

In connection with a request for an undue hardship waiver under OAR [461-135-0841](#):

- (1) The Department will provide written notice of the hardship waiver rules to:
 - (a) The personal representative or other person handling the deceased client's estate, if that person is known to the Department at the time the Department files its claim with the probate court. If the person handling the deceased client's estate is not known to the Department, the Department will file the written notice with the claim that it files with the probate court; or
 - (b) Any beneficiary, heir or family member of the deceased client who contacts the Department asserting a right superior to that of the Department to receive property or other assets of the deceased client unless the Department agrees that the beneficiary, heir or family member's claim is superior; or
 - (c) Any beneficiary, heir or family member of the deceased client who held an asset jointly with the deceased client at the time of death, if that person is known to the Department unless the Department determines that it has no right to the jointly held asset.
- (2) Any beneficiary, heir, or family member claiming entitlement to receive the assets of the deceased client may apply for a hardship waiver under this rule by submitting a written request for a waiver to the Department within 45 days of the date the notice was sent to the person or to the probate court. The Department may, in its discretion, consider waiver applications filed after the 45-day period if the waiver applicant demonstrates that there was good cause for the delay.
- (3) The written request shall include all the following information:
 - (a) The relationship of the waiver applicant to the decedent.

- (b) The nature of the applicant's right to receive the property of the decedent if the waiver is granted.
 - (c) The applicant's financial situation or other facts that support the applicant's claim that an undue hardship exists.
 - (d) A statement of the type of waiver that is being requested.
 - (e) Documentation establishing or demonstrating any of the information submitted.
 - (f) Any other information or documentation that the applicant believes should be considered by the Department in determining whether an undue hardship exists.
- (4) The Department may request additional information or documentation from the applicant. If the additional information or documentation is not provided within 30 days of the Department's request for additional information or documentation, the hardship waiver application will be considered by the Department on the basis of the information and documentation provided.
 - (5) Within 90 days of receipt of the hardship waiver application, the Department will issue a written decision granting or denying, in whole or in part, the applicant's request for an undue hardship waiver.
 - (6) If the decision is adverse to the hardship waiver applicant, the Department's written decision shall include information regarding the applicant's right to a contested case hearing before the Office of Administrative Hearings.
 - (7) The rules and procedures adopted by the Department in Chapters 137 and 461 of the Oregon Administrative Rules shall apply to hearings challenging the denial of a hardship waiver application.
 - (8) The issue for the hearing will be whether the Department's decision was correct based on the information available to the Department at the time the written decision was issued, unless the applicant can show good cause for failing to submit relevant information or

documentation to the Department prior to the date the written decision was issued.

- (9) Receipt of a timely request for waiver or request for hearing shall not prevent or delay the Department's pursuit of its estate recovery claim pending issuance of a final order at the conclusion of the hearing. The Department shall return any funds it collected if it is ultimately decided that the waiver should have been granted.

Statutory/Other Authority: ORS [411.060](#)

Statutes/Other Implemented: ORS [411.795](#)

There are no previous rules dated January 1, 2014 or later.

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