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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 39-2023

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED

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ARCHIVES DIVISION
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& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary Rule Change to Correct a SNAP Student Eligibility Rule

EFFECTIVE DATE: 07/25/2023 THROUGH 01/20/2024

AGENCY APPROVED DATE: 07/25/2023

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NEED FOR THE RULE(S):

OAR 461-135-0570 about Eligible and Ineligible Students; SNAP, needs to be changed to fix an error in the text of section five and to align the section with current SNAP policy and the Oregon Programs Eligibility Notebook (OPEN) manual.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-135-0570 will result in serious prejudice to the public interest, the Department, and students applying for or receiving SNAP benefits. The Department needs to proceed by temporary rule due to immediate nature of ongoing SNAP benefit eligibility determinations and the need for Department rules and policies to be in alignment. Failure to act immediately could result in further confusion for administrative law judges, state employees, students, and the public regarding which students with a meal plan are eligible for SNAP benefits. Failure to act immediately could also result in incorrect SNAP eligibility determinations, and subsequently, administrative error SNAP overpayments. This temporary rule change will make current SNAP policy clear and help create accurate and consistent SNAP eligibility decisions.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

The Oregon Programs Eligibility Notebook, available here:
<https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/de2818.pdf>

FNS policy memo titled, "Supplemental Nutrition Assistance Program (SNAP) – Clarification on Treatment of Meal Plans at Institutions of Higher Education," available here: <https://fns-prod.azureedge.us/sites/default/files/resource-files/partial-student-meal-plans-memo.pdf>

AMEND: 461-135-0570

RULE SUMMARY: OAR 461-135-0570 is being changed by temporary rule to base SNAP eligibility on the number of meals the school's meal plan is intended to provide, rather than the number of meals the plan actually provides. This rule

governs SNAP eligibility for higher education students who are residing in a dormitory or other living situation and have a meal plan.

CHANGES TO RULE:

461-135-0570

Eligible and Ineligible Students; SNAP ¶

(1) For the purposes of this rule and OAR 461-001-0015, "higher education" refers to the following:¶

(a) Public and private universities and colleges and community colleges that offer degree programs regardless of whether a high school diploma is required for the program. However, GED, ABE, ESL and high school equivalency programs at those institutions are not considered higher education.¶

(b) Vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the curriculum or in a particular program at the institution. However, programs at those institutions that do not require the diploma or certificate are not considered higher education.¶

(2) Except to the extent provided otherwise in section (4) of this rule, an individual is considered a "student of higher education" if all of the following subsections apply:¶

(a) The individual is attending higher education (see section (1) of this rule) at least half time or more as determined by the school.¶

(b) The individual is 18 years of age or older, but under 50 years of age.¶

(3) To be eligible for SNAP benefits, a student of higher education (see section (2) of this rule) must meet the requirements of one of the following subsections:¶

(a) Subject to section (6) of this rule, the student of higher education is:¶

(A) A paid employee (see OAR 461-001-0015) working an average of 20 hours or more per week except as excluded by section (6) of this rule; or¶

(B) Self-employed for a minimum of 20 hours per week and receives weekly earnings at least equal to the federal minimum wage multiplied by 20 hours.¶

(b) The student of higher education is participating in a state or federally funded work study program during the regular school year. To qualify under this subsection:¶

(A) The student of higher education must be approved for state or federally funded work study at the time of application for SNAP.¶

(B) The work study must be approved for the school term.¶

(C) The student of higher education must anticipate working in a work study job during the school term.¶

(D) The period of eligibility for a student of higher education eligible under this subsection:¶

(i) Begins with the month in which the school term begins or with the month that work study is approved, whichever is later.¶

(ii) Continues until the end of the month in which the school term ends, or it becomes known that the student of higher education has refused an assignment.¶

(iii) Continues through breaks of less than a month. For breaks of a month or longer, eligibility continues only if the student of higher education participates in a work study job during the break.¶

(c) The student of higher education is responsible for the care of a child in the filing group (see OAR 461-110-0370), and one of the following conditions is met:¶

(A) The child is--¶

(i) Under six years of age; or¶

(ii) Six years of age or older, but under the age of 12 years, and adequate child care is not available to enable the student to both attend class and meet the requirements of section (3)(a) or (3)(b) of this rule.¶

(B) The student of higher education is enrolled full time in higher education and is a single parent (meaning there is only one parent in the filing group) or a single adult who has parental control, with the responsibility of caring for a child under 12 years of age.¶

(d) The student of higher education is in a TANF benefit group (see OAR 461-110-0750).¶

(e) The student of higher education is physically or mentally unfit for employment.¶

(f) The student of higher education is receiving Unemployment Compensation (UC).¶

(g) The student of higher education is enrolled in higher education to receive training and skills for employment as defined below:¶

(A) Job training classes under the Workforce Innovation & Opportunity Act of 2014 (Pub. L. 113-128).¶

(B) Participation in the higher education component of the JOBS program.¶

(C) Employer-sponsored on-the-job training.¶

(D) Enrolled in an employment and training program or course of study that leads to employment. To qualify under this paragraph, the employment and training program or course of study must be of undergraduate or lower level

and designed to be completed in not more than four years.¶

(E) Participating in at least one of the following training programs:¶

(i) The Trade Readjustment Allowance (TRA) program serving displaced workers under the Trade Act.¶

(ii) The Training Unemployment Insurance (TUI) program.¶

(iii) The Self-Employment Assistance (SEA) program.¶

(iv) The Apprenticeship Program (APT).¶

(4) An individual's status as a student of higher education continues during school vacation and breaks. An individual is no longer considered a student of higher education when the individual:¶

(a) Graduates.¶

(b) Drops out.¶

(c) Withdraws from classes.¶

(d) Reduces credit hours to less than half time.¶

(e) Is suspended or expelled.¶

(f) Does not intend to register for the next school term (excluding summer term).¶

(5) A student of higher education residing in a dormitory or other living situation with a meal plan that is intended to provide more than 50 percent of the student's three daily, or 21 weekly, meals is ineligible for SNAP program benefits.¶

(6) The following situations do not earn the student of higher education hours toward the 20 hours per week requirement in section (3) of this rule:¶

(a) Income that is considered educational income under OAR 461-145-0150, including income from work in the following:¶

(A) An externship (see OAR 461-001-0015);¶

(B) A graduate assistantship (see OAR 461-001-0015);¶

(C) A graduate fellowship (see OAR 461-001-0015); or¶

(D) An internship (see OAR 461-001-0015).¶

(b) Receiving in-kind payments in lieu of actual wages.

Statutory/Other Authority: ORS 409.050, 411.816

Statutes/Other Implemented: ORS 409.010, 411.816, 411.825, 7 USC 2015, 7 CFR 273.5