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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 35-2021

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

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FILING CAPTION: Temporary Changes to Four Rules Regarding APD and SS Programs

EFFECTIVE DATE: 07/05/2021 THROUGH 12/31/2021

AGENCY APPROVED DATE: 06/29/2021

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NEED FOR THE RULE(S):

OARs 461-115-0050 and 461-115-0430 need to be changed because Federal rules require Medicaid agencies to send Medicaid recipients pre-filled renewal forms at their annual renewal. Those not eligible for passive renewal or those with changes must sign and return the form. This rule change aligns non-Modified Adjusted Gross Income (MAGI) renewal and application rules with federal policy and ONE system functionality.

OAR 461-145-0140 needs to be amended to provide guidance about how SSP and APD Medical Programs will treat new advance Child Tax Credits from the Internal Revenue Service.

OAR 461-145-0210 needs to be changed to align the rule with federal SNAP requirements, changed in 2019. It also needs to be changed to make OSIP, OSIPM, and QMB programs' treatment of gift and winnings clear.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OARs 461-115-0050 and 461-115-0430 will result in serious prejudice to the public interest, the Department, and clients of its programs. The Department needs to make the rule changes effective as soon as possible to support the active renewal process in which the renewal form must be completed and signed. The current rules do not require a signed application at renewal for any non-MAGI program, and since conversion to ONE, that is only true for cases slated for passive renewal. This change aligns non-MAGI with MAGI, ONE functionality, and federal regulations, specifically 42 CFR 434.916(3)(b). While it's true that benefits cannot be ended for failure to complete and sign the renewal form during the COVID-19 public health emergency (PHE), it is unclear when the PHE will end; furthermore, failure to support current practice in rule will prevent eligibility workers from taking action on individuals who refuse to complete and sign the renewal form when the PHE is lifted. This will require system overrides, which remove cases from necessary mass update cycles. Failure to make this change will result in significant increases in workload as well as confusion to the individuals we serve.

The Department finds that failure to act promptly by amending OAR 461-145-0140 will result in serious prejudice to the public interest, the Department, and clients of its programs. The Department needs to proceed by temporary rule due to immediate necessity to ensure proper treatment of the advance Child Tax Credits, which the Internal Revenue Service has stated will be disbursed as early as July 2021. Failure to act immediately would delay aligning Oregon's income rules and providing clear income treatment guidance. This rule amendment will implement a 12 month exclusion of the advance Child Tax Credit payments from the assets of those receiving and applying for SSP and APD Medical Programs. If these revisions are not made, the benefit determinations for many households may be incorrect, and there may be confusion for the public and ODHS staff, partners, and regulatory agencies regarding the treatment of this income.

The Department finds that failure to act promptly by amending OAR 461-145-0210 will result in serious prejudice to the public interest, the Department, and individual who apply for or receive benefits from its programs. The Department needs to proceed by temporary rule due to immediate necessity to ensure proper handling of SNAP benefits when individuals win a disqualifying amount of money from a contest, game of chance, or similar event. Federal regulations regarding how winnings are treated for the SNAP program were changed in June 2019 and this rule was not properly identified at that time for amending. This rule is out of alignment with federal requirements, and the amendments will align Oregon's rules with the federal law. If these revisions are not made, households who have winnings over the allowable amount may receive more SNAP than entitled and be asked to repay the excess benefits.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

USDA Memo- Final Rule: Implementation Memo for Lottery and Gambling Winners, available here:
<https://www.fns.usda.gov/snap/final-rule-implementation-memo-lottery-and-gambling-winners>

USDA Memo- FDPIR, TEFAP, and CSFP Income Exclusions under the American Rescue Plan Act of 2021, available here:
<https://www.fns.usda.gov/usda-foods/fdpir-tefap-and-csfp-income-exclusions-under-ARPA-2021>

American Rescue Plan Act of 2021 (PL 117-2), available here: <https://www.fns.usda.gov/pl-117-2>

RULES:

461-115-0050, 461-115-0430, 461-145-0140, 461-145-0210

AMEND: 461-115-0050

RULE SUMMARY: OAR 461-115-0050 about When an Application Must Be Filed, is being amended to de-gender and person-center language; as well as to align the rule provisions regarding when an application must be filed for OSIP, OSIPM, and QMB programs with the ONE system.

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 an individual who is 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.¶

(l) 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~~ individual 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 OSIP, OSIPM and QMB programs, ~~w~~¶

(A) When a new application is not required under section (2) or (4) of OAR 410-200-0110, except subsection (4)(b), including provisions that specify they are for "HSD Medical" programs.¶

(B) 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.¶¶

(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: 461-115-0430

RULE SUMMARY: OAR 461-115-0430 about Periodic Redeterminations; Not EA, ERDC, SNAP, or TA-DVS, is being amended to make the rule title more inclusive of language used for medical programs, to shift language towards being person-centered, and to update and align provisions regarding OSIP, OSIPM, and QMB medical program periodic redetermination or renewal with many other medical programs and the ONE system.

CHANGES TO RULE:

461-115-0430

Periodic Redeterminations or Renewal; Not EA, ERDC, SNAP, or TA-DVS ¶¶

The Department periodically ~~determines the~~views eligibility (see OAR 461-001-0000) of ~~clients for~~individuals receiving benefits and assigns a redetermination or renewal date by which the next ~~determination~~review of eligibility is required. The Department selects the redetermination or renewal date based on the ~~client~~individual's circumstances and according to the following requirements:¶¶

(1) In the GA program, the Department redetermines eligibility at least once every 12 months.¶¶

(2) In the ~~OSIP and OSIPM, OSIPM, and QMB~~ programs, the Department ~~determines~~reviews eligibility at least once every 12 months for clients who are not eligible for SSI. No redetermination is required for clients who are eligible for SSI.¶¶

(3) ~~In the QMB program, the Department determines eligibility at least once every 12 months for clients who are not eligible for SSI. For QMB recipients who are also eligible for OSIPM, a redetermination for QMB is completed with the redetermination of OSIPM in accordance with OAR 410-200-0110. The redetermination or renewal provisions for "HSD Medical" programs in OAR 410-200-0110 are also the provisions for OSIP, OSIPM, and QMB programs.~~¶¶

(43) The REF and REFM programs are time limited programs; therefore, no periodic redeterminations are made.¶¶

(54) In the SFPSS program, the Department redetermines eligibility at least once every 12 months. The Department redetermines program eligibility by redetermining eligibility for the TANF program.¶¶

(65) In the TANF program, benefits will end the last day of the certification period (see OAR 461-001-0000). The Department redetermines eligibility according to the following schedule:¶¶

(a) At least once every six months for each of the following:¶¶

(A) ~~Client~~Individuals not participating in an activity (see OAR 461-001-0025) of an open case plan (see OAR 461-001-0025).¶¶

(B) ~~Client~~Individuals who are currently serving a JOBS disqualification.¶¶

(b) At least once every 12 months for all other ~~client~~individuals.

Statutory/Other Authority: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 412.014, 412.049, 413.085, 414.685, 414.826, 414.839, 409.050

Statutes/Other Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 412.014, 412.049, 413.085, 414.685, 414.826, 414.839, 409.010, 42 CFR 435.916

AMEND: 461-145-0140

RULE SUMMARY: OAR 461-145-0140 about Earned Income Tax Credit (EITC) is being amended to change the title to Earned Income Tax Credit (EITC) and Child Tax Credit; to include provisions regarding how Self-Sufficiency Programs and APD Medical Programs treat Child Tax Credits, including the advance Child Tax Credit payments; and to make language more accurate regarding how tax credits are claimed.

CHANGES TO RULE:

461-145-0140

Earned Income Tax Credit (EITC)-~~and Child Tax Credit~~

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

(1a) An EITC may be received claimed in one of two ways:

(a) As one annual payment received at the time of the normal income tax return ~~at the time an income tax return is filed with the Internal Revenue Service (IRS).~~

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

(2b) The EITC is excluded from assets (see OAR 461-001-0000) in the month of receipt and then for a maximum of 12 calendar full months starting with the month following the month of receipt of the refund or payment. All funds remaining after the 12-month period are counted as a resource.

(2) The Child Tax Credit is determined and administered by the IRS.

(a) A Child Tax Credit may be claimed in one of two ways:

(A) At the time an income tax return is filed with the IRS.

(B) As monthly advance Child Tax Credit payments from the IRS.

(b) The Child Tax Credit is excluded from assets in the month of receipt and then for a maximum of 12 calendar full months starting with the month following the month of receipt of the refund or payment. All funds remaining after the 12-month period are counted as a resource.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.404, 411.706, 411.816, 412.049, 413.085, 414.231, 414.685

Statutes/Other Implemented: ORS 329A.500, 4090.010, 411.060, 411.083, 411.404, 411.706, 411.816, 412.049, 414.231

AMEND: 461-145-0210

RULE SUMMARY: OAR 461-145-0210 about Gifts and Winnings, is being amended to make language more precise; to make clear that gambling losses are not subtracted from winnings to determine countable winnings; and to create separate sections for how gifts and winnings are treated by OSIP, OSIPM, QMB, and SNAP programs. It is also being amended to align SNAP program requirements with Federal regulation changes regarding certain lottery and gambling winnings.

CHANGES TO RULE:

461-145-0210

Gifts and Winnings ¶¶

(1) For the purposes of this rule:¶¶

(a) "Gifts" are items given to or received by an individual on or for a special occasion, such as a holiday, birthday, graduation, or wedding. "Gifts" are not given or received on a regular basis.¶¶

(b) "Winnings" are prizes given to an individual in a contest, game of chance, or similar event. "Winnings" in the form of money may be distributed monthly, periodically (such as monthly or quarterly), or in a lump-sum single payment.¶¶

(2) In the ERDC all programs, gifts (see section (1) of this rule) and winning gambling losses are not subtracted from gambling winnings (see section (1) of this rule) in determining the individual's countable (see OAR 461-001-0000) income.¶¶

(3) In the ERDC program, gifts (see section (1) of this rule) and winnings are excluded.¶¶

~~(34) In all programs except the ERDC the OSIP, OSIPM, and QMB program and, except as provided otherwise in sections (4) and (57) of this rule:¶¶~~

~~(a) In-kind gifts and winnings are treated according to the rule applicable to the specific type of asset. In the OSIP, OSIPM, and QMB programs, except for, if an individual is offered a choice between an in-kind item and cash, the cash amount is considered unearned income, even if the individual chooses the in-kind item and regardless of the value, if any, of the in-kind item.¶¶~~

~~(b) The value of gifts and winnings in the form of money or credit card company gift cards are treated as periodic cash are treated as periodic income (see OARs 461-001-0000 and 461-140-0110) or lump-sum income (see OARs 461-140-0110 and 461-140-0120). In the OSIP, OSIPM, and QMB programs, gambling losses are not subtracted from gambling winnings in determining the individual's countable (see OAR 461-001-0000) income.¶¶~~

~~(c) In all programs except the OSIP, OSIPM, and QMB programs, e¶¶~~

(c) The value of a gift card or certificate is considered income in the month it is received if the gift card or certificate can be used to purchase food or shelter or can be resold. There is a rebuttable presumption that the gift card can be resold.¶¶

(d) Monetary gifts given for educational purposes are treated in accordance with OAR 461-145-0145.¶¶

(5) In the SNAP program, except as provided otherwise in section (7) of this rule.¶¶

(a) A filing group immediately loses SNAP benefit eligibility due to lottery or gambling winnings when provisions of section (1) of OAR 461-140-0262 are met.¶¶

(b) In-kind gifts and winnings are treated according to the rule applicable to the specific type of asset.¶¶

(c) Gifts and winnings, except cash prizes from lottery or gambling subject to section (1) of OAR 461-140-0262, in the form of money or credit card company gift cards are treated as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).¶¶

(d) Establishment-specific gift cards are excluded as income and not considered a resource assets (see OAR 461-001-0000).¶¶

~~(d6) In the all programs except the ERDC, OSIP, OSIPM, QMB, and QMB SNAP programs, the value of a gift card or certificate is considered income in the month it is received if the gift card or certificate can be used to purchase food or shelter or can be resold. There is a rebuttable presumption that the and except as provided otherwise in section (7) of this rule:¶¶~~

~~(a) In-kind gifts and winnings are treated according to the rule applicable to the specific type of asset. ¶~~

~~(b) Gifts and winnings in the form of money or credit card company gift card can be resold. ¶~~

~~(4) For employment-related items, treated as periodic or lump-sum income (see OAR 461-1450-0130.10 and 461-140-0120). ¶~~

~~(5c) In the OSIP, OSIPM, and QMB programs, monetary gifts given for educational purposes are not Establishment-specific gift cards are excluded as income and not considered a resource. ¶~~

~~(7) For employment-related in accordance with gifts or winnings, see OAR 461-145-014530.~~

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

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.700, 411.706, 411.816, 412.014, 412.049