

**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 August 22, 2023, 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:

A handwritten signature in blue ink, appearing to read "Nolan Moser".

Nolan Moser

Chief Administrative Law Judge

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. CA9

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 22, 2023

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: August 14, 2023

TO: Public Utility Commission

FROM: Jon Cray

THROUGH: Bryan Conway and Melissa Nottingham **SIGNED**

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 two applicants, referred to herein by the initials GMA and AR,¹ with Commission-assigned permanent recipient identification (ID) numbers of 25559 and 25704, respectively, to receive an Assistive Telecommunication Device or Adaptive Equipment under Oregon Administrative Rule (OAR) 860-033-0530.

DISCUSSION:

Issue

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

Applicable Law

With the enactment of Oregon Revised Statute (ORS) 759.693 to ORS 759.695, as amended, the Oregon Legislature authorized the Commission to establish a program (Telecommunication Devices Access Program) to purchase and distribute assistive telecommunication devices and, as appropriate, adaptive equipment to Oregon

¹ Applicants' initials are used in lieu of first and last name to preserve the confidentiality of the minors and their disability-related information.

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residents certified as deaf, deafblind, hard of hearing, speech impaired, vision impaired, or as having a physical condition by a designated authority.² 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.”

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.”

Under OAR 860-033-0001(2), the Commission may waive any of the OAR Chapter 860, Division 33 rules for good cause, upon request or its own motion.

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 No. 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 May 16, 2023, Staff received an email inquiry from Erika Caceres Ricca, a licensed speech-language pathologist (SLP), about whether an exception to the rule exists after having submitted GMA’s application for adaptive equipment to the Commission on May 10, 2023. Ricca also provided reasons for why an exception was necessary in her email. At the time of their application, GMA was three years and six months old.

Ricca described GMA’s communication abilities and the rationale for the selection of the requested device in his application. She states that GMA has been trialing augmentative and alternative communication (AAC) software applications on her personal tablet. Due to the nature of his disability in speech, GMA’s current means of communication is limited to nonverbal cues, e.g., complex gestures, facial expression, consonant and vowel productions, etc. However, GMA demonstrates an inherent desire

² 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 services from the Telecommunication Devices Access Program.

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to communicate with his bilingual family during therapy sessions whereby an AAC application on Ricca's tablet offers him the ability to express himself through preprogrammed, age-appropriate vocabulary.

Although Ricca does not specifically address plans for successful phone communication, she emphasizes that early intervention is critical for GMA to make significant progress in communicating with family and community members. In Order No. 20-271, the Commission recognized that language acquisition and development is at a crucial stage at this age; otherwise, the child is at grave risk for further language delays or regression that will be detrimental to their ability to effectively communicate on the telephone. The Commission offers the requested tablet and preinstalled AAC software application, a type of adaptive equipment, that will facilitate the continual development of GMA's expressive language skills, thereby affecting his ability to communicate effectively on the phone as he ages.

On July 25, 2023, Staff received a phone call from Eliesse Jakotich, Client Services Coordinator, at Parkwood Clinic, Multnomah Village. Staff informed Jakotich that the Commission may waive the rule for good cause shown pursuant to OAR 860-033-0001 and informed Jakotich that AR's licensed SLP, Ashley Carter, may submit a request for waiver. Carter's email to Staff on July 26, 2023, included an explanation as to why an exception was warranted. AR was one week away from becoming three years old at the time of his application.

Carter submitted a similar justification and underscored the paramount importance for AR to have full-time access to a tablet and AAC software application that will support his communication needs. She indicated AR's family is committed to his overall success and adheres to clinical recommendations and treatment. However, the absence of adaptive equipment presents barriers to functional communication, safety in the community, and improved quality of life for AR and his family. Carter, pending AR's family's approval, offered to share reassessments and progress reports with Staff to reinforce the request the waiver. Staff appreciates the offer and Carter's dedication to removing communication barriers for individuals like AR with a disability in speech, but progress reports are not necessary.

The Commission makes available assistive telecommunication devices and adaptive equipment that provides a means of access to communicate effectively on the telephone, including tablets with software applications, for qualifying Oregonians with disabilities. Otherwise, recipients like GMA and AR are not able to develop the necessary skills that would otherwise foster effective and independent telephone communications for participation in all aspects of society. The Commission currently

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has adequate funding for the purchase and distribution of the requested devices with preinstalled AAC software applications for GMA and AR.

The premise for the law that established the TDAP is explained in ORS 759.694. The 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.”

The Commission has previously granted three similar petitions for waiver.³ Although applications for similar assistive telecommunication devices or adaptive equipment for individuals under four years old is not common, Staff will review these applications on a case-by-case basis and, if necessary and appropriate, will consider proposing that the Commission amend the rule in a rulemaking proceeding.

Conclusion

Staff finds that a waiver of the applicable rule in both cases will fulfill the objective of the law; GMA and AR will reap the benefits of adaptive equipment that is conducive to successful phone use and full participation in their 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 GMA and AR to receive an assistive telecommunication device or adaptive equipment.

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³ See Order Nos. 17-506, 18-310, and 20-245.