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PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 471

EMPLOYMENT DEPARTMENT

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RULES:

471-030-0053, 471-030-0320

AMEND: 471-030-0053

RULE TITLE: Waiving Recovery of Overpayments

NOTICE FILED DATE: 11/28/2022

RULE SUMMARY: Amends OAR 471-030-0053 by clarifying provisions around waiving the recovery of overpayments.

RULE TEXT:

- (1) The effective date of this rule is June 23, 2021.
- (2) This rule addresses waiving recovery of overpayments pursuant to ORS 657.317.
- (3) Recovering overpaid benefits is against equity and good conscience if the individual requesting a waiver has no means to repay the benefits and has total allowable household expenses that equal or exceed 90% of the total household income less unemployment benefits. The Employment Department will use the IRS Collection Financial Standards to determine maximum allowable household expenses. The Oregon Employment Department (OED) may allow expenses higher than those provided for in the IRS Collection Financial standards if the individual requesting a waiver provides documents showing that using those IRS Collection Financial Standards would leave the individual an inadequate means of providing for basic living expenses.
- (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

ADOPT: 471-030-0320

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

NOTICE FILED DATE: 11/28/2022

RULE SUMMARY: Adopts OAR 471-030-0320 which establishes how overpayments may be recovered.

RULE TEXT:

(1) The effective date of this rule is June 23, 2021.

(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) 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(2) and shows total allowable household expenses that are less than 90% but greater than or equal to 80% of the total household income less unemployment insurance benefits, 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) 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(2) and shows total allowable household expenses that are less than 90% but greater than or equal to 80% of the total household income less unemployment insurance benefits, 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;

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

(c) Submits supporting documentation showing 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