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RULES:

137-055-1120, 137-055-3020, 137-055-3080, 137-055-4060, 137-055-4520

AMEND: 137-055-1120

NOTICE FILED DATE: 11/30/2020

RULE SUMMARY: OAR 137-055-1120 is amended to implement changes to 45 CFR §303.11, allowing a child support case to be closed when the obligated parent's sole source of income is from Social Security Income (SSI), or both SSI and either Social Security Disability Insurance (SSDI) or Social Security Retirement (SSR) benefits.

CHANGES TO RULE:

137-055-1120
Case Closure ¶¶

- (1) The administrator may elect to close a case if the case meets at least one of the following criteria and supporting documentation for the case closure decision is maintained in the case record:¶¶
- (a) There is no longer a current support order and arrearages are under \$500 or unenforceable under state law; ¶¶
 - (b) There is no longer a current support order and all arrearages in the case are assigned to the state; ¶¶
 - (c) There is no longer a current support order, the children have reached the age of majority, the obligor is entering or has entered long-term care arrangements (such as a residential care facility or home health care), and that parent has no income or assets available above the subsistence level that could be levied or attached for support; ¶¶
 - (d) The obligor or alleged father is deceased and no further action, including a levy against the estate, can be taken; ¶¶
 - (e) The obligor is living with the minor child (as the primary caregiver or in an intact two parent household), and the administrator has determined that services are not appropriate or are no longer appropriate; ¶¶
 - (f) Paternity cannot be established because: ¶¶
 - (A) The child is at least 18 years old and an action to establish paternity has not been initiated; ¶¶
 - (B) A genetic test or a court or an administrative process has excluded the alleged father and no other alleged father can be identified; ¶¶
 - (C) The administrator has determined that it would not be in the best interests of the child to establish paternity in

a case involving incest or rape, or in any case where legal proceedings for adoption are pending. For the purposes of this paragraph, a determination by the Department of Human Services or the Oregon Youth Authority that paternity establishment is not in the best interests of the child will be considered a determination by the administrator; or¶

(D) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the administrator with the recipient of services;¶

(g) The obligor's location is unknown, and the state has made diligent efforts using multiple sources to locate the obligor, in accordance with 45 CFR 303.3, all of which have been unsuccessful: ¶

(A) Over a two-year period when there is sufficient information to initiate an automated locate effort; or¶

(B) Over a six-month period when there is not sufficient information to initiate an automated locate effort; or¶

(C) After a one-year period when there is sufficient information to initiate an automated locate effort, but locate interfaces are unable to verify a Social Security Number;¶

(h) The administrator has determined that throughout the duration of the child's minority (or after the child has reached the age of majority), the obligor cannot pay support and shows no evidence of support potential because the parent has been institutionalized in a psychiatric facility, is incarcerated, or has a medically-verified total and permanent disability. The administrator must also determine that the obligor has no income or assets available above the subsistence level that could be levied or attached for support; ¶

(i) The obligor's sole income is from: ¶

(A) Supplemental Security Income (SSI) payments; or ¶

(B) Both SSI payments and either Social Security Disability Insurance (SSDI) or Social Security Retirement (SSR) benefits.¶

(j) The obligor is a citizen of, and lives in, a foreign country, does not work for the federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets; and there is no federal or state treaty or reciprocity with the country;¶

(k) The state parent locator service has provided location-only services as requested under 45 CFR 302.35(c)(3);¶

(L) The non-TANF recipient of services requests closure of a case and there is no assignment to the state of medical support or of arrearages which accrued under a support order;¶

(m) The administrator has completed a paternity-only limited service;¶

(n) The Department of Human Services, Oregon Youth Authority, Oregon Health Authority or the administrator, pursuant to OAR 137-055-1090, has made a finding of good cause or other exceptions to cooperation with the IV-D agency and has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative;¶

(o) In a non-TANF case, or a Medicaid case when cooperation with the IV-D agency is not required of the recipient of services, the administrator is unable to contact the recipient despite a good faith effort to contact the recipient through at least two different methods;¶

(p) In a non-TANF case, or a Medicaid case when cooperation with the IV-D agency is not required of the recipient of services, administrator documents the circumstances of the recipient's noncooperation and an action by the recipient of services is essential for the next step in providing IV-D services; ¶

(q) The administrator documents failure by the initiating agency to take an action that is essential for the next step in providing services; ¶

(r) The initiating agency has notified the administrator that the initiating state has closed its case;¶

(s) The initiating agency has notified the administrator that its intergovernmental services are no longer needed; ¶

(t) The Department of Human Services, Oregon Youth Authority, or Oregon Health Authority has referred a case to the IV-D agency that is inappropriate to establish, enforce, or continue to enforce a child support order and the custodial or noncustodial parent has not applied for services; or¶

(u) The obligee is deceased and no trustee or personal representative has requested services to collect arrears despite a good faith effort to contact a representative of the obligee through at least two different methods.¶

(2) For the purposes of this rule, subsistence level means the income or assets of the obligor is at or below the amount of income designated as the parent's self-support reserve, as defined in OAR 137-050-0745.¶

(3) The administrator will close a case and maintain supporting documentation for the case closure decision when the following criteria have been met: ¶

(a) The child is eligible for health care services from the Indian Health Service (IHS); and ¶

(b) The IV-D case was opened because of a Medicaid referral based solely upon health care services, including the Purchased/Referred Care program, provided through an Indian Health Program. ¶

(4) The administrator will provide notice of case closure and case reopening: ¶

(a) In cases meeting the criteria in subsections (1)(a) through (j), (1)(n) through (p), and (1)(u) of this rule, the administrator will notify the recipient of services in writing 60 calendar days prior to closure of the case of the administrator's intent to close the case. ¶

(b) In an intergovernmental case meeting the criteria for closure under subsection (1)(q) of this rule, the administrator will notify the initiating agency, in a record, 60 calendar days prior to closure of the case of the administrator's intent to close the case. ¶

(c) The case will be kept open if the recipient of services or the initiating agency supplies information in response to the notice provided under subsection (4)(a) or (b) of this section that could lead to the establishment of paternity or a support order or enforcement of an order, or, in the instance of subsection (1)(o) of this section, if contact is reestablished with the recipient of services. ¶

(d) For cases to be closed in accordance with subsection (1)(m) of this rule, the administrator must notify the recipient of services, in writing, 60 calendar days prior to closure of the case of the administrator's intent to close the case. This notice must also provide information regarding reapplying for child support services and the consequences of receiving services, including any state fees, cost recovery, and distribution policies. If the recipient reapplies for child support services in a case that was closed in accordance with subsection (1)(m) of this section, the recipient must complete a new application for IV-D services and pay any applicable fee. ¶

(e) If the administrator elects to close a case pursuant to subsections (1)(a) through (e), (1)(g) through (j), (1)(n) through (p) and (1)(u) of this rule, the administrator will notify any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case. ¶

(f) If the administrator elects to close a case pursuant to subsections (1)(a) through (c), (1)(e), (1)(h) through (j), (1)(m), (1)(o), (1)(p) and (1)(u) of this rule, the administrator will notify the obligor in writing at least 60 days prior to closure of the case of the intent to close the case. ¶

(g) If the administrator elects to close a case pursuant to subsections (1)(k), (1)(L) or (1)(r) through (t) of this rule, the administrator is not required to notify any party of the intent to close the case. However, if the case is closed pursuant to subsection (1)(L), (1)(r) or (1)(s), the administrator will send a courtesy notice to the parties advising the reason for closure. ¶

(h) If the case is closed, the former recipient of services or any party to the case may request at a later date that the case be reopened if there is a change in circumstances that could lead to the establishment of paternity or a support order or enforcement of an order by completing a new application for IV-D services and paying any applicable fee. ¶

(i) For notices under subsections (4)(a) and (d) through (g) of this rule, if the recipient of services or any party to the case specifically authorizes consent for electronic notifications, the administrator may elect to notify the recipient of services electronically of the administrator's intent to close the case. The IV-D agency must maintain documentation of the recipient's consent in the case record. ¶

(5) For notices under subsections (4)(a) and (4)(d) through (f) of this rule, a case may be closed immediately if: ¶

(a) All parties agree to waive the notice of intent to close and the 60-day objection period when the notice of intent to close has not yet been sent; or ¶

(b) All parties agree to waive the remainder of the 60-day objection period when the notice of intent to close has already been sent.

Statutory/Other Authority: ORS 25.080, 180.345

Statutes/Other Implemented: ORS 25.020, 25.080

AMEND: 137-055-3020

NOTICE FILED DATE: 11/30/2020

RULE SUMMARY: OAR 137-055-3020 is amended to clearly state that persons other than the mother can complete a parentage declaration. It is also being amended to affirm that the mother is a necessary party to any parentage action, even when she is not the person who completed the parentage declaration and provides guidance on serving mothers who cannot be located. Other minor edits are included for clarity and consistency.

CHANGES TO RULE:

137-055-3020

Paternity Establishment Procedures ¶¶

(1) When a case involves a child who is not yet born, the administrator will take no action to establish paternity or to provide locate services until such time as the child is born.¶¶

(2)(a) When initiating legal proceedings to establish paternity for a child conceived in Oregon, the administrator will use ORS chapter 109 or ORS chapter ~~416~~25.¶¶

(b) Except for proceedings filed under ORS chapter 109, past support will be established as provided by ORS chapter ~~416~~25 and OAR 137-055-3220.¶¶

(3) When the administrator initiates legal proceedings to establish paternity, if the child was born in this state, the administrator will file the Notification of Filing of Petition in Filiation Proceedings with the Center for Health Statistics.¶¶

(4) ~~¶When initiating a legal proceeding,~~ the administrator will seek to establish paternity against the man named ~~by the mother to be as~~ the most likely alleged father except as provided in sections (5) and (6). ¶¶

(5) When parentage is established by presumption under ORS 109.070 and the birth mother names one or more persons other than the presumed parent as the biological father of the child, the administrator will provide the presumed parent with notice and an opportunity to object. ¶¶

(a) If a written objection is received from the presumed parent within 30 days of the date of the notice, an action to determine parentage will be filed in circuit court.¶¶

(b) If no written objection is received from the presumed parent within 30 days of the date of the notice, the administrator will facilitate genetic testing for the birth mother, child, and alleged father(s) prior to filing an action to determine parentage in circuit court.¶¶

(A) If all known alleged fathers are excluded by testing or testing cannot be completed, the administrator may seek support from the presumed parent.¶¶

(B) If an alleged father is included by testing, the administrator will file an action in circuit court to disestablish the parentage of the presumed parent and establish the parentage of the alleged father who was included by testing.¶¶

(6) Notwithstanding section (5) of this rule, when parentage is established by presumption under ORS 109.070, the administrator will not pursue an action to determine parentage if:¶¶

(a) The mother and presumed parent are still married, cohabiting, and do not both consent to an action to determine parentage; or¶¶

(b) The presumed parent has physical custody of the child and does not consent to an action to determine parentage.¶¶

(7) When establishing support against a presumed parent, if a party provides proof that he or she filed a petition to challenge parentage under ORS 109.070, the administrator will suspend the support action pending the resolution of the petition.¶¶

(8) Except as provided in Section (6) of this rule, when the mother or other declarant states that more than one man could be the biological father of the child and genetic tests have excluded a man as the father of the child, the following provisions apply:¶¶

(a) If there is only one remaining untested alleged biological father, that man is constructively included as the father by virtue of the other men's exclusion as the father.¶¶

(b) If there is more than one remaining untested alleged biological fathers, the administrator will initiate action against each man, either simultaneously or one at a time, to attempt to obtain tests which either exclude or include each man.¶

(9) Except as provided in Section (6) of this rule, when the mother or other declarant states that more than one man could be the biological father of the child and genetic tests have included a man as the father of the child at a cumulative paternity index of at least 99, any other untested alleged father(s) will be considered to be constructively excluded by virtue of the first man's inclusion.¶

(10) The Oregon Child Support Program will pay the costs of initial genetic tests to determine paternity. ¶

(11) When a party requests additional genetic testing as provided in ORS 109.252(2), the following provisions apply:¶

(a) The laboratory selected for additional testing must be a laboratory approved by accreditation bodies designated by the Oregon Health Authority; and¶

(b) The party making the request must advance the costs of the additional tests to the accredited laboratory.¶

(12) Upon receipt of a party's request for additional genetic testing and proof that payment has been advanced to an accredited laboratory, the administrator or the court will order additional testing.¶

(13) If a non-requesting party fails to appear for the additional genetic testing, the administrator will take appropriate steps to compel obedience to the order for additional testing.¶

(14) If a requesting party fails to appear for the additional genetic testing, the administrator may enter an order in accordance with OAR 137-055-3100.¶

(15) The administrator may dismiss or terminate a proceeding to establish paternity after sending written notice to the parties that the case is being considered for dismissal or termination and that any comments or objections must be made within 10 days.¶

(16) The birth mother is a necessary party to an action to establish paternity, regardless of whether the mother is an applicant for services or custodian of the child.¶

(a) When the birth mother is not the applicant for services prompting the action to establish paternity, the administrator must serve notice of the action by personal service upon the birth mother, unless she is deceased. If the birth mother cannot be personally served, the administrator shall request permission from the circuit court to serve the mother by an alternate method as provided in ORCP 7 D(6);¶

(b) If the birth mother cannot be personally served with notice of the action or if the birth mother is deceased, the enforcing agency will not take an order establishing paternity unless genetic tests to determine paternity have been completed which fail to exclude the alleged father, and have a cumulative paternity index of at least 99%;¶

(c) In any action to establish paternity in which the administrator cannot personally serve the child's birth mother, or when the birth mother is deceased, the child's legal guardian is a necessary party to the action. If the child does not have a legal guardian, the administrator will request that the court appoint a willing, qualified and suitable person to be a guardian ad litem for the child. If no relative or other person agrees to such appointment, the administrator will request that an attorney be appointed for this purpose.

Statutory/Other Authority: ORS 180.345

Statutes/Other Implemented: ORS 25.550, 109.070, ~~416.430~~109.125

RULE SUMMARY: OAR 137-055-3080 is amended to clarify how service should be completed when the mother cannot be located while establishing paternity on behalf of a self-alleged father. Additionally, the rule is being amended to require the program to provide prior notice of such an action to a child's caretaker, even if they are not the child's legal guardian. Other minor edits are included for clarity and consistency.

CHANGES TO RULE:

137-055-3080

Responsibility of Administrator to Establish Paternity at Request of Self-Alleged Father ¶¶

(1) For purposes of this rule, self-alleged father means a man who both:¶¶

(a) Claims that he is, or possibly is, the biological father of a child born out of wedlock as defined in ORS 109.124; and¶¶

(b) Wishes to have paternity legally established for the child, establishing himself as the legal father.¶¶

(2) The administrator is responsible for pursuing establishment of paternity at the request of a self-alleged father, subject to all of the following:¶¶

(a) The self-alleged father must either:¶¶

(A) Be eligible for services under ORS 25.080, because he is receiving TANF cash assistance or Medicaid assistance for the child born out of wedlock; or¶¶

(B) Complete an application for services as provided under ORS 25.080.¶¶

(b) Unless otherwise prohibited under this rule, the administrator will:¶¶

(A) Take all appropriate steps to determine if the self-alleged father is the biological father; and¶¶

(B) Pursue appropriate action to legally establish paternity unless evidence indicates that he is not the biological father.¶¶

(c) The administrator will not pursue action to establish paternity under this section in any case where:¶¶

(A) Adoption of the child is final; or¶¶

(B) Legal parentage for a person in addition to the birth mother already exists for the child, or; ¶¶

(C) The administrator has determined that establishing paternity for the self-alleged father would not be in the best interests of the child, in accordance with section (4) of this rule.¶¶

(3)(a) When a self-alleged father requests the administrator establish his legal paternity for a child, the administrator will send written notification by first class mail to the last known address of the mother and, (if a separate party), caretaker or legal guardian of the child. Further, if the administrator knows or is informed that legal proceedings for adoption of the child are pending, the administrator will also send written notification to the licensed private agency handling the adoption, or if none exists, to the Department of Human Services;¶¶

(b) ~~If the mother and (if a separate party) legal guardian cannot readily be found, the enforcing agency~~ The administrator will make a diligent thorough attempt to locate ~~the any party. A diligent attempt~~ entitled to notice under this section, includes ing but ~~is not~~ limited to submitting the case to the Division of Child Support for state parent locator services. If unable to locate ~~the mother and legal guardian~~ a party entitled to notice under this section within 30 days, the administrator will proceed to process the case as described in section (7) of this rule without the notice described in this section;¶¶

(c) The written notification must state the following:¶¶

(A) That the self-alleged father has asked the administrator for establishment of paternity services;¶¶

(B) That if legal proceedings for adoption of the child are pending, or if ~~the child's mother (or legal guardian if a separate party)~~ it is alleged d that the child was conceived due to rape or incest, the Oregon Child Support Program director will determine whether establishing paternity is in the best interests of the child, ~~on the basis of the responses the Program director receives to the written notification;~~¶¶

(C) That a copy of any response to the notification ~~the Program director receives~~ will be sent to the self-alleged

father, and that the self-alleged father will then have an opportunity to respond to the allegations. The administrator will ensure that the address of the mother and/or guardian is ~~de~~redacted from any written material it sends to the self-alleged father;¶

(D) The factors the Program director will consider, set out in section (4) of this rule, in determining whether establishing paternity would be in the best interest of the child;¶

(E) That the mother, legal guardian, and adoption agency or the Department of Human Services child welfare program, if appropriate under this rule, has 15 days to respond in writing to the written notification;¶

(F) That the self-alleged father has 15 days to respond to an allegation or response received by the Program director;¶

(G) That if any of the parties listed in paragraph (E) or (F) of this subsection does not respond to the written notice or allegation within 15 days, the Program director will make a determination based on the responses received;¶

(H) That if the Program director determines that establishing paternity would not be in the best interests of the child, this decision:¶

(i) Means only that the administrator will not pursue action to establish paternity; and¶

(ii) Does not preclude the self-alleged father from pursuing establishment of paternity on his own, without the assistance of the administrator.¶

(4) In any case where legal proceedings for adoption of the child are pending, or where the child was conceived due to alleged rape or incest, the Program director is responsible for determining whether action to establish paternity would be in the best interests of the child.¶

(a) If the Program director determines that action to establish paternity would not be in the best interests of the child, the administrator will take no further action to establish paternity for the self-alleged father;¶

(b) A signed written statement from the mother or legal guardian of the child, stating that the child was conceived as a result of rape or incest, is sufficient reason for the Program director to determine that establishing paternity would not be in the best interests of the child, unless such statement is disputed or denied by the self-alleged father, subject to the following:¶

(A) If the self-alleged father does not respond to the copy of the allegation or response the Program director receives as provided in subsections (3)(a) through (3)(c) of this rule, the Program director will make a determination by default based on the mother's or legal guardian's statement;¶

(B) If the self-alleged father does respond and acknowledges that the child was conceived by rape or incest, the Program director must determine that establishing paternity would not be in the best interests of the child;¶

(C) If the self-alleged father does respond and denies that the child was conceived by rape or incest, the Program director will decide whether to pursue action to establish paternity. The Program director will consider factors including, but not limited to:¶

(i) Whether a police report was filed;¶

(ii) Whether the self-alleged father was convicted or acquitted of rape or incest charges;¶

(iii) Whether other persons have information that the child was conceived due to rape or incest;¶

(iv) Any other factors known or provided to the Program director that would support or refute the veracity of the rape or incest allegation;¶

(v) Whether establishing paternity would be in the best interest of the child, considering the factors listed in subsection (c) of this section;¶

(vi) The Program director's decision in this matter is limited to only whether the administrator will pursue action to establish paternity, and is in no way to be construed or intended as a determination or accusation of whether the self-alleged father is in fact guilty or not guilty of rape or incest;¶

(c) When the Program director finds that legal proceedings for adoption of the child are pending, the Program director will consider the following factors in determining whether establishing paternity would be in the best interests of the child:¶

(A) The nature of the relationship or contacts between the child and the self-alleged father. This determination may consider whether the child has lived with the self-alleged father or has had frequent visitation with the self-alleged father, thereby establishing a substantial parent-child relationship;¶

- (B) The degree of parental commitment by the self-alleged father to the child. This determination may consider whether the self-alleged father has attempted to stay in contact with the child, and if such attempts would continue or increase in the future;¶¶
- (C) The degree to which the self-alleged father has contributed or attempted to contribute, consistent with his ability, to the support of the child. This determination may consider the nature and extent of such support, and if such support would continue or increase in the future;¶¶
- (D) If there is a legal relationship between the child and the self-alleged father, or if there has been an attempt to establish such a legal relationship through filiation proceedings, custody actions, voluntary acknowledgment of paternity, or similar actions. This determination may consider whether the self-alleged father has had an opportunity to establish a legal relationship prior to the initiation of adoption proceedings;¶¶
- (E) Whether good reasons exist that would excuse the self-alleged father's failure to establish a relationship, or stay in contact with the child, or contribute to the support of the child, or attempt to establish a legal relationship with the child. Such reasons may include, but are not limited to, the self-alleged father's late awareness of the mother's pregnancy or of the child's birth.¶¶
- (5) Absent judicial review, the decision of the Program director is final with regard to any responsibility of the administrator to pursue establishment of paternity.¶¶
- (6) No provision of this rule prohibits the self-alleged father from pursuing establishing paternity on his own, without the assistance of the administrator.¶¶
- (7) If the Program director determines (when a determination by the Program director is necessary under this rule) that the administrator may pursue action to establish paternity at the request of a self-alleged father, or if the administrator does not receive a written assertion requiring such a determination by the Program director under this rule, the administrator will proceed on the case as follows:¶¶
- (a) The administrator ~~will make diligent efforts to~~must provide the mother of the child, unless she is deceased, ~~with~~ actual notice of the action to establish paternity. Notice must be by personal service upon the mother. Diligent efforts include mailing of the notice or petition and summons by first class mail to all reasonably known recent addresses with a request that the mother acknowledge service on the form provided and also mailing the same notice to one or more of the maternal grandparents, if known, addressed to them individually and requesting that they forward the notice and acknowledgment form to the mother;¶¶
- (b) ~~Notwithstanding the requirement of subsection (a) of this section, no action to establish paternity under this section may be delayed more than 60 days from the self-alleged father's initial request because of the enforcing agency's inability to provide actual notice to the mother of the child or children.~~If personal service is not successful, the administrator shall request permission from the circuit court to serve the mother by an alternate method as provided in ORCP 7 D(6);¶¶
- (c) If the mother of the child or children cannot be personally served with notice of the action or if the mother is deceased, the enforcing agency will not take an order establishing paternity unless genetic tests to determine paternity have been completed which fail to exclude the self-alleged father, and have a cumulative paternity index of at least 99;¶¶
- (d) In any action to establish paternity in which the administrator cannot personally serve the child's mother, or when the mother is deceased, the administrator will request that the court appoint a willing, qualified, and suitable person to be a guardian ad litem for the child. If no relative or other person agrees to such appointment, the administrator will request that an attorney be appointed for this purpose;¶¶
- (e) ~~When an order establishing paternity has been taken in accordance with this section without service of the notice or petition and summons on the mother, the administrator will mail a copy of the final order to the mother by first class mail to the most recent contact addresses in the case record, and to any address provided by the Oregon Department of Human Services or by the Oregon Driver and Motor Vehicle Services marked please forward, address correction requested. In addition to such mailing, the administrator will, for a period of six months from the date of the final order, continue attempts to locate the mother and personally serve her with a copy of the final order establishing paternity.~~¶¶
- (8) All other provisions of this rule notwithstanding, the administrator cannot require the child's mother (or other

custodial adult) to cooperate with efforts to establish paternity, and the administrator will not assess a penalty for not cooperating, in any case where a finding ~~that the child's mother (or other custodial adult) is exempt from cooperating due to~~ good cause; pursuant to federal law at 42 U.S.C. 654(29) and 42 U.S.C.666(a)(5)(B)(i), is either currently in effect or is pending. In any such case, the administrator need not proceed further on behalf of the self-alleged father if it determines that there is no further effective action the administrator can take on behalf of the self-alleged father.

Statutory/Other Authority: ORS 180.345

Statutes/Other Implemented: ORS 25.080, 25.550, 109.070, 109.125

AMEND: 137-055-4060

NOTICE FILED DATE: 11/30/2020

RULE SUMMARY: OAR 137-055-4060 is amended to implement changes to 45 CFR 307.11. The program currently does not issue income withholding for Social Security Income (SSI) or concurrent SSI and Social Security Disability Insurance (SSDI). This amendment is to clarify that this exemption applies to concurrent SSI and Social Security Retirement (SSR) benefits as well.

CHANGES TO RULE:

137-055-4060

Income Withholding - General Provisions, Requirements and Definitions ¶¶

- (1) OARs 137-055-4060 to 137-055-4080 provide for collection of support by means of income withholding, in accordance with ORS 25.372 to ORS 25.427 and all other applicable Oregon law, on all support cases being enforced by the administrator. ¶¶
- (2) For purposes of OARs 137-055-4060 to 137-055-4080 and as used in ORS 25.372 to ORS 25.427, the following definitions apply: ¶¶
- (a) "Alternative payment method" means the methods of paying support described in OAR 137-055-4080; ¶¶
- (b) "Best interests of the child" means the method of payment likely to produce consistent support that will reach the child(ren) in the most expedited manner. ¶¶
- (c) "Disposable income" means the part of an individual's income that remains after the deduction of any amounts required to be withheld by law, except as provided in paragraphs (B) or (C) of this subsection. ¶¶
- (A) Amounts required to be withheld by law include, but are not limited to, required withholding for taxes and social security; ¶¶
- (B) Any amounts withheld for the following will not be deducted from the obligor's income when computing disposable income, even if such withholding is required by law or by judicial or administrative order: ¶¶
- (i) Health insurance premiums; ¶¶
- (ii) Spousal or child support. ¶¶
- (C) An obligor may claim offsets against gross receipts for ordinary and necessary business expenses and taxes directly related to the income withheld. The obligor has the burden of proving such claims and must therefore furnish verifiable business records or documents to support any offsets claimed. The obligor also has the burden of furnishing such records or documents in a timely manner, and the Child Support Program will not refund to the obligor, on the basis of such claims, any amounts withheld that the administrator has already disbursed to the obligee or to any child attending school under ORS 107.108 and OAR 137-055-5110; ¶¶
- (d) "Electronic Funds Transfer" (EFT) has the definition given in OAR 137-055-5035, and includes but is not limited to payment by Electronic Payment Withdrawal (EPW) and by debit or credit system or card. ¶¶
- (e) "Electronic Payment Withdrawal" (EPW) means an automatic withdrawal of support from the person's bank account. ¶¶
- (f) "Good cause" for not withholding means a situation that exists when: ¶¶
- (A) A court or the administrator makes a written determination that, and a written explanation in the official record of why, immediate income withholding would not be in the best interests of the child; and ¶¶
- (B) If the case involves the modification of an existing support order, there is proof of timely payment of previously-ordered support and there are no arrears. Timely payment is indicated when the obligor has not previously become subject to initiated income withholding under the existing order. ¶¶
- (g) Periodic recurring income as used in calculating withholding from a lump sum payment or benefit pursuant to ORS 25.414(4), means income that is intended as a monthly or more frequent payment that includes, but is not limited to, a teachers lump sum payment for summer months. ¶¶
- (3) All support orders issued or modified by the administrator will include a provision requiring the parties to keep the administrator informed of: ¶¶

(a) The name and address of the party's current employer;¶¶

(b) Whether or not the party has access to appropriate health care coverage, and if so, the health care coverage policy information.¶¶

(4) For purposes of support enforcement, any support payment that becomes due and payable on a day other than the first day of the month in which the payment is due shall be enforceable by income withholding as of the first day of that month.¶¶

(5) Notwithstanding any other provision of this rule, if the administrator determines that Supplemental Security Income (SSI) or a combination of SSI and either Social Security Disability Insurance (SSDI) or Social Security Retirement (SSR) benefits has been incorrectly withheld from the obligor through an income withholding order, and the administrator is in possession of the funds, the administrator must return the funds to the obligor.

Statutory/Other Authority: ORS 25.396, 180.345, ~~25.427~~

Statutes/Other Implemented: ORS 25.166, 25.372, 25.427, 656.234, ~~656~~7.780, ~~656~~7.855, ~~SB 516 (2017)~~

AMEND: 137-055-4520

NOTICE FILED DATE: 11/30/2020

RULE SUMMARY: OAR 137-055-4520 is amended to implement changes to 45 CFR §307.11. The program currently identifies when a parent who pays support is a recipient of Social Security Income (SSI) or concurrent SSI and Social Security Disability Insurance (SSDI) benefits for the purpose of preventing garnishment of these funds. This amendment is to clarify that this exemption applies to concurrent SSI and Social Security Retirement (SSR) benefits as well.

CHANGES TO RULE:

137-055-4520

Garnishment ¶¶

- (1) The administrator may utilize garnishment proceedings in accordance with ORS chapter 18 for the purpose of collecting past due support.¶¶
- (2)(a) When the administrator receives a collection from a garnishment proceeding, the administrator will hold the collection for 40 days if the garnishee is making a payment of other than wages or 120 days if the garnishee is making a payment of wages before disbursing any amounts due a party from the collection.¶¶
- (b) This requirement is to accommodate the possibility that the administrator may have to return funds from the collection to the garnishee, the obligor, or the court, as a result of the obligor or any person who has an interest in the garnished property having made a challenge to garnishment in accordance with ORS chapter 18.¶¶
- (c) The administrator will waive this requirement to hold the collection, and will apply the collection to the case for immediate distribution, in any case where the obligor provides the administrator with a signed declaration under penalty of perjury expressly waiving the right to make a challenge to garnishment and requesting that the administrator apply, distribute and, as appropriate, disburse the payment immediately. ¶¶
- (3) Upon notice of a challenge to garnishment from the clerk of the court, the administrator will file a response to the challenge to garnishment, attaching copies of the writ of garnishment, garnishee response, debt calculation and any supporting documentation necessary or helpful to the court in making a determination of the challenge to garnishment.¶¶
- (4) When a single writ of garnishment is issued for two or more cases as provided in ORS 18.645, notice of a challenge to garnishment is received and the administrator files the response required by section (3), the administrator will include copies of all judgments for which the writ is issued and a debt calculation for each referenced judgment.¶¶
- (5) When the contents of a bank account are garnished and the obligor makes a timely challenge to garnishment that claims that all or some portion of the contents of the account came from lump sum payments identified in ORS 18.345, the administrator may return to the obligor the exempt portion of such lump sum payments received from that account, as appropriate.¶¶
- (6) When the garnishee is a credit union, the credit union may retain the par value of the garnished account, defined as the face value of an individual credit union share necessary to maintain a customer's membership.¶¶
- (7) Notwithstanding any other provision of this rule, if the administrator determines that funds garnished from an account include Supplemental Security Income or a combination of Supplemental Security Income (SSI) and either Social Security Disability Insurance (SSDI) or Social Security Retirement (SSR) benefits and the administrator is in possession of the funds, the administrator must return any SSI or concurrent SSI and SSDI or SSR benefits to the obligor within 5 business days. If the garnished funds were already sent to the court as the result of a challenge to garnishment, the administrator will advise the court that it is holding exempt funds that should be released to obligor.

Statutory/Other Authority: ORS 25.020, 180.345

Statutes/Other Implemented: ORS 18.345, 18.645, 25.020, 25.080