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CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILING CAPTION: Making Permanent Changes to Eight Department of Human Services Chapter 461 Rules

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RULES:
461-135-0220, 461-135-0520, 461-135-0660, 461-145-0910, 461-145-0930, 461-155-0190, 461-160-0040, 461-160-0300

AMEND: 461-135-0220

REPEAL: Temporary 461-135-0220 from SSP 51-2021

RULE TITLE: REF, REFM, and TANF Programs; COVID-19

NOTICE FILED DATE: 12/30/2021

RULE SUMMARY: OAR 461-135-0220 is being amended to permanently adopt a temporary filing to end all previously existing REF, REFM, and TANF program rule provisions related to the COVID-19 pandemic on September 30, 2021, except for the resource limit provision. It is also being changed by permanent filing to add provisions about how ODHS will distribute and handle the American Rescue Plan Act of 2021, Pandemic Emergency Assistance funds for certain TANF benefit groups.

RULE TEXT:
The provisions in this rule apply to the REF, REFM, and TANF programs.
(1) The Department amends the resource limit for the REF, REFM, and TANF programs (see OAR 461-160-0015(6) and (8)), as follows:
(a) $2,500 for a need group (see OAR 461-110-0630) with every caretaker relative (see OAR 461-001-0000) serving an intentional program violation (see OAR 461-195-0601).
(b) $10,000 for new applicants and all other need groups.
(2) American Rescue Plan Act of 2021, Pandemic Emergency Assistance funds allotted to the Department shall be distributed in a one-time payment to TANF benefit groups (see OAR 461-110-0750) as follows:
(a) The payment shall be issued in the same method as the TANF benefit.
(b) The payment is limited to groups eligible for TANF for the month of September 2021 whose eligibility (OAR 461-001-0000) was determined and authorized by November 1, 2021.
(c) The payment amount is determined based on the available funds and the total number of eligible benefit groups.
(d) Payments are not subject to overpayment (see OAR 461-195-0501) and shall not be included in any overpayment

calculation.
(e) All funds shall be issued in November 2021, on a date determined by the Department, with no remaining funds available.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 411.060, 411.070, 411.083, 412.006, 412.049, 412.064

STATUTES/OTHER IMPLEMENTED: ORS 409.010, 411.060, 411.070, 411.081, 411.083, 411.087, 412.006, 412.049, 412.064, 45 CFR 206.10, 45 CFR 400.155, 45 CFR 261.11, 45 CFR 260.31

AMEND: 461-135-0520

REPEAL: Temporary 461-135-0520 from SSP 76-2021

RULE TITLE: Time Limit and Special Requirements for ABAWD; SNAP

NOTICE FILED DATE: 12/30/2021

RULE SUMMARY: OAR 461-135-0520 is being amended to establish, in permanent rule, the new 36-month period that applies to able-bodied adult without dependents (ABAWDs) for the SNAP program, which begins January 1, 2022; and that there are no "SNAP time limit areas" in Oregon through September 30, 2022, for ABAWDs. It is also being amended to correct the name of the SNAP Employment and Training program.

RULE TEXT:

This rule establishes the time limit and special requirements for receipt of SNAP benefits for certain adults.

(1) Unless the context indicates otherwise, the following definitions apply to rules in OAR chapter 461:

(a) "Able-bodied adult without dependents (ABAWD)" means an individual 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 (see OAR 461-001-0000) under the age of 18 years in the filing group (see OAR 461-110-0310 and 461-110-0370).

(b) "SNAP time-limit areas" means areas of Oregon in which the limitation on eligibility (see OAR 461-001-0000) for SNAP benefits for ABAWD in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)) applies. There are no "SNAP time-limit areas" in Oregon during October 1, 2020 to September 30, 2022.

(c) "SNAP time-limit exempt areas" means areas of Oregon in which the limitation on eligibility for SNAP benefits contained in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)) does not apply per a waiver approved by the United States Department of Agriculture. "Exempt areas" are all counties in Oregon during October 1, 2020 to September 30, 2022.

(2) Except as provided otherwise in this rule, an ABAWD who resides in one of the SNAP time-limit areas (see section (1) of this rule) is ineligible to receive food benefits as a member of any household after the individual received food benefits for three countable months (see section (3) of this rule) during January 1, 2022 to December 31, 2024.

(3) "Countable months" means months within the 36-month period of January 1, 2022 to December 31, 2024 in which an individual as a member of any household receives SNAP benefits in Oregon or in any other state, unless at least one of the following applies:

(a) Benefits were prorated for the month.

(b) The individual was exempt from the SNAP time limit for any part of the month for any of the following reasons:

(A) The individual resided for any part of the month in one of the SNAP time-limit exempt areas (see section (1) of this rule).

(B) The individual was pregnant.

(C) A child under the age of 18 years joined the filing group.

(D) The individual met the criteria under OAR 461-130-0310(3)(a) or (b).

(c) The individual participated in one or more of the activities in paragraphs (A) to (D) of this subsection for 20 hours per week averaged over the month. For purposes of this rule, 20 hours per week averaged monthly means 80 hours per month. (Activities may be combined in one month to meet the 20 hours per week averaged monthly requirement.)

(A) Work for pay, in exchange for goods or services, or unpaid work as a volunteer.

(i) Work in exchange for goods and services includes bartering and in-kind work.

(ii) Unpaid or voluntary work hours must be verified by the employer.

(iii) For self-employed individuals, countable income after deducting the costs of producing income (as described in OAR 461-145-0930(5)) must average at least the federal minimum wage times 20 hours per week.

(B) Participate in a program under the Workforce Investment Act of 1998, Pub. L. No. 105220, 112 Stat. 936 (1998).

(C) Participate in a program under section 236 of the Trade Act of 1974, Pub. L. 93618, 88 Stat. 2023, (1975) (19 U.S.C. 2296).

(D) Comply with the SNAP Employment and Training program requirements described in OAR 461-001-0020, 461-

130-0305, and 461-130-0315. Work search activities must be combined with other work-related activities to equal 20 hours per week and may not exceed 9 hours per week.
(d) The individual complied with the Workfare requirements in OAR 461-190-0500.
(4) An ABAWD must submit evidence to the Department within 90 days following the month they received the countable month to show they were exempt or met the 80 hour activity requirement.
(5) An ABAWD who is ineligible under section (2) of this rule but otherwise eligible may regain eligibility if the requirements of subsections (a) or (b) of this section are met.
(a) The individual becomes exempt under subsection (3)(b) of this rule. Eligibility regained under this subsection begins on the date the individual files a new application and continues as long as the individual is exempt and is otherwise eligible. If not eligible on the filing date (see OAR 461-115-0040), eligibility begins the date all other eligibility requirements are met.
(b) The individual, during a consecutive 30-day period during which the individual is not receiving SNAP benefits, meets the requirements of subsection (3)(c) or (3)(d) of this rule.
(A) Eligibility regained under this subsection begins on the date the individual files a new application and continues as long as the individual meets the requirements of subsection (3)(c) or (3)(d) of this rule and is otherwise eligible. If not eligible on the filing date, eligibility begins the date all other eligibility requirements are met.
(B) There is no limit to how many times an individual may regain eligibility under this subsection during January 1, 2022 to December 31, 2024.
(c) See OAR 461-180-0010 to add an individual to an open SNAP case after the individual has regained eligibility under this section.
(6) An individual who regains eligibility under section (5) of this rule and later fails to comply with the participation requirements of subsection (3)(c) or (3)(d) of this rule may receive a second set of food benefits for three consecutive countable months. The countable months are determined as follows:
(a) If the individual stopped participation in a work program, countable months start when the Department notifies the individual they are no longer meeting the work requirement.
(b) If the individual stopped participation in a work program, countable months start when the individual notifies the Department they are no longer meeting the work requirement.
(c) If a change occurred which results in an individual becoming subject to the time limit in section (2) of this rule and the change was required to be reported under rules in OAR chapter 461, division 170, the countable months start when the change occurred.
(d) If a change occurred which results in an individual becoming subject to the time limit and the change was not required to be reported under rules in OAR chapter 461, division 170, countable months start when the Department notifies the individual they must meet the work requirement.
(e) An individual may only receive benefits without meeting the requirements of subsection (3)(c) or (3)(d) of this rule for no more than a total of six countable months during January 1, 2022 to December 31, 2024.
(7) This space is reserved for the use of discretionary exemptions, granted by the Food and Nutrition Service, for ABAWDs residing in certain SNAP time-limit areas who are at risk of having their benefits closed or reduced. Beginning April 1, 2020 to September 30, 2022, the Department is not granting discretionary exemptions.
(8) An ABAWD involved in the activities specified in subsection (3)(c) or (3)(d) of this rule or an activity listed in the individual's case plan (see OAR 461-001-0020) is eligible for support service payments necessary for transportation and other costs related to completing the activity as allowed by OAR 461-190-0360.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 411.060, 411.070, 411.121, 411.816

STATUTES/OTHER IMPLEMENTED: 7 USC 2015, 7 USC 2029, 7 CFR 273.7, 7 CFR 273.24, ORS 409.010, 409.050, 411.060, 411.070, 411.121, 411.816, 411.825, 411.837

AMEND: 461-135-0660

REPEAL: Temporary 461-135-0660 from SSP 75-2021

RULE TITLE: SNAP; COVID-19

NOTICE FILED DATE: 12/30/2021

RULE SUMMARY: OAR 461-135-0660 is being changed to permanently adopt the correction of a rule reference and to substitute month-specific language for Department certification period extensions, Interim or Mid-Certification Periodic Reports, and interviews with general language.

RULE TEXT:

The provisions in this rule apply to the SNAP program.

(1) The Department suspends the following rule sections regarding the SNAP program as provided in this rule:

(a) OAR 461-115-0230(3), and

(b) OAR 461-135-0520(2) and (6).

(2) The Department amends the following rules and rule sections regarding the SNAP program as provided in this rule:

(a) OAR 461-115-0020(2),

(b) OAR 461-115-0450(1) and (2),

(c) OAR 461-135-0570(3), and

(d) OAR 461-170-0102.

(3) Per the Families First Coronavirus Act, Title 3, Section 2301:

(a) SNAP time limit work requirements for ABAWDs (see OAR 461-135-0520) are temporarily waived.

(b) ABAWDs will not be subject to earning countable months (see OAR 461-135-0520).

(4) An individual who the Department has determined is mandatory (see OAR 461-130-0305) will be granted “good cause” (see OAR 461-130-0327) if the reason for not accepting employment or for leaving a job was due to the individual’s concerns regarding their health due to the COVID-19 pandemic.

(5) Notwithstanding OAR 461-115-0450, and beginning March 2020, the Department may extend a certification period (see OAR 461-001-0000) before the certification period ends.

(a) The Department’s Central Office shall determine the length of the certification period extension, criteria for selection, and select the cases whose certification period are extended.

(b) Selection for certification period extension is not a hearable issue.

(6) Notwithstanding OAR 461-170-0102, and beginning March 2020, the Department may waive the requirement to submit an “Interim Change Report” or a “Mid-Certification Review” in order to continue receiving benefits:

(a) The Department’s Central Office shall determine the criteria for selection and select the cases whose “Interim Change Report” or “Mid-Certification Review” are waived.

(b) Selection for waiver is not a hearable issue.

(7) Emergency allotments (supplements) are permitted through USDA waiver under Families First coronavirus Response Act of 2020. The Department may issue an emergency allotment of SNAP benefits for any months approved for an emergency allotment by the Food and Nutrition Service, with the following limitations:

(a) The emergency allotment does not change the benefit level, calculated under OAR 461-160-0400, for the benefit group (see OAR 461-110-0750).

(b) The emergency allotment shall be issued on a date determined by the Department, not subject to OAR 461-165-0100.

(c) Beginning April 2020, and except as provided in paragraphs (A) and (B) of this subsection, the amount of the emergency allotment shall be the difference between the benefit level calculated under OAR 461-160-0400 and the maximum Payment Standard for the number of individuals in the benefit group. If there is no difference, no emergency allotment shall be issued.

(A) Beginning April 2021, if the difference calculated equals an amount less than $95, the amount emergency allotment shall be $95.

(B) Beginning May 2021, if the benefit level calculated under OAR 461-160-0400 of a benefit group is $0, no emergency allotment shall be issued.

(d) When the Food and Nutrition Service makes a change that ends, reduces, or suspends the emergency allotment:

(A) No decision notice (see OAR 461-001-0000) is required. The Department is not required to mail a notice of intended action.

(B) The Department shall publicize the change using one or more of the following methods:

(i) Informing the public through the news media.

(ii) Placing posters in the offices that serve affected individuals, in the locations where SNAP is issued, and at other sites frequented by individuals receiving SNAP.

(iii) Mailing a general notice to the households of affected recipients.

(e) Excepting an overpayment (see OAR 461-195-0501), there is no right to hearing to dispute emergency allotment and no right to continuing benefits.

(8) For applications with a filing date (see OAR 461-115-0040) established on or after March 23, 2020, the Department –

(a) May waive the requirement under OAR 461-115-0020 section (1) to meet the interview requirements in order to complete the application process.

(b) May suspend the requirement under OAR 461-115-0230(3)(b) to grant a face-to-face interview at the applicant's request.

(9) Retroactively effective January 16, 2021: In addition to the provisions under section (3) of OAR 461-135-0570, to be eligible for SNAP benefits, a student of higher education (see OAR 461-135-0570) may also meet the requirements of one of the following subsections:

(a) The student of higher education is eligible to participate in state or federally funded work study program during the regular school year.

(b) The student of higher education has an Expected Family Contribution (EFC) of $0 in the current academic year, as determined through the Free Application for Federal Student Aid (FAFSA).

(10) The provisions--

(a) Listed in sections (3) and (4) of this rule end on the last day of the month in which the public health emergency declaration made by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of coronavirus disease 2019 (COVID–19) is lifted.

(b) Listed in section (9) of this rule end 30 days after the day upon which the public health emergency declaration made by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of coronavirus disease 2019 (COVID–19) is lifted.

STATUTORY/OTHER AUTHORITY: ORS 411.060, 411.070, 411.121, 411.816, ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 409.010, ORS 411.060, 411.070, 411.121, 411.816, 411.825, 411.837, 7 USC 2015, 7 USC 2029, 7 CFR 273.7, 7 CFR 273.24, Pub. L. 116-127, ORS 409.050, 7 CFR 273.10, 7 CFR 273.14

AMEND: 461-145-0910

RULE TITLE: Self-Employment; General; Not OSIP, OSIPM, or QMB

NOTICE FILED DATE: 12/30/2021

RULE SUMMARY: OAR 461-145-0910 is being amended to place in permanent rule, current temporary rule provisions. These amendments add information about how countable self-employment income is determined with a reference to the rule that explains the determination in detail and make clear that providers considered an employee of an Aging and People with Disabilities, Office of Developmental Disabilities Services, or Oregon Health Authority benefit recipient are not self-employed.

RULE TEXT:

(1) Self-employment income is income resulting from an individual's business, trade, or profession, rather than from a salary or wage paid by an employer. An individual is considered self-employed if the individual meets the criteria in sections (2) or (3) of this rule. Except as noted in section (3) of this rule when an individual has established a corporation, determine if the individual is self-employed according to section (2) of this rule. If the individual has more than one self-employment business, trade, or profession, the income from each is determined separately.

(2) Except as provided in OAR 461-145-0250(1), an individual is self-employed for the purposes of this division of rules if the individual meets the requirements of one or more of (a), (b), or (c):

(a) Files taxes as self-employed for their business on their personal taxes.

(b) Is considered an independent contractor by the business.

(c) Meets all the following criteria:

(A) Is not required by the business to complete an IRS W-4 form;

(B) Is not required to pay federal income tax or FICA payments from their paycheck(s);

(C) Liability or worker’s compensation insurance for the individual is not paid by the business;

(D) Meets at least one of the following:

(i) Creates or provides the products or services they sell, or

(ii) Sets the price for the products or services they sell;

(E) Is responsible for the business expense and losses; and

(F) Receives profits from the business.

(3) Notwithstanding section (2) of this rule:

(a) Homecare Workers (see OAR 411-031-0020) paid by the Department are not self-employed.

(b) Providers considered an employee of an Aging and People with Disabilities, Office of Developmental Disabilities Services, or Oregon Health Authority benefit recipient, such as Independent Choices Program (see OAR 411-030-0100) providers, Personal Support Workers (see OAR 411-375-0000), and Personal Care Attendants (see OAR 410-172-0810) are not self-employed.

(c) Child care providers (see OAR 461-165-0180) paid by the Department, adult foster home providers (see OAR 411-050-0602) paid by the Department, realty agents, and individuals who sell plasma, redeem beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered to be self-employed.

(4) In the ERDC, REF, SNAP, and TANF programs, self-employment income is counted prospectively to determine eligibility (see OAR 461-001-0000) 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) Except in the ERDC program, self-employment income is treated as anticipated income when a financial group (see OAR 461-110-0530) begins self-employment and is unable to determine what the income and costs will be during the budget month.

(5) In the REFM program:

(a) Self-employment income is counted only if received in the month of application.
(b) If self-employment income counted in the month of application puts the applicant over the income limits for REFM, the income is calculated according to section (4) of this rule.
(6) When determining the amount of countable (see OAR 461-001-0000) self-employment income, the Department follows OAR 461-145-0930.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.006, 412.049, 413.085, 414.685

STATUTES/OTHER IMPLEMENTED: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 412.006, 412.049, 413.085, 414.685

AMEND: 461-145-0930

REPEAL: Temporary 461-145-0930 from SSP 51-2021

RULE TITLE: Self-Employment; Determination of Countable Income

NOTICE FILED DATE: 12/30/2021

RULE SUMMARY: OAR 461-145-0930 is being amended to adopt rule changes which align the rule with current Department policy regarding self-employment cost exclusion or deductions. It is also being amended to distinguish for the ERDC program how self-employment costs are treated for program eligibility, which does not allow deductions, from how self-employment costs are treated when determining ERDC copay and hours, which does allow deductions. It is also being amended to make the general Department provisions regarding self-employment countable income clearer.

RULE TEXT:

This rule explains how different programs exclude or deduct costs from self-employment gross sales and receipts to determine countable (OAR 461-001-0000) income from self-employment.

(1) The Department initially determines gross self-employment income, totaling gross sales and receipts, including mileage reimbursements, minus any returns and allowances. If there are costs permitted under OAR 461-145-0920, the Department allows deductions or exclusions from the gross self-employment income in accordance with this rule to determine countable (OAR 461-001-0000) income from self-employment.

(2) In the ERDC program, no costs are deducted or excluded.

(3) In the OSIP, OSIPM, and QMB programs, all costs permitted under OAR 461-145-0920 are excluded.

(4) In the REF, REFM, and TANF programs, no costs are excluded.

(5) In the SNAP program, if there are any costs permitted under OAR 461-145-0920, there is an exclusion of 50 percent of gross self-employment income.

(6) In the DSNAP program, the Department allows all actual costs permitted under OAR 461-145-0920.

STATUTORY/OTHER AUTHORITY: ORS 414.685, ORS 414.826, ORS 329A.500, 409.050, 411.060, 411.083, 411.404, 411.706, 411.816, 412.006, 412.049, 413.085

STATUTES/OTHER IMPLEMENTED: ORS 414.826, 7 CFR 280.1, ORS 329A.500, 409.010, 411.060, 411.083, 411.404, 411.706, 411.816, 412.006, 412.009, 412.049

AMEND: 461-155-0190

RULE TITLE: Income and Payment Standards; SNAP and DSNAP

NOTICE FILED DATE: 12/30/2021

RULE SUMMARY: OAR 461-155-0190 is being amended to align the full-month Disaster SNAP (DSNAP) Payment Standard with adjustments set forth effective October 1, 2021, by the Food and Nutrition Service.

RULE TEXT:

(1) The monthly SNAP Countable Income Limit is set at 130 percent of the federal poverty level under OAR 461-155-0180 for the number of individuals in the need group (see OAR 461-110-0630). The monthly SNAP Adjusted Income Limit is set at 100 percent of the federal poverty level under OAR 461-155-0180 for the number of individuals in the need group.

(2) The SNAP Payment Standard (Thrifty Food Plan) is:

No. in Benefit Group...............Monthly Amount
1...$ 250
2...459
3...658
4...835
5...992
6...1,190
7...1,316
8...1,504
+1...+ 188

(3) The full-month Disaster SNAP (DSNAP) Payment Standard is:

No. in Benefit Group...............Monthly Amount
1...$ 250
2...459
3...658
4...835
5...992
6...1,190
7...1,316
8...1,504
+1...+ 188

(4) The DSNAP Gross Income Limit is set under OAR 461-155-0180 for the number of individuals in the household (see OAR 461-135-0491) group.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 411.060, 411.070, 411.816

STATUTES/OTHER IMPLEMENTED: ORS 411.070, 411.816, 411.825, 411.837, ORS 409.010, 409.050, 411.060, 7 CFR 273.1, 7 CFR 273.10, 7 CFR 280.1, H.R. 133

AMEND: 461-160-0040

REPEAL: Temporary 461-160-0040 from SSP 51-2021

RULE TITLE: Dependent Care Costs; Deduction and Coverage

NOTICE FILED DATE: 12/30/2021

RULE SUMMARY: OAR 461-160-0040 is being amended to remove the word "client," to expand child care coverage to school hours for children participating in distance learning rather than in-person schooling, and to expand child care coverage when caretakers are working from home when the nature of the work does not allow the caretaker to provide the care without affecting their work. It is also being amended to allow caretakers on authorized medical leave and maternity leave to qualify for a waived copay of $0. This changes aligns the medical and maternity leave copay waiver to policies already existing for other types of leave, such as authorized work search and authorized military transition.

RULE TEXT:

(1) In the SNAP 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 (see OAR 461-110-0310) and is in the care, control, and custody of an individual in the group.

(b) The dependent care provider:

(A) Is not in the filing group; and

(B) Is not the parent (see OAR 461-001-0000) of the dependent.

(c) The dependent care is necessary because the caretaker (see OAR 461-001-0000) is working, commuting, on a meal break, in training, participating in pre-employment education, or participating in an OFSET case plan (see OAR 461-001-0020).

(2) In the SNAP program, dependent care costs that are deductible under section (1) of this rule include:

(a) The costs of care provided by an individual care provider or care facility,

(b) Transportation costs to and from the individual care provider or care facility, and

(c) Activity or other fees associated with the care provided to the dependent that are necessary for the dependent to participate in the care; with the exception of fees related to penalties, fines, or advance payment for cost of care.

(3) In the ERDC and TANF programs, the cost of dependent child care may be paid for by the Department (is covered) only if dependent child care is necessary for the working caretaker to perform the caretaker's job duties, except in the ERDC program the cost of dependent care is allowed for approved educational hours, for caretakers participating in the Occupational Training and Child Care program, and for child care authorized under section (5) of this rule.

(a) For a caretaker working under a JOBS Plus agreement, child care is covered during the time the caretaker is engaged in work or in job search if the employer pays the caretaker during that time.

(b) Child care is covered for caretakers participating in the Occupational Training and Child Care program who have applied for the program and actively engaged in training as outlined in the Occupational Training and Child Care program.

(4) In the ERDC, JOBS, 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, unless a child is not attending in-person schooling and is instead participating in distance learning.

(5) Child care is not covered in the ERDC 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. Child care is not covered during a period of time when --

(a) 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, unless the provider is a certified family child care home under OAR 414-350-0000 to 414-350-0400.

(6) In the ERDC program the cost of dependent child care may continue to be paid for by the Department (is covered) during the certification period (see OAR 461-001-0000) with no change to the authorized child care hours subject to

the following provisions:
(a) When a reduction in work hours occurs the copay may be adjusted.
(b) When a job loss occurs:
(A) When a caretaker has a permanent job loss from all employment the copay is waived for up to three months for a work search period, starting the month after the job loss occurred.
(B) The waiver ends at the end of the three month period if the caretaker becomes employed.
(C) The three month work search period does not apply when:
(i) The adult was discharged or fired without good cause (see OAR 461-135-0070(2)) for misconduct, felony, or theft. "Misconduct" means willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, including an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest.
(ii) The adult voluntarily quit in anticipation of discharge or without good cause.
(c) For medical leave:
(A) When a caretaker is on medical leave the reason for the leave must be verified including diagnosis and prognosis under OAR 461-125-0830. Maternity leave may be authorized for three months (12 weeks) without medical documentation.
(B) Retroactively effective November 25, 2021, when a caretaker is on medical leave under paragraph (A) of this subsection, the copay is waived for up to three months starting the month after medical leave begins.
(C) The copay waiver -
(i) May not go beyond the last day of the certification period.
(ii) Ends at the end of the three-month period, unless the caretaker is still on medical leave or maternity leave and new verification is received prior to the end of the month noted on the original documentation, or for maternity leave without medical documentation, prior to the end of the month in which the twelfth week fell.
(d) For military transition:
(A) When a caretaker who is a discharged U.S. military member returns from active duty in a military war zone, the copay is waived for up to six months starting the month after the military member returns home.
(B) The copay waiver ends at the end of the six month period if the caretaker becomes employed. The copay waiver ends before the end of the six month period if the caretaker returns to active duty.
(e) Under this section child care may be used for work, work search, approved educational hours, military transition activities, or other activities to maintain a part-time or full-time slot at a child care facility.
(f) If the caretaker stops participating in the Occupational Training and Child Care program:
(A) The caretaker's copay is waived for up to three months while the caretaker is in the process of reengaging into the program.
(B) The waiver ends when the caretaker reengages into the Occupational Training and Child Care program.
(C) If the caretaker does not reengage within three months, the ERDC certification ends at the end of the three months if the caretaker does not reengage in the Occupational Training and Child Care program.
(7) In the JOBS program, the cost of child care may be covered while the care is necessary to enable the caretaker to participate in a case plan (see OAR 461-190-0211).
(8) In the ERDC, JOBS, JOBS Plus, 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 (see OAR 461-001-0000):
(A) In the ERDC program, is a member of the benefit group (see OAR 461-110-0750) and is in the care, control, and custody of an individual in the group.
(B) In the JOBS, JOBS Plus, and TANF programs, lives with the filing group.
(b) The provider of child care is not in the filing group.
(c) The provider of child care is not the parent of a child in the filing group.
(9) Coverage of the cost of dependent care is subject to the requirements in OAR chapter 461, including OAR 461-120-

0510(3), 461-135-0400, 461-155-0150, 461-160-0193, 461-165-0180, and 461-190-0211.

STATUTORY/OTHER AUTHORITY: ORS 329A.500, 409.050, 411.060, 411.070, 411.700, 411.816, 412.049

STATUTES/OTHER IMPLEMENTED: ORS 329A.500, 409.010, 411.060, 411.070, 411.700, 411.816, 412.049, HB 3073 (2021)

AMEND: 461-160-0300

REPEAL: Temporary 461-160-0300 from SSP 76-2021

RULE TITLE: Use of Income to Determine Eligibility and Copay Benefits for ERDC

NOTICE FILED DATE: 12/30/2021

RULE SUMMARY: OAR 461-160-0300 is being amended by permanent rule to move existing rule provisions regarding ERDC financial eligibility, allowable child care cost, and copay calculation from other rules into this rule and to clarify when allowable costs from self-employment are taken into account for the ERDC program. It also places into permanent rule the ERDC eligibility standard for initial certification and recertification to the January 1, 2022, 200 percent federal poverty level. Lastly, it is being amended to adopt the agency's new copay calculation rules which set a new monthly ERDC copay structure in temporary rule, beginning October 1, 2021.

RULE TEXT:

The Department determines financial eligibility (see OAR 461-001-0000) for ERDC and the copay benefit level as follows:

(1) ERDC financial eligibility.

(a) The financial group (see OAR 461-110-0530) may not exceed the resource limit in OAR 461-160-0015.

(b) The monthly countable (see OAR 461-001-0000 and 461-145-0930) gross income of the financial group is determined in accordance with OAR 461-150-0060. If monthly countable income equals or exceeds the eligibility standards, the need group (see OAR 461-110-0630) is ineligible for ERDC.

(A) At initial certification, the ERDC eligibility standard is met for a need group of eight or less if monthly countable income for the need group is less than 200 percent of the federal poverty level (FPL), as described in OAR 461-155-0180. The eligibility standard for a need group of eight applies to any need group larger than eight.

(B) During the certification period (see OAR 461-001-0000) and at recertification the ERDC eligibility standard is met for a need group of eight or less if monthly countable income for the need group during the 12 month period is less than 250 percent FPL or 85 percent state median income (SMI), whichever is higher, as described in OAR 461-155-0180. The eligibility standard for a need group of eight applies to any need group larger than eight.

(c) The copay calculated under section (3) of this rule is compared to the allowable child care cost under section (2) of this rule. If the copay is equal to or greater than the allowable child care cost, the client is not eligible for ERDC.

(2) Allowable Child Care Cost. For an individual found eligible under section (1) of this rule, the allowable child care cost is set under this section.

(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 section (3) of this rule.

(c) The copay is subtracted from the allowable child care cost, and the remainder is the payment the Department makes to the provider.

(3) Copay Calculation.

(a) A need group with a certification period that began in March 2020 through September 2021 shall have a monthly copay of $0 for the entirety of the certification period. The copay calculation for February 2020 and earlier is found in previous versions of OAR 461-155-0150.

(b) When determining the copay, upon the applicant’s request, the Department may exclude at least 50 percent of gross self-employment income when a need group has countable self-employment income and permitted costs (see OAR 461-145-0910 and 461-145-0920). The maximum exclusion is the total of all actual costs permitted under OAR 461-145-0920.

(c) The monthly copay shall be as follows, using the countable income, or countable self-employment income minus permitted costs:

Need group size of 2

Income.....................................Monthly Copay
$0 - $1452.99 ....$0
$1453 - $2178.99 ....$5
$2179 - $2904.99 ....$10
$2905 - $3267.99 ....$40
$3268 - $4292.99 ....$100

Need group size of 3

Income.....................................Monthly Copay
$0 - $1830.99 ....$0
$1831 - 2745.99 ....$5
$2746 - $3203.99 ....$10
$3204 - $3660.99 ....$15
$3661 - $4118.99 ....$50
$4119 - $5302.99 ....$110

Need group size of 4

Income.....................................Monthly Copay
$0 - $2209.99 ....$0
$2210 - $3313.99.........................$5
$3314 - $3865.99.........................$10
$3866 - $4417.99.........................$20
$4418 - $4969.99.........................$60
$4970 - $6312.99.........................$120

Need group size of 5

Income.....................................Monthly Copay
$0 - $2587.99.............................$0
$2588 - $3881.99.........................$5
$3882 - $4527.99.........................$10
$4528 - $5174.99.........................$25
$5175 - $5821.99.........................$70
$5822 - $7322.99.........................$130

Need group size of 6

Income.....................................Monthly Copay
$0 - $2965.99.............................$0
$2966 - $4448.99.........................$5
$4449 - $5189.99.........................$10
$5190 - $5930.99.........................$25
$5931 - $6671.99.........................$70
$6672 - $8332.99.........................$130

Need group size of 7

Income.....................................Monthly Copay
$0 - $3344.99.............................$0
$3345 - $5015.99.........................$5

$5016 - $5851.99.........................$10
$5852 - $6687.99.........................$25
$6688 - $7523.99.........................$70
$7524 - $8521.99.........................$130

Need group size of 8 or more
Income.....................................Monthly Copay
$0 - $3722.99.............................$0
$3723 - $5583.99.........................$5
$5584 - $6514.99.........................$10
$6515 - $7443.99.........................$25
$7444 - $8375.99.........................$70
$8376 - $9304.99..........................$130

(d) Notwithstanding the provisions of this rule section, the ERDC copay may be reduced or temporarily waived as follows:

(A) Reduced to $0 for no more than three months after closure of TANF benefits when:

(i) The closure is because an individual in the need group had earned income that led to the TANF closure;

(ii) An ERDC date of request (see OAR 461-115-0030) is established within 90 days of closure; and

(iii) The individual is eligible for ERDC at initial certification.

(B) As allowed under OARs 461-160-0040 and 461-135-0405.

STATUTORY/OTHER AUTHORITY: ORS 411.060

STATUTES/OTHER IMPLEMENTED: ORS 409.610, 411.060, 411.122