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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 47-2024
CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED
08/23/2024 11:14 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Summer EBT Program Eligibility, Overpayments, and Intentional Program Violations

EFFECTIVE DATE: 08/23/2024 THROUGH 02/18/2025

AGENCY APPROVED DATE: 08/23/2024

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NEED FOR THE RULE(S):

All of the rules in this filing need to be amended or adopted to implement the new Summer EBT program in Oregon.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by adopting and amending the rules in this filing will result in serious prejudice to the public interest, the Department, and children who qualify for Summer EBT benefits. The Department needs to proceed with temporary rulemaking to guide eligibility for the program, which started this summer. Failure to act immediately to establish these rules could result in benefit issuance delays, confusion for the public, or inaccurate eligibility decisions.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon's Summer EBT Plan of Operation and Management (available by request through the Summer EBT policy analyst)

Oregon's Summer EBT Waivers (available by request through the Summer EBT policy analyst)

USDA FNS Summer EBT 2024 Q&A:
https://fns-prod.azureedge.us/sites/default/files/resource-files/sebt-webinar-qa-II.pdf

Oregon's Summer EBT website: https://www.oregon.gov/odhs/food/Pages/sebt.aspx

https://www.govinfo.gov/app/details/PLAW-113publ79/

RULES:
461-195-0501, 461-195-0521, 461-195-0541, 461-195-0601, 461-195-0611, 461-195-0621, 461-196-0140, 461-196-0150, 461-196-0160, 461-196-0170

AMEND: 461-195-0501

RULE TITLE: Definitions and Categories of Overpayments

RULE SUMMARY: OAR 461-195-0501 is being amended to add overpayment provisions for the Summer EBT program.

RULE TEXT:

This rule applies to benefits and services delivered under chapters 410, 411, 414, and 461 of the Oregon Administrative Rules.

(1) "Overpayment" means:

(a) A benefit or service received by or on behalf of a recipient (see OAR 461-195-0301), or a payment made by the Department (see OAR 461-195-0301) on behalf of a recipient, that exceeds the amount for which the recipient is eligible.

(b) A payment made by the Department and designated for a specific purpose which is spent by a person on an expense not approved by the Department.

(A) In the Refugee Assistance (REF) program, there is a rebuttable presumption that the full amount of cash benefits was improperly spent in violation of OAR 461-165-0010(8)(a) when cash benefits are used or accessed in Oregon, outside of Oregon, or on Tribal lands at:

(i) Any liquor store (see OAR 461-165-0010);

(ii) Any casino, gambling casino, or gaming establishment (see OAR 461-165-0010);

(iii) Any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or

(iv) Any marijuana dispensary.

(B) In the State Family Pre-SSI/SSDI (SFPSS) and Temporary Assistance for Needy Families (TANF) programs, there is a rebuttable presumption that the full amount of cash benefits was improperly spent in violation of OAR 461-165-0010(9)(a) when cash benefits are used or accessed in Oregon, outside of Oregon, or on Tribal lands at:

(i) Any liquor store;

(ii) Any casino, gambling casino, or gaming establishment;

(iii) Any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or

(iv) Any marijuana dispensary.

(C) The rebuttable presumptions in paragraphs (A) and (B) of this section also apply when an individual in a location covered in paragraphs (A) or (B) uses or accesses cash benefits from a private bank account.

(c) A payment for child care made by the Department to, or on behalf of, a recipient that:

(A) Is paid to an ineligible provider;

(B) Exceeds the amount for which a provider is eligible;

(C) Is paid when the recipient was not engaged in an activity that made the recipient eligible for child care, such as an activity of the Job Opportunity and Basic Skills (JOBS) program (see OAR 461-001-0025 and OAR 461-190-0151 to OAR 461-190-0401); or

(D) Is paid when the recipient was not eligible for child care benefits.

(d) A misappropriated payment when a person cashes and retains the proceeds of a check from the Department on which that person is not the payee and the check has not been lawfully endorsed or assigned to the person.

(e) A benefit or service provided for a need when that person is compensated by another source for the same need and the person fails to reimburse the Department when required to do so by law.

(f) A cash benefit received by an individual in the GA or SFPSS programs for each month for which the recipient receives a retroactive Supplemental Security Income (SSI) lump sum payment.

(g) In the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program, a payment made by the Department to an individual or on behalf of an individual when the individual intentionally and without intimidation or coercion by an abuser:

(A) Makes a false or misleading statement or misrepresents, conceals, or withholds information for the purpose of establishing eligibility (see OAR 461-001-0000) for or receiving a benefit from the TA-DVS program; or
(B) Commits any act intended to mislead or misrepresent, conceal, or withhold information for the purpose of establishing eligibility for or receiving a benefit from the TA-DVS program.
(2) The Department may establish an overpayment for the initial month (see OAR 461-001-0000) of eligibility under circumstances including, but not limited to:
(a) The filing group (see OAR 461-110-0310 and 414-175-0015), ineligible student, or authorized representative (see OAR 461-115-0090 and 414-175-0002) withheld information;
(b) The filing group, ineligible student, or authorized representative provided inaccurate information;
(c) The Department failed to use income reported as received or anticipated in determining the benefits of the filing group; or
(d) The error was due to an error in computation or processing by the Department.
(3) Retroactively effective April 21, 2021, for medical assistance the Department:
(a) Shall not establish an administrative error overpayment,
(b) Shall not establish a client error overpayment unless an individual received unreduced liability or unreduced benefits pending a contested case hearing decision or other final order favorable to the Department, and
(c) May establish a fraud overpayment when a court determines the individual made a false or misleading statement or misrepresented, concealed, or withheld a fact for the purpose of establishing or maintaining eligibility.
(4) Overpayments are categorized as follows:
(a) An administrative error overpayment is an overpayment caused by any of the following circumstances:
(A) The Department fails to reduce, suspend, or end benefits after timely reporting by the filing group, ineligible student, or authorized representative of a change covered under OAR 461-170-0011 or 414-175-0060 and that reported change requires the Department to reduce, suspend, or end benefits;
(B) The Department fails to use the correct benefit standard;
(C) The Department fails to compute or process a payment correctly based on accurate information timely provided by the filing group, ineligible student, or authorized representative;
(D) In the General Assistance (GA) and SFPSS programs, the Department fails to require a recipient to complete an interim assistance agreement; or
(E) The Department commits a procedural error that was no fault of the filing group, ineligible student, or authorized representative.
(b) A client error overpayment is any of the following:
(A) An overpayment caused by the failure of a filing group, ineligible student, or authorized representative to declare or report information or a change in circumstances as required under OAR 461-170-0011 or 414-175-0060, including information available to the Department, that affects the recipient's eligibility to receive benefits or the amount of benefits.
(B) A recipient's unreduced liability or receipt of unreduced benefits pending a contested case hearing decision or other final order favorable to the Department.
(C) A recipient's failure to return a benefit known by the recipient to exceed the correct amount.
(D) A recipient's use of a JOBS or SFPSS program support payment (see OAR 461-190-0211) for other than the intended purpose.
(E) A payment for child care when the recipient was not eligible for child care benefits.
(F) The failure of a recipient to pay their entire share of the cost of services or the participant fee (see OAR 461-160-0610 and 461-160-0800) in the month in which it is due.
(G) In the REF, SFPSS, and TANF programs, an overpayment caused by the recipient using or accessing cash benefits in any electronic benefit transaction in any liquor store; casino, gambling, or gaming establishment; retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or marijuana dispensary (see OAR 461-165-0010).

(c) A fraud overpayment is an overpayment determined to be an intentional program violation (see OAR 461-195-0601 and 461-195-0611) or substantiated through a court determining the individual made a false or misleading statement or misrepresented, concealed, or withheld a fact for the purpose of establishing or maintaining eligibility.
(d) In the Supplemental Nutrition Assistance Program (SNAP), a provider error overpayment is an overpayment made to a drug or alcohol treatment center or residential care facility that acted as a recipient's authorized representative.
(e) In a child care program, a provider error overpayment is a payment made by the Department on behalf of a recipient to a child care provider when:
(A) Paid to an ineligible provider; or
(B) The payment exceeds the amount for which a provider is eligible.
(5) When an overpayment is caused by both an administrative and client error in the same month, the Department determines the primary cause of the overpayment and assigns as either an administrative or client error overpayment.
(6) In the TANF and TA-DVS programs, when an overpayment puts the recipient at greater risk of domestic violence (see OAR 461-001-0000), the overpayment is waived (see OAR 461-135-1200).
(7) Except as provided in section (8) of this rule, the Department establishes an overpayment when the following thresholds are exceeded:
(a) Administrative error overpayments concerning:
(A) Cash and child care programs, when the amount is greater than $200;
(B) SNAP open case, when the amount is greater than $100; and
(C) SNAP closed case, when the amount is greater than $200.
(b) Client error overpayments in:
(A) Cash and child care programs, when the amount is greater than $200;
(B) SNAP open case, when the amount is greater than $100; and
(C) SNAP closed case, when the amount is greater than $200.
(c) Provider error overpayments in:
(A) Cash and child care programs, when the amount is greater than $200;
(B) SNAP open case, when the amount is greater than $100;
(C) SNAP closed case, when the amount is greater than $200.
(8) There are no overpayment thresholds in all of the following situations:
(a) In SNAP program, if the overpayment was identified in a quality control review.
(b) In all programs, if the overpayment was caused by a recipient's receipt of continuing benefits in a contested case.
(c) In all programs except Summer EBT (SEBT), if the overpayment was caused by possible fraud by a recipient or provider.
(9) In the SEBT program, the Department (see 461-196-0020) establishes an overpayment when OAR 461-196-0160 subsections (1)(a) through (1)(c) are true.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 411.060, 411.070, 411.081, 411.404, 411.816, 412.001, 412.014, 412.049, HB 2089 (2013 Section 10)

STATUTES/OTHER IMPLEMENTED: 411.060, 411.070, 411.081, 411.404, 411.816, 412.001, 412.014, 412.049, ORS 409.010, 411.620, 411.640, 411.690, 411.892, 414.025, 416.350, 7 CFR 273.18, 42 U.S.C. 608, 412.072

AMEND: 461-195-0521

RULE TITLE: Calculation of Overpayments

RULE SUMMARY: OAR 461-195-0521 is being amended to add Summer EBT provisions for calculating overpayments.

RULE TEXT:

This rule specifies how the Department calculates an overpayment (see OAR 461-195-0501).

(1) The Department calculates an overpayment by determining the amount the individual received, or the payment made by the Department on behalf of the individual that exceeds the amount for which the individual was eligible.

(2) When a filing group (see OAR 461-110-0310, 461-196-0020 and OAR 414-175-0015), HSD medical programs (see OAR 461-001-0000) eligibility determination group (see OAR 410-200-0015), ineligible student, or authorized representative (see OAR 461-115-0090 and OAR 410-200-0015) fails to report income, the Department establishes, calculates and determines the overpayment by assigning unreported income to the applicable budget month without averaging the unreported income, except:

(a) An individual's earned income reported quarterly from the Employment Department is considered received by the individual in equal amounts during the months identified in the report.

(b) In the Employment Related Day Care (ERDC), Refugee Assistance (REF), Summer EBT (SEBT), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) programs, an individual's actual self-employment income is annualized retrospectively to calculate the overpayment.

(c) In the HSD medical programs, if actual income is not available for the months in which an overpayment occurred, an individual's actual self-employment income (see OAR 410-200-0015) received during the year when an overpayment occurred is annualized to calculate an overpayment.

(d) In all programs, if verification of self-employment income is not provided to the Department following the issuance of a subpoena, or is not yet available to the individual, self-employment income from a prior year is annualized prospectively to calculate an overpayment. There is a rebuttable presumption that self-employment income from the prior year is representative of actual self-employment income for the time of overpayment. The presumption may be rebutted only by clear and convincing evidence.

(3) The Department establishes, calculates, and determines an administrative error overpayment (see OAR 461 195 0501) based on information initially provided by a filing group, ineligible student, or authorized representative. The Department may calculate the administrative error overpayment by using any of the following:

(a) Correct prospective budgeting (see OAR division 461-150 and OAR 414-175-0040) based on information initially provided; or if it results in a lower overpayment amount;

(b) Actual income; or

(c) Averaging an individual's earned income reported quarterly from the Employment Department.

(4) When using prospective budgeting (see OAR division 461-150 or OAR 414-175-0040) and the actual income differs from the amount determined under OAR 461-150-0020(2) or OAR 414-175-0040, there may be a client error overpayment (see OAR 461-195-0501) only when the filing group, ineligible student, or authorized representative withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an overpayment.

(5) The Department uses actual income to determine the amount of a medical assistance overpayment caused by possible fraud.

(6) When a filing group, ineligible student, or authorized representative fails to report all earned income within the reporting time frame, the earned income deduction (see OAR 461-160-0160, 461-160-0190, 461-160-0430, 461-160-0550, or 461-160-0552) is applied as follows:

(a) In the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), Qualified Medicare Beneficiaries (QMB), and Refugee Assistance Medical (REFM) programs, the Department allows the earned income deduction.

(b) In the REF and TANF programs, the Department allows the earned income deduction when good cause (see section

(7) of this rule) exists.
(c) In the SNAP program, no deduction is applied to earned income if the amount or source of income was not timely reported.
(7) For the purposes of OAR 461-195-0501 to 461-195-0561, "good cause" means circumstances beyond the individual's reasonable control that caused the individual to be unable to report income timely and accurately.
(8) When support is retained:
(a) In the TANF program, the amount of support (other than cash medical support) the Department of Justice retains as a current reimbursement each month is added to other income to determine eligibility (see OAR 461-001-0000). When an individual is not eligible for TANF program benefits, the overpayment is offset by the support the Department of Justice retains as a current reimbursement.
(b) For medical assistance, the amount of the cash medical support the Department retains each month is excluded income and not used to determine eligibility. When an individual has incurred a medical assistance overpayment, the overpayment is offset by the amount of the cash medical support the Department retains during each month of the overpayment.
(9) In the REF and TANF programs, when an individual directly receives support used to determine eligibility or calculate benefits, the overpayment is:
(a) If still eligible for REF or TANF program benefits, the amount of support the individual received directly; or
(b) If no longer eligible for REF or TANF program benefits, the amount of program benefits the individual received.
(10) When an overpayment occurs due to the failure of an individual to reimburse the Department, when required by law to do so, for benefits or services (including cash medical support) provided for a need for which that individual is compensated by another source, the overpayment is limited to the lesser of the following:
(a) The amount of the payment from the Department;
(b) Cash medical support; or
(c) The amount by which the total of all payments exceeds the amount payable for such a need under the Department's rules.
(11) Benefits paid during a required notice period (see OAR 461-175-0050, OAR 410-200-0120, or 414-175-0055) are included in the calculation of the overpayment when:
(a) The filing group, HSD medical programs eligibility determination group, ineligible student, or authorized representative (see OAR 461-115-0090, OAR 410-200-0015, and OAR 414-175-0002) failed to report a change within the reporting time frame under OAR 461-170-0011, OAR 410-200-0235, or OAR 414-175-0060; and
(b) Sufficient time existed for the Department to adjust the benefits to prevent the overpayment if the filing group, HSD medical programs eligibility determination group, ineligible student, or authorized representative had reported the change at any time within the reporting time frame.
(12) In the SNAP program, if the benefit group (see OAR 461-110-0750) was categorically eligible under OAR 461-135-0505, there is no overpayment based on resources.
(13) In the OSIP and OSIPM programs, when a individual does not pay their share of the cost of services (see OAR 461-160-0610) or the Oregon Supplemental Income Program-Employed Persons with Disabilities (OSIP-EPD) or Oregon Supplemental Income Program Medical-Employed Persons with Disabilities (OSIPM-EPD) program participant fee (see OAR 461-160-0800) in the month in which it is due, an overpayment is calculated as follows:
(a) All payments made by the Department on behalf of the individual during the month in question are totaled, including but not limited to any payment for:
(A) Capitation;
(B) Long term care services;
(C) Medical expenses for the month in question;
(D) Medicare buy-in (when not concurrently eligible for an MSP);
(E) Medicare Part D;
(F) Mileage reimbursement;

(G) Special needs under OAR 461-155-0500 to 461-155-0710; and
(H) Home and community-based care (see OAR 461-001-0030), including home delivered meals and non-medical transportation.
(b) Any partial or late liability payment made by an individual receiving home and community-based care in-home services or participant fee paid by an OSIP-EPD or OSIPM-EPD program participant is subtracted from the total calculated under subsection (a) of this section. The remainder, if any, is the amount of the overpayment.
(14) When an individual's liability is unreduced pending the outcome of a contested case hearing about that liability the overpayment is the difference between the liability amount determined in the final order and the amount, if any, the individual has repaid.
(15) For medical assistance, if the individual was not eligible for one program, but during the period in question was eligible for another program with the same benefit level, there is no overpayment.
(16) Credit against an overpayment is allowed as follows:
(a) In the General Assistance (GA), REF, and TANF programs, a credit is allowed for an individual's payment for medical assistance made during the period covered by the overpayment, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless the Department authorized the procedure prior to its completion.
(b) In the SNAP program, if the overpayment was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.
(c) In all programs, for an underpayment of benefits in the program in which the overpayment occurred.
(17) In the REF program, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(8)(a), the amount of the overpayment is the amount of cash benefits the individual used or accessed.
(18) In the State Family Pre-SSI/SSDI (SFPSS) and TANF programs, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(9)(a), the amount of the overpayment is the amount of cash benefits the individual used or accessed.

STATUTORY/OTHER AUTHORITY: ORS 329A.500, 413.085, 414.685, ORS 409.050, 411.060, 411.070, 411.404, 411.660, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231

STATUTES/OTHER IMPLEMENTED: ORS 329A.500, 411.060, 411.070, 411.404, 411.660, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231, ORS 409.010, 411.620, 411.630, 411.635, 411.640, 411.690, 416.350

AMEND: 461-195-0541

RULE TITLE: Liability for Overpayments

RULE SUMMARY: OAR 461-195-0541 is being amended to add provisions for liability for overpayments in the Summer EBT program.

RULE TEXT:

(1) In all programs except the Health Systems Division (HSD) medical, Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), Qualified Medicare Beneficiaries (QMB), Refugee Assistance Medical (REFM), Summer EBT (SEBT) and Supplemental Nutrition Assistance Program (SNAP) or a child care program, the following persons are liable for repayment of an overpayment (see OAR 461-195-0501):

(a) Each individual in the filing group or required to be in the filing group and the payee when the overpayment was incurred, except an individual who did not reside with and did not know they were included in the filing group.

(b) A caretaker relative (see OAR 461-001-0000) and their spouse (see OAR 461-001-0000) who were not part of, but resided with, the filing group when the overpayment was incurred.

(c) A parent (see OAR 461-001-0000) or caretaker relative of a child (see OAR 461-001-0000) in the benefit group (see OAR 461-110-0750) and the spouse of the parent or caretaker relative if the parent, caretaker relative, or spouse was a member of or resided with the filing group when the overpayment was incurred.

(d) An individual determined liable for an overpayment remains liable when the individual becomes a member of a new filing group.

(e) An authorized representative (see OAR 461-115-0090) when the authorized representative knowingly gave incorrect or incomplete information or intentionally withheld information resulting in the overpayment.

(2) In the HSD medical and REFM programs, the following persons are liable for repayment of an overpayment:

(a) Each individual in the filing group, the HSD medical programs eligibility determination group (see OAR 410-200-0015), or required to be in the filing group and the payee when the overpayment was incurred, except an individual who ---

(A) Was a child or dependent child (see OAR 461-001-0000) at the time of the overpayment; or

(B) Did not reside with and did not know they were included in the filing group.

(b) A caretaker relative and their spouse who were not part of, but resided with, the filing group or HSD medical programs eligibility determination group when the overpayment was incurred.

(c) A parent or caretaker relative of a child in the filing group or HSD medical programs eligibility determination group and the spouse of the parent or caretaker relative if the parent, caretaker relative, or spouse was a member of or resided with the filing group or HSD medical programs eligibility determination group when the overpayment was incurred.

(d) An authorized representative (see OAR 461-115-0090 and OAR 410-200-0015) when the authorized representative knowingly gave incorrect or incomplete information or intentionally withheld information that resulted in the overpayment.

(3) In a child care program:

(a) An overpayment caused by administrative error is collectible as follows:

(A) The provider is liable for a provider overpayment made on behalf of a recipient (see OAR 461-195-0301) eligible for child care payments.

(B) Each adult in the filing group or required to be in the filing group is liable for an overpayment if the recipient was not eligible for the payment.

(b) Each adult in the filing group or required to be in the filing group is liable for a client error overpayment (see OAR 461-195-0501), and a provider is liable for an overpayment caused by the provider. The recipient and provider are jointly and severally liable for an overpayment caused by both. In the case of an alleged provider overpayment, a provider's failure to provide contemporaneous records of care provided creates a rebuttable presumption that the care was not provided.

(c) An adult who cosigned an application with a minor provider applicant is liable for an overpayment incurred by the minor provider.
(d) An authorized representative (see OAR 461-115-0090 and 414-175-0002) is liable for an overpayment when the authorized representative knowingly gave incorrect or incomplete information or intentionally withheld information that resulted in the overpayment.
(4) In the General Assistance (GA), OSIP, OSIPM, and QMB programs, the following persons are liable for repayment of an overpayment:
(a) Each individual in the filing group or required to be in the filing group and the payee when the overpayment was incurred, except an individual who ---
(A) Was a child or dependent child at the time of the overpayment; or
(B) Did not reside with and did not know they were included in the filing group.
(b) A caretaker relative and their spouse who were not part of, but resided with, the filing group when the overpayment was incurred.
(c) A parent or caretaker relative of a child in the filing group and the spouse of the parent or caretaker relative if the parent, caretaker relative, or spouse was a member of or resided with the filing group when the overpayment was incurred.
(d) An authorized representative when the authorized representative knowingly gave incorrect or incomplete information or intentionally withheld information that resulted in the overpayment.
(5) In the SNAP program, the following persons are liable for repayment of an overpayment or a claim that results from trafficking (see OAR 461-195-0601(2)) of SNAP benefits:
(a) The primary person (see OAR 461-001-0015) of any age, an ineligible student in the household, and all adults (see OAR 461-001-0015) who were members of or required to be in the filing group (see OAR 461-110-0370) when excess benefits were issued.
(b) A sponsor of a noncitizen household member if the sponsor is at fault, for payments prior to November 21, 2000.
(c) A drug or alcohol treatment center or residential care facility that acted as the authorized representative of the recipient.
(d) An authorized representative when the authorized representative knowingly gave incorrect or incomplete information or intentionally withheld information that resulted in the overpayment.
(e) For a claim that results in trafficking, the payee and the authorized representative when they actually traffic the benefits.
(6) Except as provided otherwise in section (7) of this rule, in all programs, both a noncitizen and the sponsor of the noncitizen are liable for an overpayment incurred if the overpayment results from the failure of the sponsor to provide correct information (see OAR 461-145-0820 to 461-145-0840). If the sponsor had good cause (see OAR 461-195-0521(5)) for withholding the information, the sponsor is not liable for the overpayment.
(7) In the SNAP program, the sponsor of a noncitizen is not liable under section (6) of this rule for payments on or after November 21, 2000.
(8) In the HSD medical programs, the November 2013 amendments to OAR 461-195-0501, 461-195-0521, 461-195-0541, and 461-195-0561 apply as of October 1, 2013.
(9) In the SEBT program, the following individuals are liable for repayment of an overpayment or a claim that results from trafficking (see OAR 461-195-0601(6)(b)) of SEBT benefits:
(a) All adults (see OAR 461-196-0020) who were members of or required to be in the filing group (see OAR 461-196-0020) when excess benefits were issued.
(b) An authorized representative (see OAR 461-196-0030) when the authorized representative knowingly gave incorrect or incomplete information or intentionally withheld information that resulted in the overpayment.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 411.060, 411.404, 411.816, 412.014, 412.049, 329A.500, 413.085, 414.685

STATUTES/OTHER IMPLEMENTED: 411.060, 411.404, 411.816, 412.014, 412.049, ORS 409.010, 411.087, 411.630, 411.635, 411.640, 411.690, 416.350, 329A.500

AMEND: 461-195-0601

RULE TITLE: Intentional Program Violations; Defined

RULE SUMMARY: OAR 461-195-0601 is being amended to add intentional program violation provisions for the Summer EBT program.

RULE TEXT:

(1) In the child care programs, a provider commits an intentional program violation (IPV) by intentionally making a false or misleading statement or misrepresenting, concealing, or withholding information related to their request to be eligible for a child care payment under OAR 461-165-0180 or 414-175-0080, or a claim for a child care payment.

(2) In the Supplemental Nutrition Assistance Program (SNAP):

(a) An individual commits an intentional program violation by:

(A) Making a false or misleading statement or misrepresenting, concealing or withholding a fact relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking (see OAR 461-195-0601(2)(b)) of SNAP benefits; or

(B) Committing any act that constitutes a violation of the Food Stamp Act, the SNAP program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of SNAP benefits.

(b) "Trafficking" means any of the following:

(A) The buying, selling, stealing, or other exchange of SNAP benefits for cash or consideration other than eligible food, either directly or indirectly, in complicity or collusion with others or acting alone.

(B) The exchange of firearms, ammunition, explosives, or controlled substances (as defined in section 802 of title 21, United States Code), for SNAP benefits.

(C) Purchasing a product with SNAP benefits that has a container return deposit with the intent of obtaining cash by intentionally discarding the product and returning the container for the deposit amount.

(D) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by intentionally reselling the product purchased with SNAP benefits.

(E) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(3) In the State Family Pre-SSI/SSDI (SFPSS) program, an individual commits an intentional program violation by intentionally:

(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing or maintaining eligibility (see OAR 461-001-0000) for SFPSS or increasing, or preventing a reduction in, the amount of the SFPSS grant; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing or maintaining eligibility for SFPSS or increasing, or preventing a reduction in, the amount of the SFPSS grant.

(4) In the Refugee Assistance (REF), Refugee Assistance Medical (REFM), and Temporary Assistance for Needy Families (TANF) programs, an individual commits an intentional program violation by intentionally:

(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing or maintaining eligibility for the REF, REFM, or TANF programs, or increasing or preventing a reduction in the amount of the REF or TANF grant; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing or maintaining eligibility for the REF, REFM, or TANF programs, or increasing or preventing a reduction in the amount of the REF or TANF grant.

(5) In the Summer EBT (SEBT) program, intentional program violation penalties apply to an adult (see OAR 461-196-0020) who:

(a) Commits an intentional program violation as defined in subsection (6)(a) of this rule; or

(b) Ordered, coerced, persuaded, encouraged, or otherwise induced an individual under the age of 18 to commit an SEBT intentional program violation.

(6) In the SEBT program:
(a) An individual commits an intentional program violation by:
(A) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing or maintaining eligibility for the SEBT program or trafficking (see OAR 461-195-0601(6)(b)) of SEBT benefits; or
(B) Committing any act that constitutes a violation of the Agricultural Act of 2014, the SEBT program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of SEBT benefits.
(b) "Trafficking" means any of the following:
(A) The buying, selling, stealing, or other exchange of SEBT benefits for cash or consideration other than eligible food, either directly or indirectly, in complicity or collusion with others or acting alone.
(B) The exchange of firearms, ammunition, explosives, or controlled substances (as defined in section 802 of title 21, United States Code), for SEBT benefits.
(C) Purchasing a product with SEBT benefits that has a container return deposit with the intent of obtaining cash by intentionally discarding the product and returning the container for the deposit amount.
(D) Purchasing a product with SEBT benefits with the intent of obtaining cash or consideration other than eligible food by intentionally reselling the product purchased with SEBT benefits.
(E) Intentionally purchasing products originally purchased with SEBT benefits in exchange for cash or consideration other than eligible food.

STATUTORY/OTHER AUTHORITY: ORS 411.060, 411.660, 411.816, 412.014, 412.049

STATUTES/OTHER IMPLEMENTED: ORS 411.060, 411.630, 411.635, 411.660, 411.816, 412.014, 412.049

AMEND: 461-195-0611

RULE TITLE: Intentional Program Violations; Establishment and Appeal

RULE SUMMARY: OAR 461-195-0611 is being amended to add the Summer EBT program to existing rule provisions about intentional program violation establishment and appeals.

RULE TEXT:

(1) In the Employment Related Day Care (ERDC), Refugee Assistance (REF), Refugee Assistance Medical (REFM), Summer EBT (SEBT), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) programs, an intentional program violation (IPV) is established by a state or federal court, by an administrative agency in a contested case, or by a person signing the designated form acknowledging the IPV and waiving the right to an administrative hearing. If the IPV will be established in a contested case, the Department initiates the IPV hearing.

(2) Except as provided in section (3) of this rule, there is no administrative appeal after a person waives the right to an IPV hearing and the penalty may not be changed by subsequent administrative action.

(3) A person who waives the right to an IPV hearing may seek relief in court or request a contested case hearing on the sole issue of whether the waiver was signed under duress (see OAR 461-025-0310 and 414-175-0095). If there is a determination that the waiver was signed under duress, the initial IPV penalty is void, and:

(a) If a court determines that a waiver was signed under duress, the court may determine whether an IPV occurred and the amount of the penalty.

(b) If an administrative law judge determines that a waiver was signed under duress, the Department may initiate an IPV hearing to determine whether an IPV occurred and the amount of the penalty.

STATUTORY/OTHER AUTHORITY: 411.060, 411.095, 411.816, 412.049, ORS 329A.500, 409.050, 413.085, 414.685

STATUTES/OTHER IMPLEMENTED: 411.060, 411.095, 411.816, 412.049, 409.010

AMEND: 461-195-0621

RULE TITLE: Intentional Program Violations; Penalties and Liability for Overpayments

RULE SUMMARY: OAR 461-195-0621 is being amended to add intentional program violation penalties for the Summer EBT program. It is also being amended to remove the Refugee Assistance Medical program because intentional program violations are not established in this program.

RULE TEXT:

(1) Disqualification penalties resulting from intentional program violations and other violations of law are listed in this rule. An individual may be subject to disqualification for an intentional program violation (IPV) (see OAR 461-195-0601) only if the individual was advised of the disqualification penalties prior to committing the IPV. A disqualification established in another state or established in the Food Distribution Program on Indian Reservations continues in effect in Oregon.

(2) In the Employment Related Day Care (ERDC) program, if an IPV is established against an individual through a contested case hearing, a waiver of the right to hearing, or by a state or federal court, that individual is liable for repayment to the Department of the full amount of overpayment (see OAR 461-195-0501) the Department has established. Payments of restitution to the Department are credited against the amount owed. A recipient (see OAR 461-195-0301) is not subject to an IPV disqualification but is still required to repay overpayment amounts.

(3) A child care provider who has incurred an overpayment established as an IPV claim is ineligible for payment---

(a) For six months and until the full amount of the overpayment is paid; or

(b) Permanently, if the Department of Early Learning and Care (DELC) finds that such ineligibility is in the public interest. The following is a non-exclusive list of reasons that support a determination of permanent ineligibility: safety concerns; or, the likelihood of future violations; or, the degree of egregiousness of any of the established IPVs; or, the degree of primary involvement in the violation by the provider.

(4) In the Refugee Assistance (REF), Summer EBT (SEBT), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) programs, when an IPV is established against an individual through a contested case hearing, a waiver of the right to hearing, or by a state or federal court:

(a) Except as otherwise set forth in this section, the individual is disqualified from receiving benefits in the program in which the IPV was committed for a period of 12 calendar months for the first IPV, 24 calendar months for the second IPV, and permanently for the third IPV.

(b) In the REF program, the individual is disqualified from receiving benefits in the program in which the IPV was committed for the remaining twelve months of eligibility.

(c) An individual found by a federal, state, or local court to have traded a controlled substance for SNAP benefits is disqualified from participation in the SNAP program as follows:

(A) For a period of two years upon the first occasion.

(B) Permanently upon the second occasion.

(d) An individual found by a federal, state, or local court to have traded a controlled substance for SEBT benefits is disqualified from participation in the SEBT program as follows:

(A) For a period of two years upon the first occasion.

(B) Permanently upon the second occasion.

(e) An individual found by a federal, state, or local court to have traded firearms, ammunition, or explosives for SNAP benefits is permanently disqualified from participation in the SNAP program.

(f) An individual found by a federal, state, or local court to have traded firearms, ammunition, or explosives for SEBT benefits is permanently disqualified from participation in the SEBT program.

(g) An individual convicted of trafficking (see OAR 461-195-0601) SNAP benefits for a value of $500 or more is permanently disqualified from participation in the SNAP program.

(h) An individual convicted of trafficking (see OAR 461-195-0601) SEBT benefits for a value of $500 or more is permanently disqualified from participation in the SEBT program.

(i) Unless permanently disqualified in the same program, an individual is disqualified for a 10-year period from receiving benefits in the program in which the individual committed fraud if the individual --
(A) In TANF program:
(i) Is convicted in state or federal court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more states under programs that are funded under Title IV or XIX of the Social Security Act; or
(ii) Is found in an IPV hearing or admits, in a written waiver of the right to an IPV hearing, to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive benefits simultaneously from two or more states.
(B) In the SNAP program, is found to have or admits to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously.
(C) In the SEBT program, is found to have or admits to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SEBT benefits simultaneously.
(5) If the TANF grant is affected by the IPV penalty imposed under this rule, eligibility (see OAR 461-001-0000) for and the level of SNAP benefits are determined in accordance with OAR 461-145-0105.
(6) Once a disqualification period begins, it continues uninterrupted until completed, regardless of the eligibility of the filing group (see OAR 461-110-0310 and 461-196-0020) of the disqualified individual.

STATUTORY/OTHER AUTHORITY: 409.050, 411.060, 411.816, 412.049, ORS 329A.500

STATUTES/OTHER IMPLEMENTED: 411.060, 411.816, 412.049, 409.010, ORS 329A.500, 7 CFR 273.16, 7 CFR 273.18, 45 CFR 400

ADOPT: 461-196-0140

RULE TITLE: Replacement of Benefits; SEBT

RULE SUMMARY: OAR 461-196-0140 is being adopted to describe when the Department can and cannot replace Summer EBT benefits.

RULE TEXT:
(1) The Department (see OAR 461-196-0020) will only replace Summer EBT (SEBT) benefits if the provisions in section (2) or (3) of this rule apply.
(2) In the event of a household misfortune or disaster, the Department shall replace the value of food purchased with SEBT benefits when subsections (a) through (d) of this section are true. The replacement is limited and issued under subsection (e) of this section.
(a) The food was destroyed by a filing group (see OAR 461-196-0020) misfortune or disaster.
(b) The filing group misfortune or disaster is verified.
(c) The filing group reports the loss of food.
(d) The filing group submits both the following:
(A) An itemized list of the food lost and the estimated cost of the food.
(B) A signed statement or affidavit attesting to the loss.
(e) The replacement of destroyed food is governed as follows:
(A) The amount of SEBT benefits spent prior to the date of disaster or misfortune up to the full SEBT benefit amount per child for the summer operational period (see OAR 461-196-0020 and 461-196-0060) may be replaced.
(B) The Department will issue a timely replacement of the value of loss within ten days after the filing group reported the loss or two working days of receiving a signed statement or affidavit, the itemized list of destroyed food and cost and verification of the household misfortune or disaster.
(3) The Department shall replace stolen or compromised SEBT program benefits only if the loss is caused by one of the reasons listed in paragraphs(3)(a)(A) or (3)(a)(B) of this rule. For the purposes of this section, compromised means the EBT card or the EBT card number has been used by an unauthorized individual to withdraw or spend the SEBT benefits of the filing group.
(a) The loss of SEBT benefits must be caused by one of the following:
(A) The Department issued the EBT card to an unauthorized individual who was not in the filing group.
(B) The Department failed to cancel the EBT card after the filing group reported to the Department that it had been lost, stolen, or compromised.
(b) The replacement of lost SEBT benefits is governed as follows:
(A) When the loss is caused under paragraph 3(a)(A) of this rule, the Department shall replace all compromised SEBT benefits.
(B) When the loss is caused under paragraph (3)(a)(B) of this rule, the Department will only replace the additional compromised SEBT benefits after the filing group reported to the Department the EBT card had been lost, stolen, or compromised.
(C) The Department will issue a timely replacement of the value of the loss only after the filing group reported the loss.
(4) The Department will replace an EBT card reported lost, stolen, or not received only after the current card has been deactivated. An EBT card that is damaged or not functioning properly is replaced only after the card's status is changed to "card damaged" and the card is destroyed.
(5) The Department will not replace SEBT benefits that were stolen due to electronic benefit theft. Electronic benefit theft includes the following defined terms:
(a) “Card skimming” is defined as EBT card information stolen utilizing a store’s card-swiping machine.
(b) “Card cloning” is defined as the use of information obtained by “card skimming” to create a fake EBT card for fraudulent use.
(c) “Another similar fraudulent method” is defined as EBT card information compromised through electronic means. This

may include but is not limited to scams such as text, e-mail, and telephone. It does not include the theft or unauthorized use of an individual's physical EBT card.

STATUTORY/OTHER AUTHORITY: 411.060

STATUTES/OTHER IMPLEMENTED: 411.060

ADOPT: 461-196-0150

RULE TITLE: Restoration of Lost Benefits; SEBT

RULE SUMMARY: OAR 461-196-0150 is being adopted to describe when benefits will be restored in the Summer EBT program.

RULE TEXT:

(1) An individual is entitled to a restoration of lost benefits if:

(a) The loss was caused an error by the Department (see OAR 461-196-0020), including an action to restore any benefits that were lost, or the failure to issue due to agency error; or

(b) An administrative disqualification for intentional program violation was subsequently reversed.

(2) Benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

(a) The date the Department receives a request for restoration from the filing group (see OAR 461-196-0020); or

(b) The date the Department is notified or otherwise discovers that a loss to a filing group has occurred.

(3) The Department must restore benefits found to have been wrongfully withheld through judicial action.

(a) If the judicial action is the filing group's first attempt to regain lost benefits, the benefits must be restored for not more than twelve months from the date the court action began.

(b) When the judicial action involves reviewing the Department's action, benefits must be restored not more than twelve months from:

(A) The date the agency receives a restoration request.

(B) If no request is made, the date the hearing action is initiated.

(C) Never exceeding one year from when the agency is informed of or discovers the loss.

(D) Benefits must be restored even if the child is currently ineligible.

(4) The Department must restore any lost benefits to a filing group by issuing an allotment equal to the amount of benefits that were lost, irrespective of the filing group's current eligibility status. This restored amount will be issued in addition to the regular allotment entitled to the eligible filing group.

(5) Individuals disqualified for intentional program violation (see OAR 461-195-0601) are entitled to restoration of any benefits lost during the months that they were disqualified, not to exceed twelve months prior to the date of Department notification, only if the decision which resulted in disqualification is subsequently reversed.

STATUTORY/OTHER AUTHORITY: 411.060

STATUTES/OTHER IMPLEMENTED: 411.060

ADOPT: 461-196-0160

RULE TITLE: Overpayments; SEBT

RULE SUMMARY: OAR 461-196-0160 is being adopted to establish overpayment claim provisions for the Summer EBT program.

RULE TEXT:

(1) The Department (see OAR 461-196-0020) will pursue an overpayment claim when:

(a) The overpayment amount is $200 or more;

(b) The filing group (see OAR 461-196-0020) was found eligible through a Summer EBT (SEBT) application; and

(c) An individual in the filing group knowingly obtained SEBT benefits through fraudulent activity and there is an established intentional program violation (IPV) in accordance with OAR 461-195-0611.

(2) The Department will not recover an SEBT overpayment claim through the reduction of the filing group's Supplemental Nutrition Assistance Program (SNAP) or any other public assistance benefits.

(3) Overpayments are calculated in accordance with OAR 461-195-0521 and liability for repayment of overpayments is addressed in OAR 461-195-0541.

STATUTORY/OTHER AUTHORITY: 411.060

STATUTES/OTHER IMPLEMENTED: 411.060

ADOPT: 461-196-0170

RULE TITLE: Concurrent and Duplicate Program Benefits; SEBT

RULE SUMMARY: OAR 461-196-0170 is being adopted to establish rule provisions for concurrent and duplicate benefits in the Summer EBT program.

RULE TEXT:
(1) An individual is not eligible to receive benefits from both Oregon and another state or Indian Tribal Organization for the same time period.
(2) An individual is not eligible to receive benefits as a member of more than one filing group (see OAR 461-196-0020) for the same time period.

STATUTORY/OTHER AUTHORITY: 411.060

STATUTES/OTHER IMPLEMENTED: 411.060