

Aging and People with Disabilities

Mike McCormick

Carol Lamon

Authorized Signature

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Topic: Agency-wide Policy

Transmitting (check the box that best applies):

- New policy
 Policy change
 Policy clarification
 Executive letter
 Administrative Rule
 Manual update
 Other: _____

Applies to (check all that apply):

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

Policy/rule title:	Same-sex Marriage - Definitions for Chapter 461		
Policy/rule number(s):	461-001-0000	Release no:	
Effective date:	Immediate	Expiration:	
References:			
Web Address:			

Discussion/interpretation: For the OSIPM, QMB and SNAP programs the definitions of “legally married” and “marriage” in OAR 461-001-0000 have been amended in response to recent federal decisions related to the status of same-sex couples (see below for the draft amended rule text – section 37 & 42). The definitions now include same-sex couples who were married in jurisdictions where such marriages are legal. In the OSIPM, QMB and SNAP programs this means that a same-sex couple meeting these definitions will be treated as a married couple when determining eligibility in the same manner as if they were a man and woman.

Many states, including Oregon, do not recognize same-sex marriages at this time. This means, for example, that a same-sex couple who claims to have been married in Oregon would not meet the definition of “legally married”. Following is a list of states which do allow same-sex marriage as of October 21, 2013.

California	Connecticut	Delaware
District of Columbia	Iowa	Maine
Maryland	Massachusetts	Minnesota
New Hampshire	New Jersey	New York
Rhode Island	Vermont	Washington

Implementation/transition instructions: This policy is effective for all DOR's and SNAP filing dates established on or after January 1, 2014. Current recipients of OSIPM, QMB or SNAP should be evaluated under the new criteria at the next annual review, or when a change in circumstances causes a review of eligibility, on or after January 1, 2014.

For OSIPM and QMB:

Marriage verification requirements have not changed. Same-sex couples are subject to the same verification requirements as are currently in place for opposite-sex couples. APD WG B.1, Verifying Client Information (<http://www.dhs.state.or.us/spd/tools/additional/workergd/b.1.htm#01>), lists some of the documents that are commonly available to verify relationship.

For SNAP:

Accept the client's statement about their marriage status and where they were married. Do not pend or require verification unless questionable.

Training/communication plan: Review transmittal with staff. Contact central office for technical assistance.

Local/branch action required: Begin determining eligibility based on the new requirements immediately.

Central office action required: Provide technical assistance as needed. Update manuals.

Field/stakeholder review: Yes No

If yes, reviewed by:

Filing Instructions:

If you have any questions about this policy, contact:

Contact(s):	Bill Brautigam, 503-947-5204 Michael Avery, 503-945-6410 SNAP Policy: SNAP.POLICY@state.or.us		
Phone:		Fax:	
E-mail:	bill.h.brautigam@state.or.us michael.g.avery@state.or.us		

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), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except --
 - a. The rule in which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.
 - b. OCCS medical program eligibility rules are set out in the 410-200 division of Oregon Administrative Rules.
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 victims of domestic violence, sexual assault, or stalking.
3. "Adjusted income" means the amount determined by subtracting income deductions from *countable* income (see OAR [461-140-0010](#)). Specific rules on the deductions are found in division [461-160](#).
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* mailed no later than the date of action given in the notice.
7. "Branch office" means any Department or AAA (Area Agency on Aging) office serving a program covered by this chapter of rules.
8. "Budgeting" means the process of calculating the benefit level.
9. "Budget month" means the calendar month from which nonfinancial and financial information is used to determine *eligibility* and benefit level for the payment month.
10. "Cafeteria plan" means a written benefit plan offered by an employer in which:
 - a. All participants are employees; and
 - b. Participants can 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 Services 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).
11. "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise, 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.
12. "Caretaker" means an individual who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

13. "Caretaker relative" means:
- a. In the Pre-TANF, REF, SFPSS, and TANF programs, a dependent child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece who lives in a residence maintained by one or more of the relatives as the child's or the relative's own home.
 - b. In all programs not covered under subsection (a) of this section, a *caretaker* who meets the requirements of one of the following paragraphs:
 - A. Is one of the following relatives of the *dependent child*:
 - i. Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.
 - ii. Stepfather, stepmother, stepbrother, and stepsister.
 - iii. An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.
 - B. Is or was a spouse of an individual listed in paragraph (A) of this subsection.
 - C. Met the definition of *caretaker relative* under paragraph (A) or (B) of this subsection before the child was adopted (notwithstanding the child's subsequent adoption).
14. "Certification period" means the period for which a client is certified eligible for a program.
15. "Child" includes natural, step, and adoptive children. The term child does not include an unborn.
- a. In the ERDC program, a child need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR [461-120-0110](#), and must be:
 - A. Under the age of 18; or

- B. Under the age of 19 and in secondary school or vocational training at least half time.
 - b. In the GA, GAM, and OSIP programs, a child is an individual under the age of 18.
 - c. In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:
 - A. Under the age of 18; or
 - B. Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.
16. "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 disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.
 - 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 - People 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](#)).

17. "Continuing benefit decision notice" means a *decision notice* that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.
18. "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.
19. "Cover Oregon" means Oregon Health Insurance Exchange Corporation.
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 Department of Human Services (DHS).
23. "Dependent child", in the REF, REFM, and TANF programs, means the following:
 - a. An individual who is not a *caretaker relative* 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* 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 his or her *spouse*.
24. "Disability" means:
 - a. In the SNAP program, see OAR [461-001-0015](#).
 - b. In the REF, SFPSS, 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 by blood, *marriage*, 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 victims of domestic violence. If the facility serves other people, a portion must be used solely for victims 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 minus encumbrances.
30. "Fair market value" means the amount an item is worth on the open market.
31. "Family stability" in the JOBS, Pre-TANF, Post-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, Post-TANF, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain *family stability*.
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. "Income-producing property" means any real or personal property that generates income for the financial group. 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, condominiums.
35. "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 GA, GAM, OSIP, or OSIPM program living in a *nonstandard living arrangement*, for the purposes of calculating the correct divisor in OAR [461-140-0296](#), the month in which the client would have been eligible had it not been for the disqualifying transfer of assets.

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

37. "Legally married" means a marriage uniting two individuals according -

- 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.

38. "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 his or her life, certain rights to that property.

In addition, a life estate is established when a member of the *financial group* (see OAR [461-110-0530](#)) purchases a life estate interest in the home of another individual.

39. "Lodger" means a member of the *household group* (see OAR [461-110-0210](#)) who--
 - a. Is not a member of the filing group; and
 - b. Pays the filing group for room and board.
40. "Long-term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).
41. "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:
 - 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.
42. "**Marriage**" means the union of two individuals who are *legally married*.
43. "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.
44. "Minor parent", in the ERDC, REF, REFM, and TANF programs, means a parent under the age of 18.
45. "Nonstandard living arrangement" is defined as follows:
 - a. In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:
 - A. A nursing facility in which the client receives *long-term care* services paid with Medicaid funding, except this

subsection does not apply to a Medicare client in a skilled-stay nursing facility.

- B. An intermediate care facility for the mentally retarded (ICF/MR).
 - 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 (16) 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, GAM, 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. Homeless or *domestic violence shelter*.
 - E. Lodging house if paying for room and board.
 - F. Correctional facility.
 - G. Medical institution.

46. "OCCS" is the Office of Client and Community Services, part of the Medical Assistance Programs under the Oregon Health Authority responsible for OCCS medical program eligibility policy, community outreach, OCCS Medical Program eligibility determinations, and the OHA Customer Service Call Center.

47. "OCCS Medical Programs" refers to programs for which eligibility policy can be found in division 410-200 of Oregon Administrative Rule, and includes CEC, CEM, MAA, MAF, EXT, OHP, SAC, BCCTP and MAGI Medicaid/CHIP programs, including:

- a. MAGI Child
- b. MAGI Parent or Other Caretaker Relative
- c. MAGI Pregnant Woman

- d. MAGI CHIP
 - e. MAGI SAC
48. "Ongoing month" means one of the following:
- a. For all programs except SNAP, any month following the *initial month* 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* following the *initial month* of eligibility.
49. "Parent" for all programs except the SNAP program, means the biological or legal (step or adoptive) mother or father of an individual or unborn child. For the SNAP program, a parent means the biological or legal (step or adoptive) mother or father of an individual.
- a. If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity 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 blood 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 (the adoptive parent) has given up care, control, and supervision of the child.
50. "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

51. "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.
52. "Periodic income" means income received on a regular basis less often than monthly.
53. "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. For the TANF program, the parent or caretaker relative.
 - b. For the ERDC program, the caretaker.
 - c. For SNAP, see OAR [461-001-0015](#).
 - d. For the GA, GAM, OSIP, OSIPM, and QMB programs, the client or client's spouse.
 - e. For the REF and REFM programs, the applicant, caretaker, caretaker relative, or parent.
54. "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 client was a resident in Oregon on January 1, 2008 or later; or
 - b. Issued in another state while the client 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.
55. "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.
56. "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.
57. "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

58. "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](#).
59. "Shelter-in-kind" means an agency or person outside the *financial group* (see OAR [461-110-0530](#)) provides the shelter of the *financial group*, or makes a payment to a third party for some or all of the *shelter costs* of the *financial group*. *Shelter-in-kind* does not include temporary shelter provided by a domestic violence shelter, homeless shelter, 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.
60. "Sibling" means the brother or sister of an individual. "Blood-related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the *marriage* of their parents.
61. "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* (see OAR [461-110-0530](#)).
62. "Spouse" means an individual who is *legally married* to another individual. In the ERDC program, *spouse* includes an individual who is not *legally married* to another, but is presenting themselves to the community as the spouse by:
- a. Representing themselves as married to relatives, friends, neighbors, or tradespeople; and
 - b. Sharing living expenses or household duties.
63. "Stable income" means income that is the same amount each time it is received.
64. "Standard living arrangement" means a location that does not qualify as a *nonstandard living arrangement*.
65. "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

66. "Timely continuing benefit decision notice" means a *decision notice* that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR [461-175-0050](#).
67. "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.
68. "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.
69. "Variable income" means earned or unearned income that is not always received in the same amount each month.