

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED

10/18/2023 10:17 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Proposing Rule Changes for Federal Cost of Living Adjustments

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/22/2023 11:55 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Lay Jennifer
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/22/2023

TIME: 9:30 AM - 10:30 AM

OFFICER: Jennifer Lay

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 669-254-5252

CONFERENCE ID: 1610397646

SPECIAL INSTRUCTIONS:

Everyone has a right to know about and use ODHS programs and services. ODHS provides free help. Some examples of the free help ODHS can provide: sign language and spoken language interpreters, written materials in other languages, braille, large print, audio and other formats. If you need help, are experiencing a disability and need this document in another format, have questions, or would like these materials in a different format, at least 48 hours before the hearing:

- Contact Meorah Solar at (503) 602-7545, or Jennifer Lay at 541-844-6136, 711 TTY, or by email at ruleshearings.ch461@odhsoha.oregon.gov, or
- Send an email to DHS.ALTERNATEFORMATS-TRANSLATIONS@dhssoha.state.or.us or call (503) 378-3486.

If you know of others who need this accommodation, please let them know it is available.

NEED FOR THE RULE(S)

All rules in this filing need to be amended to implement federal cost of living adjustments published annually.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

For OAR 461-135-0780, OAR 145-0220, OAR 461-155-0250, OAR 461-155-0270, OAR 461-160-0580, and OAR

461-160-0620:

<https://www.ssa.gov/pubs/EN-05-10526.pdf>

<https://www.medicaid.gov/federal-policy-guidance/index.html>

<https://www.medicaid.gov/medicaid/eligibility/spousal-impoverishment/index.html>

<https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

For OAR 461-155-0210:

<https://www.ssa.gov/oact/cola/colaseries.html>

<https://www.rentdata.org/states/oregon/2023>

<https://www.rentdata.org/states/oregon/2016>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Department estimates no impact to racial equity in Oregon for any rule amendments in this filing.

FISCAL AND ECONOMIC IMPACT:

The Department is unable to estimate the fiscal impact of amending OAR 461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-160-0580 and 461-160-0620 on the Department or individuals applying for or receiving benefits because the federal standard amounts are not yet available. The Department estimates no cost to other state agencies, local government, and business including small business. There is no cost of compliance for small business.

The Department estimates amendments to OAR 461-155-0210 will have negative fiscal impact on the Department and a positive fiscal impact on individuals receiving General Assistance (GA). Individuals that receive GA will qualify for 3.2% more in cash and rental assistance. Maximum rental assistance will rise from \$595 per month to \$615 per month, utility assistance will rise from \$99 per month to \$103 per month, and personal incidental fund will rise from \$66 per month to \$69 per month. This is a maximum increase of \$27 per month per individual receiving GA. There are up to 200 GA recipients at any given time, therefore the maximum impact to the Department is \$64,800 per year. However, historically 80% of GA benefits are reimbursed through the individual's Social Security Income (SSI) back pay award, which makes the fiscal impact to the Department closer to \$12, 960. The Department estimates no cost to other state agencies, local government, and business including small business. There is no cost of compliance for small business.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

See fiscal impact.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules but are invited to provide input during the public comment period.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Rule changes in this filing are the result of federal cost of living adjustments or federal poverty level amendments.

| | | | |
|--|------|-----|---|
| January 1999 - December 1999..... | .548 | TBD | ¶ |
| January 1998 - December 1998..... | .541 | TBD | ¶ |
| January 1997 - December 1997..... | .530 | TBD | ¶ |
| January 1996 - December 1996..... | .515 | TBD | ¶ |
| January 1995 - December 1995..... | .502 | TBD | ¶ |
| January 1994 - December 1994..... | .488 | TBD | ¶ |
| January 1993 - December 1993..... | .476 | TBD | ¶ |
| January 1992 - December 1992..... | .462 | TBD | ¶ |
| January 1991 - December 1991..... | .446 | TBD | ¶ |
| January 1990 - December 1990..... | .423 | TBD | ¶ |
| January 1989 - December 1989..... | .404 | TBD | ¶ |
| January 1988 - December 1988..... | .388 | TBD | ¶ |
| January 1987 - December 1987..... | .373 | TBD | ¶ |
| January 1986 - December 1986..... | .368 | TBD | ¶ |
| January 1985 - December 1985..... | .357 | TBD | ¶ |
| January 1984 - December 1984..... | .345 | TBD | ¶ |
| July 1982 - December 1983..... | .333 | TBD | ¶ |
| July 1981 - June 1982..... | .310 | TBD | ¶ |
| July 1980 - June 1981..... | .279 | TBD | ¶ |
| July 1979 - June 1980..... | .244 | TBD | ¶ |
| July 1978 - June 1979..... | .222 | TBD | ¶ |
| July 1977 - June 1978..... | .209 | TBD | ¶ |
| May or June 1977..... | .197 | TBD | |
| Statutory/Other Authority: 411.060, 411.070, 411.083, 411.404, ORS 409.050, 413.085, 414.685 | | | |
| Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.083, 411.404, 411.704, 413.085, 414.685, 42 | | | |
| CFR 435.135, P.L. 92-336 | | | |

AMEND: 461-145-0220

RULE SUMMARY: OAR 461-145-0220 is being amended to reflect federal cost of living adjustments published annually.

CHANGES TO RULE:

461-145-0220

Home ¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY¶

(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 ~~\$688,000~~TBD 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 461-145-0252.¶

(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 ~~\$688,000~~TBD 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: The value of a home is 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.¶

(c) In the OSIP, OSIPM, and QMB-DW programs, when the individual is temporarily absent:¶

(A) To receive assistance with activities of daily living (see OAR 411-015-0005) under one of the following conditions:¶

(i) 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.¶

(ii) 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.¶

(B) Due to illness, employment or training for future employment, seasonal employment, or uninhabitability; and both of the following conditions are met:¶

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

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

(d) 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.¶

(e) 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: 461-155-0210

RULE SUMMARY: OAR 461-155-0210 is being amended to reflect federal cost of living adjustments published annually.

CHANGES TO RULE:

461-155-0210

Payment Standards and Methods of Issuance; GA ¶¶

- (1) For purposes of this rule, "eligible spouse" means a spouse (see OAR 461-001-0000) who is eligible for and receiving OSIPM under OAR 461-125-0370(c).¶¶
- (2) ~~Retroactively effective April 1, 2023, t~~The GA payment standards are:¶¶
- (a) ~~\$59615~~ for one person.¶¶
- (b) ~~\$8921~~ for two persons.¶¶
- (3) ~~Retroactively effective April 1, 2023, t~~The payments for one person are as follows:¶¶
- (a) The Housing Assistance Payment is the least of:¶¶
- (A) The amount of monthly rent the individual owes,¶¶
- (B) ~~\$59615~~ minus the adjusted income determined under OAR 461-160-0500, or¶¶
- (C) ~~\$59615~~.¶¶
- (b) The Utility Allowance is ~~\$99103~~.¶¶
- (c) The Personal Incidental Fund is ~~\$669~~.¶¶
- (4) ~~Retroactively effective April 1, 2023, t~~The payments for two people are as follows:¶¶
- (a) For a married individual whose spouse is in the OSIPM household group and is considered an eligible spouse, the Housing Assistance Payment for each eligible spouse is half of the total Housing Assistance Payment, which is the least of:¶¶
- (A) The amount of monthly rent the individual and spouse owe;¶¶
- (B) ~~\$8921~~ minus the adjusted income determined under OAR 461-160-0500, or¶¶
- (C) ~~\$8921~~.¶¶
- (b) For a married individual whose spouse is in the OSIPM household group and is not considered an eligible spouse, the Housing Assistance Payment is the least of:¶¶
- (A) The amount of monthly rent the individual and spouse owe;¶¶
- (B) ~~\$8921~~ minus the adjusted income determined under OAR 461-160-0500, or¶¶
- (C) ~~\$59615~~.¶¶
- (c) The Utility Allowance is ~~\$1527~~.¶¶
- (d) The Personal Incidental Fund is ~~\$1026~~.¶¶
- (5) The Housing Assistance Payment is issued directly to the landlord and is contingent upon the receipt of a signed and valid Rental Agreement.¶¶
- (6) The Utility Allowance is issued directly to the individual.¶¶
- (7) The Personal Incidental Fund is issued directly to the individual.

Statutory/Other Authority: ORS 409.050, 411.060

Statutes/Other Implemented: ORS 411.010, 411.060, 411.710, 411.730, 411.740, OR Laws 2016, Ch 93

AMEND: 461-155-0250

RULE SUMMARY: OAR 461-155-0250 is being amended to reflect federal cost of living adjustments published annually.

CHANGES TO RULE:

461-155-0250
Income and Payment Standard; OSIPM ¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY¶

In the OSIPM program:¶

(1) An individual who is assumed eligible per OAR 461-135-0010 is presumed to meet the income limits for the OSIPM program.¶

(2) An individual meeting the requirements of OAR 461-135-0745 or OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in sections (3) or (5) of this rule, must have countable (see OAR 461-001-0000) income that is equal to or less than 300 percent of the full Supplemental Security Income (SSI) standard for a single individual or have established a qualifying trust as specified in OAR 461-145-0540(109)(c).¶

(3) An individual, other than one identified in sections (1), (2), (5), or (6) of this rule, must have adjusted income (see OAR 461-001-0000) below the standard in this section.¶

OSIPM Adjusted Income Standards¶

Number in Need Group &&&..... One &&&..... Two¶

AB/AD/OAA &&&&&&&&&..... ~~914.00~~TBD &&&..... ~~1,371.00~~TBD¶

(4) In the OSIPM (except OSIPM-EPD) program, an individual receiving Medicaid services in a nursing facility or an ICF-ID is allowed the following amounts for clothing and personal incidentals:¶

(a) For an individual who receives a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.¶

(b) For all other individuals, ~~\$74.75~~TBD is allowed.¶

(c) For an individual identified in subsection (b) of this section with countable income (including any SSI) that is less than ~~\$74.75~~TBD, the payment standard is equal to the difference between the individual's countable income (including any SSI) and ~~\$74.75~~TBD. For the purposes of this subsection, countable income includes income that would otherwise be countable for an individual who is assumed eligible under OAR 461-135-0010.¶

(5) In the OSIPM-EPD program, an individual must have adjusted earned income equal to or below 250 percent of the federal poverty level for a family of one.¶

(6) An individual who meets the requirements of OAR 461-135-0755, is not assumed eligible, and does not meet the income standard set out in section (3) of this rule, must have adjusted income equal to or below 150 percent of the federal poverty level for a family of one.

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

Statutes/Other Implemented: ORS 411.060, ORS 409.010, 411.070, 411.404, 411.704, 411.706, P.L. 92-336

AMEND: 461-155-0270

RULE SUMMARY: OAR 461-155-0270 is being amended to reflect federal cost of living adjustments published annually.

CHANGES TO RULE:

461-155-0270

Room and Board Standard; Community-Based Care ¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY¶

For an individual residing in a community-based care facility (see OAR 461-155-0630(1)), the room and board standard is ~~\$711.00~~TBD. An individual residing in a community-based care facility must pay room and board. Statutory/Other Authority: ORS 411.060, 411.070, 411.704, 411.706, ORS 409.050, 411.404, 413.085, 414.685 Statutes/Other Implemented: ORS 411.060, 411.070, 411.704, 411.706, ORS 409.010, 411.404, P.L. 92-336

AMEND: 461-160-0580

RULE SUMMARY: OAR 461-160-0580 is being amended to reflect federal cost of living adjustments published annually.

CHANGES TO RULE:

461-160-0580

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

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY¶¶

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 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 ~~\$148,620~~TBD.¶¶

(B) ~~\$29,724~~TBD (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 individual became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the 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 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 \$148,620TBD) plus the OSIPM resource standard for one person.¶¶

(B) \$29,724TBD (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 their 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 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: 461-160-0620

RULE SUMMARY: OAR 461-160-0620 is being amended to reflect federal cost of living adjustments published annually.

CHANGES TO RULE:

461-160-0620

Income Deductions and Patient Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM ¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY¶

In the OSIPM program:¶

(1) Deductions from income are made for an individual residing in or entering a long-term care facility or receiving home and community-based care (see OAR 461-001-0030) as explained in subsections (3)(a) to (3)(h) of this rule.¶

(2) The liability of an individual is determined according to subsection (3)(i) of this rule, except as provided otherwise in OAR 461-160-0610.¶

(3) Deductions are made in the following order:¶

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIPM program.¶

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

(c) One of the following need standards:¶

(A) A ~~\$74.75~~TBD personal needs allowance for an individual receiving long-term care services.¶

(B) A \$90 personal needs allowance for an individual receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.¶

(C) For an individual who receives home and community-based care:¶

(i) Except as provided in subparagraph (ii) of this paragraph, the OSIPM maintenance standard.¶

(ii) For an individual who receives in-home services, the OSIPM maintenance standard plus \$500.¶

(d) A community spouse (see OAR 461-001-0030) monthly income allowance is deducted from the income of the institutionalized spouse (see OAR 461-001-0030) to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.¶

(A) Step 1--Determine the maintenance needs allowance. \$2,465.00 is added to the amount over \$739.50 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or ~~\$3,715.50~~TBD, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420). If an all-inclusive rate covers items that are not allowable shelter expenses, including meals or housekeeping in an assisted living facility, or the rate includes utilities, to the extent they can be distinguished, these items must be deducted from the all-inclusive rate to determine allowable shelter expenses.¶

(B) Step 2--Compare maintenance needs allowance with community spouse's countable income. The countable (see OAR 461-001-0000) income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.¶

(C) Step 3--If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.¶

(e) A dependent income allowance as follows:¶

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$2,465.00. To determine the income allowance of each eligible dependent:¶

(i) The monthly income of the eligible dependent is deducted from \$2,465.00.¶

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.¶

(B) For a case with no community spouse:¶

(i) The allowance is the TANF adjusted income standard (see OAR 461-155-0030) for the individual and eligible dependents.¶

(ii) The TANF standard is not reduced by the income of the dependent.¶

(f) Costs for maintaining a home if the individual meets the criteria in OAR 461-160-0630.¶

(g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan.¶

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income (see OAR

461-001-0000).¶

(i) The individual's liability is determined as follows:¶

(A) For an individual receiving home and community-based care (except individuals identified in section (2) of this rule), the liability is the actual cost of the home and community-based care or the adjusted income of the individual, whichever is less. This amount must be paid to the Department or the home and community-based care facility each month as a condition of being eligible for home and community-based care.¶

(B) For an individual who resides in a nursing facility, the liability is the actual cost of services or the adjusted income of the individual, whichever is less. This amount must be paid to the facility each month as a condition of being eligible for nursing facility services.

Statutory/Other Authority: ORS 409.050, 413.085, 411.060, 411.070, 411.404, 414.065, 414.685, 411.706

Statutes/Other Implemented: ORS 409.010, 413.085, 411.060, 411.070, 411.404, 414.065, 414.685, 42 USC 1396r-5, 411.706, 42 CFR 435.725 - 435.735