

WAC 308-101-040 Eligibility for hearing. (1) A person is eligible for a hearing whenever the department proposes an adverse action against the driving privilege and the opportunity for a hearing or an interview is required by law. A person is also eligible for a hearing in the following circumstances:

(2) **HTO stay hearings:** A habitual traffic offender is eligible for a stay hearing under RCW 46.65.060 so long as the following conditions have been met:

(a) There is an alcohol/drug assessment from a state approved treatment agency on file that indicates substance dependence, and it was completed after the last drug or alcohol related offense on the driving record;

(b) The person is not revoked for a violation of a stay or probation previously granted under RCW 46.65.060 or 46.65.080;

(c) If a stay has previously been denied after a hearing, there is evidence of substance dependence with new treatment information from a state approved treatment agency.

(3) **HTO reinstatement hearings:** A habitual traffic offender is eligible for a reinstatement hearing if all of the following conditions have been met:

(a) At least four years have elapsed since the beginning of the habitual traffic offender revocation or if a habitual traffic offender stay has been violated, at least four years have elapsed since the date of the new revocation notice or the period of time set by the department has been satisfied;

(b) The person submits a declaration stating that he or she has not driven within two years prior to the request for a hearing. A record of any traffic infraction or conviction is conclusive evidence that a person drove within the past two years;

(c) The driver's record does not show any traffic infractions or criminal cases indicative of driving within the past two years. A conviction is conclusive evidence that a person drove in the past two years;

(d) Any period of additional revocation imposed following a habitual traffic offender reinstatement probation violation must be completed;

(e) If there has been a previous denial of a petition for reinstatement by a hearings examiner, at least one year has elapsed since the denial unless a shorter time is ordered by the hearings examiner;

(f) The person is not incarcerated at the time of the hearing; and

(g) The person has complied with any department required treatment obligations.

(4) **HTO reinstatement without a hearing:** The department may grant a habitual traffic offender a reinstatement without a hearing if the person is eligible for a hearing under subsection (3) of this section and at the time of the request for a hearing:

(a) There are no other suspensions or revocations in effect;

(b) There are no vehicular homicide or vehicular assault convictions on the driver's record;

(c) The person has no unresolved court cases involving driving offenses; and

(d) The person is not revoked for a violation of a stay or probation previously granted under RCW 46.65.060 or 46.65.080.

(5) **Notification if ineligible:** The department shall notify any person seeking a reinstatement or stay, of any finding of ineligibility and the basis for the ineligibility. If a hearing request is denied

for a lack of eligibility, once the reason for the ineligibility has been resolved, the driver may make another request for a hearing.

[Statutory Authority: RCW 46.01.110 and 46.01.040(10). WSR 23-07-074, § 308-101-040, filed 3/13/23, effective 4/13/23. Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-040, filed 5/21/18, effective 9/4/18.]