

ORDER NO. **17 506**

ENTERED DEC 18 2017

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1631

In the Matter of

RESIDENTIAL SERVICE PROTECTION
FUND,

Request for Waiver of OAR 860-033-0530(1).


ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on December 18, 2017, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:




Michael Dougherty
Chief Operating Officer

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. CA1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: December 18, 2017

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: December 12, 2017

TO: Public Utility Commission

FROM: Jon Cray *JC*

THROUGH: Michael Dougherty *MD* and David Poston *DP*

SUBJECT: RESIDENTIAL SERVICE PROTECTION FUND: (Docket No. UM 1631) Waiver of OAR 860-033-0530(1).

STAFF RECOMMENDATION:

Staff recommends that the Commission waive the minimum age requirement for Abel Klein to submit an application to receive an Assistive Telecommunication Device or Adaptive Equipment under OAR 860-033-0530.

DISCUSSION:

Issue

Whether the Commission should waive the minimum age requirement for Klein to submit an application to receive an Assistive Telecommunication Device or Adaptive Equipment under OAR 860-033-0530.

Applicable Law

With the enactment of Chapter 290, Oregon Laws 1987, §9 to §16, as amended, the Oregon Legislature authorized the Commission to establish a program to purchase and distribute assistive telecommunication devices and, as appropriate, adaptive equipment to Oregon residents certified as deaf, deafblind, hard of hearing, speech impaired, vision impaired, or as having a physical condition by a designated authority.¹

¹ The law designates licensed physicians, physician assistants, nurse practitioners, audiologists, hearing aid specialists, speech-language pathologists, rehabilitation instructors for persons who are blind, or vocational rehabilitation counselors of the Department of Human Services to, within the scope of their practice or profession, certify an Oregonian's disability for TDAP services.

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Certification, in accordance with the law, "implies the individual cannot use the telephone for expressive or receptive communication" and "requires the use of an assistive telecommunication device [or adaptive equipment] to communicate effectively on the telephone."

Oregon Administrative Rule (OAR) 860-033-0530(1) states that, "A person age four and above may apply to receive an Assistive Telecommunication Device or Adaptive Equipment from the Commission."

Analysis

Background

On May 31, 2017, in Docket No. AR 612, the Commission adopted the minimum age requirement of four years in OAR 860-033-0530(1). See Docket AR 612, Order No. 17-200. Commission Staff had initially proposed the age requirement after receiving applications for individuals as young as one year old. As a result, Commission Staff surveyed other states with a similar program and learned those states commonly had adopted age requirements with the minimum range from three to five years old. The Commission, ultimately, adopted Staff's recommendation to mirror the State of Washington's program age threshold of four years.

On September 19, 2017, the Commission received an application for adaptive equipment from Klein, who at the time was shy of his third birthday, with the certification completed by Amanda Wallace, an American Speech-Language and Hearing Association certified speech-language pathologist (SLP). Staff's email to the applicant on September 20, 2017 explained that Klein's request was denied due to the minimum age requirement for TDAP equipment.

Staff reviewed Klein's application a second time on October 10, 2017. Klein's SLP, Wallace, provided an addendum to Klein's application, which included a narrative of his communication capabilities and the rationale for the selection of the requested device. Wallace noted that Klein already has an Oregon Medicaid insurance-covered speech-generating device and was only requesting an eye gaze communication and mounting device, a type of adaptive equipment.

The Commission makes available assistive telecommunication devices and adaptive equipment that provides a means of access to communicate effectively on the telephone, including eye gaze communication systems and mounting solutions, for TDAP recipients of speech-generating devices with limited mobility. Otherwise, the recipient, like Klein, is unable to effectively access, control, or interact with the speech-

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generating device. The Commission currently has adequate funding for the purchase and distribution of the requested access methods for Klein.

Staff contacted Wallace on October 10, 2017, requesting additional information about Abel's communication abilities relative to telephone usage. Wallace submitted a letter on October 11, 2017, in which she explained that, due to the nature of his disability, Klein has no functional speech and relies on facial expressions and some vowel vocalizations to convey emotion. However, when Klein trialed the eye gaze module, he demonstrated reasonable engagement and success accessing and using his existing speech-generating device to communicate. Klein is currently unable to use the telephone; instead, he is a "silent" participant when his immediate family members make or receive calls from other members of the family in different states.

The premise for the law that established the TDAP is explained in Chapter 290, Oregon Laws 1987, §10. The 1987 Oregon Legislature recognized that "present technology is available, but at significant cost." Therefore, by providing assistive telecommunication devices or adaptive equipment, it would allow Oregonians with disabilities "to more fully participate in the activities and programs offered by government and other community agencies, as well as in their family and social activities at no additional cost beyond normal telephone service."

Staff does not anticipate additional applications for a similar assistive telecommunication devices or adaptive equipment for individuals under four years old. However, Staff will review these applications on a case-by-case basis and, if necessary and appropriate, may propose that the Commission amend the rule in a rulemaking proceeding.

Conclusion

Staff finds that a waiver will fulfill the objective of the law so Klein can begin to use the phone to more fully participate in his family and social activities at no additional cost and without waiting to reach four years of age.

PROPOSED COMMISSION MOTION:

Approve a partial waiver of the age requirement in OAR 860-033-0530(1) to allow Abel Klein to submit an application to the Commission for an assistive telecommunication device or adaptive equipment.

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