

Cathy Cooper  


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**Authorized Signature**

**Number:** SPD-PT-06-013  
**Issue Date:** 03/22/2006

**Topic:** Long Term Care

**Corrected**

**Subject:** Spousal Support Orders

**Transmitting (check the box that best applies):**

New Policy     Policy Change     Policy Clarification     Executive Letter  
 Administrative Rule     Manual Update     Other: \_\_\_\_\_

**Applies to (check all that apply):**

<input type="checkbox"/> All DHS employees	<input checked="" type="checkbox"/> County Mental Health Directors
<input checked="" type="checkbox"/> Area Agencies on Aging	<input type="checkbox"/> Health Services
<input type="checkbox"/> Children, Adults and Families	<input checked="" type="checkbox"/> Seniors and People with Disabilities
<input checked="" type="checkbox"/> County DD Program Managers	<input checked="" type="checkbox"/> Other (please specify): SPD central office

Policy/Rule Title:	Excluded Resource; Community Spouse Provision (OSIP and OSIPM, except OSIP-EPD and OSIPM-EPD)		
Policy/Rule Number(s):	OAR 461-160-0580	Release No:	
Effective Date:	March 6, 2006	Expiration:	N/A
References:	Deficit Reduction Act of 2005, section 6013		
Web Address:			

**Discussion/Interpretation:**

The Department will be making several rule changes effective July 1, 2006, to implement most provisions of the Deficit Reduction Act of 2005 (DRA). However, this particular provision related to spousal support orders is being implemented earlier because it has an immediate fiscal impact and does not require field training.

Prior to the DRA, federal regulations allowed states the option of allocating either resources or income first, when calculating the income and resources needed by a community spouse to meet their monthly needs. The Department chose to use income first, and this is the calculation eligibility workers routinely use when they complete the

*Allocating Resources to Generate Income for the Community Spouse (SPD 3401A).* That is, the form allocates all of the client's available income and all of the community spouse's income to meet the monthly needs, before allocating any extra resources to generate additional interest income to meet the needs. This process will not change.

However, under the DRA, federal regulations no longer allow resources first as an option in meeting the community spouse's monthly needs. Many spousal support orders in the past have requested resources in lieu of available support income from the client. Under the DRA this is no longer acceptable, so it will reduce the number of spousal support orders the Department will allow. This decision about whether a support order is acceptable is made in central office, so this change will not change eligibility decisions in field offices.

However, what may change is the criteria field offices use for referring clients and their community spouses to attorneys. Spousal support orders may no longer be a viable option for clients who began care on or after February 8, 2006, and whose income in addition to the community spouse's income, is sufficient to meet the community spouse's monthly needs.

**Implementation/Transition Instructions:**

Implement this policy change upon receipt.

**Training/Communication Plan:**

Share this Policy Transmittal with affected staff.

**Local/Branch Action Required:**

Review criteria for referring clients and their spouses to attorneys, and decide if the office procedure should change.

**Central Office Action Required:**

No longer allow the allocation of resources first to meet the community spouse's needs in spousal support orders when income is available to meet the needs, for clients who began care on February 8, 2006 or after. In addition, provide technical assistance to field staff as needed.

**Field/Stakeholder review:**       Yes       No

**If yes, reviewed by:**

**Filing Instructions:**

*If you have any questions about this policy, contact:*

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461-160-0580

Excluded Resource; Community Spouse Provision ~~On or After 10/1/89~~ (OSIP and OSIPM except OSIP-EPD and OSIPM-EPD)

- (1) In the OSIP and OSIPM programs, this rule applies to an institutionalized spouse who began a continuous period of care ~~on or after October 1, 1989~~.
- (2) Whether a couple lives together or not, the determination of whether the value of the couple's resources exceed the eligibility limit for the institutionalized spouse for OSIPM program is made as follows:
  - (a) The first step is the determination of what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)
    - (A) Division 461-160 rules applicable to OSIP describe which of the couple's resources are countable resources. Division 461-160 rules applicable to OSIP clients are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIP clients.
    - (B) The countable resources of both spouses 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. 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, but not more than \$99,540.
    - (B) \$19,908 (the state community-spouse resource allowance).
    - (C) A court-ordered community spouse resource allowance. In this rule, (OAR 461-160-0580(2)(c)(C) and (2)(f)(C)), 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 client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client'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 (D) 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 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(1)(d).
- (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 OSIP resource standard for one person (under OAR 461-160-0015(6)(a)). 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 (but not more than \$99,540) plus the OSIP resource standard for one person.

- (B) \$19,908 (the state community-spouse resource allowance), plus the OSIP resource standard for one person.
  - (C) A court-ordered community spouse resource allowance plus the OSIP resource standard for one person. (*See* paragraph (2)(c)(C) of this rule for ~~definition of a~~ **description of the** *court-ordered community spouse resource allowance.*)
  - (D) The OSIP 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. 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(1)(d).
- (3) Once eligibility has been established, 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 his or her 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.

Stat. Auth.: ORS 411.060,~~411.700~~

Stats. Implemented: ORS 411.060, 411.700