

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 43-2022

CHAPTER 461

DEPARTMENT OF HUMAN SERVICES

SELF-SUFFICIENCY PROGRAMS

FILED

08/18/2022 4:38 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary Changes about ERDC Interviews and One-Time Provider Payments, SNAP ABAWD Timelines

EFFECTIVE DATE: 08/18/2022 THROUGH 02/13/2023

AGENCY APPROVED DATE: 08/18/2022

CONTACT: Meorah Solar
503-602-7545
meorah.a.solar@dhsosha.state.or.us

2885 Chad Drive
Eugene, OR 97408

Filed By:
Meorah Solar
Rules Coordinator

NEED FOR THE RULE(S):

OAR 461-115-0230 about Interviews needs to be amended to bring the rule into alignment with the ONE system and Department policy. The ONE system does not currently pend for or require an interview for ERDC for those who qualify for priority processing.

OAR 461-135-0440 about Child Care Benefit Eligibility and Payment; COVID-19 needs to be amended to removed COVID-19 provisions that the Department has ended and to add a new one-time payment for providers to be issued in mid-August. ODHS has an Interagency Agreement with the Department of Education asking ODHS to issue the payment. This rule change allows ODHS to fulfill the requirement of the Interagency Agreement and brings rule into alignment with Department actions.

OAR 461-135-0520 about Time Limit and Special Requirements for ABAWD; SNAP needs to be amended to align the rule with new Oregon ABAWD timelines approved by the Federal Government.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-115-0230 will result in serious prejudice to the public interest, the Department, and individuals who apply for ERDC. The Department needs to proceed by temporary rule because the Department's rule is out of alignment with policy and ONE system function. Failure to align rule could cause case eligibility to be done incorrectly which might result in errors or audit findings. By aligning to the ONE system in this functionality, benefits will be determined correctly under rule.

The Department finds that failure to act promptly by amending OAR 461-135-0440 will result in serious prejudice to the public interest, the Department, and ODHS providers. The Department needs to proceed by temporary rule as ODHS would be out of compliance with their Interagency Agreement with the Department of Education and would need to return the \$1.74M received in CARES act funding. The CARES act funding would be at risk of not being obligated within the required time frames and would need to be returned to the federal government. ODHS would also

be out of compliance with the Letter of Agreement being signed for the SEIU collective bargaining agreement. If the funds are not issued, license exempt family providers, primarily women with a higher representation from Communities of Color would miss out on an important resource. Amending the rule and issuing the payments timely will allow ODHS to fulfill their obligations and issue funds before the deadline to have them obligated.

The Department finds that failure to act promptly by amending OAR 461-135-0520 will result in serious prejudice to the public interest, the Department, and individuals who apply for or receive SNAP benefits and are identified as an ABAWD. The Department needs to proceed by temporary rule because the Department has received approval from FNS to change their ABAWD timelines. The current timelines in rule end on September 30, 2022 and not proceeding by temporary rule filing will bring the Department out of alignment with FNS for the ABAWD program effective October 1, 2022. Proceeding by temporary filing will keep OAR aligned with FNS past September 30, 2022.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR 461-115-0230 - No documents relied upon.

OAR 461-135-0440 - Interagency Agreement 14327-A2 (DOE's contract number)/172199-2 (ODHS's contract number), available from the ODHS ERDC Policy Analyst team.

OAR 461-135-0520 - See SNAP Policy Analyst team for documents relied upon.

RULES:

461-115-0230, 461-135-0440, 461-135-0520

AMEND: 461-115-0230

RULE SUMMARY: OAR 461-115-0230 is being amended to remove, in temporary rule filing, the interview requirement of the ERDC program for applicants who qualify for priority processing. According to Chapter 461, families whose living circumstances meet the Department's definition of homeless or who have a foster child needing child care qualify for priority processing.

CHANGES TO RULE:

461-115-0230

Interviews ¶¶

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

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

(a) Care of a household member;¶¶

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

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

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

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

(3) In the SNAP program:¶¶

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

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

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

- (d) An applicant who fails to attend a scheduled interview must contact the Department no later than 30 days following the filing date (OAR 461-115-0040) to be eligible for benefits.¶
- (e) An adult (see OAR 461-001-0015) or primary person (see OAR 461-001-0015) in the filing group, an adult or primary person excluded from the filing group under OAR 461-110-0370(8)(b), or the authorized representative (see OAR 461-001-0000, 461-115-0090, and 461-135-0510) of the filing group is interviewed once every 12 months.¶
- (4) In the ERDC program:¶
- (a) Except as provided otherwise in subsection (c) of this section, an interview with an adult in the filing group (see OAR 461-110-0350) or the authorized representative of the filing group is required to process an initial application and a renewal of benefits.¶
- (b) A phone interview is preferred; however, a face-to-face interview must be granted at the applicant's request.¶
- (c) An interview is not required when ~~either of the following occur~~:¶
- (A) The Department has implemented the Child Care Reservation List and it is determined that a decision notice (see OAR 461-001-0000) of ineligibility will be sent under OAR 461-115-0016.¶
- (B) Retroactively effective July 1, 2022, the Department determines that the filing group may receive "priority processing" in accordance with OAR 461-170-0150(2).¶
- (5) In the OSIPM program, the Department must complete an interview with at least one individual authorized to sign the application under OAR 461-115-0071(3), except as follows:¶
- (a) Individuals in a standard living arrangement (see OAR 461-001-0000) who are receiving SSI or are in 1619(b) status are not required to complete an interview at initial application.¶
- (b) Individuals who are receiving SSI or are in 1619(b) status are not required to complete an interview at annual redetermination.¶
- (c) The interview requirement shall be waived at annual redetermination if the individual is unable to complete the interview due to incapacity and an authorized representative has not been designated.¶
- (6) In the QMB programs:¶
- (a) The Department must complete an interview with at least one individual authorized to sign the application under OAR 461-115-0071(3) at initial application.¶
- (b) An interview is not required at redetermination except in the QMB-DW program. ¶
- (7) In the REF and REFM programs, a face-to-face interview is required.¶
- (8) In the TA-DVS program, the Department will conduct a required face-to-face interview with the survivor, unless there is a safety concern related to the domestic violence (see OAR 461-001-0000) situation or there is a hardship. An interview due to safety concern or hardship may be completed via phone, home visit, or offsite appointment.
- Statutory/Other Authority: ORS 411.060, 411.404, 411.706, 411.816, 412.049, 414.826, 414.839, ORS 409.050
Statutes/Other Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.839, 411.117

AMEND: 461-135-0440

RULE SUMMARY: OAR 461-135-0440 is being changed to remove COVID-19 related program changes that are no longer active and to add a new one-time payment for which providers may be eligible, funded by the Coronavirus Aid, Relief, and Economic Security Act (2020). The Department of Education, Early Learning Division transferred \$1,740,000 in CARES Act funding to ODHS in order to issue a one-time payment to license-exempt family child care providers who did not receive one of their stabilization grants. The rule is being amended to support the issuance of the payment, which is being issued only to license exempt family providers due to the low saturation rates of the stabilization grants to these specific provider types. A list of eligible providers will be pulled on August 1, 2022, any providers who received the stabilization grant will be removed from the list and the \$1.74M in funds will be equally distributed to all remaining providers. The amount will be rounded up to the nearest dollar using state General Fund allocated to the Employment Related Day Care program (an estimated cost of no more than \$2000).

CHANGES TO RULE:

461-135-0440

Child Care Benefit Eligibility and Payment; COVID-19

(1) The provisions in this rule apply to child care benefits and requirements for child care providers in the ERDC and TANF programs.¶

~~(12) The Department suspends the following rules or rule sections regarding the ERDC or TANF programs:¶~~

~~(a) OAR 461-155-0150(5), (5)(c), (5)(e) through (5)(h), (12) through (14);¶~~

~~(b) OAR 461-160-0040(4);¶~~

~~(c) OAR 461-160-0193(2);¶~~

~~(d) OAR 461-160-0300(2), (3)(b);¶~~

~~(e) OAR 461-135-0405(2); and¶~~

~~(f) OAR 461-155-0150(3), (3)(g).¶~~

(2) The Department amends the following rule sections regarding the ERDC or TANF programs as provided in this rule:¶

~~(a) OAR 461-165-0160(2)(f);¶~~

~~(b) OAR 461-165-0180(13)(a)(A), and¶~~

~~(c) OAR 461-170-0160(1), (2), (3).¶~~

(3) The ERDC monthly countable income (see OAR 461-001-0000) standard is the 250 percent FPL or 85 percent state median income (SMI), whichever is higher, described under OAR 461-155-0180. To be eligible, the countable income of the need group (see OAR 461-110-0630) must be less than:¶

(a) The standard listed for the number of individuals in the need group for groups of eight or fewer.¶

(b) The standard listed for eight individuals in the need group for groups of more than eight individuals.¶

(4) Beginning the month of March 2020, the monthly copay is \$0 for the entirety of the certification period (see OAR 461-001-0000). ¶

(5) The Department shall pay for:¶

(a) Absent days each month the child is absent. For the purposes of this rule, absent days will be paid for up to 31 days each month if:¶

(A) The child was scheduled to be in care,¶

(B) The provider bills for the time the child was scheduled to be in care, and¶

(C) It is the provider's policy to bill all families for absent days.¶

(b) Days a child is unable to attend care due to a temporary shutdown related to COVID-19 during the COVID-19 state of emergency period initiated by Executive Order 20-03 of the Governor of Oregon.¶

(c) Days a school-age child is attending child care and participating in distance learning due to concerns, school closures, or medical reasons related to COVID-19.¶

(d) For the months of September, October, and November of 2020; days a child is unable to attend care due to a temporary shutdown related to Oregon wildfires during the COVID-19 state of emergency period initiated by Executive Order 20-03 of the Governor of Oregon; if the location at which care is provided was in an:¶

(A) Evacuation Level 1, 2, or 3 area; or¶

(B) Area with an Air Quality Index of 101 or higher.¶

(e) A one-time supplemental payment of one of the following: hall pay for one-time supplemental payments as follows:¶

(a) A provider may only receive one of the payments listed in this subsection.¶

(A) In the amount of \$2,312.00 to child care providers who, at the time the Department completed the data pull on

November 13, 2020, met the following criteria:¶

(i) Eligible for payment under OAR 461-165-0180,¶

(ii) Designation of a license-exempt standard family or enhanced family provider as identified by a Standard Family Rate provider type (see OAR 461-155-0150) or an Enhanced Family Rate provider type (see OAR 461-155-0150), and¶

(iii) Received a payment from the Department for child care provided during April, May, June, July, August, September, October, or November 2020.¶

(B) In the amount of \$2,842.00 to child care providers who, at the time the Department completed the data pull on November 13, 2020, met the following criteria:¶

(i) Met all criteria in subparagraph (5)(e)(A)(i) through (iii) of this rule subsection, and¶

(ii) Have not received an Emergency Child Care grant from the Oregon Department of Education, Early Learning Division for either phase one or phase two.¶

(C) In the amount of \$735.00 to child care providers who, at the time the Department completed the data pull on June 30, 2021, met the following criteria:¶

(i) Eligible for payment under OAR 461-165-0180,¶

(ii) Designation of a license-exempt standard family or enhanced family provider as identified by a Standard Family Rate provider type (see OAR 461-155-0150) or an Enhanced Family Rate provider type (see OAR 461-155-0150), and¶

(iii) Received a payment from the Department on or after November 13th, 2020, for child care provided during any month from April 2020 through June 2021.¶

(6) In addition to provisions in OAR 461-170-0160, an individual may apply for ERDC benefits using the Department approved "telephonic application" (see section (7) of this rule) and "narrated telephonic signature" (see section (8) of this rule) processes. An individual submitting a telephonic application must submit the application with a narrated telephonic signature.¶

(7) A telephonic application is accepted when the following requirements are met: ¶

(a) All ERDC program related questions on the application are answered.¶

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

(c) The applicant or their authorized representative (see OAR 461-115-0090) the amount of \$1508; funded by Coronavirus Aid, Relief, and Economic Security Act (2020) funds allotted to the Department in the amount of \$1,740,000; to providers a narrated telephonic signature as defined in this rule. ¶

(8) A narrated telephonic signature is accepted for an application for ERDC benefits when the Department makes record that the following requirements are met:¶

(a) The "Your Rights and Responsibilities" form is reviewed and sent to the mailing address of the applicant.¶

(b) The following sections at the end of the application form are reviewed and sent to the mailing address of the applicant:¶

(A) "Information about all programs," and¶

(B) "Information about your rights and responsibilities." ¶

(c) The applicant or their authorized representative affirms that they:¶

(A) Have heard and understand their rights and responsibilities; ¶

(B) Agree to their rights and responsibilities; ¶

(C) Have given true, correct, and complete information to the Department; and¶

(D) State their full name as their signature.¶

(d) The Department makes record of the narrated telephonic signature.¶

(9) Notwithstanding OAR 461-165-0180(13)(a)(A), legally exempt (see OAR 461-165-0180) providers that are not a legally exempt relative (see OAR 461-165-0180) to all children in care must have an up-to-date infant and child CPR and first aid certification, within 90 days of approval by the Department. Online infant and child CPR trainings approved through the Oregon Registry will be accepted by the Department until June 30, 2022.¶

(a) Providers and their staff are not subject to the infant and child CPR and first aid certification renewal provisions if the training is not available in their preferred language.¶

(b) Individuals to whom subsection (9)(a) applies must complete the infant and child CPR and first aid certification within 60 days of the day the Governor of Oregon ends the COVID-19 state of emergency period initiated by Executive Order 20-03.¶

(10) Providers who are approved by the Department on or before August 31, 2021, may receive retroactive payment prior to the Department approval date and beginning the date the following were met:¶

(a) The provider was approved through the Office of Child Care (OCC) as an Emergency Child Care provider due to the COVID-19 state of emergency who, at the time the Department completed the data pull on August 1, 2022, met the following criteria:¶

(A) Eligible for payment under OAR 461-165-0180,¶

(B) Designation of a license-exempt standard family or enhanced family provider as identified by a Standard Family Rate provider type (see OAR 461-155-0150) or an Enhanced Family Rate provider types (see OAR 461-155-0150), and¶

(bC) The provider met all other Department provider requirements.¶

(11) Providers who are not legally exempt are not eligible to receive payment from the Department if:¶

(a) Their application or approval to operate Emergency Child Care was denied, suspended, or revoked by OCC; or¶

(b) They voluntarily surrendered their Emergency Child Care approval while under investigation by the OCC or at any time after OCC gave them notice of any administrative proceeding.¶

(12) Unless indicated otherwise in this rule, the provisions in this rule end on September 30, 2021. Did not receive a stabilization grant payment from the Department of Education, Early Learning Division.

Statutory/Other Authority: ORS 131.715, 329a.500, ORS 84.001, ORS 411.060, 411.070, 412.006, 412.049, 409.050, 84.061, 84.004, 84.007, 84.010, 84.013, 84.014, 84.016, 84.019, 84.022, 84.025, 84.028, 84.031, 84.034, 84.037, 84.040, 84.043, 84.046, 84.049, 84.052, 84.055, 84.058

Statutes/Other Implemented: ORS 411.122, 411.141, 418.485, ORS 131.715, 329a.500, ORS 84.001, ORS 411.060, 411.070, 412.006, 412.049, 409.610, 84.061, 84.004, 84.007, 84.010, 84.013, 84.014, 84.016, 84.019, 84.022, 84.025, 84.028, 84.031, 84.034, 84.037, 84.040, 84.043, 84.046, 84.049, 84.052, 84.055, 84.058, 329a.260

AMEND: 461-135-0520

RULE SUMMARY: OAR 461-135-0520 is being amended to update the dates for ABAWD discretionary exemptions, SNAP time-limit areas, and SNAP time-limit exempt areas.

CHANGES TO RULE:

461-135-0520

Time Limit and Special Requirements for ABAWD; SNAP ¶¶

This rule establishes the time limit and special requirements for receipt of SNAP benefits for certain adults.¶¶

(1) Unless the context indicates otherwise, the following definitions apply to rules in OAR chapter 461:¶¶

(a) "Able-bodied adult without dependents (ABAWD)" means an individual 18 years of age or over, but under the age of 50, without dependents. For the purpose of this definition, "without dependents" means there is no child (see OAR 461-001-0000) under the age of 18 years in the filing group (see OAR 461-110-0310 and 461-110-0370).¶¶

(b) "SNAP time-limit areas" means areas of Oregon in which the limitation on eligibility (see OAR 461-001-0000) for SNAP benefits for ABAWD in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)) applies. There are no "SNAP time-limit areas" in Oregon during ~~October~~ January 1, 2020~~2~~ to ~~Sept~~ December 30~~1~~, 2022.¶¶

(c) "SNAP time-limit exempt areas" means areas of Oregon in which the limitation on eligibility for SNAP benefits contained in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)) does not apply per a waiver approved by the United States Department of Agriculture. "Exempt areas" are all counties in Oregon during ~~October~~ January 1, 2020~~2~~ to ~~Sept~~ December 30~~1~~, 2022.¶¶

(2) Except as provided otherwise in this rule, an ABAWD who resides in one of the SNAP time-limit areas (see section (1) of this rule) is ineligible to receive food benefits as a member of any household after the individual received food benefits for three countable months (see section (3) of this rule) during January 1, 2022 to December 31, 2024.¶¶

(3) "Countable months" means months within the 36-month period of January 1, 2022 to December 31, 2024 in which an individual as a member of any household receives SNAP benefits in Oregon or in any other state, unless at least one of the following applies:¶¶

(a) Benefits were prorated for the month.¶¶

(b) The individual was exempt from the SNAP time limit for any part of the month for any of the following reasons:¶¶

(A) The individual resided for any part of the month in one of the SNAP time-limit exempt areas (see section (1) of this rule).¶¶

(B) The individual was pregnant.¶¶

(C) A child under the age of 18 years joined the filing group.¶¶

(D) The individual met the criteria under OAR 461-130-0310(3)(a) or (b).¶¶

(c) The individual participated in one or more of the activities in paragraphs (A) to (D) of this subsection for 20 hours per week averaged over the month. For purposes of this rule, 20 hours per week averaged monthly means 80 hours per month. (Activities may be combined in one month to meet the 20 hours per week averaged monthly requirement.)¶¶

(A) Work for pay, in exchange for goods or services, or unpaid work as a volunteer.¶¶

(i) Work in exchange for goods and services includes bartering and in-kind work.¶¶

(ii) Unpaid or voluntary work hours must be verified by the employer.¶¶

(iii) For self-employed individuals, countable income after deducting the costs of producing income (as described in OAR 461-145-0930(5)) must average at least the federal minimum wage times 20 hours per week.¶¶

(B) Participate in a program under the Workforce Investment Act of 1998, Pub. L. No. 105-220, 112 Stat. 936 (1998).¶¶

(C) Participate in a program under section 236 of the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 2023, (1975) (19 U.S.C. 2296).¶¶

(D) Comply with the SNAP Employment and Training program requirements described in OAR 461-001-0020, 461-130-0305, and 461-130-0315. Work search activities must be combined with other work-related activities to equal 20 hours per week and may not exceed 9 hours per week.¶¶

(d) The individual complied with the Workfare requirements in OAR 461-190-0500.¶¶

(4) An ABAWD must submit evidence to the Department within 90 days following the month they received the countable month to show they were exempt or met the 80 hour activity requirement.¶¶

(5) An ABAWD who is ineligible under section (2) of this rule but otherwise eligible may regain eligibility if the requirements of subsections (a) or (b) of this section are met. ¶¶

- (a) The individual becomes exempt under subsection (3)(b) of this rule. Eligibility regained under this subsection begins on the date the individual files a new application and continues as long as the individual is exempt and is otherwise eligible. If not eligible on the filing date (see OAR 461-115-0040), eligibility begins the date all other eligibility requirements are met.¶
- (b) The individual, during a consecutive 30-day period during which the individual is not receiving SNAP benefits, meets the requirements of subsection (3)(c) or (3)(d) of this rule.¶
- (A) Eligibility regained under this subsection begins on the date the individual files a new application and continues as long as the individual meets the requirements of subsection (3)(c) or (3)(d) of this rule and is otherwise eligible. If not eligible on the filing date, eligibility begins the date all other eligibility requirements are met.¶
- (B) There is no limit to how many times an individual may regain eligibility under this subsection during January 1, 2022 to December 31, 2024. ¶
- (c) See OAR 461-180-0010 to add an individual to an open SNAP case after the individual has regained eligibility under this section.¶
- (6) An individual who regains eligibility under section (5) of this rule and later fails to comply with the participation requirements of subsection (3)(c) or (3)(d) of this rule may receive a second set of food benefits for three consecutive countable months. The countable months are determined as follows:¶
- (a) If the individual stopped participation in a work program, countable months start when the Department notifies the individual they are no longer meeting the work requirement.¶
- (b) If the individual stopped participation in a work program, countable months start when the individual notifies the Department they are no longer meeting the work requirement.¶
- (c) If a change occurred which results in an individual becoming subject to the time limit in section (2) of this rule and the change was required to be reported under rules in OAR chapter 461, division 170, the countable months start when the change occurred.¶
- (d) If a change occurred which results in an individual becoming subject to the time limit and the change was not required to be reported under rules in OAR chapter 461, division 170, countable months start when the Department notifies the individual they must meet the work requirement.¶
- (e) An individual may only receive benefits without meeting the requirements of subsection (3)(c) or (3)(d) of this rule for no more than a total of six countable months during January 1, 2022 to December 31, 2024. ¶
- (7) This space is reserved for the use of discretionary exemptions, granted by the Food and Nutrition Service, for ABAWDs residing in certain SNAP time-limit areas who are at risk of having their benefits closed or reduced. Beginning April 1, 2020 to ~~Sept~~December 30~~1~~, 2022, the Department is not granting discretionary exemptions.¶
- (8) An ABAWD involved in the activities specified in subsection (3)(c) or (3)(d) of this rule or an activity listed in the individual's case plan (see OAR 461-001-0020) is eligible for support service payments necessary for transportation and other costs related to completing the activity as allowed by OAR 461-190-0360.
- Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.121, 411.816
Statutes/Other Implemented: 7 USC 2015, 7 USC 2029, 7 CFR 273.7, 7 CFR 273.24, ORS 409.010, 409.050, 411.060, 411.070, 411.121, 411.816, 411.825, 411.837