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Authorized Signature

Number: SS-PT-08-006

Issue Date: 01/15/08

Topic: CAF Self-Sufficiency Programs Draft Administrative Rules

Transmitting (check the box that best applies):

- New Policy
 Policy Change
 Policy Clarification
 Executive Letter
 Administrative Rule
 Manual Update
 Other: Draft Administrative Rules

Applies to (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> All DHS employees | <input type="checkbox"/> County Mental Health Directors |
| <input checked="" type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> Health Services |
| <input checked="" type="checkbox"/> Children, Adults and Families | <input checked="" type="checkbox"/> Seniors and People with Disabilities |
| <input type="checkbox"/> County DD Program Managers | <input type="checkbox"/> Other (please specify): |

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|------------------------|---|-------------|--|
| Policy/Rule Title: | Draft Administrative Rules | | |
| Policy/Rule Number(s): | | Release No: | |
| Effective Date: | Planned to become eff. April 2008 | Expiration: | |
| References: | | | |
| Web Address: | http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm | | |

Discussion/Interpretation: This draft rule package is open for comment until February 26, 2008.

OAR 461-001-0000 about definitions for terms used in OAR chapter 461 is being amended to change the definition of shelter-in-kind to include shelter provided by an agency or person outside of the financial group and to clarify what constitutes shelter-in-kind. Previously, shelter-in-kind only included shelter provided by an agency or person outside of the household group. Additionally, the rule is being amended for the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) program to remove certain types of shelter and situations where no shelter is being provided from the definition of shelter-in-kind. For OSIP, OSIPM, and QMB, shelter in-kind does not automatically apply in all situations where there are no shelter costs.

OAR 461-006-0452 about the treatment of burial expenses in the Department's Estates Administration Unit is being amended and renumbered as 461-135-0833 to increase the allowance for the average cost of a plain and decent funeral to \$3,500 for those recipients of public assistance who die on or after, April 1, 2008. In addition, those funeral items not considered professional services or merchandise are being clarified. This rule is being renumbered to 461-135-0833 because

currently it is the only rule in OAR chapter 461, division 006 and it is being renumbered to be adjacent to the Department's other rules used in its estate recovery process.

OAR 461-025-0310 about requests for hearings in public assistance, medical, and food stamp programs is being amended to clarify that individuals have a right to a contested case hearing when the Department has issued a notice to an employer participating in the JOBS program seeking repayment under ORS 411.892. This rule is also being amended to clarify the circumstances when a client is entitled to a hearing when the Department has not acted on a request or application for public assistance.

OAR 461-025-0350 about withdrawals of hearing requests is being amended to make permanent a temporary rule adopted on January 1, 2008, implement HB 2423 (2007 Or. Laws, ch. 288) and adjust the process that applies to a client withdrawal from contested case. This amendment specifies when an individual may withdraw a request for hearing, the actions taken after a withdrawal occurs, and how an individual may cancel a withdrawal of a request for hearing.

OAR 461-115-0610 about verification is being amended to make updates to terminology and language and to align with current policy and practice related to domestic violence verification. Program intent and practice does not require verification of the occurrence of domestic violence in any program.

OAR 461-115-0705 about required verification in the Department's Breast and Cervical Cancer Medical program (BCCM), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Extended Medical Assistance (EXT), Oregon Health Plan (OHP) and Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs is being amended to make the rule consistent with the Department's policy and practice by removing EXT from the programs that require individuals to provide documentation of citizenship/identity. The Department's policy is that clients who are transitioning from the MAA or MAF program to EXT do not require a full medical redetermination so are not required to provide documentation of citizenship/identity.

OAR 461-125-0310 about the basis of need in the OSIP (Oregon Supplemental Income Program) and OSIPM (OSIP Medical) programs is being amended to clarify that the blindness, old age, or disability basis of need applies to OSIPM (as well as to OSIP) and that children are not eligible for the \$1.70 SIP payment. This rule is also being amended to remove old terminology and replace it with new terms. In addition, this rule is being amended to add cross-references to other rules and laws.

OAR 461-135-0832 about definitions used in the Department's Estate Administration rules is being amended to clarify key terms used in the Department's estate administration process. This amendment adds definitions for "blind child", "child under age 21" and "date of request". This rule is also being amended to change the definition of "estate" to include an inter-spousal transfer of assets for public assistance recipients who die on or after April 1, 2008. This rule is also being amended to change the definition of "living trust" to include an irrevocable trust. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-135-0835 about claims against the estates of recipients of public assistance is being amended to identify new recovery claim criteria for recipients who die on, or after, April 1, 2008. This rule is being amended to make an inter-spousal transfer of assets subject to estate recovery if such transfer(s) occurs no earlier than 60 months prior to the first date of request for assistance. This rule is also being amended to clarify that any assistance payments, made at any age, are recoverable if they are payments made under the General Assistance provisions of ORS Chapter 411, or

categorized as GA. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-135-0910 about the eligibility for the Department's public assistance, medical, and food stamp programs of refugees in the Unaccompanied Minors Program is being amended to clarify the programs for which such refugees are not eligible. Currently, the rule states that such individuals are not eligible for any cash assistance program. This rule is being amended to specify that such individuals are not eligible for the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs. This rule is being amended to make it consistent with Department practice.

OAR 461-135-1175 about the Senior Farm Direct Nutrition Program (SFDNP) is being amended to clarify that the Department uses countable income to determine eligibility for the Senior Farm Direct Nutrition Program and that the Department may not issue more than one voucher per case per year. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-140-0040 about determining the availability of income in the public assistance, medical, and food stamp programs is being amended to specify that expenses incurred to secure a payment, such as Workers Compensation or damages from an accident, are not countable. This rule is also being amended to clarify that not only earned income but also unearned income that is diverted at the request of the individual who owns it is considered available income. This rule is also being amended to cross-reference to OAR 461-150-0020 for purposes of clarity. In addition, OAR 461-140-0040 is being amended to clarify that for all programs, when a client receives money that is intended and used for the care of someone that does not live with the client, the money used for the care of the person not living with the client does not count as income to the client. This rule is also being amended to clarify that income is not considered available in the Medical Assistance Assumed (MAA), Refugee Assistance (REF), Refugee Assistance Medical, (REFM), and Temporary Aid for Needy Families (TANF) programs when the income is controlled by the client's abuser, if the client is a victim of domestic violence, the client's abuser controls the income, and the abuser is not in the client's filing group.

OAR 461-145-0120 regarding the definition of earned income for the public assistance, medical, and food stamp programs is being amended to clarify that earned income includes representative payee fees.

OAR 461-145-0370 about the treatment of income from the Older Americans Act in public assistance, medical, and food stamp programs is being amended to clarify the treatment of income that is not a wage or a salary under Title V of the Older Americans Act of 1965 by specifying that payments to an individual 55 years of age and older under Title V of the Older Americans Act of 1965 that are not a wage or salary are excluded for all programs.

OAR 461-145-0450 about the treatment of representative payee fee payments in the public assistance, medical, and food stamp programs is being repealed. Section (1) is being incorporated into OAR 461-145-0120 and section (2) is being deleted because representative payee fees are never unidentifiable and are not intended for more than one beneficiary.

OAR 461-145-0470 about the treatment of shelter-in-kind income in the Department's public assistance, medical, and food stamp programs is being amended to change the treatment of shelter-in-kind for the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM) and Qualified Medicare Beneficiary (QMB) programs and to clarify current policy regarding the treatment of shelter-in-kind in these programs. Previously the rule required that in all situations where a client had no shelter costs the shelter-in-kind standard for total shelter applied.

This rule is being amended to specify that shelter-in-kind does not apply to all situations where the client has no shelter costs. If the shelter is provided by certain nonprofit organizations or in situations where the shelter does not have any market value, the shelter is not considered shelter-in-kind. Shelter-in-kind standards only apply in situations where the client's shelter is considered shelter-in-kind as that term is defined in OAR 461-001-0000. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0490 about the treatment of Social Security benefits in public assistance, medical, and food stamp programs is being amended to be consistent with federal requirements in 42 USC 405(j)(4) and Public Law 103-296. Previously, representative payee fees were excluded from countable Social Security income. This amendment makes representative payee fees countable as unearned income.

OAR 461-145-0500 is being amended to remove language that indicates that money remaining from Social Security death benefits after the payment of burial costs can be considered "periodic income" and to correct current language. The rule will add a cross-reference to OAR 461-140-0120 about treatment of lump sum income.

OAR 461-145-0505 about the treatment of spousal support in public assistance, medical, and food stamp programs is being amended to clarify how spousal support is treated. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0520 about the treatment of stocks, bonds, and other securities in the public assistance, medical, and food stamp programs is being amended to clarify what is counted as a resource for stocks, bonds, and other securities. This rule is also being amended to remove a reference to hardship waivers for savings bonds, and adds a cross reference to OAR 461-145-0108 for types of resources not covered in section (1) of this rule. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0530 about the treatment of tax refunds in the Department's public assistance, medical, and food stamp programs is being amended to state that any income tax refunds are counted as a resource and to update statutory references.

OAR 461-145-0550 about the treatment of unemployment compensation benefits in the Department's public assistance, medical, and food stamp programs is being amended to clarify the treatment of unemployment compensation benefits by removing a reference to monthly unemployment compensation benefits, adding a reference to disaster unemployment benefits, and adding a cross reference to the disaster assistance rule (OAR 461-145-0100). The amended rule also clarifies that retroactive payments are counted as periodic or lump sum income. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0585 about the treatment of vocational rehabilitation payments in the Department's public assistance, medical, and food stamp programs is being amended to clarify the treatment of vocational rehabilitation payments. The treatment of vocational rehabilitation payments is being clarified by specifying that educational income that is not a training allowance or stipend is treated as provided in OAR 461-145-0150. The treatment of vocational rehabilitation payments is also being clarified by specifying that benefits from the United States Veterans Administration are treated as

provided in OAR 461-145-0580. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0910 about the definition and treatment of self-employment income in public assistance, medical, and food stamp programs is being amended to revise the policy on identifying self-employment by removing one criterion from a list of six, changing the criteria from meeting five out of a list of six criteria to meeting four out of a list of five criteria. The Department is also amending this rule by adding independent contractor status to the criteria for determining self-employment, and clarifying that the amount of countable income considered available is gross receipts and sales before costs. The Department is eliminating the criterion "contracts for a site or works out of another's business location." This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-155-0290, 461-155-0291, and 461-155-0295 about the income standards for the QMB-BAS, QMB-DW, and QMB-SMB programs (Qualified Medicare Beneficiaries - Basic, Disabled Worker, Special Medicare Beneficiaries) are being amended to base their income standards on the 2008 Federal Poverty Level. Currently, these rules are based on the 2007 Federal Poverty Level. These amendments will make permanent temporary rule changes planned to be adopted by March 1, 2008.

OAR 461-160-0030 about the treatment of costs in the Department's public assistance, medical, and food stamp programs is being amended to comply with federal guidance on the use of medical costs in the determination of an individual's liability as stated in the State Medicaid Manual 3701.3, published by United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. This rule is being amended to clarify how medical expenses are used to calculate the long-term care liability by adding a section that provides how to determine the medical deduction in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs. This rule is being amended to codify current practice that has not previously been codified in an administrative rule.

OAR 461-175-0050 about the notice period used to determine the effective date for taking action when the Department sends a decision notice is being amended to remove a cross-reference to the computation method in the rules for the Office of Administrative Hearings.

OAR 461-175-0200 about the types of decision notices that are required in certain circumstances is being amended to implement HB 2423, 2007 Or. Laws, Ch. 288, and restate the Department's policy about amending a decision notice, when a decision notice becomes void, and when no decision notice is needed. This amendment will make permanent a temporary rule amendment from January 1, 2008. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-175-0340 about the type of decision notice that is required when an individual makes a voluntary decision to withdraw the individual's application or make a voluntary withdrawal or reduction in benefit amount is being amended to implement HB 2423, 2007 Or. Laws Ch. 288, make permanent a temporary rule amended January 1, 2008, and clarify Department policy when an individual notifies the Department that the individual wishes to withdraw his or her application for benefits or wishes to reduce or to no longer receive benefits. This amendment specifies that the Department sends a basic decision notice when a client withdraws a request for benefits. This amendment also states that to voluntarily reduce or close benefits, the individual completes a voluntary agreement. This amendment also specifies that the voluntary agreement is a final order, and states the grounds and time limits to set aside the agreement.

OAR 461-190-0426 is being amended to include in rule the requirements that JOBS Plus employers must comply with to be eligible to receive JOBS Plus payments from the Department. This rule is also being amended to remove old terminology and replace it with new terms.

OAR 461-195-0521 about calculating an overpayment in the Department's public assistance, medical, and food stamp programs is being amended to remove a reference to the Department's spend down program, which has been eliminated.

In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

Implementation/Transition Instructions:

Training/Communication Plan:

Local/Branch Action Required:

Central Office Action Required:

Field/Stakeholder review: Yes No

If yes, reviewed by:

Filing Instructions: N/A

If you have any questions about these draft rules, contact:

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