461-140-0242 **Effective 7-06-26**

Disqualifying Transfer of Assets Including Home; Nursing Facility and Home and Community-Based Care

For an individual applying for or receiving Department-paid nursing facility services or *home and community-based care* (see OAR 461-001-0030):

(1) For the purposes of this rule:

(a) The definition of "child" in OAR 461-001-0000 does not apply.

(b) "Child" means a natural or adoptive son or daughter who is:

(A) Under age 21; or

(B) Any age and has been determined to meet the blindness criteria of OAR 461-125-0330 or the disability criteria of OAR 461-125-0370.

(c) “Home” is defined in OAR 461-145-0220.

(d) “Asset” means all income and resources of the individual and of the individual’s *spouse* (see OAR 461-001-0000). This includes income or resources to which the individual or *spouse* is entitled but does not receive because of any action by:

(A) The individual or their *spouse*;

(B) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or their *spouse*; or

(C) Any person, including a court or administrative body, acting at the direction or upon the request of the individual or their *spouse*.

(2) A transfer of an *asset* (see section (1) of this rule), including a *home* (see section (1) of this rule), by an individual or the *spouse* of the individual is a disqualifying transfer unless the requirements of at least one of the following subsections are met:

(a) The transfer was made exclusively for purposes other than establishing eligibility or maintaining benefits.

(b) The title to the *asset* was transferred to the person's *spouse*, the person's *child* (see section (1) of this rule) who is blind or has a disability under the criteria of the Social Security Administration, or another for the sole benefit of the *spouse* or a *child* who is blind or has a disability under the criteria of the Social Security Administration, provided that the transfer is arranged in such a way that no individual or entity except this *spouse* or *child* can benefit from the *asset* transferred in any way, whether at the time of transfer or any time in the future. A direct transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the *spouse* or *child* who is blind or has a disability under the criteria of the Social Security Administration is not considered to be established for the benefit of one of those individuals. In order for a transfer or a trust to be considered for the sole benefit of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual based on the life expectancy of the individual.

(c) The transfer was made to a trust described in OAR 461-145-0540(9), except that a transfer to a trust under OAR 461-145-0540(9)(a) is disqualifying if the individual is age 65 or older.

(d) The transfer was made to a trust described in OAR 461-145-0540(10) established solely for the benefit of an individual under 65 years of age who has a disability that meets the criteria of the Social Security Administration, except that a transfer to a trust under OAR 461-145-0540(10) is disqualifying if the individual is age 65 or older. This subsection applies to all transfers made on or after July 1, 2006.

(e) The transfer is a transfer described in OAR 461-160-0580(3).

(f) The resource is transferred by the *community spouse* (see OAR 461-001-0030) after the Department has determined the *community spouse*'s resource allowance in accordance with

OAR 461-160-0580 and the resource has not been attributed to the *institutionalized spouse* (see OAR 461-001-0030). Notwithstanding this subsection, a transfer of a resource by a *community spouse* who is receiving or applying for benefits remains subject to all rules regarding the transfer of an *asset* by an individual.

(3) Actions taken to avoid receiving an *asset* an individual or *spouse* is entitled to are considered a disqualifying transfer of an *asset*. Actions that would cause an *asset* to not be received include but are not limited to the following:

(a) Irrevocably waiving pension income.

(b) Waiving the right to receive an inheritance.

(c) Failing to pursue an elective share as described in Oregon Revised Statutes (ORS) 114.600 to 114.725.

(d) Not accepting or accessing injury settlements.

(e) Refusal to take legal action to obtain a court-ordered payment that is not being paid, such as child support or alimony.

(f) Refusal to pursue an equitable division of marital property during a proceeding of dissolution of marriage.

(4) Notwithstanding section (2)(a) of this rule, a transfer of a *home* by an individual or the *spouse* of the individual is a disqualifying transfer unless the title was transferred to the individual's ---

(a) *Child*;

(b) Sibling who has equity interest in the *home* and was residing in the *home* for at least one year immediately before the individual's admission to *long-term care* (see OAR 461-001-0000); or

(c) Natural or adoptive son or daughter who meets the requirements of each of the following paragraphs:

(A) The son or daughter resided with the individual in the individual's *home* continuously for at least two years immediately prior to the individual's admission to *long-term care* other than an absence from the home that is not intended to, and does not, exceed 30 days.

(B) The son or daughter provides convincing evidence that he or she provided services that permitted the individual to reside at *home* for at least two years rather than in an institution or *long-term care* facility.

(C) Without receiving payment from the Department, the son or daughter must have directly provided the services required by paragraph (B) of this subsection as described in both of the following subparagraphs for a total of at least 20 hours per week.

(i) On a daily basis, one or a combination of any of the following activities of daily living, as each sub-subparagraph is further defined at OAR 411-015-0006:

(I) Eating.

(II) Dressing/Grooming.

(III) Bathing/Personal Hygiene.

(IV) Mobility.

(V) Elimination.

(VI) Cognition/Behavior.

(ii) One or a combination of any of the following instrumental activities of daily living, as each sub-subparagraph is further defined at OAR 411-015-0007:

(I) Housekeeping.

(II) Laundry.

(III) Meal Preparation.

(IV) Medication Management.

(V) Shopping.

(VI) Transportation.

(5) Except for a transfer permitted under section (4) of this rule, each of the following subsections applies in determining whether an asset is considered transferred for *fair market value* (see OAR 461-001-0000):

(a) The compensation received for the *asset* must be in a tangible form with intrinsic value.

(b) The Department presumes that services provided for free at the time were intended to be provided without compensation, and that a transfer to an individual for services provided for free in the past is a disqualifying transfer of an *asset*. This presumption is rebuttable with convincing evidence. This evidence must also show that there was an express agreement to provide services for compensation at the time the services were provided.

(c) Compensation for services is valued at the average market rate at the time the services were provided, unless the express agreement provides a lower rate.

(d) When evaluating whether an action causing an *asset* not to be received under section (3) results in a transfer for less than *fair market value*, the Department will consider the following:

(A) Whether the individual or their *spouse* is able to afford to take the necessary action to obtain the *asset*.

(B) Whether the cost of obtaining the *asset* is greater than what the *asset* is worth.

(6) If a transfer is made for less than *fair market value* and is not exempt from disqualification under this rule, there is a rebuttable presumption that the *asset* was transferred for the purpose of establishing or maintaining eligibility and is not exempt under subsection (2)(a) of this rule.

(7) To rebut the presumption in section (6) of this rule, the individual must present evidence other than their own statement and must provide to the Department the information it requests for the purpose of evaluating the purpose of the transfer. To meet the burden, it is sufficient for the individual to show one of the following:

(a) The decision to make the transfer was not within the individual's control;

(b) At the time of transfer, the individual could not reasonably have anticipated applying for medical assistance;

(c) Unexpected loss of resources or income occurred between the time of transfer and the application for medical assistance; or

(d) Because of other similarly convincing circumstances, it appears more likely than not that the transfer was not made, in whole or in part, for the purpose of establishing or maintaining eligibility for benefits.

(8) The fact that a recipient was already eligible for benefits is not sufficient to rebut the presumption in section (6) of this rule because the *asset* may not always be excluded and if the individual had received full compensation for the *asset*, the compensation received would have been used to determine future eligibility.

Statutory/Other Authority: ORS 411.060, 411.710
Statutes/Other Implemented: ORS 411.060, 411.710, 414.042

Previous Rules