

Determining Availability of Income

- (1) This rule describes the date income is considered available, what amount of income is considered available, and situations in which income is considered unavailable.
- (2) Income is considered available the date it is received or the date a member of the *financial group* (see OAR [461-110-0530](#)) has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:
 - (a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.
 - (b) Income withheld or diverted at the request of an individual is considered available on the date the income would have been paid without the withholding or diversion.
 - (c) An advance or draw of earned income is considered available on the date it is received.
 - (d) Income that is averaged, annualized, converted, or prorated is considered available throughout the period for which the calculation applies.
 - (e) A payment due to a member of the *financial group* but paid to a third party for a household expense is considered available when the third party receives the payment.
 - (f) In prospective budgeting, income is considered available in the month the income is expected to be received (see OAR [461-150-0020](#)).
 - (g) For *Medicare Savings Programs* (see OAR [461-001-0000](#)) and Oregon Supplemental Income Program Medical (OSIPM), except for self-employment (see OAR [461-145-0915](#)), wages that are earned in one period of time but paid in another are

considered available when they are received, such as a teacher who works for nine months but is paid over twelve.

- (3) The following income is considered available even if not received:
 - (a) Deemed income.
 - (b) In the Refugee Assistance (REF), Refugee Assistance Medical (REFM), and Temporary Assistance for Needy Families (TANF) programs, the portion of a payment from an assistance program, such as public assistance, unemployment compensation, or Social Security, withheld to repay an overpayment.
 - (c) For *Medicare Savings Programs* and OSIPM, the portion of a payment from an assistance program (such as public assistance, unemployment compensation, or Social Security) withheld to repay an overpayment of the same source:
 - (A) If withheld prior to July 1, 2014.
 - (B) If withheld on or after July 1, 2014 and:
 - (i) No member of the *financial group* was receiving *Medicare Savings Programs* or OSIPM during the period the benefit was overpaid; or
 - (ii) The withheld amount is not excluded under paragraph (5)(e)(A) of this rule.
 - (d) In the Supplemental Nutrition Assistance Program (SNAP), the portion of a payment from the TANF program counted as disqualifying income under OAR [461-145-0105](#).
- (4) Unless exclusions under another rule in chapter 461 apply, the amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions including flexible spending accounts.
- (5) The following income is not considered available:

- (a) Wages withheld by an employer in violation of the law.
- (b) Income received by another individual who does not pay the benefit applicant or recipient their share.
- (c) Income received by a member of the *financial group* after the individual has left the household.
- (d) Moneys withheld from or returned to the source of the income to repay an overpayment from that source unless the repayment is *countable* (see OAR [461-001-0000](#))--
 - (A) In the SNAP program, under OAR [461-145-0105](#).
 - (B) In the REF, REFM, and TANF programs, under subsection (3)(b) of this rule.
- (e) For *Medicare Savings Programs* and OSIPM:
 - (A) The portion of a payment from an assistance program, such as public assistance, unemployment compensation, or Social Security withheld on or after July 1, 2014 to repay an overpayment from the same source if at least one member of the *financial group* was receiving *Medicare Savings Programs* or OSIPM during the period the benefit was overpaid. The amount considered unavailable cannot exceed the amount of the overpaid benefit previously counted in determining *eligibility* (see OAR [461-001-0000](#)) for *Medicare Savings Programs* or OSIPM.
 - (B) Monies withheld from or returned to a source of income, when the source is not an assistance program, to repay an overpayment of the same source.
 - (C) Unearned income not received because a payment was reduced to cover expenses incurred by a member of the *financial group* to secure the payment. (For example, if a retroactive check is received from a benefit program other

than Supplemental Security Income (SSI), legal fees connected with the claim are subtracted to determine available income. Or, if payment is received for damages received as a result of an accident the amount of legal, medical, or other expenses incurred by a member of the *financial group* to secure the payment are subtracted to determine available income.)

(D) For an individual determined eligible for *community-based care* (see OAR [461-155-0630](#)) or nursing facility services:

(i) Income that cannot be accessed due to incapacity shall be considered unavailable for up to three months while a legal or financial representative is being established, if necessary to secure placement.

(ii) Unavailability may be extended past the initial three months if additional time is needed to establish a legal or financial representative.

(iii) Unavailability of income under this paragraph is subject to approval by the APD Medicaid Financial Eligibility policy unit at initial request and for any extension.

(f) For an individual who is not self-employed, income required to be expended on an ongoing, monthly basis on an expense necessary to produce the income, such as supplies or rental of work space.

(g) Income received by the *financial group* but intended and used for the care of an individual not in the *financial group* as follows:

(A) If the income is intended both for an individual in the *financial group* and an individual not in the *financial group*, the portion of the income intended for the care of the individual not in the *financial group* is considered unavailable.

- (B) If the income is intended only for an individual not in the *financial group*, the portion of the income used for the care of the individual not in the *financial group* is considered unavailable.
 - (C) If the portion intended for the care of the individual not in the *financial group* cannot readily be identified, the income is prorated evenly among the individuals for whom the income is intended. The prorated share intended for the care of the individual not in the *financial group* is then considered unavailable.
 - (h) In the REF, REFM, SNAP, and TANF programs, income controlled by the individual's abuser if the individual is a survivor of *domestic violence* (see OAR [461-001-0000](#)), the individual's abuser controls the income and will not make the money available to the *filing group* (see OAR [461-110-0310](#)), and the abuser is not in the individual's *filing group*.
- (6) The availability of *lump-sum income* (see OAR [461-001-0000](#)) is covered in OAR [461-140-0120](#).

Statutory/Other Authority: ORS [409.050](#), [411.060](#), [411.070](#), [411.404](#), [411.816](#), [412.049](#), [413.085](#), [414.619](#)

Statutes/Other Implemented: ORS [409.010](#), [409.050](#), [411.060](#), [411.070](#), [411.404](#), [411.706](#), [411.816](#), [412.049](#), [412.072](#), [413.085](#), [414.117](#), [414.619](#)

[Previous Rules](#)

This website displays **unofficial** administrative rules with an effective date of January 1, 2014 and after. For official administrative rules, please visit the [Secretary of State Chapter 461 website](#). For administrative rule versions effective before January 1, 2014, submit a public records request to the [Secretary of State public records request website](#).