

Chapter 388-02 WAC

DSHS HEARING RULES

(Formerly chapter 388-08 WAC)

WAC		388-02-0180	What happens during a prehearing meeting?
	GENERAL	388-02-0185	What happens after a prehearing meeting?
388-02-0005	What is the purpose and scope of this chapter?	388-02-0190	What happens if you do not participate in a prehearing meeting?
388-02-0010	What definitions apply to this chapter?		
388-02-0015	How do the terms in the Administrative Procedure Act (APA) compare to this chapter?		PREHEARING CONFERENCE WITH AN ADMINISTRATIVE LAW JUDGE
388-02-0020	What does good cause mean?	388-02-0195	What is a prehearing conference?
	ADDRESSES	388-02-0197	When is a prehearing conference scheduled?
388-02-0025	Where is the office of administrative hearings located?	388-02-0200	What happens during a prehearing conference?
388-02-0030	How do I contact the board of appeals?	388-02-0205	What happens after a prehearing conference?
	DEADLINES	388-02-0210	What happens if a party does not attend a prehearing conference?
388-02-0035	How are days counted when calculating deadlines for the hearing process?		ADMINISTRATIVE LAW JUDGES
388-02-0037	When must the OAH reschedule a proceeding based on the amount of notice required?	388-02-0215	What is the authority of the ALJ?
388-02-0038	When may the OAH shorten the amount of notice required to the parties of a proceeding?	388-02-0216	Is the authority of the administrative law judge and the review judge limited?
	FILING AND SERVING PAPERS	388-02-0217	When do ALJs conduct the hearing and enter the hearing decision as an initial order or a final order?
388-02-0040	How do parties send documents?	388-02-0218	When do review judges conduct the hearing and enter final orders?
388-02-0045	What is service?	388-02-0220	What rules and laws must an ALJ and review judge apply when conducting a hearing or making a decision?
388-02-0050	How does a party serve someone?	388-02-0221	How is the index of significant decisions used?
388-02-0055	When must a party serve someone?	388-02-0225	May an ALJ or review judge decide that a DSHS rule is invalid?
388-02-0060	When is service complete?		
388-02-0065	How does a party prove service?	388-02-0230	When is the ALJ assigned to the hearing?
388-02-0070	What is filing?	388-02-0235	May a party request a different judge?
388-02-0075	How does a party file documents?	388-02-0240	How does a party file a motion of prejudice?
	RESOLUTION OF DISPUTES	388-02-0245	May an ALJ or review judge be disqualified?
388-02-0080	What are your options for resolving a dispute with DSHS?		NOTICES
	HEARING RIGHTS AND REQUESTS	388-02-0250	What happens after you request a hearing, and when must the OAH provide notice of the hearing and prehearing conference?
388-02-0085	Do you have a right to a hearing?	388-02-0255	What information must OAH include in the notice of hearing?
388-02-0090	Who may request a hearing?	388-02-0260	May the department amend a notice?
388-02-0095	What if you have questions about requesting a hearing?	388-02-0265	May you amend your hearing request?
388-02-0100	How do you request a hearing?	388-02-0270	Must you tell DSHS and OAH when your mailing address changes?
388-02-0105	What information do you give when requesting a hearing?		CONTINUANCES
388-02-0110	What happens after you request a hearing?	388-02-0275	What is a continuance?
388-02-0115	May you withdraw your hearing request?	388-02-0280	Who may request a continuance?
	INTERPRETERS		DISMISSALS
388-02-0120	Do you have the right to an interpreter in the hearing process?	388-02-0285	What is an order of dismissal?
388-02-0125	What definitions apply to limited English proficient (LEP) parties?	388-02-0290	If your hearing is dismissed, may you request another hearing?
388-02-0130	What requirements apply to notices for limited English speaking parties?	388-02-0295	Where do you send a request to vacate an order of dismissal?
388-02-0135	What requirements apply to interpreters?	388-02-0300	What is the deadline for vacating an order of dismissal?
388-02-0140	May you waive interpreter services?	388-02-0305	How does an ALJ vacate an order of dismissal?
388-02-0145	What requirements apply to the use of interpreters?		STAYS
388-02-0150	What requirements apply to hearing decisions involving limited English speaking parties?	388-02-0310	May a party request a stay of DSHS action?
	REPRESENTATION DURING THE HEARING PROCESS		SUBPOENAS
388-02-0155	Who represents you during the hearing process?	388-02-0315	May a party require witnesses to testify or provide documents?
388-02-0157	How does a party appear?	388-02-0320	Who may prepare a subpoena?
388-02-0160	If a DSHS employee cannot represent you, can they assist you during the hearing process?	388-02-0325	How is a subpoena served?
388-02-0165	What if you would like to be represented by an attorney but you cannot afford one?	388-02-0330	May the ALJ quash a subpoena?
388-02-0170	Who represents DSHS during the hearing?	388-02-0335	Do you have to pay for a subpoena?
	PREHEARING MEETING WITH A DSHS REPRESENTATIVE		HEARING METHODS
388-02-0175	What is a prehearing meeting?	388-02-0340	How is your hearing held?

388-02-0345 Is an ALJ present at your hearing?
 388-02-0350 Is your hearing recorded?
 388-02-0355 Who may attend your hearing?
 388-02-0360 May a party convert how a hearing is held?
 388-02-0365 How does a party convert how a hearing is held or how the witnesses or parties appear?
 388-02-0370 How are documents submitted for a telephone conference?
 388-02-0375 What happens at your hearing?
 388-02-0380 What is a group hearing?
 388-02-0385 May a party withdraw from a group hearing?
 388-02-0387 How may you request that a hearing be consolidated or severed when multiple agencies are parties to the proceeding?

EVIDENCE

388-02-0390 What is evidence?
 388-02-0395 When may the parties bring in evidence?
 388-02-0400 What evidence may the parties present during the hearing?
 388-02-0405 What is a stipulation?
 388-02-0410 After the parties agree to a stipulation, may they change or reject it?
 388-02-0415 What are proposed exhibits?
 388-02-0420 Do the parties mark and number their proposed exhibits?
 388-02-0425 Who decides whether to admit proposed exhibits into the record?
 388-02-0430 What may a party do if they disagree with an exhibit?
 388-02-0435 When should an ALJ receive proposed exhibits for a telephone hearing?
 388-02-0440 What is judicial notice?
 388-02-0445 How does the ALJ respond to requests to take judicial notice?

WITNESSES

388-02-0450 What is a witness?
 388-02-0455 Who may be a witness?
 388-02-0460 How do witnesses testify?
 388-02-0465 May the parties cross-examine a witness?
 388-02-0470 May witnesses refuse to answer questions?

PROOF

388-02-0475 What evidence does an ALJ consider?
 388-02-0480 What does burden of proof mean?
 388-02-0485 What is the standard of proof?
 388-02-0490 How is a position proven at hearing?
 388-02-0495 What is equitable estoppel?

RECORD CLOSURE

388-02-0500 What may an ALJ do before the record is closed?
 388-02-0505 When is the record closed?
 388-02-0510 What happens when the record is closed?
 388-02-0512 What is included in the hearing record?

HEARING DECISIONS

388-02-0515 What happens after the record is closed?
 388-02-0520 What information must the ALJ include in the decision?
 388-02-0525 When do initial orders become final?
 388-02-0530 What if a party disagrees with the ALJ's decision?

CLERICAL ERRORS IN ALJ DECISIONS

388-02-0540 How are clerical errors in ALJ decisions corrected?
 388-02-0545 How does a party ask for a corrected ALJ decision?
 388-02-0550 How much time do the parties have to ask for a corrected ALJ decision?
 388-02-0555 What happens when a party requests a corrected ALJ decision?

REQUESTS FOR BOA REVIEW OF INITIAL ORDERS FOR CASES LISTED IN WAC 388-02-0215(4)

388-02-0560 What is review of an initial order by a review judge?
 388-02-0565 What evidence does the review judge consider in reviewing an initial order?
 388-02-0570 Who may request review of an initial order?
 388-02-0575 What must a party include in the review request?
 388-02-0580 What is the deadline for requesting review by a review judge?
 388-02-0585 Where does a party send the request for review by a review judge?
 388-02-0590 How does the party that is not requesting review respond to the review request?

388-02-0595 What happens after the response deadline?

REVIEW JUDGES

388-02-0600 What is the authority of the review judge?

REQUESTS FOR RECONSIDERATION OF FINAL ORDERS ENTERED BY OAH AND BOA

388-02-0605 What if a party does not agree with a final order entered by OAH or BOA?
 388-02-0610 What is reconsideration?
 388-02-0615 What must a party include in the reconsideration request?
 388-02-0620 What is the deadline for requesting reconsideration?
 388-02-0625 Where does a party send a reconsideration request?
 388-02-0630 How does a party respond to a reconsideration request?
 388-02-0635 What happens after a party requests reconsideration?

REQUESTS FOR JUDICIAL REVIEW OF FINAL ORDERS

388-02-0640 What is judicial review?
 388-02-0645 When must you ask for judicial review?
 388-02-0650 How do you serve your petition for judicial review?

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-02-0524 In what cases does the ALJ enter the hearing decision as an initial order? [Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0524, filed 10/15/02, effective 11/15/02.] Repealed by WSR 08-21-144, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V.

388-02-0527 In what cases does the ALJ enter the hearing decision as a final order? [Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0527, filed 10/15/02, effective 11/15/02.] Repealed by WSR 08-21-144, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V.

388-02-0535 Who may ask for a change in a decision? [Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0535, filed 9/1/00, effective 10/2/00.] Repealed by WSR 02-21-061, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211.

GENERAL

WAC 388-02-0005 What is the purpose and scope of this chapter? This chapter describes the general procedures that apply to the resolution of disputes between you and the various programs within the department of social and health services (DSHS). The rules of this chapter are intended to supplement for DSHS both the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH).

(1) This chapter:

(a) Establishes rules encouraging informal dispute resolution between DSHS and persons or entities who disagree with its actions;

(b) Regulates all hearings involving DSHS; and

(c) Consolidates most DSHS hearing procedural rules into one chapter.

(2) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if you have a hearing right, including the APA and DSHS program rules or laws.

(3) Specific DSHS program hearing rules prevail over the rules in this chapter.

(4) Rules encouraging informal dispute resolution between the health care authority and persons or entities who disagree with its actions, and regulating hearings for the medical services programs established under chapter 74.09 RCW are governed by chapter 182-526 WAC.

[Statutory Authority: RCW 34.05.020. WSR 13-05-028, § 388-02-0005, filed 2/12/13, effective 3/15/13. Statutory Authority: RCW 74.09.741 and 34.05.020. WSR 12-05-043, § 388-02-0005, filed 2/10/12, effective 2/25/12. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0005, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0010 What definitions apply to this chapter? The following definitions apply to this chapter:

"Administrative law judge (ALJ)" means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not department employees or department representatives.

"BOA" means the board of appeals.

"Business days" means all days except Saturdays, Sundays and legal holidays.

"Calendar days" means all days including Saturdays, Sundays and legal holidays.

"Date of the department action" means the date when the department's decision is effective.

"Deliver" means giving a document to someone in person.

"Department" means the department of social and health services.

"Documents" means papers, letters, writings, or other printed or written items.

"DSHS" means the department of social and health services.

"DSHS or department representative" means an employee of the department, a department contractor, or an assistant attorney general authorized to represent the department in an administrative hearing. Department representatives include, but are not limited to, claims officers and administrative hearing coordinators.

"Final order" means an order that is the final department decision.

"Hearing" means a proceeding before an ALJ or review judge that gives a party an opportunity to be heard in disputes about department programs. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 of the Washington Administrative Code (WAC), chapter 10-08 WAC, or other law.

"Initial order" is a hearing decision made by an ALJ that may be reviewed by a BOA review judge at either party's request.

"Judicial review" means a superior court's review of a final order.

"Mail" means placing a document in the mail with the proper postage.

"OAH" means the office of administrative hearings, a separate state agency from the department.

"Party" means:

(1) The department or DSHS; or

(2) A person or entity:

(a) Named in a department action;

(b) To whom a department action is directed; or

(c) Allowed to participate in a hearing to protect an interest as authorized by law or rule.

"Prehearing conference" means a proceeding scheduled and conducted by an ALJ or review judge in preparation for a hearing.

"Prehearing meeting" means an informal voluntary meeting that may be held before any prehearing conference or hearing.

"Program" means a department organizational unit and the services that it provides, including services provided by department staff and through contracts with providers. Organizational units include, but are not limited to, administrations and divisions.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Review" means a review judge evaluating initial orders entered by an ALJ and making the final agency decision as provided by RCW 34.05.464, or issuing final orders.

"Review judge" means a decision-maker with expertise in department rules who is an attorney and serves as the reviewing officer under RCW 34.05.464. In some cases, review judges conduct hearings and enter final orders. In other cases, they review initial orders and may make changes to correct any errors in an ALJ's initial order. After reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are employed by the department, are located in the board of appeals (BOA), and are not part of the department program involved in the review. See WAC 388-02-0600 for information on the authority of a review judge.

"Rule" means a state regulation. Rules are found in the Washington Administrative Code (WAC).

"Should" means that an action is recommended but not required.

"Stay" means an order temporarily halting the department decision or action.

"You" means any individual or entity that has a right to be involved with the department hearing process, which includes a party or a party's representative. "You" does not include the department or its representative.

[Statutory Authority: RCW 34.05.310(4) [34.05.020]. WSR 12-10-036, § 388-02-0010, filed 4/26/12, effective 5/27/12. Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0010, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0010, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0010, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0010, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0015 How do the terms in the Administrative Procedure Act (APA) compare to this chapter? To improve clarity and understanding, the rules in this chapter may use different words than the APA or the model rules.

Following is a list of terms used in those laws and the terms as used in these rules:

Chapter 34.05 RCW Chapter 10-08 WAC	Chapter 388-02 WAC
Adjudicative proceeding	Different terms are used to refer to different stages of the hearing process, and may include prehearing meeting, prehearing conference, hearing, review, reconsideration and the entire hearing process
Agency	DSHS
Application for adjudicative proceeding	Request a hearing
Enter	Make, send
Presiding officer	ALJ or review judge
Reviewing officer	Review judge

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0015, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0015, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0020 What does good cause mean? (1)

Good cause is a substantial reason or legal justification for failing to appear, to act, or respond to an action. To show good cause, the ALJ must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline.

(2) Good cause may include, but is not limited to, the following examples.

(a) You ignored a notice because you were in the hospital or were otherwise prevented from responding; or

(b) You could not respond to the notice because it was written in a language that you did not understand.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0020, filed 9/1/00, effective 10/2/00.]

ADDRESSES

WAC 388-02-0025 Where is the office of administrative hearings located? (1)(a) The office of administrative hearings (OAH) headquarters location is:

Office of Administrative Hearings
2420 Bristol Court SW
P.O. Box 42488
Olympia WA 98504-2488
(360) 664-8717
(360) 664-8721 (fax)

(b) The headquarters office is open from 8:00 am to 5:00 p.m. Mondays through Friday, except legal holidays.

(2) OAH field offices are at the following locations:

Olympia

Office of Administrative Hearings
2420 Bristol Court SW
P.O. Box 42489
Olympia, WA 98504-2489

(360) 753-2531
1-800-583-8271
fax: (360) 586-6563

Seattle

Office of Administrative Hearings
One Union Square
600 University Street, Suite 1500
Mailstop: TS-07
Seattle, WA 98101-1129
(206) 389-3400
1-800-845-8830
fax: (206) 587-5135

Spokane Valley

Office of Administrative Hearings
16201 E. Indiana Avenue, Suite 5600
Spokane Valley, WA 99216
(509) 456-3975
1-800-366-0955
fax: (509) 456-3997

Tacoma

Office of Administrative Hearings
949 Market Street, Suite 500
Mailstop: WT-54
Tacoma, WA 98402
(253) 476-6888
fax (253) 593-2200

Yakima

Office of Administrative Hearings
32 N 3rd Street, Suite 320
Yakima, WA 98901-2730
(509) 575-2147
1-800-843-3491
fax (509) 454-7281

(3) You should contact the Olympia field office, under subsection (2), if you do not know the correct field office.

(4) You can obtain further hearing information at the OAH web site: www.oah.wa.gov.

[Statutory Authority: RCW 34.05.020 and 34.05.353. WSR 15-23-048, § 388-02-0025, filed 11/12/15, effective 12/13/15; WSR 14-11-094, § 388-02-0025, filed 5/21/14, effective 6/21/14. Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0025, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.353. WSR 09-05-032, § 388-02-0025, filed 2/11/09, effective 3/14/09. Statutory Authority: RCW 34.05.020 and chapter 34.05 RCW, Parts IV and V. WSR 05-22-076, § 388-02-0025, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0025, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0025, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0030 How do I contact the board of appeals? (1) The information included in this section is current at this time of rule adoption, but may change. Current information and additional contact information are available on the department's internet site, in person at the board of appeals office, or by a telephone call to the board of appeal's main public number.

Department of Social and Health Services Board of Appeals	
Location	Office Building 2 (OB-2) First Floor Information 1115 Washington Street Olympia, Washington
Mailing address	P.O. Box 45803 Olympia, WA 98504-5803
Telephone	(360) 664-6100
Fax	(360) 664-6187
Toll free	1-877-351-0002
Internet web site	www.dshs.wa.gov/boa

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0030, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0030, filed 9/1/00, effective 10/2/00.]

DEADLINES

WAC 388-02-0035 How are days counted when calculating deadlines for the hearing process? (1) When counting days to find out when a hearing deadline ends under DSHS rules or statutes:

(a) Do not include the day of the action, notice, or order. For example, if a hearing decision is mailed on Tuesday and you have twenty-one days to request a review, start counting the days with Wednesday.

(b) If the last day of the period ends on a Saturday, Sunday or legal holiday, the deadline is the next business day.

(c) For periods of seven days or less, count only business days. For example, if you have seven days to respond to a review request that was mailed to you on Friday, May 10, the response period ends on Tuesday, May 21.

(d) For periods over seven days, count every day, including Saturdays, Sundays, and legal holidays.

(2) The deadline ends at 5:00 p.m. on the last day.

(3) If you miss a deadline, you may lose your right to a hearing or appeal of a decision.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0035, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0037 When must the OAH reschedule a proceeding based on the amount of notice required? Any party may request that the proceeding be rescheduled and OAH must reschedule if:

(1) A rule requires the OAH to provide notice of a proceeding; and

(2) The OAH does not provide the amount of notice required.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0037, filed 1/31/11, effective 3/3/11.]

WAC 388-02-0038 When may the OAH shorten the amount of notice required to the parties of a proceeding? The ALJ and the parties may agree to shorten the amount of notice required by any rule.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0038, filed 1/31/11, effective 3/3/11.]

(11/12/15)

FILING AND SERVING PAPERS

WAC 388-02-0040 How do parties send documents?

(1) When the rules in this chapter or in other law asks a party to send copies of documents to other parties, the party must mail or deliver copies to the DSHS representative and to all other parties or their representatives.

(2) When sending documents to OAH or BOA, you must mail or deliver the documents to one of the locations listed in WAC 388-02-0025(2) for OAH or in WAC 388-02-0030 for BOA.

(3) When sending documents to your assigned field office, you may use the address listed at the top of your notice of hearing. If a field office has not been assigned, all written communication about your hearing must be sent to the OAH Olympia field office which sends the communication to the correct office.

(4) Documents may be sent by giving them to someone in person, placing them in the mail with proper postage, or by fax or email if the party mails a copy on the same day.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0040, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0045 What is service? Service gives the party notice. When a document is given to the party, the party is considered served with official notice of the contents of the document.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0045, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0050 How does a party serve someone? Unless otherwise stated in law, a party may serve someone by:

- (1) Personal service (hand delivery);
- (2) First class, registered, or certified mail;
- (3) Fax if the party mails a copy of the document the same day;
- (4) Commercial delivery service; or
- (5) Legal messenger service.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0050, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0055 When must a party serve someone? A party must serve all other parties and their representatives whenever the party files a pleading, brief or other document with OAH or BOA, or when required by law.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0055, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0060 When is service complete? Service is complete when:

- (1) Personal service is made;
- (2) Mail is properly stamped, addressed and deposited in the United States mail;
- (3) Fax produces proof of transmission;
- (4) A parcel is delivered to a commercial delivery service with charges prepaid; or
- (5) A parcel is delivered to a legal messenger service with charges prepaid.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0060, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0065 How does a party prove service?

A party may prove service by providing any of the following:

- (1) A sworn statement;
- (2) The certified mail receipt signed by the recipient;
- (3) An affidavit or certificate of mailing;
- (4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package; or
- (5) Proof of fax transmission.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0065, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0070 What is filing? (1) Filing is the act of delivering documents to OAH or BOA.

(2) The date of filing is the date documents are received by OAH or BOA.

(3) Filing is complete when the documents are received by OAH or BOA during office hours.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0070, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0075 How does a party file documents?

(1) A party may file documents by delivering them to OAH or BOA by:

- (a) Personal service (hand delivery);
 - (b) First class, registered, or certified mail;
 - (c) Fax transmission if the party mails a copy of the document the same day;
 - (d) Commercial delivery service; or
 - (e) Legal messenger service.
- (2) A party cannot file documents by email.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0075, filed 9/1/00, effective 10/2/00.]

RESOLUTION OF DISPUTES

WAC 388-02-0080 What are your options for resolving a dispute with DSHS? (1) If you disagree with a DSHS decision or action, you have several options for resolving your dispute, which may include the following:

- (a) Any special prehearing alternative or administrative process offered by the program;
- (b) Prehearing meeting;
- (c) Prehearing conference; and
- (d) Hearing.

(2) Because you have a limited time to request a hearing, you must request a hearing within the deadline on the notice of DSHS action to preserve your hearing right.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0080, filed 9/1/00, effective 10/2/00.]

HEARING RIGHTS AND REQUESTS

WAC 388-02-0085 Do you have a right to a hearing?

(1) You have a right to a hearing only if a law or DSHS rule gives you that right. If you are not sure, you should request a hearing to protect your right.

[Ch. 388-02 WAC p. 6]

(2) Some DSHS programs may require you to go through an informal administrative process before you can request or have a hearing. The notice of DSHS action sent to you should include information about this requirement if it applies.

(3) You have a limited time to request a hearing. The deadline for your request varies by the DSHS program involved. You should submit your request right away to protect your right to a hearing, even if you are also trying to resolve your dispute informally.

(4) If you request a hearing, one is scheduled.

(5) If DSHS or the ALJ questions your right to a hearing, the ALJ decides whether you have that right.

(6) If the ALJ decides you do not have a right to a hearing, your request is dismissed.

(7) If the ALJ decides you do have a right to a hearing, the hearing proceeds.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0085, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0090 Who may request a hearing?

Either you or your representative may request a hearing.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0090, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0095 What if you have questions about requesting a hearing? If you have questions about how, when, and where to request a hearing, you should:

- (1) Contact the DSHS program involved, OAH, or BOA;
- (2) Review the notice sent to you of the DSHS action or decision; or
- (3) Review the applicable law or DSHS rule.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0095, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0100 How do you request a hearing?

(1) You may request a hearing in writing or orally, depending upon which program is involved. The DSHS notice and applicable laws and rules should tell you whether the request must be in writing or may be made orally.

(2) If you are allowed to make an oral request, you may do so to a DSHS or OAH employee in person or by telephone or voice mail.

(3) You may send a written request by mail, delivery service, personal service, or by fax if you mail a copy the same day. You should send written requests to the location on the notice or to OAH at the location specified in WAC 388-02-0025(2).

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0100, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0105 What information do you give when requesting a hearing? (1) Your hearing request must contain enough information to identify you and the DSHS action. You should include:

- (a) Your name, address, and telephone number;
- (b) A brief explanation of why you disagree with the DSHS action;
- (c) Your client identification or case number, contract number, or any other information that identifies your case or the program involved; and

(d) Any assistance you need, including a foreign or sign language interpreter or any other accommodation for a disability.

(2) You should also refer to a program's specific rules or the notice to see if additional information is required in your request.

(3) OAH may not be able to process your hearing request if it cannot identify or locate you and determine the DSHS action involved.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0105, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0110 What happens after you request a hearing?

(1) After you request a hearing, the OAH sends the parties a notice containing the hearing date, time, and place. This document is called the notice of hearing. The parties may also receive a written notice of a prehearing conference. You may receive a notice of a prehearing conference either before or after receiving the notice of the hearing.

(2) Before your hearing is held:

(a) The department may contact you and try to resolve your dispute; and

(b) You are encouraged to contact the department and try to resolve your dispute.

(3) If you do not appear for your hearing, an ALJ may enter an order of default or an order dismissing your hearing according to WAC 388-02-0285.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0110, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0110, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0115 May you withdraw your hearing request?

(1) You may withdraw your hearing request for any reason and at any time by contacting DSHS or OAH in writing or orally with the ALJ and the other parties. After your request for withdrawal is received, your hearing is cancelled and OAH sends an order dismissing the hearing. If you withdraw your request you may not be able to request another hearing on the same DSHS action.

(2) If you withdraw your hearing request, you may only set aside the dismissal according to WAC 388-02-0290.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0115, filed 9/1/00, effective 10/2/00.]

INTERPRETERS

WAC 388-02-0120 Do you have the right to an interpreter in the hearing process?

If you need an interpreter because you or any of your witnesses are a person with limited English proficiency, OAH will provide an interpreter at no cost to you.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0120, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0125 What definitions apply to limited English proficient (LEP) parties? The following definitions apply to LEP parties:

"**Hearing impaired person**" means a person who, because of a hearing or speech impairment, cannot readily speak, understand or communicate in spoken language.

(11/12/15)

"**Intermediary interpreter**" means an interpreter who:

(1) Is a certified deaf interpreter (CDI); and

(2) Is able to assist in providing an accurate interpretation between spoken and sign language or between types of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter.

"**Limited English proficient (LEP)**" includes limited English speaking persons or other persons unable to communicate in spoken English because of a hearing impairment.

"**Limited English-speaking (LES) person**" means a person who, because of non-English speaking cultural background or disability, cannot readily speak or understand the English language.

"**Qualified interpreter**" includes qualified interpreters for a limited English-speaking person or a person with a hearing impairment.

"**Qualified interpreter for a limited English-speaking person**" means a person who is readily able to interpret or translate spoken and written English communications to and from a limited English-speaking person. If an interpreter is court certified, the interpreter is considered qualified.

"**Qualified interpreter for a person with a hearing impairment**" means a visual language interpreter who is certified by the registry of interpreters for the deaf or National Association of the Deaf and is readily able to interpret or translate spoken communications to and from a hearing impaired person.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0125, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0130 What requirements apply to notices for limited English-speaking parties?

If OAH is notified that you are a limited English-speaking person, all hearing notices, decisions and orders for you must:

(1) Be written in your primary language; or

(2) Include a statement in your primary language:

(a) Indicating the importance of the notice; and

(b) Telling you how to get help in understanding the notice and responding to it.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0130, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0135 What requirements apply to interpreters?

(1) OAH must provide a qualified interpreter to assist any person who:

(a) Has limited English proficiency; and

(b) Is a party or witness in a hearing.

(2) OAH may hire or contract with persons to interpret at hearings.

(3) Relatives of any party and DSHS employees may not be used as interpreters.

(4) The ALJ must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service. To do so, the ALJ considers the interpreter's:

(a) Ability to meet the needs of the hearing impaired person or limited English speaking person;

(b) Education, certification and experience;

(c) Understanding of the basic vocabulary and procedures involved in the hearing; and

(d) Ability to be impartial.

[Ch. 388-02 WAC p. 7]

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If at any time before or during the hearing the interpreter does not provide accurate and effective communication, the ALJ must provide another interpreter.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0135, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0140 May you waive interpreter services? (1) If you are limited English proficient, you may ask to waive interpreter services.

(2) You must make your request in writing or through a qualified interpreter on the record.

(3) The ALJ must determine if your waiver has been knowingly and voluntarily made.

(4) You may withdraw your waiver at any time before or during the hearing.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0140, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0145 What requirements apply to the use of interpreters? (1) Interpreters must:

(a) Use the interpretive mode that the parties, the hearing impaired person the interpreter and the ALJ consider the most accurate and effective;

(b) Interpret statements made by the parties and the ALJ;

(c) Not disclose information about the hearing without the written consent of the parties; and

(d) Not comment on the hearing or give legal advice.

(2) The ALJ must allow enough time for all interpretations to be made and understood.

(3) The ALJ may video tape a hearing and use it as the official transcript for hearings involving a hearing impaired person.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0145, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0150 What requirements apply to hearing decisions involving limited English-speaking parties? (1) When an interpreter is used at a hearing, the ALJ must explain that the decision is written in English but that a party using an interpreter may contact the interpreter for an oral translation of the decision at no cost to you.

(2) Interpreters must provide a telephone number where they can be reached. This number must be attached to any decision or order mailed to the parties.

(3) OAH or BOA must mail a copy of a decision or order to the interpreter for use in oral translation.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0150, filed 9/1/00, effective 10/2/00.]

REPRESENTATION DURING THE HEARING PROCESS

WAC 388-02-0155 Who represents you during the hearing process? (1) You may represent yourself or have anyone represent you, except a DSHS employee.

(2) Your representative may be a friend, relative, community advocate, attorney, or paralegal.

(3) You should inform DSHS or OAH of your representative's name, address, and telephone number.

[Ch. 388-02 WAC p. 8]

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0155, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0157 How does a party appear? (1) If you are going to represent yourself, you should provide the ALJ and other parties with your name, address, and telephone number.

(2) If you are represented, your representative should provide the ALJ and other parties with the representative's name, address, and telephone number.

(3) The presiding officer may require your representative to file a written notice of appearance or to provide documentation that you have authorized the representative to appear on your behalf. In cases involving confidential information, your representative must file a signed written release of information on department form 17-063.

(4) If your representative is an attorney admitted to practice in this state, your attorney must file a written notice of appearance, and must file a notice of withdrawal upon withdrawal of representation.

(5) If you or your representative have put in a written notice of appearance, the ALJ should call the telephone number on the notice of appearance if you or your representative do not appear by calling in with a telephone number before a hearing (including a prehearing).

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0157, filed 1/31/11, effective 3/3/11.]

WAC 388-02-0160 If a DSHS employee cannot represent you, can they assist you during the hearing process? Although DSHS employees cannot represent you during the hearing process, they may assist you by:

(1) Acting as a witness;

(2) Referring you to community legal resources;

(3) Helping you get nonconfidential information; or

(4) Informing you about or providing copies of the relevant laws or rules.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0160, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0165 What if you would like to be represented by an attorney but you cannot afford one? (1) Neither DSHS nor OAH will pay for an attorney.

(2) If you want an attorney to represent you and cannot afford one, community resources may be available to assist you. These legal services may be free or available at a reduced cost. DSHS or OAH can tell you who to contact for legal assistance.

(3) Information about legal assistance can also be found at www.oah.wa.gov.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0165, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0170 Who represents DSHS during the hearing? (1) A DSHS employee, DSHS contractor, or the office of the attorney general represents DSHS during the hearing. The DSHS representative may or may not be an attorney.

(2) An ALJ is independent and does not represent DSHS or any other party.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0170, filed 9/1/00, effective 10/2/00.]

PREHEARING MEETING WITH A DSHS REPRESENTATIVE

WAC 388-02-0175 What is a prehearing meeting? (1)

A prehearing meeting is an informal meeting with a DSHS representative that may be held before any prehearing conference or hearing.

(2) A DSHS representative may contact you before the scheduled hearing to arrange a prehearing meeting. You may also contact DSHS to request a prehearing meeting.

(3) A prehearing meeting is voluntary. You are not required to request one and you are not required to participate in one.

(4) The prehearing meeting includes you and/or your representative, the DSHS representative, and any other party. An ALJ does not attend a prehearing meeting.

(5) The prehearing meeting gives the parties an opportunity to:

- (a) Clarify issues;
- (b) Exchange documents and witness statements;
- (c) Resolve issues through agreement or withdrawal; and
- (d) Ask questions about the hearing process and the laws and rules that apply.

(6) A prehearing meeting may be held or information exchanged:

- (a) In person;
- (b) By telephone conference call;
- (c) Through correspondence; or
- (d) Any combination of the above that is agreeable to the parties.

(7) If a prehearing conference is required by the program or rule, a prehearing meeting may not be an option available to you.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0175, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0180 What happens during a prehearing meeting? During a prehearing meeting:

- (1) A DSHS representative:
 - (a) Explains the role of the DSHS representative in the hearing process;
 - (b) Explains how a hearing is conducted and the relevant laws and rules that apply;
 - (c) Explains your right to representation during the hearing;
 - (d) Responds to your questions about the hearing process;
 - (e) Identifies accommodation and safety issues;
 - (f) Distributes copies of the DSHS documents to be presented during the hearing;
 - (g) Provides, upon request, copies of relevant laws and rules;
 - (h) Identifies additional documents or evidence you may want or be required to present during the hearing;
 - (i) Tells you how to obtain documents from your file;
 - (j) Clarifies the issues; and
 - (k) Attempts to settle the dispute, if possible.

(11/12/15)

(2) You should explain your position and provide documents that relate to your case. You also have the right to consult legal resources.

(3) You and the DSHS representative may enter into written agreements or stipulations, including agreements that settle your dispute.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0180, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0185 What happens after a prehearing meeting? (1) If you and DSHS resolve the dispute during the prehearing meeting and put it in writing or present the agreement to an ALJ, your agreement may be legally enforceable.

(2) Any agreements or stipulations made at the prehearing meeting must be presented to an ALJ before or during the hearing, if you want the ALJ to consider the agreement.

(3) If all of your issues are not resolved in the prehearing meeting, you may request a prehearing conference before an ALJ or go to your scheduled hearing. The ALJ may also order a prehearing conference.

(4) You may withdraw your hearing request at any time if DSHS agrees to some action that resolves your dispute, or for any other reason. If you withdraw your hearing request, the hearing is not held and the ALJ sends a written order of dismissal.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0185, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0190 What happens if you do not participate in a prehearing meeting? You are not required to participate in a prehearing meeting. If you do not participate, it does not affect your right to a hearing.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0190, filed 9/1/00, effective 10/2/00.]

PREHEARING CONFERENCE WITH AN ADMINISTRATIVE LAW JUDGE

WAC 388-02-0195 What is a prehearing conference?

(1) A prehearing conference is a formal proceeding conducted on the record by an ALJ to prepare for a hearing. The ALJ must record the prehearing conference using audio recording equipment (such as a digital recorder or tape recorder).

(2) An ALJ may conduct the prehearing conference in person, by telephone conference call, or in any other manner acceptable to the parties. Your attendance is mandatory.

(3) You may lose the right to participate during the hearing if you do not attend the prehearing conference.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0195, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0195, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0197 When is a prehearing conference scheduled? (1) The ALJ may require a prehearing conference. Any party may request a prehearing conference.

(2) The ALJ must grant the first request for a prehearing conference if it is received by the OAH at least seven business days before the scheduled hearing date.

(3) The ALJ may grant untimely or additional requests for prehearing conferences.

[Ch. 388-02 WAC p. 9]

(4) If the parties do not agree to a continuance, the OAH and/or the ALJ must set a prehearing conference to decide whether there is good cause to grant or deny the continuance.

(5) The OAH must schedule prehearing conferences for all cases which concern actions of the following department programs:

- (a) Adult protective services; and
- (b) The division of residential care services.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0197, filed 1/31/11, effective 3/3/11.]

WAC 388-02-0200 What happens during a prehearing conference? During a prehearing conference the parties and the ALJ may:

- (1) Simplify or clarify the issues to be decided during the hearing;
- (2) Agree to the date, time and place of the hearing;
- (3) Identify accommodation and safety issues;
- (4) Agree to postpone the hearing;
- (5) Allow the parties to make changes in their own documents, including the DSHS notice or the hearing request;
- (6) Agree to facts and documents to be entered during the hearing;
- (7) Set a deadline to exchange names and phone numbers of witnesses and documents before the hearing;
- (8) Schedule additional prehearing conferences;
- (9) Resolve the dispute;
- (10) Consider granting a stay if authorized by law or DSHS rule; or
- (11) Determine any other procedural issues raised by the parties.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0200, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0205 What happens after a prehearing conference? (1) After the prehearing conference ends, the ALJ must enter a written prehearing order describing:

- (a) The actions taken;
- (b) Any changes to the documents;
- (c) Any agreements reached; and
- (d) Any ruling of the ALJ.

(2) The ALJ must send the prehearing order to the parties at least fourteen calendar days before the scheduled hearing, except a hearing may still occur as allowed under WAC 388-02-0280(5). The parties and the ALJ may agree to a shorter time period.

(3) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(4) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(5) The ALJ may take further appropriate actions to address other concerns.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0205, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0205, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0210 What happens if a party does not attend a prehearing conference? (1) All parties are required to attend a prehearing conference.

(2) If you do not attend, you may not be allowed to participate in the hearing. The ALJ may dismiss your hearing request or enter an order of default against you.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0210, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0210, filed 9/1/00, effective 10/2/00.]

ADMINISTRATIVE LAW JUDGES

WAC 388-02-0215 What is the authority of the ALJ?

(1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing.

- (2) As needed, the ALJ may:
 - (a) Determine the order for presenting evidence;
 - (b) Issue subpoenas or orders directing witnesses to appear or bring documents;
 - (c) Rule on objections, motions, and other procedural matters;
 - (d) Rule on an offer of proof made to admit evidence;
 - (e) Admit relevant evidence;
 - (f) Impartially question witnesses to develop the record;
 - (g) Call additional witnesses and request exhibits to complete the record;
 - (h) Give the parties an opportunity to cross-examine witnesses or present more evidence against the witnesses or exhibits;

- (i) Keep order during the hearing;
- (j) Allow or require oral or written argument and set the deadlines for the parties to submit argument or evidence;
- (k) Permit others to attend, photograph or electronically record hearings, but may place conditions to preserve confidentiality or prevent disruption;

(l) Allow a party to waive rights given by chapters 34.05 RCW or 388-02 WAC, unless another law prevents it;

- (m) Decide whether a party has a right to a hearing;
- (n) Issue protective orders;
- (o) Consider granting a stay if authorized by law or DSHS rule; and
- (p) Take any other action necessary and authorized under these or other rules.

(3) The ALJ administers oaths or affirmations and takes testimony.

(4) The ALJ enters initial or final orders as provided for in WAC 388-02-0217.

[Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0215, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, 34.05.220 and chapter 34.05 RCW, Parts IV and V. WSR 06-16-008, § 388-02-0215, filed 7/20/06, effective 8/20/06. Statutory Authority: RCW 34.05.020 and chapter 34.05 RCW, Parts IV and V. WSR 05-02-018, § 388-02-0215, filed 12/27/04, effective 1/27/05; WSR 03-13-046, § 388-02-0215, filed 6/11/03, effective 7/12/03. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371, § 211. WSR 02-21-061, § 388-02-0215, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0215, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0216 Is the authority of the administrative law judge and the review judge limited? The authority of the ALJ and the review judge is limited to those powers

conferred (granted) by statute or rule. The ALJ and the review judge do not have any inherent or common law powers.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0216, filed 1/31/11, effective 3/3/11.]

WAC 388-02-0217 When do ALJs conduct the hearing and enter the hearing decision as an initial order or a final order? (1) As provided for in WAC 388-02-0218, ALJs do not conduct hearings involving cases brought by contractors for the delivery of nursing facility services under WAC 388-96-904(5).

(2) ALJs conduct the hearing and enter the hearing decision as a final order only in cases pertaining to:

(a) Eligibility for the following programs:

(i) Food assistance;

(ii) General assistance, except for general assistance expedited medicaid (GAX);

(iii) Refugee assistance; or

(iv) Telephone assistance.

(b) Child support under chapter 388-14A WAC, except for cases relating to parent address disclosure under WAC 388-14A-2114 through 388-14A-2140 or claims of good cause for not cooperating with the division of child support under WAC 388-14A-2040 through 388-14A-2075 and WAC 388-422-0020;

(c) Juvenile parole revocation under chapter 388-740 WAC;

(d) Juvenile rehabilitation cost reimbursement under chapter 388-720 WAC;

(e) Vocational rehabilitation services under chapter 388-891 WAC; or

(f) Vendor overpayments, except for provider overpayment cases where the hearing is requested by a provider under chapter 388-502 or 388-502A WAC.

(3) ALJs conduct the hearing and enter the hearing decision as an initial order in all other cases.

[Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0217, filed 10/21/08, effective 11/21/08.]

WAC 388-02-0218 When do review judges conduct the hearing and enter final orders? (1) Review judges conduct the hearing and enter the final order in cases where a contractor for the delivery of nursing facility services requests an administrative hearing under WAC 388-96-904(5). Any party dissatisfied with a decision or an order of dismissal of a review judge may request reconsideration from the review judge as provided by this chapter and WAC 388-96-904(12). Following a review judge's decision, you, but not DSHS, may file a petition for judicial review as provided by this chapter and WAC 388-96-904(13).

(2) A review judge has the same authority as an ALJ, as described in WAC 388-02-0215, when conducting a hearing.

[Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0218, filed 10/21/08, effective 11/21/08.]

WAC 388-02-0220 What rules and laws must an ALJ and review judge apply when conducting a hearing or making a decision? (1) ALJs and review judges must first

apply the department rules adopted in the Washington Administrative Code.

(2) If no department rule applies, the ALJ or review judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, and court decisions.

(3) When applying program rules regarding the substantive rights and responsibilities of the parties (such as eligibility for services, benefits, or a license), the ALJ and review judge must apply the program rules in effect on the date of the department action, unless otherwise required by other rule or law. If the department amends its notice of the action, the ALJ and review judge must apply the rules in effect on the date the action was taken, unless otherwise required by other rule or law.

(4) When applying program rules regarding the procedural rights and responsibilities of the parties, the ALJ and review judge must apply the rules that are in effect on the date the procedure is followed.

(5) Program rules determine the amount of time the department has to process your application for services, benefits or a license.

(6) The ALJ and review judge must apply the rules in this chapter beginning on the date each rule is effective.

(7) If you have a dispute with the department concerning the working connections child care (WCCC) program, the ALJ and review judge must apply the hearing rules in this chapter and not the hearing rules in chapter 170-03 WAC. The rules in this chapter apply to disputes between you and the department of social and health services.

[Statutory Authority: RCW 34.05.310(4) [34.05.020]. WSR 12-10-036, § 388-02-0220, filed 4/26/12, effective 5/27/12. Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0220, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0220, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0221 How is the index of significant decisions used? (1) A final order may be relied on, used, or cited as precedent by a party if the final order has been indexed in the department index of significant decisions.

(2) The department index of significant decisions is available to the public at www.dshs.wa.gov/boa. For information on how to obtain a copy of the index, see WAC 388-01-190.

(3) If a precedential published decision entered by the Court of Appeals or the Supreme Court reverses an indexed board of appeals final order, that order will be removed from the index of significant decisions.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0221, filed 1/31/11, effective 3/3/11.]

WAC 388-02-0225 May an ALJ or review judge decide that a DSHS rule is invalid? (1) Neither an ALJ nor a review judge may decide that a DSHS rule is invalid or unenforceable. Only a court may decide this issue.

(2) If the validity of a DSHS rule is raised during the hearing, the ALJ or review judge may allow argument for court review.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0225, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0230 When is the ALJ assigned to the hearing? The OAH assigns an ALJ at least five business days before the hearing. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing. If requested by a party, the OAH must send the name of the assigned ALJ to the party by email or in writing at least five business days before the party's scheduled hearing date. For division of child support cases, the OAH will only be required to assign an ALJ at least five days before the hearing if such a request is specifically made by one of the parties.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0230, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0230, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0235 May a party request a different judge? A party may file a motion of prejudice against an ALJ under RCW 34.12.050. A party may also request that an ALJ or review judge be disqualified under RCW 34.05.425.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0235, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0240 How does a party file a motion of prejudice? (1) A party may request a different ALJ by sending a written motion of prejudice to the OAH before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony. A motion of prejudice must include an affidavit or statement that a party does not believe that the ALJ can hear the case fairly.

(2) Rulings that are not considered discretionary rulings for purposes of this section include but are not limited to those:

- (a) Granting or denying a request for a continuance; and
- (b) Granting or denying a request for a prehearing conference.

(3) A party must send the written motion of prejudice to the chief ALJ at the OAH headquarters identified in WAC 388-02-0025(1) and must send a copy to the OAH field office where the ALJ is assigned.

(4) A party may make an oral motion of prejudice at the beginning of the hearing before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony if:

- (a) The OAH did not assign an ALJ at least five business days before the date of the hearing; or
- (b) The OAH changed the assigned ALJ within five business days of the date of the hearing.

(5) The first request for a different ALJ is automatically granted. The chief ALJ or a designee grants or denies any later requests.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0240, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0240, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0245 May an ALJ or review judge be disqualified? (1) An ALJ or review judge may be disqualified for bias, prejudice, or conflict of interest, or if one of the parties or a party's representative has an ex parte contact with the ALJ or review judge.

(2) Ex parte contact means a written or oral communication with the ALJ or review judge about something related to the hearing when the other parties are not present. Procedural

questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

(3) To ask to disqualify an ALJ or review judge a party must send a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or review judge. A party must promptly make the petition upon discovery of possible bias, conflict of interest or an ex parte contact.

(4) A party must send or deliver the petition to the ALJ or review judge assigned to the case. That ALJ or review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0245, filed 9/1/00, effective 10/2/00.]

NOTICES

WAC 388-02-0250 What happens after you request a hearing, and when must the OAH provide notice of the hearing and prehearing conference? (1) The OAH must send a copy of your hearing request to the department, unless the OAH received your hearing request from the department. The OAH should send it to the department within four business days of the OAH receiving your request.

(2) The OAH must send a notice of hearing to all parties and their representatives at least fourteen calendar days before the hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

(3) If the OAH schedules a prehearing conference, the OAH must send a notice of prehearing conference to the parties and their representatives at least seven business days before the date of the prehearing conference except:

(a) The OAH and/or an ALJ may convert a scheduled hearing into a prehearing conference and provide less than seven business days notice of the prehearing conference; and

(b) The OAH may give less than seven business days notice if the only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance under WAC 388-02-0280 (3)(b).

(4) The OAH and/or the ALJ must reschedule the hearing if necessary to comply with the notice requirements in this section.

(5) If the ALJ denies a continuance after a prehearing conference, the hearing may proceed on the scheduled hearing date, but the ALJ must still issue a written order regarding the denial of the continuance.

(6) You may ask for a prehearing meeting even after you have requested a hearing.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0250, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0250, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0255 What information must OAH include in the notice of hearing? (1) A notice of hearing is a written notice that must include:

(a) The names of all parties who receive the notice and, if known, the names and addresses of their representatives;

(b) The name, mailing address, and telephone number of the ALJ, if known;

(c) The date, time, place, and nature of the hearing;

(d) The legal authority and jurisdiction for the hearing; and

(e) The date of the hearing request.

(2) OAH also sends you information with your notice of hearing telling you the following:

(a) If you fail to attend or participate in a prehearing conference or a hearing, you may lose your right to a hearing. Then the ALJ may send:

(i) An order of default against you; or

(ii) An order dismissing the hearing.

(b) If you need a qualified interpreter because you or any of your witnesses are persons with limited English proficiency, OAH will provide an interpreter at no cost to you.

(c) If the hearing is to be held by telephone or in person, and how to request a change in the way it is held.

(d) How to indicate any special needs for yourself or your witnesses, including the need for an interpreter in a primary language or for sensory impairments.

(e) How to contact OAH if a party has a safety concern.

[Statutory Authority: RCW 34.05.020, WSR 00-18-059, § 388-02-0255, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0260 May the department amend a notice? (1) The ALJ must allow the department to amend (change) the notice of a department action before or during the hearing to match the evidence and facts.

(2) The department must put the change in writing and give a copy to the ALJ and all parties.

(3) The ALJ must offer to continue (postpone) the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier department notice.

(4) If the ALJ grants a continuance, the OAH must send, a new hearing notice at least fourteen calendar days before the hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

[Statutory Authority: RCW 34.05.020, 34.05.220, WSR 11-04-074, § 388-02-0260, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020, WSR 00-18-059, § 388-02-0260, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0265 May you amend your hearing request? (1) The ALJ may allow you to amend your hearing request before or during the hearing.

(2) The ALJ must offer to continue (postpone) the hearing to give the other parties more time to prepare or present evidence or argument if there is a significant change in the hearing request.

(3) If the ALJ grants a continuance, the OAH must send a new hearing notice at least fourteen calendar days before the hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

[Statutory Authority: RCW 34.05.020, 34.05.220, WSR 11-04-074, § 388-02-0265, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020, WSR 00-18-059, § 388-02-0265, filed 9/1/00, effective 10/2/00.]

(11/12/15)

WAC 388-02-0270 Must you tell DSHS and OAH when your mailing address changes? (1) You must tell DSHS and OAH, as soon as possible, when your mailing address changes.

(2) If you do not notify DSHS and OAH of a change in your mailing address and they continue to send notices and other important papers to your last known mailing address, the ALJ may assume that you received the documents.

[Statutory Authority: RCW 34.05.020, WSR 00-18-059, § 388-02-0270, filed 9/1/00, effective 10/2/00.]

CONTINUANCES

WAC 388-02-0275 What is a continuance? A continuance is a change in the date or time of a prehearing conference, hearing or the deadline for other action.

[Statutory Authority: RCW 34.05.020, WSR 00-18-059, § 388-02-0275, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0280 Who may request a continuance?

(1) Any party may request a continuance either orally or in writing.

(2) Before contacting the ALJ to request a continuance, a party should contact the other parties, if possible, to find out if they will agree to a continuance. If you are unable to contact the parties, the OAH or the department must assist you in contacting them.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agreed to the continuance.

(a) If the parties agree to a continuance, the ALJ must grant it unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ must set a prehearing conference to decide whether there is good cause to grant or deny the continuance. The prehearing conference will be scheduled as required by WAC 388-02-0197 and 388-02-0250.

(4) If the ALJ grants a continuance, the OAH must send a new hearing notice at least fourteen calendar days before the new hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

(5) If the ALJ denies the continuance, the ALJ will proceed with the hearing on the date the hearing is scheduled, but must still issue a written order regarding the denial of the continuance.

[Statutory Authority: RCW 34.05.020, 34.05.220, WSR 11-04-074, § 388-02-0280, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020, WSR 00-18-059, § 388-02-0280, filed 9/1/00, effective 10/2/00.]

DISMISSALS

WAC 388-02-0285 What is an order of dismissal? (1)

An order of dismissal is an order sent by the ALJ to end the hearing. The order is made because the party who requested the hearing withdrew the request, failed to appear, or refused to participate, resulting in a default.

(2) If your hearing is dismissed because you did not appear or refused to participate, the DSHS decision stands.

[Ch. 388-02 WAC p. 13]

(3) If the hearing is dismissed due to a written agreement between the parties, the parties must follow the agreement.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0285, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0290 If your hearing is dismissed, may you request another hearing? (1) If the ALJ sends an order dismissing your hearing, you may ask that the ALJ vacate (set aside) the order of dismissal.

(2) If the order of dismissal is vacated, your hearing is reinstated, which means you get another opportunity to have a hearing on your initial request for hearing.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0290, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0295 Where do you send a request to vacate an order of dismissal? You must send your request to vacate an order of dismissal to BOA or OAH. You should specify in your request why the order of dismissal should be vacated. BOA forwards any request received to OAH to schedule a hearing. OAH sends you a notice of the hearing on the request to vacate the order of dismissal.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0295, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0300 What is the deadline for vacating an order of dismissal? (1) You must send your request to vacate an order to OAH or BOA twenty-one calendar days after the date the order of dismissal was mailed to you. If no request is received within that deadline, the dismissal order becomes a final order.

(2) You may make a late request to vacate the order of dismissal for up to one year after it was mailed but you must show good cause according to WAC 388-02-0020 for the late request to be accepted and the dismissal to be vacated.

(3) If you ask to vacate more than one year after the order was mailed, the ALJ may vacate the order of dismissal if the DSHS representative and any other party agrees to waive (excuse) the deadline.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0300, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0305 How does an ALJ vacate an order of dismissal? (1) If your request was received more than twenty-one days, but less than one year after the dismissal order was mailed, the ALJ first must decide if you have good cause according to WAC 388-02-0020.

(2) If your request was timely or you show good cause for missing the deadline, the ALJ will receive evidence and argument at a hearing from the parties on whether the order of dismissal should be vacated.

(3) The ALJ vacates an order of dismissal and reinstates the hearing if you show good cause or if the DSHS representative agrees to waive the deadline. You will then be allowed to present your case about your original request for hearing, either at the same time or at a later date if a continuance is granted.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0305, filed 9/1/00, effective 10/2/00.]

[Ch. 388-02 WAC p. 14]

STAYS

WAC 388-02-0310 May a party request a stay of DSHS action? A party may request that an ALJ or review judge stay (stop) a DSHS action until there is a decision entered by the ALJ or review judge. An ALJ or review judge decides whether to grant the stay.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0310, filed 9/1/00, effective 10/2/00.]

SUBPOENAS

WAC 388-02-0315 May a party require witnesses to testify or provide documents? A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony, or to provide books, documents, or other items.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0315, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0320 Who may prepare a subpoena? (1) ALJs, DSHS, and attorneys for the parties may prepare subpoenas. If an attorney does not represent you, you may ask the ALJ to prepare a subpoena on your behalf. The ALJ may schedule a hearing to decide whether to issue a subpoena.

(2) An ALJ may deny a request for a subpoena. For example, an ALJ may deny a request for a subpoena when the ALJ determines that a witness has no actual knowledge regarding the facts or that the documents are not relevant.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0320, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0325 How is a subpoena served? (1) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement including:

(a) Who was served with the subpoena;

(b) When the subpoena was served;

(c) Where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0325, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0330 May the ALJ quash a subpoena? (1) A party may request that an ALJ quash (set aside) or change the subpoena request at any time before the deadline given in the subpoena.

(2) An ALJ may set aside or change a subpoena if it is unreasonable.

(3) Witnesses with safety or accommodation concerns should contact OAH.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0330, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0335 Do you have to pay for a subpoena? There is no cost to prepare a subpoena, but you may have to pay for:

- (1) Serving a subpoena;
- (2) Complying with a subpoena; and
- (3) Witness fees according to RCW 34.05.446(7).

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0335, filed 9/1/00, effective 10/2/00.]

HEARING METHODS

WAC 388-02-0340 How is your hearing held? (1) Hearings may be held in person or by telephone conference.

(2) A telephone conference hearing is where all parties appear by telephone.

(3) An in-person hearing is where you appear face-to-face with the ALJ and the other parties appear either in person or by telephone.

(4) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony and question all witnesses.

(5) Parties and their witnesses may appear in person or by telephone conference. The ALJ may require parties and/or their witnesses to appear in person if the ALJ determines there is a compelling reason, and the compelling reason is stated in a hearing notice or prehearing order.

(6) After a telephone conference hearing begins, the ALJ may stop, reschedule, and convert the hearing to an in-person hearing if the ALJ determines there is a compelling reason to do so.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0340, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0340, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0345 Is an ALJ present at your hearing? (1) If your hearing is scheduled as an in-person hearing, an ALJ is physically or visually present.

(2) If your hearing is scheduled as a telephone conference, an ALJ is present by telephone.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0345, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0350 Is your hearing recorded? The ALJ must record the entire hearing using audio recording equipment (such as a digital recorder or a tape recorder).

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0350, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0350, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0355 Who may attend your hearing? (1) All parties and their representatives may attend the hearing.

(2) Witnesses may be excluded from the hearing if the ALJ finds good cause.

(3) The ALJ may also exclude other persons from all or part of the hearing.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0355, filed 9/1/00, effective 10/2/00.]

(11/12/15)

WAC 388-02-0360 May a party convert how a hearing is held? (1) The parties have the right to request that:

(a) A hearing format be converted (changed) to an in-person hearing or a telephone conference; or

(b) A witness appear in person or by telephone conference. The OAH must advise you of the right to request a change in how a witness appears.

(2) Except as provided in subsection (4) of this section, a party requesting a change in how a hearing is held must show a compelling reason. A party must also show a compelling reason to change the way a witness appears (in-person or by telephone conference). Some examples of compelling reasons are:

(a) A party does not speak or understand English well.

(b) A party wants to present a significant number of documents during the hearing.

(c) A party does not believe that one of the witnesses or another party is credible, and wants the ALJ to have the opportunity to see the testimony.

(d) A party has a disability or communication barrier that affects their ability to present their case.

(e) A party believes that the personal safety of someone involved in the hearing process is at risk.

(3) A compelling reason to convert how a hearing is held can be overcome by a compelling reason not to convert how a hearing is held.

(4) In public assistance cases, a party has the right to request that a hearing be changed without showing a compelling reason to the ALJ. Public assistance programs include:

- (a) Temporary assistance for needy families (TANF);
- (b) Working connections child care;
- (c) Disability lifeline;
- (d) Medical assistance;
- (e) Food assistance; and
- (f) Refugee assistance.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0360, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0360, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0365 How does a party convert how a hearing is held or how the witnesses or parties appear? (1)

If a party wants to convert the hearing or change how their witnesses or other parties appear, the party must contact OAH to request the change.

(2) The ALJ may schedule a prehearing conference to determine if the request should be granted.

(3) If the ALJ grants the request, the ALJ reschedules the hearing or changes how the witness or party appears.

(4) If the ALJ denies the request, the ALJ must issue a written order that includes findings of fact supporting why the request was denied.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0365, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0370 How are documents submitted for a telephone conference? (1) When a hearing is conducted by telephone, an ALJ may order the parties to provide the hearing documents at least five days before the hearing,

so all parties have an opportunity to view them during the hearing.

[Ch. 388-02 WAC p. 15]

(2) DSHS may be able to help you copy and send your documents to the ALJ and any other parties.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0370, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0375 What happens at your hearing?

At your hearing:

(1) The ALJ:

- (a) Explains your rights;
- (b) Marks and admits or rejects exhibits;
- (c) Ensures that a record is made;
- (d) Explains that a decision is mailed after the hearing;
- (e) Notifies the parties of appeal rights;
- (f) May keep the record open for a time after the hearing if needed to receive more evidence or argument; and

(g) May take actions as authorized according to WAC 388-02-0215.

(2) The parties may:

- (a) Make opening statements to explain the issues;
- (b) Offer evidence to prove their positions, including oral or written statements of witnesses;
- (c) Question the witnesses presented by the other parties; and

(d) Give closing arguments about what the evidence shows and what laws apply.

(3) At the end of the hearing if the ALJ does not allow more time to send in evidence, the record is closed.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0375, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0380 What is a group hearing? (1) A group hearing may be held when two or more parties request a hearing about similar issues.

(2) Hearings may be combined at the request of the parties or the ALJ.

(3) All parties participating in a group hearing may have their own representative.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0380, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0385 May a party withdraw from a group hearing? (1) A party may withdraw from a group hearing by asking the ALJ for a separate hearing.

(2) If a party asks to withdraw from a group hearing before the ALJ makes a discretionary ruling or the hearing begins, the ALJ must give the party a separate hearing.

(3) If a party later shows good cause, the ALJ may give the party a separate hearing at any time during the hearing process.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0385, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0387 How may you request that a hearing be consolidated or severed when multiple agencies are parties to the proceeding? The following requirements apply only to adjudicative proceedings in which an applicant or recipient of medical services programs set forth in chapter 74.09 RCW seeks review of decisions made by more than one agency.

[Ch. 388-02 WAC p. 16]

(1) When you file a single application for an adjudicative proceeding seeking review of decisions by more than one agency, this review shall be conducted initially in one adjudicative proceeding. The administrative law judge (ALJ) may sever the proceeding into multiple proceedings on the motion of any of the parties, when:

(a) All parties consent to the severance; or

(b) Either party requests severance without another party's consent, and the ALJ finds there is good cause for severing the matter and that the proposed severance is not likely to prejudice the rights of an appellant who is a party to any of the severed proceedings.

(2) If there are multiple adjudicative proceedings involving common issues or parties where there is one appellant and both the health care authority and the department are parties, upon motion of any party or upon his or her own motion, the ALJ may consolidate the proceedings if he or she finds that the consolidation is not likely to prejudice the rights of the appellant who is a party to any of the consolidated proceedings.

(3) If the ALJ grants the motion to sever the hearing into multiple proceedings or consolidate multiple proceedings into a single proceeding, the ALJ will send out an order and a new notice of hearing to the appropriate parties in accordance with WAC 388-02-0250.

[Statutory Authority: RCW 74.09.741 and 34.05.020. WSR 12-05-043, § 388-02-0387, filed 2/10/12, effective 2/25/12.]

EVIDENCE

WAC 388-02-0390 What is evidence? (1) Evidence includes documents, objects, and testimony of witnesses that parties give during the hearing to help prove their positions.

(2) Evidence may be all or parts of original documents or copies of the originals.

(3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.

(4) Testimony given with the opportunity for cross-examination by the other parties may be given more weight by the ALJ.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0390, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0395 When may the parties bring in evidence? (1) The parties may bring evidence to any prehearing meeting, prehearing conference, or hearing, or may send in evidence before these events.

(2) The ALJ may set a deadline before the hearing for the parties to provide proposed exhibits and names of witnesses. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

(a) They have good cause for missing the deadline; or

(b) That the other parties agree.

(3) If the ALJ gives the parties more time to submit evidence, the parties may send it in after the hearing. The ALJ may allow more time for the other parties to respond to the new evidence.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0395, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0400 What evidence may the parties present during the hearing? The parties may bring any documents and witnesses to the hearing to support their position. However, the following provisions apply:

- (1) The other parties may object to the evidence and question the witnesses;
- (2) The ALJ determines whether the evidence is admitted and what weight (importance) to give it;
- (3) If the ALJ does not admit the evidence the parties may make an offer of proof to show why the ALJ should admit it;
- (4) To make an offer of proof a party presents evidence and argument on the record to show why the ALJ should consider the evidence; and
- (5) The offer of proof preserves the argument for appeal.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0400, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0405 What is a stipulation? (1) A stipulation is an agreement among two or more parties that certain facts or evidence is correct or authentic.

- (2) If an ALJ accepts a stipulation, the ALJ must enter it into the record.
- (3) A stipulation may be made before or during the hearing.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0405, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0410 After the parties agree to a stipulation, may they change or reject it? (1) A party may change or reject a stipulation after it has been made.

- (2) To change or reject a stipulation, a party must show the ALJ that:
 - (a) The party did not intend to make the stipulation or was mistaken when making it; and
 - (b) Changing or rejecting the stipulation does not harm the other parties.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0410, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0415 What are proposed exhibits? Proposed exhibits are documents or other objects that a party wants the ALJ to consider when reaching a decision. After the document or object is accepted by the ALJ, it is admitted and becomes an exhibit.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0415, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0420 Do the parties mark and number their proposed exhibits? (1) DSHS representatives must mark and number their proposed exhibits and provide copies to the other parties as far ahead of the hearing as possible.

- (2) The ALJ may request that you mark and number your proposed exhibits before the hearing. You should bring enough copies of your proposed exhibits for all parties. If you do not bring enough copies, you must make your proposed exhibits available for copying.
- (3) If you cannot afford to pay for copies of proposed exhibits, either DSHS or OAH must make the copies for you.
- (4) The ALJ may require proof that you are unable to pay.

(11/12/15)

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0420, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0425 Who decides whether to admit proposed exhibits into the record? (1) The ALJ decides whether or not to admit a proposed exhibit into the record and also determines the weight (importance) of the evidence.

- (2) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.
- (3) The ALJ may also exclude proposed exhibits from the record.
- (4) The ALJ must make rulings on the record to admit or exclude exhibits.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0425, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0430 What may a party do if they disagree with an exhibit? (1) A party may object to the authenticity or admissibility of any exhibit, or offer argument about how much weight the ALJ should give the exhibit.

- (2) Even if a party agrees that a proposed exhibit is a true and authentic copy of a document, the agreement does not mean that a party agrees with:
 - (a) Everything in the exhibit or agrees that it should apply to the hearing;
 - (b) What the exhibit says; or
 - (c) How the ALJ should use the exhibit to make a decision.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0430, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0435 When should an ALJ receive proposed exhibits for a telephone hearing? (1) Parties should send their proposed exhibits to the ALJ and the other parties at least five days before the telephone hearing. In some cases, the ALJ may require that the parties send them earlier.

- (2) Sending the proposed exhibits to the ALJ before the telephone hearing allows all parties to use them during the hearing.

- (3) For a telephone hearing, DSHS may help you send copies of your proposed exhibits to the ALJ and the other parties if you cannot afford to do so.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0435, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0440 What is judicial notice? (1) Judicial notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations.

- (2) For example, an ALJ may take judicial notice of a calendar, a building code or a standard or practice.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0440, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0445 How does the ALJ respond to requests to take judicial notice? (1) The ALJ may consider and admit evidence by taking judicial notice.

- (2) If a party requests judicial notice, or if the ALJ intends to take judicial notice, the ALJ may ask the party to provide a copy of the document that contains the information.

[Ch. 388-02 WAC p. 17]

(3) If judicial notice has been requested, or if the ALJ intends to take judicial notice, the ALJ must tell the parties before or during the hearing.

(4) The ALJ must give the parties time to object to judicial notice evidence.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0445, filed 9/1/00, effective 10/2/00.]

WITNESSES

WAC 388-02-0450 What is a witness? (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) One type of witness is an expert witness. An expert witness is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0450, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0455 Who may be a witness? (1) A witness may be:

(a) You or the DSHS representative; or

(b) Anyone you, the ALJ, or the DSHS representative ask to be a witness, including DSHS employees.

(2) The ALJ decides who may testify as a witness.

(3) Unless DSHS agrees, a former DSHS employee may not be an expert witness against DSHS if that employee was actively involved in the case while working for DSHS.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0455, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0460 How do witnesses testify? All witnesses:

(1) Must affirm or take an oath to testify truthfully during the hearing.

(2) May testify in person or by telephone.

(3) May request interpreters from OAH at no cost to you.

(4) May be subpoenaed and ordered to appear according to WAC 388-02-0315.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0460, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0465 May the parties cross-examine a witness? (1) The parties have the right to cross-examine (question) each witness.

(2) If a party has a representative, only the representative, and not the party, may question the witness.

(3) The ALJ may also question witnesses.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0465, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0470 May witnesses refuse to answer questions? Witnesses may refuse to answer questions. However, if a witness refuses to answer, the ALJ may reject all of the related testimony of that witness.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0470, filed 9/1/00, effective 10/2/00.]

[Ch. 388-02 WAC p. 18]

PROOF

WAC 388-02-0475 What evidence does an ALJ consider? (1) The ALJ may only consider admitted evidence to decide the case.

(2) Admission of evidence is based upon the reasonable person standard. This standard means evidence that a reasonable person would rely on in making a decision.

(3) The ALJ may admit and consider hearsay evidence. Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. The ALJ may only base a finding on hearsay evidence if the ALJ finds that the parties had the opportunity to question or contradict it.

(4) The ALJ may reject evidence, if it:

(a) Is not relevant;

(b) Repeats evidence already admitted; or

(c) Is from a privileged communication protected by law.

(5) The ALJ must reject evidence if required by law.

(6) The ALJ decides:

(a) What evidence is more credible if evidence conflicts; and

(b) The weight given to the evidence.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0475, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0480 What does burden of proof mean? (1) Burden of proof is a party's responsibility to:

(a) Provide evidence regarding disputed facts; and

(b) Persuade the ALJ that a position is correct.

(2) To persuade the ALJ, the party who has the burden of proof must provide the amount of evidence required by WAC 388-02-0485.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0480, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0480, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0485 What is the standard of proof? Standard of proof refers to the amount of evidence needed to prove a party's position. Unless the rules or law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0485, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0490 How is a position proven at hearing? The ALJ decides if a party has met the burden of proof. The ALJ writes a decision based on the evidence presented during the hearing and consistent with the law.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0490, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0495 What is equitable estoppel? (1) Equitable estoppel is a legal doctrine defined in case law that may only be used as a defense to prevent the department from taking some action against you, such as collecting an overpayment. Equitable estoppel may not be used to require the department to continue to provide something, such as benefits, services, or a license, or to require the department to take action contrary to a statute.

(2) There are five elements of equitable estoppel. The standard of proof is clear and convincing evidence. You must prove all of the following:

(a) The department made a statement or took an action or failed to take an action, which is inconsistent with a later claim or position by the department. For example, the department gave you money based on your application, then later tells you that you received an overpayment and wants you to pay the money back based on the same information.

(b) You reasonably relied on the department's original statement, action or failure to act. For example, you believed the department acted correctly when you received money.

(c) You will be injured to your detriment if the department is allowed to contradict the original statement, action or failure to act. For example, you did not seek help from health clinics or food banks because you were receiving benefits from the department, and you would have been eligible for these other benefits.

(d) Equitable estoppel is needed to prevent a manifest injustice. Factors to be considered in determining whether a manifest injustice would occur include, but are not limited to, whether:

(i) You cannot afford to repay the money to the department;

(ii) You gave the department timely and accurate information when required;

(iii) You did not know that the department made a mistake;

(iv) You are free from fault; and

(v) The overpayment was caused solely by a department mistake.

(e) The exercise of government functions is not impaired. For example, the use of equitable estoppel in your case will not result in circumstances that will impair department functions.

(3) If the ALJ concludes that you have proven all of the elements of equitable estoppel in subsection (2) of this section with clear and convincing evidence, the department is stopped or prevented from taking action or enforcing a claim against you.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0495, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05-020. WSR 00-18-059, § 388-02-0495, filed 9/1/00, effective 10/2/00.]

RECORD CLOSURE

WAC 388-02-0500 What may an ALJ do before the record is closed? Before the record is closed, the ALJ may:

(1) Set another hearing date;

(2) Enter orders to address limited issues if needed before writing and mailing a hearing decision to resolve all issues in the proceeding; or

(3) Give the parties more time to send in exhibits or written argument.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0500, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0505 When is the record closed? The record is closed:

(1) At the end of the hearing if the ALJ does not allow more time to send in evidence or argument; or

(11/12/15)

(2) After the deadline for sending in evidence or argument is over.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0505, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0510 What happens when the record is closed? No more evidence may be taken without good cause after the record is closed.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0510, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0512 What is included in the hearing record? (1) The ALJ must produce a complete official record of the proceedings.

(2) The official record must include, if applicable:

(a) Notice of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Offers of proof, objections, and any resulting rulings;

(g) Proposed findings, requested orders and exceptions;

(h) A complete audio recording of the entire hearing, together with any transcript of the hearing;

(i) Any final order, initial order, or order on reconsideration; and

(j) Matters placed on the record after an ex parte communication.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0512, filed 1/31/11, effective 3/3/11.]

HEARING DECISIONS

WAC 388-02-0515 What happens after the record is closed? (1) After the record is closed, the ALJ must enter an initial or final order and send copies to the parties.

(2) The maximum time an ALJ has to send a decision is ninety calendar days after the record is closed, but many department programs have earlier deadlines. Specific program rules may set the deadlines.

(3) OAH must send the official record of the proceedings to the BOA. The record must be complete when it is sent, and include all parts required by WAC 388-02-0512.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0515, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05-020. WSR 00-18-059, § 388-02-0515, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0520 What information must the ALJ include in the decision? The ALJ must include the following information in the decision:

(1) Identify the hearing decision as a DSHS case;

(2) List the name and docket number of the case and the names of all parties and representatives;

(3) Find the facts used to resolve the dispute based on the hearing record;

(4) Explain why evidence is credible when the facts or conduct of a witness is in question;

(5) State the law that applies to the dispute;

(6) Apply the law to the facts of the case in the conclusions of law;

(7) Discuss the reasons for the decision based on the facts and the law;

(8) State the result and remedy ordered;

(9) Explain how to request changes in the decision and the deadlines for requesting them;

(10) State the date the decision becomes final according to WAC 388-02-0525; and

(11) Include any other information required by law or DSHS program rules.

[Statutory Authority: RCW 34.05.020, WSR 00-18-059, § 388-02-0520, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0525 When do initial orders become final? If no one requests review of the initial order or if a review request is dismissed, the initial order is final twenty-one calendar days after it is mailed.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211, WSR 02-21-061, § 388-02-0525, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020, WSR 00-18-059, § 388-02-0525, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0530 What if a party disagrees with the ALJ's decision? (1) If a party disagrees with an ALJ's initial or final order because of a clerical error, the party may ask for a corrected decision from the ALJ as provided in WAC 388-02-0540 through 388-02-0555.

(2) If a party disagrees with an initial order and wants it changed, the party must request review by a review judge as provided in WAC 388-02-0560 through 388-02-0595.

If a party wants to stay the DSHS action until review of the initial order is completed, the party must request a stay from a review judge.

(3) Final orders entered by ALJs may not be reviewed by a review judge.

(4) If a party disagrees with an ALJ's final order, the party may request reconsideration as provided in WAC 388-02-0605 through 388-02-0635. You may also petition for judicial review of the final order as stated in WAC 388-02-0640 through 388-02-0650. You do not need to file a request for reconsideration of the final order before petitioning for judicial review. DSHS may not request judicial review of an ALJ's or review judge's final order.

[Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V, WSR 08-21-144, § 388-02-0530, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211, WSR 02-21-061, § 388-02-0530, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020, WSR 00-18-059, § 388-02-0530, filed 9/1/00, effective 10/2/00.]

CLERICAL ERRORS IN ALJ DECISIONS

WAC 388-02-0540 How are clerical errors in ALJ decisions corrected? (1) A clerical error is a mistake that does not change the intent of the decision.

(2) The ALJ corrects clerical errors in hearing decisions by issuing a second decision referred to as a corrected decision or corrected order. Corrections may be made to initial orders and final orders.

(3) Some examples of clerical error are:

(a) Missing or incorrect words or numbers;

(b) Dates inconsistent with the decision or evidence in the record such as using May 3, 1989, instead of May 3, 1998; or

(c) Math errors when adding the total of an overpayment or a child support debt.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211, WSR 02-21-061, § 388-02-0540, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020, WSR 00-18-059, § 388-02-0540, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0545 How does a party ask for a corrected ALJ decision? (1) A party may ask for a corrected ALJ decision by calling or writing the OAH office that held the hearing.

(2) When asking for a corrected decision, please identify the clerical error you found.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211, WSR 02-21-061, § 388-02-0545, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020, WSR 00-18-059, § 388-02-0545, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0550 How much time do the parties have to ask for a corrected ALJ decision? (1) The parties must ask the ALJ for a corrected decision on or before the tenth calendar day after the order was mailed.

(2) If you ask the ALJ to correct a decision, the time period provided by this section for requesting a corrected decision of an initial order, and the time it takes the ALJ to deny the request or make a decision regarding the request for a corrected initial order, do not count against any deadline, if any, for a review judge to enter a final order.

[Statutory Authority: RCW 34.05.020, 34.05.220, and 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V, WSR 08-21-144, § 388-02-0550, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211, WSR 02-21-061, § 388-02-0550, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020, WSR 00-18-059, § 388-02-0550, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0555 What happens when a party requests a corrected ALJ decision? (1) When a party requests a corrected initial or final order, the ALJ must either:

(a) Send all parties a corrected order; or

(b) Deny the request within three business days of receiving it.

(2) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.

(3) If the ALJ denies a request for a corrected initial order and the party still wants the hearing decision changed, the party must request review by a review judge.

(4) Requesting an ALJ to correct the initial order does not automatically extend the deadline to request review of the initial order by a review judge. When a party needs more time to request review of an initial order, the party must ask for more time to request review as permitted by WAC 388-02-0580(2).

(5) If the ALJ denies a request for a corrected final order and you still want the hearing decision changed, you must request judicial review.

[Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0555, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0555, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0555, filed 9/1/00, effective 10/2/00.]

REQUESTS FOR BOA REVIEW OF INITIAL ORDERS FOR CASES LISTED IN WAC 388-02-0215(4)

WAC 388-02-0560 What is review of an initial order by a review judge? (1) Review by a review judge is available to a party who disagrees with the ALJ's initial order.

(2) If a party wants the initial order changed, the party must request that a review judge review the initial order.

(3) If a request is made for a review judge to review an initial order, it does not mean there is another hearing conducted by a review judge.

(4) The review judge considers the request, the initial order, and the record, and may hear oral argument, before deciding if the initial order should be changed.

(5) Review judges may not review ALJ final orders.

[Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0560, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0560, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0560, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0565 What evidence does the review judge consider in reviewing an initial order? (1) The review judge, in most cases, only considers evidence given at the original hearing before the ALJ.

(2) The review judge may allow the parties to make oral argument when reviewing initial orders.

[Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0565, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0565, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0570 Who may request review of an initial order? (1) Any party may request a review judge to review the initial order.

(2) If more than one party requests review, each request must meet the deadlines in WAC 388-02-0580.

[Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0570, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0570, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0570, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0575 What must a party include in the review request? A party must make the review request in writing and send it to BOA. The party should identify the:

(1) Parts of the initial order with which the party disagrees; and

(2) Evidence supporting the party's position.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0575, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter

(11/12/15)

34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0575, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0575, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0575, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0580 What is the deadline for requesting review by a review judge? (1) BOA must receive the written review request on or before 5:00 p.m. on the twenty-first calendar day after the initial order was mailed. A party may submit the review request by facsimile transmission (fax). A copy of the review request should also be mailed to the BOA.

(2) A review judge may extend the deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good cause for missing the deadline.

(4) If you ask a review judge to review an ALJ decision, the time period provided by this section for requesting review of an initial order, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order.

[Statutory Authority: RCW 34.05.020. WSR 12-13-083, § 388-02-0580, filed 6/19/12, effective 7/20/12. Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0580, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0580, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0580, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0580, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0585 Where does a party send the request for review by a review judge? (1) A party must send the request for review of the initial order to BOA at the address given in WAC 388-02-0030. A party should also send a copy of the review request to the other parties.

(2) After receiving a party's review request, BOA sends a copy to the other parties, their representatives, and OAH. The other parties and their representatives may respond as described in WAC 388-02-0590.

[Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0585, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0585, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0585, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0590 How does the party that is not requesting review respond to the review request? (1) A party does not have to respond to the review request. A response is optional.

(2) If a party decides to respond, that party must send the response so that BOA receives it on or before the seventh business day after the date the other party's review request was mailed to the party by BOA.

(3) The party should send a copy of the response to all other parties or their representatives.

(4) A review judge may extend the deadline in subsection (2) of this section if a party asks for more time before the deadline to respond expires and gives a good reason.

(5) If you ask for more time to respond, the time period provided by this section for responding to the review request, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order. A review judge may accept and consider a party's response even if it is received after the deadline.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0590, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0590, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0590, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0595 What happens after the response deadline? (1) After the response deadline, the record on review is closed unless there is a good reason to keep it open.

(2) A review judge is assigned to review the initial order after the record is closed. To find out which judge is assigned, call BOA.

(3) After the record is closed, the assigned review judge:

(a) Reviews the initial order; and

(b) Enters a final order that affirms, changes, dismisses or reverses the initial order; or

(c) Returns the case to OAH for further action.

[Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0595, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0595, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0595, filed 9/1/00, effective 10/2/00.]

REVIEW JUDGES

WAC 388-02-0600 What is the authority of the review judge? (1) Review judges review initial orders and enter final orders. The review judge has the same decision-making authority as the ALJ. The review judge considers the entire record and decides the case de novo (anew). In reviewing findings of fact, the review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) Review judges may return (remand) cases to the OAH for further action.

(3) Review judges may not review ALJ final orders for the types of cases listed in WAC 388-02-0217(2).

(4) A review judge conducts the hearing and enters the final order in cases covered by WAC 388-02-0218.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0600, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0600, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0600, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0600, filed 9/1/00, effective 10/2/00.]

REQUESTS FOR RECONSIDERATION OF FINAL ORDERS ENTERED BY OAH AND BOA

WAC 388-02-0605 What if a party does not agree with a final order entered by OAH or BOA? (1) If a party

[Ch. 388-02 WAC p. 22]

does not agree with the final order and wants it reconsidered, the party must:

(a) Ask the ALJ to reconsider the decision, if the final order was entered by an ALJ; or

(b) Ask the review judge to reconsider the decision, if the final order was entered by a review judge.

(2) The final order or the reconsideration decision is the final agency decision. If you disagree with that decision, you must petition for judicial review to change it.

(3) You may ask the court to stay or stop the DSHS action after filing the petition for judicial review.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0605, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0605, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0610 What is reconsideration? (1) Reconsideration is:

(a) Asking an ALJ to reconsider a final order entered by the ALJ because the party believes the ALJ made a mistake; and

(b) Asking a review judge to reconsider a final order entered by a review judge because the party believes the review judge made a mistake.

(2) If a party asks for reconsideration of the final order, the reconsideration process must be completed before you request judicial review. However, you do not need to request reconsideration of a final order before you request judicial review.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0610, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0610, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0615 What must a party include in the reconsideration request? The party must make the request in writing and clearly state why the party wants the final order reconsidered.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0615, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0615, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0620 What is the deadline for requesting reconsideration? (1) If OAH entered the final order, OAH must receive a written reconsideration request on or before the tenth calendar day after the final order was mailed.

(2) If BOA entered the final order, BOA must receive a written reconsideration request on or before the tenth calendar day after the final order was mailed.

(3) If a reconsideration request is received after the deadline, the final order will not be reconsidered and the deadline to ask for superior court review continues to run.

(4) OAH or BOA may extend its deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for the extension.

(5) If a party does not request reconsideration or ask for an extension within the deadline, the final order may not be reconsidered and it becomes the final agency decision.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0620, filed 10/15/02, effective

11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0620, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0625 Where does a party send a reconsideration request? (1) A party must send a written reconsideration request to OAH, if OAH entered the final order, or to BOA, if BOA entered the final order.

(2) After receiving a reconsideration request, OAH or BOA sends a copy to the other parties and representatives giving them time to respond.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0625, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0625, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0630 How does a party respond to a reconsideration request? (1) A party does not have to respond to a request. A response is optional.

(2) If a party responds, that party must send a response to OAH, if OAH entered the final order, or to BOA, if BOA entered the final order, by or before the seventh business day after the date OAH or BOA mailed the request to the party.

(3) A party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, OAH or BOA may extend its deadline if the party gives a good reason within the deadline in subsection (2) of this section.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0630, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0630, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0635 What happens after a party requests reconsideration? (1) After OAH or BOA receives a reconsideration request, an ALJ or review judge has twenty calendar days to send a reconsideration decision unless OAH or BOA sends notice allowing more time.

(2) After OAH or BOA receives a reconsideration request, the ALJ or review judge must either:

- (a) Write a reconsideration decision; or
- (b) Send all parties an order denying the request.

(3) If the ALJ or review judge does not send an order or notice granting more time within twenty days of receipt of the reconsideration request, the request is denied.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0635, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0635, filed 9/1/00, effective 10/2/00.]

REQUESTS FOR JUDICIAL REVIEW OF FINAL ORDERS

WAC 388-02-0640 What is judicial review? (1) Judicial review is the process of appealing a final order to a court.

(2) You may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. DSHS may not request judicial review.

(3) You must consult RCW 34.05.510 to 34.05.598 for further details of the judicial review process.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0640, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0640, filed 9/1/00, effective 10/2/00.]

(11/12/15)

WAC 388-02-0645 When must you ask for judicial review? (1) You must file your petition for judicial review with the superior court within thirty calendar days after OAH or BOA mails its final order.

(2) Generally, you may file a petition for judicial review only after you have completed the administrative hearing process. However, you do not need to file a request for reconsideration of a final order before requesting judicial review.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0645, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0645, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0650 How do you serve your petition for judicial review? (1) You must file and serve the petition for judicial review of a final order within thirty days after the date it was mailed. You must file your petition for judicial review with the court. You must serve copies of your petition on DSHS, the office of the attorney general, and all other parties.

(2) To serve DSHS, you must deliver a copy of the petition to the secretary of DSHS or to BOA. You may hand deliver the petition or send it by mail that gives proof of receipt. The physical location of the secretary is:

DSHS Office of the Secretary
 OB-2, 4th Floor
 Mail Stop 45010
 14th and Jefferson
 Olympia, WA 98504-5010

The mailing address of the secretary is:

DSHS Office of the Secretary
 P.O. Box 45010
 Olympia, WA 98504-5010

The physical and mailing addresses for BOA are in WAC 388-02-0030.

(3) To serve the office of the attorney general and other parties, you may send a copy of the petition for judicial review by regular mail. You may send a petition to the address for the attorney of record to serve a party. You may serve the office of the attorney general by hand delivery to:

Office of the Attorney General
 7141 Cleanwater Drive S.W.
 Tumwater, Washington 98501

The mailing address of the attorney general is:

Office of the Attorney General
 P.O. Box 40124
 Olympia WA 98504-0124

[Statutory Authority: RCW 34.05.220. WSR 06-24-072, § 388-02-0650, filed 12/4/06, effective 1/4/07. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0650, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0650, filed 9/1/00, effective 10/2/00.]