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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

PERMANENT ADMINISTRATIVE ORDER

SSP 30-2024

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED

03/26/2024 4:52 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: SSP and APD Permanent Rule Changes about Eligibility, Definitions, Disqualifications, and Personal Injury Claims

EFFECTIVE DATE: 04/01/2024

AGENCY APPROVED DATE: 03/26/2024

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

2885 Chad Drive
Eugene, OR 97408

Filed By:
Lay Jennifer
Rules Coordinator

RULES:

461-001-0000, 461-001-0030, 461-140-0296, 461-145-0455, 461-195-0303

AMEND: 461-001-0000

NOTICE FILED DATE: 01/24/2024

RULE SUMMARY: OAR 461-001-0000 is being amended to remove a reference to the Employment Related Day Care (ERDC) program. ERDC program governance moved from the Oregon Department of Human Services (ODHS) to the Department of Early Learning and Care (DELIC) on July 1, 2023. It is also being amended to remove "HSD" and replace it with a modified definition of "HSD medical programs". Additionally, it is being amended to remove the list of Health System Division (HSD) medical programs and replace it with a reference to the chapter 410 rule where these programs are listed.

CHANGES TO RULE:

461-001-0000
Definitions for Chapter 461 ¶¶

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:¶¶

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDSD), Department of Human Services (DHS), or any other agency formerly part of the Oregon Department of Human Services means the Oregon Department of Human Services (ODHS), except:¶¶

(a) The rule in which reference occurs only regulates programs covered by OAR chapter 461.¶¶

(b) Eligibility rules for HSD medical programs (see section (354) of this rule) are in OAR chapter 410, division 200.¶¶

(2) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are survivors of domestic violence (see section (25) of this rule), sexual assault, or stalking.¶¶

(3) "Adjusted income" means the amount determined by subtracting income deductions from countable (see

section (19) of this rule) income (see OAR 461-140-0010). Specific rules on the deductions are in OAR chapter 461, division 160.¶

(4) "Adoption assistance" means financial assistance provided to families adopting children with special needs. "Adoption assistance" may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.¶

(5) "Assets" mean income and resources.¶

(6) "Basic decision notice" means a decision notice (see section (21) of this rule) mailed no later than the date of action given in the notice.¶

(7) "Blind Work Expenses" has the meaning given in OAR 461-001-0035.¶

(8) "Branch office" means any Department or AAA (Area Agency on Aging) office serving a program covered by this chapter of rules.¶

(9) "Budgeting" means the process of calculating the benefit level.¶

(10) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine eligibility (see section (28) of this rule) and benefit level for the payment month (see section (5049) of this rule).¶

(11) "Cafeteria plan" means a written benefit plan offered by an employer in which:¶

(a) All participants are employees; and¶

(b) Participants may choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Service does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:¶

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);¶

(B) Group term life insurance plans (up to \$50,000);¶

(C) Dependent care assistance plans; and¶

(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).¶

(12) "Capital asset" means property that contributes toward earning self-employment income, either directly or indirectly. A "capital asset" generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.¶

(13) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child (see section (16) of this rule). The status of "caretaker" ends once the individual no longer exercises care, control, and supervision of the child for 30 days.¶

(14) "Caretaker relative" means an individual with whom the dependent child (see section (23) of this rule) is living, who assumes primary responsibility for the care of the dependent child, and:¶

(a) Is a biological, step, or adoptive relative of the dependent child; or¶

(b) Is the spouse of an individual described in subsection (a), even after the marriage is terminated by death or divorce.¶

(15) "Certification period" means the period for which an individual is certified eligible for a program.¶

(16) "Child" includes natural, step, and adoptive children. The term "child" does not include an unborn.¶

~~(a) In the GA and OSIP programs, a "child" is an individual under the age of 18.¶~~

~~(b) In the OSIPM and QMB~~General Assistance (GA) program and the Oregon Supplemental Income Program (OSIP), a "child" is an individual under the age of 18.¶

(b) In the Oregon Supplemental Income Program Medical (OSIPM) and Qualified Medicare Beneficiaries (QMB) programs, "child" means an unmarried individual who:¶

(A) Is not considered a decision-maker in the household;¶

(B) Is under the age of 18; and¶

(C) Has at least one natural or adoptive parent in the same household.¶

(c) In the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs, a "child" is an individual who is not an emancipated minor and is under the age of 18.¶

(17) "Community-based care" is any of the following:¶

(a) Adult foster care - Room and board and 24-hour care and services for the elderly or for people with disabilities 18 years of age or older. The care is contracted to be provided in a home for five or fewer individuals.¶

(b) Assisted living facility - A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.¶

(c) In-home Services - Individuals living in their home receiving services determined necessary by the Department.¶

(d) Residential care facility - A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.¶

(e) Specialized living facility - Identifiable services designed to meet the needs of individuals in specific target

groups which exist as the result of a problem, condition, or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.¶

(f) Independent choices - In-Home Services program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services provided pursuant to a written service plan (see OAR 411-030-0020).¶

(18) "Continuing benefit decision notice" means a decision notice that informs the individual of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.¶

(19) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.¶

(20) "Custodial parents" mean parents who have physical custody of a child. "Custodial parents" may be receiving benefits as dependent children or as caretaker relatives for their own children.¶

(21) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.¶

(22) "Department" means the Oregon Department of Human Services (ODHS).¶

(23) "Dependent child" in the Temporary Assistance for Needy Families (TANF) program means an individual who has not been legally emancipated and who is one of the following:¶

(a) An individual who is not a caretaker relative (see section (14) of this rule) of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or¶

(b) A minor parent (see section (465) of this rule) whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with their spouse.¶

(24) "Disability" means:¶

(a) In the SNAP program, see OAR 461-001-0015.¶

~~(b) In the REF, SFPSS, Supplemental Nutrition Assistance Program (SNAP), see OAR 461-001-0015.¶~~

(b) In the REF, State Family Pre-SSI/SSDI (SFPSS), Temporary Assistance for Domestic Violence Survivors (TA-DVS), and TANF programs, for purposes other than determining eligibility:¶

(A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or¶

(B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).¶

(25) "Domestic violence" means the occurrence of one or more of the acts described in subsections (a) to (d) of this section between family members, intimate partners, or household members:¶

(a) Attempting to cause or intentionally, knowingly, or recklessly causing physical injury or emotional, mental, or verbal abuse.¶

(b) Intentionally, knowingly, or recklessly placing another in fear of imminent serious physical injury.¶

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.¶

(d) Using coercive or controlling behavior.¶

(e) As used in this section, "family members" and "household members" mean any of the following:¶

(A) Spouse;¶

(B) Former spouse;¶

(C) Individuals related biologically, by marriage (see section (454) of this rule), or adoption;¶

(D) Individuals who are cohabitating or have cohabited with each other;¶

(E) Individuals who have been involved in a sexually intimate or dating relationship; or¶

(F) Unmarried parents of a child.¶

(26) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to survivors of domestic violence. If the facility serves other people, a portion must be used solely for survivors of domestic violence.¶

(27) "Electronic application" is an application electronically signed and submitted through the Internet.¶

(28) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.¶

(29) "Equity value" means fair market value (see section (30) of this rule) minus encumbrances.¶

(30) "Fair market value" means the amount an item is worth on the open market.¶

(31) "Family stability" in the Job Opportunity and Basic Skills (JOBS), Pre-TANF, SFPSS, TA-DVS, and TANF programs means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.¶

(32) "Family stability activity" in the JOBS, Pre-TANF, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by an individual, as specified in a case plan, intended to promote the ability of one or both parents

to achieve or maintain family stability (see section (31) of this rule).¶

(33) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.¶

(34) "HSD" is the Health Systems Division.¶

(35) "HSD medical programs" means all programs under HSD, including:¶

(a) Breast and Cervical Cancer Treatment Program (BCCTP);¶

(b) Extended Medical Assistance (EXT);¶

(c) Former Foster Care Youth Medical (FFCYM);¶

(d) Substitute Care; and¶

(e) MAGI Medicaid/CHIP programs for which eligibility is based on MAGI methodology, including:¶

(A) MAGI Child,¶

(B) MAGI Parent or Caretaker Relative,¶

(C) MAGI Pregnant Woman,¶

(D) MAGI Children's Health Insurance Program (CHIP),¶

(E) MAGI Adult,¶

(F) MAGI Expanded Adult,¶

(G) Compacts of Free Association (COFA) Dental, and¶

(H) Veteran Dental medical programs means all programs administered by the Health Systems Division (HSD).

These medical programs are described in OAR 410-200-0015 and governed under chapter 410 division 200.¶

(365) "Impairment-Related Work Expenses" have the meaning found in OAR 461-001-0035.¶

(376) "Income producing property" means:¶

(a) In all programs except OSIP, OSIPM, and QMB, real or personal property that generates income for the financial group (see OAR 461-110-0530). Examples of "income producing property" are:¶

(A) Livestock, poultry, and other animals.¶

(B) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, and condominiums.¶

(b) In the OSIP, OSIPM, and QMB programs, "income-producing property" means any real or personal property not used in self-employment (see OAR 461-145-0600 and 461-145-0915) that produces income for the financial group. "Income-producing property" includes:¶

(A) Livestock, poultry, or other animals that produce marketable products sold by the financial group.¶

(B) Farmland not excluded under OAR 461-145-0220 that is farmed or rented out by the financial group.¶

(C) Real property other than the home (including vacation homes and condominiums), that is rented out.¶

(c) In the OSIP, OSIPM, and QMB programs, "income-producing property" does not include:¶

(A) Rooms or other space for rent in the home (see OAR 461-145-0220).¶

(B) Livestock, poultry, or other animals kept for resale (see OAR 461-145-0010).¶

(387) "Initial month" of eligibility means any of the following:¶

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.¶

(b) In all programs except the SNAP program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.¶

(c) In the SNAP program:¶

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).¶

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.¶

(d) For a new applicant to the OSIP or OSIPM program applying for care in a nonstandard living arrangement (see section (476) of this rule), for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the individual would have been eligible had it not been for the disqualifying transfer of assets (see section (5) of this rule).¶

(e) For a current recipient of the OSIP or OSIPM program receiving or applying for care in a nonstandard living arrangement, for the purpose of calculating the correct divisor in OAR 461-140-0296, the later of the following:¶

(A) The month the disqualifying transfer occurred.¶

(B) The month of application for long-term care (see section (442) of this rule) services if the individual would have been eligible had it not been for the disqualifying transfer of assets.¶

(398) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).¶

(4039) "Legally married" means a marriage uniting two individuals according to:¶

(a) The statutes of the state where the marriage occurred;¶

- (b) Except in the SNAP program, the common law of the state in which the two individuals previously resided while meeting the requirements for common law marriage in that state; or¶
- (c) The laws of a country in which the two individuals previously resided while meeting the requirements for legal or cultural marriage in that country.¶
- (440) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a "life estate" enables the owner of the "life estate" to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A "life estate" is created when an individual owns property and then transfers ownership to another individual while retaining, for the rest of the individual's life, certain rights to that property. In addition, a "life estate" is established when a member of the financial group purchases a "life estate" interest in the home of another individual.¶
- (421) "Lodger" means someone who---¶
- (a) Is living with an individual receiving Department benefits;¶
- (b) Is not a member of the individual's filing group (see OAR 461-110-0310); and¶
- (c) Pays the filing group:¶
- (A) In all programs except the OSIP, OSIPM, and QMB programs, for room and board.¶
- (B) In the OSIP, OSIPM, and QMB programs, for room with or without board.¶
- (432) "Long term care" means the system through which the Department provides a broad range of social and health services for extended periods of time to eligible adults who are aged, blind, or have disabilities. This includes nursing facilities and the Oregon State Hospital.¶
- (443) "Lump-sum income" means earned or unearned income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. "Lump-sum income" includes but is not limited to:¶
- (a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.¶
- (b) Income from inheritance, gifts, winnings, and personal injury claims.¶
- (c) Income received less frequently than annually.¶
- (454) "Marriage" means the union of two individuals who are legally married (see section (4139) of this rule).¶
- (465) "Minor parent" in the ERDC and TANF programs means a parent under the age of 18.¶
- (476) "Nonstandard living arrangement" is defined as follows:¶
- (a) In the GA, OSIP, OSIPM, and QMB programs, an individual is considered to be in a "nonstandard living arrangement" when the individual is applying for or receiving services in any of the following locations:¶
- (A) A nursing facility in which the individual receives long-term care services paid with Medicaid funding, except this subsection does not apply to a Medicare recipient in a skilled-stay nursing facility.¶
- (B) An intermediate care facility for individuals with intellectual disabilities (ICF/ID).¶
- (C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.¶
- (D) A community-based care (see section (17) of this rule) setting, except a State Plan Personal Care (SPPC) setting is not considered a "nonstandard living arrangement".¶
- (b) In all programs except GA, OSIP, OSIPM, and QMB, "nonstandard living arrangement" means each of the following locations:¶
- (A) Foster care.¶
- (B) Residential Care facility.¶
- (C) Drug or alcohol residential treatment facility.¶
- (D) Shelter for individuals experiencing homelessness or domestic violence shelter.¶
- (E) Lodging house if paying for room and board.¶
- (F) Correctional facility.¶
- (G) Medical institution.¶
- (487) "Ongoing month" means one of the following:¶
- (a) For all programs except the SNAP program, any month following the initial month (see section (387) of this rule) of eligibility, if there is no break in the program benefit of one or more calendar months.¶
- (b) For the SNAP program, any month in the certification period (see section (15) of this rule) following the initial month of eligibility.¶
- (498) "Parent" for all programs except Job Participation Incentive (JPI) (see OAR 461-135-1260) and the SNAP program means the biological or legal parent of an individual or unborn. For JPI and the SNAP program, "parent" means the biological or legal parent of an individual.¶
- (a) If the person who gave birth (parent 1) to the child lives with an individual (parent 2) and either parent 1 or parent 2 claims that parent 2 is the other biological parent of the child or unborn, and no one else claims to be the other biological parent, parent 2 is treated as a parent even if parentage has not been legally established.¶
- (b) A stepparent relationship exists if:¶
- (A) The individual is legally married to the child's biological or adoptive parent; and¶

(B) The marriage has not been terminated by legal separation, divorce, or death.¶

(c) A legal adoption erases all prior legal and biological relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a "parent" if both of the following are true:¶

(A) The child lives with the biological parent; and¶

(B) The legal parent has given up care, control, and supervision of the child.¶

(5049) "Payment month" means, for all programs except E~~A~~mergency Assistance (EA), the calendar month for which benefits are issued.¶

(510) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.¶

(521) "Periodic income" means income received on a regular basis less often than monthly.¶

(532) "Primary person" for all programs except the SNAP program, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The "primary person" for individual programs is as follows:¶

(a) In the TANF program, the parent or caretaker relative.¶

(b) In the SNAP program, see OAR 461-001-0015.¶

(c) In the GA, OSIP, OSIPM, QMB, REF, and REFM programs, the individual or individual's spouse.¶

(543) "Qualified Partnership Policy" means a long-term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:¶

(a) Issued while the individual was a resident in Oregon on January 1, 2008 or later; or¶

(b) Issued in another state while the individual was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.¶

(554) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as "real property".¶

(565) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.¶

(576) "Safe homes" mean private homes that provide a few nights lodging to survivors of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.¶

(587) "Shelter costs" mean, in all programs except the SNAP program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the SNAP program, see OAR 461-160-0420.¶

(598) "Shelter-in-kind" means an agency or individual outside the financial group provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs (see section (587) of this rule) of the financial group. "Shelter-in-kind" does not include temporary shelter provided by a domestic violence shelter, shelter for individuals experiencing homelessness, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.¶

(6059) "Sibling" means the brother or sister of an individual. "Biologically-related" means they share at least one biological or adoptive parent. "Step" means they are not related biologically, but are related by the marriage of their parents.¶

(610) "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced spouse to a member of the financial group.¶

(621) "Spouse" means an individual who is legally married to another individual.¶

(632) "Stable income" means income that is the same amount each time it is received.¶

(643) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.¶

(654) "Teen parent" means, in the JOBS, REF, REFM, and TANF programs, a parent who is the age of 18 or 19.¶

(665) "Timely continuing benefit decision notice" means a decision notice that informs the individual of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.¶

(676) "Trust funds" mean money, securities, or similar property held by an individual or institution for the benefit of another individual.¶

(687) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.¶

(698) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 413.085, 414.619

Statutes/Other Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 411.837, 412.001, 412.006, 412.014, 412.049, 413.085, 414.619

AMEND: 461-001-0030

REPEAL: Temporary 461-001-0030 from SSP 51-2023

NOTICE FILED DATE: 01/24/2024

RULE SUMMARY: OAR 461-001-0030 is being amended to update the definitions of community spouse, institutionalized spouse, and home and community-based care. In addition, it is being amended to clarify to whom this rule applies. This filing makes temporary rule changes permanent.

CHANGES TO RULE:

461-001-0030

Definitions; OSIP, ~~OSIPM Long-Term Care~~ Nursing Facility Services or Home and Community-Based Care ¶

These terms apply to rules in Chapter 461 about OSIP ~~and OSIPM long-term care~~ nursing facility services and home and community-based care ~~clients~~: ¶

(1) Community spouse: An individual who is legally married (see OAR 461-001-0000) to an institutionalized spouse ~~and is not in a medical institution or nursing facility~~ (see section (5) of this rule) and meets all of the following requirements: ¶

(a) The individual is not residing in the Oregon State Hospital, or its equivalent if residing in another state. ¶

(b) The individual is not residing in an acute care hospital or nursing facility for a continuous period of care (see section (2) of this rule). ¶

(2) Continuous period of care: Reside for a period of at least 30 consecutive days or until death in a ~~long-term care~~ nursing facility, home and community-based care (see section (4) of this rule) setting, or an acute care hospital. There must be sufficient evidence to show there is a reasonable expectation that the client will remain in care for at least 30 consecutive days. For the purposes of this policy, an interruption in care (for example, leaving and then returning to a nursing home, or switching from one type of care to another) that lasts less than 30 days is not considered a break in the 30 consecutive days of care. A new period of care begins if care is interrupted for 30 or more days. ¶

(3) Eligible dependent: ¶

(a) For cases with a community spouse (see section (1) of this rule): ¶

(A) An "eligible dependent" is one of the following: ¶

(i) A child of the institutionalized spouse or community spouse who resides with the community spouse, and who must also be either a minor (under the age of 21) or 21 or older but still a tax dependent of either spouse. ¶

(ii) A parent or sibling of the institutionalized spouse or community spouse who resides with the community spouse and is claimed as a tax dependent by either spouse. ¶

(B) A grandchild of the institutionalized spouse or community spouse is not considered an "eligible dependent". ¶

(b) For cases without a community spouse, an "eligible dependent" resides with the institutionalized spouse and is either a minor child (under the age of 21) of the institutionalized spouse, or a child 21 or older but still a tax dependent of the institutionalized spouse. ¶

(4) Home and community-based care: Title XIX services needed to keep an individual out of a ~~long-term care facility~~ nursing facility or an intermediate care facility for individuals with intellectual disabilities (ICF-ID), not including 1915(i) Home and community-based services (see division 173 of OAR chapter 410). These services are: ¶

(a) In-home services except for state plan personal care services. ¶

(b) Residential care facility services. ¶

(c) Assisted living facility services. ¶

(d) Adult foster care services. ¶

~~(e) Home adaptations to accommodate a client's physical condition.~~ ¶

~~(f) Home-delivered meals provided in conjunction with in-home services.~~ ¶

~~(g) Specialized living facility services.~~ ¶

~~(hf) Adult day care services.~~ ¶

~~(i5) Community transition services.~~ ¶

~~(5) Home and Institutionalized spouse: An individual who is married to a community-based care client: A client receiving home and community-based care for a continuous period.~~ ¶

~~(6) Institutionalized spouse: An spouse, not residing in the Oregon State Hospital, or its equivalent if in another state, and meets one of the following requirements:~~ ¶

~~(a) The individual who is in long-term care or receiving home and community-based care for a continuous period and is married to a community spouse is residing in an acute care hospital or nursing facility for a continuous~~

period of care.

(b) The individual is applying for or receiving services in a nursing facility or home and community-based services.

Statutory/Other Authority: 411.060, ORS 409.050, 411.083, 411.404, 413.085, 414.685

Statutes/Other Implemented: 411.060, 411.700, ORS 409.010, 411.083, 411.404, 42 USC 1396r, 42 CFR 435.726

AMEND: 461-140-0296

REPEAL: Temporary 461-140-0296 from SSP 51-2023

NOTICE FILED DATE: 01/24/2024

RULE SUMMARY: OAR 461-140-0296 is being amended to change the disqualification period start date for current recipients of Long-Term Services and Supports who make a disqualifying asset transfer. The start date is being updated from the month after the transfer occurred to the first of the month following the date the Department learns of the transfer and sends a timely continuing benefit decision notice. It is also being amended to replace references to long-term care and Oregon Supplemental Income Program Medical (OSIPM) with references to nursing facility and community-based care as the rule provisions are not limited to OSIPM recipients and apply to all individuals receiving and applying for long term services and supports. Finally, it is being amended to remove the section that addresses asset transfers that occurred before July 1, 2006, and to add a reference to a potential disqualifying transfer in section 6. This filing makes some temporary rule changes permanent.

CHANGES TO RULE:

461-140-0296

Length of Disqualification Due to an Asset Transfer; ~~OSIPM~~Nursing Facility Services or Home and Community-Based Care ¶

~~(1) This rule applies to individuals in the OSIP and OSIPM programs who live in a nonstandard living arrangement applying for or receiving Department-paid nursing facility services or home and community-based care (see OAR 461-001-00030).~~¶

~~(2) A financial group (see OAR 461-110-0530) containing a member disqualified due to the transfer of an asset is disqualified from receiving benefits n individual who completes a disqualifying transfer of an asset in accordance with OARs 461-140-0210, 461-140-0220, 461-140-0242, and 461-140-0250 is disqualified from receiving Department-paid nursing facility services or home and community-based care. The length of a disqualification period resulting from the transfer is the number of months equal to the uncompensated value (see OAR 461-140-0250) for the transfer divided by the following dollar amount:~~¶

~~(a) If the initial month (see OAR 461-001-0000) is prior to October 1, 1998--\$2,595.~~¶

~~(b) If the initial month is on or after October 1, 1998 and prior to October 1, 2000--\$3,320.~~¶

~~(c) If the initial month is on or after October 1, 2000 and prior to October 1, 2002--\$3,750.~~¶

~~(d) If the initial month is on or after October 1, 2002 and prior to October 1, 2004--\$4,300.~~¶

~~(e) If the initial month is on or after October 1, 2004 and prior to October 1, 2006--\$4,700.~~¶

~~(f) If the initial month is on or after October 1, 2006 and prior to October 1, 2008--\$5,360.~~¶

~~(g) If the initial month is on or after October 1, 2008 and prior to October 1, 2010--\$6,494.~~¶

~~(h) If the initial month is on or after October 1, 2010 and prior to October 1, 2016--\$7,663.~~¶

~~(i) If the initial month is on or after October 1, 2016 and prior to October 1, 2018--\$8,425.~~¶

~~(j) If the initial month is on or after October 1, 2018 and prior to October 1, 2020 ---\$8,784.~~¶

~~(k) If the initial month is on or after October 1, 2020 and prior to October 1, 2022---\$9,551.~~¶

~~(l) If the initial month is on or after October 1, 2022--- \$10,342.~~¶

~~(3) For transfers by an individual and the spouse of an individual that occurred before July 1, 2006:~~¶

~~(a) Add together the uncompensated value of all transfers made in one calendar month and treat this total as one transfer.~~¶

~~(b) If the uncompensated value of the transfer is less than the applicable dollar amount identified in subsections (2)(a) to (2)(l) of this rule, there is no disqualification.~~¶

~~(c) If there are multiple transfers in amounts equal to or greater than the applicable dollar amount identified in subsections (2)(a) to (2)(l) of this rule, each disqualification period is calculated separately.~~¶

~~(d) The number of months resulting from the calculation in section (2) of this rule is rounded down to the next whole number.~~¶

~~(e) Except as provided in subsection (3)(f) of this rule, the first month of the disqualification is the month the asset was transferred.~~¶

~~(f) If disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.~~¶

~~(g) If both spouses of a couple are in a nonstandard living arrangement, part of the disqualification is apportioned to each of them. If one member of the couple is serving a disqualification when the other member of the couple~~

begins living in a nonstandard living arrangement, any remaining disqualification is apportioned equally to each member of the couple. If one spouse is unable to serve the resulting disqualification period for any reason, the remaining disqualification applicable to both spouses must be served by the remaining spouse.¶

(4) For transfers by an individual and the spouse of an individual that occurred on or after July 1, 2006:¶

(a) If there are multiple transfers by the individual and the spouse of the individual, including any transfer less than the applicable dollar amount identified in subsections (2)(a) to (2)(l) of this rule, the value of all transfers are added together before dividing by the applicable dollar amount identified in subsections (2)(a) to (2)(l) of this rule.¶

(b) The quotient resulting from the calculation in section (2) of this rule is not rounded. The whole number of the quotient is the number of full months the financial group is disqualified. This number might be zero full months. The remaining decimal or fraction of the quotient is used to calculate a partial month disqualification, which may be in addition to one or more full months. This remaining decimal or fraction is converted to a number of days by multiplying the decimal or fraction by the number of days in the month following the last full month of the disqualification period, if any. If this calculation results in a fraction of a day, the fraction of a day is rounded down.¶

(c) ~~Notwithstanding when the Department learns of a disqualifying transfer, the first month of~~The date the disqualification begins is:¶

(A) For an individual who transfers an asset while they are already receiving Department-paid ~~long-term care~~ (see OAR 461-001-0000) or home and community-based care (see OAR 461-001-0030) in a nonstandard living arrangement, ~~the month following the month the asset was transferred~~nursing facility services or home and community-based care, the first of the month following the date the Department learns the asset was transferred and the timely continuing benefit decision notice period ends (see OAR 461-175-0050), except that if disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.¶

(B) For an applicant who transfers an asset prior to submitting an application and being determined eligible and for an individual who transfers an asset while they are already receiving benefits in a standard living arrangement (see OAR 461-001-0000), the date of request (see OAR 461-115-0030) for ~~long-term care~~nursing facility services or home and community-based care as long as the applicant or individual would otherwise be eligible but for this disqualification period. If the applicant or individual is not otherwise eligible on the date of request, the disqualification begins the first date following the date of request that the applicant or individual would be otherwise eligible but for the disqualification period.¶

(d) If both spouses of a couple are ~~in a nonstandard living arrangement~~applying for or receiving Department-paid nursing facility services or home and community-based care, part of the disqualification is apportioned to each of them. If one member of the couple is serving a disqualification when the other member of the couple ~~begins living in a nonstandard living arrangement~~applies for or starts receiving Department-paid nursing facility services or home and community-based care, any remaining disqualification is apportioned equally to each member of the couple. If one spouse is unable to serve the resulting disqualification period for any reason, the remaining disqualification applicable to both spouses must be served by the remaining spouse.¶

(54) If an asset is owned by more than one person, by joint tenancy, tenancy in common, or similar arrangement, the share of the asset owned by the individual is considered transferred when any action is taken either by the individual or any other person that reduces or eliminates the individual's control or ownership in the individual's share of the asset.¶

(65) For an annuity that is a disqualifying transfer under section (11) of OAR 461-145-0022, the disqualification period is calculated based on the uncompensated value as calculated under OAR 461-140-0250, unless the only requirement that is not met is that the annuity pays beyond the actuarial life expectancy of the annuitant. If the annuity pays beyond the actuarial life expectancy of the annuitant, the disqualification is calculated according to section (76) of this rule.¶

(76) If an individual or the spouse of an individual purchases an annuity on or before December 31, 2005 ~~or there is a potential disqualifying transfer under section (11) of OAR 461-145-0022,~~ and the only requirement that is not met is that the annuity pays benefits beyond the actuarial life expectancy of the annuitant, as determined by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration, a disqualification period is assessed for the value of the annuity beyond the actuarial life expectancy of the annuitant.¶

(87) Effective January 1, 2023, the Department ends the disqualifications previously established under this rule based on an income cap trust.

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

Statutes/Other Implemented: 42 USC 1396p, ORS 409.010, 411.060, 411.704, 411.706

AMEND: 461-145-0455

NOTICE FILED DATE: 01/24/2024

RULE SUMMARY: OAR 461-145-0455 is being amended to add a definition for Welcome Corp, a new federal program to welcome refugees and help with the cost of initial resettlement in the United States. Welcome Corp is also being added to the rule title. Additionally, this rule is being amended to specify that Reception and Placement grants are usually provided in the refugee's first three months of arrival. Finally, this rule is being amended to indicate how the Department treats income from Welcome Corp grants when determining eligibility for programs in OAR Chapter 461.

CHANGES TO RULE:

461-145-0455

Resettlement and Placement (R&P) and Welcome Corps Grants ¶¶

(1) A Reception and Placement (R&P) grant is a payment made by the United States Department of State through a national refugee resettlement agency to a local resettlement agency, refugee sponsor, or refugee. An R&P grant is provided to the resettlement agency to help with the costs of initial resettlement of a refugee in the United States. The resettlement agency provides a part of this grant to the refugee, usually in the refugee's first three months after arrival, for the refugee's initial resettlement needs and not for ongoing living expenses.¶¶

(2) ~~In the~~ The Welcome Corps is an equivalent program to R&P. A Welcome Corps grant is money raised by a private sponsor group on behalf of a refugee. A Welcome Corps grant is used to help with the costs of initial resettlement of a refugee in the United States. The private sponsor group provides a part of this grant to the refugee, usually in the refugee's first three months after arrival, for the refugee's initial resettlement needs and not for ongoing living expenses.¶¶

(3) ~~In the Refugee Assistance (REF), Refugee Assistance Medical (REFM), and TANF programs, an R&P or Temporary Assistance for Needy Families (TANF) programs, an R&P or Welcome Corps grant is excluded from consideration as income or a resource for purposes of determining program eligibility or benefit levels, except as provided in OAR 461-140-0070.~~¶¶

(34) ~~In the SNAP program~~ supplemental Nutrition Assistance Program (SNAP), any amount paid directly to a SNAP household from an R&P or Welcome Corps grant is counted as unearned income. For an in-kind payment made directly to a provider by the resettlement agency, see OAR 461-145-0280.¶¶

(45) ~~In the OSIP, Oregon Supplemental Income Program Medical (OSIPM), and QMB programs, an R&P~~ Qualified Medicare Beneficiaries (QMB) programs, an R&P or Welcome Corps grant determined to be available to the refugee ~~case~~ is considered unearned income.

Statutory/Other Authority: ORS 411.060, 411.116, 411.404, 411.816, 412.049

Statutes/Other Implemented: ORS 411.060, 411.116, 411.404, 411.816, 412.049, 411.070, 412.006, 45 CFR 400

AMEND: 461-195-0303

NOTICE FILED DATE: 01/24/2024

RULE SUMMARY: OAR 461-195-0303 is being amended to make clear that by applying for and receiving medical assistance, an individual automatically assigns to the Oregon Department of Human Services (ODHS) and the Oregon Health Authority (OHA) any rights to payment by a liable third party. This change aligns the rule with federal law, the Oregon State Plan, and longstanding practice within the ODHS Personal Injury Lien Unit.

CHANGES TO RULE:

461-195-0303

Personal Injury Claim ¶

(1) The Personal Injury Liens program is designated and authorized to administer the personal injury lien program for the Oregon Health Authority (the Authority) and the Oregon Department of Human Services (the Department) (see OAR 461-195-0301). To administer the program, the Personal Injury Liens program is also authorized to:¶

(a) Prepare and file liens;¶

(b) Assign lien authority to a CCO (see OAR 461-195-0301) or a prepaid managed care health services organization (see 461-195-0301) for medical costs paid by a CCO or prepaid managed care health services organization to or on behalf of an applicant (see 461-195-0301) or recipient (see 461-195-0301) arising from any personal injury (see 461-195-0301);¶

(c) Assert any rights or remedies, including filing a complaint in court, arising from an assignment of right to payment acquired by the Authority in accordance with ORS 659.830 and 743.847, from an applicant or recipient; and¶

(d) Assert any rights or remedies granted in ORS 416.580 or 416.610.¶

(e) Issue subpoenas under ORS 411.593 or 413.037.¶

(2) Subpoenas require approval of an Office of Payment Accuracy and Recovery manager or policy analyst.¶

(3) ~~An~~By applicant or recipient of ~~ying for and receiving~~ medical assistance, ~~as a condition of eligibility,~~ must applicant or recipient automatically assigns to the Authority and the Department any rights to payment from any third party liable for medical costs paid by medical assistance to or on behalf of an applicant or recipient arising from any personal injury.¶

(4) An applicant or recipient of assistance (see OAR 461-195-0301), except ~~OCCS-MHSD~~ medical Pprograms (see ~~410-261-001-00-0015~~), must pursue a personal injury claim (see 461-195-0301) in accordance with 461-120-0330 (Requirement to Pursue Assets).¶

(5) An applicant or recipient of ~~OCCS-MHSD~~ medical Pprograms assistance must pursue a personal injury claim in accordance with OAR 410-200-0220 (Requirement to Pursue Assets).¶

(6) An applicant or recipient must cooperate with the Personal Injury Liens Unit, CCO, or prepaid managed care health services organization to:¶

(a) Identify any third party liable or potentially liable for medical costs paid by the Department, the Authority, CCO, or prepaid managed care health services organization to or on behalf of an applicant or recipient arising from any personal injury;¶

(b) Provide information about liability or other insurance that may cover or pay for medical costs paid by the Department, the Authority, CCO, or prepaid managed care health services organization to or on behalf of an applicant or recipient arising from any personal injury;¶

(c) Complete a MSC 0451, MSC 0451NV, or similar online form as required by the Personal Injury Liens Unit, CCO, or prepaid managed care health services organization;¶

(d) Provide other information as required by the Personal Injury Liens Unit, CCO, or prepaid managed care health services organization to assist in pursuing payment from any third party who may be liable for medical costs paid by the Department, the Authority, CCO, or prepaid managed care health services organization to or on behalf of an applicant or recipient arising from any personal injury;¶

(e) Appear as a witness in court, administrative hearing, or other proceeding arising from any personal injury; and¶
(f) Pay to the Department any medical damages received by the recipient that are subject to the Department's lien or assignment of rights to payments.¶

(7) An applicant or recipient of ~~OCCS-MHSD~~ medical Pprograms assistance who fails to comply with section (6) of this rule is ineligible for benefits until the individual meets the requirements of section (6) of this rule, or has good cause (see OAR 410-200-0220) not to comply.¶

(8) An applicant or recipient of assistance, other than ~~OCCS-MHSD~~ medical Pprograms, who fails to comply with section (6) of this rule is ineligible for benefits until the individual meets the requirements of section (6) of this

rule, or has good cause (see OAR 461-120-0330) not to comply.¶

(9) For all programs, the existence of a claim for damages for a personal injury does not make an applicant or recipient ineligible for program benefits.

Statutory/Other Authority: ORS 409.050, 411.060, 416.510 - 416.610, 413.085

Statutes/Other Implemented: ORS 411.630, 411.632, 411.635, 411.640, ORS 411.620, 413.085, 42 CFR 433.146(c), 42 USC 1396k