

**WSR 23-23-093
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 14, 2023, 1:13 p.m., effective November 16, 2023]

Effective Date of Rule: November 16, 2023.

Purpose: The department is extending emergency amendments to WAC 388-310-1600 WorkFirst—sanctions. These amendments expand good cause for not participating in WorkFirst program activities if a recipient is experiencing a hardship as defined in rule. These amendments are necessary to implement 2SHB 1447 (chapter 418, Laws of 2023), effective July 23, 2023.

Citation of Rules Affected by this Order: Amending WAC 388-310-1600.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030; and chapters 74.08A and 74.12 RCW.

Other Authority: 2SHB 1447 (chapter 418, Laws of 2023).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: These amendments support public health, safety, and welfare by supporting WorkFirst families who are experiencing hardship. The amendments are also necessary to implement 2SHB 1447 (chapter 418, Laws of 2023), effective July 23, 2023. The department is concurrently proceeding with the permanent rule-making process. Refer to CR-101 filed as WSR 23-13-025.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 14, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4981.4

AMENDATORY SECTION (Amending WSR 21-12-030, filed 5/24/21, effective 7/1/21)

WAC 388-310-1600 WorkFirst—Sanctions. (1) What WorkFirst requirements do I have to meet?

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) What happens if I don't meet WorkFirst requirements?

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance case staffing.

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, department of children, youth, and families, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your noncompliance case staffing.

(b) You will have (~~ten~~) 10 days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance case staffing described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within (~~ten~~) 10 days, we will make sure you have been screened for family violence and other barriers to participation and that we provided necessary supplemental accommodations as required by chapter 388-472 WAC. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an individual responsibility plan to help you with your situation, including referrals to appropriate services.

(3) What is considered a good reason for not doing what WorkFirst requires?

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5))

due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

- (a) You had an emergent or severe physical, mental, or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;
- (b) You were threatened with or subjected to family violence;
- (c) You could not locate child care for your children under ~~((thirteen))~~ 13 years that was:
 - (i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 110-15 WAC);
 - (ii) Appropriate (licensed, certified, or approved under federal, state, or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and
 - (iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).
- (d) You could not locate other care services for an incapacitated person who lives with you and your children ~~((-))~~ ;
- (e) You had an immediate legal problem, such as an eviction notice; ~~((-))~~
- (f) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan ~~((-))~~ ; or
- (g) You have another hardship(s) that would reasonably prevent you from participating. For purposes of this subsection, a hardship is defined as a significant problem or event.

(4) What happens in my noncompliance case staffing?

- (a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:
 - (i) Whether you had a good reason for not meeting WorkFirst requirements ~~((-))~~ ;
 - (ii) What happens if you are sanctioned;
 - (iii) How you can participate and get out of sanction status;
 - (iv) How you and your family benefit when you participate in WorkFirst activities;
 - (v) That your case may be closed after you have been in grant reduction sanction status for ~~((ten))~~ 10 months in a row;
 - (vi) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; and
 - (vii) How to reapply if your case is closed.
- (b) If you do not come to your noncompliance case staffing, we will make a decision based on the information we have. We will send you a letter letting you know whether we found that you had a good reason for not meeting WorkFirst requirements.

(5) What if we decide that you did not have a good reason for not meeting WorkFirst requirements?

- (a) Before you are placed in sanction, a supervisory level employee will review your case to make sure:
 - (i) You knew what was required;
 - (ii) You were told how you can resume WorkFirst participation to avoid or end your sanction;
 - (iii) We tried to talk to you and encourage you to participate;
 and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisory level employee approves the sanction and sanction penalties, we will send you a letter that tells you:

(i) What you failed to do;

(ii) That you are in sanction status;

(iii) Penalties that will be applied to your grant;

(iv) When the penalties will be applied;

(v) How to request an administrative hearing if you disagree with this decision; and

(vi) How to end the penalties and get out of sanction status.

(c) We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

(6) What is sanction status?

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you are placed in WorkFirst sanction status.

(7) Are there penalties when you or someone in your household goes into sanction status?

When you or someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements. Your household will only enter sanction status if we determine that you or someone else in your household did not have a good reason for failing to meet the WorkFirst requirements.

(a) You will receive a grant reduction sanction penalty following two months of noncompliance(~~(-)~~);

(b) Your grant is reduced by one person's share or (~~(forty per-~~ cent) 40%, whichever is more(~~(-)~~);

(c) The reduction is effective the first of the month following (~~(ten)~~) a 10-day notice from the department; and

(d) Your case may be closed effective the first of the month after your grant has been reduced for (~~(ten)~~) 10 months in a row.

(8) What happens before your case is closed due to sanction?

(a) Before we close your case due to sanction status, we will send you a letter to tell you:

(i) What you failed to do;

(ii) When your case will be closed;

(iii) How you can request an administrative hearing if you disagree with this decision;

(iv) How you can end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(v) How your participation before your case is closed can be used to meet the participation requirement in subsection (12).

(b) Attempt to contact you each month to begin the process of ending penalties and getting out of sanction status.

(9) What happens to my WorkFirst sanction after July 1, 2021?

If your case enters sanction status after July 1, 2021, your case may be closed after you have been in grant reduction sanction status for (~~(ten)~~) 10 months in a row.

(10) How do I resume participation to avoid or end sanction status?

(a) You must provide the information we requested to develop your individual responsibility plan; ~~((and/))~~ or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, ~~((twenty-eight))~~ 28 calendar days). The four weeks starts on the day you complete your comprehensive evaluation and you agree to your individual responsibility plan activities.

(11) What happens when I get out of sanction status before my case is closed?

When you get out of sanction status before your case is closed, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

(12) What if I reapply for TANF or SFA and I was in sanction status when my case closed?

(a) For cases that close on or after July 1, 2021:

(i) If your case closed due to sanction, you will need to follow the sanction reapplication process in subsection (13).

(ii) If your case closed for another reason while you were in sanction status and is reopened, you will reopen in grant reduction sanction status. For example, if you closed while you were in month four of grant reduction sanction status, your grant will be opened in month five of grant reduction sanction status.

(b) For cases that closed prior to July 1, 2021, your case will not open in sanction status, and subsection (13) will not apply.

(13) What if I reapply for TANF or SFA after my case is closed due to sanction?

If you reapply for TANF or SFA after your case is closed due to sanction, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.