

**Excluded Resource; Community Spouse Provision (OSIPM except OSIPM-EPD)**

This rule explains how resource exclusions apply for individuals in a *nonstandard living arrangement* (see OAR [461-001-0000](#)) when there is a *community spouse* (see OAR [461-001-0030](#)) in the Oregon Supplemental Income Program Medical (OSIPM) (except Oregon Supplemental Income Program Medical-Employed Persons with Disabilities (OSIPM-EPD)).

- (1) This rule applies to:
  - a. An *institutionalized spouse* (see OAR [461-001-0030](#)) who has applied for benefits because the individual is in or will be in a *continuous period of care* (see OAR [461-001-0030](#)).
  - b. An individual in a *nonstandard living arrangement* who becomes *legally married* (see OAR [461-001-0000](#)) following initial approval for service benefits.
- (2) Whether a *legally married* couple lives together or not, the determination of whether the value of the couple's resources exceeds the eligibility limit for the *institutionalized spouse* for OSIPM is made as follows:
  - (a) The first step is the determination of what the couple's combined *countable* (see OAR [461-001-0000](#)) resources were at the beginning of the most recent *continuous period of care*, or the date they became *legally married*, whichever occurs later. (The beginning of the *continuous period of care* is the first month of that continuous period.)
    - (A) Division [461-140](#) and [461-145](#) rules applicable to OSIPM describe which of the couple's resources are *countable* resources, and are applicable to determine whether a *community spouse's* resources are *countable*, even if the rule only applies to OSIPM individuals.
    - (B) The *countable* resources of both *spouses* (see OAR [461-001-0000](#)) are combined.

- (C) At this point in the computation, the couple's combined *countable* resources are considered available equally to both spouses.
  
- (b) The second step is the calculation of one half of what the couple's combined *countable* resources were at the beginning of the *continuous period of care* or the date they became *legally married*, whichever occurs later. The *community spouse's* half of the couple's combined resources is treated as a constant amount when determining eligibility.
  
- (c) The third step is the determination of the *community spouse's* resource allowance. The *community spouse's* resource allowance is the largest of the four following amounts:
  - (A) The *community spouse's* half of what the couple's combined *countable* resources were at the beginning of the *continuous period of care* or the date they became *legally married*, whichever occurs later, but not more than \$162,660.
  
  - (B) \$32,532 (the state community-spouse resource allowance).
  
  - (C) A court-ordered *community spouse* resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term "court-ordered *community spouse* resource allowance" means a "court-ordered *community spouse* resource allowance" that, in relation to the income generated, would raise the *community spouse's* income to a court-approved monthly maintenance needs allowance. In cases where the individual became an *institutionalized spouse* on or after February 8, 2006, this resource allowance must use all of the individual's available income and the *community spouse's* income to meet the *community spouse's* monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.
  
  - (D) After considering the income of the *community spouse* and the income available from the *institutionalized*

*spouse*, an amount which, if invested, would raise the *community spouse's* income to the monthly maintenance needs allowance. The amount described in this paragraph is the amount required to purchase a single premium immediate annuity to make up the shortfall; and the amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

- (i) The maintenance needs allowance computed in accordance with OAR [461-160-0620](#).
- (ii) The difference between--
  - (I) The sum of gross *countable* income of the *community spouse* and the *institutionalized spouse*; and
  - (II) The applicable need standard under OAR [461-160-0620](#)(3)(c).
- (d) The fourth step is the determination of what the couple's current combined *countable* resources are when a resource assessment is requested or the *institutionalized spouse* applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.
- (e) The fifth step is the subtraction of the *community spouse's* resource allowance from the couple's current combined *countable* resources. The resources remaining are considered available to the *institutionalized spouse*.
- (f) The sixth step is a comparison of the value of the remaining resources to the OSIPM resource standard for one person (under OAR [461-160-0015](#)). If the value of the remaining resources is at or below the standard, the *institutionalized spouse* meets this eligibility requirement. If the value of the remaining resources is above the standard, the *institutionalized spouse* cannot be eligible until the value of the couple's

combined *countable* resources is reduced to the largest of the four following amounts:

- (A) The *community spouse's* half of what the couple's combined *countable* resources were at the beginning of the *continuous period of care* or the date they became *legally married*, whichever is later (but not more than \$162,660), plus the OSIPM resource standard for one person.
- (B) \$32,532 (the state *community spouse* resource allowance), plus the OSIPM resource standard for one person.
- (C) A "court-ordered *community spouse* resource allowance" plus the OSIPM resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the "court-ordered *community spouse* resource allowance".)
- (D) The OSIPM resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the *community spouse* and the income available from the *institutionalized spouse*, add an amount which, if invested, would raise the *community spouse's* income to the monthly maintenance needs allowance. This amount is the amount required to purchase a single premium immediate annuity to make up the shortfall. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:
  - (i) The monthly income allowance computed in accordance with OAR [461-160-0620](#).
  - (ii) The difference between--
    - (I) The sum of gross *countable* income of the *community spouse* and the *institutionalized spouse*; and

(II) The applicable need standard under OAR [461-160-0620\(3\)\(c\)](#).

- (3) Once eligibility has been established, or reestablished in the event the individual becomes *legally married* after initial approval or services, resources equal to the *community spouse's* resource allowance (under subsection (2)(c) of this rule) must be transferred to the *community spouse* if those resources are not already in that spouse's name. The *institutionalized spouse* must indicate their intent to transfer the resources and must complete the transfer to the *community spouse* within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the *institutionalized spouse* but not transferred out of that spouse's name will be *countable* and used to determine ongoing eligibility.
- (4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the *spouse* of the individual.

Statutory/Other Authority: ORS [409.050](#), [411.060](#), [411.070](#), [411.083](#), [411.404](#), [411.706](#), [413.085](#), [414.685](#)

Statutes/Other Implemented: ORS [409.010](#), [411.060](#), [411.070](#), [411.083](#), [411.404](#), [411.706](#)

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