

WSR 22-17-036
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed August 10, 2022, 9:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-053.

Expedited rule making [Emergency rule making]—Proposed notice was filed as WSR 22-13-071.

Title of Rule and Other Identifying Information: Chapter 110-720 WAC, Collection of costs of support, treatment, and confinement of juveniles under RCW 13.40.220; WAC 110-03-0020 Definitions and 110-03-0490 Finality of the initial order.

Hearing Location(s): On September 27, 2022, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including September 27, 2022, will be considered.

Date of Intended Adoption: September 28, 2022.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by September 27, 2022.

Assistance for Persons with Disabilities: DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by September 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCYF is repealing chapter 110-720 WAC and amending WAC 110-03-0020 and 110-03-0490 as a result of SHB 2050, which repeals parent pay in Washington state.

Reasons Supporting Proposal: Parent pay requires families to pay a percentage of their income to support their child's incarceration. Parent pay is a barrier to young people's successful transition out of the juvenile system and toward a second chance. The practice has inequitable racial outcomes, creates debt for families already struggling financially, and is an inefficient source of revenue for the state.

Statutory Authority for Adoption: RCW 13.40.220.

Statute Being Implemented: RCW 13.40.220.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Rosen, Olympia, 360-764-3732; Implementation and Enforcement: DCYF, state-wide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This proposed rule does not impact small businesses as defined in RCW 19.85.020.

Scope of exemption for rule proposal:
Is fully exempt.

August 9, 2022
Brenda Villarreal
Rules Coordinator

OTS-3840.1

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0020 Definitions. The following definitions apply to this chapter:

"Adjudicative proceeding" means a proceeding in which an opportunity for a hearing occurs before an administrative law judge (ALJ) concerning an administrative appeal of a DCYF action. Hearings and prehearing conferences are elements of adjudicative proceedings. An adjudicative proceeding may take place before the office of administrative hearings (OAH) and may also encompass review proceedings before a DCYF board of appeals (BOA) review judge.

"Administrative law judge" or "ALJ" means an impartial decision-maker who is an attorney and presides over an adjudicative proceeding resulting in an initial order, or resulting in a final order if no appeal of the initial order is properly made or if no further agency appeal is available.

"Adverse action" or "DCYF action" or "department action" means licensing, the enforcement of a statute, the application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

"Board of appeals" or "BOA" means the DCYF board of appeals, the entity to which an initial order of an ALJ may be appealed and considered by a review judge.

"Business days" means all days except for Saturdays, Sundays, federal legal holidays, and state legal holidays listed in RCW 1.16.050(1).

"Business hours" means 8:00 a.m. to 5:00 p.m. Monday through Friday, except state legal holidays.

"Calendar days" means all days including Saturdays, Sundays, federal legal holidays, and state legal holidays as listed in RCW 1.16.050(1).

"Case" means the entire adjudicative proceeding following the filing of a request for hearing with OAH.

"Continuance" means a change to a later date or time of a prehearing conference, hearing, or deadline for other action.

"DCYF" or "department" means the department of children, youth, and families.

"DCYF" or "department representative" means an employee of the department, an assistant attorney general, or special assistant attorney general authorized to represent DCYF in an administrative hearing.

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

"Ex parte contact" means a written or oral communication with an ALJ or review judge about something related to the hearing when all other parties are not present, as provided in RCW 34.05.455. 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.

"File" means delivering documents to OAH or the BOA at the location designated in this chapter or in a notice or order received from OAH or the BOA. The date of filing is the date documents are actually received during office hours by OAH or the BOA.

(a) Filing may be by:

(i) Personal service (hand delivery);

(ii) First class, registered, or certified mail;

(iii) Fax transmission, if the party also mails a copy of the document the same day;

(iv) Commercial delivery service; or

(v) Legal messenger service.

(b) A party cannot file documents by email, unless agreed in advance by OAH or BOA.

"Final order" means an order that is the final DCYF decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to the BOA. If an ALJ's initial order is appealed to the BOA, the review judge's order is DCYF's final order. However, in the case of administrative proceedings related to juvenile parole revocation (~~(, findings of financial responsibility for reimbursement for the cost of support, treatment, and confinement of a juvenile,)~~) or subsidy overpayments to child care providers, the ALJ's decision is the final administrative decision.

"Good cause" means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules. An ALJ or review judge may use the provisions of superior court civil rule 60 as a guide to determine what may be considered good cause.

"Hearing" means a meeting held before OAH or a review judge that gives an aggrieved party an opportunity to be heard, for the purpose of deciding issues of fact or law, in a dispute resulting from an appealable action taken against the party by DCYF.

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

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

"Limited-English-proficient person" or "LEP" means a person with limited ability to read, write, or speak English well enough to understand and communicate effectively.

"OAH" means the office of administrative hearings. This is a separate agency and not part of DCYF.

"Party" means DCYF or a person or entity named in a department action, or to whom a department action is directed.

"Prehearing conference" means a meeting scheduled and conducted by an ALJ in preparation for a hearing.

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

"Reconsideration" means reexamination of a final order on request of a party because the party believes a mistake was made.

"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.

"Representative" means the person selected by a party to represent that party in an administrative hearing. A representative may be an attorney or a lay representative who is not an attorney.

"Review" means the act of reevaluating an initial order by examining the record and issuing the DCYF final order as provided by RCW 34.05.464.

"Review judge" or "BOA review judge" means an attorney designated by the DCYF board of appeals to act as the reviewing officer and who is authorized to review ALJ initial orders and to prepare and enter the final order.

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

"Serve" or "service" means a procedure by which notice of legal action is given to a party.

(a) Unless otherwise stated in law or rule, a party may serve another party by one of the following methods:

(i) Personal service (hand delivery);

(ii) First class, registered, or certified mail;

(iii) Fax, if the party also mails a copy of the document the same day;

(iv) Commercial delivery service;

(v) Legal messenger service; or

(vi) By any other method authorized by chapter 10-08 WAC.

(b) Service for each method, respectively, is complete when:

(i) Personal service is made;

(ii) Mail is properly stamped, addressed, and deposited in the United States mail;

(iii) Fax produces proof of transmission;

(iv) A parcel is delivered to a commercial delivery service with charges prepaid; or

(v) A parcel is delivered to a legal messenger service with charges prepaid.

(c) A party cannot serve documents by email, unless agreed in advance by the receiving party.

(d) Notice and orders served by mail by OAH or BOA are served on the date of mailing.

"Stay" means an order temporarily halting the effective date of a DCYF action.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0020, filed 12/19/19, effective 1/19/20.]

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0490 Finality of the initial order. (1) Except as provided in subsection (3) of this section, the ALJ issues an initial order that becomes a final order:

(a) Twenty-one days after the date the initial order is mailed to the parties, when none of the parties has timely requested a review; or

(b) When a request for review is dismissed.

(2) The review judge issues the final order when a party timely requests a review of an initial order.

(3) The ALJ will issue a final order in administrative proceedings concerning juvenile parole revocation(~~(, findings of financial responsibility for reimbursement for the cost of support, treatment, and confinement of a juvenile,)~~) and subsidy overpayments to child care providers.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0490, filed 12/19/19, effective 1/19/20.]

OTS-3841.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 110-720-0010	Definitions.
WAC 110-720-0020	Cost reimbursement schedule and ability to pay.
WAC 110-720-0030	Modifications.
WAC 110-720-0040	Hearing.
WAC 110-720-0050	Powers of the administrative law judge.