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### DIVISION 150

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### DIVISION 155

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### DIVISION 160

#### DETERMINING FINANCIAL ELIGIBILITY AND CALCULATING BENEFIT LEVEL

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#### ISSUING CLIENT BENEFITS AND PAYMENTS TO CHILD CARE PROVIDERS

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### DIVISION 170

#### REPORTING CHANGES

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### DIVISION 175

#### DECISION NOTICES

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<b>461-175-0030</b>	Types of Decision Notices
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<b>461-175-0230</b>	Notice Situation; Nonstandard Living Situations
<b>461-175-0240</b>	Notice Situation; Lump-Sum
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<b>461-175-0280</b>	Notice Situation; Failure to Submit Report for APR, MRS or SRS
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<b>461-175-0305</b>	Notice Situation; Removing a Person From a Benefit Group (EXT, FS, MAA, MAF, SAC, TANF) or Need Group (ERDC)
<b>461-175-0310</b>	Notice Situation; Resource Transfer Disqualification
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### DIVISION 180

#### EFFECTIVE DATES

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<b>461-180-0006</b>	Effective Dates; Changes in the Semiannual Reporting System (SRS)
<b>461-180-0010</b>	Effective Dates; Adding a New Person to an Open Case
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<b>461-180-0044</b>	Effective Dates; Income Cap Trust
<b>461-180-0050</b>	Effective Dates; Suspending or Closing Benefits and JOBS Support Service Payments
<b>461-180-0060</b>	Effective Dates; Denial of Benefits
<b>461-180-0065</b>	Effective Dates; Ending Disqualifications
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<b>461-180-0090</b>	Effective Dates; Initial Month Medical Benefits
<b>461-180-0097</b>	Effective Dates; OHP Premium
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<b>461-180-0120</b>	Effective Dates; Removing a Person
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### DIVISION 185

#### TRUST AND AGENCY (T&A) ACCOUNTS AND CLIENT PAY-IN

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<b>461-185-0020</b>	Authorization of T&A
<b>461-185-0030</b>	Interest Paid on T&A Accounts
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### DIVISION 190

#### EMPLOYMENT PROGRAM COMPONENTS

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<b>461-190-0151</b>	Employment Planning; JOBS
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### DIVISION 193

#### REFUGEE PROGRAMS

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<b>461-193-0001</b>	Refugee Project Rules
<b>461-193-0005</b>	Refugee Projects Overview
<b>461-193-0007</b>	Refugee Project Services Delivery Requirements
<b>461-193-0010</b>	Refugee Project Participant Responsibilities
<b>461-193-0016</b>	Refugee Project Administration; Delegate Authority
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<b>461-193-0031</b>	Refugee Project Requirements
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<b>461-193-0046</b>	Refugee Project Employment Projects and Services
<b>461-193-0121</b>	Refugee Project Inquires and Complaints
<b>461-193-0130</b>	Eligibility Determination Terms; Refugee Case Service Project
<b>461-193-0185</b>	Countable Resources; Refugee Case Service Project
<b>461-193-0190</b>	Refugee Project Application Process
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<b>461-193-0240</b>	Exempt From Participating in NAES
<b>461-193-0246</b>	Employment Incentives; NAES
<b>461-193-0320</b>	Effective Dates for Cash Assistance; Refugee Case Service Project
<b>461-193-0470</b>	Eligibility Decision; Refugee Case Service Project
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<b>461-193-0610</b>	Newborn Child; Refugee Case Service Project
<b>461-193-0640</b>	The Monthly Client Information Report (MCIR); Refugee Case Service Project
<b>461-193-0650</b>	Countable Income; Refugee Case Service Project
<b>461-193-0660</b>	Excluded Resources and Income; Refugee Case Service Project
<b>461-193-0670</b>	Payment Controls; Refugee Case Service Project
<b>461-193-0690</b>	Overpayments; Refugee Case Service Project
<b>461-193-0890</b>	Refugee Project Good Cause for Noncooperation
<b>461-193-0920</b>	Refugee Project Staffing
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<b>461-193-0960</b>	Refugee Project Cooperation Demonstration
<b>461-193-0980</b>	Refugee Project Staffing Appeals
<b>461-193-1140</b>	Notice Situations; Refugee Projects
<b>461-193-1190</b>	Refugee Project Noncooperation
<b>461-193-1200</b>	Refugee Project Cooperation Requirements
<b>461-193-1230</b>	Ending Refugee Project Disqualifications
<b>461-193-1310</b>	Participation Requirements; NAES Project
<b>461-193-1360</b>	Transportation Eligibility Requirements; CASE
<b>461-193-1370</b>	Child Care Eligibility Requirements; CASE
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### DIVISION 195

#### LIENS, OVERPAYMENTS AND IPV'S

<b>461-195-0301</b>	Definitions
<b>461-195-0303</b>	Personal Injury Claim
<b>461-195-0305</b>	Lien of the Department
<b>461-195-0310</b>	Notice of Claim or Action by Applicant or Recipient
<b>461-195-0315</b>	Notice of Determination of Lien by Department
<b>461-195-0320</b>	Release of Lien for Future Medicals
<b>461-195-0321</b>	Assigning a Lien to a Prepaid Managed Care Health Services Organization



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<b>461-195-0325</b>	Release or Compromise of Lien
<b>461-195-0350</b>	Procedure Where Injured Recipient is a Minor
<b>461-195-0501</b>	Definitions
<b>461-195-0511</b>	Child Care Overpayments
<b>461-195-0521</b>	Special Rules for Calculation of Overpayments
<b>461-195-0531</b>	Establishment of Overpayments
<b>461-195-0541</b>	Liability for Overpayments and Trafficking
<b>461-195-0551</b>	Methods of Recovering Overpayments
<b>461-195-0561</b>	Compromise of Overpayment Claims
<b>461-195-0601</b>	Intentional Program Violations; Defined
<b>461-195-0611</b>	Intentional Program Violations; Establishment and Appeal
<b>461-195-0621</b>	Intentional Program Violations; Penalties and Liability for Overpayments

### DIVISION 1

#### GENERAL DEFINITIONS AND RULEMAKING

##### **461-001-0000**

###### **Definitions**

In divisions 005, 006, 007, 012, 025, 115, 120, 125, 130, 135, 140, 145, 150, 155, 160, 165, 170, 175, 180, 185, 190, 193, and 195 of 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 that the rule in which reference occurs only regulates programs covered by chapter 461 of the Oregon Administrative Rules.

(2) A reference to an Administrator of an agency mentioned in section (1) shall be taken to mean the Director of DHS.

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

(4) "Department" means the Department of Human Services (DHS).

(5) "Equity value" means fair market value minus encumbrances.

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

(7) "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.

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

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

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.060, 411.816 & 418.100

Hist.: AFS 28-1978, f. & ef. 7-13-78; AFS 54-1984, f. 12-28-84, ef. 1-1-85; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

##### **461-001-0010**

###### **Notice of Rulemaking**

See the current version of OAR 407-001-0000 and 407-001-0005 which apply to notices of rulemaking for rules in Chapter 461.

Stat. Auth.: ORS 183.341, 411.060 & 418.100

Stats. Implemented: ORS 183.341, 411.060 & 418.100

Hist.: AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 8-2006, f. & cert. ef. 6-1-06

### DIVISION 5

#### ELIGIBILITY

##### **461-005-0735**

###### **Determination of Disability**

The determination of disability to qualify for AD shall be made by the State Review Team, consisting of a physician and a profession-

ally trained social worker appointed by the state administrator, after evaluation of all reports and certifications of physicians and all social summaries pertaining to the A/R and his claimed disability, including additional medical and social information furnished upon request when necessary to aid in making a valid decision as to initial eligibility and whether and when a redetermination shall be made.

Stat. Auth.: ORS 412

Stats. Implemented: ORS 411.060

Hist.: PWC 612, f. & ef. 6-30-71

### DIVISION 6

#### BURIAL EXPENSES

##### **461-006-0452**

###### **Burial Expenses**

(1) The Department of Human Services has determined that a plain and decent funeral and disposition of the remains of a decedent can be arranged for an average cost of \$3,000. This cost includes all professional services and merchandise. Preparation of the remains will be done in accord with applicable laws and regulations.

(2) For individuals dying on or after January 1, 2003, where the Department of Human Services is a claimant in their estate and where there would be insufficient assets remaining after any funeral costs to satisfy the Department's claim in full, not more than \$3,000 in estate assets, less any prearranged funeral trust, funds set aside for burial, life insurance policies specifically identified to pay for funeral expenses, or burial insurance, may be expended for funeral expenses and disposition of the remains of the decedent.

(3) In instances where a pre-paid funeral plan is sought to be changed for a Medicaid client after their death, and pre-paid funeral funds are refunded, it is the responsibility of the funeral home and the recipient(s) of the funds to inform, in writing, the Department of Human Services, Estate Administration Unit, PO Box 14021, Salem, OR 97309-5024, of any refund within 30 days of such action. Any monies refunded after the client has died are an estate asset and subject to the claims of creditors.

(4) The following items are not considered professional services or merchandise and will not be allowable in meeting the plain and decent funeral standard: Travel and/or lodging expenses to attend the funeral; cost of meals to attend the funeral; transportation of the remains beyond the immediate geographic area (beyond 25 miles); the cost of flowers; the cost to pay for an obituary; donations to charities in the decedent's name; the cost of memorial videos; and the cost of a reception after the funeral. The aforementioned list is not all-inclusive and other similar costs may be denied if the estate of the Medicaid recipient is inadequate to meet the public assistance claim amount.

Stat. Auth.: ORS 410.070, 411.060, 411.070 & 414.106

Stats. Implemented: ORS 411.620, 411.630, 411.795, 412.600, 413.200 & 414.105

Hist.: AFS 43-1983(Temp), f. & ef. 7-1-85; AFS 78-1985, f. & ef. 12-9-85; AFS 25-1994, f. & cert. ef. 11-1-94; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

### DIVISION 12

#### LAW ENFORCEMENT MEDICAL LIABILITY ACCOUNT

##### **461-012-0100**

###### **Definitions**

For the purposes of OAR 461-012-0100 through 461-012-0150, the following definitions shall apply:

(1) "LEMLA" means the Law Enforcement Medical Liability Account.

(2) "LEMLA Patient" means a person who has suffered injuries related to law enforcement activity.

(3) "Injuries Related to Law Enforcement Activity" means injuries sustained prior to booking, citation in lieu of arrest or release instead of booking that occur during and as a result of efforts by a law enforcement officer to restrain or detain, or to take or retain custody of, the individual. Whether injuries related to law enforcement activity have occurred will be determined by the law enforcement agency.

(4) "Release Date" means the date the LEMLA patient was released from actual physical custody, as determined by the law enforcement agency.

(5) “Cost of Such Services” means “usual charge” as defined in OAR 410-120-0000.

(6) “Hospital” means a hospital as defined in OAR 410-120-0000.

(7) “Overpayment” means payment made by LEMLA to a claimant in excess of the amount due for the covered services and items billed.

(8) “Claimant” means a Medicaid provider.

(9) “Medicaid Provider” means a provider who has been issued a provider number by the Department of Human Services and is not currently subject to sanction by the Department of Human Services.

(10) “Prior Payment Amount” means the total of all payments received by the claimant from all other sources, including the LEMLA patient, prior to submitting a LEMLA claim.

(11) “LEMLA Claim Amount” means the total cost of such services provided to a LEMLA patient which are directly connected to injuries related to law enforcement activity. It shall not include any charges for services provided to a LEMLA patient for a preexisting disease or condition, or services that are unrelated to the “injuries related to law enforcement activities.”

Stat. Auth.: ORS 411.060 & 414.815

Stats. Implemented: ORS 411.060 & 414.805 - 414.815

Hist.: AFS 1-1992, f. 1-14-92, cert. ef. 2-1-92; AFS 6-1992, f. & cert. ef. 3-9-92; AFS 24-1993, f. 10-27-93, cert. ef. 11-1-93; AFS 10-2002, f. & cert. ef. 7-1-02

#### **461-012-0150**

##### **Operation of the Law Enforcement Medical Liability Account**

(1) The purpose of the Law Enforcement Medical Liability Account (LEMLA) is to provide a fund to reimburse a claimant for emergency medical services provided to a LEMLA patient.

(2) The Department operates LEMLA under the authority of ORS 414.805 to 414.815.

(3) The time limit for submitting claims to LEMLA is one year after the date of injury. If a claimant has been paid by a LEMLA patient’s insurer or health care contractor and the LEMLA patient’s insurer or health care contractor subsequently demands return of the payment, a claimant must bill LEMLA not later than 180 days from the date of the demand letter or one year from the date of injury, whichever is later.

(4) The Department will process all claims received in accordance with the following procedures:

(a) The claim will be date stamped on the date received by LEMLA;

(b) The Department will review each claim submitted to verify that the claim contains all of the following required information:

(A) The LEMLA claim form, with the following information:

(i) Certification by an authorized representative of the law enforcement agency involved with an injury that the injury is related to law enforcement activity;

(ii) The release date, if any, as determined by the law enforcement agency. If the LEMLA patient has not yet been released, so state on the LEMLA claim form;

(iii) LEMLA patient’s name;

(iv) Prior payment amount;

(v) Date of injury;

(vi) Claimant’s Medicaid provider number;

(vii) Claimant’s name;

(viii) LEMLA claim amount;

(ix) Cause or nature of injury.

(B) Attached to the LEMLA form, the following information:

(i) Documentation that demonstrates the claimant has billed the LEMLA patient or the LEMLA patient’s insurer or health care contractor for the charges or expenses owed to the claimant and that the claimant has made a reasonable effort to collect from the LEMLA patient or the LEMLA patient’s insurer or health care contractor;

(ii) A copy of the hospital or provider billing document that shows the usual charge and date of service.

(c) The Department will reject claims that do not contain all of the information required in subsection (4)(b) of this rule;

(d) The Department will review the documentation of reasonable collection effort. If 45 days have not elapsed since the claimant billed the LEMLA patient or the LEMLA patient’s insurer or health care contractor, the claim may be rejected;

(e) The Department will review the date of injury. If the date stamped on the claim under subsection (4)(a) of this rule is more than

one year after the date of injury, the claim will be rejected. The one-year time limit may not apply if the provisions of section (3) of this rule apply with regards to an insurer or health care contractor demanding repayment of a previously paid claim.

(5) Using the LEMLA claim amount, the Department will pay claimants, subject to any adjustment made under section (6) of this rule, according to the following:

(a) For hospitals, by the current “Hospital Fee Schedule-Adjusted Cost/Charge Ratios for Oregon Hospitals,” established by the Director of the Department of Consumer and Business Services;

(b) For all Medicaid providers except hospitals, the Department will pay 75 percent of the LEMLA claim amount.

(6) After determining the amount under section (5) of this rule, the Department will add the amount received in section (7) of this rule. If the total is more than the usual charge, the Department will reduce the amount of its payment by the amount in excess of the usual charge.

(7) The claimant is responsible for making reasonable effort to collect from the LEMLA patient or the LEMLA patient’s insurer or health care contractor. Claimants are required to report all collections made when a claimant submits a claim to the Department for payment.

(8) If the Department has paid a claimant and the claimant subsequently receives payment from any other source, the claimant is required to repay the Department the amount received, minus the difference between the usual amount billed and the amount the Department paid. This means claimants are entitled to reimburse themselves for the amount the Department did not pay, with the excess due to the Department as repayment of an overpayment. The repayment is due and payable by check to the Department within 30 days after the claimant has received the funds from the other source.

(9) The Department will continue to pay for medical services for injuries related to law enforcement activities while the LEMLA patient is incarcerated. Upon release of the LEMLA patient from physical custody, the Department will no longer pay for further medical expenses incurred. If the LEMLA patient is cited in lieu of arrest or released instead of booked, the Department will no longer pay for further medical expenses upon discharge or release from the hospital or other medical facility.

(10) The Department will pay all accepted claims to the extent that the Department has sufficient funds available, subject to the maximum limit for payment of expenses authorized by law. The Department will monitor the expenses and if the Department determines that the authorized limit may be exceeded, or that insufficient funds are available, the Department will take the following actions:

(a) The Department will continue to accept claims and date stamp them in the order the claims are received. The Department will then suspend further processing of the claim;

(b) The Department will notify each claimant that the claim has been suspended and the reason for the action;

(c) The Department will maintain a file of suspended claims and await further legislative direction regarding the disposition of the claims.

Stat. Auth.: ORS 411.060 & 414.815

Stats. Implemented: ORS 411.060 & 414.805 - 414.815

Hist.: AFS 1-1992, f. 1-14-92, cert. ef. 2-1-92; AFS 6-1992, f. & cert. ef. 3-9-92; AFS 24-1993, f. 10-27-93, cert. ef. 11-1-93; AFS 18-1995, f. & cert. ef. 8-1-95; AFS 10-2002, f. & cert. ef. 7-1-02

## **DIVISION 25**

### **HEARINGS**

#### **461-025-0300**

##### **Contested Case Hearings**

(1) The rules in Division 025 of this chapter of rules apply to contested case hearings of the Department authorized by OAR 461-025-0310(1). The hearings are conducted in accordance with the Attorney General’s model rules at OAR 137-003-0501 and following. The method described in OAR 137-003-0520(10) is used in computing any period of time prescribed in this division of rules.

(2) Department employees are authorized to appear on behalf of the Department in the following types of hearings:

(a) Public assistance.

(b) Employment-Related Day Care.

(c) Food Stamp.



(3) The Department's contested case hearings governed by this division of rules are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the party's consent.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-025-0305**

##### **Definitions**

For the purposes of this division of rules, the following definitions apply unless the context clearly indicates otherwise:

(1) "Claimant" means a person who has requested a hearing or who is scheduled for an IPV hearing.

(2) "Department representative" or "Division representative" means a person authorized by OAR 461-025-0300 to represent the Department in the hearing.

(3) "Good cause" means a circumstance beyond the control of the claimant and claimant's representative.

(4) A "request for hearing" is a clear expression, oral or written, by an individual or representative that the person wishes to appeal a Department decision or action or, in the Food Stamp program, wishes to have the decision considered by a higher authority.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-025-0310**

##### **Hearing Requests**

(1) A claimant (defined at OAR 461-025-0305) has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:

(a) The Department has not acted on a request or application for public assistance within 45 days of the application.

(b) The Department has not acted timely on an application as follows:

(A) An application for food stamps within 30 days of the filing date.

(B) An application for a JOBS support service payment within the time frames established in OAR 461-115-0190(3).

(c) The Department acts to deny, reduce, close, or suspend food stamp benefits, a grant of public assistance, a grant of aid, a support service payment authorized in the JOBS program by OAR 461-190-0211, medical assistance, or child care benefits authorized under Division 160 or 165 of this chapter of rules in the ERDC or TANF child care programs. When used in this subsection, grant of public assistance and grant of aid mean the grant of cash assistance calculated according to the client's need.

(d) The Department claims that an earlier public assistance payment was an overpayment, or that an earlier issuance of food stamps was an overissuance.

(e) The claimant claims that the Department previously under-issued public assistance or food stamps and the Department denies the claim.

(f) The household disputes its current level of food stamp benefits.

(g) The filing group is aggrieved by any action of the Department that affects the participation of the filing group in the Food Stamp program.

(h) The claimant asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.

(i) The Department establishes or changes the client's premium for the Oregon Health Plan.

(j) In the Assessment program, the Department denies payment for a basic living expense (see OAR 461-135-0475).

(k) The right to a hearing is provided for the TA-DVS program (see OAR 461-135-1235).

(l) A service re-assessment of a client conducted in accordance with OAR Division 411-015 has resulted in a reduction or termination of Nursing Home services, Home and Community Based Waivered Services (defined at OAR 411-015-0005), Spousal Pay services (see

OAR 411-030-0080), or Independent Choices services (see OAR division 411-036).

(m) The right to a hearing is otherwise provided by statute or rule.

(2) A client is not entitled to a hearing on the question of the contents of a case plan (defined in OAR 461-190-0151) unless the right to hearing is specifically authorized by the Department's rules. For a dispute about an activity in the JOBS program, the client is entitled to use the Department's conciliation process (see OAR 461-190-0231).

(3) There is no right to a hearing to dispute a program requirement established by law. Examples are the closure of a program or a change to a payment standard.

(4) A request for hearing is complete:

(a) In public assistance programs, when the Department's Administrative Hearing Request form (form DHS 443) is completed and signed by the claimant or the claimant's representative and is received by the Department.

(b) In the Food Stamp program when:

(A) The Department receives the claimant's oral or written statement that he or she wishes to appeal a decision affecting the claimant's food stamp benefits to a higher authority; or

(B) The Department's Administrative Hearing Request form (form DHS 443) is completed and signed by the claimant or the claimant's representative and is received by the Department.

(c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.

(5) In the event a request for hearing is not timely, the Department will determine whether the failure to timely file a request for hearing was beyond the reasonable control of the party and enter an order accordingly. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(6) In the event the claimant has no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the claimant has the right to a contested case hearing.

(7) To be timely, a completed hearing request must be received by the Department not later than:

(a) The 45th day following the date of the decision notice in public assistance and medical programs.

(b) The 90th day following the date of the decision notice in the Food Stamp program, except:

(A) A filing group may submit a hearing request at any time within a certification period to dispute its current level of benefits.

(B) A filing group may submit a hearing request within 90 days of the denial of a request for restoration of benefits if less than one year has expired since the loss of benefits.

(c) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

(d) In a case described in subsection (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.

(8) In determining timeliness under section (7) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

(9) In computing the time periods provided by this rule, if the last day of the time period falls on a Saturday, Sunday, or legal holiday, the period is extended until the next working day.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.095, 411.816, 414.055, 418.100, 418.125

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-2000, f. 1-31-2000, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-025-0311**

##### **Continuation of Benefits**

(1) This rule explains who may receive continuing benefits while a contested case pends.

(2) A client who is entitled to either a continuing benefit decision notice under a rule in division 175 of this chapter of rules or a mass change notice that provides an option for continuing benefits may, at the option of the client, receive continuing benefits, in the same manner and same amount, until a final order resolves the contested case.

To be entitled to continuing benefits, the client must complete a hearing request not later than the later of:

- (a) The tenth day following the date of the notice; and
- (b) The effective date of the action proposed in the notice.
- (3) The continuing benefits are subject to modification based on additional changes affecting the client's eligibility or level of benefits.
- (4) In determining timeliness under section (2) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 28-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-025-0315**

##### **Expedited Hearings**

(1) A claimant has the right to an expedited hearing in each of the following situations:

(a) The Department denies or fails to issue a timely decision on claimant's request for TA-DVS or emergency assistance.

(b) The claimant contests the form or amount of a TA-DVS or an emergency assistance payment.

(c) The claimant has the right to a hearing over a reduction, suspension, or closure and disagrees with the Department's decision to deny the continuation of one or more of the following pending a requested hearing:

(A) Cash benefits.

(B) Food stamp benefits.

(C) Medical benefits.

(D) Nursing Home, Title XIX Home and Community Based Care waived, Spousal Pay, or Independent Choices Program services that have been reduced or closed as a result of a service re-assessment conducted in accordance with OAR Division 411-015.

(d) The claimant's request for expedited food stamp service is denied, or the claimant is aggrieved by an action of the Department that affects the expedited participation of the household in the Food Stamp program.

(e) In the JOBS program, the Department denies an application for a support service payment or a payment for a basic living expense authorized by OAR 461-190-0211, or the Department reduces or closes a support service payment authorized by OAR 461-190-0211, or the Department does not issue a JOBS support service payment within the time frames required under OAR 461-115-0190.

(2) Public Assistance programs: An expedited hearing is a telephone hearing held within five working days of the Department's receipt of the written hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service or by certified mail. In the TANF program, if the claimant requests a face-to-face hearing, the hearing may be postponed or continued as necessary to accommodate the claimant. However, the hearing must be held not later than 21 days following the receipt by the Department of the request for hearing if the claimant lives within 100 miles of Salem, Oregon, and not later than 35 days in all other cases. The final order must be issued within three working days from the date the hearing closes.

(3) Food Stamp program: An expedited hearing is a telephone hearing held within five working days of the receipt of a verbal or written hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service or by certified mail. Following the expedited hearing, a final order must be issued not later than the ninth working day after the hearing was requested.

Stat. Auth.: ORS 411.060, 411.095, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.095, 411.099, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 21-1990(Temp), f. 8-28-90, cert. ef. 9-1-90; AFS 2-1991, f. 1-15-91, cert. ef. 2-1-91; AFS 4-1995, f. & ef. 2-1-95; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-025-0316**

##### **Intentional Program Violation (IPV) Hearings; Food Stamp Program**

Notwithstanding the other rules in this division of rules and the rules at OAR 137-003-0501 and following, this rule governs intention-

al program violation hearings for the Food Stamp program. This rule reflects the requirements of the U.S. Department of Agriculture for the Food Stamp program.

(1) An individual accused of an Intentional Program Violation may waive the right to an IPV hearing by signing a waiver on a form prescribed by the Department. There is no further administrative appeal after the individual signs the waiver unless the individual asserts that the waiver was signed under duress and, within 90 days from the date the waiver was signed, requests a hearing (see OAR 461-025-0310) to prove this. The individual has the burden of proving duress. If an Administrative Law Judge determines that the waiver was signed under duress, the waiver may be nullified and the Department may thereafter initiate an Intentional Program Violation hearing.

(2) If an IPV is not established by waiver or in court, the Department may initiate the IPV hearing. The individual is entitled to an Advanced Notice of Intentional Program Violation Hearing at least 30 days in advance of the scheduled hearing. The notice includes the specific charge(s) alleged by the Department.

(3) Within 90 days of the date the individual is notified in writing of the disqualification hearing, the Office of Administrative Hearings will conduct the hearing and serve a final order on the individual.

(4) The individual is entitled to a postponement of the scheduled hearing, if the request for postponement is made at least 10 days before the date of the scheduled hearing. The hearing will not be postponed for more than a total of 30 days, and the Office of Administrative Hearings may limit the postponements to one.

(5) If the individual fails to appear for the scheduled IPV hearing after refusing the notice of hearing, refusing to claim the notice, or receiving the notice, the hearing may be conducted without the individual. The individual has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. Good cause will be determined on the record by the Office of Administrative Hearings. If the individual shows good cause, the Office of Administrative Hearings will schedule another IPV hearing for the individual. If the individual never receives the notice of hearing, the 10-day time limit to show good cause does not apply.

(6) The Administrative Law Judge must advise the individual that he or she may refuse to answer questions during the hearing.

(7) The standard for proving that an individual has committed an Intentional Program Violation is clear and convincing evidence.

(8) There is no administrative appeal of a final order, except as provided in section (5) of this rule.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.095

Hist.: AFS 4-1995, f. & ef. 2-1-95; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-025-0325**

##### **Informal Conference**

(1) The Division representative and the claimant may have an informal conference to discuss any of the matters listed in OAR 137-003-0575(3). The informal conference may also be used to:

(a) Provide an opportunity for the Division and the claimant to settle the matter;

(b) Ensure the claimant understands the reason for the action that is the subject of the hearing request;

(c) Give the claimant an opportunity to review the information that is the basis for that action;

(d) Inform the claimant of the rules that serve as the basis for the contested action;

(e) Give the claimant and the Division the chance to correct any misunderstanding of the facts;

(f) Determine if the claimant wishes to have any witness subpoenas issued; and

(g) Give the Division an opportunity to review its action.

(2) The claimant may, at any time prior to the hearing date, request an additional conference with the Division representative.

(3) The Division may provide to the claimant the relief sought at any time before the Final Order is served.

(4) Notwithstanding any rule in this chapter of rules, prehearing conferences are governed by OAR 137-003-0575.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.095

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00

**461-025-0332**

**Burden of Proof**

Except in an IPV case, the claimant has the burden of proof.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.095

Hist.: AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00

**461-025-0350**

**Withdrawals**

A claimant may withdraw a hearing request orally or in writing at any time. The withdrawal is effective on the date it is received by the Department or the Office of Administrative Hearings. The Department or the Office of Administrative Hearings will send a Final Order confirming the withdrawal to the claimant's last known address. The claimant may cancel the withdrawal up to the tenth work day following the date such an order is served.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-025-0356**

**Dismissal for Failure to Appear**

Except in an IPV case, a hearing request is dismissed by order when neither the party nor the party's representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. The Division will cancel the dismissal order on request of the party on a showing that the party was unable to attend the hearing and unable to request a postponement for reasons beyond his or her control.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.095

Hist.: AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00

**461-025-0371**

**Proposed and Final Orders**

(1) In a contested case, except one authorized by ORS 181.537 or OAR 461-165-0430, the Office of Administrative Hearings is authorized to enter a final order on behalf of the Department without first issuing a proposed order unless the Department has specifically revoked the authority.

(2) In a contested case authorized by OAR 461-165-0430, the proposed order issued by the Office of Administrative Hearings becomes the final order if the party files no timely written exceptions with the Administrator, unless the Department notifies the party and the hearing officer that it will issue the final order.

(3) If in a contested case the Office of Administrative Hearings does not have authority to enter a final order, the Office of Administrative Hearings will prepare and serve a proposed order in accordance with OAR 137-003-0645. The claimant may file written exceptions and argument to be considered by the Administrator. The exceptions must reach the Administrator not later than the tenth day after service of the proposed order. Written argument may be submitted to the Administrator not later than the twentieth day after service of the proposed order or by such time established by the Administrator. Additional evidence may be submitted only upon prior approval of the Administrator.

(4) If in a contested case hearing the Office of Administrative Hearings is authorized to issue a final order on behalf of the Department, the Department may issue the final order in the case of default.

(5) A petition by a party for reconsideration or rehearing must be filed with the person who signed the final order.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.095

Hist.: AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-025-0375**

**Final Order; Timeliness, Effective Date and Reconsideration**

(1) A Final Order will be issued or the case otherwise resolved:

(a) In public assistance cases not later than 90 days following the request for hearing;

(b) In cases involving only the Food Stamp program not later than 60 days following the request for hearing; and

(c) In IPV cases within 90 days of the date the claimant was notified in writing that a hearing had been scheduled.

(2) Delay due to a postponement or continuance granted at claimant's request shall not be counted in computing the time limits specified in section (1) of this rule.

(3) The final order is effective immediately upon being signed or as otherwise provided in the order. Final orders resulting from the claimant's withdrawal of the hearing request are effective the date the claimant withdraws. When the claimant fails to appear for the hearing and the hearing request is dismissed by final order, the effective date of the order is the date of the scheduled hearing.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.095

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00

**DIVISION 101**

**PROGRAM ACRONYMS**

**461-101-0010**

**Program Acronyms and Overview**

(1) Acronyms are used when referring to each program (except Assessment and Repatriate). There is an acronym for each umbrella program (for instance, ERDC) and acronyms for each subprogram (for instance, ERDC-SBG).

(2) When no program acronym appears in a rule in chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code (for instance, OSIP means OSIP-AB, OSIP-AD, and OSIP-OAA).

(4) ADC; Aid to Dependent Children. Financial aid to low-income families when children are deprived of parental support because of continued absence, death, incapacity, or unemployment. When used alone, ADC refers to all ADC programs. Use of the acronym, ADC, which stands for Aid to Dependent Children, and use of the phrase, Aid to Dependent Children, refer to the state's Temporary Assistance for Needy Families Program, and its acronym, TANF. The following codes are used for ADC subprograms:

(a) ADC-BAS; Aid to Dependent Children - Basic (includes eligibility based on continued absence, death, incapacity, or unemployment). ADC with deprivation based on unemployment is also denoted by ADC-BAS/UN.

(b) EA; Aid to Dependent Children - Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(5) ADCM; Aid to Dependent Children Medical. Medical aid to low-income families when children are deprived of parental support, as for ADC. Use of the acronym ADCM, which stands for Aid to Dependent Children Medical, and use of the phrase Aid to Dependent Children Medical refer to EXT, MAA, MAF, and SAC programs. When used alone, ADCM refers to all ADC-related medical programs. The following codes are used for ADCM subprograms:

(a) ADCM-BAS; Aid to Dependent Children Medical — Basic.

(b) ADCM-EXT; Aid to Dependent Children Medical — Extended. ADCM-EXT provides extended medical benefits to families after their ADC benefits end.

(c) ADCM-SAC; Aid to Dependent Children Medical — Substitute or Adoptive Care. ADCM-SAC gives medical coverage to children in substitute or adoptive care.

(6) The Assessment Program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to convey the message that TANF is primarily a self-sufficiency development program and to help individuals find employment or other alternatives before they become dependent on public assistance.

(7) BCCM; Breast and Cervical Cancer Medical program.

(8) CAWEM; Citizen/Alien — Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(9) ERDC; Employment- or Education-Related Day Care. Helps low-income families pay the cost of child care. When used alone,



ERDC refers to all ERDC programs. The following codes are used for ERDC subprograms:

(a) ERDC-BAS; ERDC — Basic. Child care for working families.

(b) ERDC-SBG; ERDC — Student Block Grant. Child care for students.

(10) EXT; Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the Assessment Program, MAA, or MAF due to an increase in their child support or earned income.

(11) FS; Food Stamps. Helps low-income households maintain proper nutrition by giving them the means to purchase food.

(12) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(13) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(14) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 1335) were repealed July 1, 2001.

(15) JOBS; Job Opportunities and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(16) JOBS Plus. Provides subsidized jobs rather than FS or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for FS clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, FS clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

(a) ADC-PLS; Clients eligible for JOBS Plus based on TANF.

(b) FS-PLS; Clients eligible for JOBS Plus based on FS.

(c) NCP-PLS; Noncustodial parents of children receiving TANF.

(17) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(18) MAA; Medical Assistance Assumed. The Medical Assistance Assumed program provides medical assistance to people who are eligible for the Assessment Program or ongoing TANF benefits.

(19) MAF; Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.

(20) OFFSET. The Oregon Food Stamp Employment Transition Program, which helps FS recipients find employment. This program is mandatory for some FS recipients.

(21) OHP; Oregon Health Plan. The Oregon Health Plan Program provides medical assistance to many low-income individuals and families. The program includes five categories of people who may qualify for benefits. The acronyms for these categories are:

(a) OHP-OPU; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/noncategorical (HPN) client.

(b) OHP-OPC; Children. OHP coverage for children who qualify under the 100 percent income standard.

(c) OHP-OP6; Children Under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard.

(d) OHP-OPP; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.

(e) OHP-CHP; Persons Under 19. OHP coverage for persons under age 19 who qualify under the 185 percent income standard for

medical assistance authorized by the Children's Health Insurance Program (CHIP) provision of the 1997 Balanced Budget Act.

(22) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program — Old Age Assistance.

(23) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(24) QMB; Qualified Medicare Beneficiaries. Additional medical coverage for Medicare recipients. When used alone, QMB refers to all QMB programs. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries — Special Medicare Beneficiary. Payment of all or a portion of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(25) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(26) REFM or REFM-BAS; Refugee Assistance Medical — Basic. Medical coverage for low-income refugees.

(27) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(28) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(29) Senior Prescription Drug Assistance Program; provides that people 65 years of age or older can purchase prescription drugs at the Medicaid price.

(30) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

(31) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(32) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment. Cash assistance used to be known as ADC.

Stat. Auth.: ORS 411.060, 411.816 & 414.342

Stats. Implemented: ORS 411.060, 411.816 & 414.342

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 42-1996, f. 12-31-

96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 8-2006, f. & cert. ef. 6-1-06

## **DIVISION 105**

### **RIGHTS AND RESPONSIBILITIES**

#### **461-105-0010**

##### **Rights of Clients**

Clients of the Department in programs regulated by chapter 461 of these rules have the following rights and the right to be informed of them:

- (1) The right to information about the programs administered by the Department.
- (2) The right to confidentiality for individually identifiable information to the extent provided under federal and state law and the administrative rules of the Department.
- (3) The right to refuse social services unless:
  - (a) The service is court-ordered;
  - (b) The service is related to a *case plan* as defined in OAR 461-190-0161 or 461-190-0310; or
  - (c) Treatment is required under OAR 461-135-0085.
- (4) The right, upon expressing dissatisfaction with an action of the Department, to obtain the Department's standard form for requesting a hearing.
- (5) The right to request a hearing within 45 days (90 days for FS) of the date of notice informing clients that their benefits are:
  - (a) Authorized.
  - (b) Reduced, ended, or denied.
  - (c) Changed to vendor, protective, or two-party payments.
- (6) The right to apply for any program administered by the Department.
- (7) The right to have a decision on eligibility made by the Department:
  - (a) In the Food Stamp program, within 30 days from the filing date.
  - (b) In the OSIPM program, within 90 days from the date of request if a disability decision must be made, and in all other cases within 45 days.
  - (c) In all other programs, within 45 days from the date of request.
- (8) The right to apply for and receive benefits and services from the Department and its contractors, grantees, agents, and providers of services who receive payments from the Department which are funded in whole or in part with federal funds without discrimination on the basis of race, color, national origin, religion, gender, disability, or political beliefs.
- (9) The right to courteous, fair and dignified treatment by Department personnel.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-105-0020**

##### **Responsibilities of Clients**

To be eligible for benefits, clients must do all the following:

- (1) Provide true, complete, and accurate information required to determine eligibility and verify that information, to the extent permitted by their physical and mental condition, or authorize the branch office to obtain verification.
- (2) Comply with the eligibility requirements of the program for which they are requesting or receiving benefits.
- (3) Report within 10 calendar days any changes that could affect their eligibility for benefits.

(4) Accept social services that are court-ordered or related to a *case plan*.

(5) Cooperate with case reviews by providing requested information and verification.

(6) Complete the application process or inform the branch office of their decision to withdraw the application for program benefits.

(7) Share these responsibilities with a spouse who resides in the same household.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.111 & 411.113

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 11-1999, f. & cert. ef. 10-1-99

#### **461-105-0060**

##### **Release of Information to the Client**

For any program covered by chapter 461 of the Oregon Administrative Rules:

(1) The Department must make the information in a case record of a client available to the following people within the limits described in this rule:

- (a) Anyone in the filing group.
- (b) Anyone authorized by the primary person or by a person in the filing group.

(2) The primary person and filing group members may have access only to client information that is related to the time during which they had that position in the case. The person can appoint an authorized representative whose access to client information covers only that same period.

(3) The "minimum necessary" standard as described in OAR 410-014-0040 is extended to limit the sharing of individually identifying information by the Department about one member of a filing group with either another member of the filing group or anyone authorized by another member of the filing group.

(4) Except for HIV information, case record information may be requested by the client and released to the client by telephone. The client must satisfy the branch as to their identity.

(5) Except as provided in this rule and in OAR 410-014-0030(6), information obtained from a third party that is part of the case record of the client is available to the client.

(6) The Department may withhold from a client information obtained from a confidential informant, including the identity of the informant, if all of the following are true:

- (a) The information was submitted to the Department in confidence.
- (b) The information was not required by law to be submitted.
- (c) The information can reasonably be considered confidential.
- (d) The Department has obliged itself not to disclose the information.
- (e) The information is not part of the case record.
- (f) The public interest would suffer if the information were disclosed.

(7) Notwithstanding OAR 461-105-0160:

(a) A client, an *authorized representative* (as defined at OAR 461-115-0090, 461-115-0140, and 461-115-0145), or a *personal representative* (as defined at OAR 410-014-0000(32), including an attorney who represents the client on a matter before the Department) may request a copy of information from the client file at no cost once every 12 months. If the client, *authorized representative*, or *personal representative* requests another copy of the same information already provided more frequently than once every 12 months, the branch office may impose a reasonable, cost-based fee.

(b) If an authorized third party who is not an *authorized representative* or *personal representative* requests client records, fees may be assessed for accessing stored records, extracting filed matter, duplication of records, or other costs necessary to releasing requested information.

(c) A branch office may establish additional, reasonable fees to cover extraordinary costs of duplicating records, making extensive searches, or preparing written summaries of records.

(d) At the option of the branch office, fee assessment may be waived.

(8) An individual designated by the manager must be present while the client or the authorized third party has access to the case record. No one except a Department employee is allowed to remove any material from the case record. Subject to payment of any cost-

based fee assessed by a branch office, the branch office will provide the person examining the case record with a copy of any portion of the case record that they are entitled to examine.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

**461-105-0070****Client Authorization for Release of Client Information to Third Party**

For any program covered by chapter 461 of the Oregon Administrative Rules, except for health, treatment, and domestic violence information, a verbal authorization from the client is permitted to allow verbal release of case record information specified by the client to third parties. Any such verbal authorization to release information to a third party is valid for a period of 30 days from the date the authorization is given verbally, unless a shorter time period is given.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

**461-105-0100****Release of Client Information to Law Enforcement Officers**

For any program covered by chapter 461 of the Oregon Administrative Rules:

(1) The Department may provide client information to a *law enforcement officer* in any of the following situations:

(a) The *law enforcement officer* is involved in carrying out public assistance laws, or any investigation, criminal or civil proceedings connected with administering the Department's benefit programs.

(b) A Department employee may disclose information from personal knowledge that does not come from the client's interaction with the Department.

(c) The disclosure is authorized by statute or administrative rule.

(2) Except as provided in section (3) of this rule, the Department may give a client's current address, Social Security number, and photo to a *law enforcement officer* if the law enforcement officer makes the request in the course of official duty, supplies the client's name, and states that the client:

(a) Is a *fugitive felon* or is violating parole or probation; or

(b) For all programs except FS, has information that is necessary for the officer to conduct official duties of the officer, and the location or apprehension of the client is within the officer's official duties. For clients only in the FS program, has information that is necessary to conduct an official investigation of a *fugitive felon* or someone violating parole or probation.

(3) If domestic violence has been identified in the household, section (2) of this rule does not authorize the release of information about a victim of domestic violence unless a member of the household is either wanted as a *fugitive felon* or is violating probation or parole.

(4) For purposes of the rules in division 461-105, a *fugitive felon* is a person fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony

(5) For purposes of the rules in division 461-105, a *law enforcement officer* is an employee of the Oregon State Police, a county sheriff's department, or a municipal police department, whose job duties include arrest authority.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

**461-105-0110****Release of Client Information to Service Providers and Legal Bodies**

For any program covered by chapter 461 of the Oregon Administrative Rules, in the absence of a specific and current client authorization that covers the applicable information and identifies the recipient:

(1) Department employees may release to service providers information necessary for accurate billing of services provided to Department clients.

(2) The following client information may be released to the client's child care providers:

(a) The program for which the client is eligible.

(b) The amount of the Department child care payment.

(c) The client's copayment amount.

(d) Reasons for a delay in payment, but only information that is specific to the reason for the delay.

(3) The Department may not disclose any information identifying any client by name or address to any committee, advisory board, legislative body, or individual member of such committee, board, or body.

(4) Except for social security numbers, health, treatment, and domestic violence information, the Department may disclose the minimum necessary information about a client to a staff member in the office of a member of the Oregon state legislature or United States Congress who has been asked by the client to review an action taken by the Department.

(5) Court-appointed special advocate (CASA) volunteers who have been appointed to a specific child are authorized to view information about the child. All other information must be removed from the case file.

(6) The Department may release client information in a judicial proceeding if at least one of the following is true:

(a) The proceedings are directly connected with administering the programs covered by chapter 461 of the Oregon Administrative Rules.

(b) A judge orders the release of the information.

(7) When appearing before the court in a judicial proceeding where the proceeding is not directly connected with administering a program covered by chapter 461 of the Oregon Administrative Rules, a Department employee provides the presiding judge with copies of the state statutes relating to confidentiality of client records (such as ORS 411.117, 411.320, and 418.130). The employee requests the court's guidance about testifying under the statutes.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

**461-105-0120****Release of Information on Child Support and Paternity Cases**

(1) For the purposes of this rule, the following terms have the following definitions:

(a) "Alleged father" means any male who has been named as a possible father of a child for whom paternity has not been established or has been contested.

(b) "Obligee" means a caretaker parent or custodian, spouse, former spouse or other dependent person for whose benefit a court or hearing officer has ordered payment of support.

(c) "Obligor" means any person who has been ordered by a court or hearing officer to make payments for the support of a child or a caretaker parent or custodian, spouse, former spouse or other dependent person.

(2) For any program covered by chapter 461 of the Oregon Administrative Rules, in the absence of a specific and current client authorization that covers the applicable information and identifies the recipient, the Department may release to the Department of Justice, Division of Child Support, the names of the alleged father, the obligor, and the obligee, the amount of support ordered, and the amount of current and past due support owed at any given time from its electronic files.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

**461-105-0130****Disclosure of Client Information**

For any program covered by chapter 461 of the Oregon Administrative Rules:



(1) The Department may disclose the minimum necessary client information without client authorization for purposes directly connected with:

(a) Administering the public assistance and food stamp laws, except for social security numbers, health, treatment, and domestic violence information.

(b) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with administering the programs covered by chapter 461 of the Oregon Administrative Rules.

(c) Any legally authorized audit or review by a governmental entity conducted in connection with administering the programs covered by chapter 461 of the Oregon Administrative Rules.

(2) Client information, other than health or treatment information, may be exchanged with other governmental or private, non-profit agencies to only the extent necessary to assist applicants or recipients of public assistance or food stamps to access and receive other governmental or private, non-profit services that will benefit or serve the applicant or recipient. Reasonable efforts must be made to obtain applicant or recipient authorization in advance.

(3) For all programs except FS, client information may be disclosed without the client's authorization for purposes directly connected with foster care and adoption assistance programs under Title IV-E of the Social Security Act.

(4) Notwithstanding any rule in this division, client information — other than information related to substance abuse treatment, mental health treatment, or HIV — may be disclosed to an Oregon attorney who represents that client if both of the following requirements are met:

(a) The attorney states that he or she currently is representing the client.

(b) The attorney states that the client has authorized disclosure of the client information to the attorney.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-105-0150**

##### **Availability of Written Public Records**

(1) A request for the Division's written public records must be in writing and must specifically identify the record being requested, the number of copies requested, and the name and address of the individual or entity making the request.

(2) The request must be mailed to: Adult and Family Services Division Forms and Publications Human Services Building, 2nd Floor 500 Summer St NE Salem, OR 97301-1066.

(3) The request must be accompanied by a check or money order covering the cost of providing the record, as determined by a fee schedule available from the Division's Forms and Publications unit.

Stat. Auth.: ORS 183, 411.060, 411.070, 411.595, 412.520, 414, 416 & 418

Stats. Implemented: ORS 411.350

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 24-2001, f. & cert. ef. 11-1-01

#### **461-105-0160**

##### **Fees for Public Records**

(1) The cost of providing a public record, as defined in ORS 192.410(4), is determined by the following factors:

(a) Cost of reproducing the record.

(b) Third-class postage at the prevailing U.S. postal rate.

(c) A reasonable charge for handling the record.

(d) Staff time needed to research and reproduce the record.

(e) Computer systems costs, if necessary, to produce the record.

(2) The cost of furnishing a public record may be waived in whole or in part if charging a fee would be counter to the effective administration of the Division's statutes or if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.350

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 24-2001, f. & cert. ef. 11-1-01

#### **461-105-0180**

##### **Nondiscrimination in Determining Eligibility**

Determine eligibility without discrimination on the basis of race, color, sex, national origin, disability, political beliefs, age, or religious creed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96

#### **461-105-0190**

##### **Discriminatory Actions**

(1) The rules of the Department protecting individuals with disabilities against discrimination are set out at OAR 407-005-0000 to 407-005-0030.

(2) The following acts of discrimination on grounds of race, color, sex, political beliefs, age, religious creed or national origin are specifically prohibited:

(a) Denying an individual any service, financial aid, or other benefit provided under any program.

(b) Providing any service, financial aid, or other benefit to an individual that is different, or is provided in a different way, from that provided to others under the program, unless such action is necessary to provide individuals with disabilities with aids, benefits or services that are as effective as those provided to others.

(c) Subjecting an individual to segregation or separate treatment in any way related to receipt of any service, financial aid, or other program benefit.

(d) Restricting an individual in any way from any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under any program.

(e) Treating an individual differently from others in determining whether they satisfy any admission, enrollment, quota, eligibility, membership or other requirement or condition individuals must meet to be provided any service, financial aid, or other benefit provided under any program.

(f) Denying an individual an opportunity to participate in any program or afford them an opportunity to do so that is different from that afforded others under the program.

(g) Denying a person the opportunity to participate as a member of a planning or advisory body that is an integral part of the program.

Stat. Auth.: ORS 409.050, ORS 411.060, 411.070, 411.816, 418.100

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-105-0410**

##### **Client Requirement to Cooperate in Quality Control Review**

(1) Clients are required to cooperate in the Department's quality control review process.

(2) In all programs except the Food Stamp program, a client who refuses to cooperate is ineligible for the program in which the review takes place until he or she cooperates.

(3) In the Food Stamp program, if a client refuses to cooperate, the client's filing group is ineligible for the program. The client can choose to cooperate at any time. If the food stamp benefits have not already closed, the filing group does not need to reapply. The filing group, upon filing a new application, may again be found eligible only in accordance with federal Food Stamp regulations in 7 CFR 273(2)(d)(2).

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 24-2001, f. & cert. ef. 11-1-01; AFS 13-2002, f. & cert. ef. 10-1-02

## **DIVISION 110**

### **ELIGIBILITY GROUPS**

#### **461-110-0110**

##### **Terms Used in Determining Eligibility**

The following terms are used in the eligibility determination process:

(1) *Child* includes natural, step, and adoptive children. The term child does not include an unborn.

(a) For EXT, MAA, MAF, REFM, and TANF, the term *dependent child* means the following:

(A) A person 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.

(b) For ERDC, 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.

(c) For FS, a *child* is an adult and minor children living with their parent(s).

(d) For GA, GAM and OSIP, a *child* is a person under the age of 18.

(e) For OHP, *child* means a person, including a minor parent, under the age of 19.

(f) For OSIPM and QMB, *child* means an unmarried person living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 21 and attending full time secondary, post-secondary or vocational-technical training designed to prepare the person for employment.

(2) *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 persons 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 recipients in demonstration sites who receive a cash benefit to coordinate in-home services under a section 1115 (42 U.S.C. 1315) demonstration waiver.

(3) *Custodial parents* means parents who have physical custody of their child(ren). Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(4) In the FS program, a *disabled* person or a person with a disability means a person who meets any of the following requirements:

(a) Receives SSI benefits under title XVI of the Social Security Act.

(b) Receives SSB benefits based on blindness or disability criteria under title I, II, X, XIV, or XVI of the Social Security Act.

(c) Receives OSIP or other state or federal supplement under section 1616(a) of the Social Security Act based on disability or blindness criteria.

(d) Receives state general assistance benefits based upon disability or blindness criteria under title XVI of the Social Security Act.

(e) Receives disability-related medical assistance under title XIX of the Social Security Act.

(f) Receives a state or federally administered supplemental benefit under section 212(a) of Public Law 93-66.

(g) Receives an annuity payment under Section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible for Medicare by the Railroad Retirement Board.

(h) Receives an annuity payment under Section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and meets the disability criteria used under title XVI of the Social Security Act.

(i) Receives VA benefits for non-service or service-connected disability rated or paid as total under title 38 of the United States Code.

(j) Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act.

(k) Has a disability considered permanent under 221(i) of the Social Security Act section and is the surviving spouse or surviving *child* of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service connected death under title 38 of the United States Code.

(l) Is a veteran or surviving spouse of a veteran considered by the VA to be in need of Aid and Attendance benefits or permanently housebound under title 38 of the United States Code.

(m) Is a surviving child of a veteran and considered permanently incapable of self-support under title 38 of the United States Code.

(5) Disqualified means an individual cannot receive program benefits because they have not cooperated in fulfilling some eligibility requirement. Actions that can disqualify an individual include not cooperating with JOBS, JOBS Plus or OFSET, failing to provide an SSN or failure to pursue assets. In some cases, a disqualified individual can make their filing group ineligible for benefits.

(6) 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.

(7) For FS, elderly means a person 60 years of age or older.

(8) In the FS program, a person is homeless if the person does not have a fixed or regular nighttime residence or has a primary residence that is one of the following:

(a) A supervised shelter that provides temporary accommodations.

(b) A halfway house or residence for people who may become institutionalized.

(c) A temporary accommodation in another person's or family's residence for 90 days or less.

(d) A place not designed to be or ordinarily used as a place for people to sleep, such as a hallway, bus station, or similar place.

(9) *Ineligible* means a person cannot receive program benefits because they do not meet some eligibility requirement that is beyond their control; not because they refuse to fulfill the requirement. A person may be ineligible for benefits because of age, alien status, student status (for FS) or because a disqualified member of the filing group makes them ineligible.

(10) *Long-term care* is the system through which the Department provides required financial benefits, specialized living arrangements, and a broad range of social and health services to eligible aged, blind or disabled adults for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(11) *Marriage* means legal marriage uniting two people. Legal marriage is:

(a) One recognized as legal by state statute of the state where the marriage occurred, including common-law marriage if recognized as legal in a state where the couple previously resided.

(b) A cultural marriage if it occurred in a country that recognizes it as legal.

(12) For FS, a *migrant farmworker* is an individual who regularly travels away from their permanent residence overnight, usually with a group of laborers, to seek employment in an agriculturally related activity. If any member of an FS household fits the definition of migrant farmworker at any time during the redetermination period, budget the household according to the policy on migrant farmworkers.

(13) A *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.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the person is not yet 21 years of age or has reached the age of 65.

(D) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, a nonstandard living arrangement means each of the following locations:

- (A) Foster care.
- (B) Residential Care Facilities.
- (C) Drug or Alcohol Residential Treatment Facilities.
- (D) Homeless or Domestic Violence Shelters.
- (E) Lodging house if paying for room and board.
- (F) Correctional facilities.
- (G) Medical institutions.

(14) *Parent* means the biological or legal (step or adoptive) mother or father of a person or unborn child.

(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 person 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.

(15) For all programs except FS, *primary person* 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 EXT, MAA, MAF and TANF, the parent or caretaker relative.

(b) For ERDC, the caretaker.

(c) For GA, GAM, OSIP, OSIPM and QMB, the client or their spouse.

(d) For OHP, REF and REFM, the applicant, caretaker, caretaker relative or parent.

(16) For FS, *primary person* means:

(a) An adult in the filing group who is designated by the group to serve as the primary person.

(A) A *child* of any age cannot be the primary person when more than one generation lives together, and an adult who is the parent or fulfilling the role of parent is employed, work-registered for FS or receiving TANF or UC.

(B) Where there is no adult, the group can designate another responsible person in the filing group.

(b) Once the primary person has been designated, the filing group cannot choose a different person to be the primary person during the same certification period or during an OFSET or job quit disqualification period, unless there is a change in the composition of the household group.

(17) Safe homes are 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.

(18) For FS, *seasonal farmworkers* are people employed in agricultural employment of a seasonal or temporary nature. If any member of an FS household fits the definition of seasonal farmworker at any time during the redetermination period, budget the household according to policy on seasonal farmworkers. Seasonal farmworkers are not required to be absent overnight from their permanent residence when:

(a) Employed on a farm or ranch performing field work related to planting, cultivation, or harvesting operations; or

(b) Employed in a canning, packing, ginning, seed conditioning, or related research or processing operation, and transported to or from the place of employment by means of a day-haul operation.

(19) *Sibling* means the brother or sister of a person. "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.

(20) *Spouse* means a person who is legally married to another person. In the ERDC and FS programs, spouse includes a person who

is not legally married to another, but is presenting themselves to the community as the husband or wife by:

(a) Representing themselves as husband and wife to relatives, friends, neighbors or tradespeople; and

(b) Sharing living expenses or household duties.

(21) *Standard living arrangement* means a location that does not qualify as a nonstandard living arrangement.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 30-1992 (Temp), f. & cert. ef. 10-14-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-110-0115**

#### **Terms Used in Determining Eligibility; OSIP-EPD and OSIPM-EPD**

(1) *Approved account* refers to a segregated account in a financial institution, the purpose of which is to save to use for future disability-related expenses that would increase the individual's independence and employment potential. Also included in this definition are accounts regulated by the Internal Revenue Code and used for retirement planning, such as IRAs, 401(k)s, TSAs, and KEOGHs.

(2) *Attached to the workforce* refers to a person who is employed and has, in each countable quarter, earnings sufficient to receive credit from the Social Security Administration (SSA) for a quarter of coverage for purposes of obtaining Social Security benefits (see 42 U.S.C. sec. 413).

(3) *Blind work expenses* (BWEs) refers to those costs defined by SSA that can be used as reductions to earned income as defined in 20 CFR 416.1112(c)(8).

(4) *Client contribution* refers to the amount that must be paid monthly as a condition of eligibility for the EPD program. This contribution is the combination of the Cost Share and the Premium.

(5) *Cost share* refers to the amount of unearned income in excess of the OSIP income and payment standard that is given to the state.

(6) *Disabled or has a disability* refers to having a physical or mental impairment, or a combination of these impairments, that meets the definition of disability used by SSA when determining eligibility for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) as defined in 20 CFR Part 404.

(7) *Disability determination* refers to the process used to establish whether the individual's disability meets the definitions used by SSA in determining eligibility for SSI and SSDI.

(8) *Employment* refers to an ongoing work activity for which income is received and a potential tax liability is incurred.

(9) *Employment and independence expense* (EIE) refers to the cost of any expense that can be reasonably expected to enhance the independence and employment potential of the individual.

(10) *Impairment related work expenses* (IRWEs) refers to those costs defined by SSA that can be used as reductions to earned income. To be allowed, the item or service must be related to the impairment and necessary to enable the person to perform their job as defined in 20 CFR 416.976.

(11) *Past relevant work* (PRW) refers to work done within the past 15 years, that was substantial gainful activity, and that lasted long enough for the worker to learn to how do it.

(12) *Premium* refers to the payment given to the state that is based on a graduated percentage of the total income of the individual.

(13) *Substantial gainful activity* (SGA) refers to the term used by SSA to describe a level of work activity and earnings. In the EPD program, a person is engaging in SGA if their earnings are at or above the EPD income standard.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05



**461-110-0210**

**Household Group**

(1) The household group is the people who live together with or without benefit of a dwelling. For homeless people, the household group is the people who consider themselves living together.

(2) A separate household group is established for all the people who live in a dwelling. A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has — separate from other dwellings — an access to the outside that does not pass through another dwelling, a sleeping area, a bathroom, and a kitchen facility.

(3) For all programs except FS, a separate household group is established for people who live in the same dwelling as another household group, if all the following are true:

(a) There is a landlord-tenant relationship between the two groups in which the tenant is billed by the landlord at fair market value for housing.

(b) The tenant lives independently from the landlord.

(c) The tenant:

(A) Has and uses sleeping, bathroom and kitchen facilities separate from the landlord; or

(B) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for fair market value compensation.

(4) People who live with more than one household group during a calendar month are members of the household group in which they spend 51 percent or more of their time, except as follows:

(a) For TANF:

(A) If a parent sleeps at least 30 percent of the time during the calendar month in the dependent child's home, the parent is in the same household group as the dependent child.

(B) If a dependent child lives with two household groups in the same calendar month for one of the following reasons, include the child in the group with the caretaker relative who usually has the major responsibility for care and control of the child.

(i) For educational reasons.

(ii) The usual caretaker relative is gone from the household for part of the month because of illness.

(iii) A family emergency.

(b) For ERDC, if a child lives with different caretakers during the month, they are considered members of both household groups.

(c) For FS:

(A) Include the person in the household group in which he or she eats at least 51 percent of his or her meals.

(B) Residents of domestic violence shelters can be included in two household groups the month they enter the shelter. (The two household groups are the one they left and the one they are in after entering the shelter.)

(5) For OSIPM, people receiving waived care or nursing facility care are each an individual household group.

(6) For QMB, the household group consists of the client and their spouse, even if the spouse does not meet all nonfinancial eligibility requirements.

(7) The people in the household group who apply for benefits are called applicants. The household group and applicants form the basis for determining who is in the remaining eligibility groups.

(8) People gone from the household for 30 days or more are no longer part of the household, except for the following:

(a) For all programs except FS, people in a general hospital for 30 days or more remain in the household group unless they go into long-term care. For FS, these people are no longer in the household group.

(b) For ERDC, EXT, MAA, MAF, OHP, SAC and TANF:

(A) Caretaker relatives who are gone for up to 90 days in a residential alcohol or drug treatment facility are in the household group.

(B) Children who are gone for 30 days or more are in the household group if they are:

(i) Gone for illness (unless they go into a long-term care Title XIX facility), social service, or educational reasons;

(ii) In foster care, but expected to return to the household within the next 30 days; or

(iii) For OHP only, in a residential alcohol or drug treatment facility. If the child's household is ineligible because of income, the child is a separate household.

(c) Additionally for MAA, MAF, and TANF, a parent who is gone for 30 days or more is in the household group if:

(A) They are absent because of education, training or employment — including absence while working or looking for work outside the area of their residence, including long-haul truck driving, fishing and active duty in the U.S. armed forces; and

(B) The other parent remains in the home.

(d) For ERDC and OHP, a person who is absent because of education, training or employment, including long-haul truck driving, fishing and active duty in the U.S. armed forces.

(9) Under OSIP-EPD and OSIPM-EPD, the household group consists only of the individual applying for or receiving benefits.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 5-1999(Temp), f. & cert. ef. 4-1-99 thru 6-30-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 17-2004, f. & cert. ef. 7-1-04

**461-110-0310**

**Filing Group; Overview**

(1) The filing group is the people from the household group whose circumstances are considered in the eligibility determination process. The filing group consists of the following:

(a) People from the household group who choose to apply for benefits and who meet non-financial eligibility requirements; and

(b) People who must apply for benefits because of their relationship to people described in subsection (1)(a) of this rule.

(2) If the filing group does not include at least one applicant who meets all non-financial eligibility requirements, the group is ineligible. Clients must provide information needed to determine who must be in the filing group.

(3) When a household member is in more than one filing group for the same program, the filing groups must be combined, unless specified otherwise in administrative rule.

(4) For FS, a household member can be in two filing groups if the person:

(a) Is a resident of a domestic violence shelter or safe home; and

(b) Recently left the household containing the person who abused them.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94

**461-110-0330**

**Filing Group; EXT, MAA, TANF**

(1) In the EXT, MAA, and TANF programs, a filing group must include a dependent child or unborn child and the following household members (even if they are not applicants or do not meet nonfinancial eligibility requirements):

(a) Parents of the dependent children in the filing group.

(b) Parents of an unborn child in the filing group.

(c) Siblings of the dependent child, except as specified in subsection (3)(a) of this rule. The siblings must be under the age of 18, or 18 years of age and attending school full time.

(d) For needy caretaker relatives of the dependent child, their spouse and their dependent children.

(e) Caretaker relatives.

(2) A dependent child is not included in the filing group if he or she has been or will be receiving foster care payments for more than 30 days or is receiving adoption assistance.

(3) The parents of a minor parent are not in the minor parent's filing group if:

(a) The minor parent does not live with his or her parent; or

(b) The parents of the minor parent are in the minor parent's household but are not applying for MAA or TANF for the minor parent or any of his or her siblings.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04

**461-110-0340**

**Filing Group; MAF and SAC**

(1) A filing group in the MAF program consists of the following people:

- (a) Applicants who meet all nonfinancial eligibility requirements.
- (b) The following household members, even if they do not apply or do not meet nonfinancial eligibility requirements:

(A) Parents of a dependent child in the filing group.

(B) Parents of an unborn, as follows:

(i) If there are no other dependent children in the filing group, both the mother and the father are in the group.

(ii) If there are other dependent children in the filing group, the mother is in the group. The father is in the group only if he is the father of a dependent child in the filing group or is married to the mother.

(c) Except as provided in section (2)(a) of this rule, each blood-related sibling of a dependent child if the sibling meets the following nonfinancial eligibility requirements:

(A) The age requirement in OAR 461-120-0510.

(B) The requirement to live with a caretaker relative in OAR 461-120-0630.

(C) A deprivation requirement of the TANF program, described in OAR 461-125-0010 and following.

(D) The citizenship or alien status requirements in OAR 461-120-0110.

(2) Notwithstanding the requirements of section (1) of this rule, in the MAF program:

(a) A sibling of a dependent child may be excluded from the filing group if the sibling is receiving adoption assistance and if counting the sibling's income causes the filing group to be ineligible for benefits.

(b) A dependent child is not included in the filing group if the child has been or will be receiving foster care payments for more than 30 days.

(c) A minor parent may form a separate filing group with his or her dependent children when the minor parent lives with an adult relative who is not his or her parent.

(3) In the SAC program, the filing group includes any child who meets all nonfinancial eligibility requirements.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02

**461-110-0350**

**Filing Group; ERDC**

(1) For ERDC, the filing group consists of applicants who meet all nonfinancial eligibility requirements and the following applicants and household group members, even if they do not meet nonfinancial eligibility requirements:

(a) The caretaker of the child for whom ERDC benefits are requested, except that this section (1) does not apply to a provider of child care for the child of a person:

(A) Who is a member of an armed forces reserve unit or a member of the National Guard;

(B) Who has been called to active duty; and

(C) Who is away from the child's home for more than 30 days.

(b) Unmarried children and their siblings, under age 18 or under the age of 19 and attending school full time, in the care and custody of the caretaker. Foster children are included if the caretaker wants to include them in the need group.

(c) The parents of a child required to be in the filing group.

(d) The parents of an unborn, if the unborn's siblings are required to be in the filing group.

(e) The spouse of the caretaker.

(2) Minor parents may form a separate filing group with their dependent children when the minor parent applies as the caretaker.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 32-2003(Temp), f. & cert. ef. 12-17-03 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04

**461-110-0370**

**Filing Group; FS**

In the Food Stamp program:

(1) Except as provided in this rule, the filing group is composed of members of a household group who customarily purchase and prepare meals together.

(2) Except as provided in sections (3), (6), and (7) and subsection (5)(b) of this rule, the following persons, if they are in the same household group, must be in the same filing group, even if they do not customarily purchase and prepare meals together:

(a) Each spouse.

(b) A *parent* (as defined in OAR 461-110-0110) and their child under age 22 who is living with them.

(c) A household group member and child under age 18 who lives with and is under *parental control* of that household group member. For the purposes of this subsection, parental control means the adult is responsible for the care, control, and supervision of the child or the child is financially dependent on the adult.

(3) Notwithstanding sections (1) and (2) of this rule, a person is excluded from the filing group if, during the month the group applied for food stamps, the person received food-stamp benefits or SSI benefits through the state of California that included food-stamp benefits. This exclusion applies only in the initial month and, if necessary to meet notice requirements, in the month following the initial month. This exclusion does not apply to a person who was the head of household in the prior household.

(4) The following persons may form a separate filing group if they purchase and prepare food with other members of the household group, unless they are required by section (2) of this rule to be in the same filing group:

(a) A paid live-in attendant and the attendant's minor children may choose not to be in the filing group with the people for whom they are providing services.

(b) An *elderly* person (as defined in OAR 461-110-0110) may be considered a separate filing group from the others with whom the elderly person purchases and prepares meals, if:

(A) The *elderly* person is unable to purchase and prepare food because of a permanent and severe disabling condition; and

(B) The combined income of the other members of the household group does not exceed the following limit: [Table not included. See ED. NOTE.]

(5) The following persons who are paying to have meals provided are not eligible to participate in the Food Stamp program independently of the care or service provider. However, they may be included in the care or service provider's filing group if the provider chooses to apply for benefits for them.

(a) A person in foster care along with his or her spouse and each child under age 22 living with them.

(b) A member of the household group who pays the filing group a reasonable amount for room and board (lodger). A reasonable amount is:

(A) An amount that equals or exceeds the Thrifty Food Plan for the person and anyone in that person's filing group (see OAR 461-155-0190(2)), if more than two meals a day are provided; or

(B) An amount that equals or exceeds two-thirds of the Thrifty Food Plan for the person and anyone in that person's filing group, if two or fewer meals a day are provided.

(6) Notwithstanding section (2) of this rule, the following household group members may form a separate filing group from other members of the household group:

(a) A resident of an alcohol or drug treatment and rehabilitation program certified by the Department for which an employee of the facility is the authorized representative.

(b) A resident of a nonprofit public or private residential care facility.

(c) A resident of a homeless or domestic violence shelter.

(d) A member of the household group who is not paying the filing group a reasonable amount for room and board (lodger), as defined in subsection (5)(b) of this rule.

(7) The following household group members are excluded from the filing group:

(a) A resident of a commercial boarding house.

(b) An ineligible student, as defined in OAR 461-135-0570.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-

1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-110-0390**

##### **Filing Group; GA, GAM**

For GA and GAM, the filing group consists of the applicant and the applicant's spouse.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

#### **461-110-0400**

##### **Filing Group; OHP**

In the OHP program, filing groups are formed from the household group as follows:

(1) A person constitutes a filing group if not required by this rule to be in a filing group with another person.

(2) The following people must be in the same filing group, even if they are not applicants or do not meet all nonfinancial eligibility requirements:

(a) People married to each other and each child of either spouse.

(b) With respect to a child or unborn, the parents of the child or unborn and the children of each parent.

(c) Siblings under the age of 19.

(3) A child whose caretaker relative is not the child's parent may constitute a separate filing group or may be in a group with the caretaker relative, at the option of the caretaker relative.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 23-2003, f. & cert. ef. 10-1-03

#### **461-110-0410**

##### **Filing Group; OSIP, OSIPM, QMB**

(1) In the OSIP and OSIPM programs (except OSIP-EPD, OSIPM-EPD, and OSIPM-IC):

(a) For applicants age 18 and older who live in a *standard living arrangement* as defined in OAR 461-110-0110, the filing group consists of applicants and the spouse of an applicant.

(b) For applicants who are under the age of 18 living in a standard living arrangement and are not assumed eligible, the filing group consists of applicants and each parent (defined in OAR 461-110-0110) of these applicants.

(2) In the OSIP and OSIPM programs (except OSIP-EPD, OSIPM-EPD, and OSIPM-IC), when people live in a *nonstandard living arrangement* as defined in OAR 461-110-0110, the filing group consists only of the person applying for benefits.

(3) In the OSIP-EPD, OSIPM-EPD, and OSIPM-IC programs, the filing group consists only of the person applying for benefits.

(4) In the QMB program, whether in a *standard or nonstandard living arrangement*, the filing group consists of applicants and the following household members:

(a) The spouse of an applicant.

(b) Each parent of children under age 21, if the children are applying and are not assumed eligible.

(c) Children under age 21, if the parent wants to include these children in the need group.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-110-0430**

##### **Filing Group; REF, REFM**

(1) In the REF and REFM programs, each person in the filing group must meet the requirements of OAR 461-120-0120 regarding alien status.

(2) In the REF and REFM programs, the filing group may consist of a single adult with no children or a married couple with no children.

(3) In the REFM program, the filing group may consist of a one- or two-parent family if the family is not eligible for the EXT, MAA, MAF or SAC program during their first eight months in the United States.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02

#### **461-110-0510**

##### **Financial Group; Overview**

The financial group is the filing group members whose income and resources count in determining eligibility and benefits.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

#### **461-110-0530**

##### **Financial Group**

(1) The financial group for ADC, ADCM, REF, and REFM consists of all the people in the filing group, except the following:

(a) Caretaker relatives (other than parents) who choose not to be included in the need group; and

(b) People who receive SSI benefits.

(2) The financial group for OHP consists of all the people in the filing group (including those receiving SSI benefits), except caretaker relatives (other than parents) who choose not to be included in the need group.

(3) For all other programs, the financial group consists of all the people in the filing group.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98

#### **461-110-0610**

##### **Need Group; Overview**

The need group consists of the following people:

(1) The people whose basic and special needs are used in determining eligibility.

(2) In the ERDC, FS, GA, OHP, OSIP, QMB, REF, and TANF programs, the people whose basic and special needs are used in determining benefit level.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 22-2004, f. & cert. ef. 10-1-04

#### **461-110-0630**

##### **Need Group**

(1) In the EA, REF, and REFM programs, the need group consists of the financial group members who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.

(2) In the ERDC program, the need group consists of each member of the financial group.

(3) In the EXT program, the need group consists of each member of the financial group.

(4) In the FS program, the need group consists of the financial group members who meet all nonfinancial eligibility requirements, except the following people are not in the need group:

(a) A member disqualified for an intentional program violation.

(b) A fleeing felon under OAR 461-135-0560.

(c) A person violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(5) In the GA and GAM programs, the need group consists of each member of the financial group except that the following people may not be in the need group:



- (a) A fleeing felon under OAR 461-135-0560.
- (b) A person in violation of a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.
- (6) In the MAA and TANF programs, the need group is formed as follows:

(a) Except as provided in subsection (b) of this section, the need group consists of the financial group members who meet all nonfinancial eligibility requirements other than the citizenship and alien status requirements of OAR 461-120-0110.

(b) The need group cannot include:

(A) A parent who is in foster care and for whom foster care payments are being made.

(B) An unborn child.

(C) In the TANF program:

(i) A person who cannot be in the need group because of a disqualification penalty.

(ii) A fleeing felon under OAR 461-135-0560.

(iii) A person violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(7) In the MAF program, the need group consists of the financial group members who meet all nonfinancial eligibility requirements, except for the following people:

(a) A parent who is in foster care and for whom foster care payments are being made.

(b) The father of an unborn child who has no eligible dependent children.

(8) In the OHP program, the need group consists of each member of the financial group. An unborn child of a pregnant female is included in the need group.

(9) In the OSIP and OSIPM programs, the need group consists of each member of the financial group.

(10) In the QMB program, the need group consists of each member of the financial group, except for the following:

(a) A person who does not meet the citizenship or alien status requirements.

(b) A person disqualified from TANF for noncooperation in the JOBS program.

(c) A person disqualified for failure to meet the requirements of OAR 461-120-0345(2) or for not providing a social security number (SSN).

(11) In the SAC program, the need group consists of the person in the financial group.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-110-0720**

##### **Benefit Group; Overview**

The benefit group is the people who receive benefits.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

#### **461-110-0750**

##### **Benefit Group**

(1) Except as provided in section (2) of this rule, for people not assumed eligible (see OAR 461-135-0010), the benefit group consists of the people from the need group requesting benefits who:

(a) Meet all nonfinancial eligibility requirements;

(b) Have resources below the resource limit; and

(c) Have income below the Income Limits/Payment Standards.

(2) In the GA and GAM programs, the following persons are not in the benefit group:

(a) A person receiving or deemed to be receiving SSI or SSDI benefits.

(b) A person who meets the non-disability eligibility requirements under Title II of the Social Security Act.

(3) For people assumed eligible (see OAR 461-135-0010), the benefit group consists of the people who are in the benefit group of the program used to assume eligibility.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 8-2006, f. & cert. ef. 6-1-06

#### **DIVISION 115**

##### **APPLICATION, REDETERMINATION, AND VERIFICATION**

#### **461-115-0010**

##### **Application Process; General**

(1) Clients may apply for one or more programs using one application and process, under the time frames and eligibility requirements that apply to each program for which the clients are applying. The Division redetermines eligibility at assigned intervals and whenever a client's eligibility becomes questionable.

(2) If the Division cannot determine eligibility during the intake, the client is entitled to a written notice that includes a statement of the specific information needed to determine eligibility and the date by which the client must provide the required information.

(3) The Division ensures that an application form is readily available to anyone requesting one and assists clients who are unable to complete the application form or gather information necessary to verify eligibility.

(4) The Division will screen applicants to determine whether they have an emergent need, are eligible for expedited food stamp services, or are at risk of being a victim of domestic violence.

(5) A filing group is entitled to establish a filing date for the Food Stamp program on the date they request benefits.

(6) If a client files an application containing the client's name and address, the Division will send the client a decision notice.

(7) A client may withdraw an application at any time.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-115-0015**

##### **Application Process; Waiting List for ERDC-SBG**

(1) Eligibility for the ERDC-SBG program is subject to the availability of funds. A waiting list of prospective applicants is created and maintained by the Department.

(2) A random drawing from among those returning a "waiting list information" form during the initial period will establish the positions of prospective applicants on the waiting list to apply for funds. Following the initial application period, prospective applicants will be added to the waiting list following those remaining from the initial application period in order of the date and time the Department receives the "waiting list information" form.

(3) An appropriate number of persons from the initial waiting list are notified of their right to apply. Those not selected are notified of their position on the waiting list.

(4) Each month, on the basis of an estimate of available funds, an appropriate number of persons on the waiting list are notified of their right to apply.

(5) The processing time frame for the ERDC-SBG application is the same as that specified in OAR 461-115-0190, except that:

(a) The date the Department sends the notification described in section (3) of this rule establishes the date of request.

(b) If the Department does not receive an application within 15 days following the date of request, the applicant is dropped from the waiting list. An applicant who applies after the 15 days must reapply to be put on the waiting list and will be added to the waiting list in order of the date and time the Department receives the "waiting list information" form.

(c) Effective January 1, 2004 through March 31, 2004, if the student is not enrolled in school when his or her name comes up on the

waiting list, the application processing time frame may not be extended to allow the student time to register and enroll in school.

(d) Effective April 1, 2004, if the student is not enrolled in school when his or her name comes up on the waiting list, the application processing time frame will be extended to allow the student time to register and enroll in school no later than the next school term.

(6) The Department updates the waiting list monthly by notifying all persons who have been on the waiting list for six months or more that they must submit a new "waiting list information" form. A person on the waiting list who does not respond within 15 days from the date the notification is sent to the person or who indicates assistance with child care expenses is not needed will be removed from the waiting list.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 24-1992(Temp), f. & cert. ef. 8-18-92; AFS 32-1992, f. 10-30-92, cert. ef. 11-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04

#### **461-115-0020**

##### **Application Requirements**

To complete the application process, the applicant or his or her authorized representative must complete and sign an application, apply at the appropriate location, provide necessary information to the Division within the time frames specified for each program, and meet the interview requirements of OAR 461-115-0230.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-115-0030**

##### **Initiating the Application Process; Not FS**

(1) For all programs covered by chapter 461 of the Oregon Administrative Rules, the client or someone authorized to act on behalf of the client must contact the Department or use another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. The request starts the application process.

(2) The *date of request* is one of the following:

(a) In the EA, ERDC-BAS, GA, OSIP, REF, and TANF programs and for support service payments in the JOBS program authorized by OAR 461-190-0211, the *date of request* is the day the request for benefits is received by the Department.

(b) In the ERDC-SBG program, the date of request is the date the Department sends the client a notice of the right to apply, along with an application.

(c) In the FS program, this section does not apply. See OAR 461-115-0040.

(d) In the GAM, MAA, MAF, OSIPM, and SAC programs, the date of request is the day the medical care began, if the actual request is made no later than the next working day. If the request is received later than the next working day, the date of request is the day the request is received by the Department.

(e) In the OHP and REFM programs, the date of request is the earlier of the following dates:

(A) The date the completed written application is received by the Department.

(B) The date stamped on the OHP application by an OHP outreach worker, toll-free operator or Department employee, if the completed written application is received by the Department within 30 days thereafter.

(C) The date the client receives medical care if the date identified under paragraph (A) or (B) of this subsection is the next working day.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-115-0040**

##### **Filing Date; FS**

(1) In the Food Stamp program, the filing date is the date a signed written request for benefits is received by the Division or by the Social Security Administration for filing groups applying in accordance with OAR 461-115-0150(3). The written request may be a Division-approved form or other written material that includes the client's name, address, and signature.

(2) A filing group is entitled to establish a filing date on the date a member of the group requests benefits. The filing date establishes:

(a) The date for starting the application processing time frames.

(b) The date from which some effective dates are determined.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-115-0050**

##### **When an Application Must Be Filed**

A client must file an application, or may amend an application already complete, as a prerequisite to receiving benefits as follows:

(1) Except as provided in sections (3), (4), (5), and (6) of this rule, a client wishing to apply for program benefits must submit a complete application on a form approved by the Department.

(2) An application is complete if the following requirements are met:

(a) All information necessary to determine the client's eligibility and benefit amount is provided on the application for all people in the filing group.

(b) The applicant, even if homeless, provides a mailing address.

(c) The application is signed. A person required but unable to sign the application may sign with a mark, witnessed by another person.

(d) The application is received by the Department.

(3) A new application is not required in the following situations:

(a) In the Food Stamp program, when a single application can be used both to determine a client is ineligible in the month of application and to determine the client is eligible the next month. This can be done when:

(A) Anticipated changes make the filing group eligible the second month; or

(B) The filing group provides verification between 30 and 60 days following the filing date, in accordance with OAR 461-180-0080.

(b) In all programs except the Food Stamp program, when a single application can be used both to determine a client is ineligible on the date of request and to determine the client is eligible when anticipated changes make the filing group eligible within 45 days from the date of request.

(c) When the case is closed and reopened during the same calendar month.

(d) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.

(e) When reinstating medical benefits for a pregnant woman covered by OAR 461-135-0950(7).

(4) A new application is required to add a newborn child to a benefit group according to the following requirements:

(a) For the REF and TANF programs:

(A) A new application is not required if the child is listed on the application as "unborn" and there is sufficient information about the child to establish its eligibility.

(B) A new application is required if the child is not included on the application as "unborn."

(b) In the EXT, MAA, MAF, OHP, and REFM programs, no additional application is required to add the child to its mother's benefit group. The child may be added to a benefit group other than the benefit group of the child's mother if eligibility can be determined without submission of a new application.

(c) In the ERDC and FS programs, an application is not required to add the child to the benefit group.

(d) For all other programs, an application is required.

(5) A new application is required to add a person to a benefit group, other than a newborn child, according to the following requirements:

(a) In the ERDC and Food Stamp programs, a new application is not required.

(b) In the EXT, MAA, MAF, OHP, REFM, SAC, and TANF programs, a person may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.

(c) In all other programs, a new application is required.

(6) Clients whose TANF grant is closing may request ERDC orally or in writing.

(7) For all programs except EXT, FS, MAA, MAF, and OHP, clients may change between programs administered by the Department using the current application if the following conditions are met:

(a) The client makes a verbal or written request for the change.

(b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.

(c) The program change can be effected while the client is eligible for the first program.

(8) A client may change between EXT, MAA, MAF, and OHP using the client's most recent medical application.

Stat. Auth.: ORS 409.050, 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-1996, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

#### **461-115-0071**

##### **Who Must Sign the Application and Complete the Application Process**

(1) In the ERDC, MAA, MAF, REF, REFM, and TANF programs, the following people must sign the application and complete the application process:

(a) In the MAA, MAF, REF, REFM, and TANF programs:

(A) Each parental caretaker relative must sign the application.

(B) A non-parental caretaker relative must sign the application, subject to the following specific requirements:

(i) If the non-parental caretaker relative applies for benefits with the dependent child and lives with a spouse, both the non-parental caretaker relative and the spouse must sign the application.

(ii) A non-parental caretaker relative who applies only for children must sign the application, but the non-parental caretaker relative's spouse is not required to sign the application.

(iii) If the non-parental caretaker relative changes, the new non-parental caretaker relative must sign a current application.

(b) In the ERDC program, a caretaker must sign.

(2) In the EA program:

(a) A caretaker relative must sign the application and complete the application process for a dependent child under age 18. If the child is not living with a caretaker relative, another adult may act on behalf of the child.

(b) If the caretaker relative lives with a spouse, both must sign the application.

(c) A dependent child age 18 who applies must sign the application and complete the application process.

(3) In the Food Stamp program, the primary person, the spouse of the primary person, or another adult member of the filing group must sign the application and complete the application process.

(4) In the GA, GAM, and QMB programs, an adult requesting assistance and the adult's spouse, if they live together, must complete the application process and sign the application.

(5) In the OHP program, the primary person, the spouse of the primary person, and other adult members of the filing group who are age 19 or over must sign the application and complete the application process.

(6) In the OSIP and OSIPM programs, an adult requesting assistance and the adult's spouse, if they live together, must sign the appli-

cation and complete the application process. If the applicant dies prior to the determination of eligibility for OSIPM, the application may be processed if the Department receives the required verification.

(7) A person required to sign the application but unable to sign may sign with a mark, witnessed by an employee of the field office.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-115-0090**

##### **Authorized Representatives; General**

(1) The head of household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for the program, in reporting changes, in obtaining benefits, or in using benefits. A person must provide adequate documentary evidence to the Division in order to serve as an authorized representative of a client.

(2) In all programs except the Food Stamp program, if an authorized representative is needed but has not been designated by the client, the Division will appoint one.

(3) In the Food Stamp program, the selection of authorized representatives and their authority are limited by federal regulations in 7 CFR 273.2, as amended at 57 Fed. Reg. 70, 193 (2000).

(4) A client who resides in a drug or alcohol treatment center licensed by the Oregon Office of Alcohol and Drug Abuse Programs may apply for food stamps only through an authorized representative. The authorized representative must be an employee of and designated by the center.

(5) A *disabled* client who participates in the Food Stamp program while residing in a *residential care facility* may participate through an authorized representative or on his or her own behalf, at the option of the *residential care facility*.

(6) In the TANF program, a person not related to the dependent child may serve as authorized representative or alternate payee for not more than 60 days.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01

#### **461-115-0140**

##### **Authorized Representative or Alternate Payee; FS**

(1) In the FS program, none of the following may serve as authorized representative or alternate payee:

(a) A person disqualified for fraud (unless he or she is the only adult member of the case).

(b) A landlord or a vendor of goods or items who deals directly with the client, including a retailer authorized to accept FS benefits.

(c) Unless authorized by the Department's Food Stamp Program Administrator or designee, an employee of the Department or an employee of a contractor involved in the certification and issuance processes for food stamp benefits.

(d) A provider of meals for the homeless.

(2) An authorized representative or alternate payee who knowingly misrepresents the filing group's circumstances or misuses FS benefits is subject to penalty as follows:

(a) For treatment programs for drug addicts or alcohol abuse or licensed RCFs acting as the authorized representative, the facility may be prosecuted under applicable federal or state law.

(b) For all other authorized representatives and alternate payees, the Department may prohibit the person from serving as a representative or payee for one year.

(3) Except as provided by this rule or by OAR 461-115-0090, a client may select his or her authorized representative or alternate payee.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05



**461-115-0145**

**Responsibilities of a Facility Acting as Authorized Representative; FS**

(1) Two types of facilities may qualify to be the authorized representative or alternative payee — a state-certified drug or alcohol treatment center and a licensed residential care facility (see OAR 461-115-0090 regarding requirements for authorized representatives). Each such drug or alcohol treatment center and licensed residential care facility must provide the branch office monthly with a list of residents receiving food stamp benefits. The list must include a statement of validity signed by an official of the facility.

(2) The facility is responsible for notifying the branch office of changes in the resident's assets or other circumstances.

(3) When a resident moves out of a facility, the facility provides the resident with his or her EBT card. If the resident moves prior to the 16th day of the month, the facility shall ensure that the correct amount, not less than one-half of that month's allotment, is in the resident's EBT account. If the resident leaves on or after the 16th day of the month, the client is entitled to any remaining benefits.

(4) The facility must return to the Division any Food Stamp benefits remaining at the end of the month for residents who have left that month if the facility was unable to return the benefits to the client.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01

**461-115-0150**

**Offices Where Clients Apply**

(1) For all programs, applicants must apply at the branch office serving the area in which they live or work. Applicants temporarily in another area of the state should apply at the branch office serving that area. Applicants may also apply at other locations for the following programs:

(a) Homeless clients may apply with a Community Action Agency for the Housing Stabilization program.

(b) Applicants may apply for OHP by:

(A) Calling the OHP toll-free number;

(B) Attending an OHP outreach meeting; or

(C) Contacting a federally qualified health center, a disproportionate-share hospital, or another entity authorized by rule.

(2) The Division has designated liaison branch offices for some groups of applicants (such as patients in state medical institutions and refugees). Those applicants must apply at the designated liaison branch office.

(3) Food Stamp applicants may apply at an office of the Social Security Administration if all members of the filing group are applying for or are receiving SSI, and the filing group has not applied for or received food stamps during the previous 30 days.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00

**461-115-0190**

**Application Processing Time Frames; Not Assessment, FS, HSP or TA-DVS**

(1) For all programs except Assessment, EA, FS, and TA-DVS and medical assistance programs based on disability, the Department determines eligibility and sends a decision notice not later than the 45th day after the *date of request*. The Department may extend the period for any of the following reasons:

(a) Information needed to determine eligibility is expected to be received after the 45-day deadline, and the client has no control over the information.

(b) Other circumstances beyond the control of the client prevent the Department from making the decision within the 45-day period.

(c) The Department must determine whether a person who has applied for OSIPM is blind or disabled. In this case, the Department determines eligibility and sends a decision notice not later than the 90th day after the date of request. The Department may extend this period for any of the following reasons:

(A) The Department cannot reach a decision because the client or an examining physician or psychologist has not taken an action necessary for the decision to be made.

(B) There is an administrative or other emergency beyond the Department's control that impairs its ability to make the decision.

(2) For EA, the Department determines eligibility within one working day of the date of application or as soon thereafter as verification of emergent need is completed. Verification of all other factors may be waived if it would delay the client's receipt of assistance.

(3) For support service payments in the JOBS program authorized by OAR 461-190-0211, the Department determines eligibility as follows:

(a) If the client is receiving a TANF grant — not later than the 30th day after the *date of request*.

(b) If the client is not receiving a TANF grant — in time to meet the need for which the request is made.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

**461-115-0210**

**Application Processing Time Frames; FS**

(1) This rule applies in the Food Stamp program to an initial application and at recertification.

(2) The Department will determine eligibility and provide the benefit group the opportunity to participate as soon as possible. The application processing time frame for regular service is the 30 days immediately following the *filing date* (see OAR 461-115-0040) and not later than the 7th day following the *filing date* for expedited service.

(3) The application processing time frame for regular service includes:

(a) An interview as soon as possible but not later than 20 days after the filing date (see OAR 461-115-0230 regarding interviews);

(b) Completion of required verification; and

(c) The eligibility determination.

(4) The *filing date* remains effective for 60 days in both of the following situations:

(a) If the Department is not able to complete the application process within 30 days (for example, unable to schedule an interview by the 20th day following the *filing date*).

(b) If the applicant contacts the Department before the 30th day following the *filing date* and informs the Department that verification cannot be provided by the 30th day due to reasons beyond his or her control.

(5) If, for a reason within his or her control, the client fails to attend an interview by the 20th day following the *filing date*, and the interview occurs between the 20th and 30th days following the filing date, all verification must be provided not later than the 30th day following the *filing date*. If required verification is received after the 30th day, a new *filing date* is established as of the date the verification is received.

(6) If a client scheduled for an interview for expedited service fails to attend the interview without good cause, the client's application is processed for regular service.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

**461-115-0230**

**Interviews**

(1) In all programs except BCCM, MAA, MAF, OHP and SAC, the Department will schedule interviews with the client or authorized representative as necessary in the process of determining the client's eligibility and for other reasons related to the programs. Home visits are used for interviews only when the visit is scheduled in advance with the household.

(2) In the Food Stamp program, all clients are interviewed face-to-face prior to initial certification and at least once each 12 months. Other interviews may be conducted by phone. Interviews must be scheduled so the household has at least ten days to provide needed verification before the deadline provided in OAR 461-115-0210. An applicant who fails to attend a scheduled interview and who fails to contact the Department not later than 30 days following the date the application was filed is ineligible for benefits.

(3) A required face-to-face interview may be conducted by telephone or home visit if an authorized representative cannot be appointed and participating in a face-to-face interview would be a hardship for the household.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02

#### **461-115-0430**

##### **Periodic Redeterminations; Not EA, ERDC, EXT, FS, OHP, REF, REFM, or TA-DVS**

The Department periodically redetermines clients' eligibility for benefits and assigns a *redetermination date* by which the next determination is required. The Department selects the *redetermination date* based on the client's circumstances and according to the following requirements:

(1) In the TANF program, the Department redetermines eligibility according to the following schedule:

(a) For clients not in the monthly reporting system (MRS) and not participating in the JOBS program — at least once every six months.

(b) For clients in the MRS or participating in the JOBS program — at least once every 12 months.

(2) In the MAA, MAF, and SAC programs, the Department redetermines eligibility at least once every 12 months.

(3) In the BCCM, GA, and GAM programs, the Department determines eligibility each 12 months.

(4) In the OSIP and OSIPM programs, the Department determines eligibility each 12 months for clients who are not eligible for SSI. No redetermination is required for clients who are eligible for SSI.

(5) In the QMB program, the Department determines eligibility each 12 months for clients who are not eligible for SSI. For QMB recipients who are also eligible for MAA, MAF or OSIPM, a redetermination for QMB is completed with the redetermination of the other program.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-115-0450**

##### **Periodic Redeterminations; FS**

In the Food Stamp program, the Department selects the certification period and the *redetermination date* based on the client's circumstances and according to the following considerations:

(1) The length of the certification period depends on how far in advance the circumstances affecting the group's eligibility can be predicted but may not exceed 12 months, except that the certification period may be extended to the end of the TBA period if the client becomes eligible for transitional benefits (see OAR 461-135-0506).

(2) For benefit groups in which all members are included in a cash or medical program, eligibility for FS and the other program benefits is determined at the same time when practicable.

(3) When a client starts working under a JOBS Plus agreement, the Food Stamp certification period is extended to include the month after the client finishes working under the agreement. If the agreement ends early, the certification period is changed to end on the original

redetermination date or on the last day of the month following the month in which the JOBS Plus agreement ends, whichever is later.

(4) A client remains eligible for and continues to receive food stamp benefits on the normal issuance cycle if the application for recertification is filed with the Department and all required verification has been received by the Department:

(a) Not later than the 15th day of the month in which the certification expires; or

(b) In the case of a benefit group whose certification period is shorter than two months, not later than the 15th day after the Department provides notice that the certification period will expire.

(5) In the event a client files a timely application for recertification but either fails to appear for a scheduled interview or fails to timely submit required verification, the Department will deny the application for recertification. A client who files a timely application for recertification (see section (4) of this rule) is eligible for a food stamp allotment for the whole month only if:

(a) The required interview is completed, or the Department receives the required verification, within 30 days after the client files the application for recertification; or

(b) The interview or verification required by this rule would have occurred timely but for a delay caused by the Department.

(6) If the client fails to file an application for recertification during a certification period, food stamp benefits for the first month of the following certification period are prorated in accordance with OAR 461-180-0080.

(7) Once assigned, the certification period cannot be shortened.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03

#### **461-115-0510**

##### **Notice of Expiration for Redeterminations; FS**

(1) Prior to the end of a certification period, the Division will provide a notice to FS benefit groups not receiving TANF informing the members they need to reapply for benefits. The notice is provided in time for the clients to meet the deadlines in OAR 461-115-0450(4). The notice informs the benefit group of the date the current certification period ends, the requirement to reapply to continue receiving benefits without interruption, how to file an application and complete an interview, and the right to a hearing.

(2) If a reported change in the benefit group's circumstances indicates a change in the benefit group's eligibility or benefit level in the last month of the certification period, the Division will send the group a notice informing them that their certification period will end the month after they receive the notice, that they must reapply to continue receiving benefits without interruption, and that they have a right to a hearing.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-115-0530**

##### **Certification Period; OHP**

(1) The OHP certification period is the period for which a client is certified eligible for the program.

(2) For an OHP applicant (except OHP-CHP) not currently receiving BCCM, EXT, MAA, MAF, OHP, OSIPM, REFM, or SAC benefits, the initial OHP certification period begins on the effective date for starting medical benefits (described in OAR 461-180-0090) and includes the following six calendar months. All other OHP certification periods (except OHP-CHP) are for six months.

(3) For an OHP-CHP applicant not currently receiving BCCM, EXT, MAA, MAF, OHP, OSIPM, REFM, or SAC benefits, the initial OHP-CHP certification period begins on the effective date for starting medical benefits (described in OAR 461-180-0090) and includes the following twelve calendar months. All other OHP-CHP certification periods are for twelve months.

(4) A client's OHP benefits end before the end of the certification period if the client no longer meets the program eligibility requirements or the program ends.

(5) To establish a new certification period, an OHP benefit group must complete a redetermination of eligibility and be found eligible.

(6) When a person wishes to be added to an OHP benefit group already certified for OHP, the entire group must establish a new certification period. If, as a result of the new redetermination process, the new filing group is ineligible, the original benefit group remains eligible for the remainder of its certification period.

(7) If a member leaves an OHP benefit group, that individual and other members of the benefit group remain eligible for the remainder of the certification period.

(8) If a current OHP client moves into another current OHP filing group, that client and the members of that filing group who are OHP-eligible are combined into one benefit group if the client is required to be in the current household's OHP filing group. The certification period for the new benefit group ends the later of the date the current client's certification period or the filing group's period was set to end.

(9) A pregnant woman found eligible for the OHP-OPP program is not assigned a certification period — she is eligible for the period described in OAR 461-135-0010.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 409.050, 411.060

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 9-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-115-0540**

##### **Certification Period; OSIP-EPD and OSIPM-EPD**

(1) In the OSIP-EPD and OSIPM-EPD programs, the Department determines eligibility and assigns a redetermination date by which the next determination of eligibility is required. A certification period is the period for which a client is certified eligible for the program. The Department determines the length of the certification period based on the stability of the client's circumstances, as follows:

(a) The period may extend up to 12 months if the client's circumstances are sufficiently predictable.

(b) If the client's circumstances are not stable or changes are expected in the near future, the period may be a minimum of three and a maximum of six months.

(2) To receive uninterrupted benefits for the next certification period, OSIP-EPD and OSIPM-EPD clients must submit a completed redetermination form in the last month of their current certification period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 17-2003, f. & cert. ef. 7-1-03

#### **461-115-0610**

##### **Verification; General**

(1) Clients must provide verification when it is requested by the Division. Verification provided for one program is used for all programs in which the client participates. The three categories of information used in the verification process are:

(a) Documentary evidence, which is the primary source of verification for all eligibility factors except residency and household composition.

(b) Collateral contact, which is an oral or documentary confirmation of an eligibility factor by a person outside of the filing group.

(c) Observations made during a home visit by a Division representative.

(2) The Division will notify a client when verification of any factor affecting eligibility or benefit level is required.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.650

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-115-0651**

##### **Required Verification and When to Verify; FS**

(1) The Department must give households at least 10 days to provide required verification.

(2) All of the following information must be verified when a client initially applies for food stamp benefits:

(a) The identity of the applicant and any authorized representative or alternate payee.

(b) Residency.

(c) Alien status.

(d) Social Security Number (SSN) or application for an SSN.

(e) Countable income.

(f) Medical expenses, if they are used as a deduction.

(g) An order to pay child support and the amount actually paid.

(h) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(3) All of the following information must be verified when a client reapplies for food stamp benefits within 30 days of a previous certification:

(a) A change in source of income, or the amount of stable income has changed by more than \$50.

(b) The amount of variable income from any source.

(c) Previously unreported medical expenses, and recurring medical expenses which have changed by more than \$25.

(d) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the client is paying for children that live in a different household group.

(e) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(4) For cases using the Change Reporting System (CRS) and the Monthly Reporting System (MRS), the following changes reported during the certification period must be verified:

(a) For CRS, a change in source of income, or the amount of stable income has changed by more than \$50.

(b) For CRS, the amount of variable income from any source.

(c) Changes in reported medical expenses by more than \$25, and previously unreported medical expenses.

(d) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the client is paying for children that live in a different household group.

(e) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(5) For cases using the Simplified Reporting System (SRS), each of the following changes reported during the certification period must be verified in accordance with OAR 461-170-0103:

(a) Alien status and SSN or application for an SSN when a new member joins the benefit group.

(b) Countable income.

(c) Medical expenses, if used as a deduction.

(d) An order to pay child support and the amount actually paid, if used as a deduction.

(6) A claimed expense or cost may be used to determine the food stamp benefit only when the client provides the required or requested verification.

(7) In addition to the verification required by sections (2) to (5) of this rule, the income for a client must be verified:

(a) Each month for a client in MRS.

(b) Every six months for a client in SRS.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06

#### **461-115-0690**

##### **Verification For FS Expedited Service; Time Limits**

This rule establishes verification requirements for expedited service in the Food Stamp program.

(1) Applicants for FS expedited services must provide verification of their identity either through a collateral contact or documentary



evidence. Benefits will not be delayed solely because other eligibility factors are not verified.

(2) Filing groups that were receiving food stamp benefits in another state during the same month they apply for expedited service in Oregon must verify that they will not use FS benefits from both the other state and Oregon in the same month. They can provide the verification by signing a statement attesting to the following:

(a) They did not receive FS benefits from the other state for the month in which they are applying for FS benefits in Oregon; and

(b) If they receive FS benefits from the other state for a month in which they receive FS benefits in Oregon, they will do the following:

(A) They will not use the other state's benefits; and

(B) They will report receipt of the other state's benefits and will turn them in to the Division within five days of receipt. Failure to do this will constitute an intentional program violation.

(3) The client's failure to provide verification of eligibility factors other than identity does not affect eligibility for expedited services if obtaining verification would cause the Division to delay issuing benefits beyond the seventh day following application.

(4) A household that does not provide all necessary verification becomes ineligible as follows:

(a) A household applying on or before the 15th of the month becomes ineligible the last day of the month of application.

(b) A household applying after the 15th of the month becomes ineligible the last day of the month following the month of application.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00

#### **461-115-0700**

##### **Required Verification; GA, GAM, OSIP, OSIPM, QMB**

For GA, GAM, OSIP, OSIPM and QMB, all eligibility factors must be verified at initial application, when there is a change to any factor, and whenever eligibility for benefits becomes questionable.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 19-1993, f. & cert. ef. 10-1-93; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-115-0705**

##### **Required Verification; BCCM, MAA, MAF, EXT, OHP, SAC**

(1) This rule establishes verification requirements for the BCCM, EXT, MAA, MAF, OHP, and SAC programs in addition to the requirements of OAR 461-115-0610.

(2) Except for clients who receive Medicare, clients who are assumed eligible in accordance with OAR 461-135-0010, OHP-CHP clients, and clients who are presumptively eligible for BCCM, each client declaring U.S. citizenship must provide *acceptable documentation* of citizenship and identity. For purposes of this rule, *acceptable documentation* consists of any of the documents permitted under section 6036 of the federal Deficit Reduction Act of 2005 (Pub. L. 109-171).

(a) A new applicant must provide *acceptable documentation* as a condition of eligibility.

(b) A current recipient who has not already provided *acceptable documentation* must provide documentation at the next redetermination of eligibility.

(c) A client who has already provided *acceptable documentation* of U.S. citizenship is not required to provide additional evidence during subsequent application for benefits or redeterminations of eligibility.

(3) In the OHP program:

(a) At initial application and at any other time it affects the client, the following must be verified:

(A) The requirement in OAR 461-120-0210 to have or apply for a social security account number.

(B) Alien status for applicants who indicate they are not U.S. citizens.

(C) The premium exemption allowed because a client is —

(i) A member of a federally recognized Indian tribe, band or group;

(ii) An Eskimo, Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or

(iii) A person eligible for benefits through an Indian Health Program.

(D) Income from the past three months and income already received in the budget month. If income cannot be verified, the client's statement is accepted.

(b) At recertification, the following must be verified, except that if income cannot be verified, the client's statement is accepted:

(A) Unearned income if it has changed since the last certification.

(B) Earned income from the three months prior to the budget month.

(c) A client enrolled *full time in higher education* must provide verification, at application and recertification, that the client meets the requirements of OAR 461-135-1110.

(d) The following must be verified when it is first reported or changed:

(A) Pregnancy of the client, which must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or like facility.

(B) Amount of the premium for cost-effective employer-sponsored health insurance.

(e) A client must provide verification to support a request for waiver of a premium arrearage (*see* OAR 461-135-1130).

(f) A client must provide verification for any eligibility requirement questioned by the Department.

Stat. Auth.: ORS 409.050, 411.060 & 414.047

Stats. Implemented: ORS 411.060, 414.042 & 414.047

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 13-2006(Temp), f. & cert. ef. 9-25-06 thru 12-31-06

## **DIVISION 120**

### **GENERAL NONFINANCIAL ELIGIBILITY REQUIREMENTS**

#### **461-120-0005**

##### **Nonfinancial Requirements**

This division of rules contains some of the nonfinancial requirements for eligibility. The nonfinancial criteria covered in this division are:

(1) Residency — OAR 461-120-0010 to 0099.

(2) Citizenship and alien status — OAR 461-120-0110 to 0199.

(3) Social Security Account Number — OAR 461-120-0210 to 0299.

(4) Assignment of rights and obtaining assets — OAR 461-120-0310 to 0399.

(5) Age and student status — OAR 461-120-0510 to 0599.

(6) Caretaker relative — OAR 461-120-0610 to 0699.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-120-0010**

##### **Residency Requirements**

(1) To be eligible for benefits, a person must be a resident of Oregon.

(2) A person is a resident of Oregon if the person lives in Oregon.

(3) There is no minimum amount of time a person must live in Oregon to be a resident. However, he or she must intend to remain in Oregon except in the following situations:

(a) ADC-EA may be issued to help clients return to a former state of residence.

(b) FS does not require intent to remain to establish residency.

(c) For MAA, MAF, OHP, SAC, and TANF, people are considered residents if they entered Oregon with a job commitment or looking for work, and are not receiving benefits from another state.

(4) For the SAC program, Oregon is the state of residence for a child who is living in Oregon and receiving Title IV-E substitute care,

even though all or part of their maintenance costs are paid by a public agency in another state.

(5) People are not residents if they are in Oregon solely for vacations.

(6) People continue to be residents during temporary periods of absence if they intend to return when the purpose of the absence is completed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-120-0030**

##### **State of Residence for People in a Medical Facility**

Residency of people living in state or private medical facilities such as hospitals, mental hospitals, nursing homes and convalescent centers is determined as follows.

(1) The following people are considered to live in the state where the medical facility is located:

(a) People age 21 or older who are capable of indicating intent to reside.

(b) People age 21 or older who became incapable of indicating intent to reside after age 21.

(2) For people under age 21 who are incapable of forming an intent to reside, or people of any age who became incapable of forming that intent before age 21, the state of residence is one of the following:

(a) Their parent's or legal guardian's state of residence at the time of application.

(b) The state of residence of the party who applies for benefits on his or her behalf, if there is no living parent, or the location of the parent is unknown, and there is no legal guardian.

(c) Oregon, if the client has been receiving medical assistance in Oregon continuously since November 1, 1981, or is from a state with which Oregon has an interstate agreement that waives the residency requirement.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.0600

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-120-0050**

##### **Incapable of Stating Intent to Reside; EXT, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC**

For EXT, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC, a person is presumed to be incapable of forming an intent to reside if any of the following is true:

(1) The person's IQ is 49 or less.

(2) The person has a mental age of seven or less, based on tests acceptable to the Oregon Health Division.

(3) The person is judged legally incompetent.

(4) The person is found incapable of indicating intent to reside based on documentation provided by a physician, psychologist or other person licensed by the state in the field of mental retardation.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-120-0110**

##### **Citizenship and Alien Status Requirements**

(1) To be a member of a benefit group for all programs except CAWEM, ERDC, REF and REFM, a person must:

(a) Be a citizen of the United States;

(b) Meet the alien status requirements in OAR 461-120-0125;

(c) Be a citizen of Puerto Rico, Guam, the Virgin Islands or Saipan, Tinian, Rota or Pagan of the Northern Mariana Islands; or

(d) Be a national from American Samoa or Swains Islands.

(2) The need and benefit groups for ERDC must contain a child who meets the citizenship and alien status requirements of section (1) of this rule.

(3) To be a member of the need and benefit groups for REF and REFM, a person must meet the alien status requirements of OAR 461-120-0120.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. &

cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-120-0120**

##### **Alien Status; REF, REFM**

The following persons admitted lawfully under any of the following provisions of law meet the alien status requirements of the REF and REFM programs:

(1) A person paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(d)(5)).

(2) A person admitted as a refugee under section 207 of the INA (8 U.S.C. 1157).

(3) A person granted asylum under section 208 of the INA (8 U.S.C. 1158).

(4) Cuban and Haitian entrants, in accordance with requirements in 45 CFR part 401.

(5) Certain Amerasians from Vietnam who are admitted to the U.S. as immigrants pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100-461 as amended)).

(6) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(7) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 11-2002(Temp), f. & cert. ef. 10-1-02 thru 12-31-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

#### **461-120-0125**

##### **Alien Status; Not REF or REFM**

(1) For purposes of this chapter of rules, a person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the *Immigration and Nationality Act* (INA) (8 U.S.C. 1101 *et seq.*).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the Food Stamp programCa battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) In the Food Stamp programCa non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) A person meets the alien status requirements if he or she is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the ERDC and TANF programs, a person meets the alien status requirements if he or she is one of the following:

(a) A person who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(d) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(4) In the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she satisfies one of the following situations:

(a) Was a qualified non-citizen before August 22, 1996.

(b) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified-noncitizen status was obtained. A person is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or for a total of more than 90 days.

(c) Is a person granted any of the following alien statuses:

(A) Refugee C under section 207 of the INA.

(B) Asylum C under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(d) Meets the alien status requirements in section (2), (7), or (8) of this rule.

(e) In the OSIPM program, is receiving SSI benefits.

(f) In the QMB program, is receiving SSI and Medicare Part A benefits.

(5) In the GA and GAM programs, a person meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified noncitizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee C under section 207 of the INA.

(B) Asylum C under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(c) A person who meets one of the alien status requirements in section (2) or (7) of this rule.

(6) In the OSIP program, a person meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified noncitizen.

(b) A qualified noncitizen who physically entered the United States on or after August 22, 1996, has had the qualified noncitizen status for at least five years, and has forty qualifying quarters of coverage as defined in section (10) of this rule.

(c) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee C under section 207 of the INA.

(B) Asylum C under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(d) A person receiving SSI benefits.

(e) A person who meets one of the alien status requirements in section (2) or (7) of this rule.

(7) In all programs except ERDC and TANF, a qualified non-citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of a person described in subsection (a) or (b) of this section.

(d) In the FS program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(8) Except as provided in sections (2), (4), (5), and (7) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(9) In the FS program, a person meets the alien status requirement if he or she is one of the following:

(a) A person granted any of the following alien statuses:

(A) Refugee C under section 207 of the INA.

(B) Asylum C under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by



taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmar-ried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who is disabled, as defined in OAR 461-110-0110(4).

(10) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means-tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-120-0130**

##### **Declaration of Citizenship or Alien Status**

(1) All persons required to meet the citizenship and alien status requirements of OAR 461-120-0110, except ERDC-SBG clients, must report their citizenship and alien status and sign a statement attesting to their status under penalty of perjury. The following persons must sign the statement:

(a) For all programs except the Food Stamp program, each adult in the filing group must sign the statement; the primary person signs for the children in the filing group.

(b) For the Food Stamp program, an adult filing group member or an authorized representative must sign the statement for everyone in the filing group.

(2) For ERDC-SBG, there is no requirement to sign the statement.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 22-1990(Temp), f. 9-28-90, cert. ef. 10-1-90; AFS 30-1991, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-120-0210**

##### **Requirement to Provide or Apply for SSN**

(1) To meet the eligibility requirements for CAWEM, ERDC or OHP-CHP, a client need not have or apply for a social security number (SSN).

(2) Except as provided in section (1) of this rule, for all programs except EA, ERDC, OHP, and TA-DVS, to be included in the need group a person must:

(a) Provide his or her SSN; or

(b) Apply for a number if he or she does not have one and provide the number when it is received.

(3) To be eligible for benefits, a person applying for EA or TA-DVS must provide his or her SSN if he or she can.

(4) Except as provided in section (1) of this rule, for OHP, all persons included in the benefit group must provide their SSN or apply for a number and provide the number when it is received.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-120-0230**

##### **Postponement of SSN Requirement; EXT, FS, OHP, MAA, MAF, SAC**

The requirement in OAR 461-120-0210 to provide or apply for a social security account number (SSAN) is delayed as follows:

(1) A newborn who is assumed eligible for the EXT, MAA, MAF, OHP or SAC program based on the eligibility of its mother may receive benefits until one year of age without meeting the SSAN requirements of OAR 461-120-0210.

(2) For the Food Stamp program:

(a) Applicants eligible for expedited services may receive their first full month's allotment without meeting the SSAN requirement but must meet the requirement before receiving a second full month's allotment.

(b) A person added to an existing benefit group, other than a newborn, may be added to an existing benefit group but must meet the SSAN requirement before the end of the first month of participation.

(c) A newborn may be added to an existing benefit group for six months or until the group's next redetermination, whichever is later, without an SSAN.

(d) A client who refuses or fails without good cause to provide or apply for an SSAN is ineligible to participate in the Food Stamp program. A client has good cause when unable to comply with a requirement of OAR 461-120-0210 due to a verified adverse circumstance that impairs the client's ability to comply. Good cause does not include delays due to illness, lack of transportation or temporary absence.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-120-0235**

##### **SSN Discrepancy; FS**

If the Social Security Administration notifies the Department that a client's SSN is not valid, the client must clear up the discrepancy. If the client fails to provide information or take other action necessary to verify the number, the client is ineligible for food stamps.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 23-2003, f. & cert. ef. 10-1-03

#### **461-120-0310**

##### **Assignment of Support Rights**

To be eligible for any program funded under Titles IV-A (TANF) or IV-E of the Social Security Act, the filing group must assign to the state its right to receive support from any other person that has accrued or that accrues while the group receives assistance, not to exceed the total amount of assistance paid.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-

1992, f. & cert. ef. 10-1-92; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-120-0315**

##### **Medical Assignment**

(1) In the EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC programs, by signing the application for assistance, clients agree to turn over their rights to reimbursement for health care costs to the Division. The Division may refuse to pay medical expenses for anyone in the benefit group when another party or resource should pay first.

(2) The amount the Division may collect in reimbursement is limited to the amount of medical services paid by the Division on the client's behalf.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-120-0330**

##### **Requirement to Pursue Assets**

(1) For all programs, except ERDC and FS, clients must make a good faith effort to obtain any asset (other than support and medical coverage, which are covered in OAR 461-120-0340 and 461-120-0345, respectively) to which they have a legal right or claim, except as follows:

(a) A parent or caretaker relative who is exempt from participation in the JOBS program (except primary wage earners who are exempt due to remoteness as provided by OAR 461-130-0310(1)) is not required to apply for unemployment insurance benefits.

(b) Except as specified by law, a client applying for or receiving any program benefits from the Department is not required to apply for other programs it administers or for supplemental security income (SSI).

(c) A person applying for EA is required to use an asset only if the asset can be made available in time to meet the emergent need.

(d) Clients are not required to borrow money.

(2) In all programs except ERDC, FS, and medical assistance programs:

(a) The effect of failing to comply with this rule is that everyone in the filing group is ineligible. In addition, when a cash payment ends due to this penalty, eligibility for and the level of food stamp benefits are determined as if the client were receiving benefits without the effects of this rule.

(b) The penalty provided by section (2)(a) of this rule is effective until all members of the filing group comply with the requirements of section (1) of this rule.

(3) In medical assistance programs:

(a) A person is ineligible for benefits if he or she fails to comply with the requirements of this rule.

(b) The penalty provided by section (3)(a) of this rule is effective until the person complies with the requirements of section (1) of this rule.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 30-1996, f. & cert. ef. 9-23-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-120-0340**

##### **Client Required To Help Department Obtain Support From Noncustodial Parent; TANF**

(1) To be eligible for TANF, a caretaker relative must make a *good faith effort* to help the Department establish paternity of each needy child and locate, and obtain support payments from, the noncustodial parent of each needy child. A client is excused from the requirements of this section for good cause defined in OAR 461-120-0350.

(2) A *good faith effort* includes taking such actions as:

(a) Supplying *sufficient information* for the Division of Child Support (DCS) to proceed with appropriate actions to establish paternity of a dependent child, to locate noncustodial parents, or to establish a support order with respect to the child. *Sufficient information*

includes, but is not limited to, the time and place of each child's conception (if paternity is not established) and the following information, if known to the caretaker relative, regarding any noncustodial parent of a needy child:

(A) Full legal name and nicknames.

(B) Social Security Number.

(C) Current or last known address.

(D) Current or last known employer, including name and address.

(E) If a student, current or last known school.

(F) Criminal record, including where and when incarcerated.

(G) Date of birth, or age.

(H) Race.

(I) Any known group or organizational affiliations.

(J) Names and addresses of close friends or relatives.

(K) Any other information the Department or DCS requests to help locate or identify an absent parent of any children in the benefit group.

(b) Supplying documentation or an explanation of the client's efforts to obtain information requested by the Department or DCS (if unable to provide any necessary information listed in subsection (a) of this section).

(c) Keeping appointments with the Department and DCS related to establishing paternity.

(d) Returning telephone calls and responding to correspondence when requested to do so by the Department or DCS.

(3) If the client has the opportunity but is unable to show he or she has *good cause* under OAR 461-120-0350, the Department will apply penalties for failure to comply with requirements of section (1) of this rule in the following manner until the client meets the requirements of this rule:

(a) For benefit groups not currently receiving TANF, if the failure to comply occurs while an application for TANF is pending the filing group is ineligible.

(b) For benefit groups receiving TANF benefits, if a failure to comply occurs, the net monthly TANF benefit, after reductions for the client's failure to comply with requirements of the JOBS program are made, is reduced by:

(A) 25% for the first month following the month in which failure to comply is determined.

(B) 50% for the second month following the month in which failure to comply is determined.

(C) 75% for the third month following the month in which failure to comply is determined.

(D) 100% (total ineligibility for the benefit group) for the fourth and subsequent months following the month in which failure to comply is determined.

(c) Once a penalized client complies with the requirements and benefits are no longer reduced under this rule, a subsequent penalty is imposed without regard to any prior penalty.

(d) If the TANF payment is affected by the penalty imposed under this rule, eligibility for and the level of food stamp benefits are determined as if the client were receiving cash benefits without reduction due to the penalty.

(4) The penalty provided by this rule ends when the client meets the requirements of section (1) of this rule.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

#### **461-120-0345**

##### **Clients Required to Obtain Medical Coverage**

This rule explains the obligation of clients to obtain medical coverage for members of the benefit group. A client is excused from the requirements of section (1)(a) of this rule for good cause defined in OAR 461-120-0350.

(1) To be eligible for any program except ERDC or FS, each adult client must:

(a) Assist the Department and the Division of Child Support of the Department of Justice in establishing paternity for each of his or

her children and obtaining an order directing the non-custodial parent of a child in the benefit group to provide health care for that child.

(b) Make a good faith effort to obtain available coverage under Medicare.

(2) To be eligible for the EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM, REFM, and SAC programs, once informed of the requirement, a person who is able to must apply for, accept, and maintain cost-effective, employer-sponsored health insurance (see OAR 461-155-0360). For GAM and OSIPM, the client is not required to incur a cost for the health insurance.

(3) In the OHP-OPU program the following applies:

(a) A person who can obtain health insurance through his or her employer must cooperate in determining eligibility for the Family Health Insurance Assistance Program (FHIAP). Rules for FHIAP are at OAR 442-004-0000 and following. If eligible for FHIAP, the person must:

(A) Apply for and accept the employer-sponsored health insurance.

(B) Enroll the other OHP-OPU recipients who are eligible for insurance through FHIAP.

(b) The requirements of subsection (a) of this section do not apply to:

(A) Members of a federally recognized Indian tribe, band or group;

(B) Eskimos, Aleuts or other Alaska natives enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act;

(C) Persons eligible for benefits through an Indian Health Program; or

(D) Persons eligible under the CAWEM program.

(4) A person who fails to meet the requirements of section (1), (2) or (3) of this rule is removed from the need group except that in the OHP program the person is removed from the benefit group.

(5) In the case of a person failing to meet the requirements of section (1)(a) of this rule, the Department applies the penalty after providing the client with notice and opportunity to show the provisions of OAR 461-120-0350 apply.

(6) The penalty provided by this rule ends when the client meets the requirements of this rule.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 30-1996, f. & cert. ef. 9-23-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-120-0350**

#### **Clients Excused for Good Cause from Compliance with OAR 461-120-0340 and 0345**

(1) A client is excused from the requirements of OAR 461-120-0340(1) and 461-120-0345(1)(a) if:

(a) The client's compliance would result in emotional or physical harm to the dependent child or to the caretaker relative. The caretaker relative's statement alone is prima facie evidence that harm would result;

(b) The child was conceived as a result of incest or rape and efforts to obtain support would be detrimental to the dependent child. The caretaker relative's statement alone is prima facie evidence on the issues of conception and detrimental effect to the dependent child;

(c) Legal proceedings are pending for adoption of the needy child; or

(d) The parent is being helped by a public or licensed private social agency to resolve the issue of whether to release the child for adoption.

(2) A pregnant client is excused from the requirements of OAR 461-120-0340 and 461-120-0345 in the EXT, GAM, MAA, MAF, OHP, REFM and SAC programs.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992,

f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

#### **461-120-0510**

#### **Age Requirements for Clients to Receive Benefits**

(1) If the year of a person's birth is known but the month is unknown, the month of birth is presumed to be July. If the date of birth is unknown, the date of birth is presumed to be the first of the month.

(2) To be eligible for the EXT, MAA, MAF, OFSET, or TANF program:

(a) A child must be:

(A) Under 18 years of age; or

(B) Under 19 years of age and *regularly attending school* full time, as determined by the school.

(b) A caretaker relative may be any age.

(3) To be eligible for the SAC program, the child must be under 21 years of age.

(4) To be eligible for payment of child care costs for the ERDC or TANF program, a child must be:

(a) Under 12 years of age for the ERDC program or under 13 years of age for the TANF program; or

(b) Under 18 years of age and:

(A) Physically or mentally incapable of selfcare;

(B) Under court supervision;

(C) Receiving foster care;

(D) Eligible for the special need rate for child care in OAR 461-155-0150; or

(E) Subject to circumstances that significantly compromise the child's safety or the caretaker's ability to work or participate in an assigned activity if child care is not available.

(5) To be eligible for the FS, OSIP-AB, OSIPM-AB, QMB-BAS, QMB-SMB, or REFM programs, a client may be any age.

(6) To be eligible for the REF program, a client must be 18 years of age or older or must be emancipated.

(7) To be eligible for the OSIP-AD (except OSIP-EPD) program, a client must be 18 years of age or older and under 65 years of age.

(8) To be eligible for the OHP program, a client must meet the age requirements in OAR 461-135-1100.

(9) To be eligible for OSIPM-AD (except OSIPM-EPD), a client must be:

(a) Eighteen years of age or older and under 65 years of age; or

(b) Receiving SSI, without regard to age.

(10) To be eligible for the OSIP-OAA or OSIPM-OAA programs, a client must be 65 years of age or older.

(11) To be eligible for the QMB-DW program, a client must be under 65 years of age.

(12) To be eligible for OSIP-EPD and OSIPM-EPD, the client must be 18 years of age or older or be legally emancipated.

(13) To be eligible for the BCCM program, a woman must be under 65 years of age.

(14) To be eligible for the GA and GAM programs, a client must be:

(a) Eighteen years of age or older and less than 65 years of age;

or

(b) Sixty-five years of age or older and must be a non-citizen who meets the requirements of OAR 461-120-0125.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 18-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06



**461-120-0530**

**Regular School Attendance**

(1) In OAR 461-120-0510(1), regularly attending school means enrolled in and attending any of the following:

(a) A school in grade 12 or below, including home schooling approved by the local school district.

(b) GED classes in lieu of high school.

(c) A course of vocational or technical training, including Job Corps, in lieu of high school.

(d) The state School for the Deaf or the state School for the Blind.

(2) The student's full-time status is defined by the school.

(3) Regular attendance continues when a student misses school because of an illness, family emergency, or vacation, as long as the student intends to return to school. Students are considered to be in attendance for the full month in which they complete or discontinue school or training.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

**461-120-0610**

**Caretaker and Caretaker Relative Defined**

(1) A caretaker is a person who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the person no longer exercises care, control, and supervision of the child for 30 days.

(2) A caretaker relative is a caretaker who is one of the following relatives of the dependent child:

(a) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great.

(b) Stepfather, stepmother, stepbrother, and stepsister.

(c) A person who legally adopts the child and any person related to the person adopting the child, either naturally or through adoption.

(3) A caretaker who is or was a spouse of a person listed in section (2) of this rule is a caretaker relative.

(4) A caretaker who met the definition of caretaker relative under section (2) or (3) before the child was adopted is a caretaker relative notwithstanding the child's subsequent adoption.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00

**461-120-0630**

**Requirement to Live with a Caretaker or Caretaker Relative**

(1) To be eligible for the EXT, MAA, MAF, and TANF programs, a child must live with a *caretaker relative*. Documentary evidence is required to show that a client is the father of a *dependent child*.

(2) To be eligible for the EA program, a child must either live with a *caretaker relative* or have lived with one within the last six months.

(3) To be eligible for ERDC, a child must live with a *caretaker*.

(4) For the REFM program, the public or private agency with custody of the child is the *caretaker* of a child under the age of 18.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 30-1992(Temp), f. & cert. ef. 10-14-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 17-2004, f. & cert. ef. 7-1-04

**DIVISION 125**

**BASIS OF NEED**

**461-125-0010**

**Deprivation as an Eligibility Requirement**

(1) To be eligible for ADC-BAS and ADCM-BAS, a dependent child must be deprived.

(2) Deprivation is the loss of parental support or care because of the absence, death, incapacity, unemployment, or underemployment of a parent.

(3) For the purpose of determining deprivation, parent means a person who is currently the biological parent, adoptive parent, or step-parent.

Stat. Auth.: ORS 411.060, 411.070, 411.595, 412.520, 183, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1993, f. & cert. ef. 2-1-93

**461-125-0030**

**Determining Deprivation of a Child**

(1) For ADC-BAS and ADCM-BAS, determination of deprivation for a child who lives with one parent or does not live with a parent is based on the continued absence or death of a parent.

(2) Determination of deprivation for a child who lives with two parents is based on:

(a) The unemployment or under-employment of the parent who is the ADC-PWE; or

(b) The incapacity of a parent.

(3) If a child meets deprivation on more than one basis, the branch office may choose which reason to use. However, the choice cannot adversely affect the child's eligibility.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

**461-125-0050**

**Determining Deprivation for Child/Unborn without Legal Paternity**

(1) For ADC-BAS and ADCM-BAS, deprivation is based only on incapacity or unemployment if:

(a) The mother and alleged father of the dependent child or unborn are living together; and

(b) Either the mother or the alleged father claim the alleged father is, in fact, the father, and no other man has been identified as the father.

(2) If eligibility based on incapacity or unemployment exists, both parents must cooperate with SED to establish paternity. A parent who refuses to cooperate is disqualified per OAR 461-120-0340.

Stat. Auth.: ORS 411.060, 411.070, 411.105, 411.111, 411.300, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009, 414.032, 183, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92

**461-125-0060**

**Deprivation Based on Death**

If either parent of a child is deceased and the other parent has not remarried, or has remarried but the stepparent is not living in the home, the child meets ADC-BAS, and ADCM-BAS deprivation based on death.

Stat. Auth.: ORS 411.060, 411.070, 411.105, 411.111, 411.300, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009 & 414.032

Stats. Implemented: ORS 411.060

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91

**461-125-0090**

**Deprivation Based on Continued Absence of a Parent**

For ADC-BAS and ADCM-BAS, there is deprivation based on continued absence if all the following are true:

(1) The child lives with only one parent or does not live with any parent.

(2) The nature of the parent's absence interrupts or ends their function as a provider of maintenance, physical care, or guidance for the dependent child.

(3) The known or indefinite duration of the absence precludes counting on the parent's performance of the functions of planning for the present support and care of the dependent child.

Stat. Auth.: ORS 411.060, 411.070, 411.105, 411.111, 411.300, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009, 414.032, 183, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91

**461-125-0110**

**Situations of Deprivation Based on Continued Absence**

For ADC-BAS and ADCM-BAS, if the child lives with only one parent or does not live with any parent, deprivation based on continued absence exists if any of the following is true:

(1) The absent parent is confined to an institution and the confinement is anticipated to last more than 30 days.

(2) The absent parent is living at home only to serve a court-imposed sentence by performing unpaid public work and unpaid community service during the work day.

(3) The dependent child is adopted by a single parent and the parent is not living with a spouse.

(4) The identity of the absent parent is not known or more than one person is identified as the child's father and legal paternity has not been established.

Stat. Auth.: ORS 411.060, 411.070, 411.105, 411.111, 411.300, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009, 414.032, 183, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91

#### **461-125-0120**

##### **Situations of No Deprivation Based on Continued Absence**

For ADC-BAS and ADCM-BAS, deprivation based on continued absence does not exist if any of the following is true:

(1) The absence is due solely to the parent's participation in the Uniformed Services of the United States.

(2) Both parents share care, control, and supervision of the child within each calendar month. This means:

(a) Each parent makes significant decisions about their child's life; and

(b) The child sleeps at least 30 percent of the time during the calendar month in the home of each parent.

Stat. Auth.: ORS 411.060, 411.070, 411.105, 411.111, 411.300, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009 & 414.032

Stats. Implemented: ORS 411.060

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92

#### **461-125-0130**

##### **Evidence of Deprivation Based on Continued Absence**

For TANF, MAA, and MAF, there is deprivation based on continued absence (except as specified in rule 461-125-0120) if the absent parent is not living in the same home as the dependent child, per section (1) of this rule, and the absent parent's visits with the child in the child's home do not exceed four times per week or a total of 12 hours per week. Use the following guidelines in deciding whether the absent parent is living in the same home as the dependent child:

(1) The absent parent is not living in the same home as the dependent child if either of the following is true:

(a) The absent parent and the dependent child have been living in separate homes for 30 days or more; or

(b) The absent parent and the dependent child have been living in separate homes for less than 30 days, but at least one of the following is true:

(A) The filing group was receiving TANF when the absent parent and dependent child began living in separate homes.

(B) The client is a victim of domestic violence.

(C) The parents have filed for divorce or legal separation.

(D) The absent parent and dependent child have established separate verifiable residences.

(2) The absent parent is considered to be living in the same home as the dependent child if the absent parent sleeps at least 30 percent of the time during the calendar month in the child's home.

(3) If the absent parent is living on the same property as the dependent child, they are considered to be living in the same home as the child, unless all the following are true:

(a) The absent parent is the owner of the property, or is a tenant on the property. To be a tenant, the absent parent must be billed for rent.

(b) The absent parent lives independently from the dependent child and caretaker relative.

(c) The absent parent:

(A) Has and uses sleeping, bathroom and kitchen facilities separate from the dependent child and caretaker relative; or

(B) Shares bathroom or kitchen facilities with the dependent child and caretaker relative, but the facilities are in a commercial establishment that provides room or board or both at a fair market rate.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.117 & 418.149

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 11-1999, f. & cert. ef. 10-1-99

#### **461-125-0150**

##### **Determining Primary Wage Earner (PWE); MAA, MAF and TANF**

(1) For MAA, MAF and TANF, the primary wage earner (PWE) is the parent who earned the most money in the 24 months before requesting assistance.

(2) Once a parent is determined to be the PWE, their status cannot change while the family remains continuously eligible for cash assistance, unless:

(a) The other parent later provides evidence that they should have been the PWE at the time of application; OR

(b) The parent who is the PWE is out of the household group for at least one full calendar month. If so, the branch office must redetermine the PWE.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.116

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 11-1999, f. & cert. ef. 10-1-99

#### **461-125-0170**

##### **Deprivation Based on Unemployment or Underemployment of the ADC-PWE**

Deprivation based on the unemployment or underemployment of the ADC-PWE exists if all the following are true:

(1) A child lives with two parents.

(2) The ADC-PWE is unemployed or underemployed.

(3) The ADC-PWE is not participating in a labor dispute.

(4) The ADC-PWE is not unemployed from their most recent job for reasons that would or do result in disqualification for UC benefits in Oregon. Most recent job is the last job the ADC-PWE had in which they worked or were hired to work at least 100 hours a month. For applicants, if the UC disqualification is from employment that ended more than 12 months before the date of request, it does not affect the client's eligibility for ADC-BAS.

Stat. Auth.: ORS 411.060, 418.075, 418.180 & 418.185

Stats. Implemented: ORS 411.060, 418.075, 418.180 & 418.185

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98

#### **461-125-0190**

##### **Unemployment or Underemployment of the ADC-PWE**

Consider an ADC-PWE unemployed or underemployed if their monthly earned income is less than the countable income limit for their need group size.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.075, 418.180 & 418.185

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97

#### **461-125-0230**

##### **Deprivation Based on the Incapacity of a Parent**

For ADC-BAS and ADCM-BAS, deprivation based on incapacity exists if a child lives with two parents, and:

(1) At least one parent is receiving SSI and/or SSB based on disability or blindness; or

(2) Medical documentation establishes that the parent has a physical or mental condition that:

(a) Is expected to last for at least 30 days from the date of request for ADC-BAS or ADCM-BAS; and

(b) Substantially reduces or eliminates the parent's ability to support or care for their dependent child, taking into consideration the following:

(A) The limited job market opportunities of incapacitated individuals; and

(B) The parent's education, training, work history, age and other related factors.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

#### **461-125-0250**

##### **Criteria for Determining the Incapacity of a Parent**

For ADC-BAS and ADCM-BAS, a condition is considered to substantially reduce or eliminate the parent's ability to support or care

for their dependent child if, as a result of the condition, one of the following criteria is met:

- (1) The parent is unable to provide adequate care for the dependent child without help from others. Adequate care includes feeding, cleaning and supervising the child.
- (2) The parent is unable to perform any type of employment.
- (3) The parent is able to perform work only in a job that is rehabilitative or in a sheltered workshop.
- (4) The parent is unable to work at least 30 hours a week at employment paying at least state or federal minimum wage, whichever is greater.
- (5) The number of hours the parent is able to work is substantially reduced.
- (6) The parent is unable to work at their customary employment, but is able to work at employment for which they are equipped by education, training, or experience, that pays substantially less than their customary employment.

Stat. Auth.: ORS 183, 411, 412, 413, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90

#### **461-125-0255**

##### **Change in Basis of Deprivation**

When an absent parent joins a household receiving TANF benefits, or another change occurs that could change the basis of deprivation, the filing group remains eligible during a 30-day period following the timely report of the change during which it may establish TANF eligibility based on incapacity or unemployment.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01

#### **461-125-0310**

##### **Eligibility for OSIP Blindness, Old Age and Disability**

To be eligible for OSIP, a person must be one of the following:

- (1) Blind at any age (AB).
- (2) Age 65 or over (OAA).
- (3) Age 18 or over and disabled (AD). Disabled children under age 18 can be eligible for OSIPM only.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

#### **461-125-0330**

##### **Blindness as the Basis of Need**

In the OSIP and OSIPM programs, a client is considered blind if any of the following is true:

- (1) The client is receiving SSB or SSI benefits based on blindness. Eligibility continues as long as eligibility for SSB or SSI eligibility continues.
- (2) The client was eligible for and received AB in Oregon in December 1973. These grandfathered clients continue to be eligible as long as they are continuously blind as defined by Oregon requirements that were in effect in 1973.

(3) The client meets one of the following OSIP blindness criteria:

(a) Vision of 20/200 or less in the better eye with a corrective lens.

(b) A limitation in vision field to an angle of 20 degrees or less.

Stat. Auth.: ORS 411.060, 411.070, 411.105, 411.710, 412.025, 412.520, 413.009, 183,

414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1991, f. & cert. ef. 10-1-91;

SSP 7-2005, f. & cert. ef. 7-1-05

#### **461-125-0350**

##### **Old Age as the Basis of Need; OSIP and OSIPM**

Only a person who has attained the age of 65 years may be eligible for the OSIP-OAA or OSIPM-OAA program.

Stat. Auth.: ORS 411.060, 413.090 & 413.240

Stats. Implemented: ORS 411.060 & 413.090

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02

#### **461-125-0370**

##### **Disability as the Basis of Need; OSIP and OSIPM**

(1) In the OSIP and OSIPM programs (except OSIP-EPD and OSIPM-EPD), a client meets the eligibility requirement to have a disability if:

(a) The client is receiving Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) based on disability. Eligibility continues as long as the client remains eligible for SSDI or SSI.

(b) The client was eligible for and received Aid to the Disabled benefits in Oregon in December 1973. These grandfathered cases continue to be eligible as long as they are continuously disabled as defined by Oregon requirements that were in effect in 1973.

(c) The Department has determined the client meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2 for SSI; or meets the definition of disability in 20 C.F.R. § 416.905.

(d) The Social Security Administration (SSA) has determined the client meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2 for SSI; or meets the definition of disability in 20 C.F.R. § 416.905.

(2) If the Department finds the client eligible for OSIPM within 90 days following the date of request, the client remains eligible, provided that the client continues to meet the disability criteria for eligibility for OSIPM, until SSA denies the disability claim in a final administrative decision.

(3) For OSIP and OSIPM, a disability determination made by SSA is binding on the Department except in each of the following situations (see 42 C.F.R. § 435.541(c)(4)):

(a) The client alleges at any time after SSA has denied disability, a disabling condition entirely different from the allegations upon which SSA based its decision, or an additional impairment(s) upon which SSA has not made a determination.

(b) More than 12 months has elapsed since the last SSA determination denying disability and the client either:

(A) Alleges that his or her impairment is more severe than at the time of the original determination; or

(B) Alleges an entirely new disability, and has not made application to SSA based on these allegations.

(c) Paragraphs (A) and (B) of this subsection both apply:

(A) The client alleges less than 12 months after the last SSA determination either that:

(i) The disability which SSA evaluated has changed or deteriorated; or

(ii) The client has a new disability upon which SSA has not made a determination.

(B) One or both of the following apply:

(i) The client has requested reconsideration or reopening of the last SSA determination denying disability and SSA has declined to consider the allegations concerning disability.

(ii) It is clear that the client no longer meets SSI eligibility requirements unrelated to disability status but may satisfy comparable Medicaid eligibility requirements.

(4) In the OSIP-EPD and OSIPM-EPD programs, a person is disabled or has a *disability* if the person has a physical or mental impairment, or a combination of these impairments, that meets the definition of *disability* used by SSA when determining eligibility for SSI or SSDI under 20 C.F.R. Part 404. The determination is made as follows:

(a) A determination by SSA that the individual is disabled or has a disability is accepted by the Department.

(b) If the client was determined to have a *disability* by SSA and lost their SSDI eligibility due to their own income, the SSA determination remains effective for one year from the date that the client loses eligibility for SSDI.

(c) If there is no currently effective SSA determination finding the individual has a disability, the case is referred to the Department's central office for a disability determination using the standards of 20 C.F.R. Parts 404 and 416 and considering all relevant medical and vocational information.

(d) For OSIPM-EPD, a person is engaging in substantial gainful activity (SGA) if their earnings are at or above the EPD Income Standard.



(e) For OSIPM-EPD, any work activity engaged in during the OSIPM-EPD application process or certification period is not evaluated as past relevant work (PRW).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; SSP 9-2003(Temp), f. & cert. ef. 4-11-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

#### **461-125-0510**

##### **Impairment Criteria; GA, GAM**

(1) To be eligible for GA and GAM, an individual must meet one of the following criteria:

(a) Have a physical or mental impairment that meets or equals the listing of impairments found in 20 CFR 404, Subpart P, Appendix 1, in effect November 1, 2003, and can be expected to:

(A) Last for a continuous period of not less than 12 months from the date of request; or

(B) Result in death within 12 months from the date of request.

(b) Be 55 years of age or older and meet the following requirements:

(A) Have a severe physical or mental impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Prevent the individual from returning to any past relevant work for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Be limited to sedentary residual functioning capacity as defined in 20 CFR 404, subpart P, appendix 2, in effect November 1, 2003.

(c) Be 55 years of age or older and have all of the following:

(A) A severe physical or mental impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Last for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Less than a 12th grade education, as evidenced by the lack of a high school diploma or GED.

(C) A history of no past relevant work as defined in section (2) of this rule in the last 15 years.

(d) Be age 50 or older but not yet age 55: and

(A) Have a severe physical or mental impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Last for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Be illiterate or unable to communicate in English.

(C) Be limited to light residual functioning capacity as defined in 20 CFR 404, subpart P, appendix 2, in effect November 1, 2003.

(D) Have a past relevant work history of "unskilled" or "none."

(e) Be age 50 or older but not yet age 55: and

(A) Have a severe physical or mental impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Last for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Have less than a High School education.

(C) Be limited to sedentary residual functioning capacity as defined in 20 CFR 404, subpart P, appendix 2, in effect November 1, 2003.

(D) Have a past relevant work history of "unskilled" or "none."

(f) Be age 45 or older but not yet age 50: and

(A) Have a severe physical or mental impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Last for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Be illiterate or unable to communicate in English.

(C) Be limited to sedentary residual functioning capacity as defined in 20 CFR 404, subpart P, appendix 2, in effect November 1, 2003.

(D) Have a past relevant work history of unskilled or none.

(2) As used in this rule:

(a) "Basic work activity" means any kind of work activity that averages at least eight hours a day for which income is received, regardless of the adequacy to meet the client's needs. Work performed against medical advice or at an activity center or sheltered workshop is not basic work activity.

(b) "Equaling" means the medical findings are at least equal in severity and duration to the listed findings. If the client's impairment is not listed, the Department considers the listed impairment most like the client's impairment to decide whether the client's impairment is medically equal to the listed impairment. If the client has more than one impairment, and none of them meets or equals a listed impairment, the Department reviews the symptoms, signs, and laboratory findings about the client's impairments to determine whether the combination of those impairments is medically equal to a listed impairment.

(c) "Light work" means work that requires lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds and requires occasional stooping. It also requires standing or walking for a total of approximately six hours of an eight-hour workday.

(d) "Past relevant work" means work that the individual has performed in the last 15 years and that constitutes substantial gainful activity as defined in 20 CFR 404.1574 and 404.1575, in effect November 1, 2003. Also, the past relevant work must have lasted long enough for the individual to learn the techniques, acquire the necessary information, and develop the facilities needed for average performance of the job situation.

(e) "Sedentary work" means work that requires lifting no more than 10 pounds at a time and occasionally lifting or carrying articles such as docket files, ledgers, and small tools. Although sitting is involved, a certain amount of walking and standing is often necessary in carrying out job duties. Periods of walking and standing should total no more than two hours of an eight-hour workday and sitting should total approximately six hours of an eight-hour workday. Most unskilled sedentary jobs require good use of the hands and fingers for repetitive hand finger actions.

(f) "Severe mental impairment" means a mental impairment that significantly limits the individual's ability to do basic work activity.

(g) "Severe physical impairment" means a physical impairment that significantly limits the individual's physical ability to do basic work activity.

(h) "Unskilled work" is work that requires little or no judgment to do simple duties that can be learned on the job within 30 days.

(3) An applicant is not eligible for GA or GAM if drug addiction or alcoholism is material to his or her disability.

(4) If the client is unable to do so, the Department will obtain medical evidence that documents a claim of physical or mental impairment.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.060 & 411.710

Stats. Implemented: ORS 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 21-1996, f. 5-30-96, cert. ef. 6-1-96; AFS 24-1996(Temp), f. & cert. ef. 6-11-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 35-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 4-2002(Temp), f. & cert. ef. 4-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 15-2004(Temp), f. & cert. ef. 6-1-04 thru 9-30-04; SSP 22-2004, f. & cert. ef. 10-1-04

#### **461-125-0810**

##### **Using Administrative Medical Examinations**

(1) When the Division is responsible for making a decision of TANF incapacity, GA disability determination, OSIP or OSIPM disability or OSIP or OSIPM blindness, the client may select a qualified medical provider to complete the medical evaluation described in OAR 461-125-0830.

(2) A decision to deny or end benefits must be reconsidered when additional medical documentation relevant to the decision is received

by the Division within 30 days of the original effective date of denial or termination.

Stat. Auth.: ORS 411.060, 411.710 & 418.100  
 Stats. Implemented: ORS 411.060, 411.710 & 418.100  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00

#### 461-125-0830

##### Medical Documentation, Disability and Other Determinations

(1) Medical documentation must be written and must contain all the following:

(a) A diagnosis in medical terminology, including an explanation of whether the impairment limits the individual's ability to perform normal functions and, if so, how.

(b) A prognosis, including an expected recovery time frame.

(c) Clinical findings from physical examination, psychiatric evaluation, X-rays, or a laboratory procedure, including specific data supporting diagnosis of a condition that causes disability, either on a medical or psychiatric basis.

(2) To determine eligibility, the Division will accept evaluations from the following medical sources: medical evaluations only from licensed physicians, including psychiatrists, osteopaths and ophthalmologists; mental evaluations only from licensed or certified psychologists; and measurement of visual acuity and visual fields only from licensed optometrists.

(3) The Division will accept supplemental medical and vocational information to augment evaluations from acceptable medical sources from a licensed social worker, licensed physical or occupational therapist, or licensed nurse practitioner.

(4) The client must provide or cooperate in obtaining sufficient medical documentation for the Division to determine eligibility.

Stat. Auth.: ORS 411.060 & 411.070  
 Stat. Implementation: ORS 411.060 & 411.070  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00

#### 461-125-0850

##### Medical Review Team (MRT)

(1) The MRTs are comprised of staff assigned by the Division.

(2) For ADC-BAS, ADCM-BAS, GA, and GAM, the MRT provides medical expertise in comparing the client's medical condition with the medical eligibility requirements. The MRT determines whether a person meets the incapacity or unemployability criteria.

(3) MRT decisions are based on all the following:

(a) The nature of the impairment;

(b) The medical documentation and, when appropriate, the social summary;

(c) The specific medical eligibility requirements of the applicable program.

(4) MRTs do all the following:

(a) Determine incapacity for ADC-BAS and ADCM-BAS;

(b) Determine exemption from JOBS program participation;

(c) Determine unemployability for GA clients, at branch discretion;

(d) Authorize medical/psychiatric examinations necessary to obtain supplemental medical documentation;

(e) Use the good cause criteria in OAR 461-125-0910 to determine if the client has good cause for refusing to cooperate with rehabilitation or treatment.

Stat. Auth.: ORS 411.060, 411.070, 183, 414, 416 & 418  
 Stats. Implemented: ORS 411.060  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92

#### 461-125-0870

##### Establishing a Medical Review Date

(1) No medical review will be done when it is documented that the client has a terminal illness.

(2) The MRT will complete a medical review whenever the MRT determines it is necessary.

Stat. Auth.: ORS 411.060, 411.070, 183, 414, 416 & 418  
 Stats. Implemented: ORS 411.060  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95

## DIVISION 130

### EMPLOYMENT PROGRAM REQUIREMENTS

#### 461-130-0305

##### General Provisions

(1) This division of rules establishes requirements for client participation in the employment programs of the Food Stamp, REF and TANF programs. The employment programs are the JOBS, OFSET, and workfare programs.

(2) Clients must provide information necessary for the Department to administer the employment programs. The necessary information includes that needed to determine the client's participation classification (see OAR 461-130-0310) and to assess whether a client had *good cause* (see OAR 461-130-0327) for any failure to meet a requirement of an employment program. If a medical condition is in question, the Department may require the client to provide a medical opinion from an appropriate medical professional.

(3) Terms in italics in this division of rules are defined in this division or elsewhere, as cited.

Stat. Auth.: ORS 411.060 & 411.816  
 Stats. Implemented: ORS 411.060  
 Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 7-2003, f. & cert. ef. 4-1-03

#### 461-130-0310

##### Participation Classifications: Exempt, Mandatory, and Volunteer

To administer the employment programs of the Food Stamp, Refugee and TANF programs, the Department assigns clients to one or more participation classifications — *exempt*, *mandatory*, and *volunteer*.

(1) In the REF and TANF programs, clients are exempt when they are exempt from disqualification in the employment programs covered by chapter 461 of the administrative rules. The following REF and TANF clients are exempt from disqualification in the employment programs covered by chapter 461:

(a) Clients 20 years of age and older who are in their ninth month of pregnancy or experiencing medical complications due to pregnancy that prevent participation in employment or self-sufficiency *components* (see OAR 461-190-0110) of an employment program.

(b) Clients during the first 90 days after giving birth.

(c) VISTA volunteers.

(d) Clients who, in order to participate in an employment program, must travel an unreasonable distance from their home or remain away from their home overnight.

(e) REF clients 65 years of age and older and TANF clients 60 years of age and older.

(f) Non-citizens who are not authorized to work in the United States.

(g) Recipients of supplemental security income (SSI) from the Social Security Administration.

(h) Non-needy caretaker relatives.

(2) In the Food Stamp Program, the following clients are *exempt*:

(a) A client with weekly *countable income* (see OAR 461-160-0020) from employment or self-employment at least equal to the federal minimum wage multiplied by 30 hours. This includes migrant and seasonal farm workers who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days

(b) A client with a physical or mental condition that prevents performance of any work.

(c) A client who is responsible for the care of a dependent child under 6 years of age or an incapacitated person.

(d) A client enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. Clients remain exempt during normal periods of class attendance, vacation and recess but no longer qualify for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion or when the student drops out of school or does not intend to register for the next normal school term (excluding summer term).

(e) Clients receiving REF or TANF benefits, while *mandatory* participants in the JOBS program.

(f) Clients who are in receipt of unemployment insurance benefits or have completed an application for unemployment insurance benefits and are waiting for an initial decision on their claim, if they were

required to register for work at an office of the Oregon Employment Department.

(g) Participants in a drug or alcohol treatment and rehabilitation program.

(h) Pregnant clients.

(i) Clients living in areas where the OFSET program is available to clients but who:

(A) Lack adequate dependent care;

(B) Do not have adequate transportation available to them; or

(C) Experience a barrier to employment, such as being homeless or having a short-term physical or mental limitation or a serious family problem.

(3) In the REF and TANF programs, all clients are *mandatory*. A parent of a child who receives TANF is mandatory if the parent is in the same filing group with the child (even if the parent is not in the TANF benefit group), unless the parent is otherwise *exempt* under section (1) of this rule.

(4) In the Food Stamp Program, a mandatory client is a person in the need group; who is 16 or 17 years of age and a primary person (see OAR 461-110-0110), or 18 years of age and older but not yet 60; and who is not exempt under section (2) of this rule.

(5) A client cannot be disqualified for conduct that occurred while a volunteer. In the REF and TANF programs, a volunteer is a client who is exempt from disqualification (see OAR 461-130-0310(2)) who chooses to participate in an employment program. In the Food Stamp Program, a volunteer is a client who is not a mandatory client who chooses to participate in an employment program.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

#### **461-130-0315**

##### **General Requirements, TANF and Refugee Programs**

(1) *Mandatory* clients in the REF and TANF programs must do the following:

(a) Complete the assessment process (see OAR 461-190-0161) and provide sufficient information for the Department to determine whether they must participate in an employment program.

(b) Register for an employment program by completing forms provided by the Department. A *mandatory* client who fails to register is ineligible for benefits.

(c) Meet all participation requirements of OAR 461-130-0325.

(2) A *mandatory* client who fails to meet a participation requirement without good cause is subject to disqualification in accordance with OAR 461-130-0330, except that a mandatory client who is exempt is not subject to disqualification but does not receive the incentive payment authorized by OAR 461-135-0210.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 7-2003, f. & cert. ef. 4-1-03

#### **461-130-0320**

##### **General Requirements, Food Stamp Program**

(1) *Mandatory* clients must do the following to be eligible for the Food Stamp Program:

(a) Register for the OFSET program or for work by signing an application for food stamps. A client who fails to register is subject to disqualification as described in OAR 461-130-0330(2);

(b) Meet all the participation requirements of OAR 461-130-0325

(2) A *mandatory* client selected for participation in an employment program who fails to comply with a participation requirement is subject to disqualification as specified in OAR 461-130-0330(2).

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98

#### **461-130-0325**

##### **Participation Requirements**

(1) *Mandatory* clients selected by the Department to participate in an employment program of the Food Stamp, REF or TANF program must do all the following:

(a) Accept a bona fide offer of employment, whether temporary, permanent, full-time, part-time, or seasonal.

(b) Maintain employment.

(A) In the REF and TANF programs, a client fails to maintain employment when:

(i) The client has been or would be found to have quit work without good cause or to have been discharged for misconduct in accordance with the unemployment insurance compensation law of Oregon.

(ii) The client voluntarily reduces earnings or hours of employment or does not accept an increase in hours worked that would result in increased earnings.

(B) In the Food Stamp Program, a client fails to maintain employment by:

(i) Voluntarily leaving a job 30 days or less prior to the date of application for food stamps or at any time thereafter;

(ii) Being dismissed for striking while a federal, state or county employee; or

(iii) Reducing hours of work to less than 30 each week. Sub-paragraph (B)(i) applies only if the client is required to register for work, or is *exempt* from work registration due to employment according to OAR 461-130-0310(2)(a), has a job that averages not less than 30 hours each week or has provided average weekly earnings not less than the federal minimum wage multiplied by 30 hours and quits the job, or quits working under a JOBS Plus agreement more than twice (see OAR 461-190-0426). Changes in employment status caused by a reduction in work hours while working for the same employer, being fired from a job, terminating a self-employment enterprise or resigning from a job at the demand of the employer do not constitute a failure to maintain employment.

(c) Schedule and keep required employment-related appointments and interviews.

(d) Notify the Department's case manager or the JOBS contractor of the reason for not keeping employment-related appointments and interviews, not attending scheduled classes and activities, or not completing case management activities. Notification must be made within three working days from the date of a missed appointment, interview, class or activity.

(e) In the REF and TANF programs, complete all case management assignments specified on their *case plans* (see OAR 461-190-0161) or other similar plans approved by the Department. In the Food Stamp program, complete all work activities and components specified on their *case plans* (see OAR 461-190-0310).

(2) For clients receiving food stamps, a household containing a client who was exempt from participation in employment programs only by OAR 461-130-0310(2)(e) or (f), but not any other provision, and who fails to comply with a requirement of the TANF or unemployment compensation program that is comparable to a requirement of an employment program of the Food Stamp Program, shall be treated as though the client had failed to comply with the corresponding requirement of the Food Stamp Program employment program. If the client fails to comply with a requirement that is not comparable, the client loses the exemption authorized by OAR 461-130-0310(2)(e) or (f) and must comply with the requirements of the Food Stamp Program employment programs.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 13-2002, f. & cert. ef. 10-1-02

#### **461-130-0327**

##### **Good Cause**

(1) A client is excused for good cause from a failure to comply with a requirement of an employment program, including an activity in a case plan (both terms defined in OAR 461-190-0161) in the following circumstances:

(a) Participation in a required activity in a case plan would have an adverse effect on or risk to the client's physical or mental health or would expose the client to increased risk of domestic violence.

(b) When the failure to comply is caused by the failure of the Department to timely provide or authorize a support service payment in the JOBS program.

(c) Appropriate child care, or day care for an incapacitated person in the household, cannot be obtained. "Appropriate child care" means that:



(A) Both the provider and the place where care is provided meet health, safety, and provider requirements as required in OAR 461-165-0180;

(B) The care accommodates the parent's work schedule; and

(C) The care meets the specific needs of the child, such as age and special-needs requirements.

(d) The work attachment position or employment offered is vacant due to a strike, lockout, or other labor dispute.

(e) The work attachment position or employment requires the client to join a union, and the client has religious objections to unions.

(f) The client belongs to a union and the employment violates the conditions of the client's membership in the union.

(g) The wage for the client's current or potential job is:

(A) Less than applicable minimum wage; or

(B) If minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(h) The client's prospective employer engages in employment practices that are illegally discriminatory on the basis of age, sex, race, religious or political belief, marital status, disability, or ethnic origin.

(i) The client's participation in a required activity in a case plan would prevent or interfere with the client's participation in an activity of the Grande Ronde Tribe's NEW program.

(j) The client's failure to participate is due to a circumstance beyond his or her reasonable control.

(k) When the failure to comply is caused by an aspect of the client's disability.

(l) The following are also "good cause" criteria in the Food Stamp program:

(A) The client has no means of transportation and would have to walk an unreasonable distance to meet the participation requirement. An "unreasonable distance" is a distance that requires a commute of more than two hours each day. The client must make a good-faith effort to secure the needed transportation.

(B) Lack of adequate child care for children who have reached age 6 but are under age 12.

(2) In the REF, REFM, and TANF programs, a client is excused from a failure to comply with a requirement of an employment program for good cause when the client is in her seventh or eighth month of pregnancy and either works in a job that requires her to work more than 10 hours each week or has a case plan that requires her to participate more than 10 hours each week.

(3) In the REF and REFM programs, a client is excused from a failure to comply with a requirement of an employment program for good cause in the following circumstances:

(a) The client quits a full-time job to accept another full-time job with a wage at least equal to the wage of the first job.

(b) The client makes a good faith effort to complete an activity on the case plan but is unable to do so.

(4) In the Food Stamp program, a client has good cause for not accepting employment or for leaving a job under the following circumstances:

(a) The hours or nature of the job interferes with the client's religious observances, convictions, or beliefs.

(b) The client accepts employment or enrolls at least half-time in any recognized school, training program, or institution of higher education that requires the client to quit a job.

(c) A client accepts employment or schooling in another county, requiring the benefit group to move and the client to quit a job.

(d) A client less than 60 years of age resigns, and the employer recognizes the resignation as retirement.

(e) The client leaves a job to follow a type of employment that moves from one area to another, such as migrant labor or construction.

(f) The client accepts a job that, for reasons beyond the control of the client, does not materialize or results in fewer work hours or a lower wage than the client's previous job.

(g) Work demands or conditions, such as not being paid for work or not being paid on schedule, make employment unreasonable.

(h) The wage for the client's current or potential job is less than applicable minimum wage or, if minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(i) The work schedule for the job in question does not conform to hours customary to the occupation or the hours worked each week are more than those customary to the occupation.

(j) The client is not obligated to accept a job during the first 30 days of registration for employment if the job is not in the client's field of experience.

(5) The Department does not require a client to provide verification of good cause if providing the verification would expose the client to increased risk of domestic violence.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-130-0328**

##### **Effect of Strikes**

(1) For the purposes of this rule, a *striker* is anyone participating in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) or any concerted slowdown or other concerted interruption of operations by employees. The following persons are not *strikers*:

(a) Employees affected by a lockout.

(b) Individuals who goes on strike but who are exempt from work registration under this division of rules the day prior to the strike, unless exempt solely on the ground that they are employed.

(c) Clients who are not part of a bargaining unit on strike who do not want to cross a picket line due to fear of personal injury or death.

(2) In the EA, EXT, MAA, MAF, SAC, and TANF programs, a filing group is ineligible during any month in which a caretaker relative is a striker. If any other member of the filing group is a striker, only that person is ineligible.

(3) Households containing a striker are not eligible to participate in the Food Stamp Program unless the household was eligible for benefits the day prior to the date the member became a *striker*. An eligible household is not entitled to an increased allotment as the result of a decrease in the income of a member on strike. Eligibility of a filing group containing a striker is determined by adding to the income of the group's members who are not strikers the greater of the *striker's* current income or the *striker's* income immediately before the strike. Deductions used to determine benefits and eligibility for households subject to the net income eligibility standard are calculated for the month of application as for any other household. *Strikers* are subject to the registration requirements of this division of rules unless exempt on the day of application.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-130-0330**

##### **Disqualifications**

(1) In the REF and TANF programs, clients may be disqualified for failure to comply with requirements of employment programs. A disqualification is initiated only after the client has had an opportunity to participate in a conciliation process (see OAR 461-190-0231) that includes a determination by the Department of whether the client had good cause for failing to comply. The effects of a JOBS disqualification are progressive. Except as provided in section (2) of this rule, once a disqualification is imposed, it affects benefits according to the following schedule until the disqualification ends in accordance with OAR 461-130-0335:

(a) There are three levels of disqualification and two months of disqualification for each of the first two levels. Any client who was disqualified for any period of time in the JOBS program prior to July 1, 1996, is treated in this rule as having been disqualified for two months.

(b) At the first level, the penalty each month is a \$50 decrease in the TANF payment standard for the need group.

(c) At the second level, the penalty for the third and fourth months of disqualification is removal of the disqualified client from the need group. If the client who caused the disqualification is not in the need group but remains in the household, the \$50 reduction in the payment standard imposed at step one continues and there is no additional penalty at the second level.

(d) At the third level, the need group receives no cash benefit in the TANF program for the fifth and all subsequent months of disqualification.

(2) Applicants for TANF and participants in the Assessment program who are disqualified for failure to comply with requirements of

an employment program are treated the same as recipients under section (1) of this rule, except that those with fewer than two months of disqualification are treated as if they have two previous months of disqualification.

(3) In the Food Stamp program, the effects of disqualifications are progressive. Mandatory clients who fail to meet the requirements of a Food Stamp employment program are removed from the need group until they meet the program requirements and for a minimum of:

- (a) For the first failure, one calendar month.
  - (b) For the second failure, three calendar months.
  - (c) For the third and subsequent failures, six calendar months.
- Stat. Auth.: ORS 411.060 & 411.816  
 Stats. Implemented: ORS 411.060 & 411.816  
 Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2005, f. & cert. ef. 7-1-05

#### **461-130-0335**

##### **Removing Disqualifications; Effect on Benefits**

(1) In the Food Stamp and TANF programs, a filing group is not subject to disqualification due to a member's conduct if that person leaves the household. Should the member join another filing group, that group is subject to the member's most recent disqualification.

(2) In the TANF program, a disqualification ends when the Division changes the participation classification of the disqualified person to *exempt* or when the client complies with the requirements of the employment program. For a client who becomes exempt, the disqualification ends on the first day of the month in which the client informs the Division of the facts that justify the change. For a client whose disqualification ends through compliance with the requirements of the employment program, *see* section (5) below.

(3) In the Food Stamp program, the disqualification ends the first day of the month following the month in which information is provided to the Division justifying the change in the client's participation classification, even if the date falls within the disqualification period provided in OAR 461-130-0330(2).

(4) An applicant who would be subject to disqualification but withdraws the application before benefits are approved is not subject to disqualification.

(5) REF and TANF clients who are disqualified for failure to meet requirements of the JOBS program must comply before the disqualification can be removed.

(a) If a client requests an opportunity to comply with the participation requirements prior to the effective date of a proposed disqualification, the Division will amend the *case plan* to enable the client to comply with the requirements for the time remaining until the effective date of disqualification. If the client meets participation requirements during that period, the disqualification penalty is not imposed but the month in which the disqualification penalty was to be imposed counts as a month of disqualification.

(b) On or after the date the disqualification was proposed to take effect, a client who states in person to an appropriate employee of the Division a desire to comply with participation requirements must be assigned an *activity* not later than the following work day and must be offered the opportunity to sign an acknowledgment of the assignment. The disqualification ends when the client participates in the activity. If the Division assigns no activity to occur within that period of time, the client's signed acknowledgment alone constitutes compliance with the requirement to participate.

(6) When the Division removes a disqualification due to a client's compliance with participation requirements, cash benefits are restored as set forth in subsections (a) and (b) below. Once the client's disqualification reaches the sixth month, the Division may establish a period of cooperation during which the client must comply with the requirements of his or her *case plan* (*see* OAR 461-190-0151 and 461-190-0161) before cash benefits are restored. The period of cooperation must not extend beyond 30 days from the date the client states in person to an appropriate employee of the Division a desire to comply with participation requirements.

(a) When the disqualification is removed during the first month of disqualification, the client is eligible for cash benefits for the whole month.

(b) When the disqualification is removed during the second through sixth months of disqualification, the client is eligible for cash

benefits effective the date the client began to comply with participation requirements.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01

### **DIVISION 135**

#### **SPECIFIC PROGRAM REQUIREMENTS**

##### **461-135-0010**

##### **Assumed Eligibility for Medical Programs**

(1) This rule sets out when a client is *assumed eligible* for certain medical programs because the client receives or is deemed to receive benefits of another program.

(2) Except for a client disqualified for failure to pursue cost-effective, employer-sponsored health insurance as required by OAR 461-120-0345, a client who does not meet the citizenship and alien status requirements set forth in OAR 461-120-0125, and a client who does not meet a citizenship verification requirement set forth in OAR 461-115-0705, the following people are *assumed eligible* for MAA:

- (a) A client receiving or eligible to receive TANF cash benefits.
- (b) A client whose TANF cash benefits are being paid as wages through the JOBS Plus program.

(c) A client who receives no TANF cash benefits because of failure by the client to comply with the requirements for a recipient of the JOBS program, or a requirement for evaluation or treatment of substance abuse or mental health (OAR 461-135-0085).

(d) A client in the Assessment Program (*see* OAR 461-135-0475).

(e) A child in a benefit group whose grant is affected by a failure to comply with the requirements of OAR 461-120-0340 regarding paternity or child support.

(3) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is *assumed eligible* for EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(4) A pregnant woman who was eligible for and receiving benefits of the EXT, GAM, MAA, MAF, OHP-OPP, OSIPM, or SAC program but becomes ineligible during the pregnancy is *assumed eligible* for Medicaid.

(5) A child born to a mother eligible for and receiving EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC benefits is *assumed eligible* for medical benefits. A child who is continuously a member of the household group of his or her mother is eligible under this section until the end of the month the child turns one year of age.

(6) Except for a child who does not meet a citizenship verification requirement set forth in OAR 461-115-0705, the following children are *assumed eligible* for SAC:

(a) A child who is the subject of an adoption assistance agreement with another state.

(b) A child in a state-subsidized, adoptive placement, if an adoption assistance agreement is in effect between a public agency of the state of Oregon and the adoptive parents that indicates the child is eligible for Medicaid.

(7) The following persons are *assumed eligible* for OSIPM (except OSIP-EPD and OSIPM-EPD):

- (a) A recipient of SSI benefits.
- (b) A person deemed eligible for SSI under sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individuals with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM.

(8) A client who receives both benefits under Part A of Medicare and SSI benefits is *assumed eligible* for the QMB-BAS program.

(9) A client is *assumed eligible* for REFM if:

- (a) The client is receiving cash assistance through the REF program; or
- (b) The client is ineligible for cash assistance through the REF program only because of income or resources.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 418.100, 1999 OL, ch. 859

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-

1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-1999(Temp), f. & cert. ef. 10-1-99 thru 1-31-00; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06

#### **461-135-0070**

##### **Specific Requirements; MAA, MAF and TANF**

(1) To be eligible for the MAA, MAF or TANF programs, a client must be one of the following:

(a) A *dependent child* (see OAR 461-110-0110). However, dependent children for whom foster care payments are made for more than 30 days are not eligible while the payments are being made for them.

(b) A *caretaker relative* (see OAR 461-120-0610) of an eligible dependent child. However, *caretaker relatives* to whom foster care payments are made for more than 30 days are not eligible while the payments are being made for them.

(c) A *caretaker relative* of a *dependent child*, when the *dependent child* is ineligible for TANF because of one of the following reasons:

(A) The child is receiving SSI.

(B) The child is in foster care, but is expected to return home within 30 days.

(C) The child is disqualified from TANF for failure to comply with requirements of the JOBS program (see the rules in division 130 of this chapter of rules) or requirements related to mental health or drug and alcohol (see OAR 461-135-0085), except that a *caretaker relative* is not eligible for TANF if the case is in a level three disqualification (see OAR 461-130-0330(1) and 461-135-0085).

(d) An essential person. An essential person is a household group member not required to be in the filing group and:

(A) Who provides a service necessary to the health or protection of a mentally or physically disabled benefit group member; and

(B) Including the person in the benefit group is less expensive than purchasing this service from another source.

(e) A parent of an unborn, as follows:

(A) For TANF and MAA, any parent whose only child is an unborn child once the mother's pregnancy has reached the calendar month before the month in which the due date falls.

(B) For the TANF and MAA programs, the father of an unborn child, if there is another dependent child in the filing group.

(C) For MAF, a mother whose only child is an unborn once the mother's pregnancy has reached the calendar month immediately before the month in which the due date falls.

(2) Clients are eligible for MAA or MAF if they are:

(a) Eligible for MAA or MAF under OAR 461-135-0010, "Assumed Eligibility for Medical Programs";

(b) Minor parents ineligible for TANF only because:

(A) They refuse to live with a parent or legal guardian as required by OAR 461-135-0080; or

(B) Their income exceeds the income standards because the Division required the minor to return to live with a parent, if the minor parent meets the conditions in OAR 461-135-0080(2); or

(c) Clients ineligible for TANF only because of the 24-month time limit in OAR 461-135-0075.

(3) Clients are eligible for MAF even while ineligible for TANF if they are ineligible for TANF only because they are:

(a) Families who would be eligible for the TANF program if they were allowed the following deductions from income:

(A) The earned income deductions authorized by OAR 461-160-0190.

(B) The unearned income support deduction authorized by OAR 461-160-0200.

(b) Self-employed families who would be eligible for TANF if the cost of producing the self-employment income were subtracted from their gross sales or receipts in accordance with OAR 461-145-0920.

(c) Families that include an ineligible non-citizen or the father of an unborn who would be eligible for TANF if the ineligible non-cit-

izen's or father's income is counted in accordance with OAR 461-160-0120.

(d) Persons who would be eligible for TANF if the assets of the following household members were not counted:

(A) An unmarried parent of a dependent child or unborn in the eligibility group.

(B) A child in common of parents in the eligibility group.

(C) The spouse and children of a *caretaker relative* in the need group.

(e) The spouse of a *caretaker relative*, but only if the spouse is the parent of a dependent child.

(4) A family is ineligible for TANF if the family:

(a) Lives in Klamath county;

(b) Meets any of the following conditions:

(A) The family has a single custodial parent who is a member of the Klamath Tribes, or the single custodial parent is not a Klamath Tribes member and at least 50 percent of the dependent children are Klamath Tribes members;

(B) The family has two custodial parents who are members of the Klamath Tribes, or only one of the two custodial parents is a Klamath Tribes member and at least 50 percent of the dependent children are Klamath Tribes members; or

(C) The family has a caretaker relative who is not the custodial parent and at least 50 percent of the dependent children are Klamath Tribes members; and

(c) Is eligible for the Klamath Tribes TANF program or would be eligible for the Klamath Tribes TANF program if not for the failure of the family to cooperate with program requirements.

(5) If a parent or caretaker relative is a member of the Siletz Tribe (Confederated Tribes of Siletz Indians of Oregon) and the family lives in Benton, Clackamas, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington or Yamhill county, the entire filing group is ineligible for TANF. The only exception is when the Siletz Tribes determines the group ineligible for its TANF program, based on eligibility factors other than failure to cooperate with Siletz TANF program requirements.

(6) If a parent or *caretaker relative* covered by section (4) or (5) of this rule fails to follow through with a Division referral to the Klamath or Siletz Tribal TANF program, the entire filing group is ineligible for TANF.

Stat. Auth.: ORS 411.060, 414.047 & 418.100

Stats. Implemented: ORS 411.060, 414.047 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 4-30-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 26-1998(Temp), f. 12-30-98, cert. ef. 1-1-99 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01

#### **461-135-0075**

##### **Twenty-Four Month Limitation on Eligibility Period; TANF**

(1) Clients may not receive benefits from the TANF program for more than a total of 24 months in any period of 84 consecutive months after June 30, 1996.

(2) The 24-month limitation described in section (1) of this rule does not apply to:

(a) Up to three months within a two-year period during which a member of the financial group is required to care for a family member who suffers a serious health condition as defined in ORS 659.470. The definition provides that a serious health condition is:

(A) An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;

(B) An illness, disease or condition that in the medical judgment of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care; or

(C) Any period of disability due to pregnancy or period of absence for prenatal care.

(b) Any month during which no member of the financial group is disqualified for failure to comply with the requirements of the JOBS program.

(c) Any month in which a dependent child resides with a person other than the child's natural or adoptive parent.



(d) A household with only one parent in which the basis of eligibility is the incapacity of that parent or, in a household with two parents, if both parents are incapacitated or one parent is incapacitated and the other parent is required in the home to care for the incapacitated parent.

(e) Any month in which a client is unable to meet the requirements of an *employment development plan* because of *domestic violence*.

(f) Any month in which a client is participating in an employment and training program in the JOBS program.

(3) For purposes of determining the 24-month limitation described in this rule, a month in which one parent of a family receiving benefits from the TANF program receives gross earnings in an amount equal to 173 times the hourly minimum wage as provided in ORS 653.025, but in an amount that does not exceed the eligibility requirements for the program, shall be counted as two-fifths (.40) of a month.

(4) A person who is eligible for TANF benefits, except for the time limit imposed by this rule, is eligible in excess of the 24-month limitation if the person is:

(a) A dependent child in a two-parent filing group and the principle wage earner dies;

(b) A dependent child and the child resides with a person other than the caretaker with whom the child lived at the time the child was receiving aid;

(c) A caretaker relative but was a dependent child during the 24-month period; or

(d) A parent of a dependent child receiving aid and who is making a diligent, good-faith effort to obtain permanent employment. During any month, the number of families receiving TANF beyond the 24-month limitation because of the exception provided by this subsection cannot exceed one percent of the total number of families receiving aid in that month or 400 families, whichever is greater.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.117

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### 461-135-0080

##### TANF Eligibility for Minor Parents

(1) To be eligible for TANF, a minor parent applying for benefits for his or her child must live with the minor's parent, parents or legal guardian unless it is unsafe or impractical for the minor parent to live with those individuals.

(2) If the minor parent returns to live with his or her parent, parents or legal guardian, and the parents' or guardian's income (after application of the provisions of OAR 461-145-0860) exceeds the TANF payment standard, the minor parent is eligible for MAA or MAF and JOBS support service payments if the minor parent:

(a) Attends high school or its equivalent full-time; or

(b) Participates in the JOBS program or another training program to develop employment or self-sufficiency skills.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 418.132

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### 461-135-0082

##### Eligibility for Refugees

(1) Clients are eligible for the Refugee Case Services Program if they:

(a) Have an alien status listed in OAR 461-120-0120;

(b) Entered the United States on or after October 1, 1997;

(c) Live in Clackamas, Multnomah or Washington county;

(d) Have resided in the United States less than eight months or have been granted asylum within the last eight months. The month in which the refugee was admitted to the United States as a refugee, or was granted asylum, counts as the first month; and

(e) Meet the eligibility requirements contained in OAR 461-193-0000 through 461-193-1380.

(2) Clients who are eligible for the Refugee Case Services program are not eligible for TANF.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03

#### 461-135-0085

##### Requirement to Seek Treatment for Substance Abuse and Mental Health; Penalties

(1) In the REF and TANF programs, when directed by the Department, a member of a need group must participate in mental health or substance abuse evaluation and treatment if:

(a) Evaluation or treatment is necessary for the person to function successfully in the workplace; and

(b) Evaluation and treatment services are available at no cost to the client.

(2) Clients are responsible for providing information needed by the Department to determine their need for services related to substance abuse or mental health problems and whether the client had *good cause* for failing to meet the requirements of this rule. If a medical condition of the client must be determined in regard to the requirements of this rule, the Department will assist the client in obtaining a medical opinion from an appropriate medical professional.

(3)(a) A client who refuses to participate in an evaluation or treatment provided for in this rule without *good cause*, defined in OAR 461-135-0087, is penalized in accordance with this section. The penalties are progressive and, once imposed, continue as long as the client refuses to participate, without regard to the client's change to or from the exempt classification in the JOBS program (see OAR 461-130-0310). There are two months of penalties in each of the first two levels as follows:

(A) At the first level, the TANF payment standard is reduced by \$50 for each of the first two months of the penalty.

(B) At the second level, the TANF payment standard is reduced by \$50 and the noncompliant client is removed from the need group for the third and fourth months of the penalty.

(C) At the third level, the filing group is ineligible for the TANF program for the fifth and all successive months of the penalty.

(b) A month is counted as a month of penalty if it is a month in which:

(A) The client is penalized for one or more days; or

(B) A penalty would have become effective, if the client had not complied with the requirements of this rule before the effective date in the notice of disqualification.

(c) If a client fails to meet the requirements of section (1) of this rule while an applicant and:

(A) Has not incurred three months of penalties since July 1, 1996, the client's first month of benefits is at the first month of the second-level penalty.

(B) Has incurred three months of penalties since July 1, 1996, the client's first month of benefits is at the second month of the second-level penalty.

(C) Has incurred four or more months of penalties since July 1, 1996, the entire benefit group is ineligible.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060, 411.816 & 418.134

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

#### 461-135-0087

##### Good Cause for Failure to Comply with Substance Abuse or Mental Health Requirements

For the TANF and REF programs, a client has *good cause* for missing a scheduled appointment or for any other failure to comply with the requirements imposed under OAR 461-135-0085 if the failure to comply was caused in significant part by circumstances beyond the client's reasonable control.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### 461-135-0089

##### Demonstrating Compliance with Substance Abuse and Mental Health Requirements; Restoring Cash Benefits

(1) In order to end a penalty imposed under OAR 461-135-0085, a client must demonstrate a willingness to participate in an evaluation or treatment required by that rule. For the first month at any level of penalty, if an appropriate evaluation or treatment is not immediately available, the client's willingness to participate is sufficient to end the penalty. If the client demonstrates a willingness to participate after

receiving a notice of disqualification but before the effective date of the penalty, the penalty is considered as having been imposed for one month.

(2) Cash benefits are restored as follows:

(a) When the penalty ends during the first month of a first-level penalty, cash benefits are restored back to the first of the month.

(b) When the penalty ends during the second through fifth penalty months, cash benefits are restored effective the date the client indicated a willingness to participate.

(c) When the penalty ends during the sixth or a subsequent penalty month, the client is treated as an applicant and must follow through with the referral and treatment program requirements to be eligible for cash benefits.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### **461-135-0095**

##### **Specific Requirements; EXT**

(1) To be eligible for EXT benefits, at least one member of the filing group must have been eligible for and received MAA or MAF for at least three of the six months prior to the beginning date of the EXT eligibility period (see OAR 461-135-0096(3) to determine the beginning date), and then become ineligible because of:

(a) An increase in the earnings of the caretaker relative;

(b) An increase in child support received; or

(c) A combination of an increase in both the earnings of the caretaker relative and child support received.

(2) If the filing group becomes ineligible for MAA or MAF when another change occurs in conjunction with the increase in earned income or child support, the filing group is not eligible for EXT if the other change, by itself, makes the group ineligible for MAA or MAF.

(3) Eligibility for EXT is limited to the members of the MAA or MAF benefit group at the time that those benefits end.

(4) Subject to the time periods established in OAR 461-135-0096(1):

(a) Once eligibility for EXT is established, members of the benefit group are ineligible if the filing group contains no dependent child.

(b) A benefit group may regain EXT eligibility after becoming ineligible, even if eligibility was lost due to moving out of state, whenever the group again meets EXT eligibility requirements.

(c) Persons who have lost EXT eligibility because they leave the household during the EXT eligibility period may regain eligibility when they return to the household.

(5) For purposes of this rule, "good cause" means a circumstance beyond the reasonable control of the client.

(6) To be considered for EXT benefits in the seventh month, unless good cause exists, the filing group must report the following information by the 21st day of the fourth month for each of the preceding three months:

(a) The gross earned income of the financial group; and

(b) Costs for child care necessary for the employment of the caretaker relative.

(7) Unless *good cause* exists, to be considered for EXT benefits in the eighth through tenth months, all of the following requirements must be met:

(a) The filing group must have met the requirements of section (6) of this rule.

(b) By the 21st day of the seventh month, the filing group must report all of the following information for each of the preceding three months:

(A) The gross earned income of the financial group.

(B) Costs for child care necessary for the employment of the caretaker relative.

(c) The caretaker relative must have had earnings in each of the preceding three months of the EXT period.

(d) The average adjusted earned income of the financial group for the reporting period must be below 185% of the federal poverty level (see OAR 461-155-0175).

(8) Unless *good cause* exists, to be considered for EXT benefits in the eleventh and twelfth months, all of the following requirements must be met:

(a) The filing group must have met the requirements of section (7) of this rule.

(b) By the 21st day of the tenth month, the filing group must report all of the following information for each of the preceding three months:

(A) The gross earned income of the financial group.

(B) Costs for child care necessary for the employment of the caretaker relative.

(c) The caretaker relative must have had earnings in each of the preceding three months of the EXT period.

(d) The average adjusted earned income of the financial group for the reporting period must be below 185% of the federal poverty level (see OAR 461-155-0175).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-135-0096**

##### **Eligibility Period; EXT**

(1) For a client who meets the eligibility requirements for EXT, the period of eligibility is one of the following:

(a) If eligibility for EXT results from increased child support, the period of eligibility is four months and may not be extended.

(b) If eligibility for EXT results from an increase in the caretaker relative's earnings:

(A) The period of eligibility is six months.

(B) The period of eligibility may be extended for no more than six additional months if the filing group meets the specific EXT requirements in OAR 461-135-0095 and the earned income of the filing group is below the EXT income standard in OAR 461-155-0175.

(2) The period of eligibility for EXT is based on the increase in the caretaker relative's earnings and is described in subsection (1)(b) of this rule in each of the following situations:

(a) A client meets the eligibility requirements for EXT based on an increase in the caretaker relative's earnings and also meets the eligibility requirements based on an increase in child support in the same month.

(b) A client meets the eligibility requirements for EXT based on a combination of increased income from the caretaker relative's earnings and child support, although either increase by itself does not make the filing group ineligible for MAA or MAF.

(3) The EXT eligibility period begins the first of the month following the month eligibility for MAA or MAF ends. If a benefit group received MAA or MAF benefits when they were eligible for EXT, the MAA or MAF benefits are not an overpayment. However, any month in which the client receives MAA or MAF benefits when eligible for EXT is counted as a month of EXT eligibility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-135-0150**

##### **Specific Requirements; SAC**

To be eligible for the SAC program, a person must:

(1) Live in substitute care covered by Title IV-E of the Social Security Act (42 U.S.C. 670 and following);

(2) Live in a foster care or private institutional setting for which a public agency of Oregon is assuming at least partial financial responsibility;

(3) Live in an intermediate care facility, an intermediate care facility for people with mental retardation, or a licensed psychiatric hospital;

(4) Receive payments from the State Office for Services to Children and Families under OAR 461-145-0255; or

(5) Be a child who is the subject of an adoption assistance agreement and is assumed eligible under OAR 461-135-0010.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01

#### 461-135-0170

##### Eligibility for 1972 COLA Clients; MAA and MAF

A client is eligible for MAA or MAF, if he or she meets all eligibility requirements except his or her income exceeds the income limit because of an SSB cost-of-living increase in July 1972; and

(1) The client received SSB in August 1972 and received benefits under MAA or MAF or a state program for the aged, blind, or disabled, or were eligible for such a program; or

(2) The client would have been eligible for SSB if he or she had not resided in a medical facility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-9; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

#### 461-135-0200

##### Multiple Disqualifications, Change in JOBS Status; TANF

This rule describes the method for calculating the net TANF benefit when a client's benefits are affected by the penalty provided in division 130 of this chapter of rules for failure to comply with the requirements of a *case plan* or the penalty provided by OAR 461-135-0085 and, during the same month, by a concurrent penalty related to child support or a penalty related to recovery from third parties (OAR 461-120-0340 and 461-120-0345 respectively).

(1) If the concurrent penalty relates to child support, during the first four months that the penalties are both applied, the penalty related to the *case plan* or to OAR 461-135-0085 is applied first, and the concurrent penalty is then applied. During the fifth and successive months, the clients are ineligible for TANF benefits, and the person whose conduct caused the penalty related to child support is ineligible for medical benefits.

(2) If the concurrent penalty relates to recovery from third parties, during the first four months that the penalties are both applied, only the penalty related to third-party recovery is applied. During the fifth and subsequent months, the penalty related to third-party recovery continues and the benefit group is ineligible for TANF benefits.

(3) A penalty imposed under OAR 461-135-0085 remains in effect when a client becomes *mandatory* while serving the penalty.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.040

Hist.: AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

#### 461-135-0210

##### TANF Cooperation Incentive Payment

(1) A TANF client or caretaker relative of a TANF client who volunteers to comply, and continues to comply, with a *case plan* in the JOBS program (*see* OAR 461-190-0161) may volunteer to receive an incentive payment. The incentive payment is made to clients in the JOBS program to motivate and recognize their progress toward employment and self-sufficiency. The incentive payment, in the amount authorized by OAR 461-155-0035, is added to the client's cash grant if the client meets the requirements of this rule and volunteers to receive the payment.

(2) A TANF client or caretaker relative of a TANF client may not receive the incentive payment if the client's grant is reduced because of an intentional program violation (*see* OAR 461-195-0611), a failure to comply with a requirement of the Child Support program (*see* OAR 461-120-0340), or a failure to comply with any other requirement of the TANF program.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01

#### 461-135-0300

##### Eligibility for and Needs Covered by EA

Emergency assistance is available for food and shelter needs of financial groups. To be eligible for EA, a financial group must have a shelter or food need that was caused by natural disaster or that resulted from the financial group's lack of income or cash resources during the month of application and the prior month sufficient to prevent the emergency. The lack of sufficient available money must have resulted

from money becoming unavailable due to circumstances beyond the group's control. Circumstances beyond the group's control include:

(1) Theft that occurs notwithstanding the financial group's reasonable precautions to prevent theft.

(2) The need to use the money for unexpected and necessary expenditures, such as the payment for car repairs when the car is used for work or for a family emergency.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 18-1990(Temp), f. & cert. ef. 7-13-90; AFS 26-1990, f. & cert. ef. 11-29-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-9; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

#### 461-135-0301

##### Closure of the Emergency Assistance (EA) Program Effective May 1, 2004

(1) Effective January 1, 2003, the EA program is not funded. Notwithstanding other rules of the Department, the program is closed effective that date.

(2) Effective December 31, 2002, all persons eligible for or receiving benefits of the program become ineligible for the program. The Department will not authorize or provide any benefit for any period after December 31, 2002 except as provided below in this rule.

(3) Effective December 1, 2003, the EA program is funded. The program is open effective that date for any person who meets the eligibility requirements on or after December 1, 2003.

(4) Effective May 1, 2004, the EA program is not funded. Notwithstanding other rules of the Department, the program is closed effective that date.

(5) Effective April 30, 2004, all persons eligible for or receiving benefits of the EA program become ineligible for the program. The Department will not authorize or provide any benefit for any period after April 30, 2004.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 30-2003(Temp), f. & cert. ef. 12-1-03 thru 4-30-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 12-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 9-30-04; SSP 22-2004, f. & cert. ef. 10-1-04

#### 461-135-0310

##### Covered Shelter Needs; EA

The following shelter needs are specifically covered by the Emergency Assistance program:

(1) Rent, mortgage, and utility costs, including basic payments, connection charges, and deposits.

(2) Moving costs.

(3) Property tax up to one year, if necessary to avoid foreclosure.

(4) Transportation to another area or residence.

(5) Repairs to provide safe housing, including one-time house, electrical, and plumbing repairs if essential to the health and safety of the occupants and if less costly than moving to other quarters. Repairs are authorized under this section only for clients who are homeowners or holders of a life estate.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

#### 461-135-0320

##### Time Limits; EA

(1) A financial group determined eligible for EA is eligible for assistance for 30 consecutive days for any needs covered by OAR 461-135-0300 and 461-135-0310.

(2) A benefit group is not eligible for the EA program until the first day of the twelfth month following the start of a previous period of eligibility in Oregon. This limitation applies to the whole group if any member of the group is affected by it.

(3) The limitation in section (2) does not apply if its application would make it more difficult for the client to escape *domestic violence* or place the client at risk of further *domestic violence*.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04



**461-135-0340**

**Work Requirements; EA**

To be eligible for EA, an adult filing group member or a *dependent child*, if required to participate in the JOBS program, must not have done any of the following without *good cause* (see OAR 461-130-0327) in the 30 days before receiving emergency assistance benefits:

- (1) Quit or refused a job.
- (2) Refused a referral to a job or training.
- (3) Been discharged for misconduct in accordance with the unemployment insurance compensation laws of Oregon.
- (4) Reduced his or her earnings.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

**461-135-0350**

**Eligible People; EA**

To be eligible for EA, a client must be a *dependent child* (defined in OAR 461-135-0070), a *caretaker relative* (defined in OAR 461-135-0070(1)(b) or (c)), or the mother of an unborn child whose pregnancy has reached the calendar month before the month in which the due date falls.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04

**461-135-0400**

**Specific Requirements; ERDC**

The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules. To be eligible for ERDC, a filing group must meet the following requirements:

- (1) For a filing group to be eligible for the ERDC-BAS program:

(a) At least one *caretaker* (see OAR 461-120-0610) must receive income from employment, including employment through a work study program. For clients who are in the start-up phase of self-employment, working on commission, or participating in job-related training that is a condition of employment, the requirement to have earned income may be waived for three months; and

(b) A child who needs child care must meet the citizenship or alien status requirements of OAR 461-120-0110.

- (2) In the ERDC-SBG program:

(a) At least one *caretaker* must be an undergraduate student without a bachelor's degree. The student must have been admitted to a two- or four-year post-secondary institution that is eligible for federal financial aid and must be registered for at least twelve quarter hours — or an equivalent number of credit hours in an institution that does not use the quarter system — that count toward graduation.

(b) In addition to meeting the requirements of sub-section (a) of this section, a student who applies for the ERDC-SBG program on or after July 1, 2005 must have been admitted to a two- or four-year non-profit, generally accredited institution of higher education located in Oregon, including community colleges, that is eligible for federal financial aid.

(c) A *caretaker* who meets the requirements of subsection (a) of this section must attend school for at least:

(A) Three out of four school quarters per or two semesters each academic year; or

(B) In an institution that does not use the quarter or semester system, a portion of the academic year equivalent to the portion required by paragraph (A) of this subsection.

(d) A student may use ERDC-SBG benefits for child care needed in order to work during an absence from school or to attend school during a term in which the student is attending school less than 12 credit hours if:

(A) The student intends to attend school at least 12 credit hours the following term; and

- (B) The absence or part-time status does not exceed:

(i) One out of four school quarters for students on the quarter system.

- (ii) The summer break period for students in the semester system.

(iii) In an institution that does not use the quarter or semester system, a portion of the academic year equivalent to the portion allowed by subparagraph (i) or (ii) of this paragraph.

(e) Students must maintain good standing according to the standards of the institution they are attending.

(f) Students must complete at least 36 quarter hours — or the equivalent in an institution that does not use the quarter system — that count toward graduation each academic year.

(g) Participation in the student child care program is limited to a total of six years.

(3) The family must have an allowable child care need as described in OAR 461-160-0040. If in the filing group there are two adults who are required to be in the filing group, and if one of the adults is unemployed, the unemployed adult is considered available to provide child care, making the group ineligible, except in the following situations:

(a) The unemployed adult is physically or mentally unable to provide adequate child care.

(b) The unemployed adult is unavailable to provide care while participating in requirements of a *case plan* other than requirements associated with post-secondary education. In the ERDC-SBG program only, the unemployed adult meets the requirements of section (2) of this rule.

(4) The caretaker must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(5) A client is not eligible for a child care payment in the ERDC program for more than six calendar months if the client is unwilling to obtain for the child a Certificate of Immunization Status.

(6) It is a requirement for eligibility in the ERDC-BAS program that child care is necessary to enable the *caretaker* to remain employed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

**461-135-0401**

**ERDC-SBG; Effective Dates for the Program**

(1) The ERDC — Student Block Grant (ERDC-SBG) program is not funded between October 1, 2002 and December 31, 2003. Notwithstanding other rules of the Department, the program is closed during this time period. The Department will not authorize or provide any benefit for any part of the period between October 1, 2002 and December 31, 2003, and the waiting list of prospective applicants referred to in OAR 461-115-0015(1) will not be maintained during that period.

(2) Effective January 1, 2004, the ERDC — Student Block Grant (ERDC-SBG) program is restored. The waiting list of prospective applicants referred to in OAR 461-115-0015(1) will be started for new applications. The Department will authorize and provide benefits to eligible persons effective February 1, 2004.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 12-2002(Temp) f. & cert. ef. 10-1-02 thru 3-30-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04

**461-135-0405**

**ERDC; Children in the Head Start Program**

(1) The following provisions apply when an ERDC client's child receives child care through a Head Start agency:

(a) The Head Start agency is considered the provider of child care.

(b) If the Head Start agency uses another provider for the child care, that provider must meet the requirements in OAR 461-165-0160 and following.

(c) The payment made by the Department on behalf of the child is made only to the Head Start agency. The child is ineligible for child care payments for care not provided under the contract between the Head Start agency and the Department.

(2) The following provisions apply when an ERDC client's child receives child care under a contract between a Head Start agency and the Department:

(a) Once the Department makes a child care payment for the child under the contract, the child is presumed to meet the ERDC eligibility requirements until the next August 31, unless:

(A) The child's caretaker has been found ineligible for ERDC under OAR 461-135-0415 for failure to make a copayment;

(B) The client was found eligible because of inaccurate information provided to the Department or because information was withheld from the Department when eligibility was determined; or

(C) The client fails to meet the requirements of the locally prepared agreement among the client, the Head Start program, and the Department.

(b) For any month in which the child is eligible to be served under a contract and the client complies with a plan developed jointly by the client, the Head Start agency, and the Department (plan), the Department waives the client's copayment for the child, in whole or in part, if the waiver is provided for in the contract.

(c) For any month in which the client's child is eligible to be served under a contract and the client complies with a plan, the Department waives the copayment with respect to the child's siblings, in whole or in part, if the waiver is provided for in the contract.

(3) The Department will not make a child care payment for a child in a Head Start program if the child's caretaker has been found ineligible for ERDC under OAR 461-135-0415 for failure to make a copayment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 33-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

#### **461-135-0415**

##### **ERDC Requirement to Make Copay or Satisfactory Arrangements**

(1) In the ERDC program, the caretaker is responsible for paying the copayment to the primary provider of child care unless the ERDC filing group received TANF benefits the previous month and the Child Care Billing form was sent to the provider showing no copayment.

(2) If the client has only one provider during a month, that provider is the primary provider. If the client uses more than one provider during a month, the client must designate one as the primary provider. If the copayment exceeds the amount billed by the primary provider, the Department may treat a different provider as the primary provider or split the copayment among the providers who bill for care.

(3) A client who fails to pay a copayment to or to make satisfactory arrangements with the primary provider is ineligible for ERDC if that provider notifies the Department of an overdue copayment within 60 days after the Department issues payment for the month at issue. The period of ineligibility ends in any of the following circumstances:

(a) On the first day of the month in which the client makes the copayment or makes satisfactory arrangements with the provider.

(b) On the first day of the month after three years have lapsed from the date the client failed to make the copayment.

(c) On the first day of the month in which the client provides verification that the copayment debt was discharged by a bankruptcy filing.

(4) The Department will make the payment to a provider if a Child Care Billing form is mailed to the provider prior to the notification described in section (3) of this rule.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.122

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 7-2003, f. & cert. ef. 4-1-03

#### **461-135-0475**

##### **Specific Requirements; Assessment Program**

(1) This rule explains the Assessment program. The eligibility criteria of the Assessment program are the same as the TANF program. The purposes of the Assessment program are:

(a) To help individuals find employment or other alternatives before they become dependent on public assistance;

(b) To assess the employment potential of clients in the labor market;

(c) To determine the services clients need to enhance their employability and their likelihood of becoming self sufficient; and

(d) To provide basic living expenses immediately to families in need.

(2) Applicants for TANF whose unverified application indicates the client meets the TANF eligibility requirements are placed in the Assessment program. Their applications for the TANF program are also considered applications for the Assessment program. The Assessment program is open for not longer than 45 days following the date of request. Clients in the Assessment program are subject to the requirements of the JOBS program, described in divisions 130 and 190 of this chapter of rules, and they are subject to the requirements of OAR 461-135-0085 pertaining to substance abuse and mental health, except that the penalty for a client in the Assessment program who fails to comply with the requirements of those rules is closure of the Assessment program (see section (5) of this rule).

(3) Once a client is found eligible for the Assessment program, the client and the Department prepare a case plan (see OAR 461-190-0161) that specifies the basic living expenses and support service payments the client will receive through the Assessment program and lists the activities of the client (see OAR 461-190-0110). The *case plan* may be adjusted while the client is in the Assessment program to reflect changing needs.

(4) Clients in the Assessment program receive assistance, listed in the *case plan*, for basic living expenses, and the Department makes support service payments listed in the *case plan*, as follows:

(a) The Department will provide the client with basic living expenses necessary to stabilize the household so the client can accomplish the activities in the *case plan*. Basic living expenses covered by this section are limited to the current need of the client for shelter, utilities, household supplies (other than food), and personal incidentals that the client cannot meet with other, immediately available resources. Payments under this subsection are limited to 200 percent of the payment standard for the benefit group (see OAR 461-155-0030(2)). Payment for "past expenses" is made only when the need of the client cannot be adequately met by a less expensive alternative.

(b) Support service payments are available through the JOBS program (see OAR 461-190-0211 and 0221) in the same manner they are available to a TANF client.

(5) The Assessment program is closed in any of the following circumstances:

(a) The client is unlikely to become employed within 45 days following the date of request, whether due to the employability of the client, the unstable housing situation of the family, or other causes.

(b) The client fails to comply with a requirement of an employment program or the case plan or fails to comply with the requirements of OAR 461-135-0085.

(c) In any circumstance that would make a client ineligible for TANF.

(d) Upon the placement of the client in a JOBS Plus assignment.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

#### **461-135-0505**

##### **Categorical Eligibility for FS**

(1) A person is categorically eligible for food stamps if the person:

(a) Receives or is authorized to receive GA or SSI benefits or cash benefits funded by TANF;

(b) Receives or is authorized to receive in-kind benefits or services funded by TANF;

(c) Is deemed to be receiving SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)); or

(d) Is a member of a financial group with *countable income* less than 185 percent of the federal poverty level as described in OAR 461-155-0180(5) — and has received a pamphlet about Information and Referral Services.

(2) A benefit or service is "funded by TANF" (see section (1) of this rule) if it is provided as part of the ADC-PLS, Assessment, EA, ERDC, JOBS, TA-DVS, transition, or other TANF-funded program.

(3) For an entire filing group to be categorically eligible for food stamps, it must contain only clients who are categorically eligible for food stamps. For the purpose of determining who is categorically eligible for food stamps, in some programs all members of the filing group are considered receiving the benefits of the program even if not all members receive the benefit. Those programs are the ERDC and TA-DVS programs and any housing assistance or transition service funded by TANF.

(4) A filing group that is eligible for transition services or the TA-DVS program is considered receiving benefits for the entire period of eligibility even if benefits are not received during each month of that period.

(5) A person categorically eligible for the Food Stamp program is presumed to meet the eligibility requirements for resources and countable and adjusted income limits. The person is also presumed to meet the requirements for a social security number, sponsored alien information, and residency, if verified in a public assistance program.

(6) When a filing group contains both members who are categorically eligible for food stamps and those who are not, a resource owned in whole or in part by a categorically eligible member is excluded.

(7) A person cannot be categorically eligible for food stamps in either of the following circumstances:

(a) The person is disqualified from receiving food stamps because of an intentional program violation.

(b) The person is a *primary person* disqualified from receiving food stamps for failure to comply with an OFSET activity or component contained in an OFSET *case plan*.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 29-2000(Temp), f. & cert. ef. 12-1-00 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-135-0506**

##### **Transitional Benefit Alternative (TBA) in the Food Stamp Program**

(1) This rule establishes the transitional benefit alternative (TBA). A client participating in TBA continues to receive food stamp benefits without reduction during the transition period. The transition period is five months. If the filing group separates into two groups during the TBA period, only the group containing the head of household continues in the TBA.

(2) Clients in the Food Stamp program who receive a cash grant in the TANF program may participate in TBA when the TANF benefits are stopped, except as provided in section (4) of this rule.

(3) The benefit level for the transition period is based on countable income for FS during the last month before TBA begins, but the TANF grant is not counted as income. Once it is established, the TBA benefit level is changed only when:

(a) The filing group submits a new application in the Food Stamp program and will receive more food stamps if they are not using the TBA reporting system;

(b) A member of the filing group leaves and applies for food stamps as a member of another household; or

(c) The Department initiates a change identified in OAR 461-170-0200.

(4) A household may not participate in TBA in each of the following situations:

(a) A member of the filing group is receiving benefits of the TANF program.

(b) The TANF benefits are stopped because the household does not reside in Oregon.

(c) The TANF benefits are stopped because of a change that results in ineligibility for TANF and the household failed to report the change timely.

(d) As of the date the TANF case closed, a person in the household was serving a penalty imposed in the TANF program.

(e) The TANF benefits are stopped at the request of the household after the household is informed of an impending disqualification in the TANF program.

(f) The head of household becomes ineligible for the Food Stamp program because he or she lives in an institution or in a facility that provides at least 50 percent of the meals.

(g) A member of the financial group is subject to a penalty in the Food Stamp program because of the person's conduct, for instance, because the person:

(A) Was excluded from the need group under OAR 461-110-0630(7);

(B) Was penalized for failure to meet a requirement of an employment program;

(C) Was ineligible for food stamps under OAR 461-105-0410; or

(D) Was ineligible for or disqualified from participation in the Food Stamp program because of a failure to comply with a requirement of the program to provide complete and accurate information to the Department.

(5) Once the TBA benefits have ended, a client's eligibility for the Food Stamp program is determined on the basis of a new application.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-135-0510**

##### **Residents of Institutions; FS**

(1) In the FS program, people who live in an institution that provides them with at least 50 percent of their meals are treated as follows:

(a) A person in a general hospital, state institution, intermediate care facility, or semi-skilled or skilled nursing facility is not eligible.

(b) A resident of a residential care facility can receive benefits only if:

(A) The facility is public or nonprofit, serves no more than 16 residents, and is licensed by the State of Oregon according to regulations issued under Section 1616(e) of the Social Security Act;

(B) The resident applies through an authorized representative who is an employee of the facility, unless the facility determines that the resident can apply on his or her own;

(C) The person is blind or disabled (see OAR 461-110-0110(4)); and

(D) The person meets all other FS eligibility requirements.

(2) The following are not considered institutions:

(a) Domestic violence shelters.

(b) Public or private nonprofit shelters for homeless people.

(c) Federally subsidized housing for the elderly, disabled, or blind recipients of benefits under Title I, II, X, XIV, or XVI of the Social Security Act.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

#### **461-135-0520**

##### **Eligibility Requirements for ABAWD; FS**

This rule establishes eligibility requirements for receipt of food stamps for certain adults.

(1) An able-bodied adult without dependents (ABAWD) is a client 18 years of age or over, but under the age of 50, without dependents. For the purpose of this definition, "without dependents" means there is no child under the age of 18 years in the client's filing group.

(2) An ABAWD who does not meet one of the exemption criteria in OAR 461-130-0310(2) must do one of the following, as designated in his or her Department-approved plan.

(a) Work for pay or as a volunteer an average of 20 hours or more per week. Voluntary work must be performed for a private for-profit or non-profit employer or a governmental agency. For self-employed clients, countable income after deducting the costs of producing income must average at least the federal minimum wage times 20 hours per week. A client may meet the requirement of this subsection by combining different work activities in one month as long as the 20-hour requirement is met.

(b) Participate in a program under the Workforce Investment Act of 1998, Pub. L. No. 105-220, 112 Stat. 936 (1998).

(c) Participate in a program under section 236 of the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 2023, (1975) (19 U.S.C. 2296).

(d) Comply with the OFSET requirements in OAR 461-130-0320, 461-130-0325, 461-190-0310 and 461-190-0600.



(3) Under a waiver from the United States Department of Agriculture, the limitation on eligibility for food stamps contained in section 6(o)(2) of the Food Stamp Act (7 U.S.C. 2015(o)(2)) is not applicable.

(4) An ABAWD who fails to comply with the requirements of section (2) of this rule is subject to the disqualification provided in OAR 461-130-0330(2).

(5) An ABAWD involved in the activities specified in section (2) of this rule or an OFSET activity listed in his or her case plan (*see* OAR 461-190-0310) is eligible for support service payments for necessary transportation or other costs related to completing the activity.

[Publication.: Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 8-2001, f. & cert. ef. 5-1-01; AFS 8-2002, f. & cert. ef. 5-1-02; AFS 13-2002, f. & cert. ef. 10-1-02

#### **461-135-0521**

##### **Job Quit by Applicants; FS**

(1) An applicant who is required to meet the OFSET requirements in OAR 461-130-0320, who voluntarily and without good cause quits a job or reduces the weekly number of hours of work to below 30, is ineligible for food stamps.

(2) For purposes of this rule, a person quits a job upon quitting a job of at least 30 hours a week or the equivalent of 30 hours a week multiplied by the federal minimum wage.

(3) The period of ineligibility is determined as follows. If the filing date falls within the 30-day period following a job quit or work reduction described in sections (1) and (2) of this rule, the person who quit the job or reduced work hours will be ineligible during the month in which the filing date falls and for the appropriate OFSET disqualification of one, three or six calendar months (*see* OAR 461-130-0330).

Stat. Auth: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 10-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 10-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 13-2002, f. & cert. ef. 10-1-02

#### **461-135-0530**

##### **People in Adult Foster Care (AFC) and Boarding Houses; FS**

(1) Residents of commercial boarding houses are not eligible for food stamps. A person operating the boarding house and his or her filing group may receive benefits separate from the residents. *Commercial boarding house* is defined in 7 CFR 273.1 as a commercial establishment that offers meals and lodging for compensation with the intent of making a profit. The definition does not include federally subsidized housing for the elderly, alcohol or drug treatment centers, group homes, battered persons shelters, or homeless shelters.

(2) Residents of AFC facilities not licensed by the State are not eligible for food stamps. Residents of AFC facilities licensed by the state must apply with their caregiver to be eligible for food stamps, as required by OAR 461-110-0370.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 7-2003, f. & cert. ef. 4-1-03

#### **461-135-0550**

##### **Residents of Drug Addiction and Alcohol Treatment Facilities; FS**

(1) Except as provided in section (2) of this rule, a resident of a drug addict or alcoholic (DAA) treatment and rehabilitation program (resident) is certified for food stamps in the same manner as other households.

(2) A resident who regularly participates in a publicly operated or private non-profit program, if the program is certified by the Oregon Office of Alcohol and Drug Abuse Programs, must apply for food stamps through an authorized representative who is an employee of the program.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 9-2001, f. & cert. ef. 6-1-01

#### **461-135-0560**

##### **Fleeing Felon and Violators of Parole, Probation, and Post-Prison Supervision; FS, GA, GAM, and TANF**

(1) A person is ineligible for the FS, GA, GAM, and TANF programs if he or she is a fleeing felon or in violation of parole, probation, or post-prison supervision.

(2) A fleeing felon is a person who knowingly flees to avoid either of the following:

(a) Prosecution or custody for a crime or attempt to commit a crime that is classified as a felony.

(b) Confinement following conviction of a felony.

(3) For purposes of this rule, the crime must be considered a felony under the laws of the place from which the person is fleeing or, in the case of New Jersey, a high misdemeanor under the law of New Jersey.

(4) A person is in violation of parole, probation, or post-prison supervision if the Department receives a report of this violation from a local, state, or federal corrections agency or court responsible for supervision of the person. The violation continues until the Department receives a report from the corrections agency or court that the person is no longer in violation.

(5) If there is a pending arrest warrant for a person for a felony, a high misdemeanor under the law of New Jersey, or a violation of parole, probation, or post-prison supervision, the person is ineligible under this rule if the person is aware of the arrest warrant and has not provided the Department with evidence on request that the person made a substantial effort within his or her ability to resolve the warrant.

(6) A person is no longer considered a fleeing felon if the arrest warrant is no longer pending or the person provides the Department with evidence that the person made a substantial effort within his or her ability to resolve the warrant.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-135-0570**

##### **Eligible and Ineligible Students; FS**

(1) For the purposes of this rule, higher education includes the following:

(a) Public and private universities and colleges and community colleges that offer degree programs regardless of whether a high school diploma is required for the program. However, GED, ABE, ESL and high school equivalency programs at those institutions are not considered higher education.

(b) Vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the curriculum or in a particular program at the institution. However, programs at those institutions that do not require the diploma or certificate are not considered higher education.

(2) A person 18 years of age or older, but under the age of 50 years, who is enrolled at least half time in higher education is ineligible to receive FS benefits, unless one of the following is true:

(a) The student is:

(A) A paid employee working an average of 20 hours or more per week; or

(B) Self-employed for a minimum of 20 hours per week and receives weekly earnings at least equal to the federal minimum wage multiplied by 20 hours.

(b) The student is participating in a state or federally funded work-study program and expects to actually perform work in a work-study job in the current term or semester. The period of eligibility for a student eligible because of this sub-section:

(A) Begins with the month in which school begins or with the month that work study is approved, whichever is later.

(B) Continues for the duration of the term or semester, unless the student refuses a work-study job.

(C) Continues through breaks of less than a month. For breaks of a month or longer, eligibility continues only if the student performs work in a work-study job during the break.

(c) The student is responsible for the care of a child in the filing group, and the child is:

(A) Under six years of age; or  
 (B) Six years of age or older, but under the age of 12 years, and adequate child care is not available to enable the student to both attend class and meet the employment requirements of sub-section (a) of this section or the work-study requirements of sub-section (b) of this section.

(d) The student is enrolled full time in higher education and is a single parent (meaning there is only one parent in the filing group) or a single adult who has parental control, with the responsibility of caring for a child under 12 years of age.

(e) The student is in a TANF benefit group.

(f) The student is physically or mentally unfit for employment.

(g) The student is in job training classes under the Workforce Investment Act of 1998 (Pub. L. 105-220).

(h) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974, 19 U.S.C. 2296.

(i) The student is enrolled as a result of participation in the higher education component of the JOBS program.

(j) The student is enrolled as a result of employer-sponsored on-the-job training.

(3) A student's enrollment status continues during school vacation and breaks. A student's enrollment status ends when the student graduates, drops out (as verified by their disenrolling), is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

(4) A student participating in a meal plan offered by the institution is ineligible for Food Stamp benefits.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 3-2002(Temp), f. 2-26-02, cert. ef. 3-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-135-0575**

##### **FS Expedited Services**

(1) Unless a filing group applies for food stamps before the end of their current certification, the filing group is eligible for expedited services in the Food Stamp program if the filing group:

(a) Has countable income less than \$150 a month and *liquid resources* that do not exceed \$100;

(b) Has gross income and *liquid resources* that total less than the total monthly rent, or mortgage, and utilities of the household; or

(c) Is a "destitute household" as described in 7 CFR 273.10(e)(3) (covering migrant and seasonal farmworker households) and has *liquid resources* that do not exceed \$100.

(d) For purposes of this rule on expedited service only, a *liquid resource* includes cash on hand, a checking or savings account, a savings certificate, and a lump sum payment.

(2) There is no limit to the number of times a benefit group may receive expedited services. However, all eligibility factors from the last expedited issuance must be verified or the benefit group must have been certified under normal processing standards since the last expedited certification before the client is eligible to receive expedited service again.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### **461-135-0580**

##### **Prepared Meals; FS**

The following FS recipients and their spouses may use FS benefits to purchase meals prepared for them and delivered to them by a nonprofit meal-delivery service authorized by the United States Department of Agriculture:

(1) People age 60 or over.

(2) Housebound people.

(3) People who have physical or other disabilities which prevent them from adequately preparing their meals.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-135-0590**

##### **Communal Dining; FS**

For FS, recipients age 60 or over and their spouses, and those receiving SSI and their spouses, may use FS benefits issued to them to purchase meals prepared especially for them at communal dining facilities authorized by the United States Department of Agriculture for that purpose.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### **461-135-0610**

##### **Meal Providers for Homeless Individuals; FS**

Homeless FS recipients may use their FS benefits to purchase prepared meals from meal providers who are certified by the state and authorized by the United States Department of Agriculture to accept FS benefits from homeless individuals.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### **461-135-0700**

##### **Specific Requirements; GA, GAM**

To be eligible for GA or GAM, a client must meet the following requirements:

(1) The client must be:

(a) An individual, childless or not living with his or her child, who is unmarried or married and not living with his or her spouse; or  
 (b) Married, living with his or her spouse, and childless or not living with his or her child, if:

(A) Both meet the GA impairment criteria found in OAR 461-125-0510;

(B) One meets the impairment criteria of the GA program and the spouse is receiving disability benefits provided for under title II or title XVI of the Social Security Act;

(C) One meets the impairment criteria of the GA program and the spouse is deemed to be receiving disability benefits provided for under title II or title XVI of the Social Security Act; or

(D) One meets the impairment criteria for the GA program, the spouse is awaiting a disability determination under title II of the Social Security Act, and the Department has determined the spouse meets the disability criteria of the Social Security Administration.

(2) The client must not be eligible for OSIP, OSIPM, except for clients found eligible under OAR 461-125-0370(1)(c), REF, or TANF.

(3) Requirements regarding eligibility for disability benefits under Title II of the Social Security Act:

(a) A client described in section (1)(a) of this rule must have filed an application for disability benefits under the Social Security Act and must not meet the non-disability eligibility requirements under Title II of the Social Security Act.

(b) In the case of a couple described in section (1)(b) of this rule, the person or persons required by section (1)(b) to meet the GA impairment criteria must meet the requirements of subsection (a) of this section.

(c) The client must present evidence of having made the application for disability benefits under the Social Security Act required by this section.

(d) The "VERSA" screen maintained by the Department, or a printed copy of the screen, is prima facie evidence of the information provided on the screen.

(4) The client must:

(a) Complete the application process for Supplemental Security Income (SSI); cooperate with the Department in applying to the Social Security Administration for SSI; appeal all denials of SSI made below

the Administrative Law Judge level; and attend all appointments designated by the Department relating to obtaining SSI.

(b) Sign an interim assistance agreement authorizing the Department to recover interim GA benefits paid to the client (or paid to providers on the client's behalf) from the initial SSI payment or initial post-eligibility payment. The following provisions are considered part of the interim assistance agreement:

(A) Interim GA benefits include only those GA cash benefits paid during the period of time that the SSI benefit covers.

(B) For any month in which SSI is prorated, the Department can recover only a prorated amount of the interim GA cash benefit.

(C) If the Department cannot stop delivery of a GA benefit issued after the SSI payment is made, the GA payment will be included in the interim assistance to be reimbursed to the Department.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 4-1997(Temp), f. 4-30-97, cert. ef. 5-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 11-2004(Temp), f. & cert. ef. 4-15-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-135-0701**

##### **Terminate GA and GAM Programs October 1, 2005**

(1) Effective October 1, 2005, the General Assistance (GA) and General Assistance Medical (GAM) programs are not funded. Notwithstanding any other rule of the Department, these programs are closed effective October 1, 2005.

(2) Effective September 30, 2005, all persons eligible for or receiving benefits of the GA or GAM programs become ineligible for these programs. Except as provided in section (4) of this rule, the Department will not authorize or provide any benefit under the GA or GAM programs after September 30, 2005.

(3) Effective October 1, 2005, all GA recipients who receive medical assistance through the OSIPM program will continue to receive OHP Plus benefits through the OSIPM program.

(4) Effective October 1, 2005, all recipients of medical assistance through the GAM program who became ineligible for GAM on September 30, 2005 because of the closure of the GAM program may receive OHP benefits as follows:

(a) Clients who have been determined to meet the eligibility requirements of the OSIPM program (see OAR 461-125-0370 and the OSIPM eligibility requirements in OAR 461 division 135) will receive the OHP Plus benefits package (see OAR 410-120-1210(2)(a)).

(b) Clients may also receive the OHP Plus benefits package for the period that:

(A) The Department has not previously made a determination about whether the client meets the disability requirements for OSIPM under OAR 461-125-0370 and the OSIPM eligibility requirements in OAR 461 division 135; and

(B) A determination is still pending about whether the client meets the disability requirements for OSIPM under OAR 461-125-0370 and the OSIPM eligibility requirements in OAR 461 Division 135.

(c) Clients who do not qualify for the OHP Plus benefits may be eligible for the OHP-OPU program under the eligibility requirements set out in OAR 461 Division 135, and if eligible, will receive the OHP Standard benefits package (see OAR 410-120-1210(2)(b)).

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.010, 411.060, 411.710, 411.730 & 411.740

Hist.: AFS 21-2002(Temp), f. & cert. ef. 12-30-02 thru 6-27-03; SSP 12-2003, f. 5-29-03, cert. ef. 6-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2005(Temp), f. & cert. ef. 8-29-05 thru 2-25-06; SSP 12-2005(Temp), f. & cert. ef. 9-20-05 thru 2-25-06; SSP 18-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-135-0705**

##### **Specific Requirements; GA, GAM Ineligible**

(1) The following are ineligible for GA and GAM:

(a) A resident of a public institution or private psychiatric hospital.

(b) A person held for a proceeding in connection with his or her commitment to a public institution or private psychiatric hospital.

(2) A GA client found by the Social Security Administration (SSA) not to meet SSI disability criteria may continue receiving GA while appealing the SSA finding until a decision is rendered by an Administrative Law Judge (ALJ) for the Social Security Administration's Office of Hearings and Appeals. A client who unsuccessfully appeals to the ALJ is no longer eligible for GA.

(3) A client whose impairment no longer meets the criteria in OAR 461-125-0510 is ineligible for benefits.

(4) The decision by the ALJ is binding on the Department unless the client has a new or significantly worsened impairment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

#### **461-135-0708**

##### **Criteria for Developing a Plan for Self-support; GA, GAM, OSIP, OSIPM and QMB**

(1) A client and the Department may develop a plan for self-support in the GA, GAM, OSIP, OSIPM and QMB programs for a client who:

(a) Meets the applicable disability or impairment criteria; and

(b) Is not eligible for SSI.

(2) A plan for self-support allows a client to retain a portion of his or her nonexcluded assets for a specific period of time to meet a specific occupational goal. The plan may provide for specialized or advanced education or training for clients with a severe disability.

(3) To be approved, a plan for self-support must meet all of the following criteria:

(a) The plan must be in writing and approved by the Department.

(b) The plan must identify a realistic occupational goal, considering the client's physical limitations and capabilities.

(c) The goal of the plan must be to provide the client with income necessary to meet his or her needs, not just for improving potential earning capability or increasing self-sufficiency within the home.

(d) Resources designated to support the plan must be kept in a separate bank account with a specific savings or planned disbursement goal for using the resources. Previously commingled funds must be put in a separate bank account in order for them to be considered designated for the plan.

(e) The duration of the plan must be limited to the time necessary to complete the plan but cannot exceed thirty-six months plus an additional 12 months if necessary for completion of education or training.

(4) A client must do all of the following to comply with a plan for self-support:

(a) Report any changes in circumstances that require a change to the current plan.

(b) Follow through with the plan without any break in excess of the longer of:

(A) Normal vacations from school or training.

(B) Three months, unless the reasons are beyond his or her control.

(5) If a client fails to comply with the requirements of section (4) of this rule, program eligibility is redetermined without the resource exclusions allowed by OAR 461-140-0420.

(6) The client and the Department may revise a plan for self-support or may agree to a new plan. To be new, the plan must not have any relationship to the old plan. When a plan is revised or a new plan established:

(a) Resources designated to support the old plan may become a part of the revised or new plan.

(b) If changes are made in the amount of resources to support the plan, eligibility and the payment amount for program benefits are redetermined.

(c) If the duration of the revised plan in addition to the months the old plan was in effect exceeds the time limits in subsection (3)(e) of this rule, approval is limited to the remainder of the maximum period only.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2002, f. & cert. ef. 7-1-02; Renumbered from 461-140-0440, SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06



**461-135-0725**

**Specific Requirements; OSIP-EPD, OSIPM-EPD**

(1) To be eligible for OSIP-EPD and OSIPM-EPD, a person must:

- (a) Have a disability, as defined in OAR 461-125-0370(2);
- (b) Have adjusted income below the limit provided in OAR 461-155-0250(6);
- (c) Be attached to the workforce as defined in OAR 461-110-0115. Once found eligible, a client remains attached to the workforce while not working if the employer treats the client as an employee, such as when the client is absent from the job under the provisions of the Family Medical Leave Act; and
- (d) Not be assumed eligible for OSIPM, as defined in OAR 461-135-0010(6).

(2) If an OSIP-EPD or OSIPM-EPD client becomes unemployed and meets all financial and nonfinancial eligibility requirements for the other OSIP or OSIPM sub-programs except for resources, the client can retain eligibility for OSIP-EPD or OSIPM-EPD for 12 months in order to spend down to the OSIP or OSIPM resource limit. The 12-month period begins the first of the month following the loss of employment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 10-2003(Temp), f. & cert. ef. 5-1-03 thru 9-30-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

**461-135-0726**

**Specific Requirements; OSIP-IC and OSIPM-IC**

To be eligible for OSIP-IC or OSIPM-IC, a person must:

- (1) Meet Title XIX waiver criteria for in-home services contained in OAR 411-030-0040; and
- (2) Meet eligibility criteria for the Independent Choices program in OAR 411-036-0030.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01

**461-135-0730**

**Specific Requirements; QMB**

(1) The following requirements apply to QMB-BAS:

(a) To qualify for QMB-BAS, a person must be receiving Medicare hospital insurance under Part A. This includes people who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-BAS are not eligible to receive the full range of the Department's medical services. QMB-BAS benefits are limited to payments toward Medicare cost-sharing expenses. These expenses are:

- (A) Medicare Part A and Part B premiums; and
- (B) Medicare Part A and Part B deductibles and coinsurance up to the Department's fee schedule.

(2) The following requirements apply to QMB-DW:

(a) To qualify for QMB-DW program, a person must be eligible for Part A of Medicare as a qualified disabled worker under Section 1818(A) of the Social Security Act. These are people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed, but can continue to receive Part A of Medicare by paying a premium.

(b) QMB-DW clients are eligible only for payment of their premiums for Part A of Medicare. They are not eligible for MAA, MAF, or OSIPM at the same time they are eligible for QMB benefits.

(3) The following requirements apply to QMB-SMB:

(a) To qualify for QMB-SMB, a person must be receiving Medicare hospital insurance under Part A. This includes people who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-SMB are not eligible to receive the full range of the Department's medical services. QMB-SMB benefits are limited to payment of Medicare Part B premiums.

(c) Clients who are institutionalized (reside in a nursing facility, an intermediate care facility for the mentally retarded (ICF/MR), or a hospital) are not eligible for QMB-SMB if they have income equal to or greater than 120% of the Federal Poverty Level (FPL).

(d) A need group with income equal to or greater than 120% of the FPL (see OAR 461-155-0295) may receive QMB-SMB benefits

on or after December 1, 2005, except as provided in subsection (3)(e) of this rule.

(e) The QMB-SMB program is subject to an enrollment cap based on the federal allocation. If the enrollment in this program (of clients with income greater than 120% of the FPL) exceeds the federal allocation for that group, the program may be closed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 9-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 3-2006(Temp), f. & cert. ef. 2-6-06 thru 6-30-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

**461-135-0750**

**Eligibility for People in Long-Term Care or Waivered Services; OSIPM**

(1) A client who meets the requirements of section (2) of this rule is eligible for services in any of the following locations:

- (a) A nursing facility.
- (b) An intermediate care facility for the mentally retarded (ICF/MR).

(c) A psychiatric institution, if the person is not yet 21 years of age or has reached the age of 65.

(d) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(2) A person who resides in a location listed in section (1) of this rule is eligible for OSIPM if the person—

(a) Meets the eligibility requirements for the OSIPM program except that income is above the program standards;

(b) Has income at or below 300 percent of the full SSI standard; has established a qualifying trust as specified in OAR 461-145-0540(10)(c); or is eligible for the OSIPM-EPD program; and

(c) Meets one of the following eligibility standards:

(A) The criteria in OAR 411-015-0100.

(B) The level-of-need criteria for an ICF/MR.

(C) The eligibility standards for medically fragile children in OAR 411-350-0010.

(D) The eligibility standards for the CIIS behavioral program in OAR 411-300-0100 to 411-300-0220.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

**461-135-0771**

**Eligibility for OSIPM Under "Grandfathering" Provision**

(1) A person is eligible for OSIPM if the person was eligible for SSI in January 1974.

(2) A person is eligible for OSIPM if the person is the essential spouse of a person eligible for OSIPM under section (1) of this rule. An essential spouse is one who lives in the same household and provides a service that otherwise would have to be provided by some other means.

(3) A person eligible for OSIPM under this rule is considered eligible continuously since January 1974.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01

**461-135-0780**

**Eligibility for Pickle Amendment Clients; OSIPM**

(1) A client is eligible for OSIPM under the so-called Pickle amendment (Pub. L. No. 94-566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, and:

(a) Is receiving SSB;

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the client was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the client when he or she became ineligible for SSI or OSIP is used as the client's countable income. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) Determine the month in which the person was entitled to Social Security and received SSI in the same month. Use the table in section (4) of this rule to find the percentage that applies to that month. Multiply the present amount of the person's and if applicable the spouse's Social Security benefits by the applicable percentage. This amount is the person's countable Social Security for purposes of the Pickle Amendment. Add that figure to any other countable income the person has, if the total is less than the OSIP income standard plus the \$20 unearned income disregard the person is Pickle eligible. All other financial and non-financial eligibility criteria must be met.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Calculations not included. See ED. NOTE.]

[ED. NOTE: Calculations referenced are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-135-0790**

##### **Eligibility for People in an Institution Since 1973; OSIPM**

A client living in an institution is eligible for OSIPM even if his or her income exceeds 300 percent of the full SSI payment standard for a person living alone if:

(1) The client has continuously met the SSI eligibility criteria used in December 1973 for a person living in an institution; and

(2) The client needs institutional care.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### **461-135-0800**

##### **Eligibility for 1972 COLA Clients; OSIPM**

A client is eligible for OSIPM if he or she meets all eligibility requirements except that his or her income exceeds the income limit because of an SSB cost-of-living increase in July 1972, and if:

(1) The client was entitled to receive SSB in August 1972 and received benefits under OSIPM or a state program for the aged, blind or disabled, or were eligible for such a program; or

(2) The client would have been eligible for SSB if he or she had not resided in a medical facility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### **461-135-0811**

##### **Eligibility for Disabled Widows and Widowers; OSIPM**

A person is eligible for OSIPM if he or she was receiving or was entitled to receive widow's or widower's social security benefits in December 1983, based on a disability; if he or she received SSI or OSIP benefits; and if all the following are true:

(1) Elimination of the actuarial reduction for people under the age of 60 increased the widow's or widower's benefits and made the person ineligible for SSI or OSIP.

(2) The person is now and has been continuously eligible for a social security widow's or widower's benefit.

(3) The person would be eligible for SSI or OSIP if the amount of the increase described in section (1), and all subsequent cost-of-living increases, were subtracted from the current social security benefit.

(4) The person applied for OSIPM no later than July 1, 1988.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 13-2002, f. & cert. ef. 10-1-02

#### **461-135-0820**

##### **Eligibility for Widows and Widowers; OSIPM**

A client is eligible for OSIPM if he or she is not entitled to Medicare Part A and became ineligible for SSI because of a mandatory application for, and receipt of, widow's or widower's Social Security disability benefits.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01

#### **461-135-0825**

##### **Continued Eligibility for Clients Under the Age of 18 Who No Longer Meet SSI Disability Criteria; OSIPM**

A client under the age of 18 who met the SSI disability criteria on August 22, 1996, and was receiving or was eligible to receive SSI benefits on that date remains eligible for OSIPM as long as he or she continues to meet all other OSIPM eligibility criteria.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### **461-135-0830**

##### **Eligibility for Disabled Adult Children; OSIPM**

A client is eligible for OSIPM as a Disabled Adult Child if the client meets all of the following requirements:

(1) The client is age 18 or older.

(2) The client became blind or a person with a disability as defined by SSA before reaching the age of 22.

(3) The client lost SSI benefits on or after July 1, 1987 because the client became eligible for Social Security benefits as a result of a parent's retirement, death, or disability, or because of an increase in such benefits.

(4) The client would continue to be eligible for SSI in the absence of the Social Security disabled adult child benefit or increases to that benefit.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-135-0832**

##### **Estate Administration; Definitions**

Effective July 18, 1995, for purposes of OAR 461-135-0832 to 461-135-0845 and ORS 414.105, 411.795, 412.600, 413.200, 416.310, and 416.340, the terms listed below have the meanings ascribed to them herein; provided, however, as used in this section, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 U.S.C. § 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department of Human Services applies the definitions and procedures set forth in OAR 461-135-0832 to 461-135-0845 to recoveries and claims made pursuant to ORS 414.105, 411.795, 412.600, 413.200, 416.310, and 416.340.

(1) *Assets* means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death.

(2) *Assign* means a *person* who acquires an interest in *real* or *personal property* or an *asset* pursuant to a written or oral assignment of such *real* or *personal property* or *asset* from a *person* with the legal right to assign it.

(3) *Bona fide purchaser for value* means any *person* who provides consideration, including money or property, to a seller or transferor of *real property* or *personal property* equal to the fair market value of the *real* or *personal property* sold or transferred.

(4) *Consideration furnished test* means the method by which the ownership of *real* or *personal property* is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if

applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.

(5) *Convincing evidence* includes, but is not limited to:

(a) Recorded documents of title.

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.

(c) Tax statements or returns.

(d) Records of banking, financial or other similar institutions.

(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(6) *Disabled child* means a natural or adopted son or daughter of the deceased client, of any age, who met SSI disability criteria and was permanently and totally disabled, as defined in ORS 412.510(3), at the time the Department's claim was asserted, and who presented evidence to the Department substantiating the disability within two years after the Department asserted the claim.

(7) *Estate* means:

(a) With respect to the collection of payments made for services provided on or after July 18, 1995, all *real property*, *personal property*, or other *assets* wherever located in which a deceased individual had any legal title or ownership or beneficial interest at the time of death, including *real property*, *personal property* or *assets* conveyed by the deceased individual to a *survivor*, *heir*, or *assign* of the decedent through *joint tenancy*, *tenancy in common*, *survivorship*, *life estate*, *living trust*, an annuity purchased on or after April 1, 2001, or other similar arrangement.

(b) With respect to the collection of payments made for services provided before July 18, 1995, all real and personal property and other assets included within an individual's estate as such estate is defined by applicable state probate law.

(8) *Heir* means any individual, including the surviving spouse, who is entitled under *intestate succession* to the *real property*, *personal property*, and *assets* of a decedent who died wholly or partially *intestate*.

(9) *Interest* means any form of legal, beneficial, equitable or ownership interest.

(10) *Intestate* means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(11) *Intestate succession* means succession to *real property*, *personal property* or *assets* of a decedent who dies *intestate* or partially *intestate*.

(12) *Joint tenancy* means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(13) *Legal title* means legal ownership by a *person*.

(14) *Life estate* means an *interest* in *real* or *personal property* that terminates upon the death of a measuring life.

(15) *Living trust* means a revocable inter vivos trust.

(16) *Medical institution* means a facility that provides care and services equivalent to those received in a nursing facility. Medical Institution does not apply to in-home waived services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(17) *Ownership documents* mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale or other similar documents evidencing ownership or *legal title* held by a *person*.

(18) *Permanently institutionalized* means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(19) *Person* means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(20) *Personal property* means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(21) *Real property* means all land wherever situated, including improvements and fixtures thereon, and every estate, Interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties.

(22) *Recipient of property* means:

(a) Any *survivor*, *heir*, *assign*, devisee under a will, beneficiary of a trust, transferee or other person to whom *real property*, *personal property* or other *assets* pass upon the death of the decedent either by law, intestate succession, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such *real property*, *personal property*, or *asset*, or proceeds from the sale thereof, through any form of conveyance, that is not a *bona fide purchaser for value*.

(23) *Survivor* means any *person* who, as a co-tenant, is automatically entitled to an expanded share of *real* or *personal property* upon the death of a fellow co-tenant.

(24) *Survivorship* means an interest in *real* or *personal property* that expires upon the death of an individual whereby the Interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(25) *Tenancy in common* means ownership of *real* or *personal property* by an individual together with one or more other *persons* which ownership *interest* shall not pass by *survivorship* upon the death of the individual.

(26) *Time of death* means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall *time of death* be construed to mean a time after which an *interest* in *real* or *personal property* or other *assets* may:

(a) Pass by *survivorship* or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(27) *Value* means the fair market value. Fair market value is the price at which *real* or *personal property* would change hands between a willing buyer and a willing seller. In the event the *real* or *personal property* was not reported to the Department by the deceased Medicaid recipient, the value would be established based on its fair market value at the time of discovery.

Stat. Auth.: ORS 411.105

Stats. Implemented: ORS 414.105

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-135-0834**

##### **Delivery of Required Notices to the Estate Administration Unit**

(1) A person required by ORS 93.268, 113.145, 114.525, or 128.266 to send notice to the Department of Human Services must send or deliver the notice to the Estate Administration Unit, Office of Financial Services, Department of Human Services.

(2) The mailing address for the Estate Administration Unit is: Estate Administration Unit, PO Box 14021, Salem OR 97309-5024.

Stat Auth: ORS 410.070

Stats. Implemented: ORS 113.145, 114.525 & 128.266

Hist.: AFS 5-2002, f. & cert. ef. 4-1-02; SSP 22-2004, f. & cert. ef. 10-1-04

#### **461-135-0835**

##### **Limits on Estate Claims**

(1) For BCCM, GA, GAM, OHP, OSIP, OSIPM, and QMB, the Department has a priority claim against the property or any interest therein belonging to the estate of any deceased person as provided in ORS chapters 411, 412, 413, and 414. The Estate Administration Unit of the Department (EAU) is authorized to present and file such claim against the estate. It will be treated as a preferred claim and filed in a like manner as the claims of other creditors.

(2) If there is a surviving spouse, the Department shall have a claim against the estate of the surviving spouse for aid paid to the surviving spouse. In addition, the Department shall have a claim against the estate of the surviving spouse for aid paid to the deceased client,



but only to the extent that the surviving spouse received property or other assets from the deceased client through probate or through operation of law. If estate recovery is deferred until the surviving spouse dies, the fair market value of the property subject to the Department's claim is determined based on the current value of the property in the surviving spouse's estate. However, neither claim is enforceable until after the death of the surviving spouse (if any) and only when there is no surviving child under age 21, no surviving blind child of any age, and no surviving disabled child.

(3) The amount of the claim is as follows:

(a) For GA and GAM, the amount of the claim will not exceed the total amount of cash and medical benefits paid. The claim will include benefits provided under the Home and Community-Based Care Waiver program. This applies to all General Assistance programs, even those that are no longer active.

(b) For BCCM, OSIP-AD, OSIP-OAA, OSIPM-AD, OSIPM-OAA, and QMB, the amount of the claim shall include the total amount of cash paid at any age and all medical benefits provided after the client reached age 55. If the client was *permanently institutionalized*, the claim shall include the total amount of cash and medical benefits paid at any age. This applies to all Old Age Assistance and Aid to the Disabled clients, including those served by Home and Community-Based Care Waiver programs. It also includes clients covered by programs that are no longer active.

(c) For OHP, OSIP-AB, and OSIPM-AB, the claim shall include the total amount of cash paid at any age and all medical benefits provided after the client reached age 55. If the client was *permanently institutionalized*, the claim shall include the total amount of cash and medical benefits paid at any age. The claim shall include benefits provided under the Home and Community-Based Care Waiver program.

(d) For OSIP, OSIPM-AB, OSIPM-AD, and OSIPM-OAA, the amount of the claim shall also include the total amount of medical benefits provided to clients who were age 55 to 64 on the date the medical benefits were provided if the benefits were provided after July 18, 1995. Medical benefits will be considered to have been provided to a client on the day of provision of medical services for which medical assistance payments are made.

(4) The priority for payment of claims against the estate will be as established under ORS 115.125.

(5) EAU may nominate a personal representative for an estate if the Department has a claim and it appears that no person with a higher preference, as established in ORS 113.085, is willing to be the representative.

(6) Property disposal will be in accordance with OAR 461-135-0838.

Stat. Auth.: ORS 410.070 & 411.060

Stats. Implemented: ORS 411.795, 412.600, 413.200 & 415.105

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-135-0837**

##### **Administering Medicaid Estate Claims When the Recipient of Assistance was a Native American Indian or Alaskan Native Village Tribal Member**

(1) When the Department has a claim against the Estate of a deceased Native American Indian or Alaskan Native Village tribal member, certain exemptions from recovery apply. The following income, resources and property are exempt from Medicaid estate recovery:

(a) Income and resources that are specifically exempt by law from Medicaid estate recovery, such as:

(A) Interests in and income derived from tribal land and other resources currently held in trust status; and

(B) Judgment funds from the Indian Claims Commission and the United States Court of Federal Claims.

(b) Ownership interest in trust or non-trust property, including real property and improvements:

(A) Located on a reservation (any federally recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act and Indian allotments);

(B) Located near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or

(C) For any federally recognized tribe not described in paragraphs (A) and (B) of this subsection, located within the most recent boundaries of a prior federal reservation.

(c) Income left as a remainder in an Estate, derived from property described in sections (1)(a) and (b) of this rule, that was collected by an Indian, by a tribe, or by a tribal organization and distributed to one or more Indians, as long as the personal representative of the Estate can clearly trace and document that the income came from the protected property.

(d) As long as the personal representative of the Estate can clearly trace and document that it came from the protected sources:

(A) An ownership interest left as a remainder in an Estate in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights; and

(B) Income derived from these sources that is collected by an Indian, a tribe, or a tribal organization and distributed to one or more Indians.

(e) Ownership interest in and usage rights to items not covered by subsections (a) through (d) of this section that have unique religious, spiritual, traditional or cultural significance.

(f) Rights that support subsistence or a traditional life style according to applicable tribal law or custom.

(2) Protection of non-trust property described in sections (1)(a) and (b) of this rule is limited to circumstances when it passes from an Indian (as defined in section 4 of the Indian Health Care Improvement Act, Pub. L. No. 94-437) to:

(a) One or more relatives (by blood, adoption or marriage), including Indians not enrolled as a member of a tribe and non-Indians, such as spouses and step-children, who would be protected as family members by the tribe;

(b) A tribe or tribal organization; or

(c) One or more Indians.

(3) The following are subject to Medicaid estate recovery:

(a) Native American Indian and Alaskan Native tribal member ownership interest in assets and property, both real and personal, that are not described in sections (1) and (2) of this rule.

(b) Any income or assets left as a remainder in the Estate that do not derive from protected property or sources described in sections (1) and (2) of this rule.

[Publication.: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 410.070 & 414.105

Stat. Implemented: ORS 414.106 & 416.340

Hist.: AFS 13-2002, f. & cert. ef. 10-1-02

#### **461-135-0838**

##### **Administering Estate Claims**

(1) When the Division has a claim against the estate of a deceased person, EAU will be responsible for recovering the claim from the estate.

(2) EAU may take necessary action to identify or otherwise preserve assets so they will be available for claims against the estate.

(3) EAU will determine the most cost-effective way to dispose of real and personal property. EAU may dispose of the property by conducting sales through licensed real estate brokers, public auctions, competitive bidding, or other methods found most cost-effective.

(4) When property has been disposed of, EAU will credit the proceeds to the Division's claim. Any amounts exceeding the claim will be available to all other claims against the estate. If no other claims exist, any excess amounts will be paid to the heirs or devisees, if any. Any remaining amounts revert to the Division of State Lands.

Stat. Auth.: ORS 411.060, 411.070, 411.105, 411.111, 411.300, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009 & 414.032

Stats. Implemented: ORS 411.795

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91

#### **461-135-0839**

##### **Title to Real and Personal Property**

(1) The Senior and Disabled Services Division may take title to real and personal property in performing its duties under ORS 411.630, 411.795, 412.600, 413.200, 414.105, and 416.310. Title shall be taken in the name of the Division. The Division may convey the property by deed or other appropriate conveyance under procedures adopted by rule of the Division:

(a) The Division is authorized to convey, as Grantor, property to the Grantee through issuance of the Bargain and Sale Deed or other appropriate conveyances;

(b) The Bargain and Sale Deed will be signed by the Division Administrator of Senior and Disabled Services Division or his/her designee.

(2) Recording responsibilities of the Deed will be the responsibility of the Grantee unless otherwise agreed upon by the Division.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.795

Hist.: AFS 28-1993(Temp), f. & cert. ef. 11-3-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94

#### **461-135-0841**

##### **Undue Hardship Waiver Criteria**

(1) The Department may waive enforcement of any estate recovery claim if it finds that enforcing the claim would result in an undue hardship to the beneficiaries, heirs, or family members of the deceased client claiming entitlement to receive the assets of the deceased client.

(2) In determining whether an undue hardship exists, the Department may consider the following criteria:

(a) Whether enforcement of the claim would cause the waiver applicant to become eligible for public or medical assistance; and

(b) Whether enforcement of the claim would cause the waiver applicant, who would otherwise be eligible for public assistance, to become homeless.

(3) Waiver of an estate recovery claim may include, but is not limited to, the following:

(a) Forgiveness of all or part of the claim, or any other relief the Department deems fit; or

(b) Taking a mortgage or trust deed in lieu of enforcement of the claim.

(4) No waiver will be granted if the Department finds that the undue hardship was created by resort to estate planning methods by which the waiver applicant or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid estate recovery.

(5) No waiver will be granted if the Department finds that the undue hardship will not be remedied by the grant of the waiver.

Stat. Auth.: ORS 410.070, 411.060 & 414.106

Stats. Implemented: ORS 414.106 & 416.340

Hist.: AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 8-1999, f. 5-27-99, cert. ef. 6-1-99; AFS 13-2002, f. & cert. ef. 10-1-02

#### **461-135-0843**

##### **Establishing Legal Title, Interest or Form of Ownership**

(1) Effective July 18, 1995, The Legal Title to or other Interest of a Person in Real or Personal Property or other Assets shall be presumed to be that set forth in any Ownership Documents. The presumption raised by such Ownership Documents may be rebutted by Convincing Evidence that accurately reflects a Person's Legal Title to, ownership of or Interest in the Real or Personal Property or other Asset. However, the department shall not consider property or assets in which the decedent held only bare legal title in the capacity as a trustee with no beneficial, equitable, reversionary or other ownership Interest in the property or assets, as property or assets in which the decedent had an Interest or held Legal Title.

(2) The form of Interest created by the Ownership Documents shall be governed by the law in effect at the Time of Death of the jurisdiction in which the Real or Personal Property or other Assets are located.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 414.105

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96

#### **461-135-0844**

##### **Procedures for Applying for Undue Hardship Waiver**

In connection with a request for an undue hardship waiver under OAR 461-135-0841:

(1) The Department will provide written notice of the hardship waiver rules to:

(a) The personal representative or other person handling the deceased client's estate, if that person is known to the Department at the time the Department files its claim with the probate court. If the person handling the deceased client's estate is not known to the Department, the Department will file the written notice with the claim that it files with the probate court; or

(b) Any beneficiary, heir or family member of the deceased client who contacts the Department asserting a right superior to that of the Department to receive property or other assets of the deceased client unless the Department agrees that the beneficiary, heir or family member's claim is superior; or

(c) Any beneficiary, heir or family member of the deceased client who held an asset jointly with the deceased client at the time of death, if that person is known to the Department unless the Department determines that it has no right to the jointly held asset.

(2) Any beneficiary, heir, or family member claiming entitlement to receive the assets of the deceased client may apply for a hardship waiver under this rule by submitting a written request for a waiver to the Department within 45 days of the date the notice was sent to the person or to the probate court. The Department may, in its discretion, consider waiver applications filed after the 45-day period if the waiver applicant demonstrates that there was good cause for the delay.

(3) The written request shall include all the following information:

(a) The relationship of the waiver applicant to the decedent.

(b) The nature of the applicant's right to receive the property of the decedent if the waiver is granted.

(c) The applicant's financial situation or other facts that support the applicant's claim that an undue hardship exists.

(d) A statement of the type of waiver that is being requested.

(e) Documentation establishing or demonstrating any of the information submitted.

(f) Any other information or documentation that the applicant believes should be considered by the Department in determining whether an undue hardship exists.

(4) The Department may request additional information or documentation from the applicant. If the additional information or documentation is not provided within 30 days of the Department's request for additional information or documentation, the hardship waiver application will be considered by the Department on the basis of the information and documentation provided.

(5) Within 90 days of receipt of the hardship waiver application, the Department will issue a written decision granting or denying, in whole or in part, the applicant's request for an undue hardship waiver.

(6) If the decision is adverse to the hardship waiver applicant, the Department's written decision shall include information regarding the applicant's right to a contested case hearing before the Office of Administrative Hearings.

(7) The rules and procedures adopted by the Department in chapters 137 and 411 of the Oregon Administrative Rules shall apply to hearings challenging the denial of a hardship waiver application.

(8) The issue for the hearing will be whether the Department's decision was correct based on the information available to the Department at the time the written decision was issued, unless the applicant can show good cause for failing to submit relevant information or documentation to the Department prior to the date the written decision was issued.

(9) Receipt of a timely request for waiver or request for hearing shall not prevent or delay the Department's pursuit of its estate recovery claim pending issuance of a final order at the conclusion of the hearing. The Department shall return any funds it collected if it is ultimately decided that the waiver should have been granted.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.795

Hist.: AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-135-0845**

##### **Valuation of Life Estate, Reversionary Interest and Property**

(1) Effective July 18, 1995, the value of an expressly created life estate or other interest in real or personal property or other asset measured by or valued with respect to a life span, including that of the relevant recipient of public assistance, is established by reference to the life estate valuation tables set forth in this rule and is valued as of the time of death of the recipient of public assistance irrespective of the actual life span of the measuring life. [Table not included. See ED. NOTE.]

(2) For public assistance recovery purposes, the interest of a person in real or personal property or other asset held in joint tenancy with right of survivorship (including transfers with right of survivorship covered by ORS 93.180) or other form of concurrent ownership with

one or more other persons with right of survivorship, other than a spouse, is presumed to be the value of the fractional share held by the person. The fractional share of a person is presumed to be the share reflected in the ownership documents. Such presumption may be rebutted under the Consideration Furnished Test or by Convincing Evidence of the actual consideration contributed by another co-owner of the property or asset. In the absence of any stated fractional share on the Ownership Documents, each co-owner is presumed to have an equal fractional share of ownership of the whole, unless rebutted by the Consideration Furnished Test or as otherwise established by Convincing Evidence.

(3) With respect to Real or Personal Property or an Asset held jointly by spouses, as Tenants in Common, tenants by the entirety, with right of survivorship or otherwise, such property or asset is conclusively deemed to be owned one-half by each spouse; provided, however, that in the event the Ownership Documents expressly set forth a different fractional share of ownership, and such fractional share is lawful in the appropriate jurisdiction, then the fractional share set forth in such Ownership Documents is presumed to be the fractional share owned by each spouse. Such presumption may be rebutted by Convincing Evidence.

(4) The Value of Real Property at, or prior to, the Time of Death is determined by establishing the fair market value of the property to the satisfaction of the Department. The burden of proof for establishing the Real Property's fair market value to the satisfaction of the Department lies with the person or, after the Time of Death of the person, with the person's representative, and may be established by any methodology, including the provision of an appraisal performed by an appraiser certified or licensed in the applicable jurisdiction, that the Department determines most accurately reflects the Value of the Real Property. The Value of liens and other encumbrances against the Real Property that is established by Convincing Evidence, if appropriate, is subtracted from the fair market value of the Real Property in order to derive a net fair market value of the Real Property.

(5) The Value of Personal Property consisting of shares of stock or other securities traded on an exchange is evidenced by the average of the bid and ask prices on the date of the Time of Death, or the next trading day thereafter. If such bid and ask prices are unavailable for certain stocks or securities, the Value may be established by a written estimate from the corporation or other entity issuing such shares or securities of the Value, or if such estimate is unobtainable, an estimate from a broker, trader or other Person with knowledge in the field of the Value. Liens and encumbrances established by Convincing Evidence against shares of stock or other securities is subtracted from the value of such stock or securities established by the foregoing procedure.

(6) The Value of tangible Personal Property, including, but not limited to, livestock, furniture, vehicles and other tangible items may be established:

(a) By a written estimate from a Person knowledgeable in the field of appraising such items of Personal Property; or

(b) From published sources such as catalogs of antiques or collectibles, blue books or other Convincing Evidence that accurately establishes the Value of the property. Liens and encumbrances established by Convincing Evidence against tangible personal property is subtracted from the value of such property established by the foregoing procedure.

(7) The Value of intangible Personal Property not otherwise provided for in this rule, is established by a written estimate from a Person knowledgeable in the field of appraising such items of intangible Personal Property. Liens and encumbrances established by Convincing Evidence against tangible personal property is subtracted from the value of such property established by the foregoing procedure.

(8) Notwithstanding anything to the contrary contained in this rule, in cases where an inventory has been filed with the appropriate court or an estate tax return has been filed with the appropriate governmental authority, the Value of any Real or Personal Property or other Asset is presumptively established by the amounts set forth on such inventory or estate tax return. The presumptive Value established by such inventory or return may be rebutted by Convincing Evidence.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060 & 410.070

Stats. Implemented: ORS 414.105

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2004(Temp), f. & cert. ef. 2-5-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-135-0847**

##### **Forms; Request for Notice of Transfer or Encumbrance; Termination of Request for Notice of Transfer or Encumbrance; Notice of Transfer or Encumbrance**

(1) The forms set forth in this rule are adopted in accordance with ORS 93.268, 205.246, and 411.692.

(2) Request for Notice of Transfer or Encumbrance Form; [Form not included. See ED. NOTE.]

(3) Termination of Request for Notice of Transfer or Encumbrance Form; [Form not included. See ED. NOTE.]

(4) Model Form — Notice of Transfer or Encumbrance Form; [Form not included. See ED. NOTE.]

(5) These forms are available at <http://dhsforms.hr.state.or.us/forms/databases/findforms.htm>. At the Find a form window in the Form Number field, type in the four-digit form number and click on search.

[ED. NOTE: Form referenced are available from the agency.]

Stat. Auth.: ORS 93.268, 205.246 & 411.692

Stats. Implemented: ORS 93.268, 205.246 & 411.692

Hist.: SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04

#### **461-135-0850**

##### **Specific Requirements; Repatriate Program**

(1) To be eligible for the Repatriate Program, a person must meet all of the following criteria:

(a) Be a United States citizen or the dependent of a United States citizen. Dependents include spouse, parents, unmarried minor children, and unmarried adult children with disabilities.

(b) Be identified by the Department of State as having returned from a foreign country because of destitution, illness (including mental illness), war, threat of war, invasion, or a similar crisis.

(c) Be without immediately available resources adequate to meet his or her needs.

(d) Certification by the United States Department of State as eligible for repatriation services.

(2) An eligible repatriate may receive aid under the Repatriate Program for up to 90 days from the date of arrival in the United States, unless approval for an extension has been granted through the United States Department of State, Office of International Social Services.

(a) For the first 30 days, there is a one-time payment of up to \$560 per person depending on need.

(b) After the first 30 days, the type and amount of assistance is provided according to the TANF standard.

(3) An individual who has received Repatriate benefits is required to repay all of the cost to the federal government unless the individual has a certificate from International Social Services (ISS-USA) that the individual has been determined mentally incompetent. Any claim the repatriate has against any individual, trust, estate, partnership, corporation, or government must be assigned to the federal government toward repayment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-135-0875**

##### **Specific Requirements; Retroactive Medical**

(1) The following clients are evaluated for retroactive eligibility for medical assistance:

(a) Clients found eligible for the BCCM, MAA, MAF, OSIPM, QMB-DW, REFM, or SAC program.

(b) Clients found ineligible for the BCCM, MAA, MAF, OSIPM, or SAC program solely because they do not meet the citizenship requirements of OAR 461-120-0125. Clients eligible under this subsection are eligible only for CAWEM program benefits (see OAR 461-135-1070).

(c) Clients found eligible for QMB-BAS, who are evaluated for OSIPM retroactive eligibility.

(2) If eligible for medical assistance retroactively, the client's eligibility cannot start earlier than the date indicated by OAR 461-180-0140.



(3) In the BCCM program, a woman cannot be eligible prior to January 1, 2002.

Stat. Auth.: ORS 411.060  
 Stats. Implemented: ORS 411.060  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 8-1993(Temp), f. & cert. ef. 4-26-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-135-0900**

##### **Specific Requirements; REF, REFM**

This rule applies to refugee clients who have lived in the United States for less than eight months. The term “refugee” refers to those clients whose alien status is described in OAR 461-120-0120. The month in which refugees enter the United States counts as the first month of residence, except for those granted asylum under section 208 of the Immigration and Nationality Act (INA) (8 U.S.C. 1158). The first month for REF and REFM benefits for asylees is the month in which they were granted asylum.

(1) For refugees residing in Clackamas, Multnomah and Washington counties:

(a) The Refugee Case Service Project (RCSP) is a prior resource. Refugees may apply to RCSP for cash benefits and employment services during their first eight months of residence in the United States. The Department will open a TANF grant for refugees with dependent minor children during the ninth month of residence in the United States if they still need assistance and are eligible for the program.

(b) The New Arrival Employment Service (NAES) project is under contract with the Department to provide employment and social adaptation services to eligible refugees for the first 12 months of residence in the United States.

(2) For refugees residing in counties other than Clackamas, Multnomah and Washington:

(a) Clients without dependent children who satisfy all other applicable financial and non-financial eligibility standards are eligible for REF and REFM during their first eight months of residence in the United States.

(b) TANF is a prior resource for refugees with dependent children.

(c) REF and REFM clients may not participate in the Assessment Program.

(3) For refugees residing in all Oregon counties, REFM clients to whom children are born may receive REFM for the entire benefit group through their eighth month of residence in the United States if they are ineligible for MAA, MAF or TANF.

Stat. Auth.: ORS 411.060  
 Stats. Implemented: ORS 411.060  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 33-1996(Temp), f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

#### **461-135-0910**

##### **Unaccompanied Minor Program; REF, REFM**

Refugees who entered the United States under the Unaccompanied Minor Program are wards of the court and are in the custody of a public agency. They are not eligible for any cash assistance program administered by the Division.

Stat. Auth.: ORS 411.060  
 Stats. Implemented: ORS 411.060  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 10-1-90; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### **461-135-0920**

##### **Refugees Applying for SSI**

(1) REF and REFM applicants who are age 65 or older or who are blind or disabled are referred to SSA to apply for SSI and receive assistance from REF funds at TANF standards until SSI benefits begin, or until passage of the eight months of eligibility for REF or REFM, whichever occurs first.

(2) Refugees eligible for SSI are eligible for supplemental payments at OSIP standards and for OSIPM.

(3) Clients may not receive SSI and REF benefits for the same month. If SSA makes a retroactive SSI payment for the same month in which a REF payment was made, the SSI payment will be used to reimburse the Division for REF assistance. REF applicants who apply for SSI must sign an agreement to reimburse the Division for REF payments made for the same month for which the client receives SSI.

Stat. Auth.: ORS 411.060  
 Stats. Implemented: ORS 411.060  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### **461-135-0930**

##### **Medical Coverage for Refugees; REFM**

(1) Clients are eligible for REFM if they are eligible for REF or would be eligible for REF except for income or resources.

(2) Clients eligible for REFM benefits are eligible for the same medical coverage as the MAA, MAF and OSIPM programs.

Stat. Auth.: ORS 411.060  
 Stats. Implemented: ORS 411.060  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### **461-135-0950**

##### **Eligibility for Inmates**

(1) This rule sets out additional restrictions on the eligibility of inmates for programs covered by chapter 461 of the Oregon Administrative Rules.

(2) Definition of an *inmate*.

(a) An *inmate* is a person living in a *public institution* who is:

(A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including a person being held involuntarily in a detention center awaiting trial or a person serving a sentence for a criminal offense;

(B) Residing involuntarily in a facility under a contract between the facility and a *public institution* where, under the terms of the contract, the facility is a *public institution*;

(C) Residing involuntarily in a facility that is under governmental control; or

(D) Receiving care as an outpatient while residing involuntarily in a *public institution*.

(b) An individual is no longer an *inmate* when:

(A) The person is released on parole, probation, or post-prison supervision;

(B) The person is on home- or work-release, unless the person is required to report to a *public institution* for an overnight stay; or

(C) The person is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual.

(3) Definition of a *public institution*.

(a) A *public institution* is any of the following:

(A) A state hospital (as defined by ORS 162.135) such as the Oregon State Hospital, Eastern Oregon Psychiatric Center, Eastern Oregon Training Center, and any other hospital established by law for similar purposes, including the “SAIP” means Secure Adolescent Inpatient Program (SAIP), and the Secure Children’s Inpatient Program (SCIP).

(B) A local correctional facility (as defined in ORS 169.005): a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds persons for more than 36 hours.

(C) A Department of Corrections institution (as defined in ORS 421.005): a facility used for the incarceration of persons sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.

(D) A youth correction facility (as defined in ORS 162.135):

(i) A facility used for the confinement of youth offenders and other persons placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or

(ii) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.

(b) As used in this rule, the term *public institution* does not include:

(A) A medical institution as defined in 42 C.F.R. 435.1009;

(B) An intermediate care facility as defined in 42 C.F.R. 440.140 and 440.150;

(C) A publicly operated community residence that serves no more than 16 residents, as defined in 42 C.F.R. 435.1009; or

(D) A child-care institution as defined in 42 C.F.R. 435.1009 with respect to:

(i) Children for whom foster care maintenance payments are made under title IV-E of the Social Security Act; and

(ii) Children receiving TANF-related foster care under title IV-A of the Social Security Act.

(4) If this rule indicates that the medical benefits of a client are *suspended*, a client meeting the eligibility requirements of a program covered under chapter 461 of the Oregon Administrative Rules is not required to submit a new application for the benefits to be reinstated.

(5) For all programs covered under chapter 461 of the Oregon Administrative Rules:

(a) Except as provided in OAR 461-135-0750, an *inmate* of a *public institution* is not eligible for benefits.

(b) If a pregnant woman receiving medical assistance through the EXT, GAM, MAA, MAF, OHP, OSIPM, or SAC program is an *inmate* of a *public institution*, her medical benefits are suspended. When the Department is informed the woman is no longer an *inmate*, her medical benefits are reinstated — effective on the first day she is no longer an *inmate* — if she is still in her protected period of eligibility under OAR 461-135-0010(2).

(c) In the OSIP and OSIPM programs, if a client who is receiving SSI becomes an *inmate* of a *public institution*, the medical benefits are *suspended*. Benefits may be suspended for up to twelve full calendar months. When the Department is informed the client is no longer an *inmate*, the medical benefits are reinstated — effective on the first day the client is no longer an *inmate* — if the client meets the eligibility requirements for the program, including being in suspense status with SSA and the client intends to remain in Oregon. The client has 30 days from the date of release to provide verification that SSI has been reinstated or the case will be closed.

(d) In the SAC program, medical benefits are *suspended* if a client who receives medical assistance because of a *serious mental illness* becomes an *inmate* of a *public institution*. When the Department is informed the client is no longer an *inmate*, the medical benefits will be reinstated, effective on the first day the client is no longer an *inmate*, and eligibility will be determined for all medical assistance programs. For purposes of this subsection, a client has a *serious mental illness* if the client has been diagnosed, prior to becoming an *inmate* of a *public institution*, by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as suffering from dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a substance abuse disorder and other than a disorder that is both:

(A) Caused primarily by substance abuse; and

(B) Likely to improve if the substance abuse discontinues or declines.

(6) In the Food Stamp and GA programs, in addition to the other provisions of this rule, an *inmate* released from a *public institution* on home arrest, and required to wear an electronic device to monitor his or her activity, is ineligible for benefits if the correctional agency provides room and board to the person.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.113

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 17-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### 461-135-0960

#### Eligibility for People in State Psychiatric Institutions and Training Centers; OSIPM, SAC

(1) People residing in state psychiatric institutions (Eastern Psychiatric Center or Oregon State Hospital) are eligible for OSIPM or SAC benefits if they are:

(a) Sixty-five years of age or older;

(b) Under 21 years of age; or

(c) Twenty-one years of age or older, if the basis of need is disability or blindness; eligibility was determined before the client reached 21 years of age; and the client entered the institution before reaching 21 years of age.

(2) There is no age limit for people in state training centers (Eastern Oregon Training Center or Fairview Training Center) to be eligible for OSIPM or SAC.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99

#### 461-135-0990

#### Specific Requirements; Reimbursement of Cost-Effective, Employer-Sponsored Health Insurance Premiums

Clients in the EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM, REF, REFM, and SAC programs are reimbursed for their share of the premiums for employer-sponsored health insurance if:

(1) The insurance is provided through a member of the household group;

(2) The insurance covers a member of the benefit group;

(3) The insurance coverage is a comprehensive plan (that is, includes basic or major medical services) or is a fully capitated health plan (FCHP) or physicians care organization (PCO); and

(4) The premium is cost-effective (see OAR 461-155-0360).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2004, f. & cert. ef. 10-1-04

#### 461-135-1060

#### Breast and Cervical Cancer Medical Program (BCCM)

(1) Program established. This rule implements ORS 414.534–538. It establishes eligibility rules for medical assistance based on a woman's need of treatment for breast or cervical cancer, including pre-cancerous conditions (treatment). The Department administers the Oregon Breast and Cervical Cancer Program by entering into agreements with local entities (referred to in this rule as qualified entities) to provide screening services funded by the Centers for Disease Control in support of the National Breast and Cervical Cancer Early Detection Program.

(2) Who is eligible. A woman may be eligible for medical assistance without regard to her income or resources. To be eligible, she must:

(a) Be found to need treatment following screening services provided by a qualified entity;

(b) Be under the age of 65;

(c) Not be covered for treatment by creditable health insurance, as defined in 42 U.S.C. §300gg(c), which includes Medicaid, Medicare, and individual or group health insurance; and

(d) Not be eligible for Medicaid through a Medicaid program listed in 42 U.S.C. §1396a(a)(10)(A)(i) (mandatory Medicaid eligibility groups).

(3) Presumptive eligibility.

(a) Start of presumptive eligibility. A woman is presumptively eligible for the BCCM program under this rule beginning the day a qualified entity determines, on the basis of preliminary information, that she is likely to meet the requirements of sections (2)(a), (b), and (c) of this rule.

(b) End of presumptive eligibility. A woman is no longer presumptively eligible for the BCCM program under this rule the earlier of:

(A) The day on which a determination is made by the Department with respect to her eligibility.

(B) The last day of the month following the month in which presumptive eligibility begins if the woman does not file an application by that date.

(4) A qualified entity that determines a woman is presumptively eligible for the BCCM program must:

(a) Notify the Department of the determination within five working days; and

(b) Explain to the woman at the time the determination is made the circumstances under which an application for medical assistance must be submitted to the Department and the deadline for the application (see section (5) of this rule).

(5) Continuing eligibility following the period of presumptive eligibility. To remain eligible for benefits, a woman determined by a qualified entity to be presumptively eligible under this rule, but who is in an eligibility group listed in 42 U.S.C. § 1396(a)(10)(A)(i), must apply for medical assistance by not later than the last day of the month following the month during which the determination of presumptive eligibility is made. The Department determines continuing eligibility of a woman found presumptively eligible under this rule.

(6) When eligibility ends. A woman found eligible for the BCCM program by the Department under this rule becomes ineligible:

(a) Once her treating health professional determines her course of treatment is complete.

(b) Upon reaching age 65.

(c) When she becomes covered for treatment by creditable health insurance.

(d) Upon becoming a resident of another state.

(e) When the Department determines she does not meet the requirements for eligibility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 414.540

Hist.: AFS 5-2002, f. & cert. ef. 4-1-02

#### **461-135-1070**

##### **Specific Requirements; Citizen/Alien-Waived Emergent Medical (CAWEM)**

To be eligible for the CAWEM program, a client must be ineligible for BCCM, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC solely because he or she does not meet citizenship or alien status requirements. If the basis for CAWEM eligibility is the OHP-OPU program, eligibility for CAWEM is subject to OAR 461-135-1102. A client who is ineligible for OHP-CHP solely because he or she does not meet citizenship requirements, cannot be eligible for CAWEM. Benefits of the CAWEM program are limited to the services described in the administrative rules of the Department of Human Services in chapter 410 of the Oregon Administrative Rules.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2004(Temp), f. & cert. ef. 7-1-04 thru 9-30-04; SSP 22-2004, f. & cert. ef. 10-1-04

#### **461-135-1100**

##### **Specific Requirements; OHP**

In addition to eligibility requirements applicable to the OHP program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the OHP program.

(1) For purposes of this rule, the *term private major medical health insurance* refers to health insurance coverage that provides medical care for physician and hospital services, including major illnesses, with a limit of not less than \$10,000 for each covered individual. This term does not include coverage under the Kaiser Child Health Program.

(2) To be eligible for OHP, a person cannot:

(a) Be receiving, or deemed to be receiving, SSI benefits;

(b) Be eligible for Medicare, except that this requirement does not apply to OHP-OPP;

(c) Be receiving Medicaid through another program; or

(d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, see ORS 735.720 to 735.740).

(3) To be eligible for the OHP-OPU program, a person must be 19 years of age or older and must not be pregnant. A person eligible for OHP-OPU is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP eligibility requirements, an HPN client:

(a) Must not be covered by private major medical health insurance and must not have been covered by private major medical health insurance during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(B) The person's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;

(C) The person's private health insurance premium was subsidized through FHIAP and the client did not voluntarily end the insurance coverage; or

(D) A member of the person's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

(A) The resource limit provided in OAR 461-160-0015.

(B) The higher education student requirements provided in OAR 461-135-1110.

(C) Payment of premiums determined in accordance with OAR 461-155-0235 and paid in accordance with OAR 461-135-1120.

(D) Selection of a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the HPN client is exempted by OAR 410-141-0060.

(E) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAP), if applicable.

(4) To be eligible for the OHP-OPC program, a person must be less than 19 years of age.

(5) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(6) To be eligible for the OHP-OPP program, a person must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(7) To be eligible for the OHP-CHP program, a person must be under 19 years of age and must:

(a) Not be eligible for OHP-OPC, OHP-OPP or OHP-OP6;

(b) Meet the resource limit provided in OAR 461-160-0015;

(c) Meet budgeting requirements of OAR 461-160-0700;

(d) Select a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the client is exempted by OAR 410-141-0060; and

(e) Not be covered by private major medical health insurance or by any private major medical health insurance during the preceding six months. The six-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life-threatening or cause permanent loss of function or disability;

(B) The person's private health insurance premium was reimbursed under OAR 461-135-0990;

(C) The person's private health insurance premium was subsidized by FHIAP; or

(D) A member of the person's filing group was a victim of domestic violence.

(8) A child who becomes ineligible for OHP because of age while receiving in-patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in-patient medical services on the last day of the month in which the age requirement is no longer met.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 8-2006, f. & cert. ef. 6-1-06

#### **461-135-1102**

##### **OHP-OPU; Effective Dates for the Program**

(1) Effective July 1, 2004, the OHP-OPU program is closed to new applicants. Except as provided in sections (2) and (3) of this rule, a new applicant is a person with a date of request (see OAR 461-115-0030) after June 30, 2004. A new applicant cannot be found eligible for the OHP-OPU program.

(2) A person is not a new applicant if the Department determines that the person is continuously eligible for medical assistance as follows:

(a) The person is eligible for and receiving benefits under the OHP-OPU program on June 30, 2004, or after that date pursuant to



subsections (b) to (e) of this section, and the Department determines that the person continues after that date to meet the eligibility requirements for OHP-OPU.

(b) The person is eligible for and receiving benefits under the CAWEM program on June 30, 2004, and is eligible for CAWEM based on the OHP-OPU program, and the Department determines that the person continues to meet the eligibility requirements for OHP-OPU except for citizenship or alien status requirements.

(c) The person's eligibility ends under the BCCM, EXT, GAM, MAA, MAF, OHP-CHP, OHP-OPC, OHP-OPP, OSIPM, REFM, or SAC program, or under CAWEM based on such program, and at that time the Department determines that the person meets the eligibility requirements for OHP-OPU.

(d) The person is a child in the custody of the Department whose eligibility for Medicaid ends because of the child's age and at that time the Department determines that the person meets the eligibility requirements for OHP-OPU.

(e) The Department determines that the person was continuously eligible for OHP-OPU on or after June 30, 2004 under subsections (a) to (d) of this section.

(3) A person who is not continuously eligible under section (2) of this rule is not a new applicant if:

(a) The person's eligibility ends under the BCCM, EXT, GAM, MAA, MAF, OHP-CHP, OHP-OPP, OHP-OPU, OSIPM, REFM, or SAC program, or the related CAWEM program; and

(b) The person meets the eligibility requirements for OHP-OPU or the related CAWEM program:

(A) Within 45 days of a date of request established during the last month of eligibility for a program listed in subsection (a) of this section; or

(B) Within 45 days of the date the Department initiates a redetermination or recertification of eligibility for a program listed in subsection (a) of this section.

(4) Except as provided in section (2) of this rule, a person who loses eligibility for a medical assistance program and applies or reapplies for medical assistance is treated as a new applicant for purposes of the OHP-OPU program.

(5) The Department intends that effective July 1, 2004, all other rules related to application, certification, recertification, or eligibility for the OHP-OPU program be applied and construed to achieve the purpose of this rule and that in the event of any ambiguity this rule controls.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 411.060 & 2003 OL Ch. 710, 735

Hist.: SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

#### **461-135-1110**

##### **Eligible and Ineligible Students; OHP-OPU**

(1) In the OHP-OPU program, a person who is enrolled *full time* in *higher education* is ineligible to receive benefits, unless the requirements of one of the following subsections are met:

(a) The student:

(A) Meets the *income requirements* for a *Pell grant*;

(B) Is not currently covered by private major medical health insurance or an HMO; and

(C) Has not been covered by private major medical health insurance or by an HMO for the six months immediately preceding the date of application.

(b) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974 (19 U.S.C. § 2296).

(2) For the purposes of this rule:

(a) *Higher education* includes the following:

(A) Any public or private university, college or community college.

(B) Any post-secondary vocational or technical school that is eligible to accept Pell grants.

(b) *Full time* is defined by the school.

(c) Meets the *income requirements* for a *Pell grant* means:

(A) The student's Student Aid Report shows an "expected family contribution" less than \$3,851 for the 2005-2006 or 2006-2007 school year; or

(B) The student is eligible for a Pell grant and provides documentation of eligibility from the school's financial aid office.

(3) A student's enrollment status continues during school vacation and breaks. A student's *higher education* status ends when the stu-

dent graduates, drops out (as verified by their disenrolling), reduces their credit or attendance hours below full-time status, is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 14-2002(Temp), f. & cert. ef. 10-30-02 thru 4-28-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-135-1120**

##### **Premium Requirement; OHP-OPU**

In the OHP-OPU program, a monthly premium must be paid when the benefit group includes at least one non-exempt (HPN) client (see OAR 461-135-1100) as follows:

(1) The following HPNs are exempt from the premium requirement:

(a) Members of a federally recognized Indian tribe, band, or group.

(b) Eskimos, Aleuts, and other Alaska natives enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act.

(c) Persons eligible for benefits through an Indian Health Program.

(d) Clients who are eligible for the CAWEM program (see OAR 461-135-1070).

(e) Persons in need groups with countable income that is 10 percent or less of the federal poverty level in any of the following situations:

(A) Using income assigned to the budget month at certification or recertification;

(B) Using income assigned to the budget month from the current certification for the need group(s) formed when an HPN client leaves the filing group;

(C) Using income assigned to the budget month from the current certification when OHP cases are combined.

(2) The amount of the premium is determined in accordance with OAR 461-155-0235.

(3) All non-exempt clients in the benefit group are responsible for payment of premiums.

(4) Once the amount of the premium is established, the amount will not change during the certification period unless:

(a) An HPN client becomes pregnant.

(b) An HPN client becomes eligible for another program (for example, MAA or OSIPM).

(c) An HPN client leaves the filing group.

(d) OHP cases are combined during their certification periods.

(e) An HPN client's exemption status changes.

(f) An HPN client is no longer a member of the benefit group.

(5) For premiums billed on or after February 1, 2004, a premium is considered paid on time when the payment is received by the Oregon Health Plan billing office on or before the 20th of the month for which the premium was billed. The day the payment arrives in the office's post office box is the date it is received. A premium not paid on time is past due. A client will not be disenrolled during their certification period for past due premiums. All past due premiums for a filing group must be paid before a client can establish a new certification period.

(6) For any billed premium, the arrearage is cancelled if the applicant is otherwise eligible for OHP and:

(a) The arrearage was incurred while the client was exempt from the requirement to pay a premium; or

(b) The applicant is exempt from the requirement to pay premiums under subsection (1)(e) of this rule.

(7) Any premium arrearage over three years old is cancelled.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 19-2003(Temp), f. & cert. ef. 7-1-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 3-2004(Temp),

f. & cert. ef. 2-19-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 8-2006, f. & cert. ef. 6-1-06

**461-135-1130**

**Disqualification for Nonpayment of OHP Premium**

(1) Disqualification for failure to pay a premium on time. Clients are disqualified from receiving OHP benefits for failure to pay an OHP premium required by OAR 461-135-1120. Clients who are disqualified are ineligible under the OHP-OPU program. The disqualification affects only non-exempt HPN clients applying for or receiving benefits under the OHP-OPU program as follows:

(a) A non-exempt HPN applicant is disqualified if the applicant has an OHP premium arrearage.

(b) All non-exempt HPN recipients in a benefit group are disqualified if a required OHP premium for the group is not paid on time. The disqualification is rescinded if the past due premium payment is received by the 20th of the month following the month for which the premium was billed.

(c) A non-exempt HPN applicant is disqualified when joining an OHP filing group that includes a person with an OHP premium arrearage.

(2) Duration of the disqualification:

(a) A disqualification resulting from a premium arrearage incurred prior to February 1, 2003, remains in effect until the arrearage is paid or is waived in accordance with this rule.

(b) A disqualification resulting from a premium billed after February 1, 2003, remains in effect until the premium is paid and for a minimum of six months. The six-month disqualification period starts the first day of the month after the notice period ends.

(c) A disqualification resulting from a non-exempt HPN applicant joining an OHP filing group that includes a person with a premium arrearage remains in effect until the arrearage is paid unless the entire arrearage was incurred prior to February 1, 2003, and is waived in accordance with this rule.

(3) Only for premiums billed before February 1, 2003, an arrearage is canceled and there is no disqualification based on the arrearage if the applicant is otherwise eligible for OHP and any of the following is true:

(a) The financial group has no income in the budget month and had no income in the prior two months.

(b) One of the following occurred either during the certification period in which the arrearage occurred or during the current budget month:

(A) A member of the filing group was the victim of a crime resulting in the loss of income or resources.

(B) A member of the filing group was the victim of domestic violence.

(C) The filing group was the victim of a natural disaster.

(D) A member of the filing group died.

(E) The filing group was homeless or lost their housing.

(c) The arrearage was incurred while the client was exempt from the requirement to pay a premium (see OAR 461-135-1120).

(d) The arrearage is a debt that has been stayed in a bankruptcy proceeding.

(e) The arrearage is over three years old.

(4) Any premium arrearage over three years old is canceled and no disqualification is based on the arrearage.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 414.025

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2003(Temp), f. & cert. ef. 9-15-03 thru 12-31-03; SSP 31-2003(Temp), f. & cert. ef. 12-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 3-2004(Temp), f. & cert. ef. 2-19-04 thru 6-30-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 9-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04

**461-135-1175**

**Senior Farm Direct Nutrition Program**

(1) The Senior Farm Direct Nutrition Program (SFDNP) provides food vouchers for low income seniors.

(2) An individual age 60 or over is eligible for SFDNP if the individual meets all of the following eligibility criteria on April 1 of the calendar year in which benefits are sought:

(a) Has income at or below 135% of the Federal Poverty Level as described in OAR 461-155-0295.

(b) Receives Medicaid or Food Stamp benefits.

(c) Resides in their own home or rental property.

(3) This program is funded by a grant from the United States Department of Agriculture. The voucher amount will be determined on a year-to-year basis, based on the grant allocation received and the number of eligible seniors.

(4) The program begins June 1 each year and ends on October 31 each year.

(5) See OAR 461-145-0190 to determine the treatment of this benefit in the eligibility process for other programs.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070

Stats. Implemented: ORS 410.070, 411.060, 411.070

Hist.: SSP 8-2006, f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-135-1180**

**Senior Prescription Drug Assistance Program**

(1) Program established. This rule establishes all the eligibility criteria for the Senior Prescription Drug Assistance Program (the program), created by ORS 414.342. The program becomes effective in accordance with the following schedule:

(a) Effective February 1, 2003 for applicants living in the following counties — Baker, Clatsop, Columbia, Douglas, Hood River, Klammath, Lake, Sherman, Tillamook, Union, Wallowa, Wasco, Washington, and Wheeler.

(b) Effective March 1, 2003 for applicants living in the following counties — Crook, Deschutes, Grant, Harney, Jefferson, Malheur, Morrow, Multnomah, and Umatilla.

(c) Effective April 1, 2003 for applicants living in the following counties — Coos, Curry, Lane, Marion, Polk, and Yamhill.

(d) Effective May 1, 2003 for applicants living in the following counties — Benton, Clackamas, Jackson, Josephine, Lincoln, and Linn.

(2) Eligibility Requirements. To be eligible for the program, a person must:

(a) Be a resident of Oregon.

(b) Have gross income not greater than 185% of the amount provided in OAR 461-155-0290 for a one-person need group. For purposes of this rule, income means income in cash or kind available to the applicant or recipient the receipt of which is regular and predictable enough to afford security in the sense that the applicant or recipient may rely upon it to contribute toward meeting the needs of the applicant or recipient.

(c) Be 65 years of age or older.

(d) Not be covered by any other public or private prescription drug benefit program and must not have been covered during the prior six months. "Any other public or private prescription drug benefit program" means a program that offers subsidized prescription drugs in which a portion of the cost is paid by the benefit program. The definition does not include a program that offers discounted drugs.

(e) Not have liquid resources with a total value of \$2,000 or more. Residences and vehicles are not considered liquid resources.

(f) Pay a non-refundable enrollment fee of \$50 to the Department and receive an enrollment card valid for twelve months.

(g) Apply for and be found eligible for the program annually.

(3) Eligibility and Procedures.

(a) Individual eligibility: An applicant's eligibility is determined without regard to the potential eligibility or assets of another person.

(b) Applications: An applicant for the program must use the application form approved by the Department and must apply not earlier than 30 days prior to his or her 65th birthday. An applicant may, but is not required to, provide his or her social security number on the application.

(c) Enrollment card: The enrollment card issued to the enrollee is valid for 12 calendar months beginning the first month after the applicant has met all eligibility requirements. The card is not valid if the client no longer meets the requirements of section (2)(a) or (d) of this rule.

(4) Program Benefits: An eligible person (enrollee) may participate in the program in accordance with OAR 410-149-0000 and following.

(5) Appeals: The Department provides a contested case hearing to a person whose application for the program is denied.

Stat. Auth.: ORS 414.346

Stats. Implemented: ORS 414.342  
Hist.: SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03

**461-135-1185****Low-Income Subsidy Program (LIS)**

(1) The Low-Income Subsidy program (LIS) is a federal assistance program for Medicare clients who need extra help meeting their Medicare Part D prescription drug costs. LIS helps Medicare clients pay their monthly premium, deductible, and co-insurance costs under Part D. LIS is a means-tested program. All clients must qualify on the basis of household income, resources, and size as defined by the Social Security Administration.

(2) LIS is not a part of the Senior Prescription Drug Assistance Program (OAR 461-135-1180, division 410-149, and ORS 414.340 to 414.348).

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

**461-135-1186****LIS Applications**

An LIS application is complete if all of the following requirements are satisfied:

(1) The applicant satisfies the provisions of OAR 461-115-0050 and completes the Department's forms.

(2) The applicant must submit:

(a) A certification by the applicant or personal representative, under penalty of perjury or sanction for false statement, as to the accuracy of information provided on the application form (see 42 CFR 423.904(d)(2));

(b) All required statements from financial institutions (see 42 CFR 423.904(d)(3)); and

(c) All information for verification (see 42 CFR 423.904(d)(3)) required under OAR 461-115-0610.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

**461-135-1187****Eligibility Determinations and Due Process for LIS**

(1) The regulations set out at 42 CFR 423.771 to 423.774 are expressly adopted and incorporated by reference for LIS. These regulations apply to the application process, eligibility determinations, and redeterminations.

(2) The Department will send to LIS applicants a decision notice consistent with the provisions of OAR 461-175-0200 not later than the 45th day after the date of request.

(3) An applicant may appeal an adverse decision notice under the provisions of division 461-025 of the Oregon Administrative Rules.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

**461-135-1200****Domestic Violence**

(1) The Department is authorized by ORS 411.117 to waive or modify requirements of the TANF program that make it more difficult for clients to escape domestic violence or put them at risk of further or future domestic violence.

(2) The Department waives the TANF requirement in OAR 461-135-0070(1)(e) for a pregnant woman to have reached late pregnancy if a client is at risk of further or future domestic violence.

(3) Except as provided in section (4) of this rule, a client is not required to meet a requirement of the TANF program contained in this chapter of rules if and while compliance by the client would make it more difficult for the client to escape domestic violence or place the client at risk of further or future domestic violence.

(4) The following TANF requirements remain in effect as described even if a client is a victim of domestic violence or at risk of victimization by domestic violence:

(a) The TANF requirements in OAR 461-135-0070 to be a dependent child, a caretaker relative, or parent.

(b) The TANF requirement in OAR 461-120-0630 that a dependent child live with a caretaker relative, except the latter requirement

may be waived during a reasonable period while the caretaker relative escapes from further or future domestic violence.

(c) The requirement of residency for TANF in OAR 461-120-0010 except that a person may access TA-DVS if the person meets all other eligibility requirements and is currently in Oregon while fleeing to another state for safety reasons arising from domestic violence.

(d) Income or resource limits except as specifically provided in OAR 461-140-0020 and 461-140-0040.

Stat. Auth.: ORS 411.117  
Stats. Implemented: ORS 411.117  
Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

**461-135-1205****Temporary Assistance for Domestic Violence Survivors Program**

The Temporary Assistance for Domestic Violence Survivors program (the program or TA-DVS) is established. The program develops a case plan and addresses temporary needs of applicants for and recipients of the TANF program and others who are victims of domestic violence, have been victims of domestic violence or are at risk of victimization by domestic violence. The rules for the program are contained in OAR 461-135-1205 to 461-135-1235. The purposes of the program are:

(1) To help families affected by domestic violence identify their emergent and safety needs;

(2) To help families identify actions that may increase their safety;

(3) To identify community resources that may meet families' needs;

(4) To provide temporary financial assistance and supportive services to eligible families when needed resources are not immediately available; and

(5) To provide financial assistance and services to help the domestic violence survivor and the children remain free from abuse.

Stat. Auth.: ORS 411.060 & 418.100  
Stats. Implemented: ORS 411.060, 418.100 & 411.117  
Hist.: AFS 9-1999, f. & cert. ef. 7-1-99; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

**461-135-1210****TA-DVS; Definitions**

Unless inconsistent with these rules (OAR 461-135-1205 to 1235) the definitions of the TANF program apply to the TA-DVS program.

Stat. Auth.: ORS 411.060 & 418.100  
Stats. Implemented: ORS 411.060, 418.100 & 411.117  
Hist.: AFS 9-1999, f. & cert. ef. 7-1-99

**461-135-1215****TA-DVS; Who is Eligible for the Program?**

The program addresses temporary needs of clients who are currently victims of *domestic violence*, have been victims of *domestic violence* or are at risk of victimization by *domestic violence*; whose safety is at risk because of *domestic violence* or the current threat of *domestic violence*; and who meet the financial and non-financial requirements in OAR 461-135-1225.

Stat. Auth.: ORS 411.060 & 418.100  
Stats. Implemented: ORS 411.060, 418.100 & 411.117  
Hist.: AFS 9-1999, f. & cert. ef. 7-1-99

**461-135-1220****TA-DVS; Application for Assistance and Effective Dates**

The client may apply for the program in person, in writing, or by phone. The Department will assess the client's safety concerns within eight working hours of receiving the application and will offer options to the client for addressing immediate safety needs. The Department will determine eligibility within sixteen working hours after the application is complete, whether or not the client has signed the application.

Stat. Auth.: ORS 411.060 & 418.100  
Stats. Implemented: ORS 411.060, 411.117 & 418.100  
Hist.: AFS 9-1999, f. & cert. ef. 7-1-99; SSP 8-2004, f. & cert. ef. 4-1-04

**461-135-1225****TA-DVS; Eligibility and Verification Requirements**

(1) Eligibility requirements for the program are the same as for the TANF program, as modified by OAR 461-135-1200(2), except as provided in OAR 461-135-1205 to 1235.



**DIVISION 140**

**GENERAL FINANCIAL ELIGIBILITY**

(2) The financial eligibility requirements are the same as for the TANF program except that:

- (a) A TANF grant does not count as income.
- (b) Income received during the budget month is not counted if the client does not have reasonable access to the money or cannot access the money independently of the abuser.
- (c) Income received during the budget month is not counted if the client needs the money for expenses made necessary by a flight from abuse, for instance an expense for temporary lodging.
- (d) There is no resource limit.
- (e) The income limit for TA-DVS is the TANF countable-income standard.
- (f) Other financial requirements may be waived in accordance with OAR 461-135-1200.

(3) The nonfinancial requirements are the same as for the TANF program except that:

- (a) Citizenship and alien status requirements (OAR 461-120-0110) are waived;
- (b) The requirements to assign support and obtain assets (see OAR 461-120-0310 to 0350) are waived, but the Department will assist the client obtain support at the client's request;
- (c) The requirement of regular school attendance (OAR 461-120-0530) is waived;
- (d) The client is not required to participate in an employment program (see divisions 130 and 190 of this chapter of rules).
- (e) Other nonfinancial requirements may be waived in accordance with OAR 461-135-1200.

(4) Verification is required as in the TANF program except that no verification is required that the client is a victim of domestic violence or needs to flee from abuse. Verification of other eligibility factors is postponed if the delay in finding the client eligible would prevent the client from meeting an emergent need.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.117 & 418.100

Hist.: AFS 9-1999, f. & cert. ef. 7-1-1999; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02

**461-135-1230**

**TA-DVS; Benefits of the Program**

(1) A client may receive benefits of the program for 90 days from the date the client was found eligible. Clients may receive benefits simultaneously from the TA-DVS and TANF programs. A client may receive benefits under the program not to exceed \$1,200 during the 90-day period of eligibility.

(2) If a client submits an application meeting all eligibility criteria set forth in OAR 461-135-1215 and 461-135-1225 less than 12 months after the commencement of a 90-day period of eligibility, that application must be jointly approved or denied by the Department's field and central offices.

(3) The client and the Department prepare a case plan that identifies activities necessary to enhance the client's safety. The case plan specifies the payments the Department makes to meet the client's needs for shelter and food and for relocation or other support services that will enhance the client's safety. The case plan either is in writing and signed by the client or is narrated by the Department in the client's case file.

(4) A client's available, liquid resources may be considered when developing the case plan.

(5) Payments issued for items in the client's case plan are issued as dual-payee checks unless the use of a dual-payee check is likely to put the client at risk of harm.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.117 & 418.100

Hist.: AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 8-2004, f. & cert. ef. 4-1-04

**461-135-1235**

**TA-DVS; Right to Hearing**

A client whose application is denied or who does not receive a decision on an application by the close of the second business day following the date the application is complete is entitled to an expedited hearing (see OAR 461-025-0315). A dispute over the amount of any payment provided to or for the client is resolved in an expedited hearing; other disputes about the contents of a case plan is resolved through conciliation.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.117 & 418.100

Hist.: AFS 9-1999, f. & cert. ef. 7-1-99; SSP 8-2004, f. & cert. ef. 4-1-04

**461-140-0010**

**Assets; Income and Resources**

(1) An available asset, either income or a resource, is categorized as either excluded or countable (defined in OAR 461-001-0000).

(2) The availability of resources is covered in OAR 461-140-0020.

(3) The availability of income is covered in OAR 461-140-0040.

(4) Excluded assets are identified in the rules in this chapter (see divisions 140 and 145 in particular) and are not considered when a client's eligibility and benefit level are determined.

(5) An available asset not specifically excluded is countable, and its value is used in determining the eligibility and benefit level of a client.

(6) An asset may not be counted as a resource and as income in the same month.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-140-0020**

**Availability of Resources**

(1) Except as provided in sections (2) to (4) of this rule,

(a) In the Food Stamp program, a resource owned jointly by a client and another person is available in its entirety to the client.

(b) In all other programs, jointly owned resources are available to members of a financial group only to the extent they own the resource.

(2) A resource is not available to a client in each of the following situations:

(a) The client has a legal interest in the resource, but the resource is not in the client's possession and the client is unable to gain possession of it.

(b) The resource is jointly owned with others not in the financial group who are unwilling to sell their interest in the resource, and the client's interest is not reasonably saleable.

(c) The client verifiably lacks the competence to gain access to or use the resource and there is no legal representative available to act on the client's behalf.

(d) The client is a victim of domestic violence and:

(A) Attempting to use the resource would subject the client to risk of domestic violence; or

(B) The client is using the resource to avoid the abusive situation.

(e) Except as provided in OAR 461-145-0540, the resource is included in an irrevocable or restricted trust and cannot be used to meet the basic monthly needs of the financial group.

(3) A resource is not considered available during the time the owner does not know he or she owns the resource.

(4) If a resource is subject to an early withdrawal penalty, the amount of the penalty is not available.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-140-0040**

**Determining Availability of Income**

(1) This rule describes the date income is considered available, what amount of income is considered available and situations in which income is considered unavailable.

(2) Income is considered available the date it is received or the date a member of the financial group has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.

(b) Earned income withheld or diverted at the request of an employee is considered available on the date the wages would have been paid without the withholding or diversion.

(c) An advance or draw of earned income is considered available on the date it is received.

(d) Income that is averaged, annualized, converted, or prorated is considered available throughout the period for which the calculation applies.

(e) A payment due to a member of the financial group, but paid to a third party for a household expense, is considered available when the third party receives the payment.

(3) The following income is considered available even if not received:

(a) Deemed income.

(b) In the ERDC, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, and TANF programs, the portion of a payment from an assistance program, such as public assistance, unemployment compensation, or social security, withheld to repay an overpayment.

(4) The amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions.

(5) The following income is not considered available:

(a) Wages withheld by an employer in violation of the law.

(b) Income received by another person who does not pay the client his or her share.

(c) Income received by a member of the financial group after he or she has left the household.

(d) Moneys withheld from or returned to the source of the income to repay an overpayment from that source unless the repayment is countable:

(A) In the FS program, under OAR 461-145-0105; or

(B) In the ERDC, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, and TANF programs, under subsection (3)(b) of this rule.

(e) For a client who is not self-employed, income required to be expended on an ongoing, monthly basis on an expense necessary to produce the income, such as supplies or rental of work space.

(f) In the FS program, income received by the financial group but intended and used for the care of someone not in the financial group as follows:

(A) If the income is intended both for someone in the financial group and someone not in the financial group, the portion of the income intended for the care of the person not in the financial group is considered unavailable.

(B) If the portion intended for the care of the person not in the financial group cannot readily be identified, the income is prorated evenly among the people for whom the income is intended. The prorated share intended for the care of the person not in the financial group is then considered unavailable.

(g) In the FS, MAF, and OHP programs, income controlled by the client's abuser if the client is a victim of domestic violence, the client's abuser controls the income and will not make the money available to the filing group, and the abuser is not in the client's filing group.

(h) In the MAA and TANF programs, the client is a victim of domestic violence and the client's abuser controls the income and will not make the money available to the filing group.

(6) The availability of lump-sum income is covered in OAR 461-140-0120.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.117, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-140-0070**

##### **Treatment of Excluded Assets**

Unless stated otherwise in another rule in this chapter of rules:

(1) Excluded income remains excluded as long as it is kept in a separate account and not commingled with other funds.

(2) Excluded income that is commingled in an account with funds not excluded remains excluded for six months from the date it is commingled, after which it is counted as a resource.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-140-0110**

##### **Treatment of Periodic Income**

(1) For FS and TANF clients in a filing group that includes at least one member who is working under a TANF JOBS Plus agreement, *periodic income* (defined in OAR 461-001-0000) is excluded.

(2) For FS clients not covered under section (1) of this rule and for ERDC clients, periodic income is counted in one of two ways. The client is given a choice either to average the income over the applicable period or to have the income counted in the month it is expected to be received.

(3) For OSIP-EPD and OSIPM-EPD clients, *periodic income* received during a certification period is averaged among the months in the certification period.

(4) In all other programs, *periodic income* is counted in the month received.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-140-0120**

##### **Availability and Treatment of Lump-Sum Income**

(1) *Lump-sum income* (defined in OAR 461-001-0000) is treated as follows if it is received by a member of a financial group.

(2) In the EA, FS, MAA, MAF, REF, REFM, SAC, and TANF programs:

(a) *Lump-sum income* is a resource.

(b) In the EA, MAA, MAF, REF, REFM, SAC, and TANF programs:

(A) *Lump-sum income* is considered available to the financial group when a member of the group receives the income and until the income becomes unavailable for a reason beyond the group's control.

(B) *Lump-sum income* is considered unavailable for a reason beyond the group's control if the member who received the lump-sum income:

(i) Leaves the financial group before spending any of the lump-sum income; or

(ii) Spends the lump-sum income on an emergency, such as a natural disaster or the serious injury or death of a household member.

(3) In the ERDC and EXT programs, *lump-sum income* is excluded.

(4) In the OHP program:

(a) If the *lump-sum income* is \$30 or less in a quarter, it is excluded for:

(A) Each financial group member who receives the lump-sum income; and

(B) Each financial group member the lump-sum income is intended for.

(b) If the *lump-sum income* exceeds \$30 in a quarter, it is counted as unearned income in the month received.

(5) In the GA, GAM, OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB programs, lump-sum income is treated as follows:

(a) *Lump-sum income* not excluded is unearned income in the month of receipt, and any amount remaining in future months is a resource.

(b) The following *lump-sum income* is excluded:

(A) The first \$20 received in a month;

(B) The income the client turns over to the Department as reimbursement for previous assistance; and

(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained at OAR 461-155-0500 and following.

(6) For OSIP-EPD and OSIPM-EPD, lump-sum income is a resource.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS

20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### 461-140-0210

##### Asset Transfer; General Information and Timelines

(1) OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of an asset on a client.

(2) If an asset is transferred during the periods of time listed in section (4) or (5) of this rule and if the transfer is made in whole or in part for the purpose of establishing or maintaining eligibility for benefits:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, the need group is disqualified if a member of the financial group or the spouse of a client transferred the asset.

(b) In the FS, MAA, MAF, REF, REFM, SAC, and TANF programs, the filing group is disqualified if the asset was a resource and a member of the financial group transferred the resource.

(3) In all programs except ERDC and OHP, clients in financial groups whose members transfer a resource within the time periods listed in section (4) of this rule or an asset within the time periods listed in section (5) of this rule must report the transfer as soon as practicable and must provide information requested by the Department concerning the transfer.

(4) In the FS, MAA, MAF, REF, REFM, SAC, and TANF programs, a transfer of resource may be disqualifying if the transfer occurs:

(a) In the Food Stamp program, during the three months preceding the filing date or during a certification period.

(b) In the MAA, MAF, REF, REFM, SAC, and TANF programs, during the three years preceding the *date of request* (as defined in OAR 461-115-0030).

(5) In the GA, GAM, OSIP, OSIPM, and QMB programs, a transfer of an asset may be disqualifying if the transfer occurs:

(a) On or before June 30, 2006 and as described in one of the following paragraphs:

(A) On or after the date that is 60 months prior to the *date of request* — for assets that are transferred without compensation equal to or greater than fair market value from a revocable trust (see OAR 461-145-0540(8)(c)).

(B) On or after the date that is 60 months prior to the *date of request* — for assets that are transferred without compensation equal to or greater than fair market value to an irrevocable trust (see OAR 461-145-0540(9)(a)).

(C) On or after the date that is 60 months prior to the date of request — when there is a change in circumstances that makes assets in an irrevocable trust unavailable to the client (see OAR 461-145-0540(9)(d)).

(D) On or after the date that is 36 months prior to the *date of request* — for assets transferred without compensation equal to or greater than fair market value from an irrevocable trust (see OAR 461-145-0540(9)(b) and (c)).

(E) On or after the date that is 36 months prior to the *date of request* — for other asset transfers made without compensation equal to or greater than fair market value.

(b) On or after:

(A) July 1, 2006; and

(B) The date that is 60 months prior to the *date of request*.

(6) The duration of the period of disqualification or ineligibility is set out in OAR 461-140-0260 to 461-140-0300.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.117, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### 461-140-0220

##### Determining if a Transfer of an Asset is Disqualifying

A transfer of an asset is not *disqualifying* if the requirements of one of the following sections are met:

(1) Except as otherwise provided in OAR 461-140-0242, the transferred item was either:

(a) An excluded asset other than a home or real property; or

(b) Personal property such as jewelry or furniture.

(2) The asset was sold or traded:

(a) In all programs except the Food Stamp program, for compensation equal to or greater than fair market value.

(b) In the Food Stamp program, for compensation near, equal to or greater than fair market value.

(3) The asset was transferred between members of the same financial group, including members who are ineligible aliens or disqualified people.

(4) The transfer settled a legally enforceable claim against the asset or client.

(5) Except in the OSIP, OSIPM and QMB programs, a court ordered the transfer.

(6) In the OSIP, OSIPM and QMB programs, a court ordered the transfer and:

(a) The transfer occurs more than 36 months or 60 months before the *date of request* (as defined in OAR 461-115-0030), whichever is applicable under OAR 461-140-0210(5); or

(b) There is an institutionalized spouse, and — after performing the calculations required in OAR 461-160-0580(2) — the amount of resources allocated to a community spouse does not exceed the largest of the four amounts set forth in OAR 461-160-0580(2)(f).

(7) The client was a victim of fraud, misrepresentation, or coercion, and legal steps have been taken to recover the asset.

(8) In the OSIP, OSIPM and QMB programs, the asset is an annuity purchased on or before December 31, 2005, the client or the spouse of the client is the annuitant, and the entire amount of principal and earned interest is paid in equal installments during the actuarial life expectancy of the annuitant. For purposes of this section, the actuarial life expectancy is established by the life expectancy table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B).

(9) In the OSIP, OSIPM and QMB programs, for a client in a *standard living arrangement* (as defined in OAR 461-110-0110), the asset is an annuity purchased on or after January 1, 2006, and the client or the spouse of the client is the annuitant.

(10) In the OSIP, OSIPM and QMB programs, for a client in a *nonstandard living arrangement* (as defined in OAR 461-110-0110):

(a) The asset is an annuity purchased from January 1, 2006 through June 30, 2006, and the client or the spouse of the client is the annuitant.

(b) The asset is an annuity purchased on or after July 1, 2006, and the annuity meets the requirements of OAR 461-145-0022(11).

Stat. Auth.: ORS 411.060, 411.816 & OAR 418.100

Stats. Implemented: ORS 411.060, 411.816 & OAR 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 2-2002(Temp), f. & cert. ef. 2-26-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### 461-140-0242

##### Disqualifying Transfer of Assets Including Home; GA, GAM, OSIP, OSIPM, and QMB

(1) A transfer of an asset (including a home) by a client or the spouse of the client is a disqualifying transfer unless the requirements of at least one of the following subsections are met:

(a) The transfer was made exclusively for purposes other than establishing eligibility or maintaining benefits.

(b) The title to the asset was transferred to the person's spouse.

(c) The title to the asset was transferred to the person's child who is blind or has a disability under the criteria of the Social Security Administration.

(d) The title to the asset was transferred to another for the sole benefit of the spouse or a child who is blind or has a disability under the criteria of the Social Security Administration. This transfer must be arranged in such a way that no individual or entity except this



spouse or child can benefit from the asset transferred in any way, whether at the time of transfer or any time in the future. A direct transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the spouse or child who is blind or has a disability under the criteria of the Social Security Administration is not considered to be established for the benefit of one of those individuals. In order for a transfer or a trust to be considered for the sole benefit of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual based on the life expectancy of the individual.

(e) The transfer was made to a trust described in OAR 461-145-0540(10).

(f) The transfer is a transfer described in OAR 461-160-0580(2).

(g) The resource is transferred by the community spouse after the Department has determined the community spouse's resource allowance in accordance with OAR 461-160-0580 and the resource has not been attributed to the institutionalized spouse. Notwithstanding this subsection, a transfer of a resource by a community spouse who is receiving or applying for benefits remains subject to all rules regarding the transfer of an asset by a client.

(2) A transfer of a home by a client or the spouse of the client is a disqualifying transfer unless the title was transferred to the client's:

(a) Child under age 21;

(b) Sibling who has equity interest in the home and was residing in the home for at least one year immediately before the client's admission to long-term care; or

(c) Son or daughter who resided with the client for at least two years immediately prior to the client's admission to long-term care and provided care that permitted the client to reside at home rather than in an institution or long-term care facility. A son or daughter provides the care required by this subsection by doing at least five of the following for the client on a regular basis, without receiving payment from the Department:

(A) Prepares meals.

(B) Shops for food and clothing.

(C) Helps maintain the home.

(D) Assists with financial affairs.

(E) Runs errands.

(F) Provides transportation.

(G) Provides personal services.

(H) Arranges for medical appointments.

(I) Assists with medication.

(3) If a transfer described in subsection (1)(a) of this rule is made for less than fair market value, there is a rebuttable presumption that the asset was transferred for the purpose of establishing or maintaining eligibility.

(4) To rebut the presumption in section (3) of this rule, the client must present evidence other than his or her own statement and must provide to the Department the information it requests for the purpose of evaluating the purpose of the transfer. To meet the burden, it is sufficient for the client to show one of the following:

(a) The decision to make the transfer was not within the client's control;

(b) At the time of transfer, the client could not reasonably have anticipated applying for medical assistance;

(c) Unexpected loss of resources or income occurred between the time of transfer and the application for medical assistance;

(d) Because of other, similarly convincing, circumstances, it appears more likely than not that the transfer was not made, in whole or in part, for the purpose of establishing or maintaining eligibility for benefits.

(5) The fact that a recipient was already eligible for benefits is not sufficient to rebut the presumption in section (3) of this rule because the asset may not always be excluded and if the client had received full compensation for the asset, the compensation received would have been used to determine future eligibility.

Stat. Auth.: ORS 411.060 & 411.710

Stats. Implemented: ORS 411.060 & 411.710

Hist.: AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-140-0250**

##### **Determining The Uncompensated Value of a Transferred Asset**

(1) The *uncompensated value* of a disqualifying transfer of an asset is used in OAR 461-140-0260 to 461-140-0300 to calculate the ineligibility period of the financial group.

(2) To determine *uncompensated value*:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) The value of the compensation received for the asset is subtracted from the fair market value of the asset. This result is the *uncompensated value*, unless the financial group had countable resources of less than the resource limit at the time of the first transfer. If the financial group had countable resources of less than the resource limit at the time of the first transfer, the remainder is then added to other countable resources, and the amount by which the sum exceeds the resource limit in OAR 461-160-0015 is the *uncompensated value*.

(B) For an annuity, unless the client verifies a lesser amount, the fair market value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

(b) In all other programs, the value of the compensation received for the resource is subtracted from the fair market value of the resource. The remainder is added to the other countable resources at the time of the transfer. The amount by which the sum exceeds the resource limit is the uncompensated value.

(c) The compensation received for a transferred asset includes:

(A) Encumbrances assumed by the buyer; and

(B) Goods or services provided to the client, limited to their true value, if there was a prior agreement to exchange the asset for the goods or services.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.632, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-140-0260**

##### **Disqualification Due to a Resource Transfer; FS**

In the Food Stamp Program:

(1) A financial group disqualified due to the transfer of a resource (described in OAR 461-140-0210 or 461-140-0220) is disqualified from receiving benefits starting on the date of the denial of benefits or on the effective date of the closure. The disqualification applies to each individual in the financial group during the month that the disqualifying transfer of resources occurred.

(2) The duration of the disqualification is based on the amount of *uncompensated value* (see OAR 461-140-0250) as provided in the following chart: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-140-0270**

##### **Disqualification Due to a Resource Transfer; MAA, MAF, REF, REFM, SAC, TANF**

(1) Financial groups in the MAA, MAF, REF, REFM, SAC and TANF programs, in which a member is disqualified due to the transfer of a resource, are disqualified for the number of months equal to the *uncompensated value* (see OAR 461-140-0250) divided by the TANF payment standard (see OAR 461-155-0030).

(2) The disqualification period starts the date the Department imposes the disqualification by terminating benefits for the period calculated above or, in the case of an applicant, by denying benefits for the same period of time measured from the date of application.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.632 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-140-0296**

##### **Length of Disqualification Due to An Asset Transfer; GA, GAM, OSIP, OSIPM or QMB**

In the GA, GAM, OSIP, OSIPM, and QMB programs:

(1) A financial group containing a member disqualified due to the transfer of an asset is disqualified from receiving benefits. The length of a disqualification period resulting from the transfer is the number of months equal to the uncompensated value (see OAR 461-140-0250) for the transfer divided by the following dollar amount:

(a) If the *initial month* (defined in OAR 461-150-0010) is on or after October 1, 1993 and prior to October 1, 1998 — \$2,595.

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

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

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

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

(f) If the *initial month* is on or after October 1, 2006 — \$5,360.

(2) For transfers by a client and the spouse of a client that occurred before July 1, 2006:

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

(b) If the uncompensated value of the transfer is less than the applicable dollar amount identified in subsections (1)(a) to (1)(e) of this rule, there is no disqualification.

(c) If there are multiple transfers in amounts equal to or greater than the applicable dollar amount identified in subsections (1)(a) to (1)(e) of this rule, each disqualification period is calculated separately.

(d) The number of months resulting from the calculation in section (1) of this rule is rounded down to the next whole number.

(e) Except as provided in subsection (2)(f) of this rule, the first month of the disqualification is the month the asset was transferred.

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

(3) For transfers by a client and the spouse of a client that occurred on or after July 1, 2006:

(a) If there are multiple transfers by the client and the spouse of the client, including any transfer less than the applicable dollar amount identified in subsections (1)(a) to (1)(e) of this rule, the value of all transfers are added together before dividing by the applicable dollar amount identified in subsections (1)(a) to (1)(e) of this rule.

(b) The quotient resulting from the calculation in section (1) of this rule is not rounded. The whole number of the quotient is the number of full months the financial group is disqualified. The remaining decimal or fraction of the quotient is used to calculate an additional partial month disqualification. This remaining decimal or fraction is converted to an additional number of days by multiplying the decimal or fraction by the number of days in the month following the last full month of the disqualification period. If this calculation results in a fraction of a day, the fraction of a day is rounded down.

(c) For a client in a *standard living arrangement* (defined in OAR 461-110-0110), the first month of the disqualification is the month following the month of the first asset transfer.

(d) If a client is in a *nonstandard living arrangement* (defined in OAR 461-110-0110), the first month of the disqualification is the later of:

(A) The month following the month the asset was transferred.

(B) The *date of request* (as defined in OAR 461-115-0030) for medical benefits as long as the client submits an application, and would otherwise be eligible but for this disqualification period.

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

(5) For an annuity that is a disqualifying transfer under section (11) of OAR 461-145-0022, the disqualification period is calculated based on the *uncompensated value* as calculated under OAR 461-140-0250, unless the only requirement that is not met is that the annuity pays beyond the actuarial life expectancy of the annuitant. If the annuity pays beyond the actuarial life expectancy of the annuitant, the disqualification is calculated according to section (6) of this rule.

(6) A disqualification period is assessed for the value of an annuity beyond the actuarial life expectancy of the annuitant if subsections (a) and (b) of this section both apply:

(a) Either:

(A) A client or the spouse of a client purchase an annuity on or before December 31, 2005; or

(B) An OSIPM client who is in a *nonstandard living arrangement* purchases an annuity on or after July 1, 2006.

(b) If the annuity pays benefits beyond the actuarial life expectancy of the annuitant, as determined by the life expectancy table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B), a disqualification period is assessed for the value of the annuity beyond the actuarial life expectancy of the annuitant.

(7) A single transfer of an asset may cause a disqualification for both a medical assistance program under this rule and the SSI cash grant. The period of the disqualification is likely to be longer for SSI than for the medical assistance program, so a person may be eligible again for the medical assistance program while still disqualified from receiving SSI. The provisions of this rule are applied without regard to the related disqualification for SSI.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 26-2000, f. & cert. ef. 10-4-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-140-0300**

##### **Adjustments to the Disqualification for Asset Transfer**

(1) The disqualification imposed under OAR 461-140-0260 is not adjusted once applied in the Food Stamp program.

(2) In all other programs, the disqualification ends if the transfer that caused the disqualification is rescinded. The duration of the disqualification is recalculated if the terms of the transfer are modified.

(3) In the GA, GAM, OSIP, OSIPM and QMB programs, the Department may waive the disqualification if the disqualification would create an undue hardship on the client. For purposes of this section, the disqualification would create an undue hardship if the requirements of subsections (a) and (b) of this section are met:

(a) The client has no other means for meeting his or her needs. The client has the burden of proving that no other means exist by:

(A) Exploring and pursuing all reasonable means to recover the assets to the satisfaction of the Department, including legal remedies and consultation with an attorney; and

(B) Cooperating with the Department to take action to recover the assets.

(b) The disqualification would deprive the client of:

(A) Medical care such that the client's health or life would be endangered; or

(B) Food, clothing, shelter, or other necessities of life without which the health or life of the client would be endangered.

(4) As authorized by ORS 411.620, the Department retains the authority to bring a civil suit or action to set aside a transfer of assets for less than fair market value and may seek recovery of all costs associated with such an action.

(5) Notwithstanding the granting of an undue hardship waiver under section (3) of this rule, the Department is not precluded from recovering public assistance from any assets in which the client held an interest, or in which the client previously held an interest, at the time the undue hardship waiver was granted.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.632

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 26-2000, f. & cert. ef. 10-4-00; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

**461-140-0410 [Renumbered to 461-135-0708]**

**461-140-0420 [Renumbered to 461-145-0405]**

## **DIVISION 145**

### **TREATMENTS OF SPECIFIC ASSETS**

#### **461-145-0001**

##### **Adoption Assistance**

(1) Adoption assistance is 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.

(2) In all programs except ERDC and FS, adoption assistance is treated as follows:

(a) The portion of adoption assistance that is for the special needs of the child is excluded, including needs such as special diet, special clothing, counseling, and medical costs not covered under Title XIX.

(b) The rest of the adoption assistance is counted as unearned income.

(3) In the ERDC program, adoption assistance is excluded.

(4) In the Food Stamp program, adoption assistance is counted as unearned income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.122

Hist.: AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 24-2001, f. & cert. ef. 11-1-01; SSP 16-2004(Temp), f. & cert. ef. 7-1-04 thru 9-30-04; SSP 22-2004, f. & cert. ef. 10-1-04

#### **461-145-0005**

##### **Agent Orange Disability Benefits**

(1) For all programs except GA and GAM:

(a) Exclude benefits from the Agent Orange Settlement Fund made by Aetna Life and Casualty for settling Agent Orange disability claims;

(b) Count payments made under the **Agent Orange Act of 1991**, and issued by the U.S. Treasury through the Department of Veterans' Affairs, as unearned income.

(2) For GA and GAM, count all Agent Orange payments as lump-sum income.

Stat. Auth.: ORS 411.060, 411.070, 412, 413, 414 & 418

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92

#### **461-145-0008**

##### **Alaska Permanent Fund Dividend**

(1) The Alaska Permanent Fund Dividend is issued annually to eligible Alaskan residents who apply for the payment. Out-of-state residents, except military personnel and students who claim Alaska as their residence, are not eligible unless they resided in Alaska and filed for the payment before leaving the state.

(2) Count Alaska Permanent Fund Dividend payments as lump-sum income.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92

#### **461-145-0010**

##### **Animals**

(1) Exclude pets and animals raised as food for the financial group.

(2) Treat income-producing animals according to the policy on income-producing property.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

#### **461-145-0020**

##### **Annuities; Not OSIPM**

(1) For the purposes of this rule:

(a) An annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380)

(b) The definition of "child" in OAR 461-110-0110 does not apply.

(c) "Child" means a biological or adoptive child who is:

(A) Under age 21; or

(B) Any age and meets the Social Security Administration criteria for blindness or disability.

(d) "Commercial annuities" mean contracts or agreements (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) An annuity is counted as a resource if:

(a) The annuity does not make regular payments for a lifetime or specified number of years; or

(b) The annuity does not qualify for exclusion as a resource under subsection (4)(c) of this rule.

(3) If an annuity is a countable resource under this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular payments already received, minus any early withdrawals, and minus any surrender fees.

(4) *Commercial annuities* and payments from such annuities are counted as follows:

(a) In all programs except OSIP, OSIPM, and QMB, annuity payments are counted as unearned income.

(b) In the OSIP and QMB programs:

(A) If a client or the spouse of a client purchases or transfers an annuity prior to January 1, 2006, the transaction may be subject to the rules on asset transfers at OAR 461-140-0220 and following. For an annuity that is not disqualifying but meets the criteria of OAR 461-140-0220, the annuity payments are counted as unearned income.

(B) If a client or the spouse of a client purchases an annuity on or after January 1, 2006, the annuity is counted as a resource unless it is excluded under paragraph (C) of this subsection.

(C) An annuity described in paragraph (B) of this subsection is excluded as a resource if the criteria in subparagraphs (i), (ii), and (iii) of this paragraph are met, except that if an unmarried client is the annuitant, the requirements of subparagraph (iv) of this paragraph must also be met and if a spouse of a client is the annuitant, the requirements of subparagraph (v) of this paragraph must also be met.

(i) The annuity is irrevocable.

(ii) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this subparagraph, the actuarial life expectancy is established by the life expectancy table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B).

(iii) The annuity is issued by a business that is licensed and approved to issue *commercial annuities* by the state in which the annuity is purchased.

(iv) If an unmarried client is the annuitant, the annuity must specify that upon the death of the client, the first remainder beneficiary is either of the following:

(I) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(II) The child of the client, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the client, in the event that the child does not survive the client.

(v) If a spouse of a client is the annuitant, the annuity must specify that, upon the death of the spouse of the client, the first remainder beneficiaries are either of the following:

(I) The client, in the event that the client survives the spouse; and the Department, in the event that the client does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(II) A child of the spouse; and the client in the event that this child does not survive the spouse.

(D) If an annuity is excluded under paragraph (C) of this subsection, annuity payments are counted as unearned income.

(c) For OSIPM, see OAR 461-145-0022.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-145-0022**

##### **Annuities; OSIPM**

In the OSIPM program:

(1) For the purposes of this rule:

(a) An annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380.)



(b) The definition of “child” in OAR 461-110-0110 does not apply.

(c) “Child” means a biological or adoptive child who is:

(A) Under age 21; or

(B) Any age and meets the Social Security Administration criteria for blindness or disability.

(d) “Commercial annuity” means a contract or agreement (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) An annuity that does not make regular payments for a lifetime or specified number of years is a resource.

(3) When a client applies for medical benefits, both initially and at periodic redetermination (see OAR 461-115-0050 and 461-115-0430), the client must report any annuity owned by the client or a spouse of the client.

(4) By signing the application for assistance, a client and the spouse of a client agree that the Department, by virtue of providing medical assistance, becomes a remainder beneficiary as described in sections (8) and (10) of this rule, under any *commercial annuity* purchased on or after February 8, 2006, unless the annuity is included in the community spouse’s resource allowance under OAR 461-160-0580(2)(c).

(5) If the Department is notified about a *commercial annuity*, the Department will notify the issuer of the annuity about the right of the Department as a preferred remainder beneficiary, as described in sections (8) and (10) of this rule, in the amount of medical assistance provided to the client.

(6) If a client or the spouse of a client purchases or transfers a *commercial annuity* prior to January 1, 2006, the transaction may be subject to the rules on asset transfers at OAR 461-140-0220 and following. For an annuity that is not disqualifying but meets the requirements in OAR 461-140-0220, the annuity payments are counted as unearned income.

(7) Sections 8 and 9 of this rule apply to a *commercial annuity* if:

(a) The client is in a nonstandard living arrangement (defined in OAR 461-110-0110), and the client or the spouse of the client purchases an annuity from January 1, 2006 through June 30, 2006; or

(b) The client is in a standard living arrangement (defined in OAR 461-110-0110), and the client or the spouse of a client purchase an annuity on or after January 1, 2006.

(8) A *commercial annuity* covered by section (7) of this rule is counted as a resource unless the annuity is excluded by meeting the following requirements:

(a) If an unmarried client is an annuitant, the annuity must meet the requirements of subsection (8)(c) of this rule, and the annuity must specify that upon the death of the client, the first remainder beneficiary is either of the following:

(A) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(B) The child of the client, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the client, in the event that the child does not survive the client.

(b) If a spouse of a client is the annuitant, the annuity must meet the requirements of subsection (8)(c) of this rule, and the annuity must specify that, upon the death of the spouse of the client, the first remainder beneficiaries are either of the following:

(A) The client, in the event that the client survives the spouse; and the Department, in the event that the client does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(B) A child of the spouse; and the client in the event that this child does not survive the spouse.

(c) An annuity covered by section (7) of this rule may not be excluded unless the annuity meets all of the following requirements:

(A) The annuity is irrevocable.

(B) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this paragraph, the actuarial life expectancy is established by the life expectancy table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B).

(C) The annuity is issued by a business that is licensed and approved to issue a commercial annuity by the state in which the annuity is purchased.

(9) If an annuity is excluded as a resource under section (8) of this rule, the annuity payments are counted as unearned income. If an annuity is a countable resource under section (8) of this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

(10) This section lists the requirements for a commercial annuity purchased by the client or the spouse of the client on or after July 1, 2006, when a client is in a nonstandard living arrangement, and the annuity names the client or the community spouse as the annuitant. Annuities that meet all of the requirements of this section are counted as unearned income. The treatment of annuities that do not meet all requirements of this section is covered in sections (11) and (12) of this rule.

(a) The annuity must comply with one of the following paragraphs:

(A) The first remainder beneficiary is the spouse of the client, and in the event that the spouse transfers any of the remainder of the annuity for less than fair market value (as defined at OAR 461-145-0250(2)(a)(B)), the Department is the second remainder beneficiary for up to the total amount of medical benefits paid on behalf of the client.

(B) The first remainder beneficiary is the annuitant’s child, and in the event that the child or a representative on behalf of the child transfers any of the remainder of the annuity for less than fair market value, the Department is the second remainder beneficiary for up to the total amount of medical benefits paid on behalf of the client.

(C) The first remainder beneficiary is the Department for up to the total amount of medical benefits paid on behalf of the client.

(b) The annuity must be irrevocable and nonassignable.

(c) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this subsection, the actuarial life expectancy is established by the life expectancy table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B).

(d) The annuity is issued by a business that is licensed and approved to issue a commercial annuity by the state in which the annuity is purchased.

(11) If the client is the annuitant and a commercial annuity does not meet all of the requirements of section (10) of this rule, or the spouse of the client is the annuitant and a commercial annuity does not meet the requirements of subsection (10)(a) of this rule, there is a disqualifying transfer of assets under OAR 461-140-0210 and following. See OAR 461-140-0296(5) and (6) for calculation of the disqualification period.

(12) Regardless of whether a commercial annuity is a disqualifying transfer of assets, if the annuity does not meet all of the requirements of section (10) of this rule, the annuity is counted as a resource with cash value equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-145-0025**

##### ***Approved Accounts; OSIP-EPD and OSIPM-EPD***

(1) All money in an *approved account* is excluded as a resource during the determination of eligibility.

(2) Only money from the client’s own earned income, or money contributed from an employer based on earnings, may be deposited into an approved account.

(3) Retirement-related approved accounts must be set up in a financial institution and must comply with IRS regulations.

(4) An asset purchased with money from an *approved account* is excluded if the purpose of the account is to save for disability-related expenses (see OAR 461-110-0115).

(5) If money from the *approved account* is used for a purpose not consistent with the definition of *approved account* in OAR 461-110-0115, the client will be prohibited from utilizing an *approved account*

for the next 12 months for the purposes of the determination of eligibility.

Stat. Auth.: ORS 411.060, 411.070 & 414.042  
Stats. Implemented: ORS 411.060, 411.070 & 414.042  
Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; SSP 17-2003, f. & cert. ef. 7-1-03

**461-145-0030**

**Bank Account**

(1) Money in a bank account belonging to one or more members of the financial group is generally counted as a resource in accordance with OAR 461-140-0020.

(2) For OSIP-IC and OSIPM-IC, money held in a designated bank account is an excluded asset if:

(a) The account is designated to receive program benefits by direct deposit through electronic funds transfer; and

(b) The benefit funds are not commingled with other assets of the client.

Stat. Auth.: ORS 183, 411, 414, 416 & 418  
Stats. Implemented: ORS 411.700 & 411.816  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01

**461-145-0040**

**Burial Arrangements and Burial Fund**

(1) The following definitions apply to this rule:

(a) A *burial arrangement* is an agreement with an entity — such as a funeral agreement (which means an arrangement made with a licensed funeral provider), burial insurance, or a burial trust designating a funeral director as the beneficiary — that makes allowance for burial costs. A burial arrangement does not include a burial space, which is covered in OAR 461-145-0050, or a burial fund.

(b) A *burial fund* is an identifiable fund set aside for a client's burial costs. A burial fund does not include a burial space, which is covered in OAR 461-145-0050, or a burial arrangement.

(2) A burial arrangement is treated as follows:

(a) In the ERDC, FS, MAA, MAF, OHP, REF, REFM, SAC and TANF programs, the equity value (defined in OAR 461-001-0000) of one prepaid burial arrangement for each member of the filing group is excluded.

(b) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), up to \$1,000 in combined equity value of each burial arrangement with a licensed funeral director (plus accrued interest) and life insurance policies are excluded. The amount of combined cash and equity value of all life insurance and burial arrangements that is over \$1,000 is counted as a resource.

(c) In all programs not listed in subsection (a) of this section and for OSIP and OSIPM clients not covered by subsection (b) of this section, a burial arrangement is treated in the manner as the program treats a burial fund under section (3) of this rule.

(3) A burial fund is treated as follows:

(A) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) A burial fund may be established only from financial means such as cash, burial contracts, bank accounts, stocks, bonds or life insurance policies.

(B) A burial fund is counted as a resource if it is commingled with assets unrelated to a burial. The amount set aside for burial must be in a separate account to be excluded from resource consideration.

(C) A burial fund may be established if the countable resources of a client exceed allowable limits. A burial fund is excluded from the resource calculation to the extent allowed in paragraph (D) of this subsection.

(D) The following calculation determines the exclusion for a burial fund:

(i) Up to \$1,500 of a burial fund may be excluded from resources for each of the following:

(I) The client.

(II) The client's spouse.

(ii) The amount in subparagraph (i) of this paragraph is reduced by the total of the following amounts:

(I) The face value of life insurance policies owned by the client that have already been excluded from resources.

(II) The amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs.

(E) All interest earned on an excluded burial fund or increases in the value of an excluded burial arrangement if left in the fund is excluded from income.

(b) In all programs not listed in subsection (a) of this section, a burial fund is counted as a resource.

(4) There is no overpayment for the time period during which the burial arrangement or burial fund existed if a client ---

(a) Cancels an excluded burial arrangement; or

(b) Uses an excluded burial fund for any purpose other than burial costs.

(5) If an asset originally used as a burial arrangement or burial fund is converted to other uses, the asset is treated under the other applicable rules.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 418.100  
Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.816, 418.100  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-145-0050**

**Burial Space and Merchandise**

(1) Burial spaces include conventional grave sites, crypts, mausoleums, urns, and other repositories that are traditionally used for the remains of deceased persons. They also include headstones and the opening and closing of the grave.

(2) Burial merchandise includes, but is not limited to, caskets, liners, burial vaults, markers, and foundations.

(3) In the ERDC, FS, MAA, MAF, OHP, SAC, REF and TANF programs, one burial space is excluded for each financial group member. Burial merchandise is excluded if owned by the client and designated for themselves, their spouse, minor and adult children, siblings, parents and the spouse of any of these people.

(4) In the GA, GAM, OSIP, OSIPM, and QMB programs, a burial space and burial merchandise are excluded if owned by the client and designated for themselves, their spouse, minor and adult children, siblings, parents and the spouse of any of these people.

Stat. Auth.: ORS 411.060 & 411.816  
Stats. Implemented: ORS 411.060 & 411.816  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

**461-145-0055**

**Capital Assets**

(1) Capital assets are property that contributes toward earning self-employment income, including self-employment income from a microenterprise, either directly or indirectly. Capital assets generally have a useful life of over one year and a combined value of \$100 or more.

(2) In all programs except FS, MAA, and TANF, the equity value of a capital asset is treated according to the rules for the asset.

(3) In the FS program, capital assets used in a business are excluded as follows:

(a) Non-farm assets are excluded as long as the financial group is actively engaged in self-employment activities.

(b) Farm assets are excluded for one year from the date the person quit self-employment as a farmer.

(4) In the MAA and TANF programs:

(a) For a self-employed client participating in the microenterprise component of the JOBS program, the value of capital assets is excluded.

(b) For all other clients, the value of a capital asset is counted according to the rules in this division of rules.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 23-2003, f. & cert. ef. 10-1-03

**461-145-0060**

**Cash**

(1) Count cash (including cash on hand, cash in a safety deposit box, and cash held by others) as a resource.

(2) Count as a resource foreign currency that can be converted to U.S. currency. The value of foreign currency is its value in U.S. currency, determined by the current exchange rate.

Stat. Auth.: ORS 183, 411.060, 411.070, 411.116, 411.120, 411.816, 414.042, 416 & 418  
Stats. Implemented: ORS 411.700 & 411.816  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91

#### **461-145-0070**

##### **Cash Contribution**

(1) Cash *contributions* are monies given voluntarily to a financial group member by someone who is not in the group.

(2) For FS, *cash contributions* are counted as unearned income, except that cash contributions from charitable sources are excluded if all the following are true:

(a) The contribution is from a private, nonprofit charitable organization.

(b) The contribution is based on need.

(c) The contribution does not exceed \$300 per quarter.

(3) For OHP, charitable contributions raised by a community to assist with a client's medical expenses are not unearned income; they are a resource not counted against the client's resource limit provided in OAR 461-160-0015.

(4) For all programs other than the Food Stamp program, and except as provided in section (3) of this rule, cash contributions are counted as unearned income.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.700 & 411.816  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 11-1999, f. & cert. ef. 10-1-99; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-145-0080**

##### **Child Support**

(1) Child support paid by a non-custodial parent for a dependent child or minor parent in the financial group is considered income of the dependent child or minor parent, whether the support is paid voluntarily or in accordance with an order to pay child support.

(2) In the MAA, MAF, REFM, and TANF programs:

(a) In determining eligibility, except for clients working under a JOBS Plus agreement, all child support received by the Division of Child Support is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(b) For clients working under a JOBS Plus agreement:

(A) Child support is excluded in determining countable income.

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) All child support paid directly to the client is considered countable unearned income in the calculation of the wage supplement.

(c) All other child support payments paid directly to the financial group or to a third party on behalf of a financial group member is considered countable unearned income.

(3) For ERDC, child support is considered countable unearned income if it is received by the financial group or is countable under OAR 461-145-0280. Otherwise it is excluded.

(4) For the FS program, child support is treated as follows:

(a) Child support payments the group receives that must be assigned to the Department to maintain TANF eligibility are excluded, even if the group fails to turn the payments over to the Department.

(b) Child support payments received by filing groups with at least one member working under a JOBS Plus agreement are excluded, except it is considered countable unearned income in the calculation of the wage supplement.

(c) All other child support is considered countable unearned income.

(d) Payments made by a non-custodial parent to a third party for the benefit of the financial group are treated in accordance with OAR 461-145-0280.

(5) In the OHP programs, child support paid directly to the financial group or paid to a third party for the benefit of the financial group is considered countable unearned income.

(6) In the OSIP, OSIPM, and QMB programs, all child support paid to the financial group is considered countable unearned income. Child support paid by the financial group is not deductible from income.

Stat. Auth.: ORS 411.060, 411.816 & 418.100  
Stats. Implemented: ORS 411.060, 411.816 & 418.100  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

#### **461-145-0088**

##### **Corporations and Business Entities; Income and Resources**

(1) The value of stocks or other ownership interest in a corporation is a resource.

(2) Assets of the corporation essential to the employment of a client are excluded. For instance, if the corporation owns equipment used by the client to produce income for the corporation, the equipment is an excluded resource. If a client must own stock in the corporation as a condition of working for the corporation, the stock is an excluded resource.

(3) Except as provided in OAR 461-140-0040(2) and section (4) of this rule, income of a corporation is not income of a client with an ownership interest in the corporation until the income is distributed to the client.

(4) In the FS and OHP programs, an expenditure by a business entity or corporation that benefits a principal — such as a car or housing payment — is considered available when the expenditure is made. For purposes of this rule, a principal is a person with significant authority in a business entity or corporation, including a sole proprietor, a self-employed person (see OAR 461-145-0910), a partner in a partnership, a member or manager of a limited liability company, and an officer or principal stockholder of a closely held corporation.

(5) In the FS program:

(a) Income from business entities and corporations is treated as follows:

(A) If a client is actively working in a corporation, the income is treated as earned income.

(B) If a client is actively working in an unincorporated business entity, refer to OAR 461-145-0910 to determine if the income is treated as earned or as self-employment.

(C) If a client is no longer actively working to produce the income, the income is treated as unearned.

(b) Income from a limited liability company is treated as follows:

(A) If a client is a member or a manager member, the income is treated as self-employment income.

(B) If a client is a manager but not a member, the income is treated as earned income.

Stat. Auth.: ORS 411.060, 411.816, 418.100  
Stats. Implemented: ORS 411.060, 411.816, 418.100  
Hist.: AFS 11-1999, f. & cert. ef. 10-1-99; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-145-0090**

##### **Disability Benefit**

(1) This rule covers public and private disability benefits, except the following:

(a) Agent Orange disability benefits (covered in OAR 461-145-0005).

(b) Radiation Exposure Compensation Act payments (covered in OAR 461-145-0415).

(c) Social security based on disability or SSI (covered in OAR 461-145-0490 and 461-145-0510).

(d) Veterans benefits (covered in OAR 461-145-0580).

(e) Workers compensation (covered in OAR 461-145-0590).

(2) For each disability payment covered under this rule:

(a) If received monthly or more frequently:

(A) In the ERDC, FS, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, income from employer-sponsored disability insurance is counted as earned income (see OAR 461-145-0130) if paid to a client who is still employed while recuperating from an illness or injury.

(B) Except as provided in paragraph (A) of this subsection, the payment is counted as unearned income.

(b) All payments other than those in subsection (a) of this section are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

Stat. Auth.: ORS 183, 411, 414, 416 & 418



Stats. Implemented: ORS 411.700 & 411.816, ACF-AT-94-12  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-145-0100****Disaster Relief**

- (1) Exclude government payments designated and used for restoring a home damaged in a disaster.
- (2) Exclude money received for emergency replacement of disaster losses.
- (3) Exclude Federal Emergency Disaster Management Agency (FEMA) payments made under the **Disaster Relief Act of 1974**, and comparable payments from states, local governments, and disaster assistance organizations.
- (4) Exclude disaster assistance payments made to farmers under Public Law 100-387.

Stat. Auth.: ORS 183, 411.060, 411.070, 411.105, 411.111, 411.116, 411.120, 411.300, 411.632, 411.700, 411.710, 411.816, 412.025, 412.520, 413.009, 414.032, 414.042, 416 & 418

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91

**461-145-0105****Disqualifying Income; FS**

(1) "TANF disqualifying income" is the portion of a TANF grant lost because of a reason listed in section (3) of this rule. It is determined by finding the difference between the TANF cash payment prior to imposition of the reduction and the payment due after the reduction described in section (3) is imposed. The incentive payment authorized by OAR 461-135-0210 is not included in the calculation.

(2) Eligibility for and the level of food stamp benefits are determined as if the client were receiving the TANF disqualifying income until:

- (a) The TANF penalty is removed;
- (b) The household becomes ineligible for TANF for a reason not included in section (3) of this rule; or
- (c) The TANF cash or MAA case has been closed for at least 12 months.
- (3) A reduction to a TANF cash payment for any of the following reasons results in TANF disqualifying income:
  - (a) A failure to pursue assets as required by OAR 461-120-0330;
  - (b) A failure to help the Department obtain child support from a non-custodial parent as required by OAR 461-120-0340;
  - (c) A failure to obtain medical coverage as required by OAR 461-120-0345;
  - (d) A failure to comply with requirements of the employment programs (see OAR 461-130-0330);
  - (e) A failure to seek treatment for substance abuse or mental health evaluation and treatment under OAR 461-135-0085;
  - (f) An IPV penalty imposed under OAR 461-195-0621;
  - (g) Repayment of a client error overpayment in the TANF program;
  - (h) Repayment of an overpayment in the TANF program that results from an intentional program violation.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: SSP 17-2004, f. & cert. ef. 7-1-04

**461-145-0108****Dividends, Interest and Royalties**

(1) Dividends are counted as unearned income, unless the dividends are from a trust described in OAR 461-145-0540(10), in which case the dividends are excluded.

(2) Interest income is counted as unearned income.

(3) Royalties are counted as unearned income, except that royalties are counted as earned income if the client is actively engaged in the activity from which the royalties are accrued.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

**461-145-0110****Domestic Volunteer Services Act (VISTA, RSVP, SCORE, ACE)**

For all Department programs covered by chapter 461 of the Oregon Administrative Rules, with respect to federal programs under the Domestic Volunteers Service Act of 1973 (Pub. L. No. 93-113):

(1) Payments under Title I — VISTA, University Year of Action, and Urban Crime Prevention — are treated as follows:

(a) For MAA, MAF, OHP, SAC, and TANF, these payments are excluded, except that these payments are counted as earned income if the total value of all compensation is equal to or greater than compensation at the state minimum wage.

(b) For GA and GAM, payments are counted as unearned income.

(c) For all other programs:

(A) The payments are excluded if the client is receiving Department program benefits when they join the Title I program. The exclusion of payments continues until the client has a break in receiving Department benefits of more than one month.

(B) The payments are counted as earned income for clients who joined the Title I program before applying for Department program benefits.

(2) Payments are excluded for programs under Title II (National Older Americans Volunteer Programs), which include:

(a) Retired Senior Volunteer Program (RSVP) Title II, Section 201.

(b) Foster Grandparent Program Title II, Section 211.

(c) Older American Community programs.

(d) Senior Companion Program.

(3) Payments are excluded for programs under Title III (National Volunteer Programs to Assist Small Businesses and Promote Volunteer Service by Persons with Business Experience), which include:

(a) Service Corps of Retired Executives (SCORE) Title III, Section 302.

(b) Active Corps of Executives (ACE) Title III, Section 302.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

**461-145-0120****Earned Income; Defined**

Earned income is income received in exchange for a person's physical or mental labor. Earned income includes all of the following:

(1) Compensation for services performed, including wages, salaries, commissions, tips, sick leave, vacation pay, draws, or the sale of one's blood or plasma.

(2) Income from on-the-job-training, paid job experience, JOBS Plus work experience, or Welfare-to-Work work experience.

(3) In-kind income, when a client is an employee of the person providing the in-kind income and the income is in exchange for work performed by the client.

(4) For self-employment, gross receipts and sales, including mileage reimbursements, before costs.

(5) Flexible (cafeteria plan) benefits that an employee takes as cash.

(6) Income from work-study.

(7) Income from profit sharing that the client receives monthly or periodically.

(8) In the OHP program, an expenditure by a business entity that substantially benefits a principal (see OAR 461-145-0088).

Stat. Auth.: ORS 409.050, 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-145-0130****Earned Income; Treatment**

(1) Generally, earned income is countable in determining eligibility for programs, subject to the following specific provisions.

(2) A flexible benefit used to pay for child care or health insurance costs is excluded if it is not reimbursed by the Department or allowed as an earned income deduction. JOBS Plus income is earned income and is treated as follows:

(a) In the TANF program:

(A) JOBS Plus income earned by an NCP-PLS client is counted in determining initial TANF eligibility.

(B) When determining the need for a TANF supplement for a TANF-PLS client, the income is treated as follows:

(i) It is excluded in determining the countable income limit and in calculating the benefit equivalency standards.

(ii) It is counted in calculating the wage supplement.

(C) JOBS Plus wages received after the client's last month of work under a JOBS Plus agreement are counted.

(b) In the FS program:

(A) JOBS Plus income earned by an NCP-PLS client:

(i) Is counted in determining initial FS eligibility.

(ii) Is excluded in determining ongoing eligibility.

(B) JOBS Plus wages received after the client's last month of work under an NCP-PLS or TANF-PLS JOBS Plus agreement are counted.

(c) For programs other than FS and TANF, NCP-PLS and TANF-PLS income is counted.

(d) For all programs, client wages received under the Oregon Employment Department UI JOBS Plus or the Tribal TANF JOBS programs are counted as earned income.

(3) In the MAA, MAF, SAC and TANF programs:

(a) Earned income of the following children is excluded:

(A) Dependent children under the age of 19 years, and minor parents under the age of 18 years, who are full-time students in grade 12 or below (or the equivalent level of vocational training, in GED courses), or in home schooling approved by the local school district.

(B) Dependent children under the age of 18 years who are attending school part-time (as defined by the institution) and are not employed full-time.

(C) Dependent children too young to be in school.

(b) Income remaining after the month of receipt is a resource.

(4) In the ERDC and OHP programs, earned income of a child is excluded.

(5) In the FS program, the following types of income are excluded:

(a) The earned income of an individual under the age of 18 years who is under the parental control of another member of the household and is:

(A) Attending elementary or high school;

(B) Attending GED classes recognized by the local school district;

(C) Completing home-school elementary or high school classes recognized by the local school district; or

(D) Too young to attend elementary school.

(b) In-kind earned income.

(c) Deductions from base pay for future educational costs under Pub. L. No. 99-576, 100 Stat. 3248 (1986), for clients on active military duty.

(6) In the MAA, MAF, OHP, SAC and TANF programs, earned in-kind income is excluded (see OAR 461-145-0280).

(7) Welfare-to-Work work experience income is treated as follows:

(a) In the MAA, MAF and TANF programs, the income is earned income, and the first \$260 is excluded each month.

(b) In the FS and OHP programs, the income is earned income.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100 & 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1990, f. & cert. ef. 3-2-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 9-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

#### **461-145-0140**

##### **Earned Income Credit (EIC)**

(1) There are federal and state earned income tax credit (EITC) programs for low-income families. An EITC may be received in one of two ways:

(a) As an advance in the employee's paycheck.

(b) As one annual payment received at the time of the normal income tax returns.

(2) In all programs except FS, GA, GAM, OSIP, OSIPM and QMB, all EITC payments are excluded.

(3) In the FS program, the EITC is treated as follows:

(a) The credit is excluded from income in the month it is received. A lump-sum credit is an excluded resource in the month following receipt.

(b) The advance credit is an excluded resource for up to 12 months from receipt if the credit is received while the client is receiving food stamp benefits and the client continuously receives the benefits.

(4) In the GA, GAM, OSIP, OSIPM and QMB programs, the credit is counted as follows:

(a) An advance payment is considered earned income.

(b) An annual payment is considered a resource.

Stat. Auth.: ORS 411.060, 411.700 & 411.816

Stats. Implemented: ORS 411.060, 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2002, f. & cert. ef. 7-1-02

#### **461-145-0150**

##### **Educational Income**

(1) Educational income is income designated specifically for educational expenses. To be considered educational income, the income must be received by one of the following:

(a) A student at a recognized institution of post-secondary education. Post-secondary education is education offered primarily to individuals 18 years of age or older. Admission may — but does not necessarily — require a high school diploma or equivalent.

(b) A student at a school for individuals with disabilities.

(c) A student in a vocational education program.

(d) A student in a program that provides for completion of requirements for a secondary school diploma or the equivalent.

(2) To determine the amount of educational income to exclude, education expenses listed in the financial aid award letter are used unless one of the following is true:

(a) The student provides verification of amounts different from those listed in the award letter, in which case the verified amounts from the student are used.

(b) The student receives child care benefits — ERDC or other child care subsidies. The amount the student actually pays for child care (including the ERDC copay) is excluded as educational income instead of the amount shown in the award letter.

(c) The student states that actual transportation costs exceed the amount allowed for the expense in the award letter. In that situation, the number of miles to and from school is multiplied by \$0.20. The product or the amount from the award letter, whichever is greater, is excluded.

(3) The following items are excluded:

(a) Educational income authorized by the Carl D. Perkins Vocational and Applied Technology Education Act or Title IV of the Higher Education Act or made available by the Bureau of Indian Affairs (BIA).

(b) All income from educational loans.

(4) The cost of the following items from remaining educational funds (including non-Title IV work study) is excluded:

(a) Tuition, mandatory fees, books and supplies, transportation, required rental or purchase of equipment or materials charged to students enrolled in a specific curriculum, other miscellaneous personal expenses (except room and board), and loan originator fees and insurance premiums required to obtain an educational loan.

(b) In all programs except ERDC — dependent care.

(5) In all programs covered by chapter 461 of the Oregon Administrative Rules, after allowing exclusions, the remaining income is treated as follows:

(a) Income received through work study (including work study provided through a VA program or other educational program), fellowships and teaching-assistant positions not excluded by section (3) or (4) of this rule is earned income.

(b) Educational income not covered by subsection (a) of this section is treated as follows:

(A) In all programs except OHP, educational income is prorated over the period it is intended to cover. If the client has already received the income, the prorated amount is counted monthly beginning with the first month of the period. If the client has not received the income at the time the determination is made, the prorated income is counted starting in the month the client expects to receive it.

(B) In the OHP program, educational income is counted in the month received.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0170**

##### **Energy Assistance Payments**

(1) In the Food Stamp program, energy assistance payments issued through the TANF program are considered unearned income.

(2) All energy assistance payments or allowances made under any federal, state, or local law not covered under section (1) — including one-time payments for weatherization, emergency repair, or replacement of heating or cooling devices — are excluded.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0175**

##### **Family Abuse Prevention Act (FAPA) Payments**

(1) Family Abuse Prevention Act (FAPA) payments are court-ordered payments to victims of domestic violence made under authority of ORS 107.718(1)(h). A payment is considered available when actually received by the victim of abuse.

(2) FAPA payments are counted as follows:

(a) For all programs except Food Stamps, the first \$2,500 is excluded. The excess above \$2,500 is counted as a resource.

(b) For the Food Stamp program, all payments are counted as unearned income.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02

#### **461-145-0180**

##### **Family Support Payments**

Family Support program payments are social benefits distributed by state or local agencies to families caring for individuals with extraordinary care needs who live at home. Needs are typically caused by disability or advanced age. Payments are made to or on behalf of family members. These payments are treated as unearned income except as follows:

(1) In the MAA, MAF, SAC and TANF programs, shelter payments and payments for services or needs not covered by TANF are excluded.

(2) In the ERDC program, the payments are excluded unless they duplicate day care payments provided through a child care program operated by the Department.

(3) In the FS program, payments provided specifically as reimbursement for an identified expense are covered by OAR 461-145-0440. Lump-sum payments are covered in OAR 461-140-0120. All other payments are unearned income.

(4) In the OHP, OSIP, OSIPM, and QMB programs, the payments are excluded.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-145-0190**

##### **Food Programs Other Than the Food Stamp Program**

(1) In all programs, the following benefits are excluded:

(a) Benefits from the Special Supplemental Food Program for Women, Infants and Children (WIC), including demonstration projects (coupons exchanged for food at farmers markets) under the Hunger Prevention Act of 1988 (Pub. L. 100-435, section 501).

(b) The value of supplemental food assistance provided to children under the Child Nutrition Act of 1966 (Pub. L. 89-642) and the National School Lunch Act (Pub. L. 79-396, section 12(e), and Pub. L. 94-105).

(c) Nutrition Assistance program benefits received in Puerto Rico, American Samoa or the Commonwealth of the Northern Mariana Islands.

(d) The value of supplemental food assistance provided for seniors in the Senior Farm Direct Nutrition Program (see OAR 461-135-1175) funded by grants from the United States Department of Agriculture.

(2) In all programs except FS, benefits from the tribal Food Distribution program are excluded. In the FS program, these benefits are subject to OAR 461-165-0030.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0200**

##### **Foster Care Payments and Guardianship Assistance Benefits**

Payments for foster care and benefits from the Guardianship Assistance program are treated as follows:

(1) In all programs except ERDC and FS:

(a) If the provider of foster care or the guardian is in the financial group, the payment or benefit is treated as earned income except that it is excluded in the following situations:

(A) The amount the placement agency identifies as being for room and board, clothing, or personal incidental needs (including recreational expenses) of the foster care client is excluded.

(B) The amount designated for special need items of the foster care client is excluded.

(b) If the provider of foster care or the guardian is not in the financial group, the foster care payments or benefits are excluded.

(2) In the ERDC and FS programs, the payments or benefits are counted as unearned income only if the person in foster care or under guardianship is in the filing group. The payments or benefits are excluded if the person in foster care or under guardianship is in the household group but not in the filing group.

(3) In the FS program, the foster care payment or guardianship assistance benefit is counted as self-employment income if the provider of foster care and the person receiving the care or the guardian and the person under guardianship are not in the same household.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 1-1993, f. & cert. ef. 2-1-93; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-145-0210**

##### **Gifts and Winnings**

(1) For the purposes of this OAR:

(a) Gifts are items given to or received by an individual on or for a special occasion, such as Christmas, Hanukkah, birthday, graduation, wedding, etc. They are not given or received on a regular basis. Gifts can be cash or non-cash.

(b) Winnings are prizes given to an individual in a contest, lottery, etc. They can be cash or non-cash. Cash winnings can be distributed periodically (e.g., monthly) or in a lump-sum.

(2) For all programs except ERDC, treat noncash gifts and winnings according to policy for the specific type of asset. Treat cash gifts and winnings as periodic or lump-sum income.

(3) For ERDC, exclude all gifts and winnings.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 9-1997, f. & cert. ef. 7-1-97

#### **461-145-0220**

##### **Home**

(1) Home defined: A home is the place where the filing group lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:



(a) Land on which the home is built and contiguous property.

(A) In all programs except FS, property must meet all the following criteria to be considered contiguous property:

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group.

(ii) It must not be separated by a public right-of-way, such as a road.

(iii) It must be property that cannot be sold separately from the home.

(B) In the Food Stamp program, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.

(2) Exclusion of home and other property:

(a) For a client who has an initial month (defined in OAR 461-150-0010) of long-term care or waived services on or after January 1, 2006:

(A) For purposes of this subsection:

(i) The definition of "child" in OAR 461-110-0110 does not apply.

(ii) "Child" means a biological or adoptive child who is:

(I) Under age 21; or

(II) Any age and meets the Social Security Administration criteria for blindness or disability.

(B) The value of a home is excluded if the client or the spouse of the client occupies the home and the equity in the home is \$500,000 or less.

(C) The home is countable as a resource if the client has equity in the home of more than \$500,000, unless one of the following requirements is met:

(i) The spouse of the client occupies the home.

(ii) The child of the client occupies the home.

(iii) The client is legally unable to convert the equity value in the home to cash.

(iv) The home equity is excluded under OAR 461-145-0250.

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.

(c) In the Food Stamp program only, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461-145-0420.

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:

(a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.

(b) In the Food Stamp program, when the financial group is absent because of employment or training for future employment.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, when the client is absent to receive care in a medical institution, if one of the following is true:

(A) The absent client is a single adult who has provided evidence that he or she will return to the home. The evidence must reflect the subjective intent of the client, regardless of the client's medical condition. A written statement from a competent client is sufficient to prove the intent.

(B) The home remains occupied by the client's spouse, child, or a relative dependent on the client for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

(d) In the MAA, MAF, REF, REFM, SAC, and TANF programs, when all members of the filing group are absent because:

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing

group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-145-0230**

##### **Housing and Urban Development**

(1) Payments from HUD made to a third party in behalf of the client are treated as follows:

(a) In the MAA, MAF, REF, REFM, SAC, and TANF programs, the payment is used to determine shelter-in-kind income.

(b) In the EA, ERDC, FS, GA, GAM, OHP, OSIP, OSIPM, and QMB programs, the payments are excluded.

(2) HUD payments made directly to a member of the financial group, except Youthbuild Program payments and Family Investment Centers payments, are treated as follows:

(a) In the MAA, MAF, REF, REFM, SAC, and TANF programs, the payment is used to determine shelter-in-kind income. If the payments are made in a lump sum, the lump sum is unearned income.

(b) In the EA and OHP programs, the payment is unearned income.

(c) In the ERDC, GA, GAM, OSIP, OSIPM, and QMB programs, the payments are excluded.

(d) In the FS program, payments for utilities are excluded. Other payments are unearned income.

(3) Youthbuild Program payments are treated as follows:

(a) In the TANF program, if the Youthbuild Program participant is a dependent child in the filing group or a caretaker relative age 19 or younger, the payments are excluded. If the participant is a caretaker relative over age 19, the payments are treated as follows:

(A) Incentive payments that are reimbursements for specific expenses not covered by program benefits, for instance transportation and school supplies, are excluded.

(B) On-the-job training (OJT) and work experience payments are earned income.

(C) The bonus payment (the incentive payment for attendance) is unearned income.

(b) In the ERDC and OHP programs, Youthbuild payments are earned income.

(c) In the FS program, payments to clients under the age of 19 years who are under the control of an adult member of the filing group are excluded. Other Youthbuild payments are earned income.

(4) Escrow accounts established for families participating in the Family Self-Sufficiency (FSS) program sponsored by HUD are excluded.

(5) Payments related to family investment centers issued under the Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, sec. 515, 104 Stat. 4196 (1990), are treated as follows:

(a) Wages are earned income, and stipends are unearned income.

(b) Service payments for items such as child care, basic education, literacy, or computer skills training are excluded.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-145-0240**

##### **Income-Producing Contract**

(1) The equity value of an income-producing sales contract is treated as follows:

(a) In the GA, GAM, MAA, MAF, REF, REFM, SAC, and TANF programs, it is a countable resource.

(b) In the EA, ERDC, FS, OHP, OSIP, OSIPM, and QMB programs, it is excluded.

(2) In all programs except MAA, MAF, REF, REFM, SAC, and TANF, income received from the contract, minus necessary costs, is counted as unearned income. The deductible, necessary costs are the same as the costs deductible under OAR 461-145-0920.

(3) In the MAA, MAF, REF, REFM, SAC, and TANF programs, income received from the contract is excluded.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

#### **461-145-0250**

##### **Income-Producing Property**

(1) Income-producing property is 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.

(2) Income from income producing property is counted as follows:

(a) If a financial group member actively manages the property 20 hours or more per week, the income is treated in the same manner as self-employment income (see OAR 461-145-0910, 461-145-0920, and 461-145-0930).

(b) If a financial group member does not actively manage the property 20 hours or more per week, the income is counted as unearned income with exclusions allowed only in accordance with OAR 461-145-0920.

(3) The *equity value* (defined in OAR 461-001-0000) of income-producing property is treated as follows:

(a) In the EA, ERDC, and OHP programs, it is excluded.

(b) In the FS program, it is counted as a resource except to the extent described in each of the following situations:

(A) If the property produces an annual countable income similar to other properties in the community with comparable market value, the *equity value* of the property is excluded.

(B) The *equity value* of income-producing livestock, poultry, and other animals is excluded.

(C) If selling the resource would produce a net gain to the financial group of less than \$1,500, the equity value is excluded.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, it is counted as a resource, except:

(A) If the property produces an annual countable income of at least six percent of its equity value, the value of the property is excluded up to a maximum of \$6,000.

(B) The total equity value is excluded if all the following are true:

(i) The property is used in a trade or business.

(ii) The property is essential to the client's self-support.

(iii) The property produces an annual countable income of at least six percent of its *equity value*.

(d) In the MAA, MAF, REF, REFM, SAC, and TANF programs, it is counted as a resource.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0255**

##### **Independent Living Program Subsidies**

(1) Independent Living Program subsidies are payments and services provided to children 16 to 20 years of age by the Department. The Independent Living Program (including the Chaffee Housing program) is described at OAR 413-030-0400 to 0455. The subsidies help the children live independently when their foster care payments are discontinued upon reaching 16 years of age.

(2) For all programs except EA and FS, the subsidies are excluded from income.

(3) For the EA and FS programs, the subsidies are countable unearned income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

#### **461-145-0260**

##### **Indian (Native American) Benefits**

(1) Exclude the following Indian benefits:

(a) Indian lands held jointly with the tribe, or land that cannot be sold without the approval of the Bureau of Indian Affairs.

(b) Payments to Puyallup Tribe members from the trust funds established under Public Law 101-41.

(c) Payments from the **Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act** (Public Law 103-436).

(2) Treat payments from the Bureau of Indian Affairs General Assistance program as follows:

(a) For all programs except FS, exclude these payments.

(b) For FS, count these payments as unearned income.

(3) For all programs except GA and GAM, exclude the following types of distributions provided under Public Law 100-241 (**Alaska Native Claim Settlement Act**):

(a) Stock.

(b) A partnership interest.

(c) Land or interest in land.

(d) An interest in a settlement trust.

(e) The first \$2,000 of each per-capita payment per financial group member per year. Count the amount over \$2,000 as lump-sum income.

(4) For all programs except GA and GAM, exclude payments to:

(a) Any Indian, when the payment is from submarginal land held in trust by the United States under Public Law 94-114.

(b) Blackfeet Indians under Public Law 92-254.

(c) Grand River Ottawa Indians under Public Law 94-540.

(d) Passamaquoddy Tribe and Penobscott Nation under the **Indian Claims Settlement Act** (Public Law 96-420).

(e) Sac and Fox Indian Claims under Public Law 94-189.

(f) Umpqua Tribe Cow Creek Band under Public Law 100-139.

(g) Yakima Nation Confederated Tribes and Bands of the Mescalero Reservation Apache Tribe under Public Law 95-433.

(h) Any Indian, when the payment is from judgment funds held in trust by the U.S. under Public Law 97-458 or 98-64.

(i) The Aroostook Band of Micmacs.

(j) The Holton Band of Maliseet Indians.

(k) Navaho or Hopi Indians under Public Law 93-531.

(l) Any Indian, for Indian Child Welfare payments under Public Law 95-608.

(5) For all programs except GA and GAM, treat payments under Public Law 92-203 (**Alaska Native Claim Settlement Act**) as follows:

(a) For FS, exclude the entire payment.

(b) For all other programs, exclude only the tax-exempt portion of the payment. Count the remainder as unearned income.

(6) For all programs except GA and GAM, treat payments under Public Law 93-134, Public Law 100-580 and Public Law 103-66 as follows:

(a) For FS, exclude the first \$2,000 of each per-capita payment for each financial group member. Count the amount over \$2,000 as lump-sum income.

(b) For all other programs, exclude the entire payment.

(7) For all programs except GA and GAM, treat payments to Seminole Tribe members as follows:

(a) Exclude the first \$2,000 of each per capita payment for each financial group member.

(b) Count the amount over \$2,000 as lump sum income.

(8) For all programs, count any payments distributed by the tribe and not excluded by public law as unearned income.

(9) For GA and GAM, count Indian benefits described in sections (3) through (7) of this OAR as periodic or lump-sum income unless the client verifies that such benefits are excluded by public law for state-funded programs.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98

**461-145-0265**

**Individual Education Account (IEA)**

The IEA is an asset accrued by JOBS Plus participants. Exclude the IEA while it accumulates, while it is saved, and when it is withdrawn for educational purposes.

Stat. Auth.: ORS 411.060, 411.070, 411.095, 411.105, 411.111 & 411.816  
Stats. Implemented: ORS 411.700, 411.816 & 657  
Hist.: AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94

**461-145-0270**

**Inheritance**

An inheritance may be received in the form of monies, property or other assets. Treat an inheritance as follows:

(1) For all programs except ERDC, GA, GAM, OSIP, OSIPM, and QMB, treat non-cash inheritances according to policy for the specific type of asset. Count cash inheritances as periodic or lump-sum income.

(2) For ERDC, exclude all inheritances.

(3) For GA, GAM, OSIP, OSIPM, and QMB, count all inheritances as periodic or lump-sum income.

Stat. Auth.: ORS 183, 411.060, 411.105, 411.111, 411.630, 411.730, 414, 416 & 418  
Stats. Implemented: ORS 411.700 & 411.816  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93

**461-145-0280**

**In-Kind Income**

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

(2) In all programs except MAA, MAF, OHP, SAC, and TANF, earned in-kind income is treated according to the administrative rules on earned income.

(3) In all programs except MAA, MAF, OHP, SAC, and TANF, unearned in-kind income (except third-party payments) is treated as follows:

(a) Income from court-ordered community service work or bartering is excluded. Bartering is the exchange of goods of equal value.

(b) Items such as cars and furniture are treated according to the administrative rule for the specific type of asset.

(4) In the MAA, MAF, SAC, and TANF programs, in-kind income is excluded.

(5) Unearned third-party payments are treated as follows:

(a) Payments made to a third party that should legally be paid directly to a member of the financial group are counted as unearned income.

(b) Payments made to a third party that the payee is not legally obligated to pay directly to a member of the financial group and that the financial group does not have the option of taking as cash, and payments made by the noncustodial parent to a third party, that are court-ordered but not designated as child support, are treated as follows:

(A) In the ERDC, MAA, MAF, SAC, and TANF programs, these third-party payments are excluded.

(B) In the FS program, these third-party payments are excluded unless they are transitional housing payments for the homeless.

(C) In all other programs, these third-party payments are excluded, except those made for the financial group's shelter costs. Third-party shelter payments are treated according to the administrative rule for shelter-in-kind.

(6) In the OHP program, in-kind income is excluded except as provided in OAR 461-145-0120 and 461-145-0470.

Stat. Auth.: ORS 409.050, 411.060, 411.816 & 418.100  
Stats. Implemented: ORS 409.050, 411.060, 411.816 & 418.100  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

**461-145-0290**

**Job Corps**

Treat Job Corps payments as follows:

(1) Count living allowance payments as earned income.

(2) Count readjustment allowance payments as follows:

(a) For all programs except FS, count as earned income;

(b) For FS, count as lump-sum income.

(3) Count reimbursements and support service payments for items already covered by the benefit group's benefits as unearned income. Exclude all other reimbursements and support service payments (including clothing allowances).

Stat. Auth.: ORS 183, 411.060, 411.070, 411.105, 411.111, 411.300, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009, 414.032, 416 & 418  
Stats. Implemented: ORS 411.700 & 411.816  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 3-1990(Temp), f. & cert. ef. 1-16-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 131991, f. & cert. ef. 7-1-91

**461-145-0300**

**Workforce Investment Act**

Payments to clients made under Title I-B of the Workforce Investment Act of 1998, Pub. L. 105-220, 112 Stat. 936 (1998), are treated as provided in this rule.

(1) Need-based (stipend) payments are unearned income except as follows:

(a) The payments are excluded for ADCM, OHP and TANF clients under the age of 19 years (under the age of 20 years if a caretaker relative);

(b) The payments are excluded for all FS clients.

(2) OJT and work experience payments are earned income, except as follows:

(a) The payments are excluded for ADCM, OHP and TANF clients under the age of 18 years (under the age of 20 years if the client is a caretaker relative);

(b) The payments are excluded for a FS client who is:

(A) Under the age of 19 years and under the control of an adult member of the filing group; or

(B) Receiving OJT payments under the Summer Youth Employment and Training Program.

(3) Reimbursements and support service payments for items already covered by the benefit group's benefits are unearned income. All other reimbursements and support service payments (including lunch payments and clothing allowances) are excluded.

[Publication.: Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.816 & 418.100  
Stats. Implemented: ORS 411.060, 411.816 & 418.100  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-2001, f. & cert. ef. 6-1-01

**461-145-0310**

**Life Estate**

(1) A life estate is the right to property limited to the lifetime of the person holding it or the lifetime of some other person. 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 person while actual ownership of the property is held by another individual. A life estate is created when an individual owns property and then transfers their ownership to another while retaining, for the rest of their life, certain rights to that property. In addition, a life estate is established when a member of the financial group purchases a life estate interest in the home of another individual.

(2) For all programs except OSIP, OSIPM and QMB, if a financial group is living in real property while a member holds a life estate in this property, the property is treated as a home (see OAR 461-145-0220). In all other situations, a life estate is treated as real property (see OAR 461-145-0420).

(3) In the OSIP, OSIPM and QMB programs:

(a) A transfer for less than fair market value (see OAR 461-140-0050) in which a member of the financial group retains a life estate is a disqualifying transfer. A transfer is considered for less than fair market value if the fair market value of the transferred resource on the day prior to the transfer is greater than the sum of the value of the rights conferred by the life estate plus the compensation received for the transfer. For purposes of this subsection, the value of the rights conferred by the life estate is established by the Life Estate and Remainder Interest Table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(A).

(b) If a member of the financial group purchases a life estate interest in the home of another individual on or after July 1, 2006, the purchase is considered a transfer of resources unless the client resides in this home for at least 12 consecutive months after the date of the purchase. The value of the transfer for a client who does not reside in



the home for at least 12 consecutive months is calculated by using the purchase price of the life estate.

Stat. Auth.: ORS 411.060, 411.816, 418.100  
 Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-145-0320**

##### **Life Insurance**

(1) Benefits paid on a life insurance policy are counted as unearned income. A deduction is allowed, not to exceed \$1,500, for the cost of the deceased person's last illness and burial if these costs were not otherwise insured.

(2) The value of a life insurance policy is treated as follows:

(a) All term insurance is excluded.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, the cash surrender value of the life insurance policy is excluded.

(c) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), the total exclusion available for life insurance and burial arrangements is limited as provided in OAR 461-145-0040(2)(b).

(d) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) Except as provided in subsection (c) of this section, the total cash surrender value of life insurance policies owned by the client or the client's spouse is excluded if the total face value of all policies is less than or equal to \$1,500. If the total face value of all policies is more than \$1,500, the entire cash surrender value is counted as a resource.

(B) The cash surrender value of a policy acquired through a *viatical settlement* is excluded. A *viatical settlement* allows a third party to acquire the life insurance policy from a terminally ill person at an agreed upon percentage of the life insurance policy face value.

Stat. Auth.: ORS 411.060, 411.816 & 418.100  
 Stats. Implemented: ORS 411.060, 411.816 & 418.100  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0330**

##### **Loans and Interest on Loans**

(1) This rule covers proceeds of loans, loan repayments, and interest earned by a lender. If the proceeds of a loan are used to purchase an asset, the asset is evaluated under the other rules in this division of rules.

(2) For purposes of this rule, "reverse-annuity mortgage" means an arrangement in which a homeowner borrows against the equity in the home and receives regular monthly tax-free payments from the lender. A "reverse-annuity mortgage" is sometimes referred to in the private sector as a reverse mortgage or a home equity conversion mortgage.

(3) The proceeds of a home equity loan or *reverse-annuity mortgage* are considered loans under this rule.

(4) For payments that a member of the financial group receives as a borrower to be treated as a loan:

(a) In the FS, GA, GAM, OHP, OSIP, OSIPM, and QMB programs, there must be an oral or written loan agreement, and this agreement must state when repayment of the loan is due to the lender.

(b) In all other programs, there must be a written loan agreement, and this agreement must be signed by the borrower and lender, dated before the borrower receives the proceeds of the loan, and state when repayment of the loan is due to the lender.

(5) When a member of a financial group receives cash proceeds from a loan:

(a) In all programs, educational loans are treated according to OAR 461-145-0150.

(b) In the ERDC, EXT, FS, MAA, MAF, OHP, REF, REFM, SAC and TANF programs, the loan is excluded. If retained after the month of receipt, the loan is treated in accordance with OAR 461-140-0070.

(c) In the GA, GAM, OSIP, OSIPM and QMB programs, a loan is excluded as income. The loan is a resource if retained in the month following the month of receipt (notwithstanding OAR 461-140-0070).

(6) Except as provided in section (7) of this rule, if a member of a financial group has made a loan and is receiving return payments as a result:

(a) The interest payment is unearned income.

(b) The payment of principal is excluded.

(7) In the GA, GAM, OSIP, OSIPM and QMB programs, if a client or a spouse of a client uses funds to purchase a promissory note, loan, or mortgage in a transaction occurring on or after July 1, 2006, the balance of the payments owing to the client or spouse of the client is a transfer of assets for less than fair market value, unless all of the following requirements are met:

(a) The total value of the transaction is being repaid to the client or spouse of the client within that person's actuarial life expectancy as established by the life expectancy table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9B.

(b) Payments are made in equal amounts over the term of the transaction without any deferrals or balloon payments.

(c) The contract is not cancelled upon the death of the client or the spouse of the client (who made the transaction).

Stat. Auth.: ORS 411.060, 411.816, 418.100  
 Stats. Implemented: ORS 411.060, 411.816, 418.100  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0340**

##### **Lodger Income**

(1) A lodger is a member of the household group who:

(a) Is not a member of the filing group; and

(b) Pays the filing group for room and board.

(2) Lodger income is the amount a lodger pays the filing group for room (rent) and board (meals).

(3) Lodger income is self-employment income.

Stat. Auth.: ORS 411.060, 411.816 & 418.100  
 Stats. Implemented: ORS 411.060, 411.816 & 418.100  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-145-0345**

##### **Military Income**

Military income (pay and allowances of a member of a uniformed service) is counted as follows:

(1) In all programs, military income is counted as earned income of the member's financial group.

(2) In all programs except FS, the portion of military pay and allowances available to the financial group is counted as unearned income if the member is not included in the filing group.

(3) In the FS program:

(a) The military income available to the financial group is counted as unearned income if the member is not in the filing group, except as provided in subsection (b) of this section.

(b) The additional pay received by a member during deployment to an area described in 37 U.S.C. 310 (hostile fire or imminent danger pay) is excluded.

(c) The following process is used to determine the countable amount after the exclusion under subsection (b) of this section:

(A) The amount of the group's military income immediately prior to the deployment is determined.

(B) The current amount of the group's military income is determined.

(C) The lesser of the two amounts is countable.

Stat. Auth.: ORS 411.816  
 Stats. Implemented: ORS 411.816  
 Hist.: SSP 4-2005, f. & cert. ef. 4-1-05

#### **461-145-0360**

##### **Motor Vehicle**

(1) The value of disability-related apparatus, optional equipment, or low mileage is not considered in determining the fair market value (defined in OAR 461-001-0000) of an automobile, truck, or van. The

fair market value of an automobile, truck, or van is presumed to be the “average trade-in value” established in the National Automobile Dealers Association’s (NADA) Used Car Guide. If the vehicle is not listed in the NADA Used Car Guide, the “average trade-in value” established in the Kelley Blue Book is used. If the vehicle is not listed in the NADA Used Car Guide and Kelley Blue Book, the “average trade-in value” established in a similar publication is used. A client may rebut the presumption with a statement from a car dealer, mechanic, or other reliable source. If the vehicle is not listed in the NADA Used Car Guide, Kelley Blue Book, and a similar publication, the estimate of the value by the client may be accepted unless it appears questionable, in which case additional evidence of the value is required.

(2) Some programs permit an exclusion for a portion of the equity value (defined in OAR 461-001-0000) for any licensed and unlicensed motor vehicles owned by the financial group:

(a) In the FS, MAA, MAF, REF, SAC, and TANF programs, this exclusion is up to \$10,000.

(b) In the GA and GAM programs, this exclusion is up to \$4,500.

(c) Any remaining equity in that vehicle and the total equity value of all other vehicles is counted as a resource.

(3) In the EA, ERDC, and OHP programs, all motor vehicles are excluded.

(4) For grandfathered financial groups in the OSIP and OSIPM programs, one motor vehicle in operating condition is excluded, and the equity value of any other motor vehicles is counted as a resource.

(5) In the OSIP, OSIPM, and QMB programs:

(a) The total value of a vehicle selected by the financial group is excluded if it is used for employment or necessary and continuing medical treatment. If it is not, the first \$4,500 of the *fair market value* is excluded. The amount above \$4,500 is counted as a resource.

(b) The total *equity value* of all other vehicles is counted as a resource.

(6) In the OSIP-EPD and OSIPM-EPD programs, if a vehicle was purchased as an *employment* and *independence expense* (defined in OAR 461-110-0115) or with moneys from an *approved account* (defined in 461-110-0115), the total value of the vehicle is excluded.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.117 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0365**

##### **National and Community Services Trust Act (NCSTA)**

(1) The National and Community Service Trust Act (NCSTA) of 1993 (P.L. 103-82) amended the National and Community Service Act (NCSA) of 1990 (P.L. 101-610) that established a Corporation for National and Community Service. The Corporation administers national service programs providing living allowance, educational award, child care and in-kind benefits.

(2) NCSTA payments are treated as follows:

(a) The living allowance (stipend benefits) is counted or excluded as follows:

(A) In the FS, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, SAC, and TANF programs, it is excluded.

(B) In the ERDC program, it is counted as earned income if it is paid to a caretaker. If it is not, it is excluded.

(b) Educational award and in-kind benefits are treated as follows:

(A) In all programs except GA, these benefits are excluded.

(B) In the GA program, these benefits are treated according to the policy for the specific type of asset.

(c) The child care allowance is treated as follows:

(A) For TANF and ERDC clients eligible for direct provider payment of child care, the allowance is counted as unearned income. The allowance is excluded only if the client already pays the provider. The provider will be paid for only the costs not covered by the allowance.

(B) For FS clients receiving a child care deduction, allow the deduction only for the costs not covered by the allowance.

(C) In the OHP, OSIP, OSIPM, and QMB programs, the allowance is excluded.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2005, f. & cert. ef. 7-1-05

#### **461-145-0370**

##### **Older Americans Act**

(1) In all programs except FS, GA, and GAM, benefits under Title III of the Older Americans Act of 1965 (Nutrition Program for the Elderly) are excluded. In the FS, GA, and GAM programs, these benefits are considered unearned income.

(2) In all programs except FS, benefits paid to persons 55 years of age and older under Title V of the Older Americans Act of 1965 (Experience Works, American Association of Retired Persons, National Association for Spanish-Speaking Elderly, National Council on Aging, National Council on Black Aging, National Council of Senior Citizens, National Urban League, U.S. Forest Service) are considered earned income. In the FS program, payments under the act are excluded.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 10-2002, f. & cert. ef. 7-1-02

#### **461-145-0380**

##### **Pension and Retirement Plans**

(1) Pension and retirement plans include the following:

(a) Benefits employees receive only when they retire. These benefits can be disbursed in lump-sum or monthly payments.

(b) Benefits that employees are allowed to withdraw when they leave a job before retirement.

(c) Annuities or trusts if purchased with funds from any of the following retirement plans (authorized by section 408 of the Internal Revenue Code of 1986 at subsections (a), (b), (c), (k), (p) or (q), or at section 408A):

(A) Individual Retirement Annuity.

(B) Individual Retirement Account.

(C) Deemed Individual Retirement Account or Annuity under a qualified employer plan.

(D) Accounts established by employers and certain associations of employees.

(E) Simplified Employee Pension (SEP).

(F) Simple Retirement Account.

(2) Benefits the client receives from retirement funds are treated as follows:

(a) Monthly payments are counted as unearned income.

(b) All other payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(3) Pension and retirement plans that allow clients to withdraw funds before retirement are treated as follows:

(a) In all programs except FS and OHP, the *equity value* (defined at OAR 461-001-0000) of the plan, minus any penalty for early withdrawal, is counted as a resource.

(b) In the Food Stamp program, any portion of an individual retirement account (IRA), or a KEOGH plan that is available before, upon, or following retirement, is counted as an available resource, less a penalty for early withdrawal. The value of any other plan is excluded as a resource.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0390**

##### **Personal Belongings**

Personal belongings are such items as household furnishings, clothing, heirlooms, keepsakes, and hobby equipment. For all programs, the value of personal belongings is excluded.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 4-2005, f. & cert. ef. 4-1-05

#### **461-145-0400**

##### **Personal Injury Settlement**

(1) For all programs except ERDC, treat personal injury settlements as follows:

(a) Count monthly payments as unearned income;

(b) For all programs except grandfathered OSIP and OSIPM, count all other payments as periodic or lump-sum income;

(c) For grandfathered OSIP and OSIPM clients, count the balance from personal injury claims after the Division's lien is satisfied as lump-sum income. If the lien was not filed due to the recipient's failure to notify the Division of the claim, count the payment as unearned income.

(2) For ERDC, exclude all personal injury settlements.

Stat. Auth.: ORS 411.060, 411.105, 411.111, 411.630, 411.730, 183, 414, 416 & 418  
Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93

#### **461-145-0405**

##### **Plan for Self-support**

(1) This rule covers two types of plans for self support.

(a) A plan for self support approved by the Social Security Administration.

(b) A plan for self support approved by the Department (see OAR 461-135-0708).

(2) Assets listed in an approved plan for self-support are treated as follows:

(a) In the Food Stamp program, assets designated for use in an approved plan for self-support are excluded.

(b) In all programs except FS, if assets are identified to meet a specific cost directly related to the occupational goal:

(A) Resources identified to meet costs, such as purchase of equipment for a trade or business, transportation, books and maintenance costs at school, are excluded.

(B) An income deduction is allowed for the amount identified to meet allowable costs necessary for complying with the plan for self support, including:

(i) Room and board, and other maintenance requirements, if the client must be away from home; and

(ii) Above-normal expenses, if the client remains at home but must buy meals or incur other known expenses while away from home during the day.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 10-2002, f. & cert. ef. 7-1-02; Renumbered from 461-140-0420, SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0410**

##### **Program Benefits**

(1) Benefits from the GA, OSIP (except OSIP-IC), REF, and TANF programs (including the 10 percent late processing fee discussed in OAR 461-165-0150) are treated as follows:

(a) In all programs except EA, ERDC, FS, and OHP:

(A) These payments are excluded in the month received, and any portion remaining following the month of receipt is counted as a resource.

(B) Payments made to correct an underpayment are excluded.

(b) In the EA program, the payments are counted as unearned income, except for benefit groups whose emergent need is the result of domestic violence. For those benefit groups, the payment is excluded.

(c) In the ERDC program, the payments are counted as unearned income.

(d) In the FS program:

(A) TANF payments are treated as unearned income.

(B) OSIP payments are treated as unearned income.

(C) GA and REF payments are treated as unearned income.

(D) An amount received as a late processing payment is treated as lump-sum income.

(E) Payments made to correct an underpayment are treated as lump-sum income.

(F) Ongoing special needs payments for laundry allowances, special diet or meal allowance, restaurant meals, shelter exceptions, and telephone allowances are treated as unearned income. All other special needs payments are excluded as reimbursements.

(e) In the OHP program:

(A) GA payments are excluded from income for purposes of determining OHP eligibility.

(B) Benefits from the OSIP (except OSIP-IC), REF, and TANF programs (including the 10 percent late processing fee discussed in OAR 461-165-0150) are treated as follows:

(i) The payments are counted as unearned income if all the people included in the benefit group for the cash payment are also in the OHP financial group.

(ii) A prorated share is counted as unearned income if any of the people in the cash payment are not included in the OHP financial group. A prorated share is determined by dividing the total payment by the number of people in the TANF benefit group.

(iii) An administrative error overpayment (see OAR 461-195-0501(2)(a)) is excluded, and a payment made to correct an underpayment caused by the Department is excluded if the underpayment occurred prior to the budget period.

(2) TANF client incentive payments are treated as follows:

(a) In all programs except TANF, the monthly cooperation incentive special-need payment is counted as unearned income.

(b) Progress and outcome incentive payments received as cash are counted as lump-sum income. All other incentives are excluded.

(3) EA payments are treated as follows:

(a) In the ERDC and FS programs, payments made directly to the client are counted as unearned income. Dual payee and provider-direct payments are excluded.

(b) In all other programs, the payments are excluded.

(4) Payments from the EXT, GAM, MAA, MAF, OHP, OSIP-IC, OSIPM, QMB, REFM, and SAC programs are excluded.

(5) Assessment Program payments are treated as follows:

(a) In all programs except FS, these payments are excluded.

(b) In the FS program, payments for basic living expenses, made directly to the client, are counted as unearned income. All other payments are excluded.

(6) ERDC payments and TANF child care payments are counted as follows:

(a) Provider-direct payments are counted as the provider's earned income.

(b) All client-direct payments are excluded.

(7) In all programs except EA, the value of a FS benefit is excluded. In the EA program, it is counted as a resource when determining the filing group's emergency food needs.

(8) JOBS, JOBS Plus, and OFSET service payments are excluded.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 5-1991, f. & cert. ef. 2-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1992(Temp), f. 7-31-92, cert. ef. 8-1-92; AFS 32-1992, f. 10-30-92, cert. ef. 11-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 18-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-145-0415**

##### **Radiation Exposure Compensation Act**

**Radiation Exposure Compensation Act** payments are issued to compensate individuals for injuries or deaths resulting from exposure to radiation from nuclear testing or uranium mining. Treat these payments as follows:

(1) For all programs except GA and GAM, exclude these payments.

(2) For GA and GAM, count as lump-sum income.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92

#### **461-145-0420**

##### **Real Property**

(1) For purposes of this rule, manufactured and mobile homes are treated in the same manner as *real property*.

(2) The *fair market value* (notwithstanding its definition in OAR 461-001-0000) of *real property* (defined in OAR 461-001-0000) is the amount described in subsection (2)(a) of this rule, unless a real estate



appraisal is submitted in which case this value is the lesser of the following amounts:

(a) The highest value identified by the county assessor on the most recent property tax statement.

(b) The value established by an appraisal as the current amount the real property would sell for on the open market.

(3) *Real property* that is not income-producing or the financial group's home is treated as follows:

(a) In the MAA, MAF, REF, REFM, SAC, and TANF programs, the *equity value* (defined in OAR 461-001-0000) of all *real property* that is not excluded under a TANF Interim Assistance agreement is counted as a resource.

(b) In the EA, ERDC, and OHP programs, *real property* is excluded.

(c) In the FS program, real property is treated as follows:

(A) The *equity value* of real property is excluded if the financial group is making a good-faith effort to sell the real property at a fair market price.

(B) The *equity value* of the real property is counted as a resource if the financial group refuses to make a good-faith effort to sell.

(C) The resource is excluded if selling the resource would produce a net gain to the financial group of less than \$1,500.

(d) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) The *equity value of real property* that was the home of the financial group is excluded if the financial group is making a good-faith effort to sell the real property at a reasonable price, unless the equity value in the home makes the client ineligible under OAR 461-145-0220(2)(a).

(B) The *equity value of all other real property* is excluded if the financial group is making a good-faith effort to sell the real property at a reasonable price. The equity value is counted after the real property is excluded for nine months unless the failure to sell it is for reasons beyond the reasonable control of the financial group.

(4) The treatment of real property that is income producing is covered in OAR 461-145-0250.

(5) The treatment of the home of the financial group is covered in OAR 461-145-0220.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0430**

##### **Real Property Excluded Under ADC Interim Assistance Agreement**

For ADC-BAS, ADCM-BAS, REF, and REFM, treat real property where the equity value puts the financial group over the ADC resource limit as follows:

(1) Exclude real property for a maximum of nine months if the financial group signs and complies with the terms of the ADC Interim Assistance Agreement. After the ninth month, count the equity value of the property as a resource.

(2) To comply with the terms of the ADC Interim Assistance Agreement, the financial group must agree to do all the following:

(a) Make a good-faith effort to sell the property; and

(b) Use the proceeds from the sale of the property to reimburse the Division for all benefits paid under the terms of the ADC Interim Assistance Agreement. The reimbursement will not exceed the net proceeds of the sale of the property.

(3) The amount of benefits paid while the financial group has excess real property is an overpayment if the financial group fails to notify the Division that they have the property.

(4) The amount of benefits paid while the financial group has excess real property up to the net proceeds of the sale of the property is an overpayment if the property sells and the financial group does not repay the Division per the terms of the ADC Interim Assistance Agreement.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90

#### **461-145-0433**

##### **Recreational Vehicles**

(1) For purposes of this rule, a *recreational vehicle* includes both of the following subsections:

(a) A vehicle (a means for carrying or transporting something) if:

(A) The vehicle is used primarily for amusement and not for day-to-day transportation; and

(B) The vehicle cannot be licensed as a motor vehicle for use on a public highway (even if the vehicle is registered or licensed as a non-motor vehicle).

(b) An ATV, boat, camper, dune buggy, plane, snowmobile, and trailer, unless the item qualifies as a capital asset under OAR 461-145-0055 or as work-related equipment under OAR 461-145-0600.

(2) Except as provided in section (4) of this rule, for all programs except ERDC and OHP, the *equity value* (defined in OAR 461-001-0000) of a *recreational vehicle* is counted as a resource.

(3) In the ERDC and OHP programs, the value of a *recreational vehicle* is excluded.

(4) In the Food Stamp program only, the equity value of a *recreational vehicle* is excluded if selling the vehicle would produce a net gain to the financial group of less than \$1,500.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 418.100

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0435**

##### **Refunds**

(1) Exclude the following refunds in the month they are received:

(a) Refunds on merchandise that was purchased or received as a gift;

(b) Refunds of utility and rental deposits.

(2) Count any refund amount remaining after the month of receipt as a resource.

Stat. Auth.: ORS 411.060, 411.070, 411.105, 411.111, 411.300, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009 & 414.032

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91

#### **461-145-0440**

##### **Reimbursement**

(1) A reimbursement is money or in-kind compensation provided specifically for an identified expense.

(2) For all programs except ERDC and FS, a reimbursement is treated as follows:

(a) A noncash reimbursement is excluded.

(b) A cash reimbursement is excluded if used for the identified expense, unless the expense is covered by program benefits.

(c) A reimbursement is counted as periodic or lump-sum income if not used for the identified expense.

(d) A reimbursement for an item already covered by the benefit group's benefits is counted as periodic or lump-sum income.

(3) For ERDC, a reimbursement is excluded, except that a reimbursement for child care from a source outside of the Department is counted as unearned income.

(4) For the Food Stamp program:

(a) A cash reimbursement for a normal household living expense, such as rent or payment on a home loan, personal clothing, or food eaten at home, is unearned income.

(b) Any other reimbursement is treated as follows:

(A) A noncash reimbursement is excluded.

(B) A cash reimbursement is excluded if used for the identified expense, unless the expense is covered by program benefits.

(C) A reimbursement is counted as periodic or lump-sum income if not used for the identified expense.

(D) A reimbursement for an item already covered by the benefit group's benefits is counted as periodic or lump-sum income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

**461-145-0450**

**Representative Payee Payment**

(1) Exclude payments received by a member of the financial group as a representative payee for others.

(2) If payments include a financial group member's portion that cannot be readily identified, prorate the payment evenly among intended beneficiaries. Count the financial group member's share as unearned income.

Stat. Auth.: ORS 183, 411, 414, 416 & 418  
Stats. Implemented: ORS 411.700 & 411.816  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

**461-145-0455**

**Resettlement and Placement (R&P) Grants**

(1) A Resettlement and Placement (R&P) grant is a payment made by the United States Department of State through national refugee resettlement agencies to local resettlement agencies, refugee sponsors and refugees. The R&P grants are provided to the resettlement agencies to help with the costs of initial resettlement of refugees in the United States. The resettlement agencies provide a part of this grant to refugees, usually in their first month after arrival, for their initial resettlement needs, and not for ongoing living expenses.

(2) For ERDC, REF, REFM and TANF, R&P grants are excluded from consideration as income and resources for purposes of determining program eligibility or benefit levels.

(3) For GA, MAA, MAF, OHP, OSIPM and QMB, an R&P grant determined to be available to the refugee case is considered unearned income.

(4) For FS, the first \$300 of the R&P grant is exempted from FS eligibility consideration as a cash contribution from a charitable organization (see OAR 461-145-0070(2)). An amount exceeding \$300 paid directly to a FS household from an R&P grant is unearned income.

Stat. Auth.: ORS 411.060, 411.116, 411.816 & 418.100  
Stats. Implemented: ORS 411.060, 411.070, 411.116, 411.135(1), 418.040 & 418.100  
Hist.: AFS 1-2001(Temp), f. & cert. ef. 1-30-01 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002, f. & cert. ef. 10-1-02

**461-145-0460**

**Sale of a Resource**

(1) In all programs except ERDC, EXT, MAA, MAF, SAC, and TANF, proceeds from the sale of a resource are treated as follows:

(a) Proceeds from the sale of a resource (other than a home) received on a monthly basis are counted as unearned income. Proceeds received other than monthly are treated as follows:

(A) If the proceeds are from the sale of an excluded resource, the amount reinvested in another excluded resource is excluded, and the remainder is counted as a resource.

(B) The proceeds from all other sales are counted as a resource. If the proceeds put the benefit group over the resource limit, they are counted as periodic or lump-sum income.

(b) For all clients except those eligible for OSIPM under OAR 461-135-0771, the proceeds from the sale of the financial group's home are excluded for three months if the financial group intends to use them to buy another home.

(c) For clients eligible for OSIPM under OAR 461-135-0771, the proceeds from the sale of the financial group's home are excluded for 12 months if the financial group intends to use them to buy another home.

(d) The proceeds from the sale of a home that are not reinvested in another home are counted as a resource. In the GA, GAM, and REF programs, if the proceeds put the benefit group over the resource limit, they are counted as periodic or lump-sum income.

(e) In the FS program, if a self-employed client sells a work-related asset, including equipment and inventory, the proceeds of the sale are treated as self-employment income. Any proceeds of the sale reinvested in another excluded resource are excluded, and the remainder are countable.

(2) In the MAA, MAF, SAC, and TANF programs, if the proceeds are from the sale of an excluded resource, the amount reinvested in another resource is excluded; all other proceeds from the sale of the resource are counted as a resource.

(3) In the ERDC and EXT programs, all proceeds from the sale of a resource are excluded.

Stat. Auth.: ORS 411.060, 411.816 & 418.100  
Stats. Implemented: ORS 411.010, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 16-2003, f. & cert. ef. 7-1-03

**461-145-0470**

**Shelter-in-Kind Income**

(1) Shelter-in-kind is when an agency or person outside the household group provides the financial group's shelter, or makes a payment to a third party for some or all of the financial group's shelter costs. Shelter costs are housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges.

(a) For all programs except OSIP, OSIPM and QMB, shelter-in-kind does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities.

(b) For OSIP, OSIPM and QMB, shelter-in-kind also includes situations where the client has no shelter costs.

(2) In the ERDC, GA, GAM, MAA, MAF, REF, REFM and TANF programs, shelter-in-kind payments are excluded, except earned shelter-in-kind is not excluded in the ERDC program.

(3) For FS, exclude shelter-in-kind housing and utility payments.

(4) For OSIP, OSIPM and QMB, exclude shelter-in-kind payments from HUD. Treat other shelter-in-kind income as follows:

(a) If all shelter costs are covered by a payment, count the Shelter-in-Kind Standard for total shelter as unearned income.

(b) If only rent or mortgage costs are covered by a payment, count the Shelter-in-Kind Standard for housing costs as unearned income.

(c) If the client has no shelter costs, count the Shelter-in-Kind Standard for total shelter as unearned income.

(5) In the OHP program, shelter-in-kind payments are excluded except that an expenditure by a business entity for a shelter cost of a principal is considered income. Principal is defined in OAR 461-140-0040.

Stat. Auth.: ORS 409.050 & 411.060  
Stats. Implemented: ORS 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 13-2002, f. & cert. ef. 10-1-02

**461-145-0490**

**Social Security Benefits**

Treat all SSB as follows:

(1) Count monthly payments as unearned income, except for retroactive payments back to the date of application. Monthly installments are paid to clients with a disability based on drug addiction or alcoholism per P.L. 103-296.

(2) Count all other payments as periodic or lump-sum income.

(3) Exclude the representative payee fee for clients who must receive payments through a representative payee under P.L. 103-296.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97

**461-145-0500**

**Social Security Death Benefit**

Count money remaining after burial costs paid from Social Security death benefits as periodic or lump-sum income.

Stat. Auth.: ORS 183, 411, 411, 416 & 418

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

**461-145-0505**

**Spousal Support**

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

(2) For ADC, ADCM, REF, and REFM:

(a) In determining eligibility, except for clients working under a JOBS Plus agreement, count as unearned income all spousal support received by RSS, if continued receipt of the spousal support is reason-

ably anticipated. Exclude these payments when determining the benefit amount.

(b) For clients working under a JOBS Plus agreement:

(A) Exclude spousal support in determining countable income.

(B) Exclude spousal support when calculating the ADC portion of the benefit equivalency standards.

(C) Count all spousal support received by the client as unearned income when calculating the wage supplement.

(c) Count as unearned income all other spousal support payments paid directly to the financial group.

(3) For ERDC:

(a) Count all spousal support paid directly to the financial group as unearned income.

(b) Exclude all other spousal support.

(4) For FS, treat spousal support as follows:

(a) Except for spousal support payments received by clients working under a JOBS Plus agreement, exclude spousal support payments the group receives that must be assigned to the Division to maintain ADC-BAS eligibility, even if the group fails to turn the payments over to the Division.

(b) For clients working under a JOBS Plus agreement:

(A) Exclude spousal support in determining countable income.

(B) Count all spousal support received by the client as unearned income when calculating the wage supplement.

(c) Count all other spousal support as unearned income.

(d) Exclude payments made by the separated or divorced spouse to a third party for the benefit of the financial group.

(5) For OHP, count all spousal support payments as unearned income.

(6) For OSIP, OSIPM, and QMB, count all spousal support paid to the financial group as unearned income. Do not allow spousal support paid by the financial group as an income deduction, except as provided in 461-160-0620.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 8-1992, f. & cert. ef. 4-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97

#### **461-145-0510 SSI**

(1) For ADCM-BAS and TANF:

(a) SSI monthly and lump-sum payments are excluded if the recipient will be removed from the financial group the month following receipt of the payment.

(b) An SSI lump-sum payment is excluded in the month received and the next month.

(2) For ERDC, GA, GAM and OHP:

(a) A monthly SSI payment is unearned income.

(b) Lump-sum SSI payments are counted according to the specific program policy on lump-sum income.

(3) For ERDC, FS, GA, GAM and OHP, if a client is required by law to receive an SSI benefit through a representative payee, the representative's fee is excluded.

(4) For FS:

(a) A monthly SSI payment is unearned income.

(b) A lump-sum SSI payment is excluded.

(5) For OSIPM, an SSI lump-sum payment is excluded for six months after the month of receipt. After the six-month period, the remaining amount is a *countable* resource.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01

#### **461-145-0520 Stocks, Bonds and Other Securities**

(1) Except as provided in section (2) of this rule, securities, including stocks, bonds, and certificates of deposit (CDs), are counted as a resource.

(2) The value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period if the owner has received a denial of a request for a hardship waiver based on financial need.

(3) A request for a hardship waiver may be made to the United States Department of the Treasury, Bureau of Public Debt, Accrual Services Division, PO Box 1328, Parkersburg, West Virginia 26106-1328.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 4-2005, f. & cert. ef. 4-1-05

#### **461-145-0525**

##### **Strikers' Benefits**

Strikers' benefits are payments made to strikers by their union, whether or not based on the striker's participation in picketing. Treat these payments as follows:

(1) For all programs except FS, count as unearned income.

(2) For FS, exclude these payments, unless the striker's current income is higher than their pre-strike income. If so, count as unearned income.

Stat. Auth.: ORS 411.060, 411.070, 411.620, 411.630, 411.632, 411.635, 411.630 & 411.816

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95

#### **461-145-0530**

##### **Tax Refund**

For all programs, the following types of tax refunds are counted as a resource:

(1) Federal and state income tax refunds.

(2) Property tax refunds, including Elderly Rental Assistance (ERA).

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

#### **461-145-0540**

##### **Trusts**

(1) Trust funds are money, securities, or similar property held by a person or institution for the benefit of another person.

(2) This section applies to all trust funds in the FS, MAA, MAF, OHP, REF, SAC, and TANF programs. It also applies to GA, GAM, OSIP, OSIPM, and QMB for trust funds established before October 1, 1993:

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the financial group for items covered by program benefits. For OSIP, OSIPM, and QMB, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.

(3) In the ERDC program, all trust funds are excluded.

(4) In the OSIP, OSIPM, and QMB programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) through (11) of this rule. In the GA and GAM programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) through (9) of this rule.

(5) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:

(a) The client.

(b) The client's spouse.

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.

(d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(6) If the trust contains resources or income of another person, only the share attributable to the client is considered available.



(7) Except as provided in section (10) of this rule, the following factors are ignored when determining how to treat a trust:

(a) The purpose for which the trust was established.

(b) Whether or not the trustees have or exercise any discretion under the trust.

(c) Any restrictions on when or if distributions may be made from the trust.

(d) Any restrictions on the use of distributions from the trust.

(8) If the trust is revocable, it is treated as follows:

(a) The total value of the trust is considered a resource available to the client.

(b) A payment made from the trust to or for the benefit of the client is considered unearned income.

(c) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.

(9) If the trust is irrevocable, it is treated as follows:

(a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.

(b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.

(c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

(d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(10) Notwithstanding the provisions above in this rule, the following trusts are not considered in determining eligibility for OSIPM and QMB:

(a) A trust containing the assets of a client determined disabled by SSI criteria that was created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:

(A) The client's parent.

(B) The client's grandparent.

(C) The client's legal guardian or conservator.

(D) A court.

(b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:

(A) Personal-needs allowance.

(B) Community spouse monthly maintenance needs allowance.

(C) Medicare and other private medical insurance premiums.

(D) Other incurred medical.

(c) A trust established on or after April 1, 1995 for the benefit of the client and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. The trust contains all the client's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

(A) Personal needs allowance and applicable room and board standard.

(B) Reasonable administrative costs of the trust, not to exceed a total of \$50 per month, including the following:

(i) Trustee fees.

(ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.

(iii) Conservatorship and guardianship fees and costs.

(C) Community spouse and family monthly maintenance needs allowance.

(D) Medicare and other private medical insurance premiums.

(E) Other incurred medical costs as allowed under OAR 461-160-0030 and 461-160-0055. Contributions to reserves for personal liabilities including but not limited to child support, alimony, and property and income taxes. Contributions to reserves for the purchase of an irrevocable burial plan on a monthly basis and contributions to a reserve for home maintenance if the client's name remains on the title.

(F) Patient liability not to exceed the cost of waived services or nursing facility services.

(d) A trust containing the resources or income of a client who is disabled as defined by SSI criteria and created before the client reached age 65, meeting the following conditions:

(A) The trust is established and managed by a non-profit association.

(B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(C) The trust is established by the client, client's parent, grandparent, or legal guardian or a court for clients who are disabled.

(D) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid.

(11) In the GA, GAM, OSIP, OSIPM, and QMB programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

(a) The absence of the services requested may result in a life-threatening situation.

(b) The client was a victim of fraud or misrepresentation.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 18-2002(Temp), f. & cert. ef. 11-19-02 thru 5-18-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0550**

##### **Unemployment Compensation Benefit**

Treat UC benefits as follows:

(1) Count monthly benefits as unearned income.

(2) Count all other payments as lump-sum income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 9-1997, f. & cert. ef. 7-1-97

#### **461-145-0560**

##### **Uniform Relocation Act**

Treat reimbursements from **Title II** of Public Law 91-646 (the **Federal Uniform Relocation Assistance Act**) and from the **Real Property Acquisition Policies Act of 1970** as follows:

(1) For GA and GAM, count as a resource.

(2) For all other programs, exclude these reimbursements.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

#### **461-145-0570**

##### **USDA Meal Reimbursement**

(1) USDA meal reimbursements are cash reimbursements for family day-care providers who serve snacks and meals to children in their care. The reimbursements are made by the United States Depart-

ment of Education and are counted as self-employment income except for the portion excluded in accordance with section (2) of this rule.

(2) The proportionate share of a USDA meal reimbursement for children in the filing group is excluded.

Stat. Auth.: 411.060 & 411.816

Stats. Implemented: 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; SSP 4-2005, f. & cert. ef. 4-1-05

#### **461-145-0580**

##### **Veterans' Benefits**

(1) Veterans' benefits, other than the aid-and-attendance, educational, and training and rehabilitation program benefits, are treated as follows:

(a) Monthly payments are counted as unearned income.

(b) Other payments are counted as periodic or lump-sum income.

(2) Veterans' aid-and-attendance payments are treated as follows:

(a) In the FS and OHP programs, the payments are excluded.

(b) For OSIP, OSIPM, and QMB clients receiving long-term care or Title XIX waived services, the payments are treated as follows:

(A) When determining eligibility, the payment is excluded.

(B) When calculating monthly benefits or patient liability, the payment is counted as unearned income.

(C) Payments for services not covered by the Department's programs are excluded.

(D) If the client receives a payment covering a previous period of eligibility, the client is required to turn over to the Department the full amount of the payment up to the cost of institutional and home- or community-based waived care provided to the client during the months covered by the payment. Any excess is counted as lump-sum or periodic income.

(c) In all other programs, aid-and-attendance payments are treated as follows:

(A) Payments for services not covered by the Department's programs are excluded.

(B) Reimbursements paid to the client for costs and services already paid for by the Department are third-party resources and may be recovered from the client. Any unrecovered third-party resource or payment above the actual cost is counted as lump-sum or periodic income.

(3) Educational benefits from the United States Veterans Administration are treated in accordance with OAR 461-145-0150.

(4) In the Food Stamp program, a subsistence allowance from a training and rehabilitation program of the United States Veterans Administration is treated as earned income. In all other programs, it is unearned income.

(5) Payments under Public Law 104-204, § 421(b)(1), 110 Stat. 2923 (1996), to children of Vietnam veterans who are born with spina bifida are excluded (see 38 U.S.C. 1805(d)).

Stat. Auth.: ORS 411.060, 411.700, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-145-0582**

##### **Victims' Assistance**

(1) Treat payments under Public Law 103-286 to victims of Nazi persecution, and payments under Public Law 103-322 (The **Crime Act of 1984**) to victims of crime, as follows:

(a) For GA and GAM, count these payments as unearned income;

(b) For all other programs, exclude these payments.

(2) For other types of victims' assistance:

(a) Treat payments that are considered a reimbursement for a lost item according to OAR 461-145-0440;

(b) Treat payments for pain and suffering as personal injury settlements according to OAR 461-145-0400.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96

#### **461-145-0585**

##### **Vocational Rehabilitation Payment**

(1) Vocational rehabilitation maintenance payments for food, shelter and clothing are counted as unearned income.

(2) In the Food Stamp program, a training allowance or stipend from a vocational rehabilitation program is treated as earned income. For all other programs, it is treated as unearned income.

(3) Vocational rehabilitation payments for special itemized needs connected with the evaluation, planning or placement activity are treated as a reimbursement. These payments include payments for:

(a) Child care.

(b) Clothing.

(c) Second residence.

(d) Special diet.

(e) Transportation.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 5-2002, f. & cert. ef. 4-1-02

#### **461-145-0590**

##### **Worker's Compensation**

(1) For workers compensation payments received monthly or more frequently:

(a) Except as provided in subsection (b) of this section, these payments are counted as unearned income.

(b) In the ERDC, FS, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, income from workers compensation is counted as earned income (see OAR 461-145-0130) if paid to a client who is still employed while recuperating from an illness or injury.

(2) All workers compensation payments other than those in section (1) are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-145-0600**

##### **Work-Related Equipment and Inventory**

(1) Work-related equipment is property essential to the employment or self-employment of a financial group member. Examples are a tradesman's tools, a farmer's machinery, and equipment used to maintain an income-producing vehicle.

(2) Work-related equipment is treated as follows:

(a) In the MAF, REF, and SAC programs, the equity value of the equipment is treated as a resource.

(b) In the MAA and TANF programs:

(A) For a self-employed client participating in the microenterprise component of the JOBS program, the equity value of the equipment is excluded.

(B) For all other clients, the equity value of the equipment is treated as a resource.

(c) In the EA, ERDC, FS, and OHP programs, the equity value of work-related equipment is excluded.

(d) In the GA, OSIP, OSIPM, and QMB programs, the value of equipment needed by a disabled or blind client to complete a plan for self-support is excluded as long as the plan is in effect. For all other equipment, the equity value of the equipment is counted as a resource.

(3) Inventory is goods that are in stock and available for sale to prospective customers.

(4) Inventory is treated as follows:

(a) In the MAF, REF, and SAC programs, the wholesale value of inventory remaining at the end of the month, minus any encumbrances, is counted as a resource.

(b) In the MAA and TANF programs:

(A) For a self-employed client participating in the microenterprise component of the JOBS program, the wholesale value of inventory remaining at the end of a quarter, less encumbrances, is counted as a resource.

(B) For all other clients, the wholesale value of inventory remaining at the end of a month, less encumbrances, is counted as a resource.

(c) In the EA, ERDC, FS, and OHP programs, inventory is excluded.

(d) In the GA, OSIP, OSIPM, and QMB programs, the value of inventory needed by a disabled or blind client to complete a plan for self-support is excluded, as long as the plan is in effect. For all other inventory, the equity value of the inventory is counted as a resource.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.117 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-145-0810**

##### **Deemed Assets; Overview**

(1) Deemed assets are the portion of the income and resources of a person not in the financial group used to determine eligibility and benefit level for a financial group member.

(2) To be eligible for benefits, clients must provide necessary information about all people whose assets are deemed to any member of the financial group.

(3) To determine countable assets for deeming, use the policy for the program the financial group is applying for.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

#### **461-145-0820**

##### **Deemed Assets; Noncitizen's Sponsor**

(1) An individual or organization may sponsor the admission of a noncitizen under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154).

(2) An affidavit of support (INS Form I-864) is the agreement between the sponsor and the United States Immigration and Naturalization Service in which the sponsor agrees to provide financial support for the noncitizen so that the noncitizen will not become a public charge.

(3) For all programs except ERDC, REF, and REFM, the countable assets of an individual sponsor and the sponsor's spouse are considered countable assets of the noncitizen as provided in this section and the following rules. The sponsor's assets are considered available to the noncitizen whether or not the sponsor lives in the same household as the noncitizen. The assets of the sponsor's spouse are considered available only when the spouse lives in the sponsor's household.

(4) The income deemed available to the noncitizen is calculated according to OAR 461-145-0840.

(5) The value of the resources deemed available to each noncitizen is determined as follows:

(a) The value of the countable resources of the sponsor and the sponsor's spouse is determined according to the rules of the program the noncitizen applies for.

(b) In the Food Stamp program only, \$1,500 is deducted from the value.

(c) The remaining value is divided by the number of noncitizens sponsored by the individual or couple. The result is the value of the resources deemed available to the noncitizen.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1993(Temp), f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 8-2003(Temp), f. & cert. ef. 4-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03

#### **461-145-0830**

##### **When to Deem the Assets of a Noncitizen's Sponsor**

The assets of a sponsor and the sponsor's spouse are considered the assets of the sponsored non-citizen unless:

(1) The sponsor has not signed a legally binding affidavit of support, for instance an INS form I-864 or I-864A;

(2) The sponsor is unable to meet the non-citizen's needs. A sponsor who receives Food Stamp, TANF or SSI benefits is presumed unable to meet the non-citizen's needs;

(3) The sponsor is deceased. The estate of a deceased sponsor is not responsible for the non-citizen;

(4) The sponsored non-citizen claims indigence;

(5) The sponsored non-citizen is a battered immigrant spouse, battered immigrant child, immigrant parent of a battered child or an immigrant child of a battered parent, as long as the battered non-citizen does not live in the same household as the person responsible for the battery;

(6) The sponsored non-citizen does not meet the alien status requirement for the program for which he or she applies;

(7) The sponsored non-citizen becomes a naturalized citizen;

(8) The sponsored non-citizen can be credited with 40 qualifying quarters of work; or

(9) The sponsored non-citizen is under 18 years of age.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1993(Temp), f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 8-2003(Temp), f. & cert. ef. 4-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03

#### **461-145-0840**

##### **Calculating Deemed Income from a Noncitizen's Sponsor**

(1) The following process is used to determine the income considered available to the noncitizen from the noncitizen's sponsor and the sponsor's spouse. The unearned income of the sponsor and the sponsor's spouse is added to their *countable* earned income (see OAR 461-140-0010 and following), less earned income deductions.

(2) The sponsored noncitizen is considered to have the income calculated according to section (1) of this rule, divided by the number of the sponsor's sponsored noncitizens.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1993(Temp), f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00

#### **461-145-0860**

##### **Deemed Assets, Parent of Minor Parent; ADC, ADCM**

In the MAA, MAF, and TANF programs, the assets of the parents of a minor parent are deemed as follows if they are living together and the minor parent is under age 18, has never married, and is not legally emancipated.

(1) In the MAA, MAF, and TANF programs, the resources of the parents of the minor parent are excluded.

(2) The income of the parents is deemed to the minor parent when the minor parent and the minor's children live with the minor's parents.

(3) The income of the parents of a pregnant minor is deemed to the minor when the minor lives with the parents.

(4) In the MAA, MAF, and TANF programs, deemed income is considered available to the minor parent and the parent's dependent child, or to the pregnant minor, even if it is not received.

(5) The amount of the deemed income of the parents is determined as follows:

(a) A \$90 earned income deduction is allowed.

(b) The needs of the parents and the parents' dependents, living in the same household and not included in the benefit group, are deducted at the TANF Payment Standard.

(c) Amounts paid to legal dependents not living in the household are deducted.

(d) Payments of alimony or child support are deducted.

(e) Any remaining income is countable deemed income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-145-0870**

##### **Deemed Assets, Spouse of Nonparent Caretaker Relative; MAF**

(1) For MAF, deem all the resources of the spouse of a nonparent caretaker relative if the caretaker relative is in the financial group. Treat the resource according to the TANF rules for the type of resource.

(2) Deem the income of the spouse as follows:

(a) Deduct the following from the spouse's countable income:

(A) The needs of the spouse and their dependents living in the household, who are not in the benefit group, at the TANF Payment Standard; and

(B) The \$90 earned income deduction.

(b) Count any remaining income as unearned income to the financial group.

Stat. Auth.: ORS 411.700 & 411.816

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99



**461-145-0910**

**Self-Employment; General**

(1) Self-employment income is income resulting from one's own business, trade, or profession, rather than from a specified salary or wage paid by an employer. A client is considered self-employed if he or she meets the criteria in sections (2) and (3) of this rule. If a client has more than one self-employment business, trade, or profession, the income from each is determined separately.

(2) In all programs except FS, a shareholder in a corporation is not self-employed by virtue of the ownership interest in the corporation but only by meeting the requirements of section (3) of this rule. In the FS program, a shareholder in an incorporated business cannot be self-employed in that business.

(3) Except as provided in OAR 461-145-0250(2), a person is self-employed for the purposes of this division of rules if he or she meets at least five of the following criteria:

(a) Is engaged in an enterprise for the purpose of producing income.

(b) Is responsible for obtaining or providing a service or product by retaining control over the means and manner of providing the work or services offered.

(c) Has principal responsibility for the success or failure of the business operation by assuming the necessary business expenses and profit or loss risks connected with the operation of the business, and has the authority to hire and fire employees to perform the labor or services.

(d) Is not required to complete an IRS W-4 form for an employer and is not required to have federal income tax or FICA payments withheld from a pay check.

(e) Is not covered under an employer's liability or workers' compensation insurance policy.

(f) Contracts for a site or works out of another's business location.

(4) Notwithstanding sections (2) and (3) of this rule:

(a) Home care providers paid by the Department are not self-employed.

(b) Child care providers paid by the Department, adult foster care providers paid by the Department, realty agents, and clients who sell plasma, redeem beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered to be self-employed.

(c) A newspaper carrier is self-employed if the business through whom the carrier obtains the newspapers treats the carrier as an independent contractor.

(5) In the ERDC, FS, MAA, MAF, REF, and TANF programs, self-employment income, including income from a microenterprise, is counted prospectively to determine eligibility as follows:

(a) Self-employment income is annualized when it is:

(A) Received during less than a 12-month period but is intended as a full year's income.

(B) From a business that has operated for a full year and the previous year is representative of what the income and costs will be during the budget month.

(b) Self-employment income is treated as anticipated income when a financial group begins self-employment and is unable to determine what the income and costs will be during the budget month.

(6) In the GA, OSIP, OSIPM, and QMB programs, self-employment income is considered *available* upon receipt by a member of the financial group, except it is prorated over the period of work if the duration of the work exceeds one month.

Stat. Auth.: ORS 411.060, 411.816, 418.040, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.040, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-145-0920**

**Self-Employment; Costs That Are Excluded To Determine Countable Income**

This rule explains how to determine which costs are excluded from gross self-employment income.

(1) Unless prohibited by section (2) of this rule, and subject to the provisions of sections (3) and (4) of this rule and to OAR 461-145-

0930, the necessary costs of producing self-employment income are excluded from gross sales and receipts, including but not limited to:

(a) Labor (wages paid to an employee or work contracted out).

(b) Materials used to make a product.

(c) In the Food Stamp program — principal and interest paid to purchase income-producing property, such as real property, equipment or capital assets. In all other programs, interest paid to purchase income-producing property, such as equipment or capital assets.

(d) Insurance premiums, taxes, assessments, and utilities paid on income-producing property.

(e) Service, repair, and rental of business equipment (including motor vehicles) and property that is owned, leased or rented.

(f) Advertisement and business supplies.

(g) Licenses, permits, legal, or professional fees.

(h) Transportation costs at 20 cents per mile, if the cost is part of the business expense. Commuting expenses to and from the worksite are not part of the business expense.

(i) Charges for telephone service that are a necessary cost for self-employment.

(j) Meals and snacks provided by family day care providers receiving USDA meal reimbursements for children in their care (including their own). The actual cost of the meals is used if the provider can document the cost. If the provider cannot document the actual cost, the following figures are used:

(A) Breakfast — \$.83;

(B) Lunch — \$1.51;

(C) Dinner — \$1.51;

(D) Snacks — \$.45.

(k) Materials purchased for resale, such as Avon products. For newspaper carriers, this includes the cost of newspapers, bags, and rubber bands.

(2) The following costs are not excluded:

(a) Business losses from previous months.

(b) Except in the Food Stamp program, payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods.

(c) Federal, state and local income taxes, draws or salaries paid to any financial group member, money set aside for personal retirement, and other work-related personal expenses (such as transportation, personal business, and entertainment expenses).

(d) Depreciation. Depreciation is a prorated lessening of value assigned to a capital asset based on its useful life expectancy and initial cost.

(e) Costs related to traveling to another area to seek business when there is no reasonable possibility of deriving income from the trip.

(f) Interest or fees on personal credit cards.

(g) Personal telephone charges.

(h) Additionally for MAF and OHP, the costs of real property used as both a home and a business, unless the real property (including utilities) used for business is separate from the dwelling in which the financial group lives.

(i) Shelter or utility costs associated with the client's home, except as authorized by section (3) of this rule.

(3) The exclusions for items used for both business and personal purposes, such as automobiles and real property (including utilities), are limited by the following rules:

(a) In the MAF and OHP programs, the costs of real property (including utilities) are prorated if a separate office or shop is located on the property used as a home. No expense is allowed if the office or shop is part of the dwelling in which the client lives. For other items, the portion of the expense that is for business use only is excluded.

(b) In the ERDC, GA, GAM, OSIP, OSIPM and QMB programs, the portion of the expense that is for business use only is excluded.

(c) In the FS program, costs are excluded for a separate office or shop located on the property used as a home, unless the office or shop is part of the dwelling in which the client lives. Costs for other items used for both business and personal use are excluded.

(4) If no member of the financial group has been self-employed for a sufficiently long period to ascertain the costs of self-employment, the costs may be estimated.

(5) For a client participating in the microenterprise component of the JOBS program, costs are excluded according to general account-

ing principals, as applied by a certified public accountant, bookkeeping firm, or other entity approved by the Department, and this rule.

Stat. Auth.: ORS 411.060, 411.816 & 418.040

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05

#### **461-145-0930**

##### **Exclusions Allowed from Self-Employment Income**

This rule explains how exclusions are taken from self-employment gross income in the different programs. Gross income less exclusions leaves countable income. Costs of producing self-employment income, determined in accordance with OAR 461-145-0920, are excludable according to the following rules:

(1) In the REF program, no costs are excludable.

(2) In the MAA and TANF programs:

(a) For a client participating in the microenterprise component of the JOBS program, costs are excluded according to general accounting principals, as applied by a certified public accountant, bookkeeping firm, or other entity approved by the Department, and OAR 461-145-0920.

(b) For all other clients, no costs are excludable.

(3) In the GA, MAF, OSIP, OSIPM, and QMB programs, all costs are excludable.

(4) In the Food Stamp program, if there are any excludable costs, the exclusion is 50 percent of gross self-employment income.

(5) In the ERDC program, if the client claims an excludable cost, the minimum exclusion is 50 percent of gross self-employment income and the maximum exclusion is the total excludable cost.

(6) In the OHP program, the minimum exclusion is 50 percent of gross self-employment income and the maximum exclusion is the total excludable cost. The total excluded costs cannot exceed the gross self-employment income for the month that the exclusion is taken.

Stat. Auth.: ORS 411.060, 418.040 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

#### **461-145-0931**

##### **Additional Exclusions for Farming Costs; FS**

In the Food Stamp program, if gross self-employment income from farming is less than the costs calculated in accordance with OAR 461-145-0920, and the client receives or anticipates receiving annual gross farm income of \$1,000 or more, then farming-related costs that exceed self-employment income from farming are allowed as an exclusion from nonfarm self-employment income, other earned income, and unearned income.

Stat. Auth.: ORS 411.060, 418.040 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99

### **DIVISION 150**

#### **RETROSPECTIVE/PROSPECTIVE ELIGIBILITY AND BUDGETING**

#### **461-150-0010**

##### **Definitions Used in Retrospective/Prospective Eligibility and Budgeting**

(1) *Eligibility* is the decision as to whether a person qualifies, under financial and nonfinancial requirements, to receive program benefits. This decision must be made before budgeting is done.

(2) *Budgeting* is the process of calculating the benefit level after eligibility has been determined.

(3) *Initial month of eligibility* means the following:

(a) The first month a benefit group is eligible for a program benefit in Oregon after a period during which the group is not eligible. For migrant and seasonal farmworker households in the FS program, the period of ineligibility must exceed one month before a new initial month of eligibility is established.

(b) For all programs except the FS 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 OHP program, the first month of any certification period.

(4) The *ongoing month* is one of the following:

(a) For all programs except FS and OHP, 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 FS and OHP programs, any month in the certification period following the initial month of eligibility.

(5) For all programs except EA, the *payment month* is the calendar month for which benefits are issued.

(6) For EA, the *payment period* is 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.

(7) The *budget month* is the calendar month from which nonfinancial and financial information is used to determine eligibility and benefit level for the payment month.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-150-0020**

##### **Prospective Eligibility and Budgeting**

(1) For prospective eligibility and budgeting, the budget month and payment month are the same.

(2) In the prospective eligibility and budgeting system, the client's estimated income, household composition, and other relevant factors are used to determine the client's eligibility and benefit level. The client and Department jointly estimate the client's income based on the income already received and the income the client expects to receive.

(3) When prospective budgeting is used and the actual income differs from the amount determined in accordance with section (2) of this rule, there may be a client-caused overpayment only if the financial group withheld information, failed to make a required change report, or provided inaccurate information. In that event, the Department uses the actual income to determine whether there is, and the amount of, an overpayment.

(4) Except as provided in OAR 461-150-0050, the client is not entitled to a benefit supplement if the estimated income exceeds the actual income.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2001(Temp), f. & cert. ef. 4-4-01 thru 6-30-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 7-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-150-0030**

##### **Retrospective Eligibility or Budgeting**

(1) For retrospective eligibility or budgeting, the budget month is the month before the payment month.

(2) To determine eligibility retrospectively:

(a) Use information from the last day of the budget month to evaluate all eligibility factors except income and resources;

(b) Use information from the entire budget month to evaluate income and resources.

(3) To determine benefit amount retrospectively, use all information from the entire budget month. Financial information includes income and resources available per OAR 461-140-0020 and 461-140-0040 in the budget month.

Stat. Auth.: ORS 411.060, 411.070, 411.095, 411.111, 411.700 & 411.816, 7 CFR 273.21(n)

Stats. Implemented: ORS 411.060, 7 CFR 273.21(n) & (g)(3)

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 19-1994, f. & cert. ef. 9-1-94

**461-150-0042**

**Use of Prospective or Retrospective; EA**

The Department uses prospective or retrospective eligibility and budgeting for EA as follows:

(1) For the month of application, prospective eligibility is used. This includes clients who leave a filing group because of domestic violence.

(2) For budgeting, the information in OAR 461-160-0140 is used to determine benefit level.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; SSP 17-2004, f. & cert. ef. 7-1-04

**461-150-0047**

**Budgeting Income for Cases In the Semiannual Reporting System (SRS)**

(1) Prospective eligibility and budgeting are used for initial and ongoing months in SRS.

(2) Income is budgeted so that the anticipated amount is the same for each month. To do this, the type of income (stable, variable, annualized) the client anticipates receiving must be determined and the monthly income is then determined using the appropriate administrative rules on annualizing, averaging or converting income.

(3) Income reported on the interim change report is used according to section (4) of this rule to determine eligibility and benefit level.

(4) Income for the fifth month of the certification period is used to determine the income for the seventh and following months in the certification period if the client believes it will remain the same throughout the period. If the client believes it will not remain the same, the client and the case manager jointly estimate the income for those months.

Stat. Auth.: 411.816

Stats. Implemented: 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03

**461-150-0048**

**Eligibility and Budgeting; ERDC**

For ERDC, the budget month and the payment month are the same. Benefits are paid in the month after the budget and payment month. Prospective eligibility and budgeting are used as follows:

(1) For the initial and ongoing months, prospective eligibility and prospective budgeting are used (*see* OAR 461-150-0020).

(2) Income is assigned to the budget month in accordance with OAR 461-150-0049.

Stat. Auth.: ORS 411.060, 411.660 & 411.816

Stats. Implemented: ORS 411.630, 411.635 & 411.660

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00

**461-150-0049**

**Budgeting Income for Cases Using APR**

(1) For cases using APR, budget income so that the anticipated amount is the same for each month of the APR period. To do this, determine what type of income (annualized, educational, temporary, variable or stable) the client anticipates they will receive during the APR period. Then, budget each type of income as follows:

(a) For income that must be annualized, calculate per OAR 461-150-0090 to arrive at a monthly figure.

(b) For educational income, assign the income to the months it is intended to cover, regardless of when it is received. Prorate the income over these months and then average according to section (2) of this OAR.

(c) For temporary income and for other situations when the child care need will last two consecutive months or less, anticipate the income to be received in the months of child care need and average according to section (2) of this OAR.

(d) For ongoing variable or stable income, average according to section (2) of this OAR.

(2) Use the following guidelines to average income using APR:

(a) If income history is representative of income the financial group will receive during the APR period:

(A) Total the financial group's countable income from the preceding two months and the current month, including income already received and expected to be received in the current month.

(B) Divide the total income by three. The resulting figure is the financial group's average monthly income for the APR period.

(b) If income history is not representative of the income the financial group will receive during the APR period:

(A) The client and worker jointly determine the anticipated amount of countable income to be received in each month of the APR period and total it. For a 4-, 5- or 6-month APR period, only the first 3 months of the period are required to be used in the calculation.

(B) Divide the total in (A) by the number of months used in the calculation. The resulting figure is the average monthly income to be used for the APR period.

(3) Clients who are over income for benefits for an APR period may reapply during a subsequent month of the same APR period. When they reapply, establish a new APR period and recalculate the income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

**461-150-0050**

**Use of Prospective or Retrospective Eligibility and Budgeting; GA, OSIP, OSIPM, QMB**

Determine how and when to use prospective or retrospective eligibility and budgeting for GA, GAM, OSIP, OSIPM, and QMB as follows:

(1) For GA, GAM, OSIP (except OSIP-EPD and OSIP-IC), OSIPM (except OSIPM-EPD and OSIPM-IC), and QMB:

(a) For the initial month, use prospective eligibility and budgeting. Exclude money received from a nonrecurring source before the date of application. If any money remains after the date of application, count it as a resource.

(b) For ongoing months, use prospective eligibility and prospective budgeting for unearned income and stable earned income. Use retrospective budgeting for varying earned income.

(2) In the OSIP-EPD and OSIPM-EPD programs, quarterly budgeting is used as follows:

(a) For initial eligibility, a quarter begins the first full month that a client earns income. The quarter will be for three consecutive months. Eligibility begins no later than the date of request, notwithstanding any other eligibility requirements.

(b) For the initial quarterly period, prospective eligibility is used for earned income. Prospective budgeting is used for earned and unearned income. Unearned income received from a nonrecurring source prior to the date of application is excluded, and the remaining balance is a resource.

(c) For changes reported during a certification period, prospective eligibility is used for earned income. Prospective budgeting is used for earned and unearned income.

(d) For redeterminations of eligibility, the last month of eligibility plus the two prior months are used to constitute the quarter, unless prospective eligibility would be more indicative of future eligibility. If prospective eligibility is used, the last month of eligibility plus the following two months are used.

(3) For OSIP-IC and OSIPM-IC, the budget month is the initial month of eligibility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

**461-150-0055**

**Eligibility and Budgeting; OHP**

In the OHP program:

(1) The budget month is:

(a) For applicants, the month of application.

(b) For clients reapplying in the last month of their OHP certification period, and for clients moving from GAM, MAA, MAF, OSIPM, REFM, or SAC to OHP, the last month of their current eligibility period.

(c) When a person is added to the filing group, the month the person is added.

(d) For late reapplications, the month the application is received.



(e) For applicants who are not eligible using the budget month described in subsections (1)(a) to (1)(d) of this rule, any month falling within 45 days after the date of request.

(2) Countable income is determined as follows:

(a) Income is considered available during a month in accordance with OAR 461-140-0040.

(b) Income is not annualized, converted, or prorated.

(c) For self-employed clients, countable self-employment income is determined in accordance with OAR 461-145-0920 and 461-145-0930.

(3) The financial group's average countable income is calculated as follows:

(a) The financial group's income from the three months preceding the budget month is added.

(b) The total is divided by three, and the result is the financial group's average countable income assigned to the budget month.

(c) The financial group's average countable income is used to determine eligibility for OHP in accordance with OAR 461-160-0700.

(4) A change in income or resources during a certification period does not affect the eligibility of the benefit group for that certification period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-150-0060**

##### **Use of Prospective or Retrospective; FS, MAA, MAF, REF, REFM, TANF**

Determine how and when to use prospective or retrospective eligibility and budgeting as follows:

(1) For the initial month:

(a) For cases in the first month of their FS redetermination period that were in MRS last month and will continue to be in MRS, use eligibility and budgeting per section (3) of this rule.

(b) For all others, use prospective eligibility and prospective budgeting. This includes clients who leave a filing group because of domestic violence and enter a shelter/safe home.

(c) No supplement is issued based on incorrectly anticipated information.

(2) For ongoing months for benefit groups not in MRS, use prospective eligibility and budgeting as follows:

(a) If benefits are ended based on anticipated changes that do not occur, restore benefits back to the first of the payment month using prospective budgeting based on the best information available.

(b) If a case is suspended for one month because of a change that is not expected to continue into the following month.

(3) For ongoing months for benefit groups in MRS:

(a) Use retrospective eligibility and budgeting until there is a break in benefits of one or more calendar months. Use retrospective budgeting even if there is a break of one calendar month if:

(A) A case is suspended for one month because of periodic extra income or some other change that is not expected to continue into the following month; or

(B) A case is suspended for one month for not filing a monthly report and the benefit group files a monthly report for the suspend month before the end of the following month. Treat requests received after the following month as new applications and use prospective budgeting.

(b) Use prospective budgeting for annualized income and prorated educational income.

(c) If the budgeting method changes from prospective to retrospective, treat income from a terminated source that was counted prospectively as follows:

(A) If the actual amount received was less than or equal to the anticipated amount, exclude the income.

(B) If the actual amount received was greater than the anticipated amount, count the difference between actual and anticipated amounts.

(4) When a person is added to an ongoing filing group (see OAR 461-180-0010), eligibility is determined as follows:

(a) If the person is joining an MRS benefit group, retrospective budgeting is used for the benefit group, including the new person's income.

(b) For all others, prospective budgeting is used.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01

#### **461-150-0070**

##### **Prospective Use of Stable Income**

Stable income is income that is the same amount each time it is received. Stable income is used as follows in prospective budgeting and eligibility:

(1) If a financial group receives stable income once a month, the monthly amount is used to anticipate the group's income for each month.

(2) If a financial group receives stable income once a week, it is converted to a monthly amount by multiplying it by 4.3. The monthly amount is used to anticipate the group's income for each month.

(3) If a financial group receives stable income once every other week, convert that biweekly amount to a monthly amount by multiplying it by 2.15. Use the monthly amount to anticipate what the group's income will be for each month.

(4) In the Food Stamp program, stable income the client expects to receive less often than monthly during a certification period is either counted as income in the month of expected receipt or is averaged over the period it is intended to cover, at the option of the client.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 411.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-89, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01

#### **461-150-0080**

##### **Prospective Use of Variable Income; Not OHP; Not MRS**

Variable income is earned or unearned income that is not always received in the same amount each month. This rule explains how variable income is determined for financial groups not in the monthly reporting system. The Division uses variable income to determine eligibility and benefits prospectively in all programs except OHP, which is covered in OAR 461-135-0055.

(1) If a financial group receives earned income based on an hourly wage, with or without tips or commissions, the income for the budget month is determined as follows. The hourly wage is multiplied by the number of hours the client is expected to work each week, and the product is added to the tips and commissions, if any, for the week. The sum is multiplied by 4.3 to arrive at the earned income for the month.

(2) If a financial group receives unearned income or earned income not based on an hourly wage, or it is not reasonable to predict the hourly wage or the number of hours the client will work, the client's prospective income is computed as follows.

(a) If the client's previous income is indicative of the income the financial group will receive during the redetermination period, the following provisions apply.

(A) If the budgeting method is changing from retrospective to prospective, the financial group's income from each representative month is added and the sum is then divided by the number of representative months. The quotient is used as the income for each month of the redetermination period.

(B) In all other cases, the financial group's income from the preceding two months is added to the income for the current month, including income already received and income expected to be received. The sum is divided by three. The quotient is used as the income for each month of the redetermination period.

(b) If the client's previous income is not indicative of the income the financial group will receive during the redetermination period, the client and worker jointly determine the anticipated income for the redetermination period.

(3) Food Stamp financial groups with variable income, who are not covered by section (1) of this rule, must choose either to have their benefit level changed from month to month in accordance with this section or to have their income determined in accordance with section

(2) of this rule. Food Stamp financial groups who choose to have their benefit level changed from month to month inform the Division of their anticipated income for each month of the redetermination period, and the Division uses the reported anticipated income to calculate the monthly benefit.

(4) In the Food Stamp program, financial groups who meet the definition of “destitute household” in OAR 461-135-0575 may not use the income averaging option for the initial month of eligibility or the first month of a new certification period. For destitute financial groups, income for the initial month of eligibility and the first month of a redetermination period is determined according to OAR 461-150-0100. Thereafter, the financial group is subject to sections (1) through (3) of this rule.

(5) In the Food Stamp program, variable income the client expects to receive during a certification period is either counted as income in the month of expected receipt or is averaged over the period it is intended to cover, at the option of the client.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01

#### **461-150-0090**

##### **Annualizing Contracted and Self-employment Income**

(1) Income from self-employment is annualized in accordance with OAR 461-145-0910(5).

(2) In the ERDC, FS, MAA, MAF, REF, and TANF programs, income derived from a contract is annualized if it is received during less than a 12-month period but is intended as a full year’s income, except that income derived from a contract and received on an hourly or piecework basis is not annualized.

(3) The following steps are taken to annualize income:

(a) The income from the appropriate 12-month period is divided by 12.

(b) If the business has been in operation for less than a year, the total income is divided by the number of months of operation. The result is the financial group’s monthly income from the source.

(4) If past income is not representative of future income, for instance when a substantial increase or decrease is expected in next year’s countable self-employment income, income is not annualized. In this case, estimates of next year’s anticipated or projected income and costs are used to determine the countable income.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05

#### **461-150-0100**

##### **Initial Month Budgeting of Destitute Filing Groups; FS**

For destitute filing groups (per OAR 461-135-0575), use only the following income to determine eligibility and benefit level in the initial month or the first month of the redetermination period:

(1) Income received from the first of the month through the filing date; and

(2) Income received after the filing date that is regular and ongoing. Do not use income from a new source anticipated to be received after the filing date.

Stat. Auth.: ORS 183, 411.060, 411.070, 414, 416 & 418

Stats. Implemented: ORS 411.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92

### **DIVISION 155**

#### **INCOME AND PAYMENT STANDARDS, AND SPECIAL NEEDS**

#### **461-155-0010**

##### **Use of Payment Standards to Establish Need**

(1) Need is the amount at the Department’s payment standards that represents the client’s need for items covered by the benefit.

(2) Special needs are costs in addition to standard allowances.

(3) In the GA and GAM programs, ongoing special needs are used to determine benefit amount as specified in OAR 461-160-0500.

(4) In the OSIP and OSIPM programs, special needs defined in 461-155-0520 and 461-155-0630 are used to determine initial and ongoing eligibility. All other special needs are used when determining the benefit amount or the client liability.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

#### **461-155-0020**

##### **Prorated Standards; Adjusted Number in Household**

Prorated standards are used only in the no-adult tables and the non-SSI/OSIP table. Prorated standards are not applied to cases in which a client receives services described in OAR chapter 411, division 015. The no-adult tables are used when there are no adults in TANF need groups. Prorated standards are based on the number of people in the need group, compared to the adjusted number in the household group. The adjusted number in the household is determined by taking the total number of persons in the household minus the following people:

(1) Unborns, unless included in the need group.

(2) Clients receiving long-term care or waived home and community-based care.

(3) Foster children.

(4) Children receiving adoption assistance.

(5) Live-in attendants who live with the filing group solely to provide necessary medical or housekeeping services and are paid to provide these services.

(6) Landlords and tenants. A landlord-tenant relationship exists if one person pays another at fair market value for housing and if:

(a) The filing group lives independently from the landlord or tenant;

(b) The filing group has and uses sleeping, bathroom, and kitchen facilities that are separate from the landlord or tenant; and

(c) If bathroom or kitchen facilities are shared, the housing must be a commercial establishment that provides either room or board or both for fair market value compensation.

(7) In the OSIP and OSIPM programs only:

(a) The biological and adoptive children of either spouse.

(b) Recipients of EXT, GA, MAA, MAF, OHP, OSIP, OSIPM, QMB, SAC, or TANF.

Stat. Auth.: ORS 411.070

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1998, f. & cert. ef. 10-1-98; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

#### **461-155-0030**

##### **Income and Payment Standards; MAA, MAF, REF, SAC, TANF**

For MAA, MAF, REF, SAC and TANF, the income standards are as follows:

(1) The Countable Income Limit Standard is the amount set as the maximum countable income limit.

(a) For need groups in the REF and TANF programs containing an adult and for all need groups in the MAA, MAF and SAC programs, the following table is used: [Table not included. See ED. NOTE.]

(b) In the REF and TANF programs, when the need group contains no adults, the “no-adult countable income limit standard” is calculated as follows:

(A) Refer to the Countable Income Limit Standard for need groups with adults. Use the standard for the number of people in the household group.

(B) Divide the standard in paragraph (A) of this subsection by the number of people in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of people in the need group. The result is the standard.

(2) The Adjusted Income/Payment Standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult.

(a) For need groups containing an adult in the REF and TANF programs and for all need groups in the MAA, MAF and SAC programs, the following table is used: [Table not included. See ED. NOTE.]

(b) For the REF and TANF programs, when the need group contains no adult, the No-Adult Adjusted Income/Payment Standard is calculated as follows:

(A) Refer to the Adjusted Income/Payment Standard for need groups with adults. Use the standard for the number of people in the household group.

(B) Divide the standard in paragraph (A) of this subsection by the number of people in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of people in the need group.

(D) Add \$12 to the figure calculated in paragraph (C) of this subsection.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.070 & 418.100

Hist.: AFS 80-1989, f. & cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-155-0035**

##### **Cooperation Incentive Payment Standard; TANF and REF**

(1) The cooperation incentive is a monthly payment added to the TANF cash grant. OAR 461-135-0210 explains who is eligible for this incentive payment.

(2) When there is an adult in the need group, the incentive payment is based on the number of people in the need group as follows:

- (a) One person — \$26;
- (b) Two people — \$32;
- (c) Three people — \$43;
- (d) Four people — \$52;
- (e) Five people — \$52;
- (f) Six people — \$75;
- (g) Seven people — \$75;
- (h) Eight or more people — \$109.

(3) When there is no adult in the need group, the incentive is calculated as follows:

(a) The payment authorized by section (1) of this rule is determined based on the number of people in the household group rather than in the need group. For instance, if there are three people in the household group, the amount used for this calculation is \$43.

(b) The figure obtained in subsection (a) of this section is divided by the number of people in the household group, and the result is rounded to the next lower whole number.

(c) The figure obtained in subsection (b) of this section is multiplied by the number of people in the need group. The result is the incentive payment.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-155-0050**

##### **Payment Standard for AFC and RCF; ADC-BAS, REF**

For ADC-BAS and REF, the payment standard for one person in AFC or RCF is the same as the adjusted income standard for a need group with one adult per OAR 461-155-0030. The payment, minus a \$30 personal allowance for clothing and personal incidentals, is for room and board.

Stat. Auth.: ORS 411.060, 411.070 & 414

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 18-1992(Temp), f. & cert. ef. 7-15-92; AFS 28-1992, f. & cert. ef. 10-1-92

#### **461-155-0070**

##### **Income and Payment Standard; EA**

(1) The income limit in the EA program is the TANF adjusted income or payment standard found in OAR 461-155-0030(2). A client

is ineligible for emergency assistance in any month he or she is eligible for the TANF program unless the grant for that month is less than the payment standard only because the grant was prorated for the month.

(2) EA benefits are limited as follows:

(a) The program will provide only the minimum amount necessary to meet the emergent need.

(b) The maximum EA benefit amount for the 30-day eligibility period is \$100.

(c) Payments for food cannot exceed the maximum FS allotment by household size.

(d) The client is not eligible for an EA payment unless the payment enables the client to resolve the emergent need in its entirety without receiving JOBS support service payments (see OAR 461-190-0211 and 461-190-0221).

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.117 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 7-1990, f. & cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 18-1990(Temp), f. & cert. ef. 7-13-90; AFS 26-1990, f. & cert. ef. 11-29-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 4-2002(Temp), f. & cert. ef. 4-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-155-0150**

##### **Child Care Eligibility Standard, Payment Rates, and Copayments**

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

(1) The following definitions apply to the rules governing child care rates:

- (a) Infant: A child aged birth through 12 months.
- (b) Toddler: A child aged 1 year through 30 months.
- (c) Preschool Child: A child aged 31 months through 5 years.
- (d) School Child: A child aged 6 years or older.

(e) Special needs child: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, licensed or certified psychologist or clinical social worker.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts:

(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets:

(A) The training requirements of the Oregon Registry entry level, established by the Oregon Center for Career Development in Childhood Care and Education; or

(B) The training requirements established by the Child Care Division for registered family providers who apply to become registered after October 1, 1999.

(c) The Enhanced Group Rate applies to child care provided in a residential dwelling that is certified by the Child Care Division as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(d) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Child Care Division Certification rules (see OAR 414-300-0000).

(e) The Enhanced Center Rate applies to child care provided in a center that is certified by the Child Care Division or in an exempt center whose staff meet the training requirements of the Oregon Registry entry level established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:



(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry entry level training requirements noted in paragraph (2)(b)(A) of this rule.

(B) New staff must meet the Oregon Registry entry level training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (2)(e)(A) of this rule.

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(f) An exempt center is eligible to receive the enhanced rate for a maximum of six months while in the process of meeting the requirements of subsection (2)(e) of this rule if it files a statement of intent to meet the requirements on a form prescribed by the Department.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (2)(b), (c), (e), or (f) of this rule.

(3) Subject to the provisions in section (6) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (6) of this rule.

(b) The product of the hours of care, limited by section (4) of this rule, multiplied by the hourly rate provided in section (6) of this rule.

(4) The number of payable billable hours for a child is limited as follows:

(a) For the ERDC-BAS and TANF programs, the total in a month may not exceed:

(A) The number of hours of care necessary for the client to maintain his or her job including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client, or to participate in activities included in a case plan (see OAR 461-190-0161 and OAR 461-190-0310); or

(B) 125 percent of the time the client is at work or participating in an approved activity of the JOBS program.

(b) For the ERDC-SBG program, the total may not exceed the number of hours of care necessary for the client to maintain his or her education, training or employment. The total may not exceed 125 percent of the sum of 200 percent of class hours and the time the client is at work.

(c) In the ERDC-BAS and TANF programs, for a client who earns less than state minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage. The limitation of this subsection is waived for the first three months of the client's employment.

(5) The following provisions apply to all programs:

(a) Providers not eligible for the enhanced rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced rate will be paid at an hourly rate for children in care less than 136 hours a month unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate.

(c) At their request, providers eligible for the enhanced rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month and customarily bill all families at a part-time monthly rate.

(d) Unless required by the client's or child's circumstances, the Department will not pay for care at a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care;

(B) The absent child's place is not filled by another child; and

(C) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(6) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (7) of this rule, is the lesser of the following:

(a) The amount billed by the provider or providers; and

(b) The monthly rate established in section (8) of this rule multiplied by a factor, limited to 1.5, determined by dividing the number of hours billed by 215.

(7) The limit allowed by section (6) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this rule, a client has special circumstances when it is necessary, in order for the client to perform the requirements of his or her employment or training, to obtain child care for a child in excess of 215 hours in a month.

(8) The payment available for care of a child who meets the special needs criteria described in subsection (1)(e) of this rule is increased in accordance with OAR 461-155-0151 if:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age; and

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(9) The following are the child care rates. The rates are based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (that is, hourly or monthly) [Table not included. See ED. NOTE.]

(10) This section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is met for need groups of eight or less if monthly income for the need group is less than 150 percent of the federal poverty level, as described in OAR 461-155-0180(4). The eligibility standard for a need group size of eight applies to any need group larger than eight. The ERDC copay is \$25 or the amount determined by the formula in subsection (b) of this section, whichever is greater.

(b) The maximum copay equals the constant determined by the table in subsection (c) of this section, added to the product of a constant determined by the table in subsection (d) of this section times the constant determined by the table in subsection (e) of this section raised to a power equal to the family's gross income, expressed in dollars. The formula is as follows:  $y = k + (b \times m^x)$

(c) The constant k is determined by the number of people in the need group, as follows:

(A) 2 persons:  $k = -30$

(B) 3 persons:  $k = -55$

(C) 4 persons:  $k = -50$

(D) 5 persons:  $k = -51$

(E) 6 persons:  $k = -80$

(F) 7 persons:  $k = -92$

(G) 8 or more persons:  $k = -103$

(d) The constant b is determined by the number of people in the need group, as follows:

(A) 2 persons:  $b = 18.0$

(B) 3 persons:  $b = 23.0$

(C) 4 persons:  $b = 20.9$

(D) 5 persons:  $b = 20.6$

(E) 6 persons:  $b = 33.2$

(F) 7 persons:  $b = 33.2$

(G) 8 or more persons:  $b = 40.4$

(e) The constant m is determined by the number of people in the need group, as follows:

(A) 2 persons:  $m = 1.001885$

(B) 3 persons:  $m = 1.001550$

(C) 4 persons:  $m = 1.001380$

(D) 5 persons:  $m = 1.001250$

(E) 6 persons:  $m = 1.000990$

(F) 7 persons:  $m = 1.000910$

(G) 8 or more persons:  $m = 1.000795$

(11) Effective October 1, 2003, a client's copay is limited to \$25 during the first month the client is eligible for ERDC. This limitation cannot be used in more than one month in any 12 consecutive months.

(12) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National

Guard unit that is called up for active duty is the lesser of the following:

- (a) The amount billed by the provider or providers.
- (b) The monthly rate established in this rule for 215 hours of care.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-155-0151**

##### **High Special Needs; Child Care**

(1) The payment authorized by OAR 461-155-0150(8) is calculated by adding the applicable special need payment authorized by section (9) of that rule to the additional amount determined by this rule.

(2) The additional amount determined by this rule is allowed in consideration of the additional cost to a child care provider for the additional care and supervision required because of a child's physical, mental or behavioral condition. To determine the additional amount, a factor determined by this rule is multiplied by:

- (a) \$2.50 for a payment calculated on an hourly basis; or
- (b) \$420 for a payment calculated on a monthly basis.

(3) The factor used to make the calculation described in section (2) of this rule is determined by first establishing a score for each category listed in section (5) of this rule. The score is established by multiplying a rating and the weight for each category. The weight is given in section (5). The rating is determined as follows:

(a) The child's need for care and supervision is assessed and is compared with the needs of other children of the same age, and a rating is determined for each category. The rating is a whole number from zero to ten.

(b) Benchmark scores are given in section (5) of this rule for each category using several descriptions of need. The child's level is matched with the benchmark descriptions, and a rating is assigned based on a comparison of the child's needs and the benchmark descriptions. If a child's level of need falls between — or is described in part by — two benchmarks in the rule, an appropriate intermediate rating is assigned based on the benchmarks scores.

(4) After a score is determined for each category, the scores are added. The sum of the scores is changed to 100 if it is less than 110 and is reduced to 300 if it exceeds 300. The adjusted score is decreased by 100, and the remainder is divided by 100. The result is the factor used in section (2) of this rule.

(5) The categories, their weights, and standards for their ratings are as follows:

- (a) Level of medical care — weight is 7:

(A) Child requires on-site medical attention by a licensed medical or mental health professional and the child care provider must have specialized training related to the child's medical or mental health needs — rating of 10.

(B) The provider must have specialized training related to the child's medical or mental health needs and consults frequently with a medical or mental health professional — rating of 8.

(C) Child requires medical attention by a caregiver who has received some specialized training related to the child's medical or mental health needs — rating of 4.

(D) Child requires medical attention or monitoring by a caregiver who has received special instructions from the parent or a service

provider related to the child's medical or mental health needs — rating of 1.

(E) Child's needs can be met by staff with general knowledge — rating of zero.

- (b) Self-sufficiency with daily tasks — weight is 5:

(A) Child requires total assistance with eating or toileting, such as requiring tube feedings or with special toileting needs, such as ostomy care — rating of 10.

(B) Child requires considerable assistance in eating or toileting — rating of 5.

(C) Child requires only minor assistance with eating or toileting — rating of 1.

(D) Child can take care of daily tasks with very little assistance — rating of zero.

- (c) Mobility — weight is 5:

(A) Child is unable to help with positioning or movement, needs frequent repositioning, and the child is difficult to move — rating of 10.

(B) Child can help with transfers, pivoting and position — rating of 5.

(C) Child is able to move independently with minor support — rating of 1.

(D) Child's mobility is similar to other children of the same age — rating of zero.

- (d) Communication skills — weight is 6:

(A) Child is unable to communicate needs and wants, and is unable to use alternative communication methods — rating of 10.

(B) Child relies entirely upon alternative methods such as sign language, picture boards, gestures, or facial expressions, to communicate the child's needs or to understand requests made of the child — rating of 8.

(C) Child has limited verbal skills. The child may require one-on-one communication to gain the child's attention, simplify instructions, or to understand the child's speech or gestures. Child may use alternative methods, mentioned in paragraph (B) of this sub-section, as a supplement to verbal skills — rating of 4.

(D) Child's communication skills are roughly similar to other children of the same age — rating of zero.

- (e) Need for monitoring and intervention — weight is 11:

(A) The child must remain within the child care provider's direct view at all times and needs frequent intervention to prevent harm to self or other children — rating of 10.

(B) The child must remain within the provider's direct view at all times but does not need frequent intervention — rating of 7.

(C) Child has behaviors that frequently require adult intervention but are not a threat to the child's or other children's safety — rating of 4.

(D) Child needs assistance to initiate, respond to, or engage in peer interactions that are safe, positive, and appropriate — rating of 2.

(E) Child needs some assistance but generally does well if the assistance is provided — rating of zero.

- (f) Cognition and comprehension — weight is 7:

(A) Child is unable to recognize danger, is unable to follow instructions without one-on-one assistance, and has difficulty processing basic sensory information about the environment. This does not include vision or hearing as the primary difficulty — rating of 10.

(B) Child needs to be given one instruction at a time and may need reminders of what was asked in order to complete instruction — rating of 5.

(C) Child is able to understand and solve problems with some special attention — rating of zero.

- (g) Other special considerations — weight is 5. There are other considerations relating to the level of supervision required for the child that are not included in the above categories. A rating is determined based on how much more supervision the child needs — because of the other consideration — than other children of the same age.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 22-2001, f. & cert. ef. 10-1-01

#### **461-155-0175**

##### **Income Standard; EXT**

(1) For the first seven months of EXT eligibility, there is no income limit.

(2) To continue EXT eligibility after the first seven months, the average adjusted earned income of the financial group must be below 185 percent of the federal poverty level as described in OAR 461-155-0180, using income from:

(a) The second three months of the EXT period to continue eligibility for the eighth through tenth months.

(b) The third three months of the EXT period to continue eligibility for the eleventh and twelfth months.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-155-0180**

##### **Poverty Related Income Standards; Not OSIP, OSIPM, QMB, TANF**

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level.

(2) A monthly income standard set at 100 percent of the 2006 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(3) A monthly income standard set at 133 percent of the 2006 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(4) A monthly income standard set at 150 percent of the 2006 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(5) A monthly income standard set at 185 percent of the 2006 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(6) A monthly income standard set at 200 percent of the 2006 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.816, 418.100

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-155-0190**

##### **Income and Payment Standards; FS**

(1) The FS Countable and Adjusted Income Limits are as follows: [Table not included. See ED. NOTE.]

(2) The FS Payment Standard (Thrifty Food Plan) is: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1998(Temp), f. 9-15-98; cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-155-0210**

##### **Payment Standard; GA, GAM**

The payment standard in the GA and GAM programs is \$0.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.010, 411.060, 411.710, 411.730 & 411.740

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 16-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 1-1996(Temp), f. 1-30-96, cert. ef. 2-1-96; AFS 10-1996, f. 3-27-96, cert. ef. 4-1-96; AFS 11-1997(Temp), f. & cert. ef. 8-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-1999, f. 7-29-99, cert. ef. 8-1-99; AFS 19-2000, f. 7-31-00, cert. ef. 8-1-00; AFS 16-2001(Temp), f. & cert. ef. 8-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2005(Temp), f. & cert. ef. 8-29-05 thru 2-25-06; SSP 18-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-155-0225**

##### **Income Standard; OHP**

(1) If a financial group contains a person with significant authority in a business entity a "principal" as defined in OAR 461-140-0040 the group is ineligible for the OHP program if the gross income of the

business entity exceeds \$10,000. If the need group is not ineligible under this section, its eligibility is evaluated under section (2) of this rule.

(2) The countable income standards for OHP are as follows:

(a) The countable income standard for OHP-OPC and OHP-OPU is 100 percent of the federal poverty level, as listed in OAR 461-155-0180(2), based on the size of the need group.

(b) The countable income standard for OHP-OP6 is 133 percent of the federal poverty level, as listed in OAR 461-155-0180(3), based on the size of the need group.

(c) The countable income standard for OHP-OPP and OHP-CHP is 185 percent of the federal poverty level, as listed in OAR 461-155-0180(5), based on the size of the need group.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 2-2004(Temp), f. & cert. ef. 2-13-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-155-0235**

##### **OHP Premium Standards**

In the OHP program, the following steps are followed to determine the amount of the monthly premium for the filing group:

(1) The number of persons in the OHP need group is determined in accordance with OAR 461-110-0630.

(2) The financial group's countable income is determined in accordance with OAR 461-150-0055 and 461-160-0700.

(3) Based on the number in the need group and the countable income, the monthly premium for each non-exempt OHP-OPU client in the benefit group is determined from the following table: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 35-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 22-1996, f. 5-30-96, cert. ef. 6-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2003(Temp), f. 2-26-03, cert. ef. 3-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 5-2004(Temp), f. & cert. ef. 3-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06; SSP 8-2006, f. & cert. ef. 6-1-06

#### **461-155-0250**

##### **Income and Payment Standard; OSIP, OSIPM**

(1) For an OSIP (except OSIP-EPD) or OSIPM (except OSIPM-EPD) client in long-term care or in a waived *nonstandard living arrangement* (defined in OAR 461-110-0110), the countable income limit standard is 300 percent of the full SSI standard for a single individual. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non-SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, clothing, personal incidentals, and household supplies. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(3) The standard in this section is used as the adjusted income limit for non-SSI OSIP and OSIPM clients. The OSIP-AB and OSIPM-AB adjusted income standard includes a transportation allowance. The total standard is: [Table not included. See ED. NOTE.]

(4) To be eligible for OSIP (except OSIP-EPD or OSIP-IC), a person must be receiving SSI or be eligible for an ongoing special need. The payment standard for SSI/OSIP clients living in the community is the SIP (supplemental income payment) amount. The SIP is a need amount added to any other special or service needs to determine the actual payment. In some cases, the need amount is zero.

(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than \$20: [Table not included. See ED. NOTE.]



(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For spouses who each receive SSI and live in an AFC, ALF or RCF, an amount is added to each person's SIP payment that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(5) For OSIP and OSIPM clients in long-term care, the following amounts are allowed for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unusual medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted income limit is 250 percent of the 2006 federal poverty level for a family of one. This 250 percent limit equals \$2,042 per month or \$24,500 per year.

(7) In the OSIP-EPD and OSIPM-EPD programs, \$970 in earnings is needed to meet the requirement in OAR 461-110-0115 for "sufficient earnings" in the definition of "attached to the workforce."

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-155-0270**

##### **Payment Standard for NSLA; OSIP, OSIPM**

For all OSIP and OSIPM cases in nonstandard living arrangements, the OSIP/OSIPM Payment Standard is allocated as follows: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-155-0290**

##### **Income Standard; QMB-BAS**

The adjusted income standard for the QMB-BAS program is 100 percent of the 2006 federal poverty level. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06

#### **461-155-0291**

##### **Income Standard; QMB-DW**

The adjusted income standard for the QMB-DW program is 200 percent of the 2006 federal poverty level (*see* OAR 461-155-0290). [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06

#### **461-155-0295**

##### **Income Standard; QMB-SMB**

The adjusted income standard for QMB-SMB is 135 percent of the 2006 federal poverty level (*see* OAR 461-155-0290). [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06

#### **461-155-0300**

##### **Shelter-in-Kind Standard**

For OSIP, OSIPM, and QMB, the Shelter-in-Kind Standard is:

(1) For a single person:

(a) Living alone, \$377 for total shelter or \$226 for housing costs only.

(b) Living with others, \$175 for total shelter or \$105 for housing costs only.

(2) For a couple:

(a) Living alone, \$460 for total shelter or \$276 for housing costs only.

(b) Living with others, \$169 for total shelter or \$101 for housing costs only.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 25-1991, f. & cert. ef. 1-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-155-0310**

##### **Special Shelter Allowance; ADC-BAS, REF**

The Special Shelter Allowance is included in the ADC-BAS and REF Payment. It is an advance of the ERA refund per ORS 418.172:

###### **Special Shelter Allowance**

No. in Need Group	Amount
1	\$22.35
2	22.35
3	21.14
4	20.34
5	19.53
6	18.73
7	17.92
8	17.12
9	16.32
10 or more	14.71

Stat. Auth.: ORS 411.060, 411.070, 183, 412, 413 & 414

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92

#### 461-155-0350

##### Minimum Contribution Standard

The Minimum Contribution Standard is used to determine which portion of a lodger's income is excluded for ADC, ADCM, REF, and REFM. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97

#### 461-155-0360

##### Cost-Effective Health Insurance

(1) This rule applies to the following medical assistance programs — EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM, REFM, and SAC. It explains how to determine whether an employer-sponsored health insurance plan is cost effective for the purpose of applying OAR 461-120-0345.

(2) The first step in making the determination of cost effectiveness is to determine the number of people in the household group who are in a benefit group of any of the programs listed in section (1).

(3) Based on the number determined in section (2) of this rule, the maximum cost-effective premium is determined from the following tables: [Table not included. See ED. NOTE.]

(4) The insurance is cost effective if the employee's share of the premium is equal to or less than the amount determined in section (3) of this rule.

(5) If the health-insurance plan is cost effective, the Department will reimburse the actual amount of the premium, not to exceed the amount determined in section (3) of this rule.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2004, f. & cert. ef. 10-1-04

#### 461-155-0500

##### Special Needs; Overview

(1) In the GA, GAM, MAA, MAF, OSIP, OSIPM, REF, REFM, and TANF programs, special needs are needs not included in the basic standard. They may be one-time needs or ongoing needs.

(2) Ongoing special needs are needs that last several months at a consistent cost. Examples are special diets and shelter exceptions. OAR 461-155-0010 is used to determine how special needs are considered for each program.

(3) Some special need items replace the standard allowances and do not change the standard payment. No additional payments are made for these items, for instance room and board or adult foster care.

(4) To be eligible for a special need item, clients must have no other available resources in the community or in their natural support system to meet the need, excluding resources used in determining eligibility.

(5) To be eligible for a special need item, clients must not be eligible for the item through Medicare, Medicaid, or any other medical coverage.

(6) The Department will authorize payment for one-time and ongoing special needs for the following, in accordance with the rules that follow:

(a) One-time needs for the following:

(A) Home adaptations to accommodate a client's physical condition;

(B) Home repairs;

(C) Moving costs;

(D) Property taxes;

(E) Transportation costs;

(F) Community transition services.

(b) Ongoing needs for the following:

(A) Adult foster care (AFC);

(B) Food for guide dogs and special assistance animals;

(C) Laundry allowances;

(D) Residential care facility (RCF) or assisted living facility

(ALF);

(E) Restaurant meals;

(F) Room and board;

(G) Shelter exceptions;

(H) Special diet allowances;

(I) Telephone allowances.

(7) In the GA, GAM, OSIP, and OSIPM programs, payment for a one-time special need will be authorized if providing for the need will sustain the client's independence and stability. This includes payments to prevent foreclosure resulting from nonpayment of property taxes and payments for adaptations to the home for reasonable accommodation of physical needs. Ongoing special needs are to be provided to enhance the client's ability to meet an unmet maintenance need such as a telephone allowance in lieu of additional service hours or due to a rural setting. Ongoing special needs are to be considered if the client cannot meet these needs through family support or other service organizations that provide funding for persons who are elderly or disabled.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

#### 461-155-0510

##### Special Need in Combined ADC/OSIP/REF Cases

(1) For OSIP and OSIPM families who receive other cash program benefits, any special need that can be met through the other benefit payment will not be met in the OSIP benefit.

(2) When a special need item is for an individual, rather than a benefit group, include the special need item in the program from which the individual is receiving benefits.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

#### 461-155-0526

##### Special Need; Community Transition Services; OSIP and OSIPM

(1) In the OSIP and OSIPM programs, the Department will authorize one-time payments for allowable expenses necessary for clients to set up housing in Oregon in their own homes or apartment, not including an adult foster home. Payments are allowed only for the following clients who are returning to the community if they meet the criteria for one of the service priority levels served by the Department according to OAR 411-015-0015(1):

(a) Clients leaving a nursing facility.

(b) Clients who have been admitted as an inpatient and are leaving an acute care hospital.

(2) Examples of allowable expenses are expenses for moving; housing security deposits; essential furnishings; eating utensils; food preparation items; deposits for utility hook-ups for heat, electricity and telephone; and health and safety measures such as pest eradication or allergen control. Allowable expenses do not include rent for housing or temporary housing, ongoing utility costs, medical supplies such as reachers, grabbers, wheelchairs, and transfer trays, or recreational items such as a television or cable television access.

(3) Payment will be authorized only for the minimum amount necessary to establish the client's basic living arrangement.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### 461-155-0530

##### Special Need; Food for Guide Dogs and Special Assistance Animals

For OSIP and OSIPM clients who are receiving SSI or waived services, a food allowance is allowed for guide dogs and special assistance animals. The maximum amount to be authorized is established yearly based on average costs incurred by Schools for Guide Dogs. Authorization of this special need must be based on a proven medical need to sustain the client's independence.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 4-2005, f. & cert. ef. 4-1-05

**461-155-0551**

**Special Need; Home Adaptations to Accommodate a Client's Physical Condition**

(1) In the OSIP and OSIPM programs, the Department will authorize — consistent with the restrictions in this rule — a one-time special needs payment for a home adaptation required by the client's care plan, if the adaptation is needed to accommodate the client's physical condition and prevent the client's placement in a nursing facility.

(2) For a home adaptation:

- (a) The client must be the owner or buyer of the house.
- (b) The adaptation must cost less than moving to another home.
- (c) Payment is limited to the lowest possible cost that will provide adequate facilities. The client must provide three competitive bids for the repairs, unless there are not three providers of the service in the local area.

(d) Providers of the adaptations must ensure that the work being completed meets current building codes.

(e) Adaptations authorized by this rule include only changes to the structure of the building, such as installation of ramps, grab-bars, and railings; widening of doorways; modification of bathroom facilities; and installation of electric and plumbing systems necessary to accommodate the client's medical equipment or supplies.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

**461-155-0580**

**Special Need; Laundry Allowances**

(1) OSIP and OSIPM clients who are receiving SSI or waived services, and GA and GAM clients, are eligible for a laundry allowance if they have proven, excessive, coin-operated laundry facility costs and do not:

(a) Have their own laundry facilities; *or*

(b) Reside in nursing facilities, Residential Care Facilities, Adult Foster Homes, Specialized Living Facilities, unless the Specialized Living Facility is apartment based, or Assisted Living Facilities.

(2) This allowance will not exceed an amount required to wash and dry the laundry.

Stat. Auth.: ORS 183, 411.060, 411.070, 411.105, 411.111, 411.300, 411.630, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009, 414.032, 416 & 418

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93

**461-155-0600**

**Special Need; Home Repairs**

In the GA, OSIP and OSIPM programs, the Department will authorize a special need payment for home repairs for homeowners or buyers as a one-time special need within the following limits:

(1) The repairs must be needed to remove a physical hazard to the health and safety of the client.

(2) Payment for repairs authorized by this rule:

(a) May be authorized for not more than one repair in any 24-month period;

(b) Is limited to the least expensive means possible; and

(c) Cannot exceed \$1,000 in any 24-month period.

(3) Payments necessary for a one-time home repair may be made over a period not to exceed 30 consecutive days.

(4) A filing group that has received a home repair payment under this rule is not eligible for a home repair payment again until the first day of the 24th month following the first payment that was made for the most recent home repair.

(5) The repairs must cost less than moving to another home.

(6) Payment is limited to the lowest possible cost that will provide adequate facilities. The client must provide three competitive bids for the repairs, unless there are not three providers of the service in the local area.

(7) Before approving payment for repairs or new installations, the Department will consider the use value and will determine whether it is consistent with the care plan for the client to remain in the house. Providers of the repairs or new installations must ensure that the work being completed meets current building codes.

(8) Repairs or replacements include, but are not limited to:

(a) Electrical wiring that does not constitute conversion to electrical space heating but that is needed;

(A) To avoid condemnation; or

(B) To remove a definite fire or shock hazard as documented by appropriate public officials.

(b) Plumbing — but not including the costs of plumbing items with which the house is not already equipped except that a toilet may be paid for when newly required by the creation or extension of a sewer district. Examples of what plumbing-related items may be covered include:

(A) Toilets and sinks.

(B) Cleaning or replacing septic tanks or cesspools.

(C) Installing sewer connections from house to street — but not sewer installation — if required by the creation of a new sewer district or the extension of an existing district.

(c) Repair or replacement of existing electric pumps for wells needed to continue the water supply. This does not include drilling a new well.

(d) Heating equipment — repair of heating stoves, furnaces and water heaters and, if repair is not possible, replacement with the least expensive adequate equipment.

(e) Repair of roofs.

(f) Repair or replacement of steps and repair of floors.

(9) Clients with life estates are not eligible for this special need allowance. The person who will benefit from the life estate, following the death of the client, is considered responsible for the home repairs.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03

**461-155-0610**

**Special Need; Moving Costs**

(1) In the GA, OSIP and OSIPM programs, the Department will authorize payment for the cost of moving a client's household effects as a one-time special need if:

(a) Moving is essential to provide nonhazardous housing. "Hazardous" housing means a building so deteriorated and unsafe that it is uninhabitable or subject to condemnation. If no official certification to that effect can be obtained, the condition of the dwelling must have been seen by a Department employee and documented in the case record.

(b) The client has been evicted for reasons other than his or her own neglect or failure to make rent or house payments.

(c) The move is a result of domestic violence or protective services.

(2) The Department will not authorize payment of expenses to return the client to a state of former residence.

(3) Payment for moving costs authorized by this rule:

(a) May be authorized for not more than one move in any 12-month period;

(b) Is limited to the least expensive means possible; and

(c) Cannot exceed \$300 in any 12-month period.

(4) Payments necessary for a one-time move may be made over a period not to exceed 30 consecutive days.

(5) A filing group that has received a payment for moving costs under this rule is not eligible for a moving cost payment again until the first day of the 12th month following the first payment that was made for the most recent month.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03

**461-155-0620**

**Special Need; Property Taxes**

(1) GA, OSIP and OSIPM clients who are homeowners or buyers are allowed a special need of one year of delinquent real property taxes, penalties and interest, if needed to prevent imminent foreclosure.

(2) Clients who are eligible for the Oregon Property Tax Deferral Program must opt to defer property taxes. If necessary, the state may provide payment for back property taxes, to bring the tax current, to allow clients to defer their ongoing property taxes.



(3) Clients who have not chosen to defer their property taxes, and have failed to pay their property taxes, will not receive a property tax special need payment unless the exception is authorized by the Division's Estate Administration Unit. The exception will be based on the value of the property, the potential of foreclosure and the potential of an Estates Administration Unit recovery of such property.

(4) "Imminent foreclosure" is indicated by a formal notice of foreclosure.

Stat. Auth.: ORS 183, 411.060, 411.070, 411.105, 411.111, 411.300, 411.630, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009, 414.032, 416 & 418

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 12-1993, f. & cert. ef. 7-1-93

**461-155-0630****Special Need; Community-Based Care**

In the OSIPM program:

(1) A client is considered living in community based facility if the client resides at one of the following care settings licensed by the Department:

- (a) Adult Foster Care;
- (b) Residential Care;
- (c) Assisted Living;
- (d) Specialized Living;
- (e) Group Care Homes.

(2) In determining eligibility for OSIPM for an individual not covered by a home and community based care waiver, the special need (see OAR 461-155-0010) is the amount of the service payment authorized by the Department and is added to the OSIP maintenance standard.

(3) If a client who meets the applicable income requirements begins living in community based facility:

(a) Payment for room and board may be authorized during the month of admission at the initial placement, limited to the approved rate.

(b) Room and board payments may be paid to the community based facility during the temporary absence of a client if all of the following criteria are met:

(A) The absence occurs because the client is admitted to a hospital or nursing home.

(B) The Department determines the intent of the client to return to the community based facility.

(C) The community based facility is willing to accept the room and board payment.

(D) The client returns within two full months following the month in which the absence began.

(c) Service payments will not be paid for any time during the period of absence of the client from a community based facility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 13-1994, f. & cert. ef. 7-1-94; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

**461-155-0640****Special Need; Restaurant Meals**

(1) To receive the restaurant meals special need, OSIP and OSIPM clients who are receiving SSI or waived services and GA and GAM clients must have proven medical and nutritional needs that cannot be met with meals purchased with food stamps.

(2) Clients living in their own homes who are unable to prepare their own meals, but are eligible for FS, may have their meals prepared by attendants that volunteer or are compensated by the SDSD In-Home Services program. Clients may also receive, if eligible, Meals on Wheels services to supplement their diet.

(3) The payment standard for restaurant meals is \$60 per month.

Stat. Auth.: ORS 183, 411.060, 411.070, 411.105, 411.111, 411.630, 414, 416 & 418

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93

**461-155-0650****Special Need; Room and Board**

(1) For GA, GAM, OSIP and OSIPM, "room and board" means a client purchases meals and shelter from a commercial provider who offers only room and board, with no additional services.

(2) Use the standard allowance for room and board if:

(a) No cooking facilities are available and it is not practical for the client to move;

(b) No member of the financial group is able to keep house; or

(c) The client requires care or training not available near the home.

(3) Room and board payment is established on a statewide standard based on the cost of an adult maintaining an independent living situation.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

**461-155-0660****Special Need; Shelter Exceptions**

(1) OSIP and OSIPM clients living in long-term care facilities, and GA and GAM clients, are not eligible for the standard shelter allowances. However, for OSIP and OSIPM clients who are receiving SSI or waived services, allow a special shelter allowance in addition to the payment for care if all the following are true:

(a) The client enters a hospital, state psychiatric institution, nursing home, AFC, ALF, RCF or SLF.

(b) There is no other way for the client to maintain their rental property or home while they receive medical care.

(c) The agency-approved medical authority believes the client can be cared for in their home within six months.

(d) The Division service worker finds the client's property fits the needs for the client's home care.

(e) Arrangements for suitable home care are within agency standards.

(2) If an exception is authorized for a client meeting the criteria in section (1) of this rule, allow actual costs for utilities and rent or mortgage costs.

(3) Clients living in the community and receiving SSI or waived services are eligible for a special payment above the standard shelter allowance based on the following criteria:

(a) Clients must provide evidence that the cost of their shelter, above the OSIP standard, is based on costs associated with accessibility by individuals with a disability.

(b) All clients, with the exception of clients with mortgage or home contract payments, must apply for HUD subsidized housing.

(c) Once a client has met the criteria in sections (3)(a) and (b) of this rule, they will receive a shelter exception based on the difference between the OSIP shelter standard and the HUD standard or actual costs, whichever is less, specific to the client's living situation. This special need will be authorized only for the period of time prior to gaining HUD housing.

(d) Clients who refuse HUD housing will no longer be eligible for a shelter exception, unless the housing that is offered is not suitable related to accessibility by individuals with a disability. Clients must also take all the necessary actions to be maintained as active on the HUD lists.

(e) Clients with mortgages or home contracts must meet the criteria of section (3)(a) of this rule. They will receive a shelter exception based on the difference between the OSIP shelter standard and one-and-one-half times the HUD standard or actual costs, whichever is less, specific to the client's living situation.

(f) Clients who are residing with their spouse, including clients receiving services through the Spousal Pay program, excluding minor dependent children, must meet the criteria in sections (3)(a) and (b) of this rule and must have their shelter exception based on half of the total monthly cost of the home.

(g) Clients requiring live-in attendants may be eligible for a shelter exception if the cost of their shelter is higher because of the need for the live-in attendant.

(4) Costs associated with utilities may be added to the cost of rent or mortgage. Clients may use actual utility costs or they may use the OSIP utility standard in the calculation.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 22-2004, f. & cert. ef. 10-1-04

**461-155-0670**

**Special Need; Special Diet Allowance**

(1) In the EXT, GA, GAM, MAA, MAF, OSIP, OSIPM, REF, REFM, SAC, and TANF programs, clients are not eligible for a special diet allowance if they are receiving any of the following:

- (a) Room and board.
- (b) Residential care facility (RCF) services or assisted living facility (ALF) care.
- (c) Long-term care.
- (d) Adult foster care (AFC) services.
- (e) An allowance for restaurant meals.
- (f) A commercial food preparation diet.

(2) EXT, GA, GAM, MAA, MAF, REF, REFM, SAC, and TANF clients, and OSIP and OSIPM clients receiving SSI or long-term care services in the community, are eligible for a special diet allowance if they are in an imminent life-threatening situation. The situation must be verified by medical documentation.

(3) Calculate the amount of a special diet allowance as follows:

(a) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs, the difference between the actual cost of the special diet and a prorated share of the FS benefit for the appropriate number of clients in the benefit group.

(b) In the GA, GAM, OSIP, and OSIPM programs, the lesser of the following:

(A) The difference between the actual cost of the special diet and the amount provided in the basic standard for food;

(B) A maximum of \$300 per month, or an exceptional amount, authorized by the SPD Program Assistance Section, which will not exceed the cost of home IV therapy.

(4) Local management staff must approve the request for a special diet allowance, which must include documentation of the client's medical need by an agency-approved medical authority.

(5) Each diet allowance must be reviewed at six month intervals.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; SSP 17-2004, f. & cert. ef. 7-1-04

**461-155-0680**

**Special Need; Supplemental Telephone Allowance**

(1) The Department will provide a telephone allowance for SSI eligibles and clients receiving in-home services if they are unable to leave their residence without assistance due to a documented medical condition.

(2) The telephone allowance may cover the following costs:

(a) The least expensive appropriate telephone service or the basic rate, whichever is less.

(b) The cost of telephone adaptive equipment, if the client has a medically documented need (for instance, TDD or emergency response system).

(c) A one-time installation charge.

(3) SSI-eligible clients granted a telephone allowance must apply for a payment through the Oregon Telephone Assistance Program (OTAP). In addition, SSI-eligible clients requesting payment for telephone installation must apply for Link-Up America. If the Link-Up America credit does not cover the installation cost, the Department will provide for the difference up to a maximum supplement payment of \$30.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

**461-155-0690**

**Special Need; Transportation Costs**

For GA and OSIP, approve transportation costs for work search or give bus tickets for bona fide job interviews. Do not make a transportation payment once the client gains employment. In addition, use the following criteria:

(1) Authorization must be given before the transportation need.

(2) Pay for the least expensive method of transportation available (private car or common carrier, such as bus, train, or airline).

(3) Allow transportation costs at \$.08 per mile if transportation is by automobile. Allow actual cost for use of public transportation.

(4) The cost per mile rate for private vehicles includes operating costs, routine vehicle maintenance, car payments, and parking.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

**DIVISION 160**

**DETERMINING FINANCIAL ELIGIBILITY  
AND CALCULATING BENEFIT LEVEL**

**461-160-0010**

**Use of Resources in Determining Financial Eligibility**

A countable resource is the available resource (see OAR 461-140-0020) remaining after allowing exclusions. Countable resources are used to determine eligibility as follows:

(1) In FS, GA, GAM, MAA, MAF, QMB, REF, REFM, SAC, and TANF, a need group is not eligible for benefits if the financial group has countable resources above the need group resource limit.

(2) In EA, if a financial group has countable resources, they are used to reduce benefits.

(3) In OHP:

(a) Need group members who are Health Plan New/Noncategorical (HPN) or OHP-CHP (see OAR 461-135-1100) are not eligible if the financial group's countable resources are above the limit.

(b) If an HPN or OHP-CHP client is determined eligible, changes in resources do not affect eligibility during the certification period or until their eligibility otherwise ends.

(4) For OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD), if a financial group has countable resources above the resource limit, treat the resources above the limit as follows:

(a) If the excess resources plus other countable income are above one month's Payment Standard for the need group, the benefit group is not eligible for benefits.

(b) If the excess resources plus other countable income do not exceed one month's Payment Standard, use them to reduce benefits. This only applies to waived cases and will cause an increase in their liability.

(5) For OSIP-EPD and OSIPM-EPD:

(a) Any money in an approved account is excluded during the determination of eligibility.

(b) Assets purchased from moneys in an approved account are excluded, provided they meet the requirements of OAR 461-145-0025.

(c) Assets purchased as employment and independence expenses are excluded, provided they meet the requirements of OAR 461-145-0025.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.117 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

**461-160-0015**

**Resource Limits**

(1) In the MAA, MAF, REF, SAC, and TANF programs, the resource limit is:

(a) \$10,000 for need groups with at least one JOBS participant who is progressing in a case plan.

(b) \$10,000 for need groups with at least one member who is working under a JOBS Plus agreement.

(c) \$2,500 for all other need groups, including all TANF applicants.

(2) In the EA program, all countable resources must be used to meet the emergent need.

(3) In the ERDC, EXT, and REFM programs, there is no resource limit.

(4) In the FS program, the resource limit is:

(a) \$3,000 for financial groups with at least one member who is elderly or an individual with a disability, as defined at OAR 461-110-0110.

(b) \$2,000 for all other financial groups.

(5) In the OHP program:

(a) There is no resource limit for a person whose eligibility is determined under the OHP-OPC, OHP-OP6, or OHP-OPP programs.

(b) The resource limit for a person whose eligibility is determined under the OHP-OPU program is \$2,000.

(c) The resource limit for children whose eligibility is determined under the OHP-CHP program is \$10,000.

(6) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:

(a) \$2,000 for a one-person need group and \$3,000 for a two-person need group.

(b) \$1,000 for an OSIP need group eligible under OAR 461-135-0771. The total cash resources may not exceed \$500 for a one-person need group or \$1,000 for a two-person need group.

(c) \$5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-145-0025 for funds that may be excluded as approved accounts).

(7) In the QMB program, the resource limit is \$4,000 for a one-person need group and \$6,000 for a need group containing two or more people.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-160-0020**

##### **How to Determine “Adjusted Income”**

(1) *Adjusted income* is determined by subtracting income deductions from *countable income*. Specific rules on the deductions are found in this division of rules.

(2) *Countable income* is described in OAR 461-140-0010.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-2002, f. & cert. ef. 7-1-02

#### **461-160-0030**

##### **Overview of Costs**

(1) Costs incurred by the client that the client has a legal responsibility to pay are deductible from income in accordance with the rules in this division of rules.

(2) The following costs are not deductible:

(a) A cost paid by someone outside the filing group through a reimbursement, vendor payment, or in-kind benefit.

(b) A cost that is paid by a person or company outside the financial group or that is written off by a medical facility. These are referred to as third-party payments.

(c) The cost for a service provided by someone in the filing group, such as child care provided by the father while the mother works.

(d) A cost used as an income deduction in one budget month or averaged over several months cannot be used again.

(e) In the OSIPM program, a cost that the client incurred while the client was serving a disqualification from Medicaid under OAR 461-140-0210 to 461-140-0300 for a transfer of assets for less than fair market value.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1990, f. & cert. ef. 2-16-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-160-0040**

##### **Dependent Care Costs; Deduction and Coverage**

(1) In the EXT and MAF programs, the cost of dependent child care may be deducted from the income of a client in accordance with the following:

(a) The dependent child must live with the filing group;

(b) The provider of child care may not be in the filing group;

(c) The provider of child care may not be the parent of the child; and

(d) The amount of the deduction is determined as follows:

(A) In the MAF program, as set out in OAR 461-160-0190.

(B) In the EXT program, the amount is limited to the cost necessary for the caretaker relative to maintain employment, including time required to commute, work, and take a meal break.

(2) In the FS program, dependent care is deductible (see OAR 461-160-0430) when all of the following are true:

(a) The dependent is a member of the filing group and is in the care, control, and custody of a person in the group.

(b) The dependent care provider:

(A) Is not in the filing group; and

(B) Is not the parent of the dependent.

(c) The dependent care is necessary because the client is working, commuting, on a meal break, in training, participating in pre-employment education, or participating in an OFSET case plan.

(3) In the ERDC-BAS, ERDC-SBG, REF, and TANF programs, the cost of dependent child care may be paid for by the Department (is covered) only if all of the following requirements are met.

(a) In the ERDC-BAS, REF, and TANF programs, dependent child care is necessary for the working client to maintain employment, including time required to work, commute, or take a meal break. For a client working under a JOBS Plus agreement, child care is covered during the time the client is engaged in work or in job search if the employer pays the client during that time.

(b) In the ERDC-SBG program, dependent child care is necessary for a client to continue his or her education, training, or employment and the client is attending class, studying, working, commuting, or is on a meal break.

(4) In the ERDC, JOBS, REF, and TANF programs, the cost of dependent child care is not covered by the Department when free care is available, such as during school hours for school-age children.

(5) Child care is not covered in the ERDC-BAS and TANF programs if the nature of the work of the caretaker does not make it necessary for a person other than the caretaker to provide the care. It is generally unnecessary during a period of time when:

(a) The caretaker works at home, or is self-employed, and the nature of the work allows the caretaker to provide the care without significantly affecting the work;

(b) The caretaker provides child care in a residence; or

(c) The caretaker works for a provider of child care in a residence that is not certified under OAR 414-350-0000 and following.

(6) In the JOBS program, the cost of child care may be covered while the care is necessary to enable the client to participate in a *case plan* (see OAR 461-190-0211).

(7) In the ERDC, JOBS, JOBS Plus, REF, and TANF programs, the cost of dependent child care may be paid for (is covered) by the Department, only if all the following are true:

(a) The dependent child:

(A) In the JOBS, JOBS Plus, REFM, and TANF programs, lives with the filing group.

(B) In the ERDC program, is a member of the benefit group and is in the care, control, and custody of a person in the group.

(b) The provider of child care is not in the filing group.

(c) The provider of child care is not the parent of the dependent.

(8) Coverage of the cost of dependent care is subject to the requirements in chapter 461 of the Oregon Administrative Rules, including OAR 461-120-0510(4), 461-135-0400, 461-155-0150, 461-160-0193, 461-165-0180, and 461-190-0211.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06



**461-160-0055**

**Medical Costs That are Deductible**

(1) For FS clients who are elderly (defined in OAR 461-110-0110) or persons with a disability (defined in OAR 461-110-0110), and for clients in the GA, GAM, OSIP and OSIPM programs, medical costs are deductible to the extent a deduction is authorized in OAR 461-160-0415 and 461-160-0430 and in this rule.

(2) Health and hospitalization insurance premiums and coinsurance are deductible. In the FS and OSIPM programs, health insurance premiums paid less frequently than monthly may be prorated over the period covered by the premium.

(3) In the FS and OSIPM programs:

(a) Long-term care insurance premiums are deductible if the insurance pays for services while a person is:

(A) Receiving waived services;

(B) Receiving nursing facility services; or

(C) In an intermediate care facility for the mentally retarded (ICF/MR).

(b) A policy that is set up to pay a lump sum, similar to life insurance, is not deductible.

(4) The cost of a medical service is deductible if it is:

(a) Provided by, prescribed by, or used under the direction of a licensed medical practitioner; or

(b) Except in the Food Stamp program, a medical necessity approved by the Department.

(5) Medical deductions are also allowed for, among other things, the cost of:

(a) Medical and dental care, including psychotherapy, rehabilitation services, hospitalization, and outpatient treatment.

(b) Prescription drugs and over-the-counter medications prescribed by a licensed practitioner, the annual fee for a drug prescription card, medical supplies and equipment, dentures, hearing aids, prostheses, and prescribed eyeglasses.

(c) In the FS program, such items as the following:

(A) Nursing care, nursing home care, and hospitalization, including payments for a person who was a member of the household group immediately prior to entering a hospital or a nursing home certified by the state. Deduction of these payments is also allowed for a person who was a member of the household group immediately prior to death if the remaining household members are legally responsible for payment of the expenses.

(B) Services of an attendant, home health aid, housekeeper or provider of dependent care necessary due to the client's age or illness, including an amount equal to a one-person FS benefit group if the client furnishes the majority of an attendant's meals.

(C) Prescribed, companion animals and assistance animals (such as a Seeing Eye Dog, Hearing Dog, or Housekeeper Monkey), including the cost of acquiring the animals, their training, food, and veterinarian bills.

(D) Reasonable costs for transportation and lodging needed to obtain medical treatment or services.

(E) Installment plan arrangements made before a bill becomes past due. The expense is not deducted if the client defaults and makes a second agreement.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-160-0060**

**Use of Rounding in Calculating Benefit Amount**

(1) In the REF and TANF programs, a benefit amount not a whole number of dollars is rounded down to the next lower whole dollar.

(2) In the ERDC program, total countable income is rounded down to the next lower whole dollar. The benefit figures are not rounded.

(3) In the GA, GAM, OHP, OSIP, OSIPM and QMB programs, rounding is not used.

(4) In the FS program, when income and deductions are calculated, a figure ending with less than 50 cents is rounded to the next lower dollar and a figure ending with 50 cents or more is rounded to the next higher dollar. Rounding is done as follows:

(a) All income from the same source is added and the sum is rounded.

(b) Weekly income is rounded before the weekly conversion factor is used to convert it to monthly income. The converted amount is rounded before the earned income deduction is applied.

(c) The costs of dependent care for each financial group member is rounded before it is compared to the limit for dependent care.

(d) The medical costs for each person who is eligible for a medical deduction are added and the sum is rounded before the deduction is calculated.

(e) The costs for shelter are added and the sum is rounded before the shelter deduction is calculated.

(f) After multiplying the adjusted income by 30 percent, any amount from 1 to 99 cents is rounded up to the next higher dollar.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

**461-160-0070**

**Benefits for Less Than a Full Month**

In the FS, GA, OSIP, REF and TANF programs, if in a month a benefit group is eligible for less than a full month's benefits (such as the initial and closing months), benefits for that month are determined as follows:

(1) The benefit amount for a full month is determined.

(2) The full benefit amount is divided by the number of days in the payment month to determine the daily benefit.

(3) The daily benefit is multiplied by the number of days in the month the group is eligible. The result is the benefit amount for the partial month (prorated benefit), except as adjusted by section (4) of this rule.

(4) Rounding is used in the calculation of the prorated benefit as follows:

(a) In the FS, REF, and TANF programs, if the prorated benefit is not a whole dollar amount, the prorated benefit is rounded to the next lower whole dollar.

(b) In the GA and OSIP programs, the prorated benefit is not rounded.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

**461-160-0090**

**Employment and Independence Expenses; OSIP-EPD and OSIPM-EPD**

(1) An *employment and independence expense* (EIE) is any expense that can reasonably be expected to enhance the individual's independence and employment opportunities.

(2) An *employment and independence expense* must be approved by the branch office prior to its use as a deduction from countable income.

Stat. Auth.: ORS 411.060, 411.07 & 414.042

Stats. Implemented: ORS 411.060, 411.07 & 414.042

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99

**461-160-0100**

**Use of Income; ADC-BAS, ADCM-BAS, ADCM-SAC, REF**

(1) *Countable income* and *adjusted income* are used to determine eligibility for the MAA, MAF, REF, SAC, and TANF programs as explained in this section:

(a) The financial group's *countable income* is compared to the *countable income* limit standard for the need group. If countable income equals or exceeds the standard, the benefit group is not eligible.

(b) If *countable income* is less than the *countable income* standard, the *adjusted income* is compared to the payment standard. If the *adjusted income* equals or exceeds the payment standard for the need

group, the benefit group is not eligible. If the adjusted income is less than the payment standard for the need group, the benefit group meets the income eligibility standard.

(2) *Adjusted income* is used to determine the monthly benefit in the REF program and the TANF program (except for a client who receives JOBS Plus income — see OAR 461-145-0130) as explained in this section:

(a) The monthly benefit is calculated by subtracting *adjusted income* from the payment standard for the need group. The remainder is the benefit amount except for need groups that include an ineligible non-citizen.

(b) If the need group contains an ineligible non-citizen, the benefit is the lesser of the remainder calculated in section (2)(a) of this rule and the payment standard for the benefit group.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01

#### 461-160-0120

##### Income of Ineligible Non-Citizens and Father of an Unborn; MAF

(1) A need group ineligible for MAA that includes an ineligible non-citizen or a father of an unborn is evaluated for the MAF program by deeming the non-excluded income of the father or the ineligible non-citizens as provided in sections (2) and (3) of this rule. The amount deemed is counted as unearned income to the MAF financial group.

(2) If a person in the MAF financial group is excluded from the need group because he is the father of an unborn, the amount of the income deemed from the father is determined by deducting from his non-excluded income:

(a) The payment standard in OAR 461-155-0030(2) for one person; and

(b) The first \$90 of earned income.

(3) If one or more people in the MAF financial group are excluded from the need group for failure to meet the requirements of OAR 461-120-0125 (regarding citizenship and alien status), the amount of the income deemed from the ineligible non-citizens is determined by deducting from their non-excluded income:

(a) The payment standard in OAR 461-155-0030(2) for the number of people who do not meet the citizenship or alien status requirements; and

(b) The first \$90 of earned income for each ineligible non-citizen.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### 461-160-0125

##### Income of Parent Who is a Household Member But Not a Caretaker; MAF

This rule explains how to determine countable income for the MAF program when a parent in the financial group is excluded from the need group because he or she has given up the care, control and supervision of a child. The countable income is determined as follows:

(1) The needs of the parent and his or her dependents who are in the same household but not the same benefit group are deducted from gross income. The amount deducted is the payment standard in OAR 461-155-0030(1)(a). No deduction is made of the needs that were already deducted in the calculation of deemed income for minor parents under OAR 461-145-0860.

(2) From the balance, the following are deducted in order — the first \$90 of earned income, amounts paid to legal dependents not living in the household, and payments of alimony and child support.

(3) The remaining income is the countable income of the need group.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02

#### 461-160-0140

##### How Income and Resources are Used to Determine Eligibility and Benefit for EA

The Department considers a client's income and resources in determining eligibility and benefit level for EA as follows:

(1) The financial group's *countable income* is compared to the TANF adjusted income payment standard for the benefit group. If countable income equals or exceeds the standard, the benefit group is not eligible.

(2) If countable income is less than the standard and the financial group meets all other EA eligibility requirements, the client is required to use all income and resources that are immediately available to meet the emergent need. The EA benefit is calculated by subtracting all income and resources that are immediately available to the client from the amount needed to meet the emergent need. The remainder is the benefit, not to exceed the limit in OAR 461-155-0070.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.117 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 7-1990, f. & cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 18-1990(Temp), f. & cert. ef. 7-13-90; AFS 26-1990, f. & cert. ef. 11-29-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04

#### 461-160-0160

##### Earned Income Deduction; MAA, REF, TANF

(1) In the REF program, the earned income deduction authorized in this division of rules is allowed for each person in the financial group who has earned income. The earned income deduction is 50 percent of the client's gross earned income including self-employment income.

(2) In the MAA and TANF programs:

(a) For a self-employed client participating in the microenterprise component of the JOBS program, the earned income deduction for income *earned in the microenterprise* is 50 percent of the client's countable income calculated pursuant to OAR 461-145-0920 and 461-145-0930.

(b) For all other *income*, the earned income deduction is 50 percent of the client's gross earned income, including self-employment income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 15-1991(Temp), f. & cert. ef. 8-16-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

#### 461-160-0190

##### Earned Income Deductions and Order Applied; MAF and SAC

For the MAF and SAC programs, earned income deductions are applied in the following order:

(1) The first earned income deduction is the standard earned income deduction of \$90.

(2) The second earned income deduction is the \$30 and one-third earned income deduction. It is calculated as follows:

(a) The \$30 is deducted after the \$90 standard deduction is taken.

(b) One-third of the amount remaining is deducted.

(3) The third earned income deduction is the dependent-care deduction. Dependent care costs are deducted as follows:

(a) The total monthly deduction cannot exceed \$200 for each dependent under two years of age or \$175 for each dependent two years of age or older:

(A) For clients with full-time employment, there is no limit on the hourly rate for care.

(B) For clients with part-time employment (less than 30 hours per week), \$1 an hour may be deducted for each dependent.

(b) Dependent care costs are deducted for the following:

(A) The hours worked and work-related commuting and meal times.

(B) Medical leave or work-related training periods, even if dependent care was not used, if the client is required to pay the provider for the time.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 5-2002, f. & cert. ef. 4-1-02

#### **461-160-0193**

##### **Determining Eligibility and Calculating Payment; Direct Provider Payments for TANF Child Care**

(1) Clients in the TANF program are eligible for direct provider payments for child care (see OAR 461-165-0160) or client-direct payments (see OAR 461-165-0190) if:

(a) The child care cost is deductible under OAR 461-160-0040;  
(b) The caretaker relative is employed and is in the financial group. For the purpose of this rule, work study and a job with earnings that are excluded for the TANF program are not considered employment; and

(c) The child meets the age requirements of OAR 461-120-0510.

(2) Payments are limited as follows:

(a) The cost must be allowed by OAR 461-160-0040;

(b) Payment is limited to the rates provided in OAR 461-155-0150;

(c) The direct child care payment is calculated in accordance with OAR 461-160-0300; and

(d) Payment is made only for child care already provided.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 22-1992(Temp), f. & cert. ef. 8-10-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 7-2003, f. & cert. ef. 4-1-03

#### **461-160-0200**

##### **Unearned Income Deduction for Child and Spousal Support; MAF and SAC**

Clients in the MAF and SAC programs are entitled to a deduction not to exceed \$50 from the following income:

(1) Child support payments made by a noncustodial parent to the financial group for a dependent child (including a minor parent) in the financial group.

(2) Spousal support payments made directly to the financial group for a member of the financial group.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02

#### **461-160-0300**

##### **Use of Income to Determine Eligibility and Benefits for ERDC**

The Division determines financial eligibility for ERDC and the benefit level as follows:

(1) The financial group's monthly income is determined in accordance with OAR 461-150-0049.

(2) The monthly income is compared to the ERDC eligibility standard in OAR 461-155-0150. If monthly income equals or exceeds the eligibility standard, the need group is ineligible for ERDC. If monthly income does not exceed the eligibility standard, the client's eligibility is determined in accordance with section (3) of this rule.

(3) For a client not found ineligible under section (2) of this rule, the allowable child care cost and the client's copay are determined as follows:

(a) The child care costs for which the client has been billed are compared to the amount provided in the appropriate child care chart in OAR 461-155-0150. The allowable child care cost is the lesser of the two amounts.

(b) The need group's copay is determined in accordance with OAR 461-155-0150. The copay is subtracted from the allowable child care cost, and the remainder is the payment the Division makes to the provider. If the copay is equal to or greater than the allowable child care cost, the client is not eligible for ERDC. If the copay is less than the allowable child care cost, the client meets the income requirement for ERDC.

Stat. Auth.: ORS 411.060 & 411.700

Stats. Implemented: ORS 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 17-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; AFS 26-1990, f. & cert. ef. 11-29-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01

#### **461-160-0400**

##### **Use of Income to Determine Eligibility and Benefits; FS**

In the Food Stamp program, the financial group's countable income and adjusted income are used to determine eligibility for food stamps and the benefit level in three steps:

(1) Step one: The financial group's *countable income* is compared to the need group's countable income limit in OAR 461-155-0190. (*Countable income* is described in OAR 461-140-0010.) If the income equals or exceeds the limit, the need group is ineligible for food stamps. A financial group that is categorically eligible for food stamps or that includes a client who is *elderly* or *disabled* need not pass this step. (*Categorical eligibility* is described in OAR 461-135-0505.)

(2) Step two: If the need group is not ineligible under step one, the financial group's *adjusted income* (see OAR 461-160-0020) is compared to the need group's adjusted income limit in OAR 461-155-0190. If the income equals or exceeds the limit, the need group — except one that is categorically eligible for food stamps — is ineligible for food stamps. If the adjusted income is less than the limit, the need group meets the income standard for the Food Stamp program.

(3) Step three: The benefit level for an eligible need group is determined as follows — *adjusted income* is multiplied by 30 percent, and the product is rounded to the next higher dollar. The result is subtracted from the need group's payment standard (see OAR 461-155-0190). The remainder is the benefit amount.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 10-2002, f. & cert. ef. 7-1-02

#### **461-160-0410**

##### **Use of Income and Income Deductions When There Are Ineligible or Disqualified Group Members; FS**

When a member of the financial group is not in the need group, benefits in the Food Stamp program are calculated as follows:

(1) If the member is a qualified non-citizen (defined in OAR 461-120-0125(1)(a)-(g)) who does not meet the alien status requirements, the following procedure is used:

(a) Benefits are calculated as if the qualified non-citizen were eligible.

(b) Benefits are then calculated as if the qualified non-citizen were not a member of the filing group. Any income received by another member of the filing group from the non-citizen is counted as income of the financial group. No expenses paid by the non-citizen are deducted from gross income.

(c) The household's benefits are the lesser of the amounts calculated in subsections (1)(a) and (b) of this rule.

(2) The process described in sections (3) and (4) of this rule is used if the member:

(a) Is a qualified non-citizen (as defined in OAR 461-120-0125(1)(i)) who does not meet the alien status requirements of OAR 461-120-0110;

(b) Is a non-citizen but not a qualified non-citizen;

(c) Is unwilling to disclose his or her alien status; or

(d) Is disqualified for failing to obtain or provide a SSN.

(3) If the member is in a group described in section (2) of this rule:

(a) The member's *countable income* is prorated among the people in the financial group.

(b) The pro rata share of each person not in the need group is excluded.

(c) The rest of the prorated income is *countable income* for the financial group.

(4) An ineligible or disqualified member covered by section (2) of this rule is entitled to all income deductions for which the member qualifies. When either billed to or paid by these members, deductions for shelter, child support, and dependent care, are calculated as follows:

(a) The deductions, except deductions for the standard utility allowance, are prorated among the members of the financial group.



(b) The prorated share of the members of the need group is deducted.

(c) The deduction for the standard utility allowance is made in accordance with OAR 461-160-0420(8).

(5) The *countable income* of the following financial group members, subject to allowable deductions, is used to determine benefits:

(a) A client who is disqualified for failure to comply with the requirements of the OFSET program or because of an intentional program violation.

(b) A client who is:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the client is fleeing, for a crime, or attempt to commit a crime, that is a felony under the law of the place from which the client is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey; or

(B) Violating a condition of probation or parole imposed under a federal or state law.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 10-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 10-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 6-2002(Temp), f. & cert. ef. 4-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-160-0415**

##### **Medical Deduction; FS**

(1) This rule explains how to calculate the deduction for medical costs in the Food Stamp program allowed under OAR 461-160-0055 when incurred by an elderly (defined in OAR 461-110-0110) member of a household or by a household member with a disability (defined in OAR 461-110-0110).

(2) For each certification period, the Department estimates the amount of the client's medical deduction and apportions the amount evenly among the months in the certification period. For medical costs payable during the month of certification, the client may choose to deduct each cost in the month of certification or to average the cost over the certification period.

(3) For medical costs that were not anticipated when the deduction was estimated but are incurred and reported to the Department during the certification period, the client may choose to deduct each cost:

(a) In the month after the cost is reported; or

(b) By averaging the cost over the period from the month after the cost was reported to the end of the certification period.

(4) If the client is billed in the last month of a certification period for a medical cost that is due after the certification period, and the client does not pay the bill during the certification period, the cost may be used to compute the deduction in the next certification period.

(5) A medical cost is not deductible in any of the following situations:

(a) The client reports a paid medical cost in the last month of the redetermination period, but reports this cost after their benefits for that month have already been issued.

(b) The medical cost is past due or is an amount carried forward from a previous billing period.

(c) The client and creditor have agreed on a monthly payment amount, but the client defaults on the agreement.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; Suspended by AFS 31-2000(Temp), f. & cert. ef. 12-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-160-0420**

##### **Shelter Cost; FS**

(1) This rule explains how to calculate the client's shelter cost. The shelter cost is used to determine the shelter deduction (see OAR 461-160-0430). The shelter cost is the sum of the client's cost of housing plus an allowance for utilities, if the client incurs a utility cost. The shelter deduction is based on the shelter cost but is subject to a limitation described in OAR 461-160-0430.

(2) Cost of housing:

(a) The following comprise the cost of housing if they are incurred with respect to the client's current residence or the home described in section (5) of this rule:

(A) Regular, periodic charges for the financial group's shelter, such as rent, mortgage payments, and condominium or association fees. Late fees charged because a mortgage or rent payment was made late are not deductible.

(B) Property taxes, state and local assessments, and property insurance on the structure.

(C) Costs for repairing a home damaged or destroyed by a natural disaster (such as a fire or flood), if such costs are not reimbursed.

(D) If the need group is homeless and living in a vehicle — vehicle payments and collision and comprehensive insurance premiums for the vehicle.

(b) If housing costs are billed on a weekly or biweekly basis, the monthly cost is the weekly cost multiplied by 4.3 or the biweekly cost multiplied by 2.15.

(c) The financial group has the following choices about housing costs:

(A) The group may choose to apply the cost in the month it is billed or becomes due.

(B) The group may choose to have periodic costs averaged.

(C) For expenses that are billed less often than monthly, the group may choose to have them averaged over the period they are intended to cover.

(3) Shared housing: If the filing group shares housing costs with a person in the dwelling who is not in the filing group, only the housing costs incurred by the filing group are included in the calculation. If the portion paid by a person outside the filing group cannot be ascertained, the cost is apportioned among the people contributing to the cost. The pro rata share of those not in the filing group is deducted from the total, and the balance is considered a housing cost of the filing group.

(4) Cost for utilities:

(a) A filing group has a cost for utilities if it incurs a cost for heating or cooling; cooking fuel; electricity; water and sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; service for a telephone, such as basic service fee, wire maintenance, subscriber line charges, relay center surcharges, 911 service, and taxes; or initial installation fees charged by a utility provider.

(b) If the group incurs no cost for utilities in either its current home or in the home described in section (5) of this rule, then the shelter cost is calculated without an allowance for utilities.

(c) If a homeless need group uses a vehicle for shelter, the cost of fuel for the vehicle is considered a utility cost.

(d) If a filing group incurs a cost for utilities, then the utility allowance is one of the following:

(A) Allowance with heating or cooling: A full standard utility allowance of \$303 is used if the household group is billed for heating or cooling costs for its dwelling. Charges for any fuel and for electricity are considered heating costs if they are used for heating. A financial group who receives an energy assistance payment for the dwelling provided through the Low-Income Energy Assistance Act of 1981 is eligible for the utility allowance established by this paragraph (A).

(B) Allowance without heating or cooling:

(i) A limited standard utility allowance of \$217 is used if the household group is not billed for heating or cooling costs but is billed for at least two other costs enumerated in section (4)(a) of this rule.

(ii) An individual standard utility allowance of \$37 is used if the household is not billed for heating or cooling costs but is billed for only one of the costs enumerated in section (4)(a) of this rule other than the service cost for a telephone, including the related taxes or fees.

(iii) A telephone standard utility allowance of \$37 is used if the household is not billed for heating or cooling costs but is billed for telephone service, such as basic service fee, wire maintenance, subscriber line charges, relay center surcharges, 911 service, and taxes.

(5) Housing costs for a home not occupied by the household: Housing and utility costs with respect to a home not currently occupied by the household may be considered in calculating the shelter cost if:

(a) The home is temporarily unoccupied because of employment or training away from home, illness, or abandonment caused by casualty or natural disaster;

(b) The financial group intends to return to the home;

(c) No other, current occupant is claiming a deduction for shelter costs in the FS program; and

(d) The home is not leased during the household's absence.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 21-1998(Temp), f. 10-15-98 & cert. ef. 11-1-98 thru 12-31-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-160-0430**

##### **Income Deductions; FS**

(1) Deductions from income are subtracted from countable income in the following order to determine adjusted income for the Food Stamp program:

(a) An earned income deduction of 20 percent of countable earned income. The 20 percent deduction is not taken from the wages funded by grant diversions such as Work Supplementation wages.

(b) A standard deduction of \$134 per month for benefit groups of one, two, or three persons. A standard deduction of \$139 for a benefit group of four persons. A standard deduction of \$162 for a benefit group of five persons. A standard deduction of \$186 for benefit groups of six or more persons.

(c) A dependent care deduction not to exceed \$175 each month for each dependent, or \$200 each month for each child under age 2, for dependent care costs billed to a member of the financial group and not paid for through any other program of the Department. For the cost to be deductible under this section, the care must be necessary to enable a member of the need group to:

(A) Accept or continue employment;

(B) Meet the requirements of a case plan (see OAR 461-190-0310 for a definition of case plan); or

(C) Attend vocational or educational training. A student receiving educational income is entitled to a deduction only for costs not excluded from educational income by OAR 461-145-0150.

(d) The medical deduction for elderly clients and clients who have a disability in the need group. The deduction is calculated by determining the total of their deductible medical costs (see OAR 461-160-0415) and subtracting \$35. The remainder is the medical deduction.

(e) A deduction for child support payments a member of the household makes under a legal obligation to a child not a member of the household group, including payments for the current month and for payments on arrearages. Child support is not deductible if collected by setoff through the Oregon Department of Revenue or by interception of a federal tax refund.

(f) A shelter deduction, calculated as follows:

(A) For FS clients required to pay room and board in nonstandard living arrangements (see OAR 461-110-0110(13)), the shelter deduction is:

(i) The cost of room and board, minus the payment standard for the benefit group; or

(ii) The actual room cost, if the client can prove that the room cost exceeds the cost described in subparagraph (i) of this paragraph.

(B) For all other clients, the shelter deduction is calculated as follows:

(i) The standard deduction and the deductions of earned income, dependent care, court-ordered child support, and medical expenses are subtracted from countable income. Fifty percent of the remainder is subtracted from the shelter cost calculated in accordance with OAR 461-160-0420.

(ii) The rounded balance is the deduction, except the deduction is limited if the filing group has no member who has a disability or is elderly. The limit is \$417.

(2) If the client cannot verify a medical or court-ordered child-support expense or cannot verify any other expense when asked to do so, the unverified expense is not used to calculate the deduction. If the client provides verification, the deduction is applied when calculating the next month's benefits. If verification is provided within the period

authorized for processing applications (see OAR 461-115-0210), the benefits for the initial month are recalculated using the deduction.

Stat. Auth.: ORS 411.816

Stat. Implemented: ORS 411.816 & 411.825

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2000(Temp) Suspended by AFS 28-2000(Temp), f. 10-31-0, cert. ef. 11-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 3-2001, f. 2-27-01, cert. ef. 3-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-160-0500**

##### **Use of Income To Determine Eligibility and Benefits; GA, GAM**

In the GA and GAM programs, a financial group's countable and *adjusted income* (see OAR 461-140-0010 and 461-160-0020) are used to determine eligibility and benefit amount as follows:

(1) If the financial group's countable income equals or exceeds the payment standard for the need group, the need group is ineligible for GA and GAM. If the countable income is less than the standard, the need group meets the income standard for GA and GAM.

(2) The benefit amount is determined by subtracting the financial group's adjusted income from the sum of the payment standard for the need group and its ongoing special needs.

(3) The benefit cannot exceed the sum of the payment standard for the benefit group plus the ongoing special needs.

Stat. Auth.: ORS 411.060 & 411.710

Stats. Implemented: ORS 411.060 & 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 17-1995, f. 7-31-94, cert. ef. 8-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

#### **461-160-0530**

##### **Calculating Benefits; SSI-Eligible Clients Living in the Community; OSIP**

OSIP clients who receive SSI and live in the community or in a community-based setting are eligible for a payment based on the difference between the SSI standard and the OSIP payment standard (see OAR 461-155-0250), determined as follows:

(1) The financial group's countable income is compared to the supplemental income payment (SIP) table for the need group to determine the SIP payment.

(2) The SIP payment is changed to the OSIP standard for clients who, though separated from their spouses, receive benefits under the OSIP standard because the Social Security Administration considers them to be a couple. The SIP payment is computed by subtracting the client's countable income (including SSI) from the appropriate OSIP standard.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070, 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-160-0540**

##### **Determining Financial Eligibility and Benefits; QMB and OSIPM (except OSIPM-EPD) Living in the Community**

(1) This rule is used to determine financial eligibility for QMB clients and OSIPM (except OSIPM-EPD) clients who:

(a) Live in the community;

(b) Do not receive SSI; and

(c) Do not receive Title XIX waived services.

(2) In the OSIPM program, to determine eligibility for non-waivered service clients, the amount of the service payment is added to the adjusted income standard defined in 461-155-0250(3). The sum of the service payment and the OSIPM adjusted income standard must be greater than the client's adjusted income. If the sum of the service

payment and the OSIPM standard is less than the adjusted income, the client is not eligible. For all other OSIPM clients, they are eligible if their adjusted income is less than the OSIPM standard.

(3) In the QMB-BAS program, a client is eligible if his or her adjusted income is equal to or less than the QMB adjusted income standard.

(4) In the QMB-SMB program, a client is eligible if his or her adjusted income is less than the adjusted income standard.

Stat. Auth.: ORS 411.060, 411.07 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

#### **461-160-0550**

##### **Income Deductions; GA, GAM, QMB and Non-SSI OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD) in the Community**

(1) This rule is used to determine adjusted income for all GA, GAM, and QMB clients and for clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

- (a) Live in the community;
- (b) Do not receive SSI; and
- (c) Do not receive Title XIX waived services.

(2) To determine adjusted income, deductions from the financial group's income are made in the following order:

- (a) One standard deduction of \$20.
- (b) One standard earned income deduction of:
  - (A) \$65 for GA, GAM, OSIP-AD, OSIP-OAA, OSIPM-AD, OSIPM-OAA, and QMB clients who are not blind; or
  - (B) \$85 for GA, GAM, OSIP-AB, OSIPM-AB, and QMB clients who are blind.
- (c) An income deduction for documented impairment-related work costs for:
  - (A) OSIP-AB, OSIP-AD, OSIPM-AB and OSIPM-AD clients; and
  - (B) QMB clients under age 65.
- (d) One half of the remaining earned income.
- (e) Deductions under a plan for self-support for clients in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs, and QMB clients less than the age of 65.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

#### **461-160-0560**

##### **Terms Used for OHP, OSIP, OSIPM Long-Term Care or Waivered**

These terms apply to OHP, OSIP and OSIPM long-term care and waived clients:

(1) *Community spouse*: A person who is legally married to an institutionalized spouse and is not in a medical institution or nursing facility.

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

(3) *Eligible dependent*:

(a) For cases with a community spouse, eligible dependents are minor (under the age of 21) or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse and are claimed as tax dependents by either spouse.

(b) For cases without a community spouse, eligible dependents are minor (under the age of 21) or dependent children living in the client's household group.

(4) *Institutionalized spouse*: A person who is in long-term care or receiving waiverable home or community-based services for a continuous period and is married to a community spouse.

(5) *Waivered services* are services needed to keep a person out of a long-term care facility. Waivered services are:

- (a) In-home services.
- (b) Services in a residential care facility.
- (c) Services for a person in an assisted living facility.
- (d) Adult foster care services.
- (e) Home adaptations to accommodate a client's physical condition.

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

(g) Specialized Living Facilities.

(h) Adult Day Care.

(i) Community transition services.

(6) *Waivered client*: A client receiving Title XIX waived services for a continuous period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

#### **461-160-0570**

##### **Excluded Resource; Community Spouse Provision Before 10/1/89**

For OSIP and OSIPM, if the institutionalized spouse began a continuous period of care before October 1, 1989:

- (1) Count the resources owned by the institutionalized spouse.
- (2) Count resources jointly owned by both spouses according to rules on availability of resources.
- (3) Do not count the resources owned solely by the community spouse.

Stat. Auth.: ORS 183, 411, 412, 413, 414, 416 & 418

Stats. Implemented: ORS 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

#### **461-160-0580**

##### **Excluded Resource; Community Spouse Provision (OSIP and OSIPM except OSIP-EPD and OSIPM-EPD)**

(1) In the OSIP and OSIPM programs, this rule applies to an institutionalized spouse who has applied for benefits because he or she is in or will be in a continuous period of care (defined in OAR 461-160-0560).

(2) Whether a couple lives together or not, the determination of whether the value of the couple's resources exceed the eligibility limit for the institutionalized spouse for OSIPM program is made as follows:

(a) The first step is the determination of what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Division 461-160 rules applicable to OSIP describe which of the couple's resources are countable resources. Division 461-160 rules applicable to OSIP clients are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIP clients.

(B) The countable resources of both spouses are combined.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$99,540.

(B) \$19,908 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this rule (OAR 461-160-0580(2)(c)(C) and (2)(f)(C)), the term court-



ordered community spouse resource allowance means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.

(D) After considering the income of the community spouse and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph (D) is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(1)(d).

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) The sixth step is a comparison of the value of the remaining resources to the OSIP resource standard for one person (under OAR 461-160-0015(6)(a)). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$99,540) plus the OSIP resource standard for one person.

(B) \$19,908 (the state community-spouse resource allowance), plus the OSIP resource standard for one person.

(C) A court-ordered community spouse resource allowance plus the OSIP resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the court-ordered community spouse resource allowance.)

(D) The OSIP resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(1)(d).

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 5-2006(Temp), f. & cert. ef. 3-6-06 thru 8-31-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-160-0590**

##### **Assessment of Resources; Community Spouse Provision**

For OSIP and OSIPM, this rule applies to an institutionalized spouse who began a continuous period of care on or after October 1, 1989:

(1) Assess a couple's combined countable resources at the beginning of each continuous period of care when requested by either spouse or by a representative acting on behalf of either spouse.

(2) Advise requesting parties of the verification needed to make the assessment. Verification of ownership interest and current value of resources must be provided. When verification is not provided within specified time frames, advise requesting parties that an assessment cannot be completed.

(3) Requesting parties have a right to appeal the determination of countable resources at the time of the assessment.

(4) If either spouse disagrees with the amount or the method of computation of the community spouse's allowances, they are entitled to a hearing within 30 days of the date of the request for the hearing.

Stat. Auth.: ORS 183, 411, 412, 413, 414, 416 & 418

Stats. Implemented: ORS 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

#### **461-160-0600**

##### **Availability of Income; Couple with an Institutionalized Spouse**

This rule applies to an OSIP or OSIPM institutionalized spouse who began a continuous period of care on or after October 1, 1989.

(1) Do not deem any of the community spouse's income available to the institutionalized spouse at any time during the institutionalized spouse's continuous period of care.

(2) Determine the ownership of income from property that belongs to the institutionalized or community spouse as follows, unless legal documents specifically provide otherwise:

(a) If the payment is made solely to the institutionalized spouse or the community spouse, the income is available only to that spouse.

(b) If the payment is made to both the institutionalized and the community spouse, one-half of the income is available to each.

(c) If the payment is made to one spouse and another person, or to both spouses and another person, the income available to each spouse is whatever their share of the income is. If the payment is made to both spouses and another person, and it is not clear what each spouse's share of the income is, each spouse's share will be one-half of the couple's portion of the payment.

(d) If the institutionalized spouse can prove that the ownership of income is other than provided above, allow that amount.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; SSP 16-2003, f. & cert. ef. 7-1-03

#### **461-160-0610**

##### **Client Liability for Clients in Long-term Care or Receiving Waivered Services; OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD)**

(1) The IC service payment of clients in the OSIP-IC and OSIPM-IC programs is reduced by the amount of their liability. Other clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who live in or enter a long-term care setting or who receive Title XIX waived services must, in order to remain eligible, make the payment required by this rule as follows:

(a) Clients who do not receive SSI, but who meet the income requirements, may be eligible for OSIP and OSIPM. These clients

must apply their adjusted income to the cost of their care or service. This amount is their client liability. If their adjusted income exceeds their cost of care or service, they must pay the full cost of care but have no additional liability.

(b) Clients who receive SSI, or are deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)), are eligible for OSIP and OSIPM without having to make a payment.

(2) The following clients are exempt from payments required by this rule if they receive waived services (as defined in OAR 461-145-0560):

- (a) A disabled adult child under OAR 461-135-0830.
- (b) A disabled widow or widower under OAR 461-135-0811.
- (c) A widow or widower under OAR 461-135-0820.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-160-0620**

#### **Income Deductions and Client Liability; Long-Term Care or Waivered Services**

(1) Deductions from income in the OSIP and OSIPM programs are made for a client specified in subsection (a) of this section as explained in subsections (a) through (i) of this section. The liability of the client is determined according to subsection (j).

(a) Deductions are made in the order below for a client who resides in or is entering a long-term care facility or receives Title XIX waived services, except that there is no client liability for:

(A) A client who receives SSI or is deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)).

(B) A client in one of the following categories who receives only waived services:

- (i) A client in OSIPM-IC.
- (ii) An adult disabled child as described at OAR 461-135-0830.
- (iii) A disabled widow or widower under OAR 461-135-0811.
- (iv) A widow or widower under OAR 461-135-0820.

(b) One standard earned income deduction of \$65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is \$85 in the OSIP-AB and OSIPM-AB programs.

(c) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-145-0405.

(d) One of the following need standards is deducted:

(A) A \$30 personal needs allowance for a client receiving long-term care services.

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

(C) The OSIP maintenance standard for a client who receives waived services.

(e) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse if the income is made available to (or for the benefit of) the community spouse. If neither spouse is eligible for SSI and both receive waived services through the home- and community-based services program in the same residence or facility, and if the countable income of either spouse is less than the one-person OSIPM payment standard, an allowance is calculated separately using calculation methods 1 and 2 below. The result that is better for the couple is the allowance. For all other couples, the amount calculated using method 2 is the allowance.

(A) Calculation method 1: The allowance is the difference between the one-person payment standard of the OSIPM program (see OAR 461-155-0250) and the countable income of the spouse with the lesser countable income.

(B) Calculation method 2:

(i) Step 1 — Determine the maintenance needs allowance. \$1,650 is added to the amount over \$495 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,488.50, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home

mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(ii) Step 2 — Compare maintenance needs allowance with community spouse's gross income. The gross income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

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

(f) A dependent income allowance is deducted for each eligible dependent as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$1,650. To determine the income allowance of the eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,650.

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

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

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

(g) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

(h) In the OSIPM program, medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(i) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(j) The client liability is determined as follows:

(A) For a client receiving waived services (except a client identified in subsection (1)(a) of this rule), the liability is the actual cost of the waived service or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, an acute hospital, a state hospital, an Intermediate Care Facility for the Mentally Retarded, or a non-waivered mental health facility, there is a liability as described at OAR 461-160-0610.

(2) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of \$85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-160-0630**

**Deduction for Maintaining a Home; Long-Term Care Client**

In the OHP, OSIP and OSIPM programs, a single client in long-term care is eligible for a home maintenance deduction for up to six months if:

- (1) A physician has documented that the client is likely to return home within six months;
- (2) The amount of the deduction is reasonable in relation to the applicable OSIP shelter standard; and
- (3) The Department determines that maintaining the home is an essential part of a plan for the client's relocation to a less restrictive living situation.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-2002, f. & cert. ef. 7-1-02

**461-160-0700**

**Use of Income; OHP**

Income is used to determine eligibility for OHP as follows:

- (1) The average countable income of the financial group assigned to the budget month is determined in accordance with OAR 461-150-0055.

(2) For each member of the need group, the average countable income of the financial group assigned to the budget month is compared to the applicable OHP income standard. If the average countable income of the financial group is below the applicable income standard for the need group size and all other financial and non-financial eligibility requirements are met, the need group member is eligible for OHP. If the average countable income of the financial group equals or exceeds the applicable OHP income standard, the need group member is ineligible for OHP except as provided by section (3) of this rule.

(3) The following members of the need group who are not eligible under section (2) of this rule are eligible for OHP if all other financial and non-financial eligibility requirements are met and the financial group's countable income, received or anticipated to be received in the budget month, is below the applicable OHP income standard:

- (a) Victims of domestic violence.
- (b) OHP-OPC clients.
- (c) OHP-OP6 clients.
- (d) OHP-OPP clients.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

**461-160-0780**

**Determining Adjusted Income; OSIP-EPD and OSIPM-EPD**

Determine Adjusted Income for OSIP-EPD and OSIPM-EPD by doing the following:

- (1) Exclude all unearned income.
- (2) From gross earned income, deduct one standard income deduction of \$20 if not deducted elsewhere.
- (3) Deduct one standard earned income deduction of \$65, or \$85 for individuals whose disability is based on blindness.
- (4) Divide the remainder by two.
- (5) Deduct any costs allowed as *employment and independence expenses*, *Impairment Related Work Expenses* or *Blind Work Expenses* as defined in OAR 461-110-0115.
- (6) The remainder is adjusted income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070 & 414.042

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00

**461-160-0800**

**Determining Cost Share; OSIP-EPD, OSIPM-EPD (Including In-Home Services)**

(1) Clients who receive waived services under OSIP-EPD and OSIPM-EPD may have a *cost share* but will not have a Client Liability as discussed in OAR 461-160-0620.

(2) For OSIP-EPD and OSIPM-EPD, *cost share* is calculated using the following method:

- (a) Determine the client's total unearned income; and

- (b) Subtract the sum of the following:

(A) The non-SSI/OSIP and OSIPM Adjusted Income/Payment Standards (see OAR 461-155-0250); and

(B) Any special needs authorized by OAR 461-155-0500.

(3) This *cost share* must be paid each month as a condition of eligibility for as long as the individual has unearned income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070 & 414.042

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00

**461-160-0810**

**Determining Cost Share and Room and Board Payments; OSIPM-EPD Clients Residing in a Community-Based Care Facility**

This rule explains how to determine *cost share* and room and board payments for OSIPM-EPD clients in a residential community-based care facility.

(1) All unearned income, except for Personal Incidental Funds, special needs and other applicable income deductions, must be given to the provider for room and board. The remaining unearned income is applied to the cost of services.

(2) If the client's unearned income is insufficient to pay the cost of room and board, the client must use both earned and unearned income to pay the provider the Room and Board Standard.

(3) A client who has only earned income must pay the provider the Room and Board Standard from earned income.

(4) Clients must make the payments described in this rule each month as a condition of eligibility.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

**461-160-0820**

**Determining Cost Share; OSIPM-EPD in Nursing Facility**

(1) If client has unearned income, all such income, except for \$30, shall be given to provider/state.

(2) If there is no unearned income, the client will not be required to pay a *cost share*.

(3) This amount must be paid each month as a condition of eligibility for as long as the individual has unearned income.

Stat. Auth.: ORS 411.060, 411.07 & 414.042

Stats. Implemented: ORS 411.060, 411.07 & 414.042

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99

**461-160-0850**

**Determining Post-Eligibility Premium; OSIP-EPD, OSIPM-EPD**

(1) *Premiums* are based on the total of the client's earned income plus any unearned income.

(2) Calculate *premium* amount in the following manner:

(a) Determine total income by adding any unearned income not given to the state as a *cost share* and any earned income, or, if the client is a resident of a Community-Based Care Facility, any earned income remaining after paying the Room and Board standard or Maintenance Standard;

(b) From total income, the mandatory taxes for an allowance of one are subtracted.

(c) Subtract any expenses that have been determined to increase the individual's independence and *employment* potential (IRWEs, BWEs & EIEs). Do not deduct taxes again as a *Blind Work Expense*.

(d) Subtract 200% of the Federal Poverty Level (FPL) for a family size of one (see OAR 461-155-0290).

(e) The *premium* is determined by multiplying the remainder by the following percentage: [Table not included. See ED. NOTE.]

(3) Premium collection will not begin until the second continuous eligibility period.

(a) Calculate average total income and IRWE and EIE costs for previous six months.

(b) Determine premium amount using these averages.

(c) Use this premium amount for the next six months.

(4) After the initial eligibility period, premiums are determined semi-annually, based on the previous six month's income and independence and *employment* related expenses.

(5) *Premium* calculations may be performed more often if client provides information that would cause the *premium* amount to change during the eligibility period.



(6) This *premium* must be paid each month, thereafter, as a condition of eligibility.

(7) The local office may waive unpaid *premiums* if the client provides proof of significant economic difficulty, such as but not limited to, homelessness, divorce, domestic violence, illness, etc.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00

## DIVISION 165

### ISSUING CLIENT BENEFITS AND PAYMENTS TO CHILD CARE PROVIDERS

#### 461-165-0010

##### Legal Status of Benefit Payments

(1) Under Oregon law, cash benefits are not subject to assignment, transfer, garnishment, levy, or execution, as long as they can be identified as program payments and are separate from other money in the client's possession.

(2) A cash payment accrues to and becomes vested in the client when issued.

(3) Except for EBT, consider a benefit issued if the check or FS benefits have been handed to the client in the branch office or check-cashing facility, or mailed to the client. Consider a benefit issued, and received by the client, when a direct check deposit is made to the client's bank account. FS coupons are considered received by the benefit group if:

(a) They are not reported lost or stolen during the validity period defined in OAR 461-165-0010; and

(b) They were not canceled by the Division.

(4) For EBT, consider benefits issued and received when an EBT card and personal identification number (PIN) have been issued in person to the client, or the EBT card and PIN have been received by the client in the mail during conversion, and the benefits have been deposited to the client's EBT account.

(5) FS benefits, except those issued by EBT or JOBS Plus, have a validity period during which ATPs may be transacted or food coupons are intended for use. If benefits are issued before the 20th day of the payment month, the validity period ends the last day of the month. If benefits are issued on or after the 20th day of the payment month, the validity period ends the last day of the following month. Filing groups who fail to pick up food coupons or fail to transact an ATP during the validity period lose entitlement to the benefits.

(6) FS benefits issued by EBT remain available for client access as long as the account is active. The EBT system makes them inaccessible after three calendar months without account activity. The Division can restore benefits for up to nine months after the account goes inactive (ages off). After that, the balance in the account is returned to the state.

(7) Benefits to the client are unrestricted and do not require accountability for individual expenditures or amounts.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.047

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 11-1991, f. 4-30-91, cert. ef. 5-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97

#### 461-165-0030

##### Concurrent and Duplicate Program Benefits

(1) A person may not receive benefits from the Department of the same type (that is, cash, medical, or food stamp benefits) for the same month as a member of two different benefit groups or from two separate programs, except as noted in this rule. This provision includes a prohibition against an individual receiving TANF concurrently with another cash assistance program funded under Title IV-E of the Social Security Act.

(a) If a GA client becomes eligible for TANF, the client's benefits are supplemented during the first month of eligibility for TANF to the TANF payment standards.

(b) A TANF recipient may receive ERDC for children who are in the household group but may not be included in the TANF filing group.

(c) A client may receive EA, HSP, and TA-DVS benefits and cash payments from other programs for the same time period.

(d) A child who is a member of an ERDC benefit group may also be a member of one of the following benefit groups:

(A) A TANF benefit group when living with a nonneedy caretaker relative, if the caretaker relative is not the child's parent.

(B) An OSIP-AB benefit group.

(C) A TANF benefit group when living with a needy caretaker relative receiving SSI.

(e) Clients in the Food Stamp program who leave a filing group that includes a person who abused them and enter a shelter or safe home for victims of domestic violence may receive food stamp benefits twice during the month they enter the shelter or safe home.

(f) A QMB-BAS client may also receive medical benefits from EXT, MAA, MAF, OSIPM, or SAC.

(2) A person may not receive benefits of the same type (that is, cash, medical, or food stamp benefits) for the same period from both Oregon and another state or tribal food distribution program, except as follows:

(a) Medical benefits may be authorized for an eligible client if the client's provider refuses to submit a bill to the Medicaid agency of another state and the client would not otherwise receive medical care.

(b) Cash benefits may be authorized for a client in the Assessment Program if benefits from another state will end by the last day of the month in which the client applied for TANF.

(3) In the FS program, each person who has been included as a member of the filing group in Oregon or another state is subject to all of the restrictions in section (2) of this rule.

(4) A person may not receive benefits from the EXT, MAA, MAF, OHP, OSIPM, or SAC program while receiving a subsidy through the Family Health Insurance Assistance Program (FHIAP) established by ORS 735.720 to 735.740.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.117, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### 461-165-0035

##### Alternate Payees; EBT

(1) An alternate payee may be used to obtain and use benefits for the benefit group when benefits are issued by electronic benefit transfer (EBT).

(2) An alternate payee may be used any time the primary person, their spouse or another responsible member of the filing group names one in writing on a form designated by the Division.

(3) The branch office may appoint an emergency alternate payee if the adult filing group members are temporarily unable to act as payee.

(4) When an alternate payee is named, issue an EBT card and personal identification number (PIN) for that person.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.047

Hist.: AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97

#### 461-165-0040

##### Assigning Payee; Not EBT

When benefits are not issued by EBT, a person may be payee for a case regardless of whether they receive benefits on that case. They may be the payee for more than one program or case. The payee is:

(1) The primary person; or

(2) An authorized representative.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.040 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97

#### 461-165-0045

##### Emergency Payee; ADC-BAS

(1) An emergency payee for ongoing ADC-BAS may be used when:

(a) The dependent children are abandoned by the caretaker relative for reasons such as the caretaker relative's death or whereabouts unknown; and

(b) There are no other relatives immediately available to be the children's caretaker.

(2) An emergency payee may be used for up to two payment months.

(3) An emergency payee does not have to be related to the dependent child.

(4) An emergency payee may not be used for initial payments.

(5) The emergency payee may be included in the benefit group if all the following are true:

(a) They meet all eligibility requirements except relationship and cooperation with JOBS;

(b) Their income and resources are counted;

(c) There is no other caretaker relative in the benefit group.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92

#### **461-165-0050**

##### **Dual Payee; When to Use**

(1) For ADC-BAS, GA, OSIP, and REF, use a dual-payee check for protective payments if the benefit group has shown they are not able to properly manage benefits meant to meet their needs. Issue the dual-payee check in both the name of the client and the name of the service provider.

(2) Issue ADC-EA checks for shelter, moving costs, property taxes, and home repairs as dual-payee revolving fund checks. The supervisor or branch manager must authorize an exception to this policy in advance.

(3) To make sure a JOBS or OFSET payment is used to meet a specific need, the branch office may write a dual-payee revolving fund check in the name of both the client and the vendor.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

#### **461-165-0060**

##### **Prohibition Against Benefits in Amounts Less Than \$10**

(1) In the REF and TANF programs, benefits are not issued if the monthly benefit is less than \$10. People who do not receive a cash payment because the monthly benefit is less than \$10 are eligible for medical benefits. The following are exceptions to the \$10 limitation:

(a) The \$10 limit does not apply to special payments, such as one-time special needs, emergency assistance, supplements, or a benefit reduced from \$10 or more to under \$10 due to the recovery of an overpayment.

(b) The \$10 limit does not apply to dual-payee payments made in money management cases if the monthly benefit amount is \$10 or more.

(c) The \$10 limit does not apply to wage supplements issued to JOBS Plus participants.

(2) In the FS program, a benefit group is not eligible for benefits in the initial month if the allotment is less than \$10.

(3) For ongoing months, FS benefits are issued as follows:

(a) An eligible one- or two-person benefit group receives a minimum monthly allotment of \$10.

(b) An eligible benefit group of three or more persons receives the calculated benefit except that a group whose calculated benefit is \$1, \$3, or \$5 receives instead an allotment of \$2, \$4, or \$6 respectively.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 19-2004(Temp), f. 7-30-04, cert. ef. 8-1-04 thru 9-30-04; SSP 22-2004, f. & cert. ef. 10-1-04

#### **461-165-0070**

##### **Immediate Issuance of Benefits**

Clients whose cases are new, reopened or restored are eligible for immediate issuance of benefits if the standard procedure for issuing benefits would not meet an emergent need of the client, as provided in this rule.

(1) A client with an emergent need is entitled to immediate cash benefits and a temporary medical card.

(2) A client eligible for expedited food stamp service (see OAR 461-135-0575) is entitled to receive the benefits within seven calendar days after filing an application.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 5-2002, f. & cert. ef. 4-1-02

#### **461-165-0080**

##### **Method for Delivery of Benefits**

(1) Benefits are delivered several ways, depending on the program and client situation. Send all mailed benefits to the client's residential address. A rural route box number is acceptable as a residential address.

(2) Make either of the following exceptions on a case-by-case basis if directions to the home are included in the case record:

(a) A post office box number can be used if any of the following is true:

(A) There is no mail service to the client's home.

(B) The client lives in a nonstandard living arrangement.

(C) There have been verified cases of benefits being stolen from home mailboxes in the client's neighborhood.

(b) Use General Delivery only if it is the client's sole means of mail receipt.

(3) Give immediate-issue benefits to the client in the branch office or check-cashing facility if benefits cannot otherwise be issued within the program requirement for immediate need.

(4) For OSIP-IC and OSIPM-IC, benefits are issued only by direct deposit into a bank account designated by client.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.047

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01

#### **461-165-0082**

##### **FS Cash-Out**

Food Stamp households in Clackamas, Columbia, Multnomah, and Washington counties receive FS benefits in cash if all persons in the filing group are 65 years of age or older or are eligible to receive SSI benefits under Title XVI of the Social Security Act.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

#### **461-165-0096**

##### **Access Fee for EBT-Issued Benefits**

Clients accessing their EBT cash account are charged 85¢, plus any applicable bank charges, for each cash-withdrawal transaction at an automated teller machine (ATM). The first two point-of-sale (POS) cash-withdrawals (without purchase) each month are free. For the third and all subsequent POS cash-back transactions, the client's EBT account is charged 85¢.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.047

Hist.: AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97

#### **461-165-0100**

##### **Issuance Date of Benefit**

(1) For all programs except EA and FS:

(a) An authorized cash payment check is dated on the first day of the payment period or as soon as practicable thereafter.

(b) Checks and medical cards are mailed so they can be delivered to the client on the first day of each month except in the following cases:

(A) Initial month benefits for cases that are new, reopened, or restored.

(B) Cases in the monthly reporting system.

(C) Cases with no special needs or service coding; these cases receive the \$1.70 OSIP payment in advance for the benefit period, from the date of eligibility to the end of the calendar year.

(D) If the first day of the month falls on Sunday or a holiday, the check is mailed in time for the client to receive it on Saturday or the mail day preceding the holiday.

(E) Checks redirected to the branch office may be released during the last workday preceding a weekend or holiday.

(c) Benefits issued by EBT will be available on the first day of each month, except for the following:

(A) Initial month benefits for cases that are new, reopened, or restored.

(B) Cases in the monthly reporting system.

(C) Benefits held by the branch office.

(2) EA clients must receive their checks, either direct or vendor, in time to meet their emergent needs.

(3) FS benefits are available as follows:

(a) FS benefits issued by EBT are available in the EBT account on the day of the month corresponding to the last digit of the client's case number except for the following:

(A) The benefits for the initial month of eligibility for a new or re-opened case.

(B) The benefits for a case in the monthly reporting system.

(C) The benefits for the seventh month of the certification period for a case in the semi-annual reporting system.

(b) FS benefits issued through the FS cash-out are available as follows:

(A) Benefits accessed through an EBT account are available on the first day of the month.

(B) Checks are mailed on the first day of the month.

(C) Direct-deposit funds are available on the third working day of the month.

(4) For FS changes that could not be made in time to adjust the monthly allotment, a supplement is issued within 10 days of the date the change was reported.

(5) For OSIPM, a medical ID card is mailed on the first of each month to clients receiving Title XIX waived services who contribute to their services by paying their excess income into a maintenance trust and agency account. The client's medical card is not held until the payment is received. If payment is not received before the end of the payment month, consider QMB for the following month.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

#### **461-165-0105**

##### **Exception to Staggered Issuance; FS**

The second month's allotment of FS benefits is not subject to staggered issuance if the filing group applies after the 15th of the month and the application is not for a redetermination of eligibility. Once eligibility for FS benefits is established for these groups, benefits are issued as follows:

(1) If the case is opened on FSMIS by the last day of the initial month of eligibility, the computer will prorate benefits for the initial month and will automatically issue benefits for the second month on the first of that month; or

(2) If the case is opened after the initial month of eligibility, the computer will prorate benefits for the initial month and will automatically issue benefits for the second month on the same day.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.047

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97

#### **461-165-0110**

##### **Alternatives to Direct Money Payment**

In the GA, OSIP, REF and TANF programs, the Division may use protective payments to ensure that the benefits are used to meet the client's basic needs. A protective payment is the payment by check of some or all of a client's grant to an authorized representative or creditor of the client. In the REF and TANF programs, protective payments may be made whenever a client demonstrates such an inability to manage funds that the Division determines the benefits are not being used in the client's best interest. Protective payments are appropriate particularly if mismanagement of funds caused by repeated interruptions of the client's grant poses a threat to the health or safety of children in the household.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01

#### **461-165-0120**

##### **Payment Procedure for Client in Hospital**

(1) In the EXT, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, regular monthly benefits continue when a client enters a general hospital. The monthly benefits remain unchanged until the client returns home or enters some other living arrangement. An authorized representative designated by the client or the branch may be used if necessary.

(2) In the ERDC, GA, GAM, OSIP, OSIPM, and QMB programs, regular monthly benefits continue if a client will be in the general hospital for less than 30 days. If the client will be in the general hospital for 30 days or more, the client's needs are determined as if the client were in a nursing home.

(3) In the FS program, regular monthly benefits continue if the client will be in his or her own home 50 percent of the time or more. If the client will be in an institution for more than 50 percent of a calendar month, the client is not eligible for FS.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-165-0130**

##### **Payment of Benefit Out-of-State**

(1) For all programs except FS and GA, send benefits out of state if clients are absent from Oregon and they establish their intent to return within 60 days.

(2) If clients are detained out of state beyond 60 days for medical reasons, determine continued eligibility and require the client to provide documentation of the need to remain in the other state.

(3) For medical benefits, out-of-state medical expenditures must have prior authorization.

(4) For FS, send benefits out of state when any of the following apply:

(a) Restoring lost benefits.

(b) The Division determines there is a need to send benefits out of state.

(A) For FS coupons, the Division has the FS coupons, receives a request to forward benefits out of state, the filing group was eligible for the benefits in Oregon and the other state will not duplicate the benefits.

(B) The client has an EBT account with residual benefits that they cannot access.

(5) For GA, do not send benefits out of state.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.047

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97

#### **461-165-0140**

##### **Endorsement and Survivorship of Benefits**

(1) The client or the client's payee must endorse checks issued in payment of a benefit. The endorsement on the check must be the same as the name appearing as payee.

(2) The client may endorse a check with a mark or thumbprint if duly witnessed by two people giving their full names and addresses.

(3) Benefits issued by EBT (electronic benefit transfer) may be used only with the Oregon Trail debit card and the client's matching personal identification number (PIN).

(4) The person with power of attorney may:

(a) Act as authorized representative or alternate payee.

(b) Endorse and cash the benefit check as in the following example: John Doe (Recipient) by Richard Jones (Power of Attorney).

(5) For all programs except FS, any cash benefit issued to clients before their death is available to their survivors.

(a) Checks may be endorsed in the name of the deceased beneficiary by the surviving spouse or next-of-kin, or by the administrator of their estate. The Department uses the following procedure:

(A) Before the next-of-kin endorses a check, the check must be presented to the branch office.

(B) The Department will rubber-stamp the endorsement on the check only if it has been determined that the client died on or after the first day of the period for which the payment was provided.



(C) The endorsement must show both the name of the deceased beneficiary and the name of the surviving spouse or next of kin, as well as the relationship of the endorser to the beneficiary.

(D) The person who endorses the check receives the proceeds of the benefit.

(b) For cash benefits in an EBT account (except for FS cash-out benefits), the Department will designate an adult survivor as the alternate payee. The Department will issue the payee an EBT card and PIN to access the balance in the EBT account.

(6) For FS, there is no survivor's right to benefits unless the survivor is independently entitled to benefits as a member of the benefit group. When the survivor is not in the benefit group:

(a) The Department will request the return of unused coupons or unnegotiated cash-out checks to the branch.

(b) For FS benefits that were issued by EBT, if no one remains in the benefit group, the Department will cancel the remaining benefits from the EBT account.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.610, 411.816, 418.047, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-165-0150**

##### **Timely Issuance of TANF Benefits for Clients in MRS**

In the TANF program, if a client is in the monthly reporting system, the Department makes benefits available within ten days after receiving a complete monthly change report. For the purpose of carrying out the requirements of ORS 411.975, a monthly change report is considered received no earlier than the first day of the payment month.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.975

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2002, f. & cert. ef. 7-1-02

#### **461-165-0160**

##### **Direct Provider Payments; General Information**

(1) The Department makes payments on behalf of eligible clients to the providers they select to care for their children. The payments are made directly to the provider unless made directly to the client in accordance with OAR 461-165-0190. To be eligible for payment, a provider must:

(a) Charge Department clients at a rate no higher than the rate charged other customers;

(b) Provide the Department his or her social security number (SSN) or IRS identification number; and

(c) Meet the requirements of OAR 461-165-0180.

(2) Payments to a client's provider are subject to the following limitations:

(a) A payment is made only for child care already provided;

(b) Payment is made for the amount charged to the client but may not exceed the rate authorized in OAR 461-155-0150;

(c) In the ERDC program, no payment will be authorized unless the client has designated a primary provider;

(d) No payment will be made for less than one dollar.

(3) In the ERDC and TANF programs, the Department may issue a payment during a month for which child care is being provided to meet an unexpected need of the provider related to the care of a covered child. The payment may be made if, without the payment, continued care by the same provider would be jeopardized and the client could not immediately obtain child care from another provider.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.122

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 22-2000(Temp) f. 9-27-00, cert. ef. 9-27-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 7-2003, f. & cert. ef. 4-1-03

#### **461-165-0171**

##### **Direct Provider Payments; Payment Forms**

(1) In the ERDC, JOBS, OFSET and TANF programs, child care providers must submit claims for child care on the appropriate form. The provider is responsible to obtain the appropriate payment form

from the Department and to return the completed form to the Direct Pay Unit of the Department.

(2) No payment will be made for a claim not received by the Department by the last day of the third month after the form was issued unless the Department determines the provider had good cause for returning the form late.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 7-2003, f. & cert. ef. 4-1-03

#### **461-165-0180**

##### **Eligibility of Child Care Providers**

To be eligible for child care payment from the Department, a provider must meet all of the requirements in sections (1) to (6) of this rule.

(1) The provider must submit a completed Department listing form to the Department. The provider and all persons identified under section (4) of this rule are considered "subject individuals" under OAR 410-007-0210(27)(a)(H) and must complete and sign the authorization for a records check and, if necessary, an authorization to release information and fingerprint cards, as necessary for the Department to complete a current records check. The provider must fully disclose all requested information as part of the records check. If information available to the Department provides no basis for denial, the Department will approve the provider to receive payment for child care from the Department unless:

(a) The provider was previously found ineligible for payment and was not subsequently determined to be eligible; or

(b) The Department determines, following a preliminary or final fitness determination (as provided in OAR 410-007-0320) and Child Protective Service (CPS) records checks, that the provider or other *subject individual* is not eligible for payment.

(2) The provider must meet all of the following requirements:

(a) Allow the Department to inspect the site of care while child care is provided.

(b) Keep daily attendance records that show the arrival and departure times each day for each child in care and billing records for each child receiving child care benefits from the Department. The provider must keep the records for 12 months and provide them to Department staff on request.

(c) Be the person who actually provides the child care. The provider must notify the Department before using someone else to supervise children on a temporary basis.

(d) Not be in the same filing group as the child cared for and must not be the *parent* (as defined at OAR 461-110-0110) of the child.

(e) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(f) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.

(3) The provider must not have a history of behavior that indicates a substantial risk to the health or safety of children in the care of the provider. A single incident may be sufficient history for ineligibility. This determination is based on a review of Criminal History (CH) and CPS records, an investigation of complaints, if any, and information provided by another agency:

(a) The Department may conduct a national criminal history check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 410-007-0290 and may withhold authorization for payment to a provider until the check is complete.

(b) If the Department obtains information of a potentially disqualifying crime, potentially disqualifying condition, or child protective services history with respect to the provider or another *subject individual*, as described in OAR 410-007-0280, 410-007-0290, 461-165-0410, or 461-165-0420, the Department will conduct a weighing test as described in OAR 410-007-0200 to 410-007-0380.

(c) If the Department obtains information regarding eligibility under this rule that indicates a substantial risk to the health or safety of children in the care of the provider, the Department may conduct a weighing test as described in OAR 410-007-0200 to 410-007-0380.

(4) Each provider must meet the requirements of either subsection (a) or (b) of this section:

(a) A provider subject to OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250

must be currently certified or registered with the Child Care Division (CCD) of the Employment Department and be in compliance with the applicable rules.

(b) A provider exempt from the rules specified in subsection (a) of this section must meet all of the following requirements:

(A) Submit names of the following persons together with their authorizations for a record check through the CH record system maintained by the Oregon State Police and the CPS record system maintained by the Department:

(i) The provider and each person the provider uses to supervise children in his or her absence.

(ii) In the case of a provider who provides care for children in the provider's home:

(I) Each person 16 years of age or older who lives in the provider's home; and

(II) Each person who frequently visits the home of the provider during the hours care is provided and may have unsupervised access to a child there.

(iii) The site director of a child care facility exempt from the requirement to be certified by CCD, and each employee of the facility who may have unsupervised access to children in the facility.

(B) Be in such physical and mental health as will not adversely affect his or her ability to care for a child in care.

(C) Be 18 years of age or older.

(D) Report to the Department, with respect to any person covered by paragraph (3)(b)(A) of this rule, any arrest and any involvement with CPS or any other agency that provides child protective services.

(E) Report to the Department within 10 days of occurrence any change to his or her name or address and the addition of any person or employee to the household or facility.

(F) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.

(G) Supervise each child in care at all times.

(H) Prevent persons who have demonstrated behavior that may have a detrimental effect on a child from having access to the children in his or her care.

(I) Allow custodial parents of children in his or her care to have immediate access to their children at all times.

(J) Inform parents of the need to obtain immunizations for their children.

(K) Take reasonable steps to protect children in his or her care from the spread of infectious diseases.

(L) Provide, in a manner specified by the Department, information required to conduct CH and CPS records checks or determine whether the provider meets health and safety requirements.

(M) Ensure that the facility where care is provided meets all of the following standards, unless the care is provided in the home of the child, except that a provider who provides care where the child lives must meet only the requirements of subparagraph (iii) of this paragraph.

(i) The facility has safe drinking water.

(ii) The facility has a working smoke detector on each floor level and in any area where children nap.

(iii) All floor levels used by children have two usable exits to the outdoors (a sliding door or window that can be used to evacuate children is considered a usable exit), or, if a second floor is used for child care, the provider has a written plan for evacuating children in an emergency.

(iv) Fireplaces, space heaters, electrical outlets, wood stoves, stairways, pools, ponds, and other hazards have barriers to protect children.

(v) Firearms, ammunition, and other dangerous items such as medicine, drugs, cleaning supplies, paints, plastic bags, and poisonous and toxic materials are kept in a secure place out of children's reach.

(vi) The building, grounds, toys, equipment, and furniture are maintained in a clean, sanitary, and hazard-free condition.

(vii) The facility has a telephone in operating condition.

(N) Complete and submit a new listing form every two years, or sooner at the request of the Department, in order for the Department to review eligibility.

(5) A provider is not eligible to receive a child care payment if the Department has referred an overpayment against the provider to a collection agency and the claim is unsatisfied.

(6) Ineligibility for payment may result from any of the following:

(a) A finding of "failed". The Department may determine, based on a specific eligibility requirement and the evidence, that a provider has failed to meet eligibility requirements listed in this rule. A provider with a status of "failed" may reapply at any time with documents and information to the Department for review. If documents and information show that the provider meets the eligibility requirements, the Department will approve the provider for payment if there is no other basis for ineligibility.

(b) A finding of "denied". If, after conducting a weighing test as described in section (3) of this rule, the Department finds substantial risk to the health or safety of children in the care of the provider, the provider will be denied and will be ineligible for payment. Providers who have been denied have hearing rights as described in OAR 410-007-0330.

Stat. Auth.: ORS 181.537 & 411.060

Stats. Implemented: ORS 181.537, 411.060 & 411.122

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 17-1994(Temp), f. & cert. ef. 8-15-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 13-2004, f. 4-29-04, cert. ef. 5-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2005(Temp), f. & cert. ef. 4-25-05 thru 9-30-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

#### **461-165-0190**

##### **Child Care Payments Paid Directly to a Client**

The Department may make payments for child care in the ERDC, JOBS, OFSET and TANF programs directly to the client instead of to the provider of child care as follows:

(1) In the initial month of eligibility — to reimburse the client for a payment already made.

(2) For short-term child care for up to 30 consecutive days while the client seeks a listable provider. The 30-day period is measured as follows:

(a) At the time of application, the 30-day period starts when the Department provides the client with the listing form for the child care provider.

(b) If the Department notifies the client that the provider-of-choice is not listed, the 30-day period starts the day after the date of the notice.

(c) If the Department notifies a client that the current provider cannot be listed, the period starts the first day of the month following the month for which the last Child Care Billing form was issued.

(d) If a client has to use an emergency provider, the 30 days start with the first day the emergency provider was used.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 7-2003, f. & cert. ef. 4-1-03

#### **461-165-0200**

##### **Restoring Benefits**

(1) A client is entitled to a supplemental payment of benefits for the current month or restoration of benefits lost in a previous month if the client received a lower benefit than he or she was entitled to for the reasons given in this rule. A client may receive a restoration of lost benefits even if no longer eligible.

(2) A client may receive a supplemental payment if there was a change in the client's circumstances that would cause an increase in benefits, if the report of change was made before the first day of the payment month but too late for the Department to adjust the next payment.

(3) A client may receive a supplemental or restorative benefit if the Department caused an administrative underpayment. An administrative underpayment includes, but is not limited to, an underpayment caused by the following:

(a) Failure to take action on information reported to the Department.

(b) Use of an incorrect effective date.

(c) Denial, closure or reduction of benefits in error and a failure to send the client a required notice of proposed action.

- (d) Making a calculation error.
- (4) A client is entitled to a restoration of lost benefits if:
  - (a) The restoration results from a final order in a contested case.
  - (b) The Department withheld too much of the client's grant in the collection of an overpayment.
  - (c) The restoration results from a court order.
  - (d) Food stamp benefits deposited in an EBT account were returned because they had aged off.
- (5) Restored benefits are added to the benefits of a currently eligible client. In the Food Stamp program, the Department will honor a reasonable request by a client to restore benefits in monthly installments.
- (6) A client who moves from Oregon remains eligible for a restoration of benefits.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 10-2002, f. & cert. ef. 7-1-02

#### **461-165-0210**

##### **Calculating Restored and Supplemental**

Supplemental and restorative benefits are calculated and paid as follows:

- (1) The effective date of the lost benefits is determined.
- (2) The benefit group is not eligible for restored benefits in any month that eligibility for the benefits cannot be established. The benefit group has an opportunity to prove eligibility for any months in question.
- (3) The correct benefits for the months in question are calculated.
- (4) The amount the benefit group actually received is subtracted from the amount they should have received.
- (5) The restoration amount for EBT aged-off FS benefits is the full amount of inaccessible benefits, if the request for restoration is made within nine months of the date the benefits were aged off.
- (6) The amount of restored benefits is offset against overdue or suspended overpayments.
- (7) The group with the largest number of people who were in the benefit group at the time the loss occurred is entitled to the restorative payment. If the location of that group is unknown, the benefit is paid to the benefit group containing the primary person at the time the loss occurred.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 10-2002, f. & cert. ef. 7-1-02

#### **461-165-0220**

##### **Replacing Lost, Stolen, Destroyed or Undelivered Checks**

- (1) Replacement checks are issued in compliance with ORS 293.475 and this rule.
- (2) A replacement check is issued if the original check remains outstanding and the payee claims any of the following:
  - (a) The original check was not received. Five postal service working days must pass from the date the original check was issued before a replacement is issued.
  - (b) The original check was received but lost, stolen or destroyed without being endorsed. A replacement check is issued without a waiting period.
  - (c) The original check was endorsed but not cashed before it was lost, stolen or destroyed. A replacement check is issued if:
    - (A) The check was destroyed and remnants of the check are provided to the Department; or
    - (B) The check was endorsed "for deposit only" before it was lost, stolen or destroyed.
  - (3) A dual-payee check is replaced only if:
    - (a) The client completes an affidavit affirming that the unendorsed check has been lost, destroyed or stolen; or
    - (b) The client has endorsed the check and the second party completes an affidavit concerning the lost check. The second party must agree to reimburse the state and not to hold the client responsible if the original check is negotiated. The replacement check is made payable to the second party only.
  - (4) A check may be issued to replace a check that has been processed by the State Treasurer for payment only after the client has provided the Department with the information and documents needed to conduct an investigation into the loss.

(5) A replacement check is not issued in either of the following situations:

- (a) The client cashes a dual-payee check without the second party's signature.
- (b) A check has been deposited directly to an account specified by the client.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 11-1991, f. 4-30-91, cert. ef. 5-1-91; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 10-2002, f. & cert. ef. 7-1-02

#### **461-165-0230**

##### **Replacing FS Benefits and EBT Cards**

- (1) The Department does not replace food stamp benefits after they are delivered to the EBT account.
- (2) The Department will replace the value of food purchased with food stamp benefits if the food is destroyed by a verified household misfortune and the benefit group reports the loss within ten days of occurrence. The amount of the replacement cannot exceed one month's allotment. The Department will replace the loss within ten days after the household provides sufficient verification.
- (3) 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.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 10-2002, f. & cert. ef. 7-1-02

#### **461-165-0410**

##### **Provider Listing; Disqualifying Criminal History**

- (1) This rule explains the grounds upon which the Department denies a request of a child care provider to receive child care payments from self-sufficiency programs of the Department based on the records of subject individuals. For the purposes of this rule, the provider and all persons identified under OAR 461-165-0180(4) are considered "subject individuals" under OAR 410-007-0210(27)(a)(H).
- (2) The Department may find a child care provider ineligible for payment when the criminal history of a *subject individual* indicates behavior that may jeopardize the safety of a child or have a detrimental effect on a child while in the care of the provider, in the following circumstances:

(a) The *subject individual* has been charged with or arrested for a crime listed in OAR 410-007-0280. The subject individual must provide sufficient documentation of the disposition of the charges before the criminal history check and fitness determination can be completed. A provider covered by this subsection is ineligible for payment until the criminal history check and final fitness determination can be completed.

(b) The *subject individual* has been convicted of two or more crimes listed in OAR 410-007-0280 at any time.

(c) The *subject individual* has been convicted of violation of probation and a crime listed in OAR 410-007-0280, at any time, that relates to the person's qualification or duties as a child care provider.

(d) The subject individual has been charged with two or more crimes listed in OAR 410-007-0280 within the past five years or has three or more arrests at any time for a crime listed in OAR 410-007-0280.

(3) The Department may pay for the services of a child care provider even if a *subject individual* has a potentially disqualifying criminal history, defined by OAR 410-007-0280, only if the Department has determined — based on a weighing test as described in OAR 410-007-0320 and consideration of the information listed in OAR 410-007-0280, 410-007-0290, 410-007-0300, and 461-165-0410 — that repeated criminal behavior is unlikely and that the provider does not present a danger to a child in the provider's care.

Stat. Auth.: ORS 411.060 & 411.122

Stats. Implemented: ORS 181.537, 411.060, 411.122

Hist.: AFS 12-1997, f. & cert. ef. 8-25-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06



**461-165-0420**

**Provider Listing; Disqualifying Child Protective Service History**

(1) A provider of child care is not eligible for a payment from the Department if the Department determines, based on prior conduct, that a *subject individual* is likely to engage in conduct that would jeopardize the safety of children in the provider's care. For the purposes of this rule, the provider and all persons identified under OAR 461-165-0180(4) are considered "subject individuals" under OAR 410-007-0210(27)(a)(H). In order to make its determination, the Department may use any available information including the Child Protective Service (CPS) records of the Department.

(2) There is a rebuttable presumption that a person is likely to engage in conduct that would jeopardize the safety of children in the provider's care if, with respect to that person, there is a *Founded CPS Disposition* (a *founded report*), as defined in OAR 413-010-0705.

(3) Notwithstanding a *founded report* or other report in the records of the Department, the Department may determine the presence of the *subject individual* would not likely jeopardize the safety of children in the provider's care based on:

(a) The content and source of the reports, the time elapsed since the reports, and the number of reports and referrals;

(b) The person's participation in rehabilitation, training, or counseling;

(c) The likelihood of the person's abuse of drugs or alcohol;

(d) Any other relevant eligibility requirements or supplemental information under OAR 410-007-0300 or 461-165-0180.

(4) If there is a *founded report* with respect to a *subject individual*, but the Department determines, based on a fitness determination made in accordance with the procedures in OAR 410-007-0320, that the presence of the person would not likely jeopardize the safety of children in the provider's care, the Department may pay for services of a child care provider.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.122

Hist.: AFS 12-1997, f. & cert. ef. 8-25-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

**461-165-0430**

**Child Care Provider Hearings**

(1) A provider has a right to a contested case hearing only to contest a fitness determination that results in a denial of eligibility for payment or to dispute an allegation of an overpayment of child care. Hearings to contest a fitness determination that results in a denial are governed by OAR 410-007-0330. Hearings to contest an overpayment are governed by division 461-025 of the Oregon Administrative Rules.

(2) In the case of an alleged overpayment, the provider may delay repayment on an overpayment until a final order is served by completing a request for hearing not later than the fifteenth day following the date of the overpayment notice.

(3) A provider whose application for listing is denied and who fails to request a hearing within the 45-day hearing request period is not eligible to reapply for listing until 180 days following the date of the denial notice.

(4) If a provider requests a hearing to contest a fitness determination resulting in a denial of eligibility for payment, the provider remains ineligible for payment pending the hearing unless the decision to deny eligibility was based on a mistake in identifying the person with the CH or CPS record.

Stat. Auth.: ORS 181.537, 411.060

Stats. Implemented: ORS 181.537, 411.060, 411.095

Hist.: AFS 12-1997, f. & cert. ef. 8-25-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

**DIVISION 170**

**REPORTING CHANGES**

**461-170-0010**

**Reporting Changes; When Changes Must be Reported**

(1) When a client is required by this division of rules to report a change in circumstances, the report may be made by telephone, office visit, report form, or other written notice. The report must be made as follows:

(a) Changes reported outside the monthly reporting system (MRS) or simplified reporting system (SRS) must be reported within 10 days of occurring. A change of income is considered to occur as follows:

(A) For earned income, the change occurs upon the client's receipt of the first paycheck from a new job, on the client's receipt of the first paycheck reflecting a change in the rate of pay, or on the last day of employment in the case of a job separation.

(B) For unearned income, the change occurs the day the client receives the new or changed payment.

(b) Changes required to be reported through the MRS must be reported on the Monthly Report Change form designated by the Department and according to MRS requirements. Non-income changes must be reported according to OAR 461-170-0015.

(c) Clients using Averaging with Periodic Review (APR) must report changes according to OAR 461-170-0015 and 461-170-0020. For clients using APR who report changes in amount of income outside the Periodic Review form, act on the change as soon as notice requirements allow.

(d) Clients using the SRS must report changes according to OAR 461-170-0020.

(2) For all programs, changes are considered reported effective the date the information is received by a DHS office.

(3) Changes reported for one program are considered reported for all programs in which the client participates.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1992(Temp), f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05

**461-170-0015**

**Changes that Must Be Reported; ERDC**

ERDC clients must report:

(1) Changes as required by the rules applicable to the Periodic Review and APR reporting systems.

(2) The following changes within 10 days of occurring. If these changes are reported for another program, they are considered reported for ERDC:

(a) Changes in members of the filing group, and any resulting changes in income.

(b) Changes of address.

(c) Changes in source of income, including the loss of a job, and related changes in the amount of income.

(d) Changes in the rate of pay, except that clients are not required to report a change due to the annual adjustment in the Oregon minimum wage.

(e) Changes in child care providers.

(f) For ERDC-SBG, changes in the student caretaker's alien status and student status.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03

**461-170-0020**

**Changes That Must be Reported; FS, MAA, MAF, SAC, TANF**

(1) Clients in the FS, MAA, MAF, SAC, and TANF programs are required to report all applicable changes described in this rule.

(2) Clients must report each of the following changes within 10 days of occurrence, unless the client is required to report the change by section (7) or (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) A change in employment, including getting, changing, quitting, or losing a job.

(b) A change in source of income.

(c) A change in earned income of more than \$100 a month, except a change due to an annual adjustment in the Oregon minimum wage.

(d) A change in unearned income of more than \$50, except a change in a public assistance grant.

(3) Clients must report each of the following changes within 10 days of occurrence, unless the client is required to report the change by section (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) The acquisition or change in ownership of non-excluded vehicles.

(b) The sale or receipt of resources that cause total resources to exceed program resource limits.

(4) In the MAA, MAF, SAC, and TANF programs, clients must report a member of the filing group becoming pregnant. The report must be received by the Department not later than the 10th day after the client becomes aware of the pregnancy.

(5) In the MAA, MAF, SAC, and TANF programs, clients must report each of the following changes within 10 days of occurrence:

(a) A change in the members of the household group and any resulting change in income.

(b) A change in residence.

(c) A change in who pays the shelter costs if the costs were or will be paid by a non-custodial parent.

(6) In the FS program, clients must report each of the following changes within 10 days of occurrence, unless the client is required to report the change by section (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) A change in residence and the shelter costs in the new residence.

(b) A change in members of the filing group and any resulting change in income.

(c) A change in the legal obligation to pay child support.

(7) Clients in the monthly reporting system (MRS) must report changes in income as required by the rules applicable to the Monthly Change Report.

(8) In the FS program, clients in the simplified reporting system (SRS) must report:

(a) By the 10th day of the month following the month of occurrence, when:

(A) Monthly income exceeds the countable income limit in the FS program; or

(B) Their mailing address changes.

(b) On the interim change report, all other changes not covered by subsection (8)(a) of this rule.

(9) In the FS program, clients participating in the transitional benefit alternative (TBA) are not required to report changes.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.105

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05

#### **461-170-0025**

##### **Changes That Must be Reported; EXT**

Clients in the EXT program are required to report each of the following within 10 days of occurrence:

(1) A change in address of anyone who is receiving benefits.

(2) A change of name of anyone who is receiving benefits.

(3) A change in health-insurance coverage available to anyone who is receiving benefits.

(4) A report of pregnancy of anyone who is receiving benefits.

(5) A birth to anyone who is receiving benefits.

(6) A report that a member of the filing group who is 18 years of age is no longer a full-time student in secondary school or in vocational or technical training.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-170-0030**

##### **Changes That Must be Reported; Not ERDC, FS, MAA, MAF, OHP, TANF**

(1) In all programs except ERDC, EXT, FS, MAA, MAF, OHP, OSIP-EPD, OSIPM-EPD, SAC, and TANF, clients are required to report within 10 days all changes in income, resources, and circumstances that may affect their eligibility for benefits or the amount of benefits they receive.

(2) In the OSIP-EPD and OSIPM-EPD programs, clients must report the following changes within 10 days:

(a) A change in employment, including obtaining, quitting or losing a job.

(b) A change in source of income.

(c) A change in earned income based on hourly wages when the change is due to:

(A) A change in rate of pay; or

(B) A change greater than five in the number of hours worked each week when the change is expected to last one month or longer.

(d) A change in earned income not based on hourly wages of more than \$100 a month.

(e) A change in unearned income, except a change in a public assistance grant, of more than \$25.

(f) A change in residence.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.105

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

#### **461-170-0035**

##### **Reporting Changes; OHP**

In the OHP program, clients are required to report, within 10 days of occurrence:

(1) A change in:

(a) Address.

(b) Name.

(c) Other health care coverage.

(2) The pregnancy of a member of the benefit group.

(3) A birth to a member of the benefit group.

(4) The availability of employer-sponsored health insurance for a member of the benefit group.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.105

Hist.: AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03

#### **461-170-0100**

##### **Criteria for Using MRS**

(1) A filing group is not subject to the requirements of the monthly reporting system (MRS) unless it is required to participate by section (2) or (4) of this rule.

(2) For MAA, REF, REFM and TANF, the following filing groups must participate in the MRS, unless they are specifically excluded by section (5) of this rule:

(a) Filing groups that are in the MRS for another program.

(b) Filing groups that have countable earned or unearned income that is not the same every month and cannot be anticipated, averaged, converted, or annualized.

(3) For FS, the filing group can only participate in the MRS if it is in the MRS for another program.

(4) For GA, GAM, OSIPM and QMB, a filing group not specifically excluded by section (5) of this rule must participate in the MRS if it has varying earned or unearned income that cannot be averaged, converted or annualized.

(5) The following filing groups are excluded from participating in the MRS:

(a) FS and TANF filing groups that include a member working under a JOBS Plus agreement.

(b) Filing groups in the EA, ERDC, EXT, MAF, SAC and TADVS programs.

(c) FS filing groups in which any of the following is true:

(A) At least one member is a migrant or seasonal farm worker.

(B) The members are homeless.

(C) Each adult member is elderly or disabled, and no financial group member has earned income.

(D) At least one member is receiving ERDC.

(E) The group resides on an Indian Reservation.

(d) OHP filing groups for their OHP benefits. They may be in the MRS for their other program benefits.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 70-1989, f. 11-30-89, cert. ef. 12-1-89; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

#### **461-170-0101**

##### **Semiannual Reporting System (SRS); FS**

(1) OAR 461-170-0101 to 461-170-0104 establish and explain the simplified reporting system (SRS) used in the Food Stamp program.

(2) Clients certified to receive food stamps for six months or longer may participate in SRS.

(3) Unless there is no earned income and all members of a filing group are elderly or persons with a disability (under OAR 461-110-0110), a filing group may participate in SRS if the certification period is no longer than six months and the group:

(a) Contains a migrant or seasonal farm worker; or

(b) Contains only homeless individuals.

(4) A filing group may not participate in SRS and is removed from SRS if the group:

(a) Includes a person who is in the monthly reporting system for another program; or

(b) Contains a person who is receiving benefits from the ERDC program.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05

#### **461-170-0102**

##### **Required Reports for the Semiannual Reporting System (SRS) — Interim Change Report; FS**

(1) During the sixth month of a certification period, a client participating in SRS and certified for food stamps for longer than six months must submit to the Department, on a form designated by the Department, an interim change report of household circumstances, unless the household has no earned income and all members are elderly or persons with a disability (under OAR 461-110-0110).

(2) The required interim change report is considered complete when it is received by the Department by the last day of the sixth month of the certification period and:

(a) The client completely and accurately answers all questions necessary to determine eligibility and benefit amounts;

(b) The client provides all required verification; and

(c) The form contains the signature of the primary person or the authorized representative.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 16-2005, f. & cert. ef. 12-1-05

#### **461-170-0103**

##### **Actions Resulting From Changes in Household Circumstances; Simplified Reporting System (SRS); FS**

In the Food Stamp program, benefits may be changed for a client using SRS based on information obtained other than through the interim change report — only as follows:

(1) The benefit level will be increased if the information demonstrates the client is eligible for greater benefits.

(2) The benefits will be closed or reduced if any of the following subsections apply:

(a) The household requests a closure of benefits.

(b) The action is based on information that is verified upon receipt. Information is considered verified upon receipt if:

(A) It is not questionable and the person making the report has first-hand knowledge of the information reported; or

(B) Verification is provided with the reported change in accordance with OAR 461-115-0651.

(c) The client reports information that results in loss of eligibility for the FS program.

(d) The client reports financial group income exceeding the countable income limit.

(3) The Department acts on information reported through computer matches when the interim change report is processed, when the client is recertified, or when the monthly match with the Employment Department generates an Unemployment Compensation (UC) hold.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-170-0104**

##### **Effect of Failure to Submit Complete Interim Change Report; Simplified Reporting System (SRS); FS**

(1) If the Department does not receive a complete interim change report by the last day of the sixth month of the certification period, benefits for the seventh month of the certification period are suspended. If the interim change report is not received during the month of suspension, the client is ineligible for that month.

(2) If a completed interim change report is received by the last day of the seventh month, it is used to determine eligibility and benefit level for the seventh and remaining months of the certification period in SRS.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 16-2005, f. & cert. ef. 12-1-05

#### **461-170-0110**

##### **When a Monthly Change Report Is Considered Complete**

(1) Clients in the MRS must report to the branch office every month, using the Monthly Change Report Form. A Monthly Change Report is considered complete when it is received by the branch within the payment month and all the following are done:

(a) The client answers, completely and accurately, all questions necessary to determine eligibility and compute benefit amount;

(b) The client provides all required verification requested by the worker;

(c) The report contains the signature of the primary person or the authorized representative of the case.

(2) The branch office must receive a completed Monthly Change Report from the client before establishing eligibility for the payment month. The branch office uses information from the budget month to determine benefits for the payment month.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.105 & 7 CFR 273.21(j)

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92

#### **461-170-0120**

##### **Change Report Incomplete or Not Received**

If the branch office does not receive a completed Monthly Change Report by the last day of the payment month, the following actions are taken:

(1) FS benefits are suspended for the payment month and:

(a) If no Monthly Change Report form is received for the month of suspension, the case is closed effective the end of the month of suspension.

(b) If a completed Monthly Change Report form is received for the month of suspension, it is used to determine eligibility and benefit level for the month following the month of suspension.

(2) For all other programs, the case is closed effective the end of the budget month.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 22-2004, f. & cert. ef. 10-1-04

#### **461-170-0130**

##### **Acting on Reported Changes; EXT, GAM, MAA, MAF, OSIPM, SAC**

(1) When an EXT, GAM, MAA, MAF, OHP, OSIPM, or SAC client, who is required by this division of rules to report a change in circumstances, makes a timely report of a change that could reduce or



end medical benefits, the Department must review each individual in the filing group for other medical program eligibility prior to reducing or ending medical benefits.

(2) If the Department needs additional information to act on the timely reported change, members of the benefit group remain eligible from the date the change was reported until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 409.050, 411.060

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-170-0150**

##### **Averaging with Periodic Review (APR)**

(1) Use APR for all ERDC clients.

(2) The length of the APR period is as follows:

(a) When the need for child care occurs within two consecutive calendar months or less, the length of the APR period will be as follows:

(A) If the child care need occurs within one calendar month, the APR period will consist of that month only.

(B) If the child care need occurs within two consecutive calendar months, the APR period will consist of those two months only.

(b) When income can be reasonably anticipated for four months or more, the APR period can be four, five or six months.

(c) For ERDC-SBG cases, the APR period can be extended up to 12 months if income can be reasonably anticipated for the entire period.

(d) or all other cases, the APR period is three months.

(3) The Division may shorten the APR period or re-average future income over the remaining months of the period when clients report income changes between periodic reviews that, after the application of OAR 461-150-0049, would cause a substantial change in the copay.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.105, 411.111 & 411.816

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 13-1993(Temp), f. & cert. ef. 7-1-93; AFS 21-1993, f. & cert. ef. 10-12-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01

#### **461-170-0160**

##### **When a Periodic Review Form is Considered Complete**

(1) Clients using APR must report to the branch office every three months, using the Periodic Review form. A Periodic Review form is considered complete when it is received by the branch by the last day of the last month in the review period and all the following are done:

(a) The client answers, completely and accurately, all questions necessary to determine a copay amount for the following APR period;

(b) The client provides all required verification;

(c) The form contains the signature of the primary person or the authorized representative.

(2) The branch office must receive a completed Periodic Review form from the client before establishing a copay amount for the following APR period.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.105, 411.111 & 411.816

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99

#### **461-170-0170**

##### **Periodic Review Form Incomplete or Not Received**

(1) If the branch office does not receive a completed Periodic Review form by the last day of the last month in the APR period, close the case effective the end of that month.

(2) If the branch office receives a completed Periodic Review form by the last day of the month following the last month of the APR period, use it to determine eligibility and establish an ERDC copay. The next APR period begins on the first of the month following the last month of the previous period.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.105, 411.111 & 411.816

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99

#### **461-170-0200**

##### **State and Federal Government-Initiated Changes**

Some changes initiated by the state or federal government may affect the entire caseload or significant portions of the caseload. Because the Division is informed of these changes by the agencies responsible, clients are not required to report these changes. These changes include:

(1) Periodic cost-of-living adjustments to SSB.

(2) Periodic cost-of-living adjustments to ADC, ERDC, GA, OSIP, and REF standards.

(3) Other changes in eligibility criteria based on legislative or regulatory actions.

(4) Additionally for FS:

(a) Periodic cost-of-living adjustments to SSI benefits.

(b) Annual adjustments to the countable and adjusted income limits, Thrifty Food Plan, dependent care, excess shelter, and the standard deduction (effective each October).

(c) Annual adjustments to the state's standard utility allowance (SUA).

Stat. Auth.: ORS 411.060 & 411.105

Stats. Implemented: ORS 411.060 & 411.105

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98;

## **DIVISION 175**

### **DECISION NOTICES**

#### **461-175-0010**

##### **What a Decision Notice Must Include**

(1) A *decision notice* is a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(2) A decision notice, other than a mass-change notice described in OAR 461-175-0250:

(a) Specifies the action the Department intends to take, the effective date of the action, and the date the notice is mailed.

(b) Specifies the reasons for the action.

(c) In the Food Stamp program only, provides the name and phone number of the Department staff person or identifies the office to contact for additional information.

(d) Informs the client of the extent to which the client has a right to a hearing before an impartial person.

(e) Specifies the method and deadline for requesting a hearing.

(f) Informs the client of the right to representation, including legal counsel, and the right to have witnesses testify on his or her behalf.

(g) Provides information about the availability of free legal help.

(h) Cites the rules that support the action.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04

#### **461-175-0030**

##### **Types of Decision Notices**

(1) A basic decision notice is a decision notice as described in OAR 461-175-0010. It is mailed no later than the date of action given in the notice.

(2) A continuing benefit decision notice is a decision notice as described in OAR 461-175-0010. It informs the client of the right to continued benefits. It is mailed in time to be received by the date benefits are, or would be, received.

(3) A timely continuing benefit decision notice is a decision notice, as described in OAR 461-175-0010. It informs the client of the right to continued benefits. It is mailed no later than ten days before the effective date of action given in the notice.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 22-2004, f. & cert. ef. 10-1-04

**461-175-0050**

**Notice Period**

The notice period is used to determine the effective date for taking action when a decision notice is sent to the filing group:

(1) For a basic decision notice, the notice period is the month in which the notice is mailed.

(2) For a continuing benefit decision notice, the notice period is the budget month from which information is used to initiate the decision notice.

(3) For a timely continuing benefit decision notice, the notice period is the month in which the ten-calendar day mailing requirement ends.

Stat. Auth.: ORS 411.060, 411.105 & 411.730  
Stats. Implemented: ORS 411.060  
Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92

**461-175-0200**

**Notice Situations; General Information**

(1) For all programs except OHP and the Assessment program, unless stated differently in a specific rule, the Department mails or otherwise provides the client with (sends) a decision notice as follows:

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A timely continuing benefit decision notice is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(2) A notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice, unless the delay resulted from the client requesting a hearing. If the notice is void, a new notice is sent to inform the financial group of a new date on which their benefits will be reduced or closed.

(3) A notice approving MAA, MAF, REF, REFM, or TANF benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(4) For EA, a basic decision notice is sent for all situations.

(5) For OHP:

(a) A basic decision notice is sent when benefits are approved or denied, when the premium amount changes, and when benefits are ended because the OHP certification period has ended.

(b) Unless otherwise provided for, a timely continuing benefit decision notice is sent whenever benefits are otherwise reduced or closed.

(6) For the Assessment program, a basic decision notice is sent when payment for basic living expenses is denied. No other notices are required for this program.

(7) No decision notice is required if:

(a) Benefits are ended because there is no living person in the benefit group.

(b) A hearing order upholds a Department decision, and notice was sent before the client requested the hearing.

(c) A request for a support service in the JOBS program is approved.

Stat. Auth.: ORS 411.060, 411.816 & 418.100  
Stats. Implemented: ORS 411.060, 411.117, 411.816 & 418.100  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

**461-175-0203**

**Notice Situation; ADCM-EXT**

When ADCM-BAS benefits end, send a basic decision notice notifying the benefit group of the following:

(1) Its right to ADCM-EXT benefits; and

(2) The fact that ADCM-EXT will end the month the benefit group ceases to include an eligible dependent child.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1997(Temp), f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97

**461-175-0205**

**Notice Situation; Benefits for Less Than 30 Days**

To end benefits if a client receives them for less than 30 days, send the following notice:

(1) For all programs except FS, a basic decision notice.

(2) For FS:

(a) A basic notice if the information on ending benefits is included in the initial approval notice;

(b) In all other situations, a timely continuing benefit decision notice.

Stat. Auth.: ORS 183, 411, 414, 416 & 418  
Stats. Implemented: ORS 411.060  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

**461-175-0206**

**Notice Situation; Benefit Standard Changes; Not FS**

(1) If the basis for a decision to reduce, suspend, or close a grant of public assistance is a *change to a benefit standard*, a timely continuing benefit decision notice is sent at least 30 calendar days before the effective date of the action, or at least 10 working days before the effective date of the action if the Department has fewer than 60 days before the effective date to implement a change to a benefit standard.

(2) For purposes of this rule, the term "change to a benefit standard" means a change to the applicable inflation-adjusted contribution, income, or payment standard. It does not include the annual adjustment to a standard based on a federal or state inflation rate.

(3) This rule does not apply in the Food Stamp program.

Stat. Auth.: ORS 411.060, 418.100  
Stats. Implemented: ORS 411.060, 411.095, 418.100  
Hist.: SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

**461-175-0207**

**Notice Situation; Child Care Benefit Calculation**

For decisions concerning ERDC or TANF child care benefits, the Department sends a continuing benefit decision notice when benefits are calculated in accordance with OAR 461-155-0150.

Stat. Auth.: ORS 411.060, 411.105, 411.111 & 411.630  
Stats. Implemented: ORS 411.060  
Hist.: AFS 6-1993(Temp), f. & cert. ef. 4-6-93; AFS 12-1993, f. & cert. ef. 7-1-93; SSP 7-2003, f. & cert. ef. 4-1-03

**461-175-0210**

**Notice Situation; Client Moved or Whereabouts Unknown**

(1) To end benefits if a client has moved out of state, send the following notice:

(a) For ERDC, EXT, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, REF, REFM, SAC, and TANF:

(A) Send a timely continuing benefit decision notice to clients who have moved out of state. For clients in MRS, send a continuing benefit decision notice if the move is reported in the Monthly Change Report.

(B) Send a basic decision notice if the client becomes eligible for benefits in another state.

(b) For FS, no decision notice is required if the Department determines that the benefit group has moved out of Oregon.

(2) If Department mail or benefits have been returned with no forwarding address, give clients their benefits if their whereabouts become known during the period covered by the returned benefits. See OAR 461-165-0130 for when FS benefits can be sent out of state. If the client's whereabouts are unknown, end benefits by sending the following notice to their last known address:

(a) For all programs except FS, a basic decision notice.

(b) For FS, no notice is required.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

**461-175-0220**

**Notice Situation; Disqualification**

(1) If a benefit group or individual is disqualified for an FS voluntary job quit or for failure to apply for or provide an SSN, pursue

assets, cooperate in the JOBS, JOBS Plus, or OFSET program, or assist the state's efforts to collect support, the Department sends the following type of notice:

(a) If benefits are reduced or closed because of the disqualification notice:

(A) A continuing benefit decision notice is used when changes are reported on the Monthly Change Report, Interim Change Report or Periodic Review forms.

(B) A timely continuing benefit decision notice is used when changes are not reported on the Monthly Change Report, Interim Change Report or Periodic Review forms.

(b) If benefits are opened without the disqualified individual in the benefit group or if the entire benefit group is denied assistance, a basic decision notice is used.

(2) For a JOBS, JOBS Plus, or OFSET disqualification, and for an FS voluntary job quit by a person receiving food stamp benefits, the notice includes the following information:

(a) The client action that resulted in disqualification.

(b) The length of the minimum disqualification period.

(c) The reduced benefit amount.

(d) How the client may end the disqualification after the minimum period.

(3) For a voluntary job quit by a person applying for food stamp benefits, the notice includes the following information:

(a) The action that resulted in the disqualification; and

(b) The length of the disqualification period.

(4) For an IPV disqualification:

(a) A basic decision notice is required if a person in the benefit group is disqualified for an IPV as the result of a court order or a final order from an administrative hearing.

(b) A continuing benefit decision notice is required if a person in the benefit group is disqualified for an IPV based on a signed waiver.

(5) For a disqualification due to being a fleeing felon or in violation of parole, probation or post-prison supervision (under OAR 461-135-0560):

(a) A basic decision notice is required if benefits are opened without the disqualified person in the benefit group or if the entire filing group is denied benefits.

(b) A timely continuing benefit decision notice is required if a person in the benefit group is disqualified.

(6) The notice situation for a disqualification due to a transfer of assets is covered in OAR 461-175-0310.

Stat. Auth.: 411.060, 411.816, 418.100

Stats. Implemented: 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-175-0225**

##### **Notice Situation; Institution/Income and Resource Allowances**

If an institutionalized spouse is determined eligible for OSIPM, or upon request by either spouse, or a person acting on behalf of either spouse, send a basic decision notice to each spouse or each person's authorized representative, containing all the following:

(1) The amount of the community spouse's income allowance.

(2) The amount of income allowances for family members.

(3) The method for computing the income allowances for the community spouse and family members.

(4) The amount of the community spouse's resource allowance.

(5) The method for computing the community spouse's resource allowance.

(6) Either spouse's right to a hearing regarding ownership or availability of income or resources, and the determination of the community spouse's income or resource allowance.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

#### **461-175-0230**

##### **Notice Situation; Nonstandard Living Situations**

(1) In the Food Stamp program:

(a) A timely continuing benefit decision notice is sent to terminate, suspend, or reduce benefits if the notice occurs as a result of any of the following situations:

(A) A client has been admitted or committed to an institution.

(B) A client has been placed in foster care, skilled nursing care, intermediate care, or long term hospitalization.

(C) A client is placed in official custody or a correctional facility.

(D) A client enters a drug or alcohol residential treatment facility.

(E) A client leaves a drug or alcohol residential treatment facility without reapplying for FS benefits.

(b) No decision notice is required if the Department determines that a resident of a drug or alcohol treatment center or a residential care facility (RCF) is ineligible as a result of one of the following actions taken against the center or facility:

(A) Disqualification by Food and Nutrition Services (FNS) as an authorized representative.

(B) Loss of certification with the Department.

(c) A resident of an RCF that is disqualified or loses its certification as described in subsection (1)(b) of this rule may still qualify for Food Stamps through a separate application.

(2) Except as provided in section (3) of this rule, for all programs except FS, a basic decision notice is sent to terminate, suspend, or reduce benefits in each of the following situations:

(a) The client has been admitted or committed to an institution.

(b) The client has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

(c) The client is placed in official custody or a correctional facility.

(3) In the OSIP and OSIPM programs, a client receiving waived or long term care services is sent a timely continuing benefits decision notice in each of the following situations:

(a) A reduction or closure of services occurs as the result of a process of reevaluating both the functional impairment levels of a client and the requirements of a client for assistance in performing activities of daily living.

(b) Services are closing because the client has not paid the client liability.

(c) The client receives benefits in the OSIP-IC or OSIPM-IC program, and benefits will end under OAR 411-036-0050.

(d) There is an increase in the client liability.

(e) There is a change in special needs as described in OAR 461-180-0040.

Stat. Auth.: ORS 411.060, 411.101, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.095, 411.099, 411.101, 411.111, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-175-0240**

##### **Notice Situation; Lump-Sum**

(1) If a financial group receives lump-sum income that will make the financial group ineligible or cause a reduction in benefits:

(a) The Department will deny benefits to an applicant and send a basic decision notice.

(b) If a benefit group is receiving benefits, the Department will stop or reduce them and:

(A) If the action is based on changes reported on the monthly change report, interim change report or periodic review, will send a continuing benefit decision notice.

(B) If the action is not based on changes reported on the monthly change report, interim change report or periodic review, will send a timely continuing benefit decision notice.

(2) In the GA program, the decision notice described in section (1) of this rule includes:

(a) The amount of the countable lump-sum income.

(b) The calculation of this income on a monthly basis.

(c) The length of time that the benefit group is ineligible because of receipt of lump-sum income and the amount that will be included as countable income in the first month of eligibility.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 24-2001, f. & cert. ef. 11-1-01; SSP 20-2003, f. & cert. ef. 8-15-03



**461-175-0250**

**Notice Situation; Mass Changes**

(1) A mass-change notice is a basic decision notice that informs the client of:

(a) The general nature of a change described in OAR 461-175-0250(2).

(b) Examples of how the change affects the client's benefits.

(c) The month in which the change will take place.

(d) The client's right to a hearing.

(e) The client's right to continue benefits and under what circumstances benefits will be continued pending a hearing.

(f) General information on whom to contact for additional information.

(g) The liability the client's household will incur for any overissued benefits if the hearing decision is adverse to the client.

(2) A mass-change notice may be used for the following purposes:

(a) To notify clients whose benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency.

(b) To notify clients whose benefits are reduced or closed to reflect a change to payments in another program operated by the Department.

(3) No decision notice is required when the Department makes the following mass changes:

(a) In the Food Stamp program, an annual adjustment to income limits, the shelter deduction, or the standard deduction.

(b) An annual adjustment to a standard utility allowance in the Food Stamp program.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 22-2004, f. & cert. ef. 10-1-04

**461-175-0270**

**Notice Situation; APR, MRS, SRS or TBA**

(1) When a benefit group is entered into the MRS, the Department sends a basic decision notice for the GA, GAM, OSIP, OSIPM, and QMB programs and a continuing benefit decision notice for all other programs.

(2) When a benefit group is entered into the SRS or TBA, and when it starts using the APR, the Department sends a continuing benefit decision notice.

(3) When the Department takes action on information reported on the monthly change report, interim change report or periodic review:

(a) It sends a continuing benefit decision notice for clients in the ERDC, FS, MAA, MAF, REF, REFM, and TANF programs. Except for ERDC and FS, the notice includes:

(A) The amount of income used to determine the benefits or ineligibility; and

(B) The amount of each deduction; or

(C) The reported nonfinancial changes that affect eligibility.

(b) No notice is required for clients in the GA, GAM, OSIP, OSIPM, and QMB programs.

(4) For all changes not reported on the monthly change report, interim change report or periodic review, the Department sends a timely continuing benefit decision notice.

(5) For benefit groups in the MRS, when ending TANF benefits because of information acquired through the information match with the Child Support program, the Department sends a continuing benefit decision notice.

(6) When the Department removes a client from the MRS, SRS or TBA, it will provide a continuing benefit decision notice if the change occurs at a time other than at the start of a certification period.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03

**461-175-0280**

**Notice Situation; Failure to Submit Report for APR, MRS or SRS**

(1) In the MAA, MAF, REF and TANF programs, the Department sends a continuing benefit decision notice when the benefit group fails to return the monthly change report by the tenth day of the payment month. The notice informs the benefit group that:

(a) The report was not received by the Department by the tenth day of the payment month.

(b) The benefit group must provide the report by the end of the payment month to receive benefits for the payment month.

(c) The benefit group will not receive the earned income deductions.

(d) If the report is not received by the Department by the last day of the payment month, benefits will be closed effective the last day of the budget month.

(2) In the ERDC program, the Department sends a continuing benefit decision notice to close benefits when the benefit group fails to return the periodic review report by the last day of the last month of the APR period.

(3) For FS clients in the MRS, the Department sends a continuing benefit decision notice when the benefit group fails to return the monthly change report by the 10th day of the payment month. The notice informs the benefit group that:

(a) The report was not received by the Department by the 10th day of the payment month.

(b) The benefit group has until the end of the payment month to provide the report to receive benefits for the payment month.

(c) If the report is not received by the Department by the last day of the payment month, benefits will be suspended effective the last day of the budget month.

(d) The case will remain in suspended status for a month and then be closed.

(4) In the FS program, the Department sends a continuing benefit decision notice when a benefit group in SRS fails to return the interim change report by the 10th day of the sixth month of the certification period. The notice informs the benefit group that:

(a) The report was not received by the Department by the 10th day of the sixth month in the certification period.

(b) The benefit group has until the end of the sixth month of the certification period to provide the report to receive benefits for the seventh month of the certification period.

(c) If the report is not received by the Department by the last day of the sixth month of the certification period, benefits will be suspended effective the last day of the sixth month.

(d) The case will remain in suspended status for a month, then the case will be closed.

(5) In the GA, GAM, OSIP and OSIPM programs, the Department does not send a notice if a client fails to provide a monthly change report.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2003, f. & cert. ef. 8-15-03

**461-175-0290**

**Notice Situation; Overpayment Repayment**

(1) Send a timely continuing benefit decision notice the first time a filing group is notified their benefits are being reduced for recovery of an overpayment.

(2) If any member of the filing group that received the decision notice described in section (1) of this rule receives benefits in another filing group, send a timely continuing benefit decision notice.

Stat. Auth.: ORS 183, 411.060, 411.070, 411.116, 411.120, 411.816, 414.042, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 28-1992, f. & cert. ef. 10-1-92

**461-175-0300**

**Notice Situation; Prior Notice**

(1) A basic decision notice is used if the benefit group was informed in writing, when their benefits began, that they would receive benefits only for a specific period of time.

(2) A basic decision notice is used when a special need allowance granted for a specific period of time is removed at the end of the specified period and the benefit group was informed of this in writing when the allowance began. A timely continuing benefit decision notice is required if stopping the special need allowance results in benefit closure.

(3) In the EA program, no decision notice is used if the client received a decision notice at the time of application stating that the emergency assistance was authorized for only a 30-day period.

(4) In the ADC-PLS program, a basic decision notice is used if:

(a) An employer submits a wage reimbursement billing and the Department calculates a supplement (see OAR 461-190-0416 about supplements);

(b) The benefit group received a timely continuing benefit decision notice that the method of payment would be changed from cash to employer-paid wages; and

(c) The notice specified the period of time that benefits would be diverted.

(5) In the Food Stamp program, no decision notice is required if the client is provided written notification at the time of application or redetermination that:

(a) The benefit group's allotment would vary from month to month and listed the anticipated changes;

(b) In the case the client applied at the same time for both cash assistance and food stamp benefits, the food stamp benefits would be reduced or closed upon approval of the cash assistance; or

(c) In the case of a benefit group that has applied for expedited benefits, receipt of benefits beyond the month of application depends on the client providing required verification (see OAR 461-115-0690). In such cases, the Department may act on the verified information without further notice.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 25-1994, f. & cert. ef. 11-1-94; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 3-2005(Temp), f. & cert. ef. 3-2-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05

#### **461-175-0305**

##### **Notice Situation; Removing a Person From a Benefit Group (EXT, FS, MAA, MAF, SAC, TANF) or Need Group (ERDC)**

(1) To remove a person from a benefit group or from an ERDC need group, the following notices are used:

(a) A continuing benefit decision notice is used when the removal is based on information reported on the monthly change report, interim change report or periodic review form.

(b) A timely continuing benefit decision notice is used when the removal is not based on the monthly change report, interim change report or periodic review form.

(2) In the EXT, MAA, MAF, OHP, SAC and TANF programs, if a child is removed from the benefit group as a result of a court order or a voluntary placement in foster care by the child's caretaker relative, a basic decision notice is used.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03

#### **461-175-0310**

##### **Notice Situation; Resource Transfer Disqualification**

(1) When the Department proposes to disqualify a filing group because of a disqualifying transfer of assets (see OAR 461-140-0210), the following notice is sent:

(a) For new applicants, a basic decision notice.

(b) For ongoing clients, a timely continuing benefit decision notice.

(2) A notice required by this rule includes the amount of uncompensated value used in the eligibility determination and the period of ineligibility caused by the transfer.

(3) In the GA, GAM, OSIP, OSIPM and QMB programs, the notice must also include:

(a) The action that resulted in the disqualification, and

(b) Information that the client, or the facility in which the client resides (on behalf of the client), may apply for a waiver of the disqualification on the basis of undue hardship.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-175-0320**

##### **Notice Situation; Restoring FS Benefits**

In the Food Stamp program, after the Department determines whether a person is entitled to restoration of benefits, the person is entitled to a basic decision notice that includes the amount to be restored, any offsetting that was done, and the manner in which the benefits will be restored. Once the Department sends the notice, no additional notice is required when the restoration payments stop.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2002, f. & cert. ef. 7-1-02

#### **461-175-0340**

##### **Notice Situation; Voluntary Action**

(1) The following criteria are used to determine if a decision notice must be sent when the filing group states they wish to withdraw their request for benefits, or the benefit group states they wish to reduce or to no longer receive benefits:

(a) For all programs except FS:

(A) If the request is made by phone or in person, a timely continuing benefit decision notice is sent.

(B) If the request is signed by the primary person, another adult member of the filing group, or the authorized representative, a basic decision notice is sent.

(b) For FS:

(A) If the request is made by phone to end or reduce benefits, a timely continuing benefit decision notice is sent.

(B) If the request is made in person to reduce benefits, a basic decision notice is sent.

(C) If the request to reduce benefits is signed by the primary person, another adult member of the filing group, or the authorized representative, a basic decision notice is sent.

(D) If the request to end benefits is signed by the primary person, another adult member of the filing group, or the authorized representative in the presence of a worker, no notice is required. If it is not signed in the presence of a worker, a basic decision notice is sent.

(E) If the client withdraws a signed request for benefits, a basic decision notice is sent.

(2) In the FS program, a timely continuing benefit decision notice is sent if the benefit group returns a signed Change Report form with information that requires a reduction or closure of benefits.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

## **DIVISION 180**

## **EFFECTIVE DATES**

#### **461-180-0005**

##### **Effective Dates; Acting on Changes for Cases Using APR**

(1) For changes reported on the Periodic Review form, the effective date is:

(a) The first day of the next APR period; or

(b) If changes will end benefits, the last day of the current APR period.

(2) For changes not reported on the Periodic Review form:

(a) For changes that require the APR period to be shortened, the effective date for the end of the period becomes the last day of the month in which the notice period ends. If the notice period ends the month after the change is reported, and the information results in an increase in benefits, adjust benefits for the last month of the shortened APR period;

(b) For all other changes that will cause:

(A) An increase in benefits, the effective date is the first of the month after the filing group reports the change;

(B) A decrease in benefits, the effective date is the first of the month after the notice period ends.

(c) For changes that will end benefits, the effective date is the last day of the month in which the notice period ends.

Stat. Auth.: ORS 411.060, 411.070, 411.620, 411.630, 411.640, 411.650, 411.700 & 411.816  
 Stats. Implemented: ORS 411.060  
 Hist.: AFS 13-1993(Temp), f. & cert. ef. 7-1-93; AFS 21-1993, f. & cert. ef. 10-12-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94

#### **461-180-0006**

##### **Effective Dates; Changes in the Semiannual Reporting System (SRS)**

(1) The effective date of a change based on an interim change report is:

(a) The first day of the seventh month of the certification period; or

(b) If the change causes benefits to close, the last day of the sixth month of the certification period.

(2) The effective date of a change not based on an interim change report is as follows:

(a) For a change resulting in an increase in benefits, the effective date is determined in accordance with OAR 461-180-0010 and 461-180-0020.

(b) For a change resulting in a decrease in benefits, the effective date for reducing benefits is the first of the month following the month in which the decision notice period ends when the reported change is *considered verified upon receipt*.

(c) For a change resulting in a closure of food stamp benefits, the effective date is the last day of the month in which the notice period ends.

Stat. Auth.: ORS 411.816  
 Stats. Implemented: ORS 411.816  
 Hist.: SSP 20-2003, f. & cert. ef. 8-15-03

#### **461-180-0010**

##### **Effective Dates; Adding a New Person to an Open Case**

(1) In the following programs, the effective date for adding a person (other than an assumed eligible newborn) to the benefit group is one of the following:

(a) In the GA, OSIP, REF, and TANF programs, it is the date on which all eligibility requirements are met and verified. If benefits have been issued for the month and adding the new person would reduce benefits, the person is added the first of the month following the month in which the notice period ends.

(b) In the TANF program, for adding a child to be covered by a provider-direct child care payment, it is the first of the month in which the child is added to the benefit group.

(c) In the EXT, GAM, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, it is whichever occurs first:

(A) The date the client requests benefits, if he or she was eligible as of that date.

(B) The date all eligibility requirements are met.

(d) In the Food Stamp program:

(A) If adding the person increases benefits, it is the first of the month after the filing group reports the person has joined the household group.

(B) If adding the person reduces benefits, it is the first of the month following the month in which the notice period ends.

(e) In the QMB-BAS and QMB-DW programs, it is the first of the month after the new person has been determined to meet all QMB eligibility criteria and the Department receives the required verification.

(f) In the QMB-SMB program, it is the first of the month in which the new person has been determined to meet all QMB-SMB eligibility criteria and the Department receives the required verification.

(2) In the following programs, the effective date for adding an assumed eligible newborn to the benefit group is one of the following:

(a) In the TANF program, it is:

(A) The date of birth, if all eligibility requirements are met and verified within 45 days after the birth; or

(B) The date all eligibility factors are met and verified, if the verification is completed more than 45 days after the date of birth.

(b) In the EXT, GAM, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, it is the date of birth if all the following are true. If any of the following is not true, the newborn is added to the benefit group in accordance with section (1) of this rule.

(A) A request for benefits is made within one year of the birth. A telephone call from the attending physician, another licensed practitioner, a hospital, or the family is considered a request for benefits.

(B) The newborn has continuously lived with the mother since the date of birth.

(C) The mother was receiving EXT, GAM, MAA, MAF, OHP, OSIPM, or SAC on the date of birth, even if she is not currently eligible for benefits.

(3) In the ERDC program, the effective date for adding a person to the need group or benefit group is as follows:

(a) If adding the person to the need group will decrease the copay, the effective date is the first of the month after the client reports the person has joined the household.

(b) If adding the person to the need group increases the copay — for instance, because the person receives income — the effective date is the first of the month following the end of the decision notice period.

(c) The effective date for adding a child to the benefit group — that is, covering the cost of their care — is the earliest of the following:

(A) For newborns, the date of birth, if all eligibility requirements are met and verified within 45 days after the birth.

(B) For all other children, the first of the month in which the change is reported, if all eligibility requirements are met and verified within 45 days.

(C) For newborns and other children, if eligibility cannot be verified within 45 days, the effective date is the first of the month in which all eligibility factors are met and verified.

Stat. Auth.: ORS 411.060 & 411.816  
 Stats. Implemented: ORS 411.060 & 411.816  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-180-0020**

##### **Effective Dates; Changes in Income or Deductions that Cause Increases**

For all programs, except for cases using APR, this rule is used to determine the effective date when a change in income or income deductions causes an increase in benefits.

(1) For a change reported through the MRS, the effective date is the first of the payment month.

(2) For a change not reported through the MRS, the effective date is one of the following:

(a) In the EXT, GA, MAA, MAF, SAC and TANF programs, the effective date for an anticipated change reported before the payment month is the first of the payment month in which it will occur. If the change is not reported until the month it occurs or later, the effective date is the first of the month following the month in which the change was reported.

(b) In the OSIP program, the effective date for an anticipated change is:

(A) The first of the month in which the change occurs if the change is reported by the 10th day of the month following the month the change occurred; or

(B) Ten days before the change is reported, if it is reported after the 10th day of the month following the month the change occurred.

(c) In the FS program, the effective date when verification is not requested is the first of the month following the date the change was reported. If verification is requested, the effective date for the change is:

(A) The first of the month following the date the change was reported if verification is received no later than the due date for the verification.

(B) The first of the month following the date the verification is received by the Department, if received after the verification due date.

Stat. Auth.: ORS 411.060, 411.816 & 418.100  
 Stats. Implemented: ORS 411.060, 411.816 & 418.100  
 Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05



**461-180-0030**

**Effective Dates; Changes in Income or Income Deductions that Cause Reductions**

For all cases except those using APR and those in SRS or TBA, this rule is used to determine the effective date when changes in income or income deductions cause a decrease in benefits.

(1) When retrospective budgeting is being used, the effective date for the reduction is the first day of the payment month.

(2) When prospective budgeting is being used, the effective date for reducing benefits is the first day of the month following the month in which the decision notice period ends.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03

**461-180-0040**

**Effective Dates; Changes in Special or Service Need**

(1) The effective date for a special need is the date of request for the special need item.

(2) The effective date for long-term care is the date the service plan is implemented. A service plan is considered implemented when:

(a) The client employs a homemaker worker (see OAR 411-031-0020 and 411-031-0040) or a contracted in-home agency (see OAR 411-030-0090), and the homemaker worker or agency is an enrolled Medicaid provider; or

(b) The client is placed in a licensed community-based setting or Medicaid-certified nursing facility.

(3) Payment for long-term care will be authorized:

(a) For applicants — from the date of request for applicants who have met all the financial, nonfinancial and service eligibility requirements; and

(b) For recipients — upon authorization of the Department.

(4) The effective date for a termination of or a decrease in service or a special need is the later of the following:

(a) The end of the ten-day timely-continuing-benefit-notice period; and

(b) The day of change in a special need or the termination date of a service plan.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05

**461-180-0044**

**Effective Dates; Income Cap Trust**

The effective date for an income cap trust that makes a client income-eligible for long term care or waived services under OAR 461-135-0750 and 461-145-0540(10)(c) is the first day of the month in which the trust document is signed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-180-0050**

**Effective Dates; Suspending or Closing Benefits and JOBS Support Service Payments**

This rule explains the effective date for closing or suspending benefits for the entire benefit group and the effective date for ending JOBS support service payments. The effective date is determined as follows:

(1) When prospective eligibility is used, the effective date for closing or suspending benefits is:

(a) For all cash and medical benefits for benefit groups in the MRS, the last day of the budget month.

(b) For cash and medical benefits for benefit groups not in MRS and for FS, the last day of the month in which the notice period ends.

(2) When retrospective eligibility or budgeting is used, the effective date for closing or suspending benefits is the last day of the budget month.

(3) When prospective budgeting is used, the effective date for closing or suspending benefits is the last day of the month in which the notice period ends.

(4) When an absent parent enters an ongoing TANF household, or another change occurs that ends eligibility based on the incapacity

or unemployment of a parent, the effective date for closing benefits is the last day of the month in which the 30-day period described in OAR 461-125-0255 ends.

(5) For a pregnant female receiving benefits of the EXT, MAA, MAF, OSIPM, or SAC program, the effective date for closing benefits is no earlier than the last day of the calendar month in which the 60th day after the last day of pregnancy falls, except at the client's request.

(6) In the OHP program, the effective date for closing benefits is:

(a) The last day of the month in which the benefit group becomes ineligible;

(b) The date the program ends; or

(c) For cases not covered by subsection (a) or (b) of this section, the last day of the certification period.

(7) The effective date for ending support service payments authorized under OAR 461-190-0211 is the earlier of the following:

(a) The date the related JOBS activity is scheduled to end.

(b) The date the client no longer meets the requirements of OAR 461-190-0211.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 18-2004, f. & cert. ef. 7-12-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

**461-180-0060**

**Effective Dates; Denial of Benefits**

The effective date for denying benefits is the earlier of the following:

(1) The date the decision is made that the client is not eligible;

or

(2) The end of the application processing time frame, if the application or required verification is incomplete.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92

**461-180-0065**

**Effective Dates; Ending Disqualifications**

(1) The effective date for ending a JOBS disqualification or a disqualification related to diagnosis, counseling, or treatment for substance abuse or mental health is:

(a) The date the client meets the requirements for ending the JOBS disqualification (see OAR 461-130-0335); or

(b) The date the client meets the requirements for ending the disqualification for failure to comply with OAR 461-135-0085(1) (see OAR 461-135-0089).

(2) In the EXT, GAM, MAA, MAF, OHP, OSIPM, and SAC programs, the effective date for ending the disqualification for failing to enroll in cost-effective, employer-sponsored health insurance is the date the client provides verification of enrollment during the open enrollment period.

(3) In the FS program, the effective date for ending an employment program disqualification is the date the client fulfills the requirements to end the disqualification or the first of the month following the minimum disqualification period, whichever occurs later (see OAR 461-180-0010 regarding the effective date for adding a person to an open case).

(4) For an IPV disqualification, the disqualification ends the day after the minimum disqualification period ends, if there is no additional IPV disqualification to be served and all eligibility requirements are met.

(5) For all other disqualifications in the TANF program, the disqualification ends whenever the client agrees to cooperate.

(6) For other disqualifications in the Food Stamp program, the disqualification ends at the end of the disqualification period.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 22-1990(Temp), f. 9-28-90, cert. ef. 10-1-90; AFS 26-1990, f. & cert. ef. 11-29-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 22-2004, f. & cert. ef. 10-1-04

**461-180-0070**

**Effective Dates; Initial Month Cash Benefits**

(1) In the REF and TANF programs, the effective date for the initial month of cash benefits is as follows:

(a) For a client required to participate in the Assessment program, it is the later of the following:

(A) The day the Assessment program ends

(B) The 30th day following the date the client requests benefits, if the Department does not receive required verification until after the 30th day

(b) For a client not required to participate in the Assessment program (see OAR 461-135-0475), it is the day the client meets and verifies all eligibility requirements.

(c) In the TANF program, if the only eligible child is an unborn, it cannot be earlier than the first day of the calendar month preceding the month in which the due date falls.

(d) For a provider-direct child care payment (see OAR 461-165-0190), it is the first of the month in which TANF benefits begin.

(e) For a JOBS support service payment, it is the date the client meets all eligibility requirements in OAR 461-190-0211.

(2) For GA clients, the effective date for the initial month of cash benefits is whichever of the following occurs first:

(a) The day all eligibility requirements are met and verified.

(b) The 45th day from the date the client requests benefits, if all eligibility requirements were met, but the Department did not receive documentation until after the 45th day.

(3) For OSIP clients, the effective date for the initial month of cash benefits is whichever of the following occurs first:

(a) The date the client requests benefits, if he or she was eligible as of that date.

(b) The date all eligibility requirements are met.

(4) In the EA program, the effective date for opening the case is the day benefits are issued to the benefit group. For benefit groups whose only eligible child is an unborn, the effective date cannot be earlier than the first day of the calendar month preceding the month in which the due date falls.

(5) In the ERDC-BAS and ERDC-SBG programs, the effective date for starting benefits is one of the following:

(a) The first day of the month in which the request for benefits is made, as long as:

(A) All eligibility requirements are met in that month; and

(B) Verification is provided within the application processing timeframes.

(b) If all eligibility requirements are not met in the month of request, the effective date is the first day of the month in which they are met, if verification is provided within the application processing timeframes.

(c) For benefit groups that received TANF within the 30 days before applying for ERDC, the effective date is the first of the month following closure of their TANF benefits.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04

**461-180-0080**

**Effective Dates; Initial Month FS Benefits**

In the Food Stamp program:

(1) Except as provided in section (2) of this rule, for a filing group making an initial application or applying after the end of its certification period, the effective date for starting benefits is the filing date (see OAR 461-115-0050 and 461-115-0210), as long as all eligibility requirements are met on the filing date. If all eligibility requirements are not met on the filing date, the effective date is the date all eligibility requirements are met.

(2) For migrant and seasonal farmworkers that received FS benefits in another state the month before applying for FS in Oregon, the effective date for starting benefits is the first of the month.

(3) If a filing group is applying for benefits during the last two months of a certification period, the effective date is the first of the month following the end of the certification period, unless the filing group fails to complete the application process within the time frames listed in OAR 461-115-0210.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 10-1995, f. 30-30-95, cert. ef. 4-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

**461-180-0081**

**Effective Dates; Cases Receiving Transitional Benefit Alternative (TBA)**

(1) The effective date for starting TBA benefits is the first day of the month after the TBA notice is mailed. The effective date cannot precede the date the Department has determined the client is no longer eligible for TANF.

(2) Once a household begins to receive TBA benefits, the benefits are not changed until the end of the TBA period except that TBA benefits will be changed appropriately if:

(a) A member of the household leaves the household and applies for food stamps as a member of another household; or

(b) The Department receives a report from the client that results in an increase in benefits.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03

**461-180-0085**

**Effective Dates; Redeterminations of EXT, GAM, MAA, MAF, OHP, OSIPM, SAC**

In the EXT, GAM, MAA, MAF, OHP, OSIPM, and SAC programs, when the Department initiates a redetermination of eligibility, the Department must review each individual in the filing group for other medical program eligibility prior to reducing or ending medical benefits. If additional information is needed to redetermine eligibility, members of the benefit group remain eligible from the date the review is initiated until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 409.050 & 411.060

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**461-180-0090**

**Effective Dates; Initial Month Medical Benefits**

The effective date for starting medical benefits for an eligible client is as follows:

(1) In the GAM, MAA, MAF, OHP, OSIPM, QMB-DW, REFM, and SAC programs:

(a) Except as provided for in sub-section (b) of this section:

(A) If the client meets all eligibility requirements on the date of request, it is the date of request.

(B) If the client does not meet all eligibility requirements on the date of request, it is the first day following that date that all eligibility requirements are met.

(b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new date of request.

(2) In the EXT program, it is the first of the month following the month that MAA or MAF program benefits end.

(3) In the QMB-BAS program, it is the first of the month after the benefit group has been determined to meet all QMB-BAS eligibility criteria and the Department receives the required verification.

(4) In the QMB-SMB program, it is the first of the month in which the benefit group meets all QMB-SMB eligibility criteria and the Department receives the required verification.

(5) Retroactive eligibility is authorized under certain circumstances in some medical programs, (see OAR 461-135-0875 and 461-180-0140).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05

**461-180-0097****Effective Dates; OHP Premium**

(1) Clients in the OHP-OPU program are required to pay a premium if not exempted by OAR 461-135-1120. The premium for the first month is prorated based on the effective date for starting medical benefits.

(2) If a person becomes a non-exempt OHP-OPU client during a month in which the person was receiving medical assistance from a program other than OHP-OPU, the effective date for starting the premium is the first of the next month.

(3) The effective date for ending the OHP premium is the first of the month in which the client becomes:

- (a) Exempt from paying a premium; or
- (b) Eligible under another medical assistance program.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 414.025(2)(u)

Hist.: AFS 36-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03

**461-180-0100****Effective Dates; Eligibility Following Closure**

The new effective date of eligibility following closure of benefits or following the end of a certification period is determined as follows:

(1) For the Food Stamp program, see OAR 461-115-0450.

(2) In the OHP program, if the client completes the application process within the time period described in OAR 461-115-0190, the effective date is determined as follows:

(a) If the Department initiates a recertification of eligibility for the OHP program, the effective date for the subsequent certification period is the first day that the client meets all eligibility requirements for OHP following the prior certification period.

(b) If the filing group establishes a date of request before the end of a certification period in the OHP program, the effective date for the subsequent certification period is the first day that the client meets all eligibility requirements for OHP following the prior certification period.

(c) If the filing group requests medical benefits while eligible for medical assistance from a program other than OHP, the effective date for the certification period is the first day that the client meets all eligibility requirements following the closure of the program under which the group was receiving medical assistance.

(d) If the filing group requests medical benefits after the closing date for the prior certification period, or if an effective date cannot be determined by subsection (a), (b), or (c) of this section, the effective date is determined by OAR 461-180-0090.

(3) In the ERDC program, eligibility starts the first day of the month of the date of request.

(4) In the TANF program:

(a) Eligibility starts on the date provided by OAR 461-180-0070 for TANF unless the client meets the requirements of subsection (b) of this section.

(b) Eligibility starts the first day of the month following closure if the client contacts the Department during the month of closure and submits to the Department a complete application not later than the end of the month following closure.

(5) In all other programs, if the client completes the application process within the applicable time period described in chapter 461 of the Oregon Administrative Rules, eligibility starts on the first day of the month following closure if the filing group meets all eligibility requirements on that date and if:

(a) The filing group established a *date of request* (see OAR 461-115-0030 for the meaning of *date of request*) prior to closure; or

(b) The Department initiated a redetermination of eligibility prior to closure.

(6) For all programs except Food Stamps, ERDC, and TANF, if the client does not complete the application process within the time period described in chapter 461 of the Oregon Administrative Rules, the determination of an effective date requires a new *date of request* (see OAR 461-115-0030 for the meaning of *date of request*).

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

**461-180-0105****Effective Dates; Reductions Delayed Pending a Hearing Decision**

(1) If a proposed reduction or closure of benefits or a proposed disqualification arising out of an employment program is delayed because the client requested a hearing, the proposed action takes effect in accordance with sections (2) and (3) of this rule.

(2) A disqualification is effective in the following programs on the first day of the month following issuance of a final order upholding the disqualification:

(a) In the JOBS and JOBS Plus programs.

(b) In the FS program, if the disqualification is a result of any of the following:

(A) A job quit.

(B) Failure to comply with a requirement in OAR 461-130-0320.

(C) Failure to comply with a requirement of the JOBS or UC employment program.

(c) In the OHP-OPU program.

(3) All other reductions or closures are effective in accordance with the notice that precipitated the appeal.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 31-2003(Temp), f. & cert. ef. 12-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

**461-180-0110****Effective Dates; Reimbursement of Employer-Sponsored Health Insurance Premiums**

The effective date for starting reimbursement of cost-effective employer-sponsored health insurance premiums per OAR 461-135-0990 is one of the following:

(1) For new cases, the later of the following:

(a) The date of request; or

(b) If no member of the filing group is eligible for medical on the date of request, the date of initial medical eligibility.

(2) For ongoing cases, the later of the following:

(a) The first of the month in which the insurance becomes effective; or

(b) The first of the month in which the benefit group requests reimbursement.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060

Hist.: AFS 22-1990(Temp), f. 9-28-90, cert. ef. 10-1-90; AFS 26-1990, f. & cert. ef. 11-29-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92

**461-180-0120****Effective Dates; Removing a Person**

For all programs, except in cases using APR, the effective date for removing a person from the benefit group is one of the following:

(1) If the person has left the benefit group in the current budget month because he or she is ineligible, is disqualified, or has left the household, the effective date is:

(a) For changes reported through the MRS:

(A) The first of the payment month, if the change will reduce benefits.

(B) The last day of the budget month, if the change will end benefits.

(b) For changes reported outside the MRS and for all disqualifications:

(A) The first of the month after the notice period ends, if the change will reduce benefits.

(B) The last day of the month in which the notice period ends, if the change will end benefits.

(2) If the person is reasonably expected to leave the household next month, the effective date is the later of the following:

(a) The first of the month following the month in which the person leaves the household group, if the change will reduce benefits.

(b) The end of the month in which the person is expected to leave the household group, if the change will end benefits.



(3) In the OHP program, if the person is receiving benefits from a program that is ending, the effective date is the day on which the program ends.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 13-1993(Temp), f. & cert. ef. 7-1-93; AFS 21-1993, f. & cert. ef. 10-12-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 17-2004, f. & cert. ef. 7-1-04

#### **461-180-0125**

##### **Effective Dates; Reopen FS After Returned Mail**

Food Stamp benefits may be reopened effective the first of the month when mail is returned by the U.S. Post Office marked "undeliverable, no forwarding address" in the following situation:

(1) The food stamp benefits ended as of the last calendar day of the prior month;

(2) The reason for the case closure was mail returned, no forwarding address; and

(3) The client contacted the Department within the first calendar month following the case closure with a new mailing address.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

#### **461-180-0130**

##### **Effective Dates; Restored Benefits**

(1) The effective date for restoring benefits that were underpaid (including erroneous collections of overpayments) or denied or closed in error is one of the following:

(a) In all programs except FS, for underpayments resulting from administrative error, the effective date is the date the error was made, subject to the following conditions:

(A) In all programs except TANF, benefits can be restored only for the preceding 12 months.

(B) In the TANF program, benefits may be restored as far back as October 1, 1981.

(b) In all programs except FS, for underpayments resulting from client error, the effective date is the earliest of the following:

(A) The month the benefit group notifies the branch office of the possible loss.

(B) The month the branch office discovers the loss.

(C) The date a hearing is requested.

(2) In the FS program, for underpayments resulting from administrative error, benefits are restored for not more than twelve months prior to whichever of the following occurs first:

(a) The date the benefit group notifies the branch office of the possible loss.

(b) The date the branch office discovers the loss.

(c) The date a hearing is requested.

(3) In the FS program, benefits are not restored for underpayments resulting from client error.

(4) The effective date for restoring benefits that have been suspended is:

(a) The first of the month after the suspension, if suspension was for only one month; or

(b) The date the benefit group again becomes eligible, if benefits have been suspended for more than 30 days. Treat the month in which benefits are restored as an initial month.

Stat. Auth.: ORS 183, 411.060, 411.070, 411.105, 411.111, 411.300, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009, 414.032, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-180-0140**

##### **Effective Dates; Retroactive Medical Benefits**

(1) In the MAA, MAF, OSIPM, and SAC programs:

(a) If a benefit group requests and is eligible for retroactive medical benefits, the earliest date they can be eligible is three months before the date of request. For example, if the benefit group requests benefits on July 10th, eligibility may begin as early as April 10.

(b) After the earliest date is established, eligibility is determined on a month-by-month basis. The period starts on the earliest established date and ends on the date the benefit group requests benefits.

For example, if the benefit group requests benefits on August 10th, the earliest date is May 10. Eligibility is established separately for May 10 through May 31, June 1 through June 30, July 1 through July 31, and August 1 through August 9.

(2) In the QMB-BAS programs:

(a) If a benefit group currently eligible for QMB-BAS requests and is eligible for retroactive medical benefits under MAA, MAF, OSIPM, or SAC, the earliest date they can be eligible is three months before the effective date for QMB-BAS.

(b) After the earliest date is established, eligibility is determined on a month-by-month basis. The period starts on the earliest established date and ends on the effective date for QMB-BAS. For example, if the benefit group requests benefits on August 10 and the effective date is September 1, the earliest date the group can be eligible for retroactive medical benefits is June 1. Eligibility is established separately for June 1 through June 30, July 1 through July 31, and August 1 through August 31.

(3) If a benefit group currently eligible for QMB-DW requests and is eligible for retroactive medical benefits, the earliest date they can be eligible is three months before the effective date of their initial eligibility.

(4) If a benefit group currently eligible for QMB-SMB requests and is eligible for retroactive payment of Part B Medicare premiums, the earliest date they can be eligible is three months before the effective date of their initial eligibility.

(5) If a benefit group currently eligible for REFM requests and is eligible for retroactive medical benefits, the earliest they can be eligible is the most recent of the following:

(a) The date the benefit group arrived in the United States; or

(b) Three months before the date of request.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 17-2004, f. & cert. ef. 7-1-04

## **DIVISION 185**

### **TRUST AND AGENCY (T & A) ACCOUNTS AND CLIENT PAY-IN**

#### **461-185-0010**

##### **T & A Overview, When to Use**

(1) T&A is a system for handling client funds when the Division is responsible for receiving and disbursing these funds. These accounts are set up when the Division is the client's representative payee for SSB, SSI, Veterans, or other benefits;

(2) Additionally, SDSD may set up an account when any of the following is true:

(a) There is no one available to assist the client and the client understands the need for the account;

(b) The client is not able to manage their income or resources;

(c) The account balance of a client's nursing facility personal incidental fund is more than \$90.

(3) Do not set up a T&A account for people who are under age 18.

Stat. Auth.: ORS 411.060, 411.070, 411.620, 411.630, 411.632, 411.635, 411.640 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95

#### **461-185-0020**

##### **Authorization of T&A**

(1) The client, or their guardian or conservator, authorizes establishment of a T&A account on a form prescribed by the Division.

(2) Spouses must each sign the authorization form to have their funds administered in trust.

(3) Clients not able to sign their name may make a mark. Two people must witness the signing and give their addresses.

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90

**461-185-0030**

**Interest Paid on T&A Accounts**

Interest earned from investment of T&A account monies will be put into the T&A accounts on a quarterly basis. Interest will be reported in accordance with IRS regulations on a Division form.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 6-1994, f. & cert. ef. 4-1-94

**461-185-0050**

**Client Pay-In System**

(1) Except as provided in sections (2) and (3) of this rule, a client who receives waived in-home services and has countable income above the payment standard for the benefit group must pay to the Department the lesser of the following amounts as a condition of being eligible for waived in-home services:

(a) The difference between their adjusted income and the payment standard for the number in the benefit group.

(b) The actual cost of the waived service.

(2) The service liability of clients in the OSIP-IC and OSIPM-IC programs is calculated in accordance with section (1) of this rule. Clients in the OSIP-IC and OSIPM-IC programs do not pay the Department directly. The IC service payment of these clients will be reduced by the amount of their liability.

(3) The following clients are exempt from the payment required by this rule:

(a) Adult disabled children as described at OAR 461-135-0830.

(b) Disabled widows and widowers under OAR 461-135-0811.

(c) Widows and widowers under OAR 461-135-0820.

(4) Each month, the Department will send the client an invoice requesting payment based on the calculation in section (1) of this rule.

(5) Payments must be received by the Department in the month of service.

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

**DIVISION 190**

**EMPLOYMENT PROGRAM COMPONENTS**

**461-190-0110**

**Definitions for the JOBS Program**

This rule contains definitions of terms used to describe the JOBS Program. When used in this division of rules as defined in this rule, the terms appear in *italics*.

(1) *Activity*: An action or set of actions to be taken by the client, as specified in the case plan, intended to reduce barriers and increase the likelihood of self sufficiency, employment, job retention, and wage enhancement. Activities are listed and described in OAR 461-190-0161.

(2) *Barrier*: A personal condition or circumstance that reduces the likelihood the client will become employed or the client's ability to participate in an activity listed in the case plan.

(3) *Component*: A set of one or more activities of the JOBS Program. Components of the JOBS program are basic education, job readiness, job search, job skills training, JOBS Plus, microenterprise, OJT, program entry, sheltered or supported work, UN work program, work experience, work supplementation, and vocational training. Components are described in OAR 461-190-0161.

(3) *Employer contact*: A client communication with an employer or employer's representative through a visit, phone call or mail to request consideration for employment.

(4) *Progress (good or satisfactory)*: A client participating in an education or training activity makes good progress or satisfactory progress by meeting a standard of achievement measured in a period of less than one year (such as a term or quarter). The standard is established in writing by the educational institution or training program consistent with its evaluation standards. The appropriate state or local education agency and the Department must approve the standard before it is applicable with respect to a client. Standards must include:

(a) In an education *activity*, both a qualitative measure of progress, such as a specific grade point average, and a quantitative measure, such as a time limit for completion of the activity.

(b) In a training activity, both a qualitative measure of progress, such as gains in competency or proficiency levels, and a quantitative measure, such as a time limit for completion of the activity.

(5) *Subsidized employment*: A job in which the wages paid to an employee are subsidized by a state or local employment and training program.

(6) *Support services*: Services that case-managed clients need to participate successfully in activities outlined in their case plan, to seek and maintain employment, or to remove barriers.

(7) *Teen parent*: Custodial parent under age 20.

(8) *Transition services*: Services included in a client's case plan when the client becomes employed or becomes ineligible for cash benefits because of an increase in income or resources.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 10-1991, f. & cert. ef. 4-19-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

**461-190-0151**

**Employment Planning; JOBS**

The Division will develop a *case plan* with each client. The *case plan* is complete and binding once it is signed by a representative of the Division, the client is informed of its contents and the client has been offered a copy of the plan. A client who disagrees with a requirement to comply with any provision of a *case plan* may seek resolution of the disagreement through the conciliation process described in OAR 461-190-0231. The client must inform the Division of any circumstances that may require a change to the provisions of the *case plan*.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01

**461-190-0161**

**JOBS Components and Activities**

This rule contains definitions of the components and activities of the JOBS program. When used in this division of rules as defined in this rule, the terms appear in *italics*.

(1) *Assessment*: An activity of the program entry component that involves gathering information to identify the strengths, interests, family circumstances, status in the JOBS Program, and vocational aptitudes and preferences of the client and to mutually determine an employment goal, the level of participation of the client in the JOBS Program, and which support services are needed.

(2) *Basic education*: A component intended to ensure functional literacy for all JOBS clients. Basic education activities are high school attendance, English as a second language (ESL) instruction, adult basic education (ABE) instruction, and services that result in obtaining a general equivalency diploma (GED). The component is discussed in OAR 461-190-0171 and 461-190-0181.

(3) *BASIS testing*: An activity in the program entry component. The BASIS test establishes the functional literacy level of the client.

(4) *Case plan* (formerly also known as an employment development plan (EDP) — and also known as a personal plan or personal development plan): A written outline, developed by the client and case manager, with input from partners as appropriate, listing activities and goals for the client. The activities and goals are identified during the assessment and are intended to reduce the effect of barriers to the self sufficiency, employment, job retention, and wage enhancement of the client. The case plan also identifies the support service payments the Department will make to help the client complete the plan. Completing a case plan is an activity of the program entry component.

(5) *Degree Completion Initiative (DCI)*: A component in which a limited number of TANF recipients may participate for up to 12 months to complete an educational degree at a two- or four-year

educational institution as defined at OAR 461-190-0195(2)(b). This component is discussed at OAR 461-190-0195.

(6) English as a second language (ESL): An activity in the basic education component. ESL classes are designed to give clients with limited English proficiency better working skills in the language.

(7) Job readiness: A component designed to prepare clients to compete in the local labor market. The sole activity is life skills.

(8) Job search: A component that focuses on clients looking for and obtaining employment. It is designed to improve skills in locating and competing for employment in the local labor market and may include writing resumes, receiving instruction in interviewing skills, and participating in group and individual job search. The component is discussed in OAR 461-190-0201.

(9) Job skills training: A component designed to provide classroom training in vocational and technical skills or equivalent knowledge and abilities in a specific job area. The component and activity are both called job skills training.

(10) JOBS Plus program (JOBS Plus): A component that provides TANF clients with on-the-job training and pays their benefits as wages. See the rules at OAR 461-190-0401 and following.

(11) Life skills: The activity of the job readiness component. The activity develops employment-preparation skills and skills and attitudes that are commonly found in the workplace.

(12) Microenterprise: A component in which the client is self-employed in a sole proprietorship, partnership, or family business that has fewer than five employees and has capital needs no greater than \$35,000.

(13) On-the-job training (OJT): A component and activity in which a client works for an employer for a contracted period. The employer trains the client and is reimbursed by the Department, usually at 50 percent of the wages of the participant, for those training costs.

(14) Program entry: The component that includes all the activities that prepare a client to actively participate in the JOBS program. Program entry activities are assessment, BASIS testing and writing the initial case plan.

(15) Sheltered work or supported work: A component that gives clients intensive staff support, skill training, intervention and counseling that will enable them to function independently at work.

(16) UN work program: A component in which TANF clients work in unsubsidized employment and may also participate in another JOBS work site training activity.

(17) Vocational Training: A component of the JOBS Program that provides JOBS participants with access to specific vocational training that will lead to a career with an appropriate wage level and opportunity for employment.

(18) Work experience: A component in which the client works without pay at a job site to develop good work habits and basic vocational skills that enhance the likelihood the client will become employed. Work experience is available through private for-profit businesses, nonprofit organizations or public agencies.

(19) Work supplementation: Up to six months of work-site training provided by an employer. The component and activity are both called work supplementation. In work supplementation, the Department subsidizes the wages of the participant by providing up to \$200 per month to the employer.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 27-1993(Temp), f. & cert. ef. 11-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 21-2003(Temp), f. 8-29-03, cert. ef. 9-1-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 25-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-190-0163**

#### **Restrictions for On-the-Job Training, Work Experience, Work Supplementation; JOBS**

(1) The Division cannot require a client to participate in an *activity* of the *OJT*, *work experience* or *work supplementation* components in the following circumstances:

(a) The client would displace a currently employed worker or position or would cause a reduction in regularly scheduled hours, wages or benefits of a current employee;

(b) The assignment would impair an existing contract for services or a collective bargaining agreement;

(c) The employment or assignment occurs at the same time another person is laid off from the same or an equivalent job within the same organizational unit or an employer terminates an employee or reduces its work force by hiring a participant in *OJT*, *work experience* or *work supplementation*;

(d) The employment or assignment infringes in any way on promotional opportunities of a current employee.

(2) The Division cannot require a client to participate in the *work supplementation component* by filling an established but currently vacant position.

(3) The working conditions for clients participating in the *OJT*, *work experience* and *work supplementation components* must not violate applicable state and federal health and safety standards or require activities not considered usual and customary in the occupation for which the participant is being trained.

(4) Clients participating in the *OJT*, *work experience* and *work supplementation components* who are covered by a workers' compensation system are entitled to the same level of benefits under the same conditions as other persons similarly employed.

(5) Clients in *work supplementation* not covered by an applicable workers' compensation statute must be provided with equal medical and accident protection for on-site injuries as that required by the state's worker compensation statute for covered employment.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 18-1998, f. & cert. ef. 10-2-98

#### **461-190-0171**

#### **Education Requirements for Teen Parents; JOBS**

(1) Except as provided in section (2) of this rule, *teen parents* who participate in the JOBS program and do not have a high school diploma or GED must participate in the *basic education component*.

(2) A *teen parent* is excused from the requirements of section (1) of this rule if any of the following is true:

(a) He or she is *exempt* from the requirement to participate in the JOBS Program for a reason other than having given birth within the prior 90 days (*see* OAR 461-130-0310(2)).

(b) He or she is under age 18, has been excused by the local school district from state compulsory school attendance, and meets the following conditions:

(A) The employment goal of the *teen parent* is an occupation or occupational field that does not require a high school diploma or GED, there is a labor market demand for it, and the goal is appropriate for the client and likely to lead to self-sufficiency; and

(B) The *teen parent* is participating in the *job skills training component* and an education *component* designed to result in a literacy level of at least grade 8.9.

(c) He or she is age 18 or 19 and can be assigned to employment training to prepare for occupations or occupational fields for which there is a labor market demand, and either he or she has failed to achieve *good or satisfactory progress* in completing his or her educational *activities* or educational *activities* are inappropriate for his or her education and employment goals.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00

#### **461-190-0181**

#### **Basic Education for Nonteens; JOBS**

(1) Parents age 20 and over in the JOBS Program may be required to participate full-time (as defined by the education provider) in the *basic education component* if their employment goals requires a literacy level of 8.9, unless one of the following is true:

(a) They are exempt from the requirement to participate in the JOBS Program for a reason other than providing care for a child under age 3 months;



(b) They demonstrate a literacy level of at least grade 8.9 through *BASIS testing*;

(c) They have a high school diploma or GED.

(2) Clients with limited English proficiency may be required to participate in English education if their inability to speak, read or write the English language limits their employment opportunities.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 18-1998, f. & cert. ef. 10-2-98

**461-190-0195**

**Degree Completion Initiative Component**

(1) The Degree Completion Initiative (DCI) assists TANF parents who are undergraduates to complete their education at a two- or four-year educational institution. DCI is a work-attached component of the JOBS program for certain TANF clients. A participant in the DCI component (participant) receives TANF cash assistance as well as support services provided through the JOBS program. JOBS support services does not pay for the cost of tuition, fees, books, or supplies associated with enrollment by a participant at an educational institution.

(2) The following definitions apply to DCI:

(a) "DCI" refers to Degree Completion Initiative.

(b) "Educational institution" refers to any post-secondary educational institution approved or accredited by the Northwest Commission on Colleges and Universities, by its regional equivalent, or by the appropriate official, department, or agency of the state or nation in which the institution is located and which is--

(A) A two- or four-year college or university; or

(B) A community college.

(c) "Participant" refers to a participant in the DCI component of the JOBS program.

(3) The number of participants at any time may not exceed one hundred households receiving TANF.

(4) Applying for DCI; Waiting List:

(a) A parent who is applying for or receiving TANF may apply for DCI by completing and signing the DCI application and submitting it to the Department. The application and other documentation required by this rule must be submitted to Department of Human Services JOBS Unit (DCI), 2nd Floor, 500 Summer Street NE E48, Salem, Oregon 97301.

(b) The Department will follow the following procedure for DCI applications received by the Department:

(A) For applications received prior to November 1, 2005, the Department will select participants in a random selection process of applicants, subject to the priority established in paragraph (E) of this subsection. The number of participants selected may not exceed the cap established in section (3) of this rule. The Department will notify all selected applicants who qualify that they have been selected to participate.

(B) For applications received prior to November 1, 2005, the Department will create a waiting list of applicants from the applicants who are not selected for participation in the random selection held pursuant to paragraph (A) of this subsection. The waiting list will be created through a random selection process in which the first application selected will be first on the waiting list. The Department will notify applicants that they have been placed on the DCI waiting list.

(C) For applications received on or after November 1, 2005, the Department will add applicants to the waiting list created pursuant to paragraph (B) of this subsection in the order of the date and time the completed application is received by the Department. The Department will notify applicants that they have been placed on the waiting list.

(D) When an opening in DCI becomes available, the Department will notify the next applicant on the waiting list.

(E) The priority population for the first 100 DCI slots will be applicants who are undergraduates and who require 12 months or less to complete a degree at an educational institution.

(F) If the department does not have 100 DCI slots filled, applications will be open to applicants who are undergraduates and who require between 13 and 24 months to complete a degree at an educational institution. Prior to November 1, 2005, a random selection process will be used if there are too many applicants in this category for the remaining slots available.

(c) The Department will inform each applicant for DCI who does not qualify or no longer qualifies for placement on the waiting list.

(5) Selection Requirements:

(a) A DCI applicant must meet the financial and nonfinancial eligibility requirements for TANF.

(b) Subject to the priority established by paragraph (4)(b)(E) of this rule, a DCI applicant must demonstrate that they are an undergraduate who requires 24 months or less to complete a degree at an educational institution.

(c) A DCI applicant who is not applying for or receiving TANF at the time of selection may not participate in DCI or remain on the waiting list.

(d) A DCI application must include documentation that the DCI applicant has been accepted for full-time attendance into or is enrolled full-time at an educational institution. If the DCI applicant does not include such documentation with the DCI application, the applicant must submit documentation to the Department no later than 60 days from the date the application is submitted. An applicant who does not provide this documentation within 60 days is not eligible to participate in the DCI component. This deadline may be extended beyond 60 days in special circumstances beyond the control of the client.

(6) Requirements of Participants; Limitations:

(a) A participant must provide documentation to the Department quarterly, or following completion of each academic term at the educational institution, that the participant is making satisfactory academic progress, as defined by the educational institution, toward a degree.

(b) A participant who does not provide the documentation required by subsection (6)(a) of this rule, or who is not making satisfactory academic progress as defined by the educational institution, is not eligible to continue to participate.

(c) A participant must attend classes full-time as defined by the educational institution, unless there is good cause (see OAR 461-130-0327) to limit attendance to less than full-time.

(d) Unless there is good cause (see OAR 461-130-0327) for not attending year round, a participant must either--

(A) Attend classes year round, including during the summer if classes are offered by the educational institution; or

(B) If not attending classes year round, participate in work experience related to the field of study of the participant when not attending classes.

(e) A participant must provide the Department, either verbally or in writing, with attendance information at least once per month.

(f) Eligibility for DCI is limited to 12 months and may not be extended.

(g) Upon completing the last semester or term of the educational program of the participant, the participant must engage in work preparation activities, which may include resume preparation, employment research, interviews, work experience, and other activities related to job placement.

(h) The following requirements apply to a participant who is required to participate in the JOBS program:

(A) A mandatory participant who does not attend classes year round may be required to participate in other activities of the JOBS program.

(B) A mandatory participant found to be ineligible to participate in DCI must meet the participation requirements of the JOBS program.

(i) A participant may not simultaneously receive services from both the ERDC-SBG program and from the TANF or JOBS program.

(j) Except as provided in subsection (6)(k) of this rule, a participant must remain eligible for TANF: if the participant becomes ineligible for TANF, the participant is ineligible for DCI.

(k) If a participant becomes temporarily ineligible for TANF during a period of four or fewer months due to income from a paid work experience, the applicant may retain their DCI slot when school resumes if the participant meets all of the following requirements:

(A) The time of the participant in DCI will be no longer than 12 months.

(B) The participant regains TANF eligibility.

(C) DCI is still an appropriate activity for the participant.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 418.100

Hist.: SSP 15-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

**461-190-0197**

**Microenterprise Component**

(1) A microenterprise is a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no

greater than \$35,000. The microenterprise component is a component in which a self-employed TANF client (see OAR 461-145-0910(2) for definition of “self-employed client”) can meet participation requirements of the JOBS program by working in a microenterprise.

(2) The Department will authorize a client to participate in the microenterprise component if the client is self-employed in a microenterprise and provides the Department with:

(a) A business plan for the microenterprise; and

(b) Approval of the business plan by an expert third party entity such as the United States Small Business Administration, a member program of the Oregon Microenterprise Network, the Service Corps of Retired Executives (SCORE), or an entity approved by the Department.

(3) The business plan required by section (2) of this rule must include provisions for review of the client’s progress in the microenterprise by the approving entity.

(4) The Department may require a client to participate in other JOBS activities while participating in the microenterprise component. A client participating in the microenterprise component must:

(a) Participate in the microenterprise component for the number of hours required by the rules of the JOBS program; or

(b) Participate in the microenterprise component and other JOBS activities identified in the case plan for the number of hours required by the case plan.

(5) A client participating in the microenterprise component must provide semiannually to the Department a statement of the client’s income prepared by a certified public accountant, bookkeeping firm, or other entity approved by the Department according to generally accepted accounting principles and OAR 461-145-0920.

(6) The Department will not authorize JOBS funds to be used for equipment, supplies, wages, or other business expenses that support the microenterprise.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: SSP 23-2003, f. & cert. ef. 10-1-03; SSP 7-2005, f. & cert. ef. 7-1-05

#### **461-190-0201**

##### **Job Search; JOBS**

(1) There are two categories of *job search*: *initial job search* and *regular job search*. *Initial job search* begins immediately after the client applies for benefits and lasts not longer than fifty-six calendar days. Regular job search begins not later than the day after the Division finds the client eligible for benefits.

(2) During initial job search the client must make two *employer contacts* each business day and may be assigned other *activities* likely to increase the probability of employment.

(3) The client begins *regular job search* after being found eligible for benefits and after the client completes the Assessment Program (see OAR 461-135-0475 concerning the Assessment Program). After every twelve consecutive weeks of *job search* the client is entitled to two weeks without *job search activities*. The client must participate in ten hours of *job search activities* during a week of *regular job search* for it to count toward the twelve consecutive weeks.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 23-1991(Temp), f. 10-31-91, cert. ef. 11-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 18-1998, f. & cert. ef. 10-2-98

#### **461-190-0211**

##### **Standards for Support Service Payments**

(1) The Department helps individuals comply with their case plans by providing payments for child care, housing, transportation, and other needs to make participation in required activities successful. These payments are provided for costs directly related to participation in activities, for costs necessary to obtain and retain a job, and for enhancing wages and benefits. In approving JOBS support service payments, the Department must consider lower-cost alternatives. It is not the intent of the Department or of this rule to supplant Department funding with other funding that is available in the community. It is the Department’s expectation that case managers and clients will work collaboratively to seek resources that are reasonably available to the client in order to participate in activities.

(2) Support service payments must be authorized in advance and are subject to the limitations of this rule. The following standards apply to support service payments.

(3) Subject to the limitations of state funding, JOBS payments for support service will be made available to an individual if all of the following are true:

(a) The individual is one of the following:

(A) A TANF applicant or recipient;

(B) A recipient in the Assessment program;

(C) A minor parent who has returned to the minor’s parent’s home in the last 40 days, if the move caused the client to become ineligible for TANF.

(D) A TANF client participating in diagnosis, counseling, or treatment programs for substance abuse or mental health.

(E) A non-citizen who is ineligible for TANF, who is legally able to work in the United States, and who has a child receiving TANF.

(F) A person disqualified from the TANF program for failure to comply with the child-support related requirements of OAR 461-120-0340 and 461-120-0345.

(G) A person eligible for transition benefits and services under OAR 461-190-0241.

(H) A person currently receiving TA-DVS benefits.

(I) A non-custodial parent of a child receiving TANF benefits, if both are residents of Oregon.

(b) The individual has agreed to participate in a JOBS activity as specified in the individual’s case plan.

(4) Denials and Reductions The Department may reduce, close, or deny in whole or in part an individual’s request for a support service payment in the following circumstances:

(a) If the individual is disqualified for failing to comply with a case plan, unless the payment in question is necessary for the client to comply with his or her case plan.

(b) If the purpose for the payment is not related to the individual’s case plan.

(c) If the client disagrees with a support service payment offered or made by the Department as outlined in the client’s case plan.

(5) Required Verification:

(a) The Department may require the individual to provide verification of a need for the support service prior to approval and issuance of payment if verification is reasonably available.

(b) The Department may require the individual to provide verification of costs associated with a support service if verification is reasonably available.

(6) Child Care Payments for child care are authorized, as limited by OAR 461-160-0040, if necessary to enable the individual to participate in JOBS program activities. If authorized, payment for child care will be made for:

(a) The lesser of the actual rate charged by the care provider and the rate established in OAR 461-155-0150. The Department rate for children in care less than 158 hours in a month is limited by OAR 461-155-0150, except that the cost of child care may be paid up to the monthly maximum when children are in care less than 158 hours per month; and

(A) Appropriate care is not accessible to the individual at the hourly rate; or

(B) The individual is a teen parent using on-site care while attending education activities.

(b) The minimum hours necessary, including meal and commute time, for the individual to participate in JOBS activities or to obtain and maintain employment.

(7) Child care payments may be provided when individuals are not participating in activities of the JOBS program if necessary for them to retain their provider. Only the minimum amount necessary to maintain the child care slot with the provider may be covered as established in OAR 461-155-0150. Not more than 30 days between scheduled JOBS activities may be covered.

(8) Housing and Utilities In addition to payments for basic living expenses provided in OAR 461-135-0475, payments may be provided to secure or maintain housing and utilities in the following situations:

(a) To prevent an eviction or utility shut-off, to secure housing in order to find or maintain employment or to participate in activities listed in the individual’s case plan. Payment is available when all the following are true:

(A) The individual cannot make a shelter or utility payment due to lack of assets.

(B) The lack of assets did not result from a JOBS or Child Support disqualification, a reduction due to an IPV recovery, overpayment recovery (other than administrative error), or failure by the individual to pay shelter or utility expenses when funds were reasonably available.

(C) The individual's case plan addresses how subsequent shelter or utility payments will be made.

(b) The shelter need results from domestic violence and all the following are true:

(A) The individual is not eligible for TA-DVS.

(B) The individual will be able to pay all subsequent shelter costs, either through the individual's own resources or through other resources available in the community.

(C) The individual's case plan addresses how subsequent shelter costs will be paid.

(c) For clients who are in the Assessment program or are applying for a payment under section (6) of this rule, the Department will make payments if the client meets the eligibility criteria in section (9) of this rule. A client who receives a TANF grant is expected to meet the housing and utility expenses out of the money received each month in the TANF grant. Therefore, for clients who receive a TANF grant, the Department may make payments on a case-by-case basis as appropriate if the client otherwise meets the JOBS support service payment eligibility criteria of this section.

(9) Transportation The Department will provide payments for transportation costs incurred in travel to and from JOBS activities. Payment is made only for the cost of public transportation or the cost of vehicle insurance, repairs, and fuel for a personally owned vehicle. The Department will not authorize payment for repair of a vehicle owned by an individual who is not in the TANF filing group. Payments are subject to the following considerations:

(a) Payments for public transportation are given priority over payments for a privately owned vehicle.

(b) Payment for a privately owned vehicle is provided if the client or driver has a valid license and either of the following is true:

(A) No public transportation is available or the client is unable to use public transportation because of a verifiable medical condition or disability for which no accommodation is available.

(B) Public transportation is available but is more costly than the cost of car repair or fuel.

(10) Other Payments The Department will provide payments for other items that are directly related to participation in JOBS activities. Payments under this section may be authorized for:

(a) Reasonable accommodation of a client's disability.

(b) Costs necessary in obtaining and retaining a job or enhancing wages and benefits, such as:

(A) Clothing and grooming for participation in JOBS activities or job interviews.

(B) Moving expenses necessary to accept employment elsewhere.

(C) Books and supplies for education needs.

(D) Tools, bonding, and licensing required to accept or retain employment.

(11) Students Receiving Financial Aid Authorization for payments for students in vocational training who receive financial aid is subject to the following conditions:

(a) A student whose financial aid consists solely of student loans is not required to use any of that financial aid for support services.

(b) Support service payments are not authorized for services specifically covered by federal or state financial aid other than student loans.

(c) Students whose financial aid consists of a combination of loans and grants may be required to pay for support services from any grant money remaining after payment of tuition, fees solely related to the institution where the individual attends, books, and supplies (applying first the loan and then any grants) if the financial aid award letter specifically permits this use of funds.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-

1998, f. & cert. ef. 10-2-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2005(Temp), f. & cert. ef. 9-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-190-0231**

##### **Conciliation; JOBS**

(1) The Division uses a conciliation process to resolve disputes that arise between clients and Division staff in the JOBS program, including disputes about whether the client had *good cause* (see OAR 461-130-0327) for failing to comply with a requirement of the program and disputes about a *case plan*, irregular attendance at assigned JOBS activities, missed appointments, failure to participate in a JOBS component, and refusal to accept or maintain employment.

(2) The client, the Division or the Division's contractor may initiate conciliation. Conciliation is not a required JOBS activity, and the Division cannot disqualify clients based on their failure to participate in the conciliation process.

(3) Conciliation ends when:

(a) A decision is made by the Division as to whether the client had *good cause* for not complying with a requirement of the JOBS program;

(b) The Division and the client agree to modify a disputed *case plan*;

(c) The client misses the conciliation appointment without *good cause*;

(d) Efforts to conciliate are unsuccessful; or

(e) The client clearly indicates an intent not to participate in the conciliation process.

(4) Conciliation must end before the Division begins the process of disqualifying a client for a failure to comply with a requirement of the JOBS program.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 18-1998, f. & cert. ef. 10-2-98

#### **461-190-0241**

##### **Transition Services; JOBS**

(1) A client who becomes ineligible for the TANF program or the Assessment program because of an increase in earned income is eligible for transition benefits and services for 12 months upon meeting the criteria in OAR 461-190-0211 for receiving support services in the JOBS program. The total cost of JOBS support service payments may not exceed \$1,000 for the duration of the 12-month period. For clients whose eligibility ends for reasons other than income from new employment, the benefits and services are limited to completing any JOBS activity in progress at the time program eligibility ends.

(2) The transition period begins on the date determined by the following:

(a) For clients participating in an OJT activity, the transition period begins:

(A) When TANF benefits end because of earned income, if there are three or fewer months left in the OJT contract.

(B) Three calendar months before the end of the OJT contract, if TANF benefits end because of the level of earned income when more than three months remain in the contract.

(b) For clients participating in a work supplementation activity, the transition period begins when the wage subsidy (grant diversion) to the employer ends.

(c) For all other clients, the transition period begins when TANF or Assessment program benefits end.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 23-1991(Temp), f. 10-31-91, cert. ef. 11-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 25-1998, f. 12-28-95, cert. ef. 1-1-98; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2005(Temp), f. & cert. ef. 9-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-190-0310**

##### **OFSET Components and Activities**

This rule contains the definitions of the Food Stamp OFSET program:



(1) **Assessment:** An activity that involves gathering information to identify a client's strengths, interests, family circumstances, status in the OFSET program, goals, and vocational aptitudes and preferences and to mutually determine an employment goal, the level of the client's participation in the OFSET program, and which support services are needed to be able to participate in the components and activities.

(2) **Basic education:** A component intended to ensure functional literacy for all OFSET clients. Basic education activities are high school attendance, English as a second language (ESL) instruction, adult basic education (ABE) instruction, and services that result in obtaining a general equivalency diploma (GED).

(3) **Case plan:** The case plan (also called a personal plan or personal development plan) is a written outline, developed together by the client and case manager, with input from partners as appropriate, listing activities for the client. The components and activities are identified during the assessment and are intended to reduce the effect of barriers to the client's self-sufficiency, employment, job retention and wage enhancement. The case plan also identifies the support services the Department will make available to help the client complete the plan. The case plan cannot require more than 120 hours of activities each month.

(4) **English as a second language (ESL):** An activity in the basic education component. ESL classes are designed to give clients with limited English proficiency better working skills in the language.

(5) **Job search:** A component that focuses on clients looking for and obtaining employment. The client may not be required to participate in only job search activities for more than eight weeks a year.

(6) **Job skills training:** A component that includes training designed to improve skills in locating and competing for employment in the local labor market and may include writing resumes and receiving instruction in interviewing skills.

(7) **JOBS Plus program (JOBS Plus):** A component that provides clients with on-the-job training and pays their benefits as wages.

(8) **Other employment-related activities:** A component composed of other activities related to employment, including:

(a) Participation in a program of the Workforce Investment Act;

(b) A program authorized by section 236 of the Trade Act of 1974 (19 U.S.C. 2296);

(c) **Sheltered work or supported work:** A component that gives clients intensive staff support, skill training, intervention and counseling that will enable them to function independently at work.

(d) **Vocational training:** A component designed to provide classroom training in vocational and technical skills or equivalent knowledge and abilities in a specific job area. Examples are Project Independence, Women in Transition and Nurses Aid certification.

(e) **Work search agreement:** See *case plan*, above in this rule.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 13-2002, f. & cert. ef. 10-1-02

#### **461-190-0360**

##### **OFSET Payments**

The Department may authorize payment of not more than \$40 a month for transportation and other costs identified on the case plan of an OFSET client. If public transportation is available, the Department may issue to the client bus passes or tickets (whichever is less costly) sufficient to enable the client to participate in the OFSET activities identified on the case plan.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

#### **461-190-0401**

##### **Applicability**

The *JOBS Plus program* is a component of the JOBS program and is subject to the provisions of ORS Chapter 411 and the following rules (OAR 461-190-0401 to 461-190-0426). Clients who participate in the JOBS Plus program (participants) become employed and

receive wages rather than cash benefits from the TANF program, food stamps, and unemployment insurance benefits.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 18-1998, f. & cert. ef. 10-2-98

#### **461-190-0406**

##### **Eligibility of Clients**

(1) Any client not excluded from participation by law, if eligible for the TANF program, may volunteer to participate in the *JOBS Plus program*. If there are no volunteers available to participate, the Department may select participants from among eligible clients. Recipients of SSI and teenage parents who remain in high school, if they are making progress toward receiving a diploma, are exempt from participation in the *JOBS Plus program*.

(2) Clients remain eligible to participate as long as they would, except for participating in the *JOBS Plus program*, be eligible for TANF. Eligibility of a participant working under a *JOBS Plus assignment* is not affected by changes in deprivation (see OAR 461-125-0010).

(3) The benefits of participants remain suspended until the first day of the month following the month in which they last perform work under a *JOBS Plus* agreement. TANF clients cannot receive TANF cash benefits and a *JOBS Plus* supplement for the same month.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 18-1998, f. & cert. ef. 10-2-98; SSP 7-2005, f. & cert. ef. 7-1-05

#### **461-190-0407**

##### **Clients' Individual Education Accounts**

After a client has participated in the JOBS Plus program for 30 days, the Division withholds one dollar for each hour the client works for the JOBS Plus employer to be used for the client's individual education account. To be qualified for use of his or her account, an *eligible participant* (see OAR 575-090-0010) must make a written request to the Division for access to the account. Upon receipt of such a request, the Division will transfer the account to the Commission. The client must apply with the Oregon Student Assistance Commission to access the account.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.894

Hist.: AFS 14-1999, f. & cert. ef. 11-1-99

#### **461-190-0411**

##### **Participation of Employers**

(1) The Division assigns participants to employers who enter into work-site agreements with the Division. The Division will assign participants to public employers only when there is no appropriate vacant position with a private employer.

(2) The Division will not assign participants to employers who have demonstrated a pattern of unreasonably ending a client's *JOBS Plus* participation prior to completion of training or who have demonstrated an unwillingness to provide adequate training or comply with the work-site agreement.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 18-1998, f. & cert. ef. 10-2-98

#### **461-190-0416**

##### **Supplemental Payments**

This rule applies to TANF clients who become participants in the *JOBS Plus program*.

(1) If the net monthly full-time wage paid to a participant would be less than the amount of the TANF and the food stamp benefits the participant would otherwise receive, the Division will determine and pay to the participant a supplemental payment as provided in this section.

(2) **Definitions:**

(a) *JOBS Plus income* for sections (2) and (3) is determined retrospectively as follows:

(A) For the full benefit equivalency test, the applicable hourly wage is multiplied by the hours that were available for work, specifically the hours for which the participant was paid, including sick leave used and hours the participant was engaged in *job search*, and hours during which the participant missed work without being excused by the employer. From that product, a \$90 standard deduction and the amount of garnishments withheld are subtracted. To the remainder is

added any child support received by the participant and \$102 to account for the participant's potential earned income credit. If the participant missed the work referred to in this paragraph due to *good cause* as defined in OAR 461-130-0327, the hours are excluded from the calculation;

(B) For the minimum benefit equivalency test, the applicable hourly wage is multiplied by the hours for which the participant was paid. From that product, a \$90 standard deduction and the amount of garnishments withheld are subtracted. To the remainder is added any child support received by the participant and \$102 to account for the participant's potential earned income credit.

(b) The *full benefit equivalency income* is determined prospectively as follows. The total of the TANF Program and Food Stamp Program benefits is determined for the eligibility group in accordance with OAR 461-160-0100 and 461-160-0400. Child and spousal support are used in determining the food stamp benefits under this rule only if it is likely the participant will receive it;

(c) *Minimum benefit equivalency income* is determined by deducting from the *full benefit equivalency income* the difference between the TANF standard for the eligibility group with the participant included and the TANF standard for the eligibility group without the participant included.

(3) Wage supplements: A participant is entitled to a wage supplement for any month in which *JOBS Plus income* is exceeded by either the *full benefit equivalency income* or the *minimum benefit equivalency income*. The supplement is determined by subtracting the *JOBS Plus income* calculated in accordance with paragraph (2)(a)(A) from the *full benefit equivalency income* and by subtracting the *JOBS Plus income* calculated in accordance with paragraph (2)(a)(B) from the *minimum benefit equivalency income*. The larger remainder, if greater than zero, is the wage supplement.

(4) Food stamp supplements:

(a) To ensure that Food Stamp clients do not incur a net loss of income because of their participation in the *JOBS Plus program*, the Division provides a supplemental payment equal to the amount by which the client's *JOBS Plus income* is less than the Thrifty Food Stamp Plan standard for the client's eligibility group;

(b) The *JOBS Plus income* for this section is calculated prospectively by subtracting \$90 from the sum of the gross *JOBS Plus* wages the client has already received for the month and any that the client can reasonably expect to receive during the month, and adding the remainder to any EIC payment the client received or anticipates receiving during the month and any other prospective income, and then subtracting the amount scheduled to be garnished during the month.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 18-1998, f. & cert. ef. 10-2-98

#### **461-190-0421**

##### **Increased Tax Liability**

(1) To ensure that the diversion of food stamp program benefits to *JOBS Plus* wages does not cause a participant to incur a loss of income as a result of increased tax liability, the Division will make a yearly payment to compensate the participant if the participant's tax liability exceeds the liability the client would have incurred had the amount of food stamp benefits not been included in the *JOBS Plus* wages.

(2) To receive the payment, the client must do the following:

(a) Request the payment from the Division by June 30 of the year following the tax year.

(b) Submit the federal tax forms (including the EIC schedule) and state tax forms that were submitted with respect to the prior year together with the same forms completed with income reduced by the amount of food stamp benefits used in calculating the *full benefit equivalency income* under OAR 461-190-0416.

(3) The payment described in this rule is excluded income in the Food Stamp program.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 18-1998, f. & cert. ef. 10-2-98; AFS 9-1999, f. & cert. ef. 7-1-99

#### **461-190-0426**

##### **Termination of Work-Site Agreement**

(1) A *JOBS Plus* work-site agreement may be terminated by a participant, upon request to the Division, after the client has worked

for two weeks for the employer. For the third and any subsequent termination requested by the client, the client is subject to disqualification for failure to comply with the requirements of the JOBS program as provided in OAR 461-130-0325(1)(b).

(2) The Division will terminate a *JOBS Plus* work-site agreement if the agreement is violated by the employer or the staffing company and at the end of the month prior to the month in which a member of the eligibility group begins serving a disqualification in the Food Stamp Program.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 18-1998, f. & cert. ef. 10-2-98

## **DIVISION 193**

### **REFUGEE PROGRAMS**

#### **461-193-0000**

##### **Refugee Project Participant Rights**

Project participants have the following rights, which the project worker must explain to them both orally and in writing:

(1) The right to information about services administered under the project.

(2) The right to refuse to release information given to the project or to other agencies or people, unless the release is for purposes directly connected with administering the project, or as determined by law.

(3) The right to a staffing within 5 working days of the date of the Decision Notice informing participants that their benefits and/or services are:

(a) Reduced;

(b) Ended; or

(c) Denied.

(4) The right to receive a decision on eligibility promptly and by the 10th calendar day from the intake date.

(5) The right to apply for and receive benefits and services without discrimination.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 8-1995(Temp), f. 3-30-95, cert. ef. 4-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

#### **461-193-0001**

##### **Refugee Project Rules**

(1) The OARs in OAR chapter 461, division 193, apply to people who meet the refugee/asylee alien status requirement of OAR 461-120-0120.

(2) For these clients, the OARs in this division take precedence over other AFS OARs in chapter 461, except as follows:

(a) The Refugee Case Services Program (RCSP) is a prior resource for refugees/asylees as stated in OAR 461-135-0900(1).

(b) Confidentiality and release of client/participant information is governed by OARs 461-105-0050 through 461-105-0140.

(c) The requirement to serve clients without discrimination, and definitions of discriminatory acts, are covered in OARs 461-105-0180 and 461-105-0190.

(d) Lost benefit checks are restored per OAR 461-165-0220.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 19-1997, f. & cert. ef. 10-1-99

#### **461-193-0005**

##### **Refugee Projects Overview**

The Oregon refugee project encourages, assists and requires applicants and recipients to fulfill their responsibilities to support themselves and their families by preparing for, accepting and retaining employment. Refugee projects are funded by the Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement (ORR) by funding awarded to States for certain services. Funding falls generally into four categories: Cash, Medical and Administration; Social Services; Targeted Assistance; and Discretionary.

(1) The contracted service provider who is awarded the funding for a project has the authority to select refugees for participation in the project and to remove them from project participation. Selection for,

and removal from, the project is based on project eligibility, the service provider's determination of the participant's motivation and chances for success, and cooperation of the participant in project activities. Project services are designed to enable refugees to obtain jobs with less than one year's participation. All refugees participating in a refugee funded project must meet the following criteria:

(a) The refugee must provide proof that they were lawfully admitted to the United States under valid provisions of the Immigration and Nationality Act.

(b) The refugee may remain in an employment project longer than one year if they have entered a job, and need help to retain employment or move to a better job.

(c) The refugee must not be a full-time student or intending to enroll as a full-time student within six months of their project intake date.

(d) The refugee must meet all the individual eligibility criteria for the project they apply for and any assistance which is provided.

(2) TANF/ADC (Temporary Assistance for Needy Families/Aid to Dependent Children) funding is used for those refugees who otherwise qualify under the State Plan for these services.

(3) DHHS/ACF/ORR (Department of Health and Human Services/Administration for Children and Families/Office of Refugee Resettlement) Cash Medical and Administration (CMA) funding is in part used to provide limited cash assistance to refugees who are ineligible for cash assistance under any other categorical social service program and meet refugee cash assistance standards. Refugees may be eligible for refugee cash assistance during a period to be determined by the ORR. CMA funding is also used to provide limited medical assistance to refugee who are ineligible for Medicaid services under the State's Plan and is governed by the service standard of the Oregon Health Plan. CMA funding is also used to provide assistance, services and administration of the refugee program.

(4) Social Services funding is primarily for facilitating refugee employment and achievement of self-sufficiency; for employability services that directly enhance refugee employment potential, have specific employment objectives and are designed to enable refugees to obtain jobs with less than one year's participation.

(a) Participants must be age 16 or older and must not be full-time students in elementary, secondary, or alternative school.

(b) Vocational training shall not last more than one year and must be intended to lead to employment within one year.

(c) Participation priorities are in the following order, except in the most extreme circumstances:

(A) All newly arrived refugees during their first year in the United States, who apply for services.

(B) Refugees who are receiving cash assistance.

(C) Unemployed refugees who are not receiving cash assistance.

(D) Employed refugees in need of services to retain employment or to attain economic independence.

(5) Targeted Assistance funding uses a formula allocation to States, to counties and to similar areas in the States where, because of factors such as unusually large refugee populations, high refugee concentrations and high use of public assistance by refugees, there exists and can be demonstrated a specific need for supplementation of available resources for services to refugees.

(a) Participants must be age 16 or older and must not be full-time students in elementary, secondary, or alternative school.

(b) Vocational training shall not last more than one year and must be intended to lead to employment within one year.

(c) Services should focus primarily on those refugees who, either because of their protracted use of public assistance or difficulty in securing employment, continue to need services beyond the initial year of resettlement.

(d) Participation priorities are in the following order:

(A) Cash assistance recipients, particularly long-term recipients.

(B) Unemployed refugees who are not receiving cash assistance.

(C) Employed refugees in need of services to retain employment or to attain economic independence.

(6) Discretionary funding augments targeted assistance programs for funding to localities most impacted by the influx of refugees. Discretionary projects are of a limited duration and offer a variety of different services, with specific criteria outlined in the grant application announcement.

(7) Refugee Service Projects:

(a) Refugee Case Service: This project provides case coordination and cash assistance to all qualified refugees in the project area.

(b) New Arrival Employment Services (NAES): This project assists newly arrived refugees to achieve self-sufficiency through employment, within available resources. Available training may include power sewing and pre-industrial training.

(c) Pre-Employment Training (PET): This project provides classroom instruction for newly arrived refugees who are in the NAES project on work search skills, job application and interview skills, and appropriate on the job behavior in order to help them understand the dynamics of the American work place, enable them to function more effectively on the job, and improve their potential for job retention.

(d) Coordinated Assistance to Support Employment (CASE): This project assists newly arrived refugees who are in the NAES project to early employment with support services of training, financial support services and employment plan support.

(e) Established Employment Services (EES): This project assists refugees to achieve self-sufficiency through employment, within available resources.

(f) Clark County Washington Employment Services: This project assists refugees to achieve self-sufficiency living in Clark County, Washington.

(g) Refugee Medical Screening: This project provides for a medical screening for all newly arrived refugees in Oregon within their first 90 days in the United States.

(h) Unaccompanied Minor Child Welfare Services: This project assists refugees entering as unaccompanied minors. It is operated by the child welfare division of the State of Oregon. The project focuses on providing a family environment in which the unaccompanied refugee child can develop the social and behavioral skills necessary to achieve self-sufficiency. Services to unaccompanied minors are in the same range of child welfare benefits and services available in the state.

(i) Discretionary projects as awarded each federal fiscal year.

Stat. Auth.: ORS 411.060, 411.116 & 411.135(1)

Stats. Implemented: ORS 411.070, 414.025(2), 418.040 & 418.100

Hist.: AFS 9-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 12-1995, f. & cert. ef. 6-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 13-2001, f. 6-29-01, cert. ef. 7-1-01

#### **461-193-0007**

##### **Refugee Project Services Delivery Requirements**

A State must provide any individual wishing to do so an opportunity to apply for services and determine the eligibility of each applicant.

(1) The provision of services for refugees, with the exception of referral and interpreter services, is limited to refugees who have been in the United States 60 months (5 years) or less. All services for a refugee must be completed at the end of their 60th month, unless specified otherwise in grant language.

(2) Services should be provided in a manner that is linguistically and culturally compatible with a refugee's background.

(3) Refugee-specific services must be provided during the initial years of resettlement and which are specifically designed to meet refugee needs and are in keeping with the OARs and objectives of the refugee program. Exceptions to refugee-specific services include vocational or job skills training, on-the-job training (OJT), or English language training.

(4) English language instruction must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related services.

(5) Refugee women should have the same opportunities as men to participate in training and instruction. Services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women.

(6) A family self-sufficiency plan must be developed for any refugee who participates in refugee program funded employment-related services.

(7) In planning services, projects must take into account the reception and placement (R&P) services provided by resettlement agencies in order to ensure the provision of seamless, coordinated services to refugees that are not duplicative.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 19-1997, f. & cert. ef. 10-1-97



**461-193-0010**

**Refugee Project Participant Responsibilities**

To be eligible for benefits and services, participants must do all the following:

(1) Provide true, complete, and accurate information required to determine eligibility and verify that information, to the extent permitted by their physical and mental condition, or authorize the Project office to obtain verification.

(2) Comply with the eligibility requirements of the project.

(3) Report within 2 working days any changes that could affect their eligibility for services and/or benefits, including, but not limited to the following:

- (a) Receipt of income, resources, or property.
- (b) Change in job status or school attendance.
- (c) Involvement in a motor vehicle or personal accident.
- (d) People moving in and out of the household.
- (e) Changes in address or telephone number.
- (f) Decision to withdraw from the project.

(4) Repay all overpayments in cash assistance benefits.

(5) Attend and complete all required Project activities and appointments, unless there is verifiable good cause.

(6) Contact the project worker, if they are unable to attend, or will be late for scheduled activities. Report within 1 working day from when the activity was missed.

(7) Turn in valid job applications and follow through on job referrals.

(8) Keep a job, if they have one. Participants must also not reduce their work hours or quit a job, unless the job worker agrees it is for a valid reason.

(9) Accept, at any time, from any source, an offer of employment as determined to be appropriate by the project. A job offered, if determined appropriate by the project, is required to be accepted by the participant without regard to whether the job would interrupt a plan of services, or services in progress unless the participant is participating in an on-the-job training. As defined, "appropriate" is any job a participant is capable of performing (based on assessment information of the project) which pays at least minimum wage and will lead or contribute to the economic self-sufficiency of the family.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 8-1995(Temp), f. 3-30-95, cert. ef. 4-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 12-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 19-1997, f. & cert. ef. 10-1-97

**461-193-0016**

**Refugee Project Administration; Delegate Authority**

AFS, through its State Refugee Program, administers the Oregon refugee services projects.

(1) AFS may choose to delegate authority for all or part of the education, employment, training or support services to a state or local service provider. Services and payments are subject to availability of federal and state funds and may be terminated in part or in full by AFS if necessary federal or state authorization or funding is curtailed.

(2) The level of services provided by or on behalf of AFS may vary by geographic location. This range of services may include services provided to refugee participants without cost to AFS.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070, 411.095 & 411.111

Hist.: AFS 9-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95

**461-193-0026**

**Refugee Project Applicant Orientation**

All applicants receive an initial orientation to a service project. The orientation covers information appropriate to the specific project, and may contain the following information:

- (1) Project resources available to participants.
- (2) Employment services available to participants.
- (3) Responsibilities of the project.
- (4) Participant's rights regarding releasing case information.

(5) The rights, responsibilities and obligations of participants, including the grounds for exemptions and the consequences for refusing or failing to participate.

(6) The necessity of income from employment earnings to help the participant and family achieve a measure of stability and security to enhance the resettlement process.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 9-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

**461-193-0031**

**Refugee Project Requirements**

(1) To be eligible for refugee employment and employment-related projects, a participant must meet all the following conditions:

(a) The applicant must be between the ages of 16 and 64.

(b) The applicant must be in search of full-time or part-time employment.

(c) The applicant must complete an employment intake.

(d) The applicant must sign a project rights and responsibilities document.

(e) If the applicant, within 30 days before the intake date, has done any of the following, a good cause determination must be made by the project worker.

(A) Refused an offer of employment.

(B) Quit a job.

(C) Caused their own dismissal from a job.

(D) Voluntarily reduced their hours of employment or earnings.

(f) If the project worker determines that the applicant does not have good cause, the applicant(s) are not eligible for benefits or services until they demonstrate cooperation with the project.

(g) The participant must not be enrolled as a full-time student or intending to enroll as a full-time student within 6 months of their employment intake date.

(h) If the applicant is eligible and is selected for the project, eligibility for services is the date of the completed intake.

(2) In addition, to be eligible for the NAES project, the refugee must meet all the following:

(a) Must have lived in the United States for less than 12 months.

To determine the eligibility period, consider the month the refugee arrives in the United States as the first month, regardless of the day the refugee arrives.

(b) Must live in Clackamas, Multnomah or Washington county.

(c) Cannot be served in the project after their first 12 months in the United States unless they are in a retention status for job placement.

(3) In addition, to be eligible for cash assistance benefits:

(a) The case financial resources shall not exceed \$10,000.

(b) The case shall not receive, from any source, more earned or unearned income than the cash standards for the case size.

(c) The case shall not receive project assistance and public assistance from another project or state during the same time period.

(d) The case shall complete a case service and NAES project intake.

(e) All adults in the case shall sign a Case Service Rights and Responsibilities.

Stat. Auth.: ORS 411.060, 411.116 & 411.135(1)

Stats. Implemented: ORS 411.070, 414.025(2), 418.040 & 418.100

Hist.: AFS 9-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 13-2001, f. 6-29-01, cert. ef. 7-1-01

**461-193-0040**

**Refugee Project Employees' Responsibilities**

Project organizations are responsible for any misconduct, indolence, malfeasance, misfeasance, and nonfeasance of their employees. Any intentional violation of project policy or adjusting or withholding of information to favor or disfavor a participant or other Project service provider shall result in disciplinary action and/or dismissal. Project employees who provide direct or indirect participant services to the project shall comply with the rights and responsibility policy by demonstrating the following:

(1) Individual actions of employees and the policies of the project should demonstrate a respect for individual differences and a commitment to optimum use of project and community resources to promote early employment and economic self-sufficiency.

(2) Project workers shall not carry cases of relatives, close friends, individuals they sponsor, or any person living within their home.

(3) Project workers, and project organizations shall not receive services and/or benefits from the project.

(4) Project workers shall not give or lend money to, or exchange material goods with, any participant served in the project, or any other federally funded project.

(5) Project workers shall follow all policies of the project.

(6) Project workers shall not withhold, or misrepresent participant project information.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

#### **461-193-0042**

##### **Refugee Project Employment Plan**

(1) The Employment Plan is the plan to help the participant attain employment as quickly as possible. All participants in the project must have an Employment Plan.

(2) The Employment Plan must:

(a) Be based on an assessment to reflect the participant's abilities, background, etc.

(b) Contain development of a family self-sufficiency component.

(c) Accurately and clearly state the participant's goal.

(d) Detail the plan for assessment, counseling, treatment, training, educational and other employment-preparation activities the participant must complete to achieve the goal.

(e) Specify the plan for services and payments to support the participant in approved activities.

(f) Be a joint effort with the participant.

(g) Not specify a fixed, target wage.

(h) Be used to inform participants of dates, times, and locations of scheduled activities.

(3) The participant and the project worker complete the Employment Plan at the time of the employment intake.

(4) Review the Employment Plan:

(a) When there is a change in plan direction;

(b) At the time of any training completion and evaluation;

(c) At the time of the case manager Formal Review; AND

(d) At any other time that is needed.

(5) Update the employment plan when:

(a) Changes occur in participant employment goals, barriers, participation or support service needs; OR

(b) At the time of the review.

(6) Participants may request a project management review if they disagree with their employment plan. If requested, a review must be provided.

Stat. Auth.: ORS 411.060, 411.116 & 411.135(1)

Stats. Implemented: ORS 411.070, 414.025(2), 418.040 & 418.100

Hist.: AFS 9-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 13-2001, f. 6-29-01, cert. ef. 7-1-01

#### **461-193-0046**

##### **Refugee Project Employment Projects and Services**

The following projects and services may be offered:

(1) Application and interview assistance.

(2) Developing an employment plan.

(3) Employment counseling.

(4) Pre-Employment Training (PET).

(5) Job development planning and referral.

(6) Job search.

(7) Job training.

(8) New job on-site follow-up.

(9) New job orientation.

(10) On-the-Job Training (OJT).

(11) Referral to mainstream resources.

(12) Up-grade assistance.

Stat. Auth.: ORS 411.060, 411.116 & 411.135(1)

Stats. Implemented: ORS 411.070, 414.025(2), 418.040 & 418.100

Hist.: AFS 9-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 13-2001, f. 6-29-01, cert. ef. 7-1-01

#### **461-193-0121**

##### **Refugee Project Inquiries and Complaints**

(1) The participant, a third party, or a third party on the behalf of a participant may submit an oral or written inquiry regarding clarification or additional information regarding project policy, services, or other information.

(a) Handle inquiries and complaints in a courteous and effective manner. When the complaint is made about or on behalf of a participant by an interested third party, confidential information shall be safeguarded.

(b) Letters of complaint received about project employees shall be forwarded to their directors.

(c) Letters of inquiry which are beyond the organization's project scope shall be forwarded to the director of the project organization who has direct service responsibility.

(d) Letters of inquiry which are directly related to project policy shall be forwarded to the project manager.

(2) The participant may file a complaint anytime he/she is dissatisfied with the project, its policies, etc. A complaint is filed with the completion of the Grievance Review and Outcome.

(a) The participant may file a complaint within 30 calendar days from the date the project worker's actions result in the participant's complaint.

(b) If the project is closed for any reason while the participant is in the process of filing a complaint or complaint appeal, the complaint process shall proceed even after the case closes.

(c) If a participant is not satisfied with the response to his/her inquiry, the participant may request a review with the project worker regarding this decision.

(3) Reviewing a Grievance:

**NOTE:** This section applies to all project case complaints except those cases involved in contested case appeals for penalty staffing.

(a) All appeals must be requested in writing by the participant.

(b) Requests for an appeal must be received within 30 calendar days from the date of the decision on the Grievance Review and Outcome.

(c) Appeals shall be scheduled within five working days of the receipt of the written request.

(d) If, in the review outcome, it is decided that the action was not within project policy, the grievance is valid.

(A) If the action was not implemented, no follow-up is needed.

(B) If the action was implemented, the action will be removed and any loss of benefits to the participant will be restored retroactively to the date the benefits were affected.

(e) If, in the review outcome, it is decided that the action taken by the project worker was proper, the grievance is not valid. A written reply shall be sent to the participant.

(f) The participant shall be notified of the outcome of the review by mail within two working days of the decision.

(g) If the participant fails to appear at the review without good cause, the grievance review shall be closed. Reviews for the same complaint shall not be processed.

(4) Level 1 — With the Agency Supervisor:

(a) The level 1 appeal is at the supervisor level. The appeal shall include the agency supervisor, as well as the participant, participant's representative, and agency worker.

(b) The supervisor reviews the grievance, the action which initiated the grievance, and project policy pertaining to the action.

(c) If the participant does not agree with the outcome of the appeal, he/she may appeal the decision to the next level.

(5) Level 2 — With the Agency Director:

(a) The level 2 appeal is at the director level. The appeal shall include the agency director, as well as the participant, participant's representative, agency worker, and supervisor.

(b) The director reviews the grievance, the action which initiated the grievance, and project policy pertaining to the action.

(c) If the participant does not agree with the outcome of the appeal, he/she may appeal the decision to the next level.

(6) Level 3 — With the Project Manager:

(a) The level 3 appeal is at the project manager level. The appeal shall include the project manager, as well as the participant, participant's representative, agency worker, supervisor, and director.

(b) The project manager reviews the grievance, the action which initiated the grievance, and project policy pertaining to the action.

(c) The appeal with the project manager is the highest grievance review level available in the project. The outcome of the grievance review at Level 3 is considered final.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 22-1997, f. & cert. ef. 12-1-97

**461-193-0130****Eligibility Determination Terms; Refugee Case Service Project**

The following terms are used in the eligibility determination process for Refugee Case Service:

(1) Asylee: a refugee who is granted asylum under Section 208 of the Immigration and Nationality Act. Most asylees are granted asylum after arriving in the United States. Others are admitted to the United States from another country so that they can join a family member who has already received asylum.

(2) Case head: the case member who is responsible for providing information necessary to determine eligibility and calculate benefits, and report income. The case head may be either adult in the case.

(3) Child: the offspring of a person, either natural, legal, or attached to, and does not include an unborn child.

(4) Dependent child: a person age 19 or less and a full-time student in primary or secondary school or alternative primary or secondary school, who is not married, and not a caretaker relative of their own dependent child, and is not classified as an emancipated youth.

(5) Disqualified: a person who cannot receive project services and benefits because they have not cooperated in fulfilling an eligibility requirement.

(6) Emancipated youth: a person under age 18 who has been determined to be a single case by the Immigration and Naturalization Service, or who is unattached to a family.

(7) Family reunification case: a newly arrived refugee who joins nuclear family members.

(8) Income: Any money received from capital or labor, as defined in 461-193-0650.

(9) Ineligible: a person who cannot receive project services and benefits because they do not meet some eligibility requirement not including noncooperation.

(10) Marriage: legal marriage uniting two people. A legal marriage is one recognized as legal by state statute of the state where the marriage occurred. This includes common-law marriage if recognized as legal in the state where the couple previously resided. A cultural marriage is recognized as legal if it occurred in a country which recognizes it as legal.

(11) New arrival: a refugee who originally resettled in Oregon.

(12) Parent: the natural, legal, or attached mother or father of a person or unborn child.

(13) Resource: Any accumulated money or property as defined in 461-193-0185.

(14) Secondary migrant: a refugee who originally resettled in another state, and was part of another state's Department of State Reception and Placement counts, who has moved to Oregon.

Stat. Auth.: ORS 411.060, 411.116 & 411.135(1)

Stats. Implemented: ORS 411.070, 414.025(2), 418.040 & 418.100

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 6-1997, f. 5-28-97, cert. ef. 6-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 13-2001, f. 6-29-01, cert. ef. 7-1-01

**461-193-0185****Countable Resources; Refugee Case Service Project**

The following are types of resources which must be counted in determining financial eligibility:

(1) Bank Account: Count money in a bank account belonging to one or more members of the case. For bank accounts held jointly with people not in the case, count only those funds contributed to the account by the case members.

(2) Cash: Count cash on hand, cash in a safety deposit bank, cash held by others, and foreign currency that can be converted to United States currency. The value of foreign currency is its value in United States currency determined by the current exchange rate.

(3) Motor Vehicle: Exclude up to \$10,000 in equity value of one licensed motor vehicle selected by the case. Count any remaining equity in the vehicle and the total equity of all other vehicles.

(4) Real Property: Real property is land, buildings, and whatever is erected or affixed to the land and taxed as real property. Count real property that is not income producing or the case's home as a resource.

(5) Stocks, Bonds, and Other Securities: Count stocks, bonds, and other securities including Certificates of Deposit (CD).

(6) Tax Refund: Count all federal and state income tax refunds, as well as property tax refunds, except any portion that is designated as EIC.

Stat. Auth.: ORS 411.060, 411.095 & 411.111

Stats. Implemented: ORS 411.060, 411.095 & 411.111

Hist.: AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 22-1997, f. & cert. ef. 12-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98

**461-193-0190****Refugee Project Application Process**

(1) People have the right to apply for services and benefits administered by the projects.

(2) A complete application is required to determine eligibility.

(a) The application is considered complete if all information to determine eligibility for the project is provided on the application for all people in the case; and

(b) The application is signed by all adult members of the case.

(3) The application process shall ensure that project requirements are accurately and promptly applied.

(4) Project staff shall help all applicants comply with policy requirements of the application process. This includes helping applicants who are unable to understand the application or gather information necessary for eligibility determination.

(5) For Refugee Case Service, a case shall consist of:

(a) A family — the mother and/or father, and any unemancipated children under age 17, and any children age 17 through 19 who are students in a secondary school.

(b) A husband and wife couple.

(c) Single adults or emancipated youth who are not in school and who are not part of a family case. Youths classified as single individuals:

(A) Shall be considered adults; and

(B) Cannot withdraw from their own case and be placed in their parent's case in order to attend high school.

(6) For all other refugee projects, the case consists only of the individual.

(7) A participant may withdraw their application at any time during the intake process. An application will be considered to be withdrawn if the participant does not complete the application process.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 22-1997, f. & cert. ef. 12-1-97

**461-193-0221****Refugee Project Training Activities**

Training services are provided in coordination with the refugee projects. Participants are required to be actively enrolled in an employment service project.

(1) Only selected and approved participant vocational training will be considered a higher service priority than job search, job referral, or job placement activities.

(2) The participant in training must remain a student in good standing and make satisfactory progress in the program.

(3) The participant must agree to attend classes daily and to report absences to the instructor timely.

(4) The participant shall be told of the consequences of poor attendance. Poor attendance in training is a noncooperation issue.

(5) The participant is responsible for arranging transportation and child care to attend training. Lack of child care or transportation is not a valid barrier to participation in classes.

(6) The training provided must include monitoring.

(a) The job worker must review the participant's progress at the end of each month and when training is completed.

(b) The instructor monitors attendance and informs the job worker of all absences.

(7) The training instructor completes a detailed exit evaluation of all training participants. The evaluation covers the participant's motivation to seek employment and to learn English, skills and knowledge gained by the class, barriers removed, and behavior likely to affect employment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 9-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97



**461-193-0240**

**Exempt From Participating in NAES**

All participants are required to be enrolled in an employment project unless they are exempt. People served by the project are exempt from participation in an employment project if they meet any of the following:

- (1) Pregnant females who are:
  - (a) In their 9th month of pregnancy; or
  - (b) Experiencing medical complications due to pregnancy that prevent participation in employment or self-sufficiency projects. Documentation from a Project-approved medical authority is required.
- (2) Females during their first 90 days after giving birth to a child.
- (3) Persons whose individual documented medical condition does not allow participation in employment services at any level as determined by the employment service provider.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 8-1995(Temp), f. 3-30-95, cert. ef. 4-1-95; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

**461-193-0246**

**Employment Incentives; NAES**

NAES provides incentives to encourage participants to focus on early employment and economic self-sufficiency. A participant is eligible for an incentive only if the following is true:

- (1) The participant is active in the NAES Project.

- (2) For a training incentive:

(a) The participant successfully completes a Pre-Employment Training (PET) class and/or vocational training or became employed before the training was completed.

(b) The participant has met the minimum attendance criteria for training. Minimum attendance criteria is:

- (A) Less than 4 absences (excused or unexcused) from a Pre-Employment Training class.
- (B) Less than 3 absences (excused or unexcused) from a vocational training class.

- (3) For an employment incentive:

(a) The participant successfully completes their first 30-day and/or 90-day full-time employment placement. Eligibility for the incentive starts on the 30th and 90th day of employment in the full-time job.

(b) The participant is employed in at least two part-time jobs concurrently. The part-time employments must be equal to at least 35 hours per week. Eligibility for the incentive starts on the 30th and 90th day of the job which makes the work week at least 35 hours per week.

(c) Each participant is eligible for only one 30-day and one 90-day employment incentive, regardless of the number of jobs obtained during their Project eligibility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 9-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95; 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 22-1997, f. & cert. ef. 12-1-97; AFS 13-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 18-2003, f. & cert. ef. 7-1-03

**461-193-0320**

**Effective Dates for Cash Assistance; Refugee Case Service Project**

Eligibility for cash assistance is according to the following dates:

- (1) For children born to refugees in the United States, the cash assistance date is the date of birth.

(2) For cases who have a person who quit a job (or refused an offer of employment, caused their own dismissal from a job, or voluntarily reduced their hours of employment or earnings) without good cause within 30 days of the case service intake date, the cash assistance date is the date they demonstrate cooperation with the project.

(3) For all other cash assistance benefit eligibles, the cash assistance date is the date of the case service intake after all initial eligibility factors for the case are completed and verified, including the employment intake, if required.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. 2-1-94; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 2-1996(Temp), f. 1-30-96, cert. ef. 2-1-96; AFS 11-1996, f. 3-27-96, cert. ef. 4-1-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 19-1997, f. & cert. ef. 10-1-97;

AFS 8-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 5-1-00; AFS 14-2000, f. & cert. ef. 5-2-00

**461-193-0470**

**Eligibility Decision; Refugee Case Service Project**

(1) The project worker determines whether the applicant meets initial eligibility for the project.

(2) Final determination of eligibility is made by the State Refugee Coordinator.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. 2-1-94; AFS 8-1995(Temp), f. 3-30-95, cert. ef. 4-1-95; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 2-1996(Temp), f. 1-30-96, cert. ef. 2-1-96; AFS 11-1996, f. 3-27-96, cert. ef. 4-1-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

**461-193-0560**

**Full Monthly Payment Standards; Refugee Case Service Project**

(1) The level of cash assistance benefit standard is determined by the number of participants in the case.

(2) The following is the monthly basic payment standard: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. 2-1-94; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 6-1997, f. 5-28-97, cert. ef. 6-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 3-2003(Temp), f. & cert. ef. 2-14-03 thru 6-30-03; SSP 18-2003, f. & cert. ef. 7-1-03; SSP 27-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 34-2003, f. 12-31-03 cert. ef. 1-1-04

**461-193-0610**

**Newborn Child; Refugee Case Service Project**

When a child is born to a family within their time eligibility period, the newborn child must be added to the Refugee Case Service case.

(1) The parent(s) in the case must add the new child to the application and re-sign the form with a new date.

(2) The parent(s) must also provide verification of the child's birth (e.g., hospital or birth certificate).

(3) The case may be eligible for an additional cash assistance benefit payment for the month the child was born. The project case's income for the reporting period prior to the baby's birth is evaluated. The calculation of cash assistance benefits is the difference between the basic cash standard levels of the two different case sizes in relationship to the baby's date of birth.

(a) If the net income is greater than the cash standard for the new case size, the case is not eligible for an additional cash assistance benefit payment for the month.

(b) If the net income is less than the cash standard for the new case size, the case is eligible for an additional cash assistance benefit payment for the month.

(4) The newborn child's U.S. arrival date and eligibility period is the same as the mother's.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

**461-193-0640**

**The Monthly Client Information Report (MCIR); Refugee Case Service Project**

(1) All participants served in the project, whether or not they receive cash assistance benefits, are required to submit a MCIR each month they are in the project.

(2) The MCIR is used to report monthly income and resources received by household members during the reporting period.

(3) The project reporting period is from the 15th of the previous month through the 14th of the current month. Income is counted at the time it is received by the participant, not when it is earned.

(4) All MCIRs must be completed, signed, and dated on or after the 15th of the month and received by the project by the 18th of each month.

(5) Checks are issued monthly, near the first day of the month.

(6) If the MCIR and supporting documentation are not received by the 18th of the month deadline, the check may be later than the first of the month.

(7) The project shall collect, review, and document information reported on the MCIR.

(8) MCIRs and payment requests are submitted to the State Refugee Coordinator in accordance with the established monthly schedule.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 8-1995(Temp), f. 3-30-95, cert. ef. 4-1-95; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

**461-193-0650****Countable Income; Refugee Case Service Project**

Any income received during the reporting period and reported by the case shall affect the monthly cash assistance benefits for the benefit month. The following are types of income which must be counted in determining financial eligibility for the project.

(1) Annuities, Dividends, Interest, Royalties: Count all payments.

(2) Cash contributions: Count all monies given voluntarily to a case member by someone who is not in the case.

(3) Child Support: Count income paid voluntarily or per court order by an absent parent for a dependent child in the case.

(4) Disability Benefit: Count state or private disability payments received.

(5) Earned Income: Adult case member income received in exchange for a person's physical or mental labor. Count the net earned income after allowing deductions for federal, state, FICA and workers compensation taxes. Earned income includes, but is not limited to:

(a) Compensation for services performed: This includes wages, salaries, commissions, tips, sick leave, vacation pay, draws, or the sale of one's blood or plasma.

(b) Income from on-the-job training or paid job experience.

(c) In-kind income, when the participant is an employee of the person providing the in-kind income and the income is in exchange for work performed by the participant.

(d) Income from self-employment.

(e) Income from profit sharing that the participant receives monthly or periodically.

(f) Income from employer-funded temporary disability insurance and temporary worker's compensation paid to a participant who is still considered to be employed while recuperating from a temporary illness or injury.

(6) Gifts and winnings: Count all cash gifts and winnings. Gifts are items given to or received by an individual on or for a special occasion. Winnings are prizes given to an individual in a contest, lottery, etc.

(7) Personal Injury Settlement: Count monthly payments.

(8) Public Welfare Benefits: In the initial month, count cash public assistance received by all case members of the project.

(9) Social Security Benefits: Count monthly payments.

(10) Spousal support: Count income paid, voluntarily or per court order, by a separated or divorced spouse to a member of the case.

(11) Strikers' Benefits: Count payments made to strikers by their union, whether or not based on the striker's participation in picketing.

(12) UC (Unemployment Compensation): Count monthly UC benefits.

(13) Worker's Compensation: Count monthly worker's compensation benefits.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070, 414.025(2)(u), 418.040 & 418.100

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 22-1997, f. & cert. ef. 12-1-97; AFS 8-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 5-1-00; administrative correction 5-22-00

**461-193-0660****Excluded Resources and Income; Refugee Case Service Project**

(1) Burial space, merchandise, and arrangements: Exclude the equity value of all prepaid burial arrangements, one burial space per case member, and any burial merchandise owned by the case member.

(2) Children's Income: Exclude the earnings of participants who are:

(a) Unemancipated and 19 years of age or younger; OR

(b) In a high school approved training.

(3) Disaster relief: Exclude government payments designated and used for restoring a home damaged in a disaster, money received for

emergency replacement of disaster losses, and Federal Emergency Disaster Management Agency (FEMA) payments made under the Disaster Relief Act of 1974, and comparable payments from states, local governments, and disaster assistance organizations.

(4) Family Support Payments: Family support program payments are authorized by the Developmental Disabilities Act. These are funds distributed by the Oregon Developmental Disabilities Council to state or local agencies to provide supportive payments to family with a disabled person. Exclude any payment for services or needs not covered by the project and shelter payments.

(5) Home: A home is the place where the case members live. A home can be a house, boat, trailer, mobile home, or other habitation. A home also includes the land on which it is built and contiguous property. Exclude the value of a home when it is occupied by the members of the case.

(6) Incentives: Exclude all project bonus incentives given for employment and training.

(7) Independent Living Subsidies: These are payments made and services provided by the State Office for Services to Children and Families (SCF) to children ages 16 through 20. The subsidies are to assist the individuals to live independently when their foster care payments were discontinued on or after the date they reached 16 years of age. Exclude all independent living subsidies issued by SCF.

(8) In-kind income: In-kind income is compensation in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party). Exclude all in-kind income.

(9) Individual Education Account: The individual education account is an asset accrued by JOBS Plus participants. Exclude it while it accumulates, while it is saved, and when it is withdrawn for educational purposes.

(10) Motor Vehicle: Exclude up to \$10,000 in equity value of one licensed motor vehicle selected by the case. Count any remaining equity in the vehicle and the total equity of all other vehicles as a resource.

(11) Paycheck Deductions: Exclude paycheck deductions for:

(a) Federal, state and social security taxes.

(b) FICA and worker compensation benefits.

(c) Medical coverage, retirement benefits, union dues, work-related tools and supplies, and mileage reimbursement.

(12) Project benefits: Exclude project cash benefits received as well as any project emergency fund payments, unless the funds were for an emergent need due to a lost check.

(13) Public welfare benefits: Exclude food stamp benefits for all participants.

(14) Refunds: Exclude refunds on merchandise that was purchased or received as a gift and refunds of utility and rental deposits.

(15) SSI (Supplemental Security Income): Exclude SSI monthly and lump-sum payments, even if received by a case member, if that person will be removed from the case the following month.

(16) R and P (Reception and Placement): Exclude all R and P payments made by voluntary agencies for refugees.

(17) Alien Sponsor Assets: Exclude all income and resources of the alien sponsor as long as the participant is one of the following:

(a) A Cuban or Haitian entrant.

(b) An alien admitted as a refugee, parolee or someone who has been granted political asylum.

(18) Earned Income Credit (EIC): EIC is a federal and state tax program for low-income families. EIC may be received as an advance in each paycheck or as one annual payment at the time of the normal income tax returns. Exclude all EIC payments.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 22-1997, f. & cert. ef. 12-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 8-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 5-1-00; AFS 14-2000, f. & cert. ef. 5-2-00

**461-193-0670****Payment Controls; Refugee Case Service Project**

(1) Project management has the right to withhold payment requests if there is reason to believe the request is not complete, under question, or is in violation of project policy and/or federal regulations.

(2) Cash assistance benefit payments shall be authorized by the project provider and approved by a supervisor on the approved project documents. Final eligibility determination is made by the State Refugee Coordinator.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 8-1995(Temp), f. 3-30-95, cert. ef. 4-1-95; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

**461-193-0690****Overpayments; Refugee Case Service Project**

(1) An overpayment is any cash payment made by the project that exceeds the amount a person is eligible for, and is received by, or on behalf of, that person. An overpayment may result from administrative or participant error.

(2) Any overpayment amount is a debt and a delinquent account owed to the State of Oregon and is subject to collection. The project shall recover the overpayment amount from the case head and all adults who were members of the case at the time of the overpayment. The project may recover overpayment amounts from the following sources or from any other source permitted by law:

- (a) Reimbursement from the participant.
- (b) Reduction of ongoing benefits.
- (c) The amount of any restoration of benefits otherwise payable to the participant (e.g., ending a disqualification).
- (d) Overpayments not immediately recoverable from a source specified here are subject to collection services through AFS under its administrative OARs.

(3) Overpayments may be paid in full or under a repayment schedule. All repayment schedules shall be approved by the case service supervisor and the State Refugee Coordinator.

(a) The repayment schedule shall be one of the following:

(A) The total amount of the overpayment divided by the remaining months of case time eligibility.

(B) Voluntary deduction of the entire next cash assistance check, if the amount of the overpayment is less than the next cash assistance check.

(C) Voluntary deduction of all future cash assistance checks until the overpayment is repaid.

(b) Cash repayment shall be in the form of a provider check (not a participant's personal check) payable to Adult and Family Services and sent to the State Refugee program. Attach a copy of the Notice of Overpayment and Repayment Plan. The State Refugee Program shall monitor repayment of all overpayments to ensure compliance.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

**461-193-0890****Refugee Project Good Cause for Noncooperation**

(1) The participant may have good cause for noncooperation if any of the following is true:

(a) The task, performed on a regular basis, has an adverse effect on the participant's physical or mental health. Documentation from a project-approved medical authority is required.

(b) The work site violates established health and safety standards.

(c) The participant has no means of transportation and would have to walk an unreasonable distance to employment or a pickup point. The participant must show that they have made a good-faith effort to secure the needed transportation.

(d) The wage is:

(A) Not at least equal to applicable minimum wage laws; or

(B) If these laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(e) The work schedule does not conform to hours customary to the occupation or hours worked per week are more than those customary to the occupation.

(f) Adequate child care is not available or there is a breakdown in child care arrangements for a child in the household. The participant must cooperate in obtaining child care from another provider within 3 working days.

(g) The position offered is vacant due to a strike, lockout, or other labor dispute.

(h) The employment requires a participant to join a union and the participant has religious objections to unions.

(i) The job and/or employer is discriminatory in terms of age, sex, race, religious or political belief, marital status, handicap, or ethnic ori-

gin. Age, sex, and handicap requirements are allowable when there are valid or legal reasons for the requirements.

(j) Because of circumstances beyond the participant's control, such as:

(A) A mental or physical illness, impairment, or condition preventing compliance.

(B) A verified breakdown in transportation with no readily accessible alternative.

(C) Inclement weather that prevented the participant, and others similarly situated, from traveling.

(D) Verified adverse circumstances that affected the participant's ability to attend project activities.

(E) A legitimate breakdown in communication, such as project worker failure to inform the participant of an appointment.

(k) The participant is working in a job and quits to accept a job with one or more of the following:

(A) Higher wage, with equal or more hours.

(B) More hours, which produces a higher case income.

(C) In an employment field that the client prefers with no loss in case income, and provides stable employment.

(2) The participant is making a good faith effort to attend and complete activities approved on the Employment Plan, but is unable to complete activities. Examples of good faith efforts include attendance at activities, and demonstrated efforts to complete all assignments and activities.

(3) The project worker shall determine if good cause exists for noncooperation with project requirements.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 8-1995(Temp), f. 3-30-95, cert. ef. 4-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

**461-193-0920****Refugee Project Staffing**

A staffing is an opportunity for an applicant or a participant to ask for a review of a decision or a proposed decision to a higher authority.

(1) All refugee projects must have policy and procedures for a staffing defined in their project.

(a) A participant may have a staffing if any of the following applies:

(A) The project has not acted on an application for project benefits/services within 30 days of the application.

(B) The project acts to deny, reduce, close, or suspend project services or benefits.

(C) The project claims that a project payment was an overpayment.

(b) The participant and project staff have the following rights:

(A) To submit evidence to establish all pertinent facts and circumstances in the case.

(B) To bring witnesses.

(C) To advance arguments without interference.

(D) To question any testimony or evidence.

(E) To receive a complete description of the issues.

(F) To have the staffing conducted in a language the participant understands.

(G) To respond to the incident.

(H) To know what penalties could be imposed.

(I) To be informed of appeal policy regarding the staffing decision.

(J) To appeal the decision of the staffing.

(2) For NAES and Refugee Case Service projects:

(a) A request for a staffing must be in writing and not later than 5 working days following the date of the notice proposing the action. The request is complete when a staffing request form is filled out and signed by the participant and received by the organization that is proposing the action.

(b) When staffing is requested, the proposed action indicated in the decision notice shall not be applied.

(c) A staffing request shall be dismissed only when:

(A) The request for the staffing was untimely (more than 5 working days following the date of the decision notice), unless it was untimely due to circumstances beyond the control of the participant;



(B) A staffing decision has previously been issued by the project on the same issue for the same participant; or

(C) All issues of the staffing become moot before the staffing decision is made.

(d) The staffing must be scheduled within 2 working days of receiving the request.

(A) The participant must be informed of the scheduled staffing in writing and by mail.

(B) The participant must attend the staffing. The staffing shall also include the case services and employment service supervisors, case manager, and job worker.

(C) If the participant does not appear for the scheduled staffing within 15 minutes of the time set for the staffing, the staffing shall be dismissed. The proposed action shall be implemented immediately. The staffing shall be rescheduled only if the participant had good cause for not appearing within the time frame. If good cause is found, the staffing shall be rescheduled within 3 working days.

(e) A postponement of the staffing may be granted one time upon the request of the participant. Requests must be made no later than one day prior to the scheduled staffing. Both the participant and project staff must agree to the postponement, with rescheduling occurring within 2 working days.

(f) A participant may withdraw a staffing request at any time. The withdrawal shall be effective when received by project staff. The project shall implement the action as defined in the decision notice.

(g) The supervisor conducts the staffing and may expel a person from the staffing if a person engages in conduct that disrupts the staffing. The supervisor may terminate the staffing if the participant's conduct is disruptive or does not allow the staffing to proceed in an orderly manner. If a staffing is terminated because of the participant's disruption of the staffing, the decision will be based on the record created before the staffing was terminated.

(h) A staffing decision must be made for all staffings on the day of the staffing and are effective immediately. The staffing decision is made by the supervisor conducting the staffing.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 8-1995(Temp), f. 3-30-95, cert. ef. 4-1-95; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

#### **461-193-0940**

##### **Refugee Project Disqualifications**

(1) All refugee projects must have policy and procedures for disqualification defined in their project.

(2) For NAES and Refugee Case Service projects, project disqualifications are imposed within the following conditions and are progressive. There are two levels of penalties.

(a) The first disqualification is a \$50 decrease in the payment standard for the case. This disqualification can be applied only one time during project eligibility.

(b) The second, and any subsequent, disqualification results in loss of cash assistance for the entire case (if the case is receiving cash assistance) OR ineligibility for the entire case (if the case is not receiving cash assistance).

Stat. Auth.: ORS 411.060, 411.116 & 411.135(1)

Stats. Implemented: ORS 411.070, 414.025(2), 418.040 & 418.100

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 8-1995(Temp), f. 3-30-95, cert. ef. 4-1-95; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 16-2000(Temp), f. 6-28-00, cert. ef. 7-1-00 thru 9-30-00; AFS 24-2000, f. 9-29-00, cert. ef. 10-1-00

#### **461-193-0960**

##### **Refugee Project Cooperation Demonstration**

Participants who are disqualified for noncooperation with project requirements must demonstrate cooperation before the disqualification can be ended.

(1) All refugee projects must have policy and procedures for demonstrating cooperation.

(2) For NAES and Refugee Case Service projects:

(a) The participant must demonstrate cooperation by signing a Cooperation Agreement and completing an assigned appropriate activity.

(A) Employment disqualification assigned activities shall be developed and assigned by the job worker.

(B) Case service disqualification assigned activities shall be developed and assigned by the case manager.

(b) After the participant completes their assigned activity, eligibility for cash benefits for the month following the disqualification month can resume.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 8-1995(Temp), f. 3-30-95, cert. ef. 4-1-95; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

#### **461-193-0980**

##### **Refugee Project Staffing Appeals**

(1) All refugee projects must have policy and procedures for appealing a staffing decision defined in their project.

(a) The participant has the right to appeal the outcome of a staffing.

(b) The appeal must be in writing.

(2) For NAES and Refugee Case Service projects:

(a) The appeal must be received within 5 calendar days from the date of the staffing decision.

(b) The appeal is not valid until the participant has signed the appeal request form.

(c) The proposed action shall not be implemented when an appeal is made. The proposed action shall remain pending until the appeal process has been completed.

(d) The appeal shall be scheduled within 5 working days of the receipt of the written request.

(e) All OARs of schedule and conducting a staffing shall also apply to appeals.

(f) The appeal is conducted by the project director and a decision rendered the day of the appeal.

(g) If the appeal decision is the same as the staffing decision, the proposed action in dispute shall be implemented immediately.

(h) The participant shall be provided with a copy of appeal decision the same day as the appeal.

(i) If the participant does not agree with the appeal decision, they may appeal the decision further to the State Refugee Coordinator.

(j) The State Refugee Coordinator shall review the appeal decision and issue a decision.

(k) If the participant does not agree with the State Refugee Coordinator's decision, the participant has the right to file a hearing request with AFS.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

#### **461-193-1140**

##### **Notice Situations; Refugee Projects**

(1) All Refugee projects must have policy and procedures for sending a decision notice when project benefits and/or services are:

(a) Denied;

(b) Reduced; or

(c) Closed.

(2) For NAES and Refugee case service projects, the project worker shall send a decision notice to the participant according to the following time lines:

(a) For denials, give the decision notice to the applicant at the time of the intake.

(b) For disqualifications, send the decision notice at the time that noncooperation is established and no later than the fifteenth of the month preceding the month in which the action is to become effective.

(c) For time eligibility, send the decision notice no later than the first day of the month of closure.

(d) For cases that fail to provide MCIR and/or MCIR information, the provision included in the MCIR that informs clients that their case will close at the end of the current calendar month if they fail to submit an MCIR shall serve as notice. Send a notice confirming case closure at the end of the current calendar month to cases that fail to submit an MCIR by the end of that month.

(e) For all other closures, send the decision notice as soon as the information becomes known.

(f) For all disqualifications, reductions and closures, if the decision notice cannot be mailed the fifteenth of the month preceding the

month in which the action is to become effective, the action to be imposed cannot be effective until the next month.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 20-2000, f. 7-31-00, cert. ef. 8-1-00; AFS 20-2001(Temp), f. & cert. ef. 9-20-01 thru 12-31-01; AFS 26-2001, f. 12-21-01, cert. ef. 1-1-02

#### **461-193-1190**

##### **Refugee Project Noncooperation**

(1) Noncooperation with refugee project requirements exists when a participant fails to meet the requirements of cooperation and does not have good cause.

(2) In addition, discharge from a job for misconduct is a knowing, deliberate defiance of reasonable employer expectations. When determining whether a participant's misconduct caused their dismissal from employment, the job worker will consider the following.

(a) The employee's misconduct must demonstrate any of the following:

(A) A willful violation.

(B) A willful disregard of the employer's interests.

(C) Recurring negligence.

(D) Wrongful intent.

(b) The employer must have clearly communicated their expectations to the employee to establish:

(A) The reasonableness of the employer's action; and

(B) The employee's knowledge of the consequence of the conduct.

(c) Gross misconduct (e.g., drunkenness or insubordination) does not have to be preceded by a warning from the employer.

(d) A single instance of poor judgement, carelessness, tardiness, unsatisfactory conduct beyond the client's control or inefficiency is not usually misconduct. Persistent instances, or an act that results in serious consequences to the employer, can be considered reasonable grounds for dismissing an employee for misconduct.

(3) Disqualify participants who fail to cooperate with employment or case service requirements, and/or were discharged from employment due to misconduct, if they do not have good cause for noncooperation or discharge.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97

#### **461-193-1200**

##### **Refugee Project Cooperation Requirements**

Unless good cause can be determined, all project participants are required to do all the following:

(1) For Refugee Case Service Project:

(a) Cooperate with case activities and assignments as specified on the Case Service Family Self-Sufficiency Plan.

(b) Attend and participate in the employment intake.

(c) Cooperate and participate in formal review.

(d) Apply for a social security number and Oregon photo identification; and

(A) REF clients must provide a copy of the Oregon photo identification to the case manager.

(B) TANF recipients must provide the Social Security Number and a copy of the Oregon photo identification to the case manager.

(e) Work toward removal of barriers that prevent full participation in the Case Service Family Self-Sufficiency Plan.

(f) Attend monthly meetings as prescribed by the case manager.

(g) Report changes in case size, address or telephone number within 2 working days.

(h) Provide information on medical problems and conditions which may prevent full participation in employment services.

(2) For all refugee employment projects:

(a) Complete the assessment process and provide enough information so that the project worker can determine whether to select the participant for employment project participation.

(b) Be legally able to accept work in the United States.

(c) Cooperate with case activities and assignments as specified on the Employment Plan.

(d) Ensure that child care and transportation needs do not prevent full participation in employment or employment-related activities.

(e) Work toward removal of barriers that prevent full participation as prescribed in the employment plan.

(f) Attend training as prescribed by each individual training course.

(g) Attend employment-related appointments and interviews.

(h) Notify the job worker of the reason for not keeping employment-related appointments and interviews, not attending scheduled activities, or not completing case activities. Notification must be made within 1 working day from the date of the missed appointments, interview, class, or activity.

(i) Complete action on job referrals.

(j) Submit valid employment applications.

(k) Accept a bona fide offer of employment, whether it is temporary, permanent, full-time, part-time, or seasonal.

(l) Maintain employment. Notify the job worker of any job problems before taking any action on the job, such as quitting.

(m) Cooperate with the employment service provider and employer to resolve work-related problems.

(n) Cooperate with the employment service provider on all follow-up activities to job placement.

Stat. Auth.: ORS 411.060, 411.116 & 411.135(1)

Stats. Implemented: ORS 411.070, 414.025(2), 418.040 & 418.100

Hist.: AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 13-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

#### **461-193-1230**

##### **Ending Refugee Project Disqualifications**

End the disqualification for noncooperation with project requirements as follows:

(1) The disqualification was applied in error. Do not count the disqualification.

(2) The participant demonstrates cooperation. If the participant does not demonstrate cooperation, the disqualification cannot end.

(3) When a participant is given a Decision Notice and they become exempt from employment service participation or ineligible for the project, not resulting from the disqualification, do not impose the disqualification.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97

#### **461-193-1310**

##### **Participation Requirements; NAES Project**

Project participants must be actively working toward self-sufficiency by performing specific tasks as assigned to them on their Employment Plan.

(1) Participants must be actively engaged in NAES employment activities as specified on their Employment Plan; OR

(2) Employed in a full-time or part-time job.

Stat. Auth.: ORS 411.060, 411.116 & 411.135(1)

Stats. Implemented: ORS 411.070, 414.025(2), 418.040 & 418.100

Hist.: AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 13-2001, f. 6-29-01, cert. ef. 7-1-01

#### **461-193-1360**

##### **Transportation Eligibility Requirements; CASE**

(1) To receive continued transportation support services the participant must have completed mass transit training, unless they have good cause.

(2) Each active NAES participant shall receive five (5) full months of bus passes. The first month of resettlement is considered a partial month and the participant may receive either a bus pass or bus tickets, depending on cost.

(3) After the first five (5) full months of bus passes and for continued Pre-Employment Training classes and employment stabilization, participants may be authorized bus tickets, bus passes or gas money to assist in reaching the employment site. This is based on the need to help stabilize employment, until the first pay period. Support services authorized after the first pay period need to have a detailed case narrative justification and management signature authorization.

(4) To receive gas money in lieu of bus tickets, the participant shall have a vehicle, a valid driver's license, and proof of current automobile insurance. Gas money authorization shall not exceed the actual purchase costs for bus transportation for the same distance and same period of time.

Stat. Auth.: ORS 411.060, 411.116 & 411.135(1)  
Stats. Implemented: ORS 411.070, 414.025(2), 418.040 & 418.100  
Hist.: AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97;  
AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 16-2000(Temp), f. 6-28-00, cert. ef. 7-1-00 thru 9-30-00; AFS 24-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 13-2001, f. 6-29-01, cert. ef. 7-1-01

**461-193-1370**

**Child Care Eligibility Requirements; CASE**

- (1) To be eligible for child care support service payments:
  - (a) NAES participant children must be under 13 years of age, or a documented special needs child per OAR 461-155-0150.
  - (b) Child care must be needed because the adult family member(s) is participating in approved NAES employment plan activities or is employed.
  - (c) The adult family member(s) must attend the child care orientation provided by CASE, which covers information about the American laws of child care and appropriate child care providers.
  - (2) The standards for CASE child care payment rates are the same as AFS per OAR 461-155-0150.
  - (3) Support service child care shall be authorized to child care providers who are in compliance with OAR 461-165-0180 or registered through the Child Care Division.
  - (4) The coordination specialist identifies appropriate child care providers with compatible language in the participant's geographic area and arranges for the participant to contact the provider. The participant is informed of the time frame in which they need to contact the Project to authorize child care.
  - (5) If the participant does not select the presented child care provider, they must have good cause.
  - (6) The coordination specialist shall follow-up with the participant within five (5) working days of placing the participant's child(ren) in care to determine if the referral was successful. If a child care barrier still remains, the coordination specialist and job worker will continue to work with the family to resolve the barrier.

Stat. Auth.: ORS 411.060, 411.116 & 411.135(1)  
Stats. Implemented: ORS 411.070, 414.025(2), 418.040 & 418.100  
Hist.: AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97;  
AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 16-2000(Temp), f. 6-28-00, cert. ef. 7-1-00 thru 9-30-00; AFS 24-2000, f. 9-29-00, cert. ef. 10-1-00

**461-193-1380**

**Support Service Eligibility Requirements; CASE**

- (1) Refugees may be eligible for support services if they meet the following eligibility criteria:
  - (a) The refugee is fully cooperating with NAES activities and responsibilities. Participants who have a disqualification are not eligible to receive CASE services unless they have agreed to cooperate.
  - (b) The participant does not have other resources or income available. Other resources that are considered a higher priority than CASE support services are:
    - (A) For child care, any of the following:
      - (i) Employment/Education-Related Day Care (ERDC).
      - (ii) An adult in or out of the household available to provide care free of charge.
      - (iii) Changing employment plan activities so that a family member can care for the child.
    - (B) The participant has resources or support services from their sponsor or other previously resettled extended family members.
  - (2) Support services will be made available case by case, based on the participant's individual needs. The job worker shall develop a support service action plan which will be adjusted as the case conditions change. The coordination specialist shall approve support service action plans and issue payments to support the services as authorized.
  - (3) Support services are available to participants to:
    - (a) Allow participation in employment service authorized activities and components.
    - (b) Remove or reduce barriers to employment.
    - (c) Support job entry, including enabling disqualified participants, who are cooperating, to attend a verified job interview or accept a verified job offer.
    - (d) Help to maintain employment.
    - (e) Support voluntary job search.
    - (f) Enable completion of approved training.
  - (4) Support service payments:

- (a) Must be issued directly to the provider, for child care payments.
- (b) May be issued to the participant or the provider, as determined by the coordination specialist.
- (5) Project support service components include:
  - (a) Coordination of services.
  - (b) Transportation support services.
  - (c) Mass transit training.
  - (d) Child care support services.
  - (e) Child care training.
  - (f) Individualized support services such as work clothing, tools, employment card, and over-the-counter reading glasses.
  - (g) Identifying and resolving medical barriers to employment.
- (6) Authorization of support services shall be as follows:
  - (a) There shall be no retroactive reimbursement provided of transportation costs.
  - (b) Support services shall be dispensed based on the most cost-effective use of funding, effective use of CASE staff time, and administrative cost effectiveness.
  - (c) All direct employment-related individualized support services shall have a written justification of need from the employer or transcribed by the project from the employer. This justification shall have a detailed accounting of the specific items required for the position. The coordination specialist and the job worker shall review the specific need. They shall jointly determine if the employment situation is stable, if the support service will translate into long-term employment retention for the client, and if the project can justify the outlay.
  - (d) The purchase of over-the-counter glasses may be requested from the participant, training instructor, job worker, or employer. Reading glass purchase is based on the best judgment of the coordination specialist from information received. No prescription glasses shall be purchased with support service funding.
  - (e) For other services, the employer and/or the participant shall submit a detailed written justification for support service to retain or enter employment. The coordination specialist and the job worker shall review the specific need. They shall jointly determine if the employment situation is stable, if the support will translate into a long-term retention for the client, and if the Project can justify the outlay.
  - (7) The provider of all individualized support services shall fully account for purchases with receipts attached to the justification document.

Stat. Auth.: ORS 411.060, 411.116 & 411.135(1)  
Stats. Implemented: ORS 411.070, 414.025(2), 418.040 & 418.100  
Hist.: AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97;  
AFS 16-2000(Temp), f. 6-28-00, cert. ef. 7-1-00 thru 9-30-00; AFS 24-2000, f. 9-29-00, cert. ef. 10-1-00

**DIVISION 195**

**LIENS, OVERPAYMENTS AND IPV'S**

**461-195-0301**

**Definitions**

- For purposes of OAR 461-195-0301 to 461-195-0350, the following definitions shall apply:
- (1) "Action" means an action, suit or proceeding.
  - (2) "Applicant" means an applicant for assistance.
  - (3) "Assistance" means moneys for a recipient's needs and for the needs of other individuals living with the recipient whom the recipient has an obligation to support which are paid by the Department or by a prepaid managed care health services organization for services provided under contract pursuant to ORS 414.725 either directly to the recipient or to others for the benefit of the recipient. Assistance includes both cash and medical assistance. The medical assistance must be directly related to the personal injury. Assistance does not include Food Stamp benefits. Assistance is received by the recipient on the date of issuance of a check for cash assistance and the date of service for medical assistance, regardless of the actual payment date by the Department or the prepaid managed care health services or organization.
  - (4) "Claim" means a legal action or a demand by, or on behalf of, a recipient for damages for or arising out of a personal injury which is against any person or public body, agency or commission other than



the State Accident Insurance Fund Corporation or Workers' Compensation Board.

(5) "Compromise" means a compromise between a recipient and any person or public body, agency or commission against whom the recipient has a claim.

(6) "Judgment" means a judgment in any action or proceeding brought by a recipient to enforce the claim of the recipient.

(7) "Net settlement" means the amount of the judgment, settlement, or compromise to which the lien attaches, as follows: the amount of the judgment, settlement, or compromise, minus the attorney fees and costs in OAR 461-195-0305(3), and minus personally incurred medical costs (in OAR 461-195-0305(4)) and personal injury protection (PIP – see ORS 742.520). Net settlement is the amount that is available for release or compromise of lien pursuant to OAR 461-195-0325.

(8) "Personal injury" means a physical or emotional injury to an individual including but not limited to assault, battery, or medical malpractice arising from such physical or emotional injury.

(9) "Prepaid managed care health services organization" means a managed health, dental or mental health care organization that contracts with the Department on a prepaid basis under the Oregon Health Plan pursuant to ORS 414.725. Prepaid managed care health organizations may be dental care organizations, fully capitated health plans, mental health organizations, physician care organizations, or chemical dependency organizations.

(10) "Recipient" means an individual who receives assistance or whose needs are included in a public assistance grant.

(11) "Settlement" means a settlement between a recipient and any person or public body, agency or commission against whom the recipient has a claim.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610  
Stats. Implemented: ORS 25.020, 25.080, 409.020 & 411.060  
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0100; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-195-0303**

##### **Personal Injury Claim**

(1) Medical assistance applicants and recipients are required, as a condition of eligibility, to assign to the Department any rights to payment for medical care from any third party and, once they receive assistance, to assist the Department in pursuing any third party who may be liable for medical care or services paid by the Department, including health services paid for pursuant to ORS 414.705 to 414.750.

(2) For all programs, the existence of a claim for damages for personal injuries does not make recipients ineligible for program benefits. For all programs except FS, the Department will file a lien on the claim.

(3) If a recipient fails to pursue such a claim, after the Department's Personal Injury Liens staff determine that a claim should be pursued, the Department shall apply the penalties in OAR 461-120-0330 unless good cause is established per OAR 461-120-0350.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610  
Stats. Implemented: ORS 411.620, 411.630, 411.632, 411.635 & 411.640  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-195-0300; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-195-0305**

##### **Lien of the Department**

(1) Whenever a recipient has a claim for damages for a personal injury, the Department shall have a lien upon the amount of any judgment in favor of a recipient or amount payable to the recipient under a settlement or compromise as a result of that claim for all assistance received from the date of the injury to:

(a) The date of satisfaction of the judgment favorable to the recipient; or

(b) The date of the payment under the settlement or compromise.

(2) The person or public body, agency or commission bound by the judgment, settlement, or compromise shall be responsible for immediately informing the Department's Personal Injury Liens Unit when a judgment has been issued or a settlement or compromise has been reached so that the exact amount of the Department's lien may be determined. For the purposes of this rule, immediately means within ten calendar days. If the Department is not timely notified, the 180 day limitation in ORS 416.580(1) does not begin to run until the Department's Personal Injury Liens Unit has actual notice of a settlement, compromise, or judgment.

(3) The lien will not attach to the amount of any judgment, settlement, or compromise to the extent of the attorney fees, costs and expenses which the Recipient incurred in order to obtain that judgment, settlement, or compromise.

(4) The lien will not attach to the amount of any judgment, settlement, or compromise to the extent of medical, surgical and hospital expenses personally incurred by such recipient on account of the personal injury giving rise to the claim, for which assistance was not provided or paid. For purposes of OAR 461-195-0301 to 461-195-0350, personally incurred expenses are limited to those expenses not covered by the Department, and for which the client is personally liable at the time of judgment, settlement, or compromise.

(5) The Department's lien must be satisfied or specific approval must be given by the Department's Personal Injury Liens Unit's staff before any portion of the claim judgment, settlement, or compromise is released to the recipient. The Department shall have a cause of action against any person or public body, agency or commission bound by the judgment, settlement, or compromise who releases any portion of the claim judgment, settlement, or compromise to the recipient before meeting this obligation.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610  
Stats. Implemented: ORS 25.020, 25.080, 409.020 & 411.060  
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0105; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-195-0310**

##### **Notice of Claim or Action by Applicant or Recipient**

(1) An applicant for or recipient of assistance who has a claim for a personal injury or begins an action to enforce such claim, or the attorney or authorized representative (as defined at OAR 461-115-0090) for the applicant or recipient, is required to notify the Department and the prepaid managed care health services organization of the recipient, if the recipient is receiving services from the organization, within ten days of initiating that claim or action, unless the action was initiated prior to the application for assistance.

(a) If the action was initiated prior to the application for public assistance, the applicant must notify the Department at the time of application.

(b) The notification must include the names and addresses of all parties against whom the action is brought or claim is made. A parent, guardian, foster parent or caretaker relative must make the notification on behalf of an injured minor or incompetent adult.

(2) Notification by an attorney or authorized representative for an applicant or recipient or other person required to provide notification must be sent to the Personal Injury Liens Unit, Office of Payment Accuracy and Recovery, Department of Human Services, either by mail or fax.

(3) The mailing address for the Personal Injury Liens Unit is: Personal Injury Liens Unit, PO Box 14512, Salem OR 97309-0416.

(4) The Personal Injury Liens Unit's fax number is (503) 378-2577 and telephone number is (503) 947-9970.

(5) If an applicant for or recipient of assistance fails to give the notification as required by this rule, the Department or the prepaid managed care health services organization of the recipient, if the recipient is receiving services from the organization, will have a cause of action under ORS 416.610 against the recipient for amounts received by the recipient pursuant to a judgment, settlement, or compromise to the extent that the Department or the prepaid managed care health services organization could have had a lien against such amounts had such notice been given. At least 30 days prior to commencing an action under ORS 416.610, the Personal Injury Liens Unit and the prepaid managed care health services organization, if any, must consult with each other.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.620 & 416.510 - 416.610  
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0110; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-195-0315**

##### **Notice of Determination of Lien by Department**

Where the Department determines that it has a lien pursuant to OAR 461-195-0305, the Department shall:

(1) Notify the recipient of the Department's determination;

(2) File a notice of lien with the county recording officer as provided in ORS 416.550(a); and

(3) Send, by registered or certified mail, a certified copy of the Notice of Lien filed pursuant to section (2) of this rule to each person or public body, agency or commission against whom the claim is made or action is brought by or on behalf of the recipient.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610  
Stats. Implemented: ORS 25.020, 25.080, 409.020 & 411.060  
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0115; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-195-0320**

##### **Release of Lien for Future Medicals**

(1) To qualify for consideration of a full or partial release of the State's share of the Department's lien (including the amount of an assigned lien) pursuant to ORS 416.600, the recipient must demonstrate, through documentation satisfactory to the Department, that:

(a) As a result of the personal injury for which the recipient has a claim, the recipient has a medical condition which will require future medical treatment;

(b) The nature of future medical treatment;

(c) The date on which the future medical treatment can reasonably be expected to occur;

(d) The anticipated cost of the future medical treatment;

(e) The amount of the settlement, compromise, or judgment awarded the recipient;

(f) Timely compliance by the recipient with the notification requirements; and

(g) Any other documentation requested by the Department.

(2) In considering a request for a full or partial release of a lien pursuant to ORS 416.600, the Department may take into account:

(a) Whether the recipient has provided the documentation required by section (1) of this rule;

(b) Whether the future medical treatment is likely to occur in the near future. The Department will evaluate this factor in light of the nature and certainty of the type of medical treatment anticipated;

(c) Whether the amount of the settlement, compromise, or judgment is sufficient to pay the future medicals and all or part of the Department's lien;

(d) Whether the recipient has or is likely to have another source for payment of the future medical expenses;

(e) The effect, if any, of the requested release on the continuing eligibility for future medical or public assistance of the recipient;

(f) Any other factor deemed relevant by the Department, including information received from a prepaid managed health care services organization;

(g) In the event the recipient is a minor, the provisions of OAR 461-195-0350 may apply.

(3) In no case will the Department consider a request for a partial or full lien release pursuant to ORS 416.600 unless the recipient and the liable third party have entered into a final, binding settlement or compromise agreement or the recipient has received a final judgment. In every case, the lien amount that represents the federal share of Title XIX or Title XXI payments must be repaid to the federal government and shall not be subject to partial or full lien release.

Stat. Auth.: ORS 416.510 - 416.600  
Stats. Implemented: ORS 25.020, 25.080, 409.020 & 411.060  
Hist.: AFS 14-1995, f. 6-30-95, cert. ef. 7-1-95; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-195-0321**

##### **Assigning a Lien to a Prepaid Managed Care Health Services Organization**

(1) The Department may assign a lien in accordance with ORS 416.510 to 416.610 to a prepaid managed care health services organization (organization) for assistance in the amount of covered health services (as defined in Oregon Health Plan Rules, OAR Division 410-141 and the General Rules, OAR Division 410-120, or other Department rules establishing covered medical assistance) costs incurred by a recipient on account of a personal injury that were actually paid for by the organization:

(a) During a period for which the Department paid the organization a capitation or enrollment fee pursuant to ORS 414.725; and

(b) On account of the personal injury for which the recipient had a claim.

(2) The assignment described in section (1) of this rule will be made only if the organization makes a timely request for assignment to the Department. A timely request is made if the Department's Personal Injury Liens Unit receives the request not more than 30 days

from the date the organization receives notice of a claim or action under OAR 461-195-0310.

(3) The amount of the lien that may be assigned does not include amounts excluded from a lien according to OAR 461-195-0305(3) and (4), 461-195-0320, or 461-195-0350.

(4) For purposes of ORS 416.510 to 416.610, assignment of the lien establishes the organization as a designee of the Department in relation to the lien, pursuant to ORS 416.540(5), which designation shall include the following:

(a) As the Department's designee, the organization is subject to these rules in the pursuit of its assigned lien and any actions taken by the organization to settle, compromise or release its lien.

(b) In cases where the Department and the organization share a joint lien, the organization shall copy the Personal Injury Liens Unit on all documentation related to the assigned lien, including communications with the person or public body, agency or commission against whom a claim is made or an action is brought in relation to settlement, compromise or release of the assigned lien. This requirement can be met by listing the Personal Injury Liens Unit on the "cc" portion of the documentation or certificate of service, and sending a copy to the Personal Injury Liens Unit when the document is sent or filed. In other cases, the organization shall make such documentation available to the Department for review upon request.

(c) The Department may require the use of forms and procedures related to the assignment of liens and the efficient administration of these rules, to minimize redundancy in communications with a recipient and the parties to an action.

(5) The form of notice of lien that may be assigned to an organization shall comply with ORS 416.560, with the organization assigned as the designee. Upon receiving assignment of lien from the Department, the organization shall follow the procedure to perfect such lien established in ORS 416.550. An organization to which the Department has assigned a lien must notify the Department no later than 10 calendar days after filing notice of the lien.

(6) An organization to which a lien is assigned is solely responsible for taking all necessary actions to perfect its lien and to document actions taken to recover under the lien. Consequences for failure to comply with applicable requirements for perfecting the lien and recovering under the lien shall be the sole responsibility of the organization and shall not prevent the Department from recovering amounts due the Department pursuant to its lien authority.

(7) Immediately after a judgment has been rendered in favor of a recipient or a settlement or compromise has been agreed upon, the person or public body, agency or commission bound by such settlement, compromise, or judgment is required to notify the Department.

(a) If the organization receives such notification on an assigned lien, the organization shall provide a copy of such notification to the Department within 10 calendar days of receipt of the notification.

(b) After such notification, the Department must send a statement of the amount of the lien to such person or public body, agency or commission by registered mail or by certified mail with return receipt. This statement should also include information provided by the organization that has properly perfected its assigned lien.

(8) A lien assigned by the Department to an organization is subject to release or compromise as described in OAR 461-195-0325.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-195-0325**

##### **Release or Compromise of Lien**

(1) If the Department has not assigned a lien to a prepaid managed care health services organization (organization) or if the organization failed to perfect its assigned lien, the Department may release or compromise its lien and distribute collections under its lien as follows:

(a) To the Department, an amount equal to the State share of Department's medical assistance expenditures for the recipient. The State share means the amount of state funds provided in relation to Title XIX or Title XXI payments.

(b) To the federal government, the federal share of the State medical assistance expenditures. The federal share means the amount of federal financial assistance claimed by the State in relation to Title

XIX or Title XXI payments that the State must repay to the federal government pursuant to applicable law.

(c) To the recipient, any remaining amount after distributions provided for in subsections (a) and (b) of this section; except that if the lien amount is more than 75 percent of the net settlement, the Department may distribute to the recipient 25 percent of the net settlement. The amount distributed to the recipient must be treated as income or resources consistent with applicable law.

(2) If the Department has assigned a lien to a prepaid managed care health services organization (organization) and the organization properly perfected its lien, the Department and the organization may release or compromise and distribute collections under the liens as follows:

(a) To the Department, an amount equal to the State share of medical and cash Assistance and the federal share of medical assistance expenditures for the recipient.

(b) The Department will reimburse to the federal government, the federal share of the State medical assistance expenditures for which federal match was claimed by the Department.

(c) To the recipient, the amount remaining after the distributions provided for in subsections (a) and (b) of this rule; except that if the lien amount is more than 75 percent of the net settlement, the Department may distribute to the recipient 25 percent of the net settlement. The amount distributed to the recipient must be treated as income or resources consistent with applicable law.

(d) To the organization, the expenditures subject to the lien by the organization except as otherwise provided in subsection (c) of this section. If the lien amount is more than 75 percent of the net settlement, the Department may distribute to the recipient 25 percent of net settlement before making a distribution to the organization. If the organization holds the only lien through assignment, and if the lien amount is more than 75 percent of the net settlement, the organization must distribute to the recipient 25 percent of the net settlement.

(e) As between the Department and the organization after the distributions provided for in subsections (a), (b), (c) and (d) of this rule, ORS 416.540(6) requires that the Department's lien must be satisfied first.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610  
Stats. Implemented: ORS 25.020, 25.080, 409.020 & 411.060  
Hist.: AFS 18-1991, f. 9-30-91, cert. ef. 10-1-91; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-195-0350**

##### **Procedure Where Injured Recipient is a Minor**

(1) Where the injured recipient is a minor, the Department may petition the court having probate jurisdiction in the county in which the minor lives to determine the sum that will be needed for the minor's complete physical rehabilitation. Except to the extent that of the federal share of the amount of a lien, the lien of the Department, including any lien assigned to a prepaid managed care health services organization, shall not attach to the amount of any sum needed for the rehabilitation.

(2) If the recipient is a minor, no payments to the Department in satisfaction of its lien and no payments to the recipient under a judgment, settlement, or compromise may be made until a hearing has taken place and the court has issued its order under ORS 416.590.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610  
Stats. Implemented: ORS 25.020, 25.080, 409.020 & 411.060  
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0150; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

#### **461-195-0501**

##### **Definitions**

The definitions in this rule apply to programs covered by chapter 461 of the Oregon Administrative Rules other than child care programs.

(1) An overpayment is a cash, medical or food stamp benefit received by or on behalf of a client, or a vendor payment made by the Department on behalf of a client, that exceeds the amount the client is eligible for; a cash benefit received by a client in the GA program for a month for which the client receives a retroactive SSI lump-sum payment; or a JOBS program support payment (see OAR 461-190-0211) used by a client for other than the intended purpose or issued when a client was not eligible for TANF as a result of fraud. It is not an overpayment when:

(a) Specifically so provided by rule;

(b) The benefit is paid pending a contested case hearing in a disqualification case unless the client was ineligible for the benefit for a reason other than the disputed disqualification; or

(c) A client is found eligible as a result of an error in judgment by the Department when judgement is permitted and the eligibility decision was based on the best information available to the client and the Department.

(2) Overpayments are categorized as follows:

(a) Except as otherwise provided in subsection (c) of this section, an *administrative error* overpayment is an overpayment caused by any of the following circumstances:

(A) The Department failed to reduce, suspend, or end benefits after timely receipt of information that required such action;

(B) The Department failed to use the correct benefit standard;

(C) The Department failed to compute or process a payment correctly;

(D) The Department failed to require a general assistance client to complete an interim assistance agreement; or

(E) The Department committed a procedural error that was no fault of the filing group or authorized representative.

(b) An *administrative technical* overpayment is an overpayment in a program other than the Food Stamp program caused by a client's failure to register for the JOBS program, to have a social security account number, or to make a declaration of citizenship or alien status.

(c) A *client error* overpayment is an overpayment caused by misunderstanding or error on the part of a client, a client's receipt of un-reduced benefits pending a hearing decision, a client's failure to return a benefit known by the client to exceed the correct amount, or a client's use of a JOBS program support payment (see OAR 461-190-0211) used for other than the intended purpose.

(d) In the Food Stamp program, a *provider error* overpayment is an overpayment made to a drug or alcohol treatment center or residential care facility that acted as a client's authorized representative.

(3) In the Food Stamp program, trafficking is the buying or selling of food stamp benefits for cash or consideration other than eligible food; or the exchange for coupons of firearms, ammunition, explosives, or controlled substances (as defined at 21 U.S.C. 802).

Stat. Auth.: ORS 411.060, 411.816 & 418.100  
Stats. Implemented: ORS 411.060, 411.816 & 418.100  
Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2001(Temp), f. & cert. ef. 4-4-01 thru 6-30-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

#### **461-195-0511**

##### **Child Care Overpayments**

This rule defines overpayments in the Department's child care programs and explains when clients and providers are liable for an overpayment.

(1) A *child care overpayment* is a payment for child care made by the Department to or on behalf of a client that is paid to an ineligible provider or exceeds the amount authorized by law for the care provided, except that it is not a *child care overpayment* if any of the following subsections apply:

(a) A client fails to make a required report of a change in income during a reporting period, other than the changes covered in OAR 461-170-0015.

(b) The total due and paid to two or more providers exceeds the monthly limit the Department may pay on behalf of the client. The exception provided by this subsection does not apply if:

(A) Two or more providers are paid at the full-time rate; or

(B) One of the providers provides child care under a contract with the Department.

(c) A client unintentionally provides an inaccurate estimate of prospective income or other information.

(d) A client would otherwise be eligible for a payment and provides inaccurate information due to an aspect of a documented disability of the client.

(2) A child care payment is a client overpayment if made for care provided when a client was not:

(a) Engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-190-0110 and following); or

(b) Eligible for child care benefits.

(3) A child care overpayment occurring after November 30, 1999, not caused by the client or the provider is collectible as follows:



(a) The provider is liable for a provider overpayment made on behalf of a client eligible for child care payments.

(b) The client is liable for an overpayment if the client was not eligible for the payment.

(4) A client is liable for a *client overpayment*, and a provider is liable for an overpayment caused by the provider. The client 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.

(5) The Department may recover a child care overpayment for which a provider is liable by reducing up to 100 percent any future child care payments for which the provider bills the Department.

(6) An adult who cosigned an application with a minor provider applicant is responsible to repay an overpayment incurred by the minor provider.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.122 & 418.100

Hist.: AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-195-0521**

##### **Special Rules for Calculation of Overpayments**

This rule contains special rules for calculating an overpayment.

(1) If a client directly receives support that should be, but is not, used to reimburse the Department for assistance or to reduce benefits, there is an overpayment for the amount of support the client received directly that should have been used to reimburse the Department or reduce benefits.

(2) If a client failed to comply with the requirements of OAR 461-120-0345 relating to medical insurance, an overpayment is calculated according to this section. The client is not included in the need group (see OAR 461-110-0630) during any period in which the client failed to meet a requirement of the OAR 461-120-0345 by withholding information or giving false information. Therefore, there is an overpayment equal to the difference between the benefits the group received and the reduced amount it would have received had the client been removed from the need group.

(3) If the benefit group was categorically eligible for food stamps, there is no Food Stamp overpayment based on resources, Social Security number, or residency. A Food Stamp overpayment may exist based on incorrect income.

(a) For a group found eligible for food stamps under OAR 461-135-0505(1)(a), (b) or (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for food stamps. Benefit groups of one or two persons would be entitled to at least \$10 in food stamp benefits.

(b) For a group found eligible for food stamps only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185% Federal Poverty Level, the group is no longer categorically eligible and the overpayment is the food stamp benefit amount.

(4) When a client receives benefits in the OSIPM program and does not pay their share of the cost of service (client liability), the overpayment consists of all payments made by the Department on behalf of the client, including but not limited to capitation payments, all medical expenses for that period, waived service payments (including home-delivered meals and non-medical transportation), Medicare Buy-In, and mileage reimbursement.

(5) Credit against an overpayment is allowed as follows:

(a) In the GA, REF and TANF programs, a credit is allowed for a client's payment for medical services 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 it would have been authorized if requested.

(b) Credit is allowed for an underpayment of benefits.

(c) In the FS 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.

(6) Benefits paid during the notice period (see OAR 461-175-0050) are included in the calculation of the overpayment if:

(a) The client failed to report changes within the reporting time frame; and

(b) Benefits could have been adjusted in time to prevent the overpayment if the client had reported changes at any time within the reporting time frame.

(7) An overpayment is determined and calculated by assigning unreported income to the applicable budget month without averaging the unreported income. There is a rebuttable presumption that a client's earnings reported in a quarterly earnings report from the Employment Department were received by the client in equal amounts during the months identified in the report.

(8) Earned income deductions are applied in calculating an overpayment except as follows:

(a) For MAA, MAF, REF and TANF, no earned income deduction (see OAR 461-160-0160 and -0190) is allowed for a client who, without good cause, did either of the following:

(A) Failed to report all earned income within the reporting time frame.

(B) Under reported earned income.

(b) For FS, no deduction is applied to earned income not timely reported.

(9) For the purposes of section (8) of this rule, good cause means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.

(10) In the TANF program, the amount of support retained by the Department as current reimbursement each month is added to other income to determine ineligibility. In the case of a client not eligible for TANF, the overpayment is offset by support retained by the Department as current reimbursement.

(11) When a client has incurred an overpayment due to both an administrative error and a client error in the same month, the client error overpayment is calculated by determining the total overpayment for the month and subtracting from it the portion due to administrative error.

(12) In the medical programs:

(a) There is no overpayment if the client was ineligible for financial assistance but, during the period in question, would have been eligible for EXT or any other medical program.

(b) When an overpayment is caused by *administrative error*, there is no corresponding overpayment if the client had been eligible to receive medical benefits under EXT, GAM, MAA, MAF, OSIPM or SAC. In such cases, the overpaid cash benefits are not counted as income in calculating eligibility for EXT, GAM, MAA, MAF, OSIPM or SAC and are not used in determining the client's spend down (see OAR 461-160-0080).

Stat. Auth.: ORS 411.060, 411.660, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.630, 411.635, 411.660, 411.816 & 418.100

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-195-0531**

##### **Establishment of Overpayments**

(1) The Department will not establish an administrative technical overpayment if the client was willing and able to meet the eligibility requirements and would have been eligible for the same amount of benefits had the requirements been met.

(2) The Department will establish an overpayment for the initial month of eligibility only when:

(a) The client withheld material information;

(b) The client provided false information;

(c) The Department failed to use income reported as received or anticipated in determining the client's benefits; or

(d) The error was due to an error in computation by the Department.

(3) In the TA-DVS program, the Department will establish an overpayment only if an IPV in the TA-DVS program has been established.

Stat. Auth.: ORS 411.060, 411.660 & 411.816

Stats. Implemented: ORS 411.630, 411.635 & 411.660

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

**461-195-0541**

**Liability for Overpayments and Trafficking**

(1) For all programs except BCCM, EXT, FS, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC, the following people are liable for repayment of an overpayment:

(a) Each person included in the benefit group when the overpayment was incurred, except for people who did not reside with, and did not know they were included in, the benefit group.

(b) A caretaker relative and his or her spouse who were not part of, but resided with, the filing group when the overpayment was incurred.

(c) If a person currently in a benefit group is liable for an overpayment, the entire benefit group is liable for the overpayment. In this case, the Department will not collect from the benefit group until it has unsuccessfully attempted to collect the overpayment from all other liable persons.

(2) In the Food Stamp program, the following people are liable for repayment of an overpayment or a claim that results from *trafficking* (as defined at OAR 461-195-0501(3)):

(a) The primary person (see OAR 461-110-0110) of any age, an ineligible student in the household, and all adults who were members of the filing group when excess benefits were issued, except no member of a financial group is liable for an overpayment caused by a change the group was not required to report.

(b) A sponsor of a non-citizen household member if the sponsor is at fault.

(c) A drug or alcohol treatment center or residential care facility that acted as the authorized representative of the client if this authorized representative gave incorrect or incomplete information or withheld information resulting in the overpayment.

(3) In the BCCM, EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC programs, the following people are liable for repayment of an overpayment:

(a) The primary person, if that person is an adult, and all other adults in the filing group except the following:

(A) An adult not in the benefit group, except a parent of a child in the benefit group.

(B) An adult who was in the benefit group when the overpayment occurred but who did not live with the benefit group and was unknowingly in the benefit group.

(b) If a person currently in a benefit group is liable for an overpayment, the entire benefit group is liable for the overpayment. In this case, the Department will not collect from the benefit group until it has unsuccessfully attempted to collect the overpayment from all other liable persons.

(4) In all programs, both the non-citizen and the sponsor of a non-citizen 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 for withholding the information, the non-citizen alone is liable for the overpayment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.630 & 411.635

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05

**461-195-0551**

**Methods of Recovering Overpayments**

(1) For all programs, in addition to judicial process, the Department may recover overpayments through an agreed repayment plan, reduction in benefits, voluntary payment from the client, and offset of the debt. In medical programs, benefits are reduced to collect an overpayment only in the GAM program, and only non-medical benefits are reduced.

(2) The Department will reduce current benefits to collect an overpayment only as follows:

(a) For overpayments in REF and TANF, the Department will:

(A) Allow only half of the 50 percent earned income deduction described in OAR 461-160-0160.

(B) Reduce the benefit payment for REF and TANF, in an amount equal to ten percent of the benefit group's total benefit requirement at the full standard of need. The benefit payment after such reduction, when combined with all other income (before allowing the 50 percent earned income deduction), must be sufficient to provide the benefit

group with 90 percent of the standard for a family with no income. In the TANF program, the cooperation incentive (see OAR 461-135-0210) is not included in the calculations prescribed by this paragraph.

(b) The Department may recover an overpayment in the GA, GAM, or OSIP program by reducing cash benefit payments by the lesser of the following:

(A) The total overpayment amount.

(B) The total benefit amount.

(C) Ten percent of the client's total benefit requirement at the standard of need.

(c) Unless the Department and the client agree to a repayment plan and the filing group meets the terms of the plan, the Department will collect an overpayment from a liable filing group participating in the Food Stamp program by reducing the benefit group's food stamp allotment each month as follows:

(A) For an overpayment caused by *client error or administrative error*, ten percent of the group's monthly allotment or \$10 a month, whichever is greater.

(B) For an overpayment caused by conduct that constituted an IPV, 20 percent of the group's monthly entitlement or \$20 a month, whichever is greater.

(3) For overpayment of child care benefits, the Department will not recover an overpayment through reduction of a client's child care benefits.

(4) The Department may recover an overpayment by offset as follows:

(a) For all programs, the Department uses the collection services provided by the Department of Revenue and any other state or federal agency to collect a liquidated claim established by:

(A) A court judgment.

(B) A confession of judgment.

(C) A document signed or acknowledged by the debtor that acknowledges the debt, such as:

(i) The Department-designated form to acknowledge an IPV.

(ii) A plea-bargain agreement.

(iii) Any other document acknowledging the overpayment.

(D) A written notification of overpayment from the Department to the debtor, advising the debtor of the basis and amount of the overpayment and the right to request a hearing, if the debtor has exhausted his or her rights of administrative appeal.

(E) A written communication from the debtor acknowledging the debt.

(b) In cases that have both an underpayment and an overpayment in the same program, the Department will offset one against the other.

(c) The amount of any retroactive payment or restoration of lost benefits otherwise payable to the client, when the retroactive payment corrects a prior underpayment of benefits in the program in which the overpayment occurred.

(d) By offsetting the full amount of the overpayment against restored benefits owed to the benefit group or to another FS benefit group that a liable member of the overpaid group has joined.

(e) Through use of a warrant authorized by chapter 663, Oregon Laws 2003.

(5) A confession of judgement is used in the case of a client error overpayment. The Department will not file a confession of judgement while the client receives public assistance and will file one only if the client has refused to agree to or has defaulted on a repayment plan.

(6) The Department will not take collection action against a filing group while a member of the group is working under a JOBS Plus agreement.

Stat. Auth.: ORS 411.060, 411.660 & 411.816

Stats. Implemented: ORS 411.630, 411.635 & 411.660

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2001, f. & cert. ef. 11-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 8-2004, f. & cert. ef. 4-1-04

**461-195-0561**

**Compromise of Overpayment Claims**

(1) This rule establishes the Department's policy for compromising claims for overpayments in the Child Support, ERDC, Food Stamp, medical, and TANF programs. The Department will consider a request to compromise an overpayment claim only if the costs of administration and collection necessary to collect the account in full would likely exceed the current balance of the overpayment. In making the determination whether to compromise, the Department will

consider the requester's ability to repay the overpayment in full within a reasonable time, as evidenced by such factors as:

(a) Income less than 200% of the federal poverty level (see OAR 461-155-0180(6)); or

(b) Income and liquid assets that are small compared with the outstanding overpayment.

(2) The following limitations and considerations apply to the Department's evaluation of a request to compromise an overpayment claim:

(a) The Department's authority to compromise may be limited by federal or state law.

(b) The Department will allow a compromised claim to be paid in installments over a period not to exceed 90 days.

(c) The Department will compromise a claim only once it is a liquidated claim; liquidated claim is described in OAR 461-195-0551.

(d) The Department will compromise a claim that exceeds \$20,000 only to the extent permitted by the rules of the Secretary of State.

(e) Except for an overpayment in the child support program, the Department will not agree to compromise a claim for less than 75 percent of the total amount of the claim. In the child support program, the amount for which a claim will be compromised will be determined following the applicable standards in OAR 137-055-6120(1).

(f) During the 12 months following the date of the compromise agreement, the Department reserves the right to collect the original, unmitigated claim through benefit reduction (see OAR 461-195-0551). This subsection does not apply to claims in the child support program.

(3) The following limitations apply to a request to compromise an overpayment:

(a) A request for compromise will be considered only if 36 months have passed since the requester was first notified of the overpayment.

(b) A request for compromise will be considered only if 12 months have passed since the requester was last eligible for and received benefits of the program in which the overpayment occurred or last received a direct provider payment for child care (see the rules in division 165 of this chapter of rules). This subsection does not apply to claims in the child support program.

(c) An overpayment caused by the requester's conduct is subject to compromise only if caused by his or her inadvertent error or by circumstances beyond his or her reasonable control.

(d) The Department will not compromise a claim if the requester has not made a good faith effort to repay the overpayment.

(e) The Department is more likely to approve a request to compromise if the requester has not previously caused an overpayment in the same program.

Stat. Authority: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.635, 411.816, 418.100

Hist.: AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06

#### **461-195-0601**

##### **Intentional Program Violations; Defined**

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

(2) In the Food Stamp program, a person 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 or possession of food stamp benefits; or

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

(3) In the TANF program, a person 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 TANF or increasing, or preventing a reduction in, the amount of the TANF grant; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing or maintaining eligi-

bility for TANF or increasing, or preventing a reduction in, the amount of the TANF grant.

(4) In the TA-DVS program, a person commits an IPV by intentionally and without intimidation or coercion by an abuser:

(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing eligibility for or receiving a benefit from the TA-DVS program; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing eligibility for or receiving a benefit from the TA-DVS program.

Stat. Auth.: ORS 411.060, 411.660 & 411.816

Stats. Implemented: ORS 411.630, 411.635 & 411.660

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 8-2004, f. & cert. ef. 4-1-04

#### **461-195-0611**

##### **Intentional Program Violations; Establishment and Appeal**

(1) In the ERDC, Food Stamp, and TANF programs, an 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 for 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) There is no administrative appeal after a person waives the right to an IPV hearing, and the penalty cannot be changed by subsequent administrative action. However, the person is entitled to seek relief in court or to request a hearing on the sole issue of whether the waiver was signed under duress (see OAR 461-025-0310).

Stat. Auth.: ORS 411.060, 411.095, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.095, 411.816, 418.100

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

#### **461-195-0621**

##### **Intentional Program Violations; Penalties and Liability for Overpayments**

(1) Disqualification penalties resulting from intentional program violations and other violations of law are listed in this rule. A person may be subject to disqualification for an IPV only if the person was advised of the disqualification penalties prior to committing the IPV. A disqualification established in another state continues in effect in Oregon.

(2) In the ERDC program, if an IPV is established against a person through a contested case hearing, a waiver of the right to hearing, or by a state or federal court, that person is liable for repayment to the Department of the full amount of overpayment the Department has established. The amount of restitution to the Department ordered by a court as part of a criminal proceeding does not lower the amount owed to the Department. Payments of restitution to the Department are credited against the amount owed. A client is not subject to an IPV disqualification but is still required to repay overpayment amounts.

(3) A child care provider found to have committed an intentional program violation (IPV) is ineligible for payment for child care as follows:

(a) A child care provider with an IPV established between April 1, 2001 and September 30, 2005 is permanently disqualified to receive payment.

(b) A child care provider who has incurred an overpayment established as an IPV claim after September 30, 2005 is ineligible for payment:

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

(B) Permanently, if the Child Care Program Manager 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 IPV's; or, the degree of primary involvement in the violation by the provider.

(4) In the Food Stamp and TANF programs, when an IPV is established against a person through a contested case hearing, a waiver of the right to hearing, or by a state or federal court:

(a) That person is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court.

(b) The client 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.

(c) If the TANF grant is affected by the IPV penalty imposed under this rule, eligibility for and the level of food stamp benefits are determined in accordance with OAR 461-145-0105.

(5) In the TA-DVS program, if an IPV is established against a person through a contested case hearing or a waiver of the right to hearing:

(a) That person is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court. The Department will seek repayment from the client only if seeking repayment would not place the client at greater risk of domestic violence.

(b) Subsequent applications for TA-DVS that meet the eligibility criteria set forth in OAR 461-135-1215 and 461-135-1225 must be staffed with the Department's central office.

(6) A person found by a federal, state, or local court to have traded a controlled substance for food stamp coupons ("coupon" is defined in 7 U.S.C. 2012 (1999)) is disqualified from participation in the Food Stamp program as follows:

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

(b) Permanently upon the second occasion.

(7) A person found by a federal, state, or local court to have traded firearms, ammunition, or explosives for coupons (as defined in 7 U.S.C. 2012 (1999)) is permanently disqualified from participation in the Food Stamp program.

(8) A person convicted of an act prohibited by 7 U.S.C. 2024(b) or (c) (1999) involving an item covered by those subsections and having a value of \$500 or more is permanently disqualified from participation in the Food Stamp program.

(9) A person is disqualified for a 10-year period from receiving benefits in the program in which the person committed fraud if the person:

(a) In the TANF program:

(A) 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.

(B) 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 Food Stamp program, is convicted in state or federal court, is found in an IPV hearing, or admits in a written waiver of the right to an IPV hearing, of having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple benefits simultaneously from one or more states under programs that are funded under the Food Stamp Act of 1977.

(10) The Department issues notice of disqualification in accordance with OAR 461-175-0220. The disqualification provided for in this rule begins the first of the month following the month in which the notice period ends.

(11) Once a disqualification period begins, it continues uninterrupted until completed, regardless of the eligibility of the filing group of the disqualified person.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

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