

WSR 23-22-002
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed October 18, 2023, 2:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-040.

Title of Rule and Other Identifying Information: WAC 388-823-0600

How do I show that I have another neurological or other condition similar to intellectual disability?, 388-823-0610 If I have another neurological or other condition similar to intellectual disability, how do I meet the definition of substantial functional limitations?, 388-823-1005 When does my eligibility as a DDA client expire?, and 388-823-1010 When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA?

Hearing Location(s): On December 5, 2023, at 10:00 a.m., virtual via Microsoft Teams or call in. Please see the department of social and health services (DSHS) website for the most up-to-date information.

Date of Intended Adoption: Not earlier than December 6, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on December 5, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on November 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration is amending these rules to implement HB 1407 (2023), make changes to the eligibility expiration processes, and clarify language in the eligibility review section.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 71A.16.020.

Statute Being Implemented: RCW 71A.16.040.

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

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Will Nichol, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1583.

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. These rules relate to internal governmental operations that are not subject to violation by a nongovernment party.

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(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 17, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4985.5

AMENDATORY SECTION (Amending WSR 18-15-046, filed 7/13/18, effective 8/13/18)

WAC 388-823-0600 How do I show that I have another neurological or other condition similar to intellectual disability? In order to be considered for eligibility under the category of another neurological or other condition similar to intellectual disability you must:

(1) Be age four or older and have a diagnosis by a licensed physician of a neurological or chromosomal disorder that:

- (a) Originated before age ((~~eighteen~~) 18;
- (b) Is known by reputable authorities to cause intellectual and adaptive skills deficits;
- (c) Is expected to continue indefinitely without improvement;
- (d) Is other than intellectual disability, autism, cerebral palsy, or epilepsy;
- (e) Is not attributable to nor is itself a mental illness, or emotional, social, or behavior disorder; and
- (f) Has resulted in substantial functional limitations.

(2) Be receiving fee-for-service medically intensive children program (MICP) services under chapter 182-551 WAC, and have been continuously eligible for DDA due solely to your MICP eligibility since before August 13, 2018; or

(3) Be under the age of ((~~ten~~) 20) and have one or more developmental delays.

AMENDATORY SECTION (Amending WSR 18-15-046, filed 7/13/18, effective 8/13/18)

WAC 388-823-0610 If I have another neurological or other condition similar to intellectual disability, how do I meet the definition of substantial functional limitations? If you have an eligible condition of another neurological or other condition similar to intellectual disability, in order to meet the definition of substantial functional limitations you must have impairments in both intellectual abilities and adaptive skills, which are separate from any impairment due to an unrelated mental illness, or emotional, social, or behavioral disorder.

(1) For ((~~WAC 388-823-0600(1)~~) a neurological or chromosomal disorder), evidence of substantial functional limitations requires documentation of (a) and (b) below:

(a) For impairment in intellectual abilities, either subsection (i) or (ii) or (iii) of this section:

(i) An FSIQ score of more than 1.5 standard deviations below the mean under WAC 388-823-0720 and subject to all of WAC 388-823-0720 and WAC 388-823-0730;

(ii) If you are under the age of (~~twenty~~) 20, significant academic delays defined as delays of more than two standard deviations below the mean at the time of testing in both broad reading and broad mathematics; or

(iii) A written statement (~~by~~) from a licensed physician, a licensed psychologist, or a school psychologist that your condition (~~is so severe that you are unable to demonstrate the minimal skills required to complete testing for an~~) prevents you from completing FSIQ testing.

(b) For impairment in adaptive skills, a score of more than two standard deviations below the mean under WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750.

(2) For (~~WAC 388-823-0600(2)~~) the medically intensive children's program, you do not need additional evidence of your substantial functional limitations if your eligible condition is solely due to your eligibility and participation in the fee-for-service medically intensive children program under chapter 182-551 WAC.

(3) For (~~WAC 388-823-0600(3)~~) developmental delays, evidence of substantial functional limitations requires documentation of (a) or (b) or (c) below:

(a) You are under the age of three and have one or more developmental delays under WAC 388-823-0770;

(b) You are under the age of three and meet the ESIT eligibility requirements; or

(c) You are under the age of (~~ten~~) 20 and have three or more developmental delays under WAC 388-823-0770.

AMENDATORY SECTION (Amending WSR 18-15-046, filed 7/13/18, effective 8/13/18)

WAC 388-823-1005 When does my eligibility as a DDA client expire? (1) If you are determined eligible before age three, your eligibility expires on your fourth birthday.

(2) If you are determined eligible (~~(at age three but under age ten under)~~) with developmental delays (~~(or Down syndrome)~~) after your third birthday, your eligibility expires on your (~~tenth~~) 20th birthday.

(3) DDA will notify you at least six months before your eligibility expiration date.

(4) If your eligibility expires, you must reapply in order to maintain eligibility with DDA.

(5) If (~~(you fail to reapply before your expiration date or if)~~) DDA receives your reapplication less than (~~(sixty)~~) 60 days before your expiration date and (~~(DDA)~~) does not have sufficient time to make an eligibility determination by the date of expiration, your DDA eligibility will expire and your DDA paid services will stop.

(a) If DDA determines you are eligible after your eligibility expires, your eligibility will be reinstated on the date that DDA determines you eligible under WAC 388-823-0100.

(b) If DDA determines you are eligible after your eligibility expires, your eligibility will not be retroactive to the expiration date.

(6) This expiration of eligibility takes effect ~~((even))~~ if DDA is unable to locate you to provide written notification that eligibility is expiring.

(7) There is no appeal right to eligibility expiration.

AMENDATORY SECTION (Amending WSR 19-14-119, filed 7/3/19, effective 8/3/19)

WAC 388-823-1010 When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA? (1)

DDA will review your eligibility:

(a) If you are age ~~((nineteen))~~ 19 and:

(i) Your most recent eligibility determination was completed before your ~~((sixteenth))~~ 16th birthday; and

(ii) You are eligible with intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition similar to intellectual disability.

(b) If you are age ~~((nineteen))~~ 19 and ~~((were determined))~~ are eligible ~~((under))~~ with another neurological or other condition similar to intellectual disability and have used academic delays as evidence of your substantial functional limitations~~((+))~~.

(c) Before authorization of any DDA-paid service if you are not currently receiving paid services and your most current eligibility determination was made before June 1, 2005~~((+))~~.

~~((If the evidence used to make your most recent eligibility determination is insufficient, contains an error, or appears fraudulent;~~

~~((e)))~~ If new information becomes available that does not support your current eligibility determination~~((+or))~~.

~~((f)))~~ (e) If you were determined eligible due solely to your eligibility for fee-for-service (FFS) medically intensive children's program (MICP) services and you are no longer eligible for FFS MICP services.

(2) If DDA ~~((requires additional information to make a determination of eligibility during a review and you do not provide sufficient information))~~ does not receive all of the documentation necessary to determine you are eligible during a review, DDA will terminate your eligibility:

(a) On your ~~((twentieth))~~ 20th birthday if the review is because you are age ~~((nineteen))~~ 19; or

(b) ~~((Ninety))~~ 90 days after DDA requests the information if the review is because:

(i) You have requested a paid service;

(ii) ~~((The evidence used to make your most recent eligibility determination is insufficient, contains an error, or appears fraudulent;~~

~~((iii)))~~ New information is available that does not support your current eligibility determination; or

~~((iv)))~~ (iii) You are no longer eligible for FFS MICP services under chapter 182-551 WAC.