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**PERMANENT ADMINISTRATIVE ORDER**

**ED 4-2024**

CHAPTER 471

EMPLOYMENT DEPARTMENT

**FILED**

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ARCHIVES DIVISION  
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& LEGISLATIVE COUNSEL

FILING CAPTION: Rule amendments modifying the criteria for waiving or offsetting the recovery of certain overpayments.

EFFECTIVE DATE: 06/23/2024

AGENCY APPROVED DATE: 06/18/2024

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RULES:

471-030-0053, 471-030-0320

AMEND: 471-030-0053

RULE TITLE: Waiving Recovery of Overpayments

NOTICE FILED DATE: 04/24/2024

RULE SUMMARY: Rule amendments modifying the criteria for waiving or offsetting the recovery of certain overpayments

RULE TEXT:

- (1) The effective date of this rule is June 23, 2024.
- (2) This rule addresses waiving recovery of overpayments pursuant to ORS 657.317.
- (3) Overpayments will be waived if recovery of benefits is against equity and good conscience based on the following criteria
  - (a) Automatic waiver criteria, the individual has claimant non-fault overpayment and
    - (A) Has reported wages in the last four quarters that are less than or equal to 300% of the federal poverty level for a family of four, OR
    - (B) Is a recipient of Temporary Assistance for Needy Families (TANF) within the 60 days prior to establishing the overpayment.
  - (b) If automatic waiver criteria does not apply, claimants may request a waiver which will be allowed if
    - (A) The individual has claimant non-fault overpayment and
      - (i) Does not meet the automatic waiver criteria listed in subsection (a) and the size of their family, as defined in subsection (c) below, exceeds four persons and reported wages in the last 4 quarters that are less than or equal to 300% of the federal poverty level for the size of family listed by the claimant on the waiver request, OR
      - (ii) Was not receiving Temporary Assistance for Needy Families (TANF) at the time the overpayment was established and is receiving TANF at the time the waiver request is submitted.
    - (B) The individual has a claimant fault non-fraud overpayment and

- (i) Has reported wages in the last four quarters that are less than or equal to 200% of the federal poverty level for a family of four, OR
- (ii) The size of their family, as defined in subsection (c) below, exceeds four persons and reported wages in the last 4 quarters that are less than or equal to 200% of the federal poverty level for the size of family listed by the claimant on the waiver request, OR
- (iii) Is a recipient of Temporary Assistance for Needy Families (TANF) within the 60 days prior to establishing the overpayment or is receiving TANF at the time the waiver request is submitted.
- (c) For purposes of 471-030-0053 (b) (A) (i) and (B) (ii) "family" includes those individuals listed in OAR 471-030-0038(1)(f) that are financially supported by the claimant.
- (d) All requests to waive a wage garnishment for claimant non-fault and claimant fault non-fraud overpayments will be considered to be requests to waive the overpayment and the criteria set forth in (3) (a) and (b) will be applied to the request.
- (4) If a waiver is granted, the department will stop collection activity of the overpaid benefits that are waived. OED will give written notice of any waivers that are granted, indicating the amount of the overpaid benefits for which the waiver is granted.
- (5) Any funds, which would otherwise have been restored to the balance of the claim impacted by the overpayment decision, will be removed if the overpayment is waived so the individual does not receive more than the claim's maximum benefit amount.
- (6) Waivers are effective the Sunday of the week in which the request for waiver was filed with OED. OED shall apply the provisions under OAR 471-010-0040 in determining the date the request for waiver is received.
- (7) If a request for waiver of recovery is denied, the individual will receive an administrative decision as defined in OAR 471-030-0039.
- (8) Overpaid benefits that have been recovered prior to the filing of a waiver request will not be waived or refunded.
- (9) If the individual is paid more than once for the same week(s), only the amount in excess of the final entitlement is eligible to be waived.
- (10) In applying ORS 657.315 when the individual is not eligible for a waiver under the provisions of this rule, the provisions under OAR 471-030-0320 shall apply for offsetting overpaid benefits.
- (11) In applying ORS 657.317(3), a waiver will not be granted if the overpayment is a result of willful misrepresentation or fraud as established in ORS 657.215.
- (12) Overpayments caused by the negotiation of an original and a replacement check that were issued for the same period pursuant to OAR 471-030-0049 will not be waived.
- (13) The determination to waive recovery of overpayments under ORS 657.317 and this rule shall be made by employees authorized by the Director.

STATUTORY/OTHER AUTHORITY: ORS 657.610

STATUTES/OTHER IMPLEMENTED: ORS 657.267, 657.268, 657.315, 657.317

AMEND: 471-030-0320

RULE TITLE: Recovery by Offset of Overpaid Benefits and Recovery Periods

NOTICE FILED DATE: 04/24/2024

RULE SUMMARY: Rule amendments modifying the criteria for waiving or offsetting the recovery of certain overpayments .

RULE TEXT:

(1) The effective date of this rule is June 23, 2024.

(2) This rule addresses the percentage of future weekly benefits that may be offset pursuant to Oregon Revised Statute (ORS) 657.215, 657.310, and ORS 657.315.

(3) OED shall offset 100% of the benefits payable for each week claimed when the overpayment is due to misrepresentation under ORS 657.215.

(4) Effective June 23, 2024, OED shall offset 100% of the benefits payable for each week claimed when the overpayment is determined not liable for penalty under ORS 657.310(2)(a) except:

(a) If an individual meets the requirement for a waiver under OAR 471-030-0053 the overpayment is cancelled.

(b) If an individual's request for waiver submitted under OAR 471-030-0053 cannot be canceled under OAR 471-030-0053(3) and has reported wages in the last 4 quarters that are more than 200% of the federal poverty level for a family of four but less than 300% of the federal poverty level for a family of four, the department shall offset 50% of the benefits payable for each week claimed for a period of six (6) months. After six (6) months, the offset will be at 100%.

(c) When the overpayment is the result of back pay as described in OAR 471-030-0017, the department shall offset 50% of the benefits payable for each week claimed.

(5) Effective June 23, 2024, OED shall offset 50% of the benefits payable for each week claimed when the overpayment is determined to have been paid erroneously under ORS 657.315 including when the overpayment is the result of back pay as described in OAR 471-030-0017, except:

(a) If an individual meets the requirement for a waiver under OAR 471-030-0053 the overpayment is cancelled.

(b) If an individual's request for waiver submitted under OAR 471-030-0053 cannot be canceled under OAR 471-030-0053(3) and has reported wages in the last 4 quarters that are more than 300% of the federal poverty level for a family of four but less than 400% of the federal poverty level for a family of four, the department shall offset 0% of the benefits payable for each week claimed for a period of six (6) months. After six (6) months, the offset will be at 50%.

(6) OED will reconsider at any time the offset requirements provided in sections (4) and (5) of this rule if the individual's financial situation changes and the individual:

(a) Submits a new request for waiver; and

(b) Submits a statement explaining the change in their financial situation.

(7) Offsetting overpaid benefits, as described in sections (4) and (5) of this rule, is limited to the five years following the week in which the decision establishing an overpayment became final. When a decision is issued under ORS 657.306 the five years begins immediately following the week the decision establishing an overpayment became final.

STATUTORY/OTHER AUTHORITY: ORS 657.610

STATUTES/OTHER IMPLEMENTED: ORS 657.215, 657.267, 657.268, 657.306, 657.310, 657.315, 657.317, 657.320