

Chapter 388-447 WAC
HOUSING AND ESSENTIAL NEEDS REFERRAL

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WAC

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WAC 388-447-0001 What are the incapacity requirements for referral to the housing and essential needs (HEN) program? (1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" mean the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Incapacitated" means you cannot be gainfully employed due to a physical or mental impairment that is expected to continue for at least ninety days from the date you apply.

(d) "Mental impairment" means a diagnosable mental disorder.

(e) "Physical impairment" means a diagnosable physical illness.

(2) You must be incapacitated in order to receive a HEN referral.

(3) We determine if you are incapacitated when:

(a) You apply for a referral to the HEN program;

(b) You become gainfully employed;

(c) You obtain work skills by completing a training program;

(d) We receive new information that indicates you may be able to work; or

(e) Your incapacity authorization period ends.

(4) We deny your HEN referral if you are gainfully employed at the time of application for referral to the HEN program. "Gainfully employed" means you are performing, in a regular predictable manner, an activity usually done for pay or profit and earning more than the substantial gainful activity standard defined by the Social Security Administration (SSA).

(5) We do not consider you to be gainfully employed if you are working:

(a) Under special conditions that go beyond providing reasonable accommodation; or

(b) Occasionally or part-time because your impairment limits the hours you are able to work compared to unimpaired workers in the same job.

(6) We determine you are incapacitated if you are:

(a) Eligible for the aged, blind, or disabled (ABD) cash assistance program;

(b) Approved through the progressive evaluation process (PEP). The PEP is a sequence of eight steps described in WAC 388-447-0030 through 388-447-0100;

(c) Eligible for services from the Developmental Disabilities Administration (DDA);

(d) Diagnosed as having an intellectual disability based on a full scale score of seventy or lower on the Wechsler adult intelligence scale (WAIS);

(e) Eligible for long-term care services from Aging and Long-term Support Administration (AL TSA);

(f) Released from a medical institution where you received services from AL TSA within the past 90 days; or

(g) Released from inpatient treatment for a mental impairment within the past 90 days if:

(i) The release from inpatient treatment was not against medical advice; and

(ii) You were discharged into outpatient mental health treatment.

(7) If you have a physical or mental impairment or are impaired due to a substance use disorder, and do not meet the other incapacity criteria in subsection (6) (c) through (g), we decide if you are incapacitated by applying the PEP.

(8) In determining incapacity, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling; and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and co-workers, tolerating the pressures of a work setting, maintaining appropriate behavior, using judgment, and adapting to changes in a routine work setting.

[Statutory Authority: RCW 74.04.050, 74.040.055 [74.04.055], 74.04.057, 74.08.090, and 2018 c 48. WSR 18-18-007, § 388-447-0001, filed 8/23/18, effective 9/23/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0001, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0005 What evidence do we consider to determine incapacity? (1) To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include the following:

(a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

(i) Medical doctor (MD);

(ii) Doctor of osteopathy (DO);

(iii) Doctor of optometry (OD) for visual disorders;

(iv) Doctor of podiatry (DP) for foot and ankle disorders;

(v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice;

(viii) Qualified speech-language pathologist, for purposes of establishing speech or language impairments;

(ix) Doctor of dental surgery (DDS) or doctor of medical dentistry (DMD) for tooth abscesses or temporomandibular joint (TMJ) disorders; and

(x) Chief of staff of a U.S. Department of Veterans Affairs medical center, or their designee, as authorized in federal law.

(b) For a mental impairment, a health professional licensed in Washington state or where the examination was performed:

(i) Psychiatrist;

(ii) Psychologist;

(iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(iv) Physician assistant (PA) for impairments within their licensed scope of practice;

(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning;

(vi) Clinical social worker;

(vii) Mental health professional (MHP); and

(viii) Physician treating you for a mental impairment.

(2) "Supplemental medical evidence" means information from a licensed health professional who can provide supporting documentation for impairments established by an "acceptable medical source" listed in subsection (1) of this section. "Supplemental medical evidence" sources include, but are not limited to:

(a) Naturopath;

(b) Chiropractor;

(c) Physical therapist; and

(d) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.

(3) "Other evidence" means information from sources not listed in subsections (1) and (2) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical source" in subsection (1) of this section. Sources of "other evidence" may include public and private agencies, schools, family members, friends, caregivers, and employers.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, 41.05.021, 74.09.035, and 74.09.530. WSR 18-05-075, § 388-447-0005, filed 2/20/18, effective 3/23/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0005, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0010 What medical evidence do I need to provide?

You must provide medical evidence of your impairment(s) and how your impairment(s) affects your ability to perform regular and continuous

work activity. Medical evidence must be in writing and be clear, objective and complete.

(1) Objective evidence for physical impairments means:

(a) Laboratory test results;

(b) Pathology reports;

(c) Radiology findings including results of X-rays and diagnostic imaging scans;

(d) Clinical findings including, but not limited to, ranges of joint motion, blood pressure, temperature or pulse; and documentation of a physical examination; or

(e) Hospital history and physical reports and admission and discharge summaries; or

(f) Other medical history and physical reports related to your current impairments.

(2) Objective evidence for mental impairments means:

(a) Clinical interview observations, including objective mental status exam results and interpretation.

(b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).

(c) Hospital, outpatient and other treatment records related to your current impairments.

(d) Testing results, if any, including:

(i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or

(ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.

(3) Medical evidence sufficient for an incapacity determination must be from a medical professional described in WAC 388-447-0005 and must include:

(a) A diagnosis for the impairment, or impairments, based on an examination performed within five years of application;

(b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-447-0001; and

(c) Documentation of how the impairment, or impairments, is currently limiting your ability to work based on an examination performed within ninety days of the date of application or incapacity review.

(4) We consider documentation in addition to objective evidence to support the medical evidence provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.

(5) If you can't obtain medical evidence sufficient for us to determine if you are incapacitated without cost to you, and you meet the other eligibility conditions defined in WAC 388-447-0001, we pay the costs to obtain objective evidence based on our published payment limits and fee schedules.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0010, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0020 How does the department assign severity ratings to my impairments? (1) "Severity rating" is a rating of the extent of your impairment and how it impacts your ability to perform the basic

work activities detailed in WAC 388-447-0001. Severity ratings are assigned in Steps II through IV of the progressive evaluation process (PEP). The following chart provides a description of levels of limitations on work activities and the severity ratings that would be assigned to each.

	Effect on Work Activities	Degree of Impairment	Numerical Value
(a)	There is no effect on your performance of one or more basic work-related activities.	None	1
(b)	There is no significant limit on your performance of one or more basic work-related activities.	Mild	2
(c)	There are significant limits on your performance of one or more basic work-related activity.	Moderate	3
(d)	There are very significant limits on your performance of one or more basic work-related activities.	Marked	4
(e)	You are unable to perform at least one basic work-related activity.	Severe	5

(2) We use the description of how your condition impairs your ability to perform work activities given by the medical evidence provider to establish severity ratings when the impairments are supported by, and consistent with, the objective medical evidence.

(3) A contracted doctor reviews your medical evidence and the ratings assigned to your impairment when:

(a) The medical evidence indicates functional limitations consistent with at least a moderate physical or mental impairment; and

(b) Your impairment has lasted, or is expected to last, nine months or more with available treatment.

(4) The contracted doctor reviews the medical evidence, severity ratings, and functional assessment to determine whether:

(a) The medical evidence is objective and sufficient to support the findings of the medical evidence provider;

(b) The description of impairments is supported by the medical evidence; and

(c) The severity rating, duration, and assessment of functional limitations assigned by DSHS are consistent with the medical evidence.

(5) If the medical evidence provider's description of your impairments is not consistent with the objective medical evidence, we will:

- (a) Assign a severity rating, duration, and functional limitations consistent with the objective medical evidence;
- (b) Clearly describe why we rejected the medical provider's opinion; and
- (c) Identify the medical evidence used to make the determination.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0020, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0030 Progressive evaluation process step I—How does the department review the medical evidence required for an incapacity determination?

(1) When we receive your medical evidence, we review it to see if it is sufficient to decide whether you meet the incapacity requirements. It must:

- (a) Contain sufficient information under WAC 388-447-0010;
- (b) Be written by an authorized medical professional described in WAC 388-447-0005;
- (c) Document a potentially incapacitating condition; and
- (d) Indicate an impairment is expected to last at least ninety days from the application date.

(2) If the information received isn't clear, we may require more information before we decide if you are incapacitated. As examples, we may require you to get more medical tests or be examined by a medical specialist.

(3) We deny incapacity if:

- (a) The reported impairment isn't expected to last ninety days or more from the date of application;
- (b) We don't have the medical evidence detailed in WAC 388-447-0010, which is necessary to determine incapacity.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0030, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0040 Progressive evaluation process step II—How does the department determine the severity of mental impairments?

If you are diagnosed with a mental impairment by a professional described in WAC 388-447-0005, we use information from the medical evidence provider to determine how the impairment limits work-related activities.

(1) We review the following psychological evidence to determine the severity of your mental impairment:

- (a) Psychosocial and treatment history records;
- (b) Clinical findings of specific abnormalities of behavior, mood, thought, orientation, or perception;
- (c) Results of psychological tests; and
- (d) Symptoms observed by the examining professional that show how your impairment affects your ability to perform basic work-related activities.

(2) If you are diagnosed with an intellectual disability, the diagnosis must be based on the Wechsler adult intelligence scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
85 or above	1
71 to 84	3
70 or lower	5

(3) If you are diagnosed with a mental impairment with physical causes, we assign a severity rating based on the most severe of the following four areas of impairment:

- (a) Short term memory impairment;
- (b) Perceptual or thinking disturbances;
- (c) Disorientation to time and place; or
- (d) Labile, shallow, or coarse affect.

(4) We base the severity of an impairment diagnosed as a mood, anxiety, thought, memory, personality, or cognitive disorder on a clinical assessment of the intensity and frequency of symptoms that:

- (a) Affect your ability to perform basic work-related activities; and
- (b) Are consistent with a diagnosis of a mental impairment as listed in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).

(5) We base the severity rating for a functional mental impairment on accumulated severity ratings for the symptoms in subsection (5) of this section as follows:

Condition	Severity Rating
(a) The clinical findings and objective evidence are consistent with a significant limitation on performing one or more basic work activities.	Moderate (3)
(b) You are diagnosed with a functional disorder with psychotic features;	Marked (4)
(c) You have had two or more hospitalizations for psychiatric reasons in the past two years;	
(d) You have had more than six months of continuous psychiatric inpatient or residential treatment in the past two years;	
(e) The clinical findings and objective evidence are consistent with very significant limitations on ability to perform one or more basic work activities.	Severe (5)
(f) The clinical findings and objective evidence are consistent with an inability to perform one or more basic work activities.	

(6) If you are diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, we assign a severity rating as follows:

Condition		Severity Rating
(a)	Two or more disorders with moderate severity (3) ratings; or	Marked (4)
(b)	One or more disorders rated moderate severity (3), and one rated marked severity (4).	
(c)	Two or more disorders rated marked severity (4).	Severe (5)

(7) We deny incapacity when you haven't been diagnosed with a significant physical impairment and the overall severity of your mental impairment is one or two;

(8) We approve incapacity when your overall mental severity rating is severe (5).

[Statutory Authority: RCW 74.04.050, 74.040.055 [74.04.055], 74.04.057, 74.08.090, and 2018 c 48. WSR 18-18-007, § 388-447-0040, filed 8/23/18, effective 9/23/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0040, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0050 Progressive evaluation process step III—How does the department determine the severity of physical impairments? "Severity of a physical impairment" means the degree that an impairment restricts you from performing the basic work-related activities in WAC 388-447-0001. Severity ratings range from one to five, with five being the most severe. We assign severity ratings based on the table in WAC 388-447-0020.

(1) We assign to each physical impairment a severity rating that is supported by medical evidence.

(2) If your physical impairment is rated two, and there is no mental impairment or a mental impairment that is rated one, we deny incapacity.

(3) If your physical impairment is rated five, we approve incapacity.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0050, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0060 Progressive evaluation process step IV—How does the department determine the severity of multiple impairments?

(1) If you have more than one impairment, we determine the overall severity rating by deciding if your impairments have a combined effect on your ability to be gainfully employed.

(2) When you have two or more diagnosed impairments that limit work activities, we assign an overall severity rating as follows:

Condition		Severity Rating	
(a)	All impairments are mild and there is no cumulative effect on basic work activities.	Mild	2
(b)	All impairments are mild and there is a significant cumulative effect on one or more basic work activities.	Moderate	3
(c)	Two or more impairments are of moderate severity and there is a very significant cumulative effect on basic work activities.	Marked	4
(d)	Two or more impairments are of marked severity.	Severe	5

(3) We deny incapacity at this step when the overall severity rating is two.

(4) We approve incapacity at this step when the overall severity rating is five.

[Statutory Authority: RCW 74.04.050, 74.040.055 [74.04.055], 74.04.057, 74.08.090, and 2018 c 48. WSR 18-18-007, § 388-447-0060, filed 8/23/18, effective 9/23/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0060, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0070 Progressive evaluation process step V—How does the department determine the impact of a mental impairment on my ability to function in a work environment? If you have a mental impairment, we evaluate your cognitive and social functioning in a work setting. "Functioning" means your ability to perform typical tasks that would be required in a routine job setting and your ability to interact effectively while working.

(1) We evaluate cognitive and social functioning by assessing your ability to:

(a) Understand, remember, and persist in tasks by following very short and simple instructions.

(b) Understand, remember, and persist in tasks by following detailed instructions.

(c) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision.

(d) Learn new tasks.

(e) Perform routine tasks without special supervision.

(f) Adapt to changes in a routine work setting.

(g) Make simple work-related decisions.

(h) Be aware of normal hazards and take appropriate precautions.

(i) Ask simple questions or request assistance.

(j) Communicate and perform effectively in a work setting.

(k) Complete a normal workday and workweek without interruptions from psychologically based symptoms.

(l) Set realistic goals and plan independently.

(m) Maintain appropriate behavior in a work setting.

- (2) We approve incapacity when we have objective medical evidence that demonstrates you are:
- (a) At least moderately impaired in your ability to understand, remember, and persist in tasks following simple instructions, and at least moderately limited in your ability to:
 - (i) Learn new tasks;
 - (ii) Be aware of normal hazards and take appropriate precautions;
 and
 - (iii) Perform routine tasks without undue supervision; or
 - (b) At least moderately impaired in your ability to understand, remember, and persist in tasks following complex instructions; and at least markedly limited in your ability to:
 - (i) Learn new tasks;
 - (ii) Be aware of normal hazards and take appropriate precautions;
 and
 - (iii) Perform routine tasks without undue supervision.
- (3) We approve incapacity when you are moderately impaired in your ability to:
- (a) Communicate and perform effectively in a work setting; and
 - (b) Markedly impaired in your ability to maintain appropriate behavior in a work setting.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0070, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0080 Progressive evaluation process step VI—How does the department determine the impact of a physical impairment on my ability to function in a work setting? In Step VI of the progressive evaluation process (PEP), we review the medical evidence provided and determine how your physical impairment limits your ability to work. This determination is then used in Steps VII and VIII of the PEP to determine your ability to perform either work you have done in the past or other work available in the national economy.

(1) "Exertion level" means having strength, flexibility, and mobility to lift, carry, stand or walk as needed to fulfill job duties in the following work levels. For this section, "occasionally" means less than one third of the time and "frequently" means one third of the time or more.

The following table is used to determine your exertion level. Included in this table is a strength factor, which represents your ability to perform physical activities, as defined in Appendix C of the *Dictionary of Occupational Titles (DOT)*, Revised Edition, published by the U.S. Department of Labor as posted on the Occupational Information Network (O.*NET).

If you are able to:	Then we assign this exertion level
(a) Lift ten pounds maximum and frequently lift or carry lightweight articles. Walking or standing only for brief periods.	Sedentary

If you are able to:	Then we assign this exertion level
(b) Lift twenty pounds maximum and frequently lift or carry objects weighing up to ten pounds. Walk six out of eight hours per day or stand during a significant portion of the workday. Sitting and using pushing or pulling arm or leg movements most of the day.	Light
(c) Lift fifty pounds maximum and frequently lift or carry up to twenty-five pounds.	Medium
(d) Lift one hundred pounds maximum and frequently lift or carry up to fifty pounds.	Heavy

(2) "Exertional limitation" means a restriction in mobility, agility or flexibility in the following twelve activities: Balancing, bending, climbing, crawling, crouching, handling, kneeling, pulling, pushing, reaching, sitting, and stooping. We consider any exertional limitations you have when determining your ability to work.

(3) "Functional physical capacity" means the degree of strength, agility, flexibility, and mobility you can apply to work-related activities. We consider the effect of the physical impairment on the ability to perform work-related activities when the severity of the physical impairment is moderate, marked, or severe. All limitations must be substantiated by the medical evidence and directly related to the diagnosed impairment(s).

(4) "Nonexertional physical limitation" means a restriction on work activities that does not affect strength, mobility, agility, or flexibility. Examples are:

(a) Environmental restrictions which may include, among other things, your inability to work in an area where you would be exposed to chemicals; and

(b) Workplace restrictions, such as impaired hearing or speech, which would limit the types of work environments you could work in.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0080, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0090 Progressive evaluation process step VII—How does the department determine ability to perform past work?

(1) If your overall severity rating is moderate (three) or marked (four) and we have not approved or denied incapacity by this stage of the progressive evaluation process (PEP), then we decide if you are able to do the same or similar work as you have done in the past. We consider your current physical and/or mental limitations when making this decision. Vocational factors are education, relevant work history, and age.

(2) We evaluate your work experience to determine if you have relevant past work. "Relevant past work" means work that:

(a) Is defined as gainful employment per WAC 388-447-0001;

(b) Has been performed within the past five years; and

(c) You performed long enough to acquire the knowledge and skills to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation that you have, we compare:

(a) The exertion, nonexertional, educational, and skill requirements detailed in the DOT for that job; and

(b) Current cognitive, social, exertional, and nonexertion factors that significantly limit your ability to perform past work.

(4) After considering vocational factors, we deny incapacity when we determine you:

(a) Are able to perform any of your relevant past work; or

(b) Recently acquired specific work skills through completion of schooling or training, for jobs within your current physical and mental capacities.

(5) We approve incapacity at this step if you are fifty-five years of age or older and do not have the physical or mental ability to perform relevant past work.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0090, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0100 Progressive evaluation process Step VIII—How does the department determine ability to perform other work? When we determine you cannot do work you have done in the past, we consider your age, education, and other factors to decide if you are able to perform other work.

(1) We evaluate education in terms of formal schooling or other training to acquire skills that enable you to meet job requirements. We classify your level of education as follows:

If you:	Then your education level is:
(a) Can't read or write a simple communication, such as two sentences or a list of items.	Illiterate
(b) Have no formal schooling or vocational training beyond the eleventh grade; or	Limited education
(c) Have participated in special education in basic academic classes of reading, writing, or mathematics in high school.	
(d) Have received a high school diploma or high school equivalency certificate; or	High school and above level of education
(e) Have received skills training and was awarded a certificate, degree or license.	

(2) We approve incapacity if you have a moderate or marked physical impairment and meet the criteria below:

Exertion Level	Age	Education Level	Other Vocational Factors
Sedentary	Any age	Any level	Does not apply
Light	50 and older	Any level	Does not apply
Light	35 and older	Illiterate or LEP	Does not apply
Light	18 and older	Limited Education	Does not have any past work
Medium	50 and older	Limited Education	Does not have any past work

(3) We approve incapacity when you have a moderate or marked mental health impairment and we have objective medical evidence that social or cognitive factors described in WAC 388-447-0070 interfere with working as follows:

Social and Cognitive Limitation	Age
(a) Moderately impaired in your ability to: <ul style="list-style-type: none"> (i) Communicate and perform effectively in a work setting; and (ii) Maintain appropriate behavior in a work setting. 	50 years and older
(b) Markedly impaired in your ability to: <ul style="list-style-type: none"> (i) Understand, remember, and persist in tasks following detailed instructions; (ii) Set realistic goals and plan independently; or (iii) Learn new tasks. 	45 years and older
(c) Markedly impaired in your ability to: <ul style="list-style-type: none"> (i) Understand, remember, and persist in tasks by following very short and simple instructions; (ii) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision; (iii) Perform routine tasks without special supervision; (iv) Adapt to changes in a routine work setting; (v) Make simple work-related decisions; (vi) Be aware of normal hazards and take appropriate precautions; (vii) Ask simple questions or request assistance; (viii) Communicate and perform effectively in a work setting; 	Any age

Social and Cognitive Limitation	Age
(ix) Complete a normal workday and work week without interruption from psychologically based symptoms; or	
(x) Maintain appropriate behavior in a work setting.	

(4) We approve incapacity when you have both a mental and physical impairment with at least a moderate overall severity and we have objective medical evidence that social or cognitive factors in WAC 388-447-0070 interfere with your ability to work as follows:

Age	Education	Other Restrictions
Any age	Any level	(a) You are moderately impaired in your ability to communicate and perform effectively in a work setting.
50 or older	Limited education or less	(b) You are restricted to medium exertion level or less.
Any age	Limited education or less	(c) You are restricted to light exertion level or less.

(5) If you do not meet the criteria listed above, and there are jobs you can do in the national economy, we will find you able to perform other work and take the following actions:

(a) Deny incapacity; and

(b) Give you examples of jobs you can do in the national economy despite your impairment(s).

(6) If there are no jobs you can do in the national economy despite your impairment(s), we approve incapacity.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0100, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0110 When does my eligibility for referral to the housing and essential needs (HEN) program end? (1) If we determine you are incapacitated and you meet the eligibility requirements in WAC 388-400-0070, you are eligible for referral to the housing and essential needs (HEN) program for a maximum period of twelve months. This is your incapacity authorization period.

(2) Your HEN referral eligibility stops at the end of your incapacity authorization period unless you provide current medical evidence that demonstrates there was no material improvement in your impairment. No material improvement means that your impairment continues to meet the incapacity criteria detailed in WAC 388-447-0001.

(3) The medical evidence must meet the criteria defined in WAC 388-447-0010.

(4) We use medical evidence received after your incapacity authorization period has ended when:

(a) The delay was not due to your failure to cooperate;

(b) We receive the evidence within thirty days of the end of your incapacity authorization period; and

(c) The evidence meets the incapacity criteria in WAC 388-447-0001.

(5) Even if your condition has not improved, you aren't eligible for referral to the HEN program when:

(a) We receive current medical evidence that doesn't meet the incapacity criteria in WAC 388-447-0001; or

(b) We determine the prior decision that your condition met incapacity requirements was incorrect because:

(i) The information we had was incorrect or not enough to show incapacity; or

(ii) We didn't apply the rules correctly to the information we had at that time.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0110, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0120 How does substance use affect my eligibility for referral to the housing and essential needs (HEN) program?

(1) You must complete a substance use disorder assessment when we have information that indicates you may have a substance use disorder unless you have good cause.

(2) You must participate in substance use treatment if a certified substance use disorder professional indicates a need for treatment, unless you have good cause. Good cause includes, but is not limited to, the following reasons:

(a) We determine that your physical or mental health impairment prevents you from participating in treatment.

(b) The outpatient substance use disorder treatment you need isn't available in the county where you live.

(c) The inpatient substance use disorder treatment you need isn't available at a location you can reasonably access.

(d) You are a parent or other relative personally providing care for a minor child or an incapacitated individual living in your household, child care or day care is necessary for you to participate in substance use disorder treatment, and such care is not available.

(3) If you refuse or do not complete an assessment or treatment without good cause, your HEN referral eligibility will end until you provide proof you are pursuing an assessment or treatment as required.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.805, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.62.005, 74.62.030, and 2023 c 289. WSR 24-01-068, § 388-447-0120, filed 12/14/23, effective 1/14/24. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0120, filed 11/26/13, effective 1/1/14.]

WAC 388-447-0130 What referral to the housing and essential needs (HEN) program rules may the department implement during a state of emergency? During a declared state of emergency, the department may implement the following rules to help mitigate impacts to clients:

(1) Postpone review of your HEN referral program eligibility beyond the 12 month period if the department determines you are not eligible for the aged, blind, or disabled (ABD) program at the time of your incapacity review. The postponement of this review may occur retroactively to the date the governor declares a state of emergency.

(2) Accept a diagnosis of a medically determinable impairment from a "supplemental medical evidence" source in subsection (2) of WAC 388-447-0005, or the predictive risk intelligence system (PRISM).

(3) Accept functional medical evidence beyond 90 days of the date of application or incapacity review, or otherwise waive the requirement of WAC 388-447-0010 (3)(c) in its entirety.

(4) Suspend or waive eligibility review requirements detailed in WAC 388-434-0005 for referral to the HEN program.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.09.530, 74.62.030, and 2022 c 297 § 205(21). WSR 22-17-080, § 388-447-0130, filed 8/17/22, effective 9/17/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.09.530, 74.08A.100. WSR 21-07-004, § 388-447-0130, filed 3/4/21, effective 4/4/21.]