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LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

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

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 45-2023

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED

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& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary Rule Changes about SNAP Participation Classification, ABAWD Time Limits, and Exemptions

EFFECTIVE DATE: 09/19/2023 THROUGH 01/02/2024

AGENCY APPROVED DATE: 09/19/2023

CONTACT: Jennifer Lay
541-844-6136
jennifer.l.lay@odhs.oregon.gov

2885 Chad Drive
Eugene, OR 97408

Filed By:
Lay Jennifer
Rules Coordinator

NEED FOR THE RULE(S):

OAR 461-130-0310 needs to be amended to align the rule with federal regulation. Currently, the rule indicates that in the Supplemental Nutrition Assistance Program (SNAP), the time limit, disqualification, and employment program provisions in subsection 3(b) apply to individuals working a minimum of thirty hours per week but it does not specify that the individual must be working for pay. Adding "for pay" to (3)(B)(a) clarifies that the individual must be paid for working to be exempt from SNAP Able Bodied Adult Without Dependents (ABAWD) time limits.

OAR 461-135-0520 needs to be amended to align Supplemental Nutrition Assistance Program (SNAP) Able-Bodied Adult Without Dependents (ABAWD) provisions with federal regulation and the Financial Responsibility Act of 2023.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-130-0310 and 461-135-0520 will result in serious prejudice to the public interest, the Department, and Supplemental Nutrition Assistance Program (SNAP) recipients. The Department needs to proceed by temporary rule because the length of time needed to establish a permanent rule will not comply with SNAP federal requirements. Failure to act immediately could result in confusion for administrative law judges, state employees and the public. Failure to act immediately could also cause inaccurate SNAP eligibility decisions that do not align with federal guidance.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

FNS waiver approval effective for implementation date of July 1, 2023 located here:
<https://fns-prod.azureedge.us/sites/default/files/resource-files/fy23-q3-abawd-waiver-status.pdf>

FNS guidance on debt ceiling changes:

SNAP Provisions of the Fiscal Responsibility Act of 2023 – Questions and Answers 2 – August 2023 located here:

<https://www.fns.usda.gov/snap/provisions-fiscal-responsibility-act-2023-questions-answers-2>

SNAP Provisions of the Fiscal Responsibility Act of 2023 – Questions and Answers 1 – July 2023 located here:

<https://www.fns.usda.gov/snap/provisions-fiscal-responsibility-act-2023-questions-and-answers-1>

Implementing SNAP Provisions in the Fiscal Responsibility Act of 2023 – June 2023 located here:

<https://www.fns.usda.gov/snap/implementing-fra-provisions-2023>

SNAP Provisions in the Fiscal Responsibility Act of 2023 – June 2023 located here:

<https://www.fns.usda.gov/snap/provisions-fiscal-responsibility-act-2023>

RULES:

461-130-0310, 461-135-0520

AMEND: 461-130-0310

RULE SUMMARY: OAR 461-130-0310 is being amended to clarify that in the Supplemental Nutrition Assistance Program, individuals must be working for pay for the employment program, time limit, and disqualification provisions in subsection (3)(b) to apply. This change aligns rule with federal regulation.

CHANGES TO RULE:

461-130-0310

Participation Classifications: Exempt, Mandatory, and Volunteer ¶¶

(1) In the Pre-TANF, REF, SNAP, and TANF programs:¶¶

(a) The Department assigns an individual to one or more employment program participation classifications: exempt, mandatory, and volunteer (see OAR 461-130-0305 for definitions of all three terms).¶¶

(b) Notwithstanding OAR 461-130-0503(2)(c), while receiving Employment Payments (see OAR 461-001-0025) under OAR 461-135-1270, an individual is classified as a volunteer.¶¶

(2) In the Pre-TANF and TANF programs:¶¶

(a) An individual in the need group (see OAR 461-110-0630) is JOBS exempt from employment program participation and disqualification if the individual meets the requirements of at least one of the following paragraphs. The individual is -¶¶

(A) A parent (see OAR 461-001-0000) providing care for a family member who is an individual with a disability (see OAR 461-001-0000) and is in the household group (see OAR 461-110-0210) with the parent. Medical documentation to support the need for the care is required.¶¶

(B) A noncitizen who is not authorized to work in the United States.¶¶

(C) An individual who is eligible for and receives supplemental security income (SSI) from the Social Security Administration.¶¶

(D) A caretaker relative (see OAR 461-001-0000) who is non-needy.¶¶

(b) A caretaker relative of a dependent child or unborn who receives TANF program benefits is JOBS eligible if the caretaker relative is in the same filing group with the dependent child (see OAR 461-001-0000) or unborn (even if the caretaker relative is not in the TANF program benefit group under OAR 461-110-0750), unless the caretaker relative is otherwise JOBS exempt from participation under subsection (a) of this section.¶¶

(c) A JOBS volunteer is an individual who is federally mandatory and eligible to participate in an employment program, but who may not be disqualified as they meet at least one of the following state exemptions:¶¶

(A) Pregnant and the pregnancy has reached the first of the calendar month prior to the month in which the due date falls.¶¶

(B) Pregnant and experiencing medical complications due to the pregnancy that prohibit participation in activities of the program and are documented by a qualified and appropriate professional.¶¶

(C) A parent, who is 20 years old and older, or has a high school diploma or GED and is age 18 or 19, during the first six months after the birth of the parent's dependent child except that the Department may require the parent to participate in parenting classes or a family stability activity (see OAR 461-001-0000). An exemption allowed under this paragraph may apply only to one JOBS Eligible participant in each filing group (see OAR 461-110-0330).¶¶

- (D) A parent under age 20 years old without a high school diploma or GED, during the first 16 weeks after the birth of the parent's dependent child except that the Department may require the parent to participate in parenting classes, a family stability activity, or an educational track if the parent has not completed high school, GED, or equivalency program.¶¶
- (E) An individual whose participation is likely to cause undue hardship or is contrary to the best interests of the dependent child or needy caretaker relative.¶¶
- (F) Pregnant and participating more than 10 hours per week during the first two months of the third trimester.¶¶
- (G) A VISTA volunteer.¶¶
- (3) In the SNAP program:¶¶
 - (a) An individual is exempt from registration in an employment program and disqualification if the individual meets the requirements of one of the following paragraphs. The individual is:¶¶
 - (A) An individual with a physical, mental, or behavioral health condition that prevents performance of work or the ability to obtain or maintain employment, including but not limited to:¶¶
 - (i) Having a disability (see OAR 461-001-0015) or receiving disability income, or has applied for disability benefits pending a decision or is in the appeal process.¶¶
 - (ii) Pregnant and a medical practitioner has limited their work due to medical complications related to the pregnancy.¶¶
 - (iii) Receiving "wrap-around services" focused on physical or mental health. "Wrap-around services" means a range of services provided by a Community Based Organization (CBO) addressing a participant's needs which include medical or health issues preventing a participant from obtaining or maintaining employment.¶¶
 - (B) Responsible for the care of a child (see OAR 461-001-0000) in the filing group under 6 years of age.¶¶
 - (C) Responsible for the care of an individual with an incapacity that substantially reduces or eliminates the individual's ability to care for themselves, and providing this care prevents the participant from obtaining or maintaining employment.¶¶
 - (D) A student enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. An individual remains exempt during normal periods of class attendance, vacation, and recess but no longer qualifies for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion, or when the student drops out of school or does not enroll in classes for the next regular school term (excluding summer term).¶¶
 - (E) A regular participant in a drug addiction or alcoholic treatment and rehabilitation program.¶¶
 - (b) An individual is mandatory for registration in an employment program and the requirements in OAR 461-130-0315 if the individual meets the requirements of one of the following paragraphs. These individuals may be disqualified under OAR 461-130-0330 for failing to meet the requirements in OAR 461-130-0315. The individual is not required to participate in any SNAP employment and training program and is not subject to the SNAP time limit under OAR 461-135-0520. The individual is:¶¶
 - (A) Working for pay a minimum of 30 hours a week or earning money equal to at least the federal minimum wage multiplied by 30 hours per week multiplied by 4.3 weeks. An individual who is self-employed with allowable costs must meet the earnings threshold after allowing the 50 percent deduction. This includes migrant and seasonal farm workers (see OAR 461-001-0015) who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days.¶¶
 - (B) Engaged in the TANF JOBS program under Title IV-A of the Social Security Act. ¶¶
 - (C) In receipt of unemployment insurance benefits, has completed an application for unemployment insurance benefits and is waiting for an initial decision on the claim, or is participating in at least one of the following Employment Department 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 Insurance (SEA) program. ¶¶
 - (iv) The Apprenticeship Program (APT).¶¶
 - (c) A mandatory client is an individual in the need group (see OAR 461-110-0630); who is 16 or 17 years of age and a primary person (see OAR 461-001-0015), or 18 years of age and older and 59 years of age and younger; and who is not exempt under subsection (a) of this section.¶¶
- (4) In the REF program, an individual in the need group is exempt from the REP program participation and disqualification if the individual meets the requirements of at least one of the following subsections. The individual is -¶¶
 - (a) 65 years of age or older.¶¶
 - (b) An individual providing care for a family member who is in the household group and has a disability (see OAR 461-001-0000). Medical documentation to support the need for the care is required. ¶¶
 - (c) An individual whose participation is likely to cause undue hardship to that individual.¶¶

- (d) Pregnant and the pregnancy has reached the first of the calendar month prior to the month in which the due date falls.¶
- (e) Pregnant and experiencing medical complications due to the pregnancy that prohibit participation in activities of the program and are documented by a qualified and appropriate professional.¶
- (f) Pregnant and participating more than 10 hours per week during the first two months of the third trimester.
Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.816, 412.006, 412.009, 412.014, 412.049
Statutes/Other Implemented: ORS 409.010, 409.750, 411.060, 411.070, 411.816, 411.837, 412.006, 412.009, 412.014, 412.049, 7 USC 2015(d), 7 CFR 273.7

AMEND: 461-135-0520

RULE SUMMARY: OAR 461-135-0520 is being amended to update the Supplemental Nutrition Assistance Program Able-Bodied Adult Without Dependents (ABAWD) age range, exemption reasons, and the criteria for removing countable months.

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:¶¶

(A) Through August 31, 2023, an individual 18 years of age or over, but under the age of 50, without dependents.

For the purpose of this definition rule, "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) Effective September 1, 2023 through September 30, 2023, an individual 18 years of age or over, but under the age of 51, without dependents.¶¶

(C) Effective October 1, 2023, an individual 18 years of age or over, but under the age of 53, without dependents.¶¶

(b) "SNAP time-limit areas" means areas of Oregon in which the limitation on eligibility (see OAR 461-001-0000) for SNAP benefits for individuals with an ABAWD status in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)) applies. "SNAP time-limit areas" are:¶¶

(A) Benton, Clackamas, Columbia, Deschutes, Hood River, Jackson, Lane, Linn, Malheur, Marion, Multnomah, Polk, Washington, and Yamhill counties.¶¶

(B) The reservation and trust lands of the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation.¶¶

(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:¶¶

(A) Baker, Clatsop, Coos, Crook, Curry, Douglas, Gilliam, Grant, Harney, Jefferson, Josephine, Klamath, Lake, Lincoln, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, and Wheeler counties. The reservation and trust lands of any Sovereign Tribal Nation located within those counties.¶¶

(B) The reservation and trust lands of the Burns Paiute Tribe; the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw; the Confederated Tribes of Siletz Indians; the Confederated Tribes of Grand Ronde; the Confederated Tribes of the Umatilla Indian Reservation; the Confederated Tribes of Warm Springs; the Coquille Indian Tribe; and the Cow Creek Band of Umpqua Tribe of Indians.¶¶

(2) Except as provided otherwise in this rule, an individual with an ABAWD status 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. Due to the COVID-19 pandemic and under OAR 461-135-0660, the Department shall not assign countable months until July 1, 2023, and after.¶¶

(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) ¶~~Effective July 6, 2023, the individual was exempt from the SNAP time limit for any part of the month for any of the following reasons:¶¶

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

~~(B) The individual wa~~s pregnant.¶¶

~~(C) A child under the age of 18 years joine~~d the filing group.¶¶

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

(E) The individual is experiencing homelessness.¶¶

(F) The individual is a veteran of the US Armed Forces, regardless of discharge status. ¶¶

(G) The individual is 24 years of age or younger and was in foster care on the date they turned 18 years of age, regardless of what state or agency provided the foster care.¶¶

~~(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(54)) 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 individual with an ABAWD status must submit evidence to the Department within 90 days following the month they received the countable month to show they were exempt or~~ To remove a countable month, an individual must report they were exempt or submit evidence to the Department they met the 80 hour activity requirement.¶¶

(5) An individual with an ABAWD status 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) The Department is authorizing the use of discretionary exemptions, granted by the Food and Nutrition Service, for individuals with an ABAWD status who are at risk of having their benefits closed or reduced. Under these special exemptions, individuals will be eligible to receive a discretionary exemption each month beginning July 2023. ~~All of the following restrictions apply:~~ ¶¶

(a) Effective September 1, 2023, a discretionary exemption shall be issued for each month an individual meets one of the following:¶¶

~~(a)~~ (a) The individual ~~must~~ resides in one of the following SNAP time-limit areas that will not be offering ABAWD support services: Benton, Columbia, Hood River, Malheur, Polk, and Yamhill counties.¶¶

~~(b)~~ (b) The individual resides in an area offering ABAWD support services but is not eligible for those support services due to lacking USCIS work authorization (also called employment authorization).¶¶

(c) The individual is subject to the SNAP time limits during September 2023 due to being 50 years of age.¶

(D) The individual is subject to the SNAP time limits starting October 2023 through December 2023 due to being 50 through 52 years of age.¶

(E) The individual is impacted by an identified ONE system defect which will result in an incorrect eligibility decision and the central office SNAP Policy Analyst Unit has determined a discretionary exemption shall be issued.¶

(b) The following restrictions apply:¶

(A) A discretionary exemption is only valid for one month at a time.¶

(B) A discretionary exemption may not be granted for a previous month.¶

(c) The Department will not disqualify an individual with an ABAWD status from the SNAP program for non-participation when they have been issued a discretionary exemption for the following month.¶

(8) An individual with an ABAWD status 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