

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

<u>Department of Human Services - Children, Adults and Families</u>	461
Agency and Division	Administrative Rules Chapter Number

<u>Annette Tesch</u>	<u>Human Services Building, 500 Summer St. NE - E48, Salem, OR 97301</u>	<u>(503) 945-6067</u>
Rules Coordinator	Address	Telephone

RULE CAPTION

Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

<u>May 22, 2012</u>	<u>10:00a</u>	<u>Rm 254, 500 Summer St. NE, Salem, OR</u>	<u>Annette Tesch</u>
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request

RULEMAKING ACTION

ADOPT:

AMEND: 461-025-0300, 461-025-0310, 461-025-0315, 461-115-0090, 461-115-0140, 461-115-0230, 461-120-0210, 461-130-0330, 461-135-0010, 461-140-0120, 461-150-0080, 461-155-0250, 461-165-0035, 461-165-0180, 461-175-0200, 461-175-0210

REPEAL:

ORS 181.537, 409.050, 409.610, 411.060, 411.070, 411.095, 411.122, 411.404, 411.408, 411.610, 411.704, 411.706, 411.816, 411.892, 412.009, 412.014, 412.049, 414.231, 657A.340, 657A.450

Stat. Auth.

42 USC 602(a), 7 CFR 273.2, 7 CFR 273.6, 7 CFR 273.12(a)(5), 45 CFR 98.11, Children's Health Insurance Program Reauthorization Act of 2009 (Public Law 111-3), FNS Waiver 2030043

Other Authority

ORS 183.415, 183.417, 181.537, 409.010, 409.050, 409.610, 411.060, 411.070, 411.095, 411.099, 411.103, 411.117, 411.122, 411.404, 411.408, 411.610, 411.704, 411.706, 411.816, 411.892, 412.009, 412.014, 412.049, 412.069, 414.025, 414.231, 414.826, 414.831, 414.839, 657A.340, 657A.450

Stats. Implemented

RULE SUMMARY

OAR 461-025-0300 about contested case hearings is being amended to continue certain current contested case procedures by opting out as permitted from new statewide rules on the topics of requests for admission, interrogatories, and disclosure of witness addresses and telephone numbers. Under this amendment, witness addresses and phone numbers will not be disclosed to clients not represented by an attorney. Witness addresses and phone numbers will also not be disclosed to clients represented by an attorney if the Department has concerns that the release of the information may affect the safety of the witness. This rule is also being amended

to state that requests for admission and interrogatories would only be permitted when the Department of Justice is representing the Department of Human Services.

OAR 461-025-0310 about hearing requests is being amended to indicate that a client has a right to a hearing when there is a decision notice or contested case notice from the Department that denies in part a claim that the Department previously underissued public assistance or SNAP program benefits as well as when the Department modifies a grant of aid or public assistance. This rule is also being amended to continue current contested case procedures under which the timeliness of a hearing request is based on the date the Department receives it, not the date of the postmark. This rule is also being amended to implement ORS 411.103 by setting out the Department's policy when a hearing request is late because a notice was not received and there was no actual knowledge of it. This rule is also being amended to change the policy for allowing late hearing requests. Under this change, a much wider array of reasons for being late would be allowed but the rule would set a firm deadline for late hearing requests, after which no late hearing requests would be allowed other than those for liable adults who were not sent an overpayment notice.

OAR 461-025-0315 about expedited hearings is being amended to update the rule by revising the methods by which clients are notified of hearings and by changing its description of what triggers a face-to-face hearing.

OAR 461-115-0090 about authorized representatives is being amended to allow the Department in all programs except SNAP to deny the client's selection of an authorized representative if the authorized representative has a conflict of interest. This rule is also being amended to clarify its requirements for the SNAP program by expressly stating requirements in federal regulations instead of cross-referencing the regulation and by stating when other rules and other sections of this rule apply.

OAR 461-115-0140 about authorized representatives in the SNAP program is amended to revise the policy about when an individual serving an Intentional Program Violation may serve as an authorized representative. This rule is also being amended to state when and how employees of the Department or contractor involved in the certification and issuance processes for SNAP benefits may serve as authorized representatives.

OAR 461-115-0230 about interviews in the application process is being amended to state that the ERDC program requires an interview to process an initial application and a renewal of benefits. This is a federal requirement for the ERDC program, but the requirement had only been stated in the Family Services Manual. This rule amendment also makes permanent a temporary rule change adopted on February 29, 2012.

OAR 461-120-0210 about requirements to provide social security numbers is being amended to fit current practice and indicate that the exception which allows benefits for a newborn in the SNAP program includes new benefit groups, not just existing ones.

OAR 461-130-0330 about disqualifications in the SNAP, REF and TANF programs is being amended to clarify the first level of disqualification in the REF and TANF programs. The current rule states the penalty for the first level of disqualification is for three months. Because the disqualification could be removed at any point during the three months if the client completed the cooperation requirement, or REF or TANF closes, the amendment will provide that the penalty at the first level is for up to three months or until the client has completed the two consecutive week cooperation period.

OAR 461-135-0010 about assumed eligibility for medical programs is being amended to indicate that children who are born to a mother eligible for and receiving OHP-CHP benefits (OHP coverage for persons under 19 years of age who qualify under the 201 percent income standard) are assumed eligible to receive medical benefits until the end of the month the child turns one year of age. This amendment makes permanent the temporary rule change adopted on January 13, 2012.

OAR 461-140-0120 about the availability and treatment of lump-sum income is being amended to clarify one situation in which lump-sum income is not counted in the EA (currently closed), MAA, MAF, REF, REFM, SAC, and TANF programs. The current rule states that lump-sum income is unavailable if a financial group "...spends the lump-sum income on an emergency, such as a natural disaster or the serious injury or death of a household member." The amendment broadens the exemption to cover spending on an immediate basic need and removes the specific emergency examples.

OAR 461-150-0080 about prospective budgeting of variable income in the context of determining if clients meet income eligibility requirements is being amended to make the rule consistent with current prospective budgeting practices in the SNAP program by removing the statement that a financial group with variable income in the SNAP program may choose to have its benefit level changed from month to month.

OAR 461-155-0250 about income and payment standards in the Oregon Supplemental Income Program Medical (OSIPM) is being amended to clarify current policy regarding income standards for certain clients in nonstandard living arrangements (NSLA). This amendment clarifies that the 300 percent of the full SSI standard only applies to clients in an NSLA who also meet the requirements of OAR 461-135-0750 for certain individuals in long-term care or waived services. This amendment also clarifies that a qualifying trust exemption applies to that standard. This amendment makes permanent temporary changes that became effective February 1, 2012.

OAR 461-165-0035 about alternate payees in the context of electronic benefit transfers is being amended to state who may not be an alternate payee. This amendment prohibits Department-approved child care providers from being assigned as an alternate payee for child care benefits in the ERDC, JOBS, JOBS Plus, and TANF programs. This rule is also being amended to make permanent temporary rule changes adopted on February 27, 2012.

OAR 461-165-0180 about eligibility of child care providers is being amended to update policies as part of the implementation of the new Child Care Billing and Attendance Tracking (CCBAT) system. This amendment indicates which written attendance records providers will be required to keep and the deadline for providers to complete registration for the CCBAT system. Registration is a requirement, and once the CCBAT system is implemented, providers must use the CCBAT system to receive child care subsidy payments.

OAR 461-175-0200 about the types of notices of rights to a hearing that the Department sends in connection with various decisions is being amended to indicate that the Department will send a decision notice when the Department adjusts previously underissued public assistance or SNAP benefits.

OAR 461-175-0210 about how the Department treats notice situations when clients move and whereabouts are unknown is being amended to follow SNAP reporting requirements. This rule currently allows the closure of cases without a notice for all SNAP reporting systems, when clients move and their whereabouts are unknown. Under the amended rule, only SNAP cases in CRS (Change Reporting System) can be closed for returned mail with no forwarding address or whereabouts unknown. This rule is also being amended to make permanent the temporary rule changes that were effective January 1, 2012.

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

Written comments may be submitted until May 24, 2012 at 5:00 p.m. Written comments may be e-mailed to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Children, Adults, and Families Division, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department

provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

The Department requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

May 24, 2012, 5:00p.m.

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Signature

Robert Trachtenberg

Printed Name

04/13/12

Date

(If you plan to attend the hearing and need auxiliary aids and services such as assistive listening devices or interpreters for the hearing impaired, please contact the Rules Coordinator as soon as possible about the type of aid or service needed. The hearing site is accessible for individuals with mobility impairments.)

A copy of the draft rules can be accessed at the self-sufficiency policy website:

http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm

To request a hardcopy, please contact the Rules Coordinator listed at the top of this form.

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday.

ARC 920-2005

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services - Children, Adults and Families
Agency and Division

OAR Chapter 461
Administrative Rules Chapter Number

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients

In the Matter of: Amending OARs

Statutory Authority: ORS 181.537, 409.050, 409.610, 411.060, 411.070, 411.095, 411.122, 411.404, 411.408, 411.610, 411.704, 411.706, 411.816, 411.892, 412.009, 412.014, 412.049, 414.231, 657A.340, 657A.450

Other Authority: 42 USC 602(a), 7 CFR 273.2, 7 CFR 273.6, 7 CFR 273.12(a)(5), 45 CFR 98.11, Children's Health Insurance Program Reauthorization Act of 2009 (Public Law 111-3), FNS Waiver 2030043

Statutes Implemented: ORS 183.415, 183.417, 181.537, 409.010, 409.050, 409.610, 411.060, 411.070, 411.095, 411.099, 411.103, 411.117, 411.122, 411.404, 411.408, 411.610, 411.704, 411.706, 411.816, 411.892, 412.009, 412.014, 412.049, 412.069, 414.025, 414.231, 414.826, 414.831, 414.839, 657A.340, 657A.450

Need for the Rule(s):

OAR 461-025-0300 about contested case hearings needs to be amended because of caseload volume and because certain discovery procedures would unduly complicate or interfere with the hearing process. Field staff who represent the Department in these hearings handle a high volume of cases on short timelines and lack sufficient time to handle a litigation process similar to federal court. This rule also needs to be amended because the disclosure of witness addresses and phone numbers is unnecessary for client to prepare for hearings, somewhat invasive to the witnesses, and occasionally presents safety concerns. This amendment continues certain current contested case procedures by opting out as permitted from new statewide rules on the topics of requests for admission, interrogatories, and disclosure of witness addresses and telephone numbers. Under this amendment, witness addresses and phone numbers will not be disclosed to clients not represented by an attorney. Witness addresses and phone numbers will also not be disclosed to clients represented by an attorney if the Department has concerns that the release of the information may affect the safety of the witness. Additionally, requests for admission and interrogatories would only be permitted when the Department of Justice is representing the Department of Human Services.

OAR 461-025-0310 about hearing requests needs to be amended because its current language is not clear about a client's right to a hearing when the Department adjusts previously underissued public assistance or SNAP benefits, and the client disputes the amount of the adjustment. This rule amendment clarifies that a client has a right to a hearing when the Department denies in part a claim that the Department previously underissued public assistance or SNAP program benefits. This rule also needs to be amended to implement ORS 412.069 to indicate a client has a right to hearing when the Department modifies a grant of aid or public assistance This rule also needs to

be amended because basing timeliness of a hearing request on the date of a postmark would create operational conflicts due to the number of client documents received, the number of staff opening mail, and the expense of changing procedures about saving envelopes. This amendment avoids these conflicts by continuing current contested case procedures under which the timeliness of a hearing request is based on the date the Department receives it, not the date of the postmark. This rule also needs to be amended to implement ORS 411.103 by setting out the Department's policy when a hearing request is late because a notice was not received and there was no actual knowledge of it. This rule also needs to be amended to align the Department's late hearing request guidelines more closely with other state agencies. Under this change, a much wider array of reasons for being late would be allowed but the rule would set a firm deadline for late hearing requests, after which no late hearing requests would be allowed other than those for liable adults who were not sent an overpayment notice.

OAR 461-025-0315 about expedited hearings needs to be amended to because its description of the methods by which clients are notified of hearings and what triggers a face-to-face hearing are outdated. This amendment permits notice by overnight mail and electronic mail which are more timely for the expedited time frame than certified mail. This amendment also reflects current practices under which OAH decides who receives an in-person hearing, primarily under ADA criteria.

OAR 461-115-0090 needs to be amended to protect clients and program integrity against persons with conflicts of interest by allowing the Department to deny their approval as authorized representatives in all programs except the SNAP program. This rule needs to be amended to clarify SNAP program policies by expressly stating requirements in federal regulations instead of cross-referencing the regulation and by stating when other rules and other sections of this rule apply.

OAR 461-115-0140 needs to be amended to further define guidelines for SNAP authorized representatives. These guidelines are being further defined by revising the policy about when an individual serving an Intentional Program Violation may serve as an authorized representative, and by stating when and how employees of the Department or contractor involved in the certification and issuance processes for SNAP benefits may serve as authorized representatives.

OAR 461-115-0230 needs to be amended to meet the federal requirement that the Department complete either a face to face or phone interview with all ERDC new applicants and those renewing their applications, and the state requirement to place such requirements in the rules.

OAR 461-120-0210 needs to be amended because the current rule indicates that a newborn without a Social Security Number may be added to an existing benefit group, with no further information or clarification for new benefit groups. Federal law does not limit newborns to existing benefit groups. Wording clarification meets the federal intent for including newborns in SNAP benefit groups, new or existing, up until six months following the date the child is born or until the group's next recertification, whichever is later.

OAR 461-130-0330 needs to be amended to clarify the rule providing in the REF and TANF programs that the penalty at the first level of disqualification is for up to three months or until the client has completed the two consecutive week cooperation period.

OAR 461-135-0010 needs to be amended because the rule has stated that children born to a mother eligible for and receiving OHP-CHP benefits are excluded from being assumed eligible. The Children's Health Insurance Reauthorization Act of 2009 allows these children to be considered assumed eligible. This amendment makes this rule follow federal law by indicating that children who are born to a mother eligible for and receiving OHP-CHP benefits are assumed eligible to receive medical benefits until the end of the month the child turns one year of age.

OAR 461-140-0120 needs to be amended to clarify when lump-sum income is considered unavailable and therefore not counted in determining eligibility. The rule will be clarified by broadening the exemption to cover spending on an immediate basic need and removing the specific emergency examples.

OAR 461-150-0080 needs to be amended because the Department has not intended to budget variable income in the SNAP program on a monthly basis. This budgeting method is not used since the removal of the monthly reporting system (MRS). All income for the SNAP is budgeted prospectively. Additionally, monthly budgeting would add to staff workload and potential monthly payment errors. It is better customer service to determine income prospectively so client's benefit level remains steady instead of changing on a monthly basis. This amendment makes this rule consistent with the current practice of budgeting income prospectively.

OAR 461-155-0250 needs to be amended to clarify current policy with respect to individuals subject to income standards related to service need. The rule currently describes this group as individuals living in a nonstandard living arrangement (nonstandard living arrangement is defined at OAR 461-000-0001(47)). The definition of nonstandard living arrangement includes individuals applying for or receiving services in a number of different care settings. The intention is that the term "services" refers only to those services that are, or would be, authorized by the Department. This requirement is already clearly stated in another rule (OAR 461-135-0750). This amendment clarifies OAR 461-155-0250 by specifically referencing OAR 461-135-0750. Additionally, a reference to OAR 461-145-0540 needs to be added regarding income standards for certain individuals who have established qualifying trusts to clarify that these individuals are not subject to the 300 percent income standard (OAR 461-145-0540 already establishes that these individuals are not subject to the 300 percent income standard).

OAR 461-165-0035 needs to be amended as part of the implementation of the Child Care Billing and Attendance Tracking (CCBAT) system to prevent the conflict of interest that would occur if the child care provider is also the alternate payee who authorized the provider's hours. The paper-based billing requires the signature of both the client and the provider to authorize payment for child care hours. The new billing system will give authority to an EBT cardholder (including an alternate payee) to enter and approve child care hours for payment. Allowing Department-approved child care providers to be an alternate payee would remove the client from the process of authorizing child care hours for payment, and the provider could authorize hours unilaterally, leaving the client and Department unprotected. This amendment addresses this conflict by stating that Department-approved child care providers may not be assigned as an alternate payee in the child care programs.

OAR 461-165-0180 needs to be amended due to upcoming changes associated with the new CCBAT automated attendance and billing system that scheduled for implementation starting September 2012. The policies are being updated by indicating which attendance records will

need to be kept in written form and giving a deadline for providers to complete registration for the CCBAT system.

OAR 461-175-0200 needs to be amended to comply with SNAP notice requirements in federal law (7 CFR 273.17(b)) and to align notice requirements across programs. These needs are addressed by amending this rule to indicate that the Department will send a decision notice when Department the Department adjusts previously underissued public assistance or SNAP benefits.

OAR 461-175-0210 about how the Department treats notice situations when clients move and whereabouts are unknown needs to be amended to follow SNAP reporting requirements. This amendment will follow SNAP reporting requirements by removing language allowing SNAP case closure in the SRS (Simplified Reporting System) and TBA (Transitional Benefit Alternative) reporting systems. Under the amended rule, only SNAP cases in CRS (Change Reporting System) may have their cases closed for returned mail with no forwarding address or whereabouts unknown.

Documents Relied Upon (and where they are available): CCDF state plan section 2.2.11, available from ERDC Program Manager, 500 Summer Street NE, E48, Salem, Oregon 97301

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The Department estimates that amending OAR 461-025-0300 will have a positive fiscal impact on the Department and the Oregon Health Authority because they will avoid the additional staffing expense needed to respond to interrogatories and requests for admission in contested case hearings. Each additional hearing representative costs about \$53,000 in state general fund. The Department is unable to estimate the extent of this impact (the number of positions needed) because there is no track record under the new statewide rules. The Department estimates that this amendment will have no fiscal impact on other state agencies, local government, clients, the public, and business, including small business. No small businesses are regulated by this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-025-0310 will benefit some clients who file late hearing requests that are less than four months late because more of these late hearing requests will be eligible for a hearing on the merits. This amendment will also have a negative impact on some clients who file hearing request more than four months late because probably none of these hearing requests will be eligible for a hearing on the merits. The Department is unable to estimate the fiscal impact of these changes on the Department, the Oregon Health Authority, other state agencies, clients, the public, local government, and businesses, including small businesses, because the Department does not centrally track sufficient information to determine how many additional clients will qualify for hearings, how many will no longer qualify, and the proportion of such clients who ultimately prevail on the merits. The economic effect on business is not significant. There is no cost of compliance for small business. There are no small businesses regulated under this rule change.

The Department estimates that amending OAR 461-025-0315 will have no fiscal impact on the Department, the Oregon Health Authority, the Office of Administrative Hearings, other state agencies, local government, clients, the public, and business, including small business. There is no cost of compliance for small business. No small businesses are regulated by this rule.

The Department estimates that amending OAR 461-115-0090 will have no fiscal impact on the clients, the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small business. Small businesses are not regulated by this rule.

The Department estimates that amending OAR 461-115-0140 will have no fiscal impact on the clients, the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small business. Small businesses are not regulated by this rule.

The Department estimates that amending OAR 461-115-0230 will have no fiscal impact on clients, the public, providers, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small business. No small businesses are subject to this rule.

The Department estimates that amending OAR 461-120-0120 will have no fiscal impact on the clients, the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small business. Small businesses are not regulated by this rule.

The Department estimates that amending OAR 461-130-0330 will have no fiscal impact on the clients, the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small business. Small businesses are not regulated by this rule.

The Department estimates that amending OAR 461-135-0010 will result in no fiscal impact on clients, the public, the Department, the Oregon Health Authority, other state agencies, local government, and business, including small business. There is no cost of compliance for small business. There are no small businesses subject to this rule. The Department estimates this rule change will not make additional clients eligible but instead will reduce the eligibility determination workload.

The Department estimates amending OAR 461-140-0120 will have no fiscal impact on the Department, clients, the public, the Oregon Health Authority, other state agencies, local government, and business, including small business. There is no cost of compliance for small business. There are no small businesses subject to this rule.

The Department estimates that amending OAR 461-150-0080 will have no fiscal impact on clients, the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small business. There are no small businesses subject to this rule. This amendment makes this rule consistent with current practices. The Department is unable to estimate the fiscal impact on clients of implementing the current rule language because it does not centrally track how income is calculated for each SNAP household. In February 2012, the SNAP caseload was 437,854.

The Department estimates that amending OAR 461-155-0250 will have no fiscal impact on the Department, the Oregon Health Authority, other state agencies, providers, clients, the public, local government, and business including small business. There is no cost of compliance for small business. No small businesses are subject to this rule.

The Department estimates that amending OAR 461-165-0035 will have no fiscal impact on the Department, other state agencies, providers, clients, the public, local government, and business including small business. There is no cost of compliance for small business. No small businesses are regulated by this rule.

The Department estimates that amending OAR 461-165-0180 will have no fiscal impact on clients, providers, the public, the Department, other state agencies, local government, and business, including small business. There is no net cost of compliance for small business. The record keeping amendment reduces the record keeping requirements for providers, saving time. The registration requirement is estimated to take five minutes. The Department estimates there are about 5,000 providers who are subject to this rule, and they may be considered small businesses.

The Department estimates that amending OAR 461-175-0200 will have a negative fiscal impact on the Department and the Oregon Health Authority because it will result in additional expenses in the contested case process, but the Department is unable to estimate the fiscal impact of this amendment because it has no basis to estimate how many additional hearings would be requested and how many such requests will ultimately result in a hearing. The Department estimates that there is no fiscal impact on other state agencies, local government, clients, the public, and business, including small business. There is no cost of compliance for small business. No small businesses are regulated by this rule.

The Department estimates that amending OAR 461-175-0210 will have no fiscal impact on the clients, the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small business. Small businesses are not regulated by this rule.

How were small businesses involved in the development of this rule? 461-165-0180: Child care providers and provider unions have seen presentations of the Child Care Billing and Attendance Tracking (CCBAT) project and are included in the periodic CCBAT Stakeholder updates. For the balance of rules in this filing, small businesses were not involved in the early development but will be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?: Yes, at the Office of Self-Sufficiency Programs RAC held on 12/13/11 or 3/13/12 or at the SPD Financial Eligibility Rules RAC held on 3/21/12. If not, why?

Signature

Robert Trachtenberg
Printed Name

04/13/12
Date

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, **except to the extent that Department rules are permitted to and provide for different procedures.**
 - (a) The method described in OAR 137-003-0520(10) is used in computing any period of time prescribed in this division of rules.
 - (b) **In any contested case to which this division of rules applies:**
 - (A) **When a party or claimant is not represented by an attorney, the Department and any party or claimant in the contested case are not required to provide the telephone numbers and addresses of witnesses prior to the hearing.**
 - (B) **When a party or claimant is represented by an attorney, the Department does not provide the telephone number and addresses of a witness if the Department has concerns due to domestic violence that the release of the information may affect the safety of the witness.**
- (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) Supplemental Nutrition Assistance Program.
- (3) **When a Department employee represents the Department in a contested case to which this division of rules applies, requests for admission and written interrogatories are not permitted.**
- (4) 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.
- (5) **The Department has adopted the exceptions to the Attorney General's model rules set out in subsection (1)(b) and section (3) of this rule due to its caseload volume and because these discovery procedures would unduly complicate or interfere with the hearing process.**

Stat. Auth.: ORS **409.050**, 411.060, **411.404**, 411.816, **412.014**, 412.049

Stats. Implemented: ORS **409.010**, 411.060, **411.404**, 411.816, **412.014**, 412.049

461-025-0310
Hearing Requests

- (1) A *claimant* (see 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) Except as provided in subsection (o) of this section, the Department has not approved or denied 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 SNAP program benefits --- 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 SNAP program 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 SNAP program benefits was an overissuance.
 - (e) The **Department modifies a *grant of public assistance* or a *grant of aid*; or the *claimant* claims that the Department previously underissued public assistance or SNAP program benefits and the Department denies ~~the~~, or **denies in part, that claim.****
 - (f) The household disputes its current level of SNAP program benefits.
 - (g) The *filing group* (see OAR 461-110-0370) is aggrieved by any action of the Department that affects the participation of the filing group in the SNAP 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 Pre-TANF program, the Department denies payment for a basic living expense (see OAR 461-135-0475) or other support service payment in the JOBS program (see subsection (c) of this section).
 - (k) In the TA-DVS program, when OAR 461-135-1235 provides a right to a hearing.
 - (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 facility services or *Waivered Services* (defined at OAR 461-001-0030).
 - (m) The claimant's benefits are changed to vendor, protective, or two-party payments.
 - (n) Department has issued a notice seeking repayment under ORS 411.892 to an employer participating in the JOBS program.
 - (o) In the OSIP and OSIPM programs, when the Department has not approved or denied an application within the time frames established in OAR 461-115-0190.
 - (p) 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 re-engagement process (see OAR 461-190-0231). In the TA-DVS program, a dispute about the contents of a TA-DVS case plan (see OAR 461-135-1205) is resolved through re-engagement if there is no right to a hearing under OAR 461-135-1235.
- (3) A request for hearing is complete:
- (a) In public assistance and SNAP programs, when the Department's Administrative Hearing Request form (form DHS 443) is --
 - (A) Completed;
 - (B) Signed by the *claimant*, the claimant's attorney, or the claimant's *authorized representative* (see OAR 461-115-0090); and
 - (C) Received by the Department. **OAR 137-003-0528(1)(a) (which allows hearing requests to be treated as timely based on the date of the postmark) does not apply to hearing requests contesting a *decision notice* (see OAR 461-001-0000). The Department has adopted the exception to the Attorney General's model rules set out in this paragraph due to operational conflicts.**

- (b) In the SNAP program, when the Department receives an oral or written statement from the *claimant*, the claimant's attorney, or the claimant's *authorized representative* that the *claimant* wishes to appeal a decision affecting the claimant's SNAP program benefits to a higher authority.
- (c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.
- (4) 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~~ **may issue an order accordingly of dismissal if there is no factual dispute about whether sections (7) and (10) of this rule provide a right to a hearing.** The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.
- (5) 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.
- (6) To be timely, a completed hearing request must be received by the Department not later than:
 - (a) Except as provided in subsection (b) of this section, the 45th day following the date of the *decision notice* (see OAR 461-001-0000) in public assistance and medical programs.
 - (b) The 90th day following the effective date of the reduction or termination of benefits in a public assistance program if the reduction or termination of aid is a result of a JOBS disqualification (see OAR 461-130-0330) or a penalty for failure to seek treatment for substance abuse or mental health (see OAR 461-135-0085).
 - (c) The 90th day following the date of the *decision notice* in the SNAP program, except:
 - (A) A *filing group* may submit a hearing request at any time within a *certification period* (see OAR 461-001-0000) 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 not more than twelve months has expired since the loss of benefits.
 - (d) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

- (e) 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.

- (7) ~~In determining timeliness under section (6) of this rule, delay caused by circumstances beyond the control of the *claimant* is not counted.~~ **When the Department receives a completed hearing request that is not filed within the timeframe required by section (6) of this rule but is filed no later than 120 days after a *decision notice* became a final order:**
 - (a) **The Department refers the hearing request to the Office of Administrative Hearings for a contested case hearing on the merits of the Department's action described in the notice --**
 - (A) **If the Department finds that the *claimant* and claimant's representative did not receive the *decision notice* and did not have actual knowledge of the notice; or**
 - (B) **If the Department finds that the *claimant* did not meet the timeframe required by section (6) of this rule due to excusable mistake, surprise, excusable neglect (which may include neglect due to significant cognitive or health issues), reasonable reliance on the statement of a Department employee relating to procedural requirements, or due to fraud, misrepresentation, or other misconduct of the Department.**
 - (b) **The Department may refer the request for a hearing to the Office of Administrative Hearings for a contested case proceeding to determine whether either of the following paragraphs apply.**
 - (A) **The *claimant* or claimant's representative received the *decision notice* or had actual knowledge of the *decision notice*. At the hearing, the Department must show that the *claimant* or claimant's representative had actual knowledge of the notice or that the Department mailed the notice to the correct address of the *claimant* or claimant's representative, as provided to the Department.**
 - (B) **The *claimant* qualifies for a contested case hearing on the merits under paragraph (a)(B) of this section.**
 - (c) **The Department may dismiss a request for hearing as untimely if –**
 - (A) **The *claimant* does not qualify for a hearing under subsection (a) of this section; or**
 - (B) **The Department receives a completed hearing request more than 120 days after a *decision notice* became a final order.**

- (8) In computing the time periods provided by this rule, see OAR 461-025-0300(1).
- (9) In the REF and REFM programs, a client is not eligible for a contested case hearing when assistance is terminated because the eligibility time period imposed by OAR 461-135-0900 has been reached. If the issue is the date of entry into the United States the Department provides for prompt resolution of the issue by inspection of the individual's documentation issued by the US Citizenship and Immigration Services (USCIS) or by information obtained from USCIS, rather than by contested case hearing.
- (10) If the Department receives an overpayment hearing request more than 120 days after an overpayment notice became a final order, the Department verifies whether its records indicate that the liable adult requesting the hearing was sent the overpayment notice, and --**
- (a) If no overpayment notice was sent to that liable adult, the overpayment hearing request is timely. The Department will send the claimant a *decision notice* or a contested case notice.**
- (b) If an overpayment notice was sent to the liable adult, there is no hearing right based on the issue of whether or not the hearing request was received.**

Stat. Auth.: ORS 411.060, **411.095**, 411.404, 411.408, 411.816, 411.892, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.095, **411.103**, 411.117, 411.404, 411.408, 411.816, 411.892, 412.009, 412.014, 412.049, 412.069

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 --
 - (A) Emergency assistance; or
 - (B) TA-DVS (see OAR 461-135-1235).
 - (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) Supplemental Nutrition Assistance Program 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 SNAP service or DSNAP is denied, or the claimant is aggrieved by an action of the Department that affects the expedited participation of the household in the SNAP 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~~ **overnight mail, or if the claimant agrees by electronic 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) Supplemental Nutrition Assistance 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~~ **overnight mail, or if the claimant agrees by electronic mail.** Following the expedited hearing, a final order must be issued not later than the ninth working day after the hearing was requested.
- (4) **If the Office of Administrative Hearings grants 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.**

Stat. Auth.: ORS 411.060, 411.095, **411.404**, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.095, 411.099, **411.103**, 411.117, **411.404**, 411.816, 412.049, ~~414.042~~

461-115-0090

Authorized Representatives; General

- (1) The head of household, *spouse* (see OAR 461-001-0000), 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.
- (2) In all programs except the SNAP program, the Department must allow a person or persons of the applicant's choice to act as the authorized representative unless the person may cause harm to the client **or may be considered as having a conflict of interest.**
- (3) In all programs except the SNAP program, if an authorized representative is needed but has not been designated by the client, the Department will appoint one.
- (4) In the SNAP program;:
 - (a) **Except as limited by sections (5) and (6) this rule, the selection of an authorized representative and their authority are limited by federal regulations in 7 CFR 273.2(n) representative must be made in writing by an adult member of the household.**
 - (b) **The selection and authority of an authorized representative is further limited by OAR 461-115-0140.**
- (5) A client who resides in a drug addiction or alcoholic treatment center identified in OAR 461-135-0550(2) may apply for SNAP program benefits only through an authorized representative. The authorized representative must be an employee of and designated by the center.
- (6) A client with a *disability* (see OAR 461-001-0015) who participates in the SNAP program while residing in a *group living facility* (see OAR 461-001-0015) may participate through an authorized representative or on his or her own behalf, at the option of the *group living facility* (see OAR 461-135-0510(2)(e)).
- (7) 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, **411.404**, 411.816, 412.014, 412.049, ~~414.042~~

Stats. Implemented: ORS 411.060, **411.404**, 411.816, 412.014, 412.049, ~~414.042~~

461-115-0140

Authorized Representative or Alternate Payee; SNAP

In the SNAP program:

- (1) ~~In the SNAP program, none~~ **None** of the following may serve as authorized representative (see **OAR 461-115-0090**) or alternate payee:
 - (a) ~~A person disqualified for fraud (unless he or she is the only adult member of the case)~~ **An individual serving an Intentional Program Violation, unless the Department determines no one else is available to serve as the authorized representative.**
 - (b) A landlord or a vendor of goods or items who deals directly with the client, including a retailer authorized to accept SNAP benefits.
 - (c) ~~Unless authorized by the Department's SNAP Program Manager or designee, an employee~~ **Employees** of the Department or an employee of a contractor involved in the certification and issuance processes for SNAP benefits, **unless authorized in writing by the designee of the Department's SNAP Program Manager. The designee must determine no one else is available to serve as the authorized representative.**
 - (d) A provider of meals for the homeless.
- (2) An authorized representative or alternate payee who knowingly misrepresents the circumstances of the *filing group* (see OAR 461-110-0370) or misuses SNAP benefits is subject to penalty as follows:
 - (a) In *group living* (see OAR 461-001-0015) situations or treatment programs for drug addiction or alcohol abuse, the facility may be prosecuted under applicable federal or state law.
 - (b) For other authorized representatives and alternate payees not covered by subsection (a) of this section, 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

461-115-0230

Interviews

- (1) In the TANF program, the Department may conduct a required face-to-face interview by telephone or home visit if an *authorized representative* (see OAR 461-115-0090) has not been appointed, and participating in a face-to-face interview is a *hardship* (see section (2) of this rule) for the household.
- (2) For the purposes of this rule, "hardship" includes but is not limited to:
 - (a) Care of a household member;
 - (b) A client's age, *disability* (see OAR 461-001-0000), or illness;
 - (c) A commute of more than two hours from the client's residence to the nearest *branch office* (see OAR 461-001-0000);
 - (d) A conflict between the client's work or training schedule and the business hours of the *branch office*; and
 - (e) Transportation difficulties due to prolonged severe weather or financial hardship.
- (3) In the SNAP program:
 - (a) An interview must be scheduled so that the *filing group* (see OAR 461-110-0370) has at least ten days to provide any needed verification before the deadline under OAR 461-115-0210.
 - (b) A face-to-face interview must be granted at the applicant's request.
 - (c) When an applicant misses the first scheduled interview appointment, the Department must inform the applicant by regular mail of the missed interview.
 - (d) An applicant who fails to attend a scheduled interview must contact the Department no later than 30 days following the *filing date* (OAR 461-115-0040) to be eligible for benefits.
 - (e) An adult in the *filing group* or the *authorized representative* of the *filing group* is interviewed once every 12 months.
- (4) **In the ERDC program:**
 - (a) **Except as provided otherwise in subsection (c) of this section, an interview with an adult in the *filing group* (see OAR 461-110-0350) or the *authorized representative* of the *filing group* is required to process an initial application and a renewal of benefits.**

- (b) **A phone interview is preferred; however, a face-to-face interview must be granted at the applicant's request.**
- (c) **An interview is not required when the Department has implemented the Child Care Reservation List and it is determined that a *decision notice* of ineligibility will be sent under OAR 461-115-0016.**

Stat. Auth.: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

461-120-0210

Requirement to Provide Social Security Number (SSN)

- (1) In the CAWEM, ERDC, REF, and REFM programs, a member of a *need group* (see OAR 461-110-0630) or a *benefit group* (see OAR 461-110-0750) is not required to provide or apply for a social security number (SSN). In these programs, the Department may request that a member of the filing group or *need group* provide an SSN on a voluntary basis.
- (2) In the EA and TA-DVS programs, an individual must provide his or her SSN if the individual can.
- (3) Except as provided in section (5) of this rule, in the BCCM, CEC, CEM, EXT, HKC, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, to be included in the *benefit group*, an individual must:
 - (a) Provide a valid SSN for the individual; or
 - (b) Apply for a number if the individual does not have a valid one and provide the SSN when it is received.
- (4) Except as provided in sections (5) to (7) of this rule, in the SNAP and TANF programs, to be included in the *need group*, an individual (other than an unborn) must:
 - (a) Provide a valid SSN for the individual; or
 - (b) Apply for a number if the individual does not have one and provide the SSN when it is received.
- (5) In the BCCM, CEC, CEM, EXT, GA, GAM, HKC, MAA, MAF, OHP, OSIPM, QMB, SAC, and SNAP programs, an individual is not required to apply for or provide an SSN if the individual is ---
 - (a) A member of a religious sect or division of a religious sect that has continuously existed since December 31, 1950; and
 - (b) Adheres to its tenets or teachings that prohibit applying for or using an SSN.
- (6) The requirement to apply for or provide the SSN is delayed as follows:
 - (a) In the BCCM, CEC, CEM, EXT, MAA, MAF, OHP, and SAC programs, a newborn who is assumed eligible based on the eligibility of the mother of the newborn may receive benefits until one year of age without meeting the SSN requirements of section (4) of this rule.

- (b) In the SNAP program:
 - (A) An applicant eligible for expedited services may receive his or her first full month's allotment without meeting the SSN requirement but must meet the requirement before receiving a second full month's allotment.
 - (B) Before applying for or providing an SSN, a newborn may be ~~added to an existing~~ **included in a** *benefit group* (see OAR 461-110-0750) for six months following the date the child is born or until the group's next recertification, whichever is later.
 - (c) In the TANF program, without meeting the SSN requirements of section (4) of this rule, a newborn child born in Oregon may be added to the *benefit group* for six months following the child's date of birth or until the next redetermination of eligibility of the *filing group* (see OAR 461-110-0330), whichever is sooner.
- (7) In the SNAP program:
- (a) An individual who refuses or fails without good cause to provide or apply for an SSN when required by this rule is ineligible to participate. This period of ineligibility continues until the individual provides the SSN to the Department.
 - (b) An individual may participate in SNAP for one month in addition to the month of application, if the individual can show good cause why the application for an SSN has not been completed. To continue to participate, the individual must continue to show good cause each month until the application for an SSN is complete with Social Security Administration.
 - (c) An individual meets the good cause requirement in subsections (a) and (b) of this section if the individual provides evidence or collateral information that the individual applied for or made every effort to supply the Social Security Administration with the necessary information to complete the application process. Delays due to illness not associated with a *disability* (see OAR 461-001-0015), lack of transportation, or temporary absence do not qualify as good cause under this rule.
- (8) This rule authorizes or requires the collection of an SSN for each of the following purposes.
- (a) The determination of eligibility for benefits. The SSN is used to verify income and other assets, and match with other state and federal records such as the Internal Revenue Service (IRS), Medicaid, child support, Social Security benefits, and unemployment benefits.
 - (b) The preparation of aggregate information and reports requested by funding sources for the program providing benefits.

- (c) The operation of the program applied for or providing benefits.
- (d) Conducting quality assessment and improvement activities.
- (e) Verifying the correct amount of payments, recovering overpaid benefits, and identifying any individual receiving benefits in more than one household.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.826, 414.831, 414.839

461-130-0330

Disqualifications; Pre-TANF, REF, SNAP, TANF

- (1) In the Pre-TANF, REF, SNAP, and TANF programs, the Department may not disqualify from program benefits a client who is a *volunteer* (see OAR 461-130-0305) participant in an employment program.
- (2) In the Pre-TANF, REF, and TANF programs, a *mandatory* (see OAR 461-130-0305) client who fails to comply with an employment program participation requirement and does not have *good cause* (see OAR 461-130-0327) for the failure to comply is subject to disqualification under this rule only after the requirements of all of the following subsections are met:
 - (a) The client has had the opportunity to participate in the re-engagement process under OAR 461-190-0231;
 - (b) The Department has determined the client is willfully non-compliant and does not have *good cause* for failing to comply with a requirement of the program;
 - (c) The Department has offered (and the client has refused) or conducted screenings (and assessed if appropriate) for physical or mental health needs, substance abuse, domestic violence, and learning needs;
 - (d) The Department has determined the client has no barriers (see OAR 461-001-0025) or refuses to take appropriate steps to address identified barriers;
 - (e) The Department has determined the client has not met *federally required participation rates* (see OAR 461-001-0025); and
 - (f) The Department has assessed for any risk of harm posed to the children by a reduction in cash assistance.
- (3) In the REF and TANF programs, the effects of a JOBS disqualification are progressive. There are two levels of disqualification. 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) At the first level, the penalty is removal of the disqualified client from the *need group* (see OAR 461-110-0630) for **up to three months or until the client has completed the two-consecutive week cooperation period.**
 - (b) At the second level, the *need group* receives no cash benefit in the program for one month.

- (c) At the end of the second level, program benefits are closed and the filing group may not receive program benefits for the following two consecutive months. This may be prevented if the disqualified client:
 - (A) Contacts a representative of the Department in order to re-engage in the JOBS program prior to the end of the second level; and
 - (B) Begins the two consecutive weeks of cooperation as outlined in section (4) of OAR 461-130-0335 prior to the end of the second level; or
 - (C) Is no longer a member of the *household group* (see OAR 461-110-0210 and 461-130-0335(2)); or
 - (D) Is unable to participate because there are no appropriate activities (see OAR 461-001-0025) or *support services* (see OAR 461-001-0025) necessary to support the *activity* (see OAR 461-001-0025).
- (4) In the SNAP program:
 - (a) A *mandatory* client who fails to comply with the requirements of an employment program is subject to disqualification. A disqualified client is removed from the *need group* until he or she meets the employment program requirements and serves the applicable progressive disqualification under the following subsections:
 - (A) One calendar month for the first failure to comply.
 - (B) Three calendar months for the second failure to comply.
 - (C) Six calendar months for the third and subsequent failures to comply.
 - (b) A client who is *exempt* (see OAR 461-130-0305) from participation in the SNAP employment program because he or she is a *mandatory* participant in the JOBS program, receiving unemployment compensation benefits, or has applied for unemployment compensation benefits and is waiting on an initial decision must comply with the requirements of those programs. If the client fails to comply with the requirements of the applicable program the client is disqualified from receiving SNAP benefits, unless he or she can show *good cause* under OAR 461-130-0327.

Stat. Auth.: ORS 411.060, 411.816, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.009, 412.049

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) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is assumed eligible for the EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.
- (3) A pregnant woman who was eligible for and receiving medical assistance under any Medicaid program and becomes ineligible while pregnant is assumed eligible for Medicaid until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.
- (4) A *child* (see OAR 461-001-0000) 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 under this section until the end of the month the *child* turns one year of age.
- (5) 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.
- (6) The individuals described in subsection (a) and (b) of this section are assumed eligible for OSIPM (except OSIPM-EPD) unless subsection (c) or (d) of this section applies:
 - (a) A recipient of SSI benefits.
 - (b) An individual 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.
 - (c) An individual described in subsection (a) or (b) of this section who is in a *nonstandard living arrangement* (see OAR 461-001-0000) is not eligible for *long-term care* (see OAR 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client).
 - (d) An individual described in subsection (a) or (b) of the section who is in a *nonstandard living arrangement* is not assumed eligible for long-term care

services if *countable* resources exceed the limit after performing the calculation under OAR 461-160-0580.

- (7) A client who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB-BAS program.
- (8) A client is assumed eligible for the REFM program if ---
 - (a) The client is receiving cash assistance through the REF program;
 - (b) The client loses eligibility for cash assistance through the REF program only because of income or resources;
 - (c) The client loses eligibility for the EXT, MAA, MAF, or SAC programs, but still meets the requirements of the REFM program; or
 - (d) The client had refugee-related medical assistance established in another state based on refugee status granted by the United States Citizenship and Immigration Services, and moved to Oregon within the client's first eight months in the United States.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 412.049, 414.025

461-140-0120

Availability and Treatment of Lump-Sum Income

- (1) *Lump-sum income* (see OAR 461-001-0000) is treated as follows if it is received by a member of a *financial group* (see OAR 461-110-0530).
- (2) In the EA, MAA, MAF, REF, REFM, SAC, SNAP, 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 **immediate basic need or 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 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, except that in the OSIP and OSIPM programs retroactive SSB and SSI payments are treated in accordance with OAR 461-145-0490 and 461-145-0510.
 - (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.

- (5) 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.
- (6) In the OSIP-EPD and OSIPM-EPD programs, *lump-sum income* is counted as a resource.

Stat. Auth.: ORS 411.060, **411.404**, 411.816, **412.014**, 412.049

Stats. Implemented: ORS 411.060, **411.404**, 411.816, **412.014**, 412.049

461-150-0080

Prospective Budgeting of Variable Income; Not OHP; Not MRS

In all programs except the OHP program, *variable income* (see OAR 461-001-0000) is used as follows in prospective *budgeting* (see OAR 461-001-0000) and *eligibility* (see OAR 461-001-0000) so that the anticipated amount is the same for each month, except as specified in OAR 461-150-0060 and section (6) of this rule:

- (1) For income paid more than once per month, determine an average amount per pay period in accordance with sections (2) to (4) of this rule. The average amount is then converted to a monthly amount as follows, if paid --
 - (a) Twice per month, multiply by 2;
 - (b) Every other week, multiply by 2.15; or
 - (c) Once per week, multiply by 4.3.
- (2) For variable earned income based on an hourly wage when the past is representative, monthly income is determined by calculating an average number of hours per pay period, then these hours are multiplied by the hourly wage and converted to a monthly amount under section (1) of this rule.
- (3) For variable earned income involving various rates of pay (overtime, shift differential, tips) when the past is representative, monthly income is determined by calculating the average income per pay period, then the average income is converted to a monthly amount under section (1) of this rule.
- (4) For variable earned or unearned income when the past is representative and income cannot be calculated under section (2) or (3) of this rule, monthly income is determined by averaging the income over --
 - (a) A representative period of months by totaling the income for those months and dividing by the number of months used; or
 - (b) A representative number of pay periods and converting to a monthly amount under section (1) of this rule.
- (5) For variable earned and unearned income when the past is not representative of the income the *financial group* (see OAR 461-110-0530) will receive during the eligibility period, the client and the Department jointly determine the anticipated income.
- (6) In the SNAP program, ÷
 - (a) ~~A *financial group* with *variable income* may choose to have the benefit level changed from month to month under this section or to have the monthly income~~

~~determined under sections (1) to (5) of this rule. A *financial group* choosing to have the benefit level changed from month to month must inform the Department of the anticipated income for each month of the *certification period* (see OAR 461-001-0000) and the Department uses the reported anticipated income to calculate the monthly benefit.~~

~~(b)~~—A *financial group* meeting the definition of "destitute household" in OAR 461-135-0575 is not eligible to use the income averaging option for the *initial month* (see OAR 461-001-0000) of eligibility or the first month of a new *certification period*. For a destitute *financial group*, income for the *initial month* of eligibility and the first month of a *certification period* is determined under OAR 461-150-0100, thereafter, the *financial group* is subject to sections (2) to (5) of this rule.

Stat. Auth.: ORS 411.060, **411.070**, **411.404**, 411.816, **412.014**, 412.049

Stats. Implemented: ORS 411.060, **411.070**, **411.404**, 411.816, **412.014**, 412.049

461-155-0250

Income and Payment Standard; OSIPM

- (1) A client who is assumed eligible per OAR 461-135-0010(6) is presumed to meet the income limits for the OSIPM program.
- (2) A client in a *nonstandard living arrangement* (see OAR 461-001-0000) **meeting the requirements of OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in section (4) of this rule**, must have countable income that is equal to or less than 300 percent of the full SSI standard for a single individual (except OSIPM-EPD) **or have established a qualifying trust as specified in OAR 461-145-0540(9)(c)**.
- (3) The OSIPM (except OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows:

OSIPM Items of Need				
	One Person in Need Group		Two People in Need Group	
Adjusted No. in Household	One	Two or More	Two	Three or More
Shelter	429.00	199.00	531.00	197.00
Food	169.00	166.33	324.00	308.67
Other	100.00	100.00	193.00	193.00

- (4) A client, other than one identified in section (1), (2), or (6) of this rule, must have adjusted income below the standard in this section. The Department determines the adjusted number in the household under OAR 461-155-0020.

OSIPM Adjusted Income Standards				
	One Person in Need Group		Two People in Need Group	
Adjusted No. in Household	One	Two or More	Two	Three or More
AD/OAA	698.00	465.33	1,048.00	698.67
AB	700.70	476.03	1,048.00	699.00

- (5) In the OSIPM program, individuals in a nursing facility or an ICF-MR are allowed the following amounts for clothing and personal incidentals:
 - (a) For clients who receive a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

- (b) For all other clients, \$30 is allowed.
- (6) In the OSIPM-EPD program, the adjusted earned income limit is 250 percent of the federal poverty level for a family of one.

Stat. Auth.: ORS 411.060, 411.070, **411.404**, 411.704, 411.706

Stats. Implemented: ORS 411.060, 411.070, **411.404**, 411.704, 411.706

461-165-0035

Alternate Payees; EBT

- (1) An alternate payee may be used to obtain and use benefits for the ~~benefit group~~ **benefit group** (see **OAR 461-110-0750**) when benefits are issued by electronic benefit transfer (EBT).
- (2) ~~An~~ **Except as provided in section (5) of this rule, an** alternate payee may be used any time the primary person, ~~their~~ **the spouse of the primary person**, or another responsible **adult** member of the filing group names one in writing on a form designated by the Department.
- (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~~ **the Department issues** an EBT card and personal identification number (PIN) for that person.
- (5) **For child care benefits in the ERDC, JOBS, JOBS Plus, and TANF programs, an alternate payee may not be a Department-approved child care provider or acting on behalf of a Department-approved child care provider.**

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.049

Stats. Implemented: ORS ~~409.050~~ **409.010**, 411.060, 411.070, 411.816, 412.049

461-165-0180

Eligibility of Child Care Providers

- (1) The Department must approve a child care provider to receive payment for child care if information available to the Department provides no basis for denying eligibility unless --
 - (a) The provider previously was denied and subsequently was not determined to be eligible; or
 - (b) The Department determines, following a preliminary or final fitness determination (see OAR 407-007-0320) or Child Protective Service (CPS) records checks, that the provider or other *subject individual* (see OAR 407-007-0210(21)(a)(G)) is not eligible for payment.
- (2) Ineligibility for payment may result from any of the following:
 - (a) A finding of "denied". A provider may be denied under OAR 461-165-0410 and 461-165-0420. If, after conducting a weighing test as described in OAR 407-007-0210, the Department finds substantial risk to the health or safety of a child in the care of the provider, the provider must be denied and is ineligible for payment. A provider who has been denied has the right to a hearing under OAR 407-007-0330.
 - (b) A finding of "failed". A provider may be failed if the Department determines, based on a specific eligibility requirement and evidence, that a provider does not meet the eligibility requirements of this rule. A provider with a status of "failed" may reapply at any time by providing the required documents and information to the Department for review.
 - (c) The Department has referred an overpayment against the provider for collection and the claim is unsatisfied.
- (3) The provider must submit a completed Department Listing Form (DHS 7494) to the Department. The provider and each individual identified under section (4) of this rule is considered a *subject individual* and must complete and sign the authorization for a records check through the Criminal History (CH) record system maintained by the Oregon State Police and the Child Protective Service (CPS) record system maintained by the Department and, if necessary, an authorization to release information and fingerprint cards. The provider must fully disclose all requested information as part of the records check.
- (4) A *subject individual* is identified as follows:
 - (a) The site director of an exempt child care facility and each employee of the facility who may have unsupervised access to a child in care.

- (b) The child care provider and each individual the provider uses to supervise a child in his or her absence.
 - (c) In the case of a provider who provides care for a child in the provider's home--
 - (A) Each individual 16 years of age or older who lives in the provider's home; and
 - (B) Each individual who frequently visits the home of the provider during the hours care is provided and may have unsupervised access to a child in care.
- (5) To receive payment or authorization for payment, the provider must meet the requirements of either subsection (a) or (b) of this section:
- (a) Currently be certified or registered with the Child Care Division (CCD) of the Employment Department under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 unless legally exempt, and be in compliance with the applicable rules.
 - (b) If legally exempt from being certified or registered with the CCD, complete the Department's background check process and be approved by the Department.
- (6) Each *subject individual* must:
- (a) Allow the Department to conduct a national criminal history records check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 407-007-0250. The Department must withhold authorization for payment to a provider until the background check process is complete and the Department approves the provider.
 - (b) 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.
 - (c) Have a history of behavior that indicates no substantial risk to the health or safety of a child in the care of the provider.
- (7) Each provider must:
- (a) Obtain written approval from their certifier or certifier's supervisor if the provider is also certified as a foster parent.
 - (b) Be 18 years of age or older and in such physical or mental health as will not affect adversely the ability to meet the needs of safety, health, and well-being of a child in care.

- (c) Not be in the same filing group as the child cared for and cannot be the *parent* (see OAR 461-001-0000) of the child.
- (d) Allow the Department to inspect the site of care while child care is provided.
- (e) Keep daily attendance records showing the arrival and departure times for each child in care and billing records for each child receiving child care benefits from the Department. The provider must keep ~~the~~ **written records of attendance that are not able to be recorded in the Child Care Billing and Attendance Tracking (CCBAT) system** for a minimum of 12 months and provide the **written** records to the Department upon request.
- (f) Be the individual or facility listed as providing the child care. The provider must notify the Department before using someone else to supervise a child on a temporary basis.
- (g) 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.
- (h) Report to the Department within 10 days of occurrence:
 - (A) Any arrest or involvement with CPS or any other agency providing child protective services of the child care provider, household member, or facility member.
 - (B) Any change to his or her name or address including where care is provided, and the addition of any individual or employee to the household or facility.
- (i) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.
- (j) Supervise each child in care at all times.
- (k) Prevent any individual who behaves in a manner that may harm children from having access to a child in the care of the provider.
- (l) Allow the custodial parent of a child in his or her care to have immediate access to the child at all times.
- (m) Inform a parent of the need to obtain immunizations for a child.
- (n) Take reasonable steps to protect a child in his or her care from the spread of infectious diseases.

- (o) 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 in the home of the child must meet only the requirements of paragraph (A) of this subsection:
 - (A) Each floor level used by a child has two usable exits to the outdoors (a sliding door or window that can be used to evacuate a child is considered a usable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.
 - (B) The facility has safe drinking water.
 - (C) The facility has a working smoke detector on each floor level and in any area where a child naps.
 - (D) Each fireplace, space heater, electrical outlet, wood stove, stairway, pool, pond, and any other hazard has a barrier to protect a child.
 - (E) Any firearm, ammunition, and other dangerous item such as any medicine, drug, cleaning supply, paint, plastic bag, and poisonous and toxic material is kept in a secure place out of a child's reach.
 - (F) The building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard-free condition.
 - (G) The facility has a telephone in operating condition.
 - (p) Complete and submit a new listing form every two years, or sooner at the request of the Department, so that the Department may review the provider's eligibility. This requirement does not apply to a provider registered or licensed by CCD.
 - (q) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.
 - (r) **Complete registration for the CCBAT system within 45 days of the date of the registration notice.**
- (8) A child care provider not subject to certification or registration with the Oregon Employment Department, Child Care Division (CCD) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250, must complete an orientation provided by the Department or a Child Care Resource and Referral agency within 90 days of being approved by the Department if he or she:
- (a) Receives funds from the Department; and

- (b) Begins providing child care services after June 30, 2010, or resumes providing child care services, after a break of more than one year that began after June 30, 2010.

Stat. Auth.: ORS 181.537, 409.050, 409.610, 411.060, 411.070, 411.122, 657A.340, 657A.450
Stats. Implemented: ORS 181.537, ~~409.050~~ **409.010**, 409.610, 411.060, 411.070, 411.122,
657A.340, 657A.450

461-175-0200

Notice Situations; General Information

- (1) In the EA program, a *basic decision notice* (see OAR 461-001-0000) is sent for all situations.
- (2) In the SNAP program, a *basic decision notice* is sent for all actions on applications for assistance.
- (3) In the JOBS program:
 - (a) A *basic decision notice* is sent whenever a request for a support service payment is denied.
 - (b) No decision notice is required if request for a support service is approved.
- (4) In the TANF program, a notice approving 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.
- (5) In the Pre-TANF program, a *basic decision notice* is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.
- (6) In the TA-DVS program, a *basic decision notice* (see OAR 461-001-0000) is sent to a safe mailing address or hand delivered for all situations. This includes when the program is approved, denied, or closed (prior to the end of the 90 day eligibility period) and when a payment under the program is denied.
- (7) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a *decision notice* (see OAR 461-001-0000) 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* (see OAR 461-001-0000) 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.
 - (c) **A *decision notice* is sent whenever the Department adjusts previously underissued public assistance or SNAP benefits.**
- (8) In all programs:

- (a) Notwithstanding any rule in Chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:
 - (A) Amend a *decision notice* with another *decision notice* or a contested case notice.
 - (B) Amend a contested case notice.
 - (C) Delay a reduction or closure of benefits as a result of a client's request for hearing.
 - (D) Extend the effective date on a *decision notice* or contested case notice.
- (b) Except as provided in subsection (a) of this section or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the *financial group* (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.
- (c) No *decision notice* is required in each of the following situations:
 - (A) Benefits are ended because there is no living person in the *benefit group* (see OAR 461-110-0750).
 - (B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.
 - (C) The client has signed a voluntary agreement that qualifies as a final order under ORS 183.417(3)(b) (see OAR 461-175-0340(2)).
 - (D) A *decision notice* that included the eligibility begin and end dates was given for TA-DVS program benefits and the 90 day eligibility period ends.
- (d) When the Department amends a *decision notice* with another *decision notice* under subsection (a) of this section, the date of the amended notice restarts the client's deadlines to request a hearing or continuing benefits, or both.
- (e) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a client's timeline to request continuing benefits.
- (f) When a client has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the client need not re-file the hearing request or renew the request for continuing benefits.

- (9) When a child is found eligible for HKC program benefits based on an ELA determination, the Department sends a *basic decision notice* which includes a statement about how the child may qualify for HKC or OHP program benefits with a lower or no premium payment.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231
Stats. Implemented: ORS 183.415, 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826

461-175-0210

Notice Situation; Client Moved or Whereabouts Unknown

- (1) To end benefits if a client has moved out of state, the Department sends the following *decision notice* (see OAR 461-001-0000):
 - (a) In the ERDC, EXT, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, REF, REFM, SAC, and TANF programs:
 - (A) The Department sends a *timely continuing benefit decision notice* (see OAR 461-001-0000) to clients who have moved out of state.
 - (B) The Department sends a *basic decision notice* (see OAR 461-001-0000) if the client becomes eligible for benefits in another state.
 - (b) In the SNAP program, no *decision notice* is required if the Department determines that the *benefit group* (see OAR 461-110-0750) has moved out of Oregon.
- (2) If Department mail or benefits have been returned with no forwarding address, the Department gives the client the benefits if the client's whereabouts become known during the period covered by the returned benefits. See OAR 461-165-0130 for when SNAP benefits can be sent out of state. If the client's whereabouts are unknown, the Department ends benefits by sending the following *decision notice* to their last known address:
 - (a) In all programs except the SNAP program, a *basic decision notice*.
 - (b) In the SNAP program, **for cases in the CRS reporting system**, no *decision notice* is required.

Stat. Auth.: ORS 411.060, 411.095, **411.404**, 411.816

Stats. Implemented: ORS 411.060, 411.095, **411.404**, 411.816