental property will accommodate the service plan of the individual when the individual returns.¶

(b) The allowance may be authorized for six months. If, after six months, the individual continues to meet the criteria in subsection (a) of this section, an extension may be approved in writing by a supervisor.¶

(c) The accommodation allowance equals the total of the individual's housing cost, including taxes and homeowners insurance, plus the limited standard utility allowance for the SNAP program provided in OAR 461-160-0420.¶

(2) Disability-associated accommodation allowance.¶

(a) In order to be eligible for an accommodation allowance under this section, an individual must meet the requirements of each of the following paragraphs:¶

(A) The individual must meet the requirements of at least one of the following subparagraphs:¶

(i) Receive SSI.¶

(ii) Have adjusted income less than the OSIPM program income standard.¶

(iii) Be receiving or be eligible to receive home and community-based care in-home services under OAR chapter 411 division 030 and be 18 years of age or older¶

(B) The individual's shelter costs exceed \$451 for a one-person need group or \$559 for a two-person need group; and¶

(C) The individual has a documented increase in rent associated with access by an individual with a disability.¶

(b) The amount of the accommodation allowance is limited to the amount of the increase in housing cost associated with the individual's access needs.¶

(3) Accommodation allowance based on increased costs associated with an individual's need for a home with an additional bedroom for a service provider.¶

(a) In order to be eligible for an accommodation allowance under this section, an individual must meet the requirements of all of the following paragraphs:¶

(A) Receive in-home services under OAR Chapter 411 Division 030.¶

(B) Require full assistance in at least four of the six activities of daily living as determined by the assessment

described in OAR Chapter 411 Division 015.¶

(C) Receive services from one or more homecare workers who routinely sleep at the individual's home as part of the individual's service plan.¶

(b) The amount of the accommodation allowance is the limited standard utility allowance for the SNAP program under OAR 461-160-0420 plus:¶

(A) One-third of the monthly rental cost; or¶

(B) One-third of the monthly payment on the property agreement (including mortgage, trust deed, or land sale contract). The property agreement is the agreement existing at the time the individual is approved for the accommodation allowance. The accommodation allowance for the housing portion ends if the debt is refinanced, unless the refinancing was done only to reduce the original property agreement's interest rate or total monthly payment amount and the owner realized no direct or indirect payment of the home's equity value is from the refinancing.¶

(i) If the refinancing requirement is met under this paragraph, the amount of the accommodation allowance is one-third of the refinanced property agreement amount plus the limited standard utility allowance under OAR 461-160-0420.¶

(ii) If the refinancing requirement under this paragraph is not met and the housing portion of the accommodation allowance ends, the individual remains eligible only for the limited standard utility allowance portion under OAR 461-160-0420.¶

(4) Special requirements.¶

(a) An individual who rents and qualifies for an allowance under section (2) or (3) of this rule must take the steps necessary to obtain subsidized housing under any federal or state housing program. An individual who fails, at any time, to take the steps necessary to obtain reasonably available subsidized housing is ineligible for the allowance. An individual who has been denied or revoked from participation in any rent subsidy program based on the individual's own actions is ineligible for benefits under this rule.¶

(b) An individual who rents housing and refuses subsidized housing will no longer be eligible for an accommodation allowance, except that if the housing that is offered is not suitable, related to accommodations, and the individual continues to have increased costs related to accommodations in the individual's current living situation, the accommodation allowance may continue until such time as appropriate subsidized housing is found.

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

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

AMEND: 461-160-0580

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-160-0580 about excluded resources for OSIPM except OSIPM-EPD is being amended to correct the term "monthly income allowance" to "maintenance needs allowance." This brings the rule verbiage into federal compliance and aligns the rule with current policy.

CHANGES TO RULE:

461-160-0580

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

†Retroactively effective July 6, 2020, in the OSIPM (except OSIPM-EPD) program:¶¶

(1) This rule applies to an institutionalized spouse (see OAR 461-001-0030) who has applied for benefits because the individual is in or will be in a continuous period of care (see OAR 461-001-0030).¶¶

(2) Whether a legally married (see OAR 461-001-0000) couple lives together or not, the determination of whether the value of the couple's resources exceeds the eligibility limit for the institutionalized spouse for the OSIPM program is made as follows:¶¶

(a) The first step is the determination of what the couple's combined countable (see OAR 461-001-0000) resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)¶¶

(A) Division 461-140 and 461-145 rules applicable to OSIPM describe which of the couple's resources are countable resources, and are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIPM ~~client~~individuals.¶¶

(B) The countable resources of both spouses are combined.¶¶

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.¶¶

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.¶¶

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:¶¶

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$128,640.¶¶

(B) \$25,728 (the state community-spouse resource allowance).¶¶

(C) A court-ordered community spouse resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term "court-ordered community spouse resource allowance" means a "court-ordered community spouse resource allowance" that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the ~~client~~individual became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the ~~client~~individual's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.¶¶

(D) After considering the income of the community spouse (see OAR 461-001-0030) and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph is the amount required to purchase a single premium immediate annuity to make up the shortfall; and the amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:¶¶

(i) The ~~monthly income~~maintenance needs allowance computed in accordance with OAR 461-160-0620.¶¶

(ii) The difference between:¶¶

- (I) The sum of gross countable income of the community spouse and the institutionalized spouse; and¶¶
- (II) The applicable need standard under OAR 461-160-0620(3)(c).¶¶
- (d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.¶¶
- (e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.¶¶
- (f) The sixth step is a comparison of the value of the remaining resources to the OSIPM resource standard for one person (under OAR 461-160-0015). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:¶¶
 - (A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$128,640) plus the OSIPM resource standard for one person.¶¶
 - (B) \$25,728 (the state community-spouse resource allowance), plus the OSIPM resource standard for one person.¶¶
 - (C) A "court-ordered community spouse resource allowance" plus the OSIPM resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the "court-ordered community spouse resource allowance".)¶¶
 - (D) The OSIPM resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. This amount is the amount required to purchase a single premium immediate annuity to make up the shortfall. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:¶¶
 - (i) The monthly income allowance computed in accordance with OAR 461-160-0620.¶¶
 - (ii) The difference between:¶¶
 - (I) The sum of gross countable income of the community spouse and the institutionalized spouse; and¶¶
 - (II) The applicable need standard under OAR 461-160-0620(3)(c).¶¶
- (3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.¶¶
- (4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the spouse (see OAR 461-001-0000) of the client individual.

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

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

AMEND: 461-160-0630

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-160-0630 about deductions for maintaining the home of a nursing facility care clients is being amended to make clear that the deduction includes the cost of homeowners insurance, not other types of insurance. This amendment makes the rule more understandable and concise.

CHANGES TO RULE:

461-160-0630

Deduction for Maintaining a Home; Nursing Facility Care Client ¶¶

‡Retroactively effective July 6, 2020, in the OSIP and OSIPM programs:¶¶

(1) A single individual in a nursing facility is eligible for a home maintenance deduction for up to six months if 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 individual is likely to return home within six months.¶¶

(c) The Department determines that maintaining the home is consistent with the individual's care needs.¶¶

(2) The amount of the deduction is the total of the individual's housing cost, including taxes and homeowners 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: 461-160-0800

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-160-0800 about determining the participant fee in the OSIP-EPD and OSIPM-EPD programs is being amended to allow the participant fee to be based on the lesser of the participant fee calculation or the client liability calculation for individuals in a nonstandard living arrangement. This amendment aligns the rule with Integrated Eligibility.

CHANGES TO RULE:

461-160-0800

Determining Participant Fee; OSIP-EPD, OSIPM-EPD (Including In-Home Services) ¶¶

Retroactively effective July 6, 2020:¶¶

~~(1) Individuals who receive OSIP-EPD and OSIPM-EPD program benefits will have a participant fee (see section (2) of this rule) but do not have a OAR 461-001-0035).¶¶~~

(a) For individuals in a standard living arrangement (see OAR 461-001-0000), the participant fee is the amount calculated under section (2) of this rule.¶¶

(b) For individuals in a nonstandard living arrangement (see OAR 461-001-0000), the participant fee is the amount calculated under section (2) of this rule or the client liability as discussed in OAR 461-160-0620.¶¶

~~(2) In the OSIP-EPD and OSIPM-EPD programs, t, whichever is less.¶¶~~

(2) The participant fee is calculated using the Federal Poverty Level (FPL) (see OAR 461-155-0290) and the individual's total countable (see OAR 461-001-0000) income as follows:¶¶

~~(a) For client individuals with countable income less than 75 percent of the FPL, the participant fee is \$0.¶¶~~

~~(b) For client individuals with countable income equal to or greater than 75 percent but less than 100 percent of the FPL, the participant fee is \$50 per month.¶¶~~

~~(c) For client individuals with countable income equal to or greater than 100 percent but less than 250 percent of the FPL, the participant fee is \$100 per month.¶¶~~

~~(d) For client individuals with countable income equal to or greater than 250 percent of the FPL, the participant fee is \$150 per month.¶¶~~

~~(3) The participant fee under section (2) of this rule must be paid each month as a condition of eligibility for as long as the individual is an receiving OSIP-EPD or OSIPM-EPD client.¶¶~~

~~(4) OSIP-EPD and OSIPM-EPD client individuals in a licensed community-based care facility must pay room and board costs in addition to their participant fees.¶¶~~

~~(5) The local office may waive unpaid participant fees if the individual provides verification (OAR 461-115-0610) of significant economic difficulty, such as, but not limited to, homelessness, divorce, domestic violence (see OAR 461-001-0000), or illness.~~

Statutory/Other Authority: ORS 411.060, 411.070, 414.042

Statutes/Other Implemented: ORS 411.060, 411.070, 414.042

AMEND: 461-175-0230

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-175-0230 about notices for individuals in nonstandard living situations is being amended to require a certain notices be sent when an individual's participant fee is changing in different situations. This amendment aligns the rule with Integrated Eligibility.

CHANGES TO RULE:

461-175-0230

Notice Situation; Nonstandard Living Situations ¶¶

Retroactively effective July 6, 2020:¶¶

(1) In the SNAP program:¶¶

(a) A timely continuing benefit decision notice (see OAR 461-001-0000) is sent to terminate, suspend, or reduce benefits if the notice occurs as a result of any of the following situations:¶¶

(A) A ~~client~~ individual has been admitted or committed to an institution.¶¶

(B) A ~~client~~ individual has been placed in foster care, skilled nursing care, intermediate care, or long-term hospitalization.¶¶

(C) A ~~client~~ individual is placed in official custody or a correctional facility.¶¶

(D) A ~~client~~ individual enters a drug or alcohol residential treatment facility.¶¶

(E) A ~~client~~ individual leaves a drug or alcohol residential treatment facility without reapplying for SNAP benefits.¶¶

(b) No decision notice (see OAR 461-001-0000) is required if the Department determines that a resident of a group living (see OAR 461-001-0015) facility or a drug or alcohol treatment center is ineligible as a result of one of the following actions taken against the center or facility:¶¶

(A) Disqualification by Food and Nutrition Services (FNS) as an authorized representative.¶¶

(B) Loss of certification with the Department.¶¶

(c) A resident of a facility that is disqualified or loses its certification as described in subsection (b) of this section may still qualify for SNAP benefits through a separate application.¶¶

(2) Except as provided in section (3) of this rule, for all programs except the SNAP program, a basic decision notice (see OAR 461-001-0000) is sent to terminate, suspend, or reduce benefits in each of the following situations:¶¶

(a) The ~~client~~ individual has been admitted or committed to an institution, or the ~~client~~ individual loses Medicaid eligibility while in the institution.¶¶

(b) The ~~client~~ individual has been placed in skilled nursing care, intermediate care, or long-term hospitalization.¶¶

(c) The ~~client~~ individual is placed in official custody or a correctional facility.¶¶

(3) Except as provided in OAR 461-175-0300, in the OSIPM program, a ~~client~~ individual receiving home and community-based care (see OAR 461-001-0030) or long-term care services is sent -¶¶

(a) A timely continuing benefit decision notice in each of the following situations:¶¶

(A) A reduction or closure of services occurs as the result of a process of reevaluating both the functional impairment levels of a ~~client~~ individual and the requirements of a ~~client~~ individual for assistance in performing activities of daily living.¶¶

(B) Services are closing because the ~~client~~ individual has not paid the client liability.¶¶

~~(C) The client (see OAR 461-160-0610) or participant fee (see OAR 461-001-0035).¶¶~~

~~(C) The individual receives benefits in the OSIP-IC or OSIPM-IC program, and benefits will end under OAR 411-030-0100.¶¶~~

(D) There is a change in special needs as described in OAR 461-180-0040.¶¶

(E) Except as provided in subsection (b) of this section, when there is an increase in the client liability or participant fee as described in OAR 461-160-0610 and OAR 461-160-0620.¶¶

(b) A continuing benefit decision notice (see OAR 461-001-0000) when there is an increase in a client liability or

participant fee as a result of any of the following:¶¶

(A) A cost-of-living adjustment (COLA).¶¶

(B) A mass change under a program operated by a federal agency.¶¶

(C) A mass change to payments in a program operated by the Department. ¶¶

(c) A basic decision notice when there is a decrease in the client liability or participant fee.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.101, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, 411.085, 411.095, 411.099, 411.101, 411.103, 411.816, 412.014, 412.049

AMEND: 461-175-0300

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-175-0300 about prior notice, notice situations is being amended to add participant fee to the notice situations for client liability. This amendment aligns the rule with Integrated Eligibility.

CHANGES TO RULE:

461-175-0300

Notice Situation; Prior Notice ¶¶

Retroactively effective July 6, 2020:¶¶

(1) Except as provided in section (5) of this rule, when benefits in any Department program except a medical program and the SNAP program will end or be reduced after a specific period of time, the Department may issue a decision notice (see OAR 461-001-0000) informing the benefit group (see OAR 461-110-0750) of the date benefits will end or be reduced, and no further decision notice is required.¶¶

(2) Except as provided in section (5) of this rule, in any Department program except a medical program and the SNAP program, if the benefit group was informed in writing when the benefits began that the benefit group would receive benefits only for a specific period of time a basic decision notice (see OAR 461-001-0000) may be used to--¶¶

(a) Deny an application to start or continue benefits after the completion of a certification period (see OAR 461-001-0000) or to approve benefits at a level lower than the prior certification period.¶¶

(b) Indicate that benefits have been ended or reduced when no timely application is submitted.¶¶

(3) A basic decision notice is used when a special need allowance granted for a specific period of time is removed at the end of the specified period and the benefit group was informed of this in writing when the allowance began. A timely continuing benefit decision notice (see OAR 461-001-0000) is required if stopping the special need allowance results in benefit closure.¶¶

(4) In the JOBS Plus program, a basic decision notice is used if--¶¶

(a) An employer submits a wage reimbursement billing and the Department calculates a supplement (see OAR 461-190-0416 about supplements);¶¶

(b) The benefit group received a timely continuing benefit decision notice that the method of payment would be changed from cash to employer-paid wages; and¶¶

(c) The notice specified the period of time that benefits would be diverted.¶¶

(5) No additional decision notice is required when:¶¶

(a) Notwithstanding OAR 461-115-0010(6), when a benefit group submits an application for a program from which they currently are receiving benefits.¶¶

(b) In the OSIPM program:¶¶

(A) An individual's client's liability (see OAR 461-160-0610) or participant fee (see OAR 461-001-0035) returns to the previous liability amount after the Department sent the client individual a basic decision notice for a decrease in the client liability or participant fee due to a one-time allowable deduction and that notice also specified when the deduction no longer would apply causing the client liability or participant fee to return to the previous liability amount; or¶¶

(B) A client individual's benefits are being closed or reduced and the Department sent the client individual a basic decision notice of eligibility and a simultaneous continuing benefit decision notice (see OAR 461-001-0000) because the client individual's circumstances changed between the date of the client individual's application and the date of the Department's eligibility decision and the change caused the client individual's benefits to be reduced or closed.¶¶

(c) In the ERDC program when a filing group (see OAR 461-110-0310 and 461-110-0350) is receiving priority processing (see OAR 461-170-0150(2)) but does not return postponed verification to the Department by the last day of the month in which the application period ends (see OAR 461-115-0190).¶¶

- (d) A decision notice that included the eligibility begin and end dates for the three consecutive months of Employment Payments (see OAR 461-001-0025 and 461-135-1270) was given and the three-month eligibility period ends.¶
- (e) A decision notice that informed the JPI benefit group in writing, when their benefits began, that they would receive JPI (see OAR 461-135-1260) benefits only for a specific period of time.¶
- (f) A decision notice that included the eligibility begin and end dates was given for the reduced ERDC copay described in OAR 461-155-0150(13) and the three-month eligibility period ends.¶
- (g) A decision notice that included the eligibility begin and end dates was given for TA-DVS program benefits and the 90-day eligibility period ends.¶
- (6) In the SNAP program:¶
 - (a) A basic decision notice is used to close benefits if the benefit group was informed in writing, when their benefits began, that they would receive benefits only for a specific period of time.¶
 - (b) No decision notice is required if the client/individual is provided a decision notice at the time of application or redetermination that -¶
 - (A) The allotment of the benefit group would vary from month to month and listed the anticipated changes;¶
 - (B) In the case the client/individual applied at the same time for both cash assistance and SNAP benefits, the SNAP benefits would be reduced or closed upon approval of the cash assistance; or¶
 - (C) In the case of a benefit group receiving benefits under expedited services with postponed verification:¶
 - (i) The expedited services benefits would close if the Department did not receive the postponed verification within the timeframe established under OAR 461-115-0690.¶
 - (ii) The expedited services benefits may be adjusted beyond the timeframe established under OAR 461-115-0690 based on the verified information provided to the Department without further notice.

Statutory/Other Authority: ORS 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 414.231, 414.826

Statutes/Other Implemented: ORS 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 414.231, 414.826

AMEND: 461-180-0020

NOTICE FILED DATE: 01/31/2020

RULE SUMMARY: OAR 461-180-0020 about effective dates when there are changes in income or income deductions that cause increases is being amended to integrate decreases in EPD participant fees into sections that currently describe the effective date for decreases in liability only as some participant fees may be based on client liability calculations. It is also being amended to make all decreases in liability or participant fee, except those due to changes in service setting, effective the month they are reported or discovered. This amendment aligns the rule 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. ~~FRetroactively effective July 6, 2020,~~ 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 increases resulting from reported changes is 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 or increased deductions due to changes to an individual's marital status or number of eligible dependents that reduce client liability (see OAR 461-160-0610) or the OSIPM-EPD participant fee:¶¶
 - ~~(A) If the change was reported timely, the change is effective the month the change occurred.¶¶~~
 - ~~(B) If the change was not reported timely, the change is effective the month it (see OAR 461-001-0035), the effective date is the first of the month in which the change is reported or discovered.¶¶~~
 - (c) For medical costs allowed in accordance with OAR 461-160-0030 that reduce liability the client liability or participant fee:¶¶
 - (A) One-time and ongoing costs that have already been paid when the change is reported are allowed in the month they ~~we are paid~~ reported. ¶¶
 - (B) For one-time and ongoing costs that have been incurred but not paid, the change is effective the month the individual reports they ~~will paid the cost or began~~ making payments.¶¶
 - (d) When the decrease in client 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 a higher maintenance standard due to a change in service setting, the effective date is the date the individual moves into~~ the change was reported or discovered, if the change was not reported timely new

service setting.

(e) When ~~the~~ a decrease in client liability is caused by a ~~higher maintenance standard due to a change in service setting~~ change in income and a change in service setting that occurs in the same month, the effective date is the date the individual moves into the new service setting.

(f) When ~~at~~ the decrease in liability participant fee is caused by a ~~change in income and a change in service setting that occur~~ higher maintenance standard due to a change in service setting or a combination of a higher maintenance standard and another change that is reported or discovered in the same month, the effective date is the ~~day~~ first of the month 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