WSR 24-21-091
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed October 17, 2024, 8:57 a.m., effective October 18, 2024]

Effective Date of Rule: October 18, 2024.

Purpose: The department of social and health services (department) is extending emergency amendments to WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work? These amendments are necessary to better align aged, blind, or disabled (ABD) program rules with Social Security Administration's (SSA) revision of the definition of "past relevant work" by reducing the relevant work period from 15 to five years.

Citation of Rules Affected by this Order: Amending WAC 388-449-0080.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.100, 74.09.035, 74.09.530, 74.62.030.

Other Authority: C.F.R. 404.1560 and 416.965.

Under RCW 34.05.350 the agency for good cause finds 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: Emergency adoption of these rules is necessary to better align ABD program rules with SSA federal regulations. Effective June 22, 2024, SSA revised the definition of "past relevant work" by reducing the relevant work period from 15 to five years. Related emergency rules are in place via WSR 24-13-110.

The department is concurrently proceeding with the permanent rule-making process; refer to CR-101 filed as WSR 24-13-124 on June 20, 2024, and CR-102 filed as WSR 24-18-038 on August 26, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.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: October 15, 2024.

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Rules Coordinator

SHS-5038.1

<u>AMENDATORY SECTION</u> (Amending WSR 15-03-031, filed 1/12/15, effective 2/12/15)

WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work? (1) If we neither deny disability at Step 1 or 2 nor approve it at Step 3, we consider our assessment of your physical and/or mental functional capacity, per WAC 388-449-0020 and 388-449-0030, to determine if you can do work you have done in the past.
    (2) We evaluate your work experience to determine if you have relevant past work and transferable skills. "Relevant past work" means work:
    (a) Defined as substantial gainful activity per WAC 388-449-0005;
    (b) You have performed in the past ((~~fifteen~~)) <u>five</u> years; and
    (c) You performed long enough to acquire the knowledge and skills necessary to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.
    (3) For each relevant past work situation, we compare:
    (a) The exertional, nonexertional, and skill requirements of the job based on the Appendix C of the Dictionary of Occupational Titles; and
    (b) Current cognitive, social, exertional, and nonexertional factors that significantly limit your ability to perform past work.
    (4) We deny disability when we determine that you are able to perform any of your relevant past work.
    (5) We approve disability when you are fifty-five years of age or older and don't have the physical, cognitive, or social ability to perform past work.