

WSR 24-13-080
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed June 17, 2024, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-10-059.

Title of Rule and Other Identifying Information: Chapter 388-823 WAC, Developmental disabilities administration intake and eligibility determination.

Hearing Location(s): On August 6, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than August 7, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on June 20, 2024, by 5:00 p.m. on August 6, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, 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 July 23, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending these rules to implement 2SHB 2008, which directs DDA to remove intelligence quotient (IQ) criteria from DDA enrollment processes. Additional changes have been made to combine and repeal redundant sections in the chapter, clarify language, and update intake and eligibility processes.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 71A.10.020, 71A.16.020, and 74.08.090.

Statute Being Implemented: RCW 71A.10.020, 71A.16.020, and 74.08.090.

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: William 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. Under RCW 34.05.328 (5) (b) (vii), a cost-benefit analysis is not required for rules that relate only to client medical or financial eligibility. Chapter 388-823 WAC establishes medical criteria for determining DDA eligibility.

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: Rules of DSHS relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

Scope of exemption for rule proposal:

Is fully exempt.

June 11, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5040.2

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-823-0010 Definitions. The following definitions apply to this chapter:

~~(("ABAS-II"))~~ "ABAS" means adaptive behavior assessment system (~~(second edition)~~), which is a comprehensive, norm-referenced assessment of adaptive behavior and skills of individuals from birth through age 89.

"Adaptive behavior" means age-appropriate behaviors people need to live and function independently in daily life.

~~(("CAS" means the DAS-Naglieri cognitive assessment system, a clinical instrument for assessing intelligence based on a battery of cognitive tasks. The test is used for children ages five through seventeen years eleven months.))~~

"Client" means a person ~~((with))~~ who has a developmental disability as defined in RCW 71A.10.020 and has been determined eligible for DDA under chapter 388-823 WAC ~~((who is currently eligible and active with the developmental disabilities administration (DDA))~~.

"Community first choice" or "CFC" is a medicaid state plan program defined in chapter 388-106 WAC.

~~(("C-TONI" means the comprehensive test of nonverbal intelligence, a battery of six subtests, designed to measure different aspects of nonverbal intellectual abilities from ages six to eighteen years eleven months.))~~

~~(("DAS" means differential ability scales, which is a cognitive abilities battery for children and adolescents at least age two years, six months but under age eighteen.))~~

"DABS" means diagnostic adaptive behavior scale, which is a comprehensive standardized assessment of adaptive behavior for people ages 4-21.

"DDA" means the developmental disabilities administration, an administration within department of social and health services.

"Department" means the department of social and health services.

"Diagnostic report" means a report that documents evidence of a developmental or intellectual disability.

"Documentation" means written information that provides support for certain claims, such as diagnoses, test scores, or residency for the purpose of establishing DDA eligibility.

~~(("DSM-IV-TR" means the diagnostic and statistical manual of mental disorders, fourth edition, text revision.))~~

"DSM-5" means the diagnostic and statistical manual of mental disorders, fifth edition.

"Eligible" means that DDA has determined that you have a condition that meets all of the requirements for a developmental disability as set forth in this chapter.

"ESIT" means early support for infants and toddlers, a program administered by the department of ~~((early learning))~~ children, youth, and families under chapter 110-400 WAC.

"Expiration date" means a specific date that your eligibility as a client of DDA and all services paid by DDA will stop.

~~((("FSIQ" means the full scale intelligence quotient which is a broad measure of intelligence achieved through one of the standardized intelligence tests included in these rules. Any standard error of measurement value will not be taken into consideration when making a determination for DDA eligibility.))~~

"Functional limitation" means a reduced ability or lack of ability to perform an action or activity in the manner or within the range considered to be normal.

"ICAP" means the inventory for client and agency planning. This is ~~((a standardized))~~ an adaptive behavior assessment of functional ability. The adaptive behavior section of the ICAP assesses daily living skills and the applicant awareness of when to perform these skills. ~~((The goal is to get a snapshot of his/her ability.~~

~~"K-ABC" means Kaufman assessment battery for children, which is a clinical instrument for assessing intellectual development. It is an individually administered test of intelligence and achievement for children at least age two years, six months but under age twelve years, six months. The K-ABC comprises four global scales, each yielding standard scores. A special nonverbal scale is provided for children at least age four years but under age twelve years, six months.~~

~~"Leiter-R" means Leiter international performance scale - revised, which is an untimed, individually administered test of nonverbal cognitive ability for individuals at least age two years but under age twenty-one years.))~~

"Medicaid personal care" or "MPC" is a medicaid state plan program as defined in chapter 388-106 WAC.

"Necessary supplemental accommodation" means services designed to afford people equal access to DDA services as described in chapter 388-472 WAC.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

~~((("Nonverbal" means that you do not possess sufficient verbal skills to complete a standard intellectual test.))~~

"NSA" means necessary supplemental accommodations, which are services provided to you if you have a mental, neurological, physical, or sensory impairment or other problems that prevent you from getting program benefits in the same way that an unimpaired person would get them.

"Review" means DDA must determine that ~~((a current client of DDA))~~ an enrolled person still meets ~~((all of))~~ the requirements for a developmental disability as set forth in this chapter.

"RHC" means a residential habilitation center operated by the DDA.

"SIB-R" means the scale of independent behavior-revised which is an adaptive behavior assessment derived from quality standardization and norming. It can be administered as a questionnaire or as a carefully structured interview, with special materials to aid the interview process.

"SOLA" means a state operated living alternative residential service for adults operated by DDA.

~~("Stanford Binet" is a battery of fifteen subtests measuring intelligence for individuals at least age two years but under age twenty-three years.)~~

"Termination" means an action taken by DDA that stops your DDA eligibility and services paid by DDA. If your DDA eligibility is terminated your DDA authorized services will also be terminated. If you remain eligible for community first choice (CFC) or medicaid personal care (MPC) and you are under the age of ~~((eighteen))~~ 18 DDA will continue to authorize this service. If you are ~~((eighteen))~~ 18 or older CFC or MPC services will be authorized by the aging and long-term support administration.

"VABS" means Vineland adaptive behavior scales, which is an assessment to measure adaptive behavior in children from birth but under age ~~((eighteen))~~ 18 years, nine months and in adults with low functioning in four separate domains: Communication, daily living skills, socialization, and motor skills.

~~("Wechsler" means the Wechsler intelligence scale, which is an individually administered measure of an individual's capacity for intelligent behavior. There are three Wechsler intelligence scales, dependent upon the age of the individual:~~

- ~~• Wechsler preschool and primary scale of intelligence for children at least age three years but under age seven years;~~
- ~~• Wechsler intelligence scale for children at least age six years but under age sixteen years; and~~
- ~~• Wechsler adult intelligence scale for individuals at least age sixteen years but under age seventy-four years.~~

~~"WJ III(r)" means the Woodcock-Johnson(r) III, a test which is designed to provide a co-normed set of tests for measuring general intellectual ability, specific cognitive abilities, scholastic aptitude, oral language, and academic achievement. The WJ III(r) is used for ages two and up.)~~

AMENDATORY SECTION (Amending WSR 15-01-021, filed 12/5/14, effective 1/5/15)

WAC 388-823-0015 How does the state of Washington define developmental disability? The state of Washington defines developmental disability in RCW 71A.10.020 ~~((+5))~~.

(1) To qualify for DDA you must have a diagnosed condition of intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition found by DDA to be closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability which:

- (a) Originates ~~((prior to))~~ before age ~~((eighteen))~~ 18;
- (b) Is expected to continue indefinitely; and
- (c) Results in substantial limitations.

(2) In addition to the requirements listed in subsection (1) of this section, you must meet the other requirements contained in this chapter.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0020 How do I (~~(become a client of)~~) enroll with the developmental disabilities administration? (1) You (~~(become a client of)~~) may enroll with the developmental disabilities administration (DDA) if you apply for eligibility with DDA and DDA determines that you meet all eligibility criteria required to establish a developmental disability as defined in this chapter.

(~~((1))~~) (2) You apply to become a client of DDA by (~~(calling the regional)~~) contacting a DDA office (~~(or a local DDA office)~~) and requesting a DDA eligibility packet (~~(be sent to you)~~). You may also download, complete, and (~~(print the)~~) return an eligibility packet at (~~(http://dshs.wa.gov/ddd/eligible.shtml)~~) https://www.dshs.wa.gov/dda/consumers-and-families/eligibility.

(~~((2))~~) (3) You must complete and return the required forms, along with (~~(all)~~) any supporting documentation that you have (~~(, to address any disability indicated in the eligibility packet)~~).

AMENDATORY SECTION (Amending WSR 18-17-028, filed 8/6/18, effective 9/6/18)

WAC 388-823-0025 Who may apply for a DDA eligibility determination? (1) You may apply for a DDA eligibility determination (~~(on your own behalf)~~) for yourself.

(2) A person may (~~(submit an application)~~) apply for a DDA eligibility determination on your behalf if the person is:

(a) Delegated to consent to routine medical care for you under WAC (~~(388-148-1560)~~) 110-148-1560;

(b) Your parent if you are under (~~(eighteen)~~) 18;

(c) Your caretaker relative under WAC 182-500-0020;

(d) Your spouse;

(e) Your authorized representative under WAC 182-503-0130; (~~(or)~~)

(f) Applying for you because a medical condition prevents you from applying (~~(on your own behalf.)~~); or

(g) Someone to whom you or the courts have given permission to apply on your behalf.

(3) If you or your (~~(legal)~~) authorized representative request it, DDA will withdraw your eligibility application or terminate your eligibility.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0055 Who is responsible for obtaining (~~(the)~~) required documentation (~~(needed to make my eligibility determination)~~)?

(1) You are responsible (~~(to provide all of)~~) for providing the infor-

mation required ((by DDA)) to ((make a determination)) determine DDA eligibility.

(2) If you provide DDA with a signed consent form and contacts, DDA will assist in obtaining records.

~~((1) If you provide DDA with a signed consent form and the sources for obtaining the documentation DDA may be able to assist you in obtaining records.))~~ (3) Evidence required to make an eligibility determination includes, but is not limited to:

(a) ~~((School psychologist and/or licensed psychologist evaluations))~~ Evaluations and reports from a school psychologist, a licensed psychologist, or both;

(b) Evidence of ~~((medical diagnoses by a licensed physician,))~~ a qualifying condition;

(c) ~~((Cognitive))~~ Clinical and diagnostic tests measuring a person's development and adaptive skills test results and accompanying reports((7)); and

(d) Mental health records.

~~((2))~~ (4) DDA will not pay for ((the purchase of)) diagnostic ((assessments)), ((intelligence quotient (IQ) testing)) developmental, or adaptive skills ((testing)) assessments.

~~((3) If DDA determines that you have a qualifying condition and your records do not include an adaptive skills assessment per WAC 388-823-0710 administered within the past thirty-six months, DDA may administer the inventory of client and agency planning (ICAP) to determine your level of adaptive functioning to meet the substantial limitation requirement. DDA will administer the ICAP at no expense to you.))~~

(5) If you cannot provide DDA with an adaptive assessment completed in the last 36 months, but you otherwise meet DDA eligibility criteria, DDA will offer to administer the ICAP for you at no cost.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0075 What if I do not have written evidence that my disability began before my ((eighteenth)) 18th birthday? (1) If there is no documentation available about your ~~((early developmental history, educational history, illnesses, or injuries, DDA may accept verbal information from your family or others who knew you prior to the age of eighteen to verify that your disability began prior to age eighteen))~~ condition existing before age 18, DDA may accept an attestation - either verbal or written. The attestation must confirm your condition began before age 18 and may be from someone who knows you or a self-attestation verified by another person who knows you. The information must be specific and reliable, and it cannot substitute for documentation that could be obtained with reasonable diligence.

(2) Additional evidence of your eligible condition and the resulting substantial limitations is still required.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0090 How long will it take to complete a determination of my eligibility? (1) DDA has ~~((thirty))~~ up to 30 days from receipt of the final piece of requested documentation to make ~~((the))~~ a determination of eligibility.

~~((1))~~ (2) If DDA has received all requested documentation and ~~((it is sufficient to))~~ can establish eligibility, DDA will ~~((make a determination of eligibility and send you written notice of eligibility))~~ provide written and verbal notice.

~~((2))~~ (3) If DDA ~~((has received all requested documentation but it is insufficient to establish eligibility, DDA will make a determination of ineligibility and send you written notice of denial of eligibility))~~ cannot establish eligibility, DDA will send written and verbal notice of the reason for the ineligible decision.

~~((3))~~ (4) If DDA has insufficient information to determine you eligible and has not received all of the requested documentation, DDA may deny ~~((your))~~ eligibility after ~~((ninety))~~ 90 days from the date of application. Rules governing reapplying for eligibility are in WAC 388-823-1080.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0100 What is the effective date of my eligibility determination? ~~((1) If DDA receives sufficient information to substantiate your DDA eligibility, the))~~ The effective date of your DDA eligibility ~~((as a DDA client))~~ is the date ~~((of receipt of))~~ DDA receives the final piece of documentation needed to make an eligibility determination.

~~((2) DDA services cannot begin before the effective date of your DDA eligibility.))~~

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0105 How will DDA notify me of the results of my eligibility determination? (1) DDA will ~~((send you))~~ provide written and verbal notification of the ~~((final))~~ determination ~~((of your eligibility per WAC 388-825-100)).~~

~~((1) If you are not eligible, the written notice will explain why you are not eligible, explain your appeal rights to this decision, and provide you with an administrative hearing request form.))~~

(2) If you are determined eligible, the written ~~((notice))~~ notification will include:

- (a) Your ~~((eligibility))~~ eligible condition(s);
- (b) The effective date of your eligibility;
- (c) The expiration date or review date of your eligibility, if applicable; and
- (d) The name and phone number of your DDA primary contact.

(3) If you are determined not eligible, the written notification will:

- (a) Explain the decision;
- (b) Explain your appeal rights to the decision; and
- (c) Provide you with an administrative hearing request form.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0115 If I am (~~eligible to be a client of~~) enrolled with DDA, will I receive DDA services? ~~If ((DDA determines that you are eligible to be a client of))~~ enrolled with DDA, your access to services ((as a DDA client)) depends on ((your)) meeting eligibility requirements for the ((specifie)) service. ((DDA paid services are described in WAC 388-825-057.)) Your eligibility for services is determined separately from your DDA enrollment.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0200 How do I show that I have intellectual disability as an eligible condition? ~~((In order to be considered for eligibility under the condition of intellectual disability you must be age four or older and have a diagnosis of mental retardation as specified in the DSM-IV-TR or intellectual disability as specified in the DSM-5. This diagnosis must meet the following criteria:~~

~~(1) The diagnosis must be made by a licensed psychologist, or be a finding of intellectual disability by a Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.~~

~~(2) An acceptable diagnostic report includes documentation of all three diagnostic criteria specified in the DSM-IV-TR or DSM-5.))~~

To be considered eligible with intellectual disability, you must have a diagnosis of intellectual disability or an equivalent diagnosis. This diagnosis must meet the following criteria:

(1) The condition must have onset before age 18;

(2) The diagnosis must be made by a licensed psychologist, a Washington certified school psychologist, or other school psychologist certified by the National Association of School Psychologists; and

(3) The diagnosis must be documented in an acceptable diagnostic report.

AMENDATORY SECTION (Amending WSR 15-01-021, filed 12/5/14, effective 1/5/15)

WAC 388-823-0210 If I have intellectual disability, how do I meet the definition of substantial limitations? ~~((If you have an eligible condition of intellectual disability, in order to meet the definition of substantial limitations you must have:~~

~~(1) Documentation of a full-scale intelligence quotient (FSIQ) score of more than two standard deviations below the mean per WAC 388-823-0720, and subject to all of WAC 388-823-0720 and 388-823-0730, and~~

~~(2) Documentation)) To meet the definition of substantial limitations for intellectual disability, you must have documentation of an adaptive skills test score of more than two standard deviations below the mean ((as described)) in accordance with ((WAC 388-823-0740 and subject to all of)) WAC 388-823-0740 and 388-823-0750.~~

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0300 How do I show that I have cerebral palsy as an eligible condition? ~~(1) ((In order to)) To be considered ((for eligibility under the condition of)) eligible with cerebral palsy, you must ((be age four or older and)) have a diagnosis ((by a licensed physician)) of cerebral palsy or similar ((brain)) cerebral damage which causes ((, quadriplegia, hemiplegia, or diplegia)) full or partial limb paralysis, with evidence of onset ((prior to)) before age ((three)) 18.~~

(2) DDA accepts a diagnosis from:

(a) A licensed physician; or

(b) A physician assistant or advanced registered nurse practitioner (ARNP) associated with a neurological practice.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0310 If I have cerebral palsy, how do I meet the definition of substantial limitations? ~~((If you have an eligible condition of cerebral palsy, in order to)) To meet the definition of substantial limitations for cerebral palsy, you must demonstrate the need for direct physical assistance, ((per)) as defined in WAC 388-823-0760, with two or more of the following activities as a result of your condition:~~

- (1) Toileting;
- (2) Bathing;
- (3) Eating;
- (4) Dressing;
- (5) Mobility; or
- (6) Communication.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0400 How do I show that I have epilepsy as an eligible condition? ~~((In order to)) To be ((considered for eligibility under the condition of)) eligible with epilepsy, you must ((be age four or older and)) have a diagnosis of epilepsy or a neurological condition that produces seizures.~~

(1) You must show evidence that your epilepsy or seizure disorder originated ((prior to)) before age ((eighteen)) 18 and is expected to continue indefinitely.

(2) The diagnosis must be made by a ~~((board-certified))~~ licensed neurologist ~~((and be supported with documentation of medical history with neurological testing))~~.

(3) You must provide confirmation from ~~((your))~~ a physician or neurologist that your seizures are ~~((currently uncontrolled and ongoing or recurring and cannot be controlled by medication))~~ ongoing despite medical intervention.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0410 If I have epilepsy, how do I meet the definition of substantial limitations? ~~((If you have an eligible condition of epilepsy, in order to))~~ To meet the definition of substantial limitations for epilepsy, you must have documentation of an adaptive skills test score ~~((that reflects your daily functioning))~~ of more than two standard deviations below the mean ~~((as described in WAC 388-823-0740 and subject to all of))~~ in accordance with WAC 388-823-0740 and 388-823-0750.

AMENDATORY SECTION (Amending WSR 22-01-037, filed 12/6/21, effective 1/6/22)

WAC 388-823-0500 How do I show that I have autism as an eligible condition? (1) To be considered ~~((for eligibility under the condition of))~~ eligible with autism:

- ~~(a) ((You must be age four or older;~~
- ~~(b))~~ You must ~~((have been))~~ be diagnosed with:
 - (i) Autism spectrum disorder ~~((299.00 under the diagnostic and statistical manual of mental disorders, fifth edition (DSM-5)))~~; or
 - (ii) Autistic disorder ~~((299.00 under the diagnostic and statistical manual of mental disorders, fourth edition, text revision (DSM-IV-TR))~~ before February 1, 2022;
- (b) The condition must have originated before age 18; and
- (c) You must have been diagnosed by:
 - (i) A ~~((board-certified))~~ licensed neurologist;
 - (ii) A ~~((board-certified))~~ licensed psychiatrist;
 - (iii) A licensed psychologist;
 - (iv) A licensed developmental and behavioral pediatrician; or
 - (v) ((An advanced registered nurse practitioner (ARNP)) One of the following professionals associated with an autism center, developmental center, or center of excellence((?)):
 - ~~((v))~~ (A) A licensed physician; ~~((associated with an autism center, developmental center, or center of excellence; or~~
 - ~~(vi) A board certified developmental and behavioral pediatrician.~~
- ~~(d) The condition must be expected to continue indefinitely; and~~
- ~~(e) You must provide evidence of onset before age five.)~~
 - (B) An ARNP;
 - (C) A physician assistant; or
 - (D) A naturopath.
- (2) ~~((An acceptable diagnostic report includes documentation of diagnostic criteria specified in:~~
 - ~~(a) The DSM-5; or~~

~~(b) DSM-IV-TR for a diagnostic report dated before February 1, 2022.) The diagnosis must be documented in a diagnostic report.~~

AMENDATORY SECTION (Amending WSR 22-12-055, filed 5/26/22, effective 6/26/22)

WAC 388-823-0510 What constitutes substantial limitation due to autism? ~~((1))~~ To establish substantial limitation due to autistic disorder ~~((diagnosed under the DSM-IV-TR))~~ or autism spectrum disorder, you must have an adaptive skills test score more than two standard deviations below the mean ~~((as described in WAC 388-823-0740 and subject to all of))~~ in accordance with WAC 388-823-0740 and WAC 388-823-0750.

~~((2) To establish substantial limitation due to autism spectrum disorder diagnosed under the DSM-5 you must:~~

~~(a) Have an adaptive skills test score more than two standard deviations below the mean as described in WAC 388-823-0740 and subject to WAC 388-823-0740 and WAC 388-823-0750; and~~

~~(b) Have either:~~

~~(i) A full-scale intellectual quotient (FSIQ) score more than one standard deviation below the mean as described in WAC 388-823-0720 and subject to WAC 388-823-0720 and WAC 388-823-0730; or~~

~~(ii) A written statement from a qualified professional that your autism prevents you from completing FSIQ testing. "Qualified professional" means:~~

~~(A) Board-certified neurologist;~~

~~(B) Board-certified psychiatrist;~~

~~(C) Licensed psychologist;~~

~~(D) Licensed physician associated with an autism center, developmental center, or center of excellence;~~

~~(E) Board-certified developmental and behavioral pediatrician; or~~

~~(F) Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.)~~

AMENDATORY SECTION (Amending WSR 24-01-119, filed 12/19/23, effective 1/19/24)

WAC 388-823-0600 How do I show that I have another neurological or other condition similar to intellectual disability? (1) ~~((In order to))~~ To be considered for eligibility ~~((under the category of))~~ with another neurological or other condition similar to intellectual disability you must:

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

~~((a))~~ (i) Originated before age 18;

~~((b))~~ (ii) Is known by reputable authorities to cause intellectual and adaptive ~~((skills))~~ skill deficits;

~~((c))~~ (iii) Is expected to continue indefinitely without improvement;

~~((d))~~ (iv) Is other than intellectual disability, autism, cerebral palsy, or epilepsy; and

~~((e))~~ (v) Is not attributable to nor is itself a mental illness, or emotional, social, or behavior disorder; ~~((and~~
~~(f) Has resulted in substantial functional limitations.))~~ or
~~((2))~~ (b) Be receiving fee-for-service medically intensive children program (MICP) services under ~~((chapter 182-551))~~ WAC 182-551-3000, 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 20 and have one or more developmental delays)).~~
(2) You must have been diagnosed by:
(a) A licensed physician;
(b) Geneticist; or
(c) One of the following professionals associated with a neurological clinic or genetic testing center:
(i) An ARNP; or
(ii) A physician assistant.

AMENDATORY SECTION (Amending WSR 24-01-119, filed 12/19/23, effective 1/19/24)

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? (1) 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 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 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 from a licensed physician, a licensed psychologist, or a school psychologist that your condition prevents you from completing FSIQ testing.~~
~~(b) For impairment in) an adaptive skills test (7-a) score of more than two standard deviations below the mean ~~((under WAC 388-823-0740 and subject to all of))~~ in accordance with WAC 388-823-0740 and WAC 388-823-0750.
(2) For ~~((the medically intensive children's program,))~~ WAC 388-823-0600(2) 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 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 20 and have three or more developmental delays under WAC 388-823-0770.)~~

DEVELOPMENTAL DELAY

NEW SECTION

WAC 388-823-0620 How do I show that I have a developmental delay as an eligible condition? To be eligible with developmental delay, you must be:

- (1) Under the age of three and have one or more developmental delays;
- (2) Under the age of three and meet the ESIT eligibility requirements; or
- (3) Under the age of 20 and have three or more developmental delays.

NEW SECTION

WAC 388-823-0630 What evidence do I need of developmental delays? (1) To qualify under developmental delay, DDA must receive evidence showing a standard deviation of at least 1.5 or 25% or more of the chronological age in at least one of the following developmental areas:

- (a) Fine or gross motor skills;
- (b) Self-help/adaptive skills;
- (c) Expressive or receptive communication, including American Sign Language;
- (d) Social/emotional skills; and
- (e) Cognitive, academic, or problem-solving skills.

(2) The evidence of developmental delay must be:

- (a) Measured using an age-appropriate diagnostic assessment; and
- (b) Assessed within the past 18 months, except when written confirmation explains the previously measured delay remains valid.

(3) DDA accepts a written statement from a qualified professional stating that your developmental delay prevents you from completing testing.

(4) The assessment must be completed by one of the following professionals qualified to assess the developmental areas outlined above:

- (a) Licensed physician or physician assistant;
- (b) Licensed psychologist or certified school psychologist;
- (c) Speech language pathologist;
- (d) Audiologist;

- (e) Licensed occupational therapist;
- (f) Licensed physical therapist;
- (g) ARNP or registered nurse;
- (h) Certified teacher;
- (i) Master's level social worker; or
- (j) Orientation and mobility specialist.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0740 What evidence do I need of my adaptive skills limitations? (1) ~~((Evidence of substantial limitations of adaptive functioning requires a qualifying score completed in the past thirty-six months on one of the tests shown in the table below:))~~ For evidence of adaptive skills limitations, DDA accepts a qualifying score from one of the following assessments completed in the past 36 months.

Assessment	Qualifying Score
Vineland adaptive behavior scales (VABS)	An adaptive behavior composite score of 69 or less
Scales of independent behavior - Revised (SIB-R)	A broad independence standard score of 69 or less
Adaptive behavior assessment system ((- Second edition (ABAD-H)) (ABAS)	An adaptive behavior composite score of 69 or less
Inventory for client and agency planning (ICAP)	A broad independence standard score of 69 or less
<u>Diagnostic adaptive behavior scale (DABS)</u>	<u>A broad total adaptive score of 69 or less</u>

(a) ~~((Tests))~~ Assessments must be administered and scored by professionals who have a background in individual assessment, human development and behavior, ~~((and))~~ tests and measurements, ~~((as well as an understanding))~~ and knowledge of individuals with disabilities.

(b) ~~((Tests must be administered following the instructions for the specific test used.))~~ DDA will administer or arrange for the administration of the ICAP only if results from one of the other acceptable tests are not available within the past 36 months.

(c) ~~((Department))~~ Authorized administration staff or ~~((designee contracted with DDA))~~ contracted designee must administer the ICAP.

~~((d))~~ DDA will administer or arrange for the administration of the ICAP only if results from one of the other acceptable tests are not available.

(2) The adaptive test score cannot be a result of:

~~((a))~~ (a) An unrelated mental illness or other psychiatric condition occurring at any age; or

~~((other))~~ (b) Another illness or injury occurring after age ~~((eighteen))~~ 18.

~~((a))~~ (3) If you are dually diagnosed with a qualifying condition and mental illness, other psychiatric condition, or other illness or injury, you must provide acceptable documentation that your adaptive functioning ~~((impairment))~~, measured by an adaptive skills test,

would meet the requirements for DDA eligibility without the influence of the mental illness, other psychiatric condition, or other illness or injury.

~~((b))~~ (a) "Acceptable documentation" means written reports or statements that are directly related to ~~((the subject at issue))~~ adaptive functioning, reasonable ~~((in light of all))~~ considering the evidence, and from a ~~((source of appropriate authority))~~ qualified professional. The determination of whether a document is acceptable is made by DDA.

~~((e))~~ (b) If no documentation is provided or DDA determines that the documentation is not acceptable DDA ~~((will))~~ may deny eligibility. The determination ~~((may))~~ can be challenged through an administrative appeal.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0750 If I have more than one adaptive test score, what criteria will DDA use to select the adaptive test for determining eligibility? If you have more than one adaptive test score ~~((during the thirty-six))~~ from the 36 months ~~((prior to your))~~ before an eligibility determination, DDA will accept the most recent assessment that ~~((test score obtained closest to the date of review or application providing it is a valid score and))~~ reflects adaptive functioning due to your developmental disability.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0760 ~~((What evidence))~~ How do I ~~((need to))~~ show my need for direct physical assistance? (1) ~~((The))~~ To show your need for direct physical assistance, your impaired motor control must require ~~((with))~~ direct physical assistance to complete activities of daily living ~~((is due to your impaired motor control and means))~~ resulting in:

(a) ~~((You))~~ The need ~~((the presence and))~~ for physical assistance ~~((of another person on a daily basis to be able))~~ to communicate ~~((and be understood by any other))~~ with another person on a daily basis.

(i) ~~((If you are able to communicate through))~~ Effective use of a communication device ~~((you will be))~~ is considered independent ~~((in))~~ communication.

(ii) ~~((You must require more))~~ More than ~~(("setting up" of the))~~ communication device set up is required.

(b) ~~((You))~~ The need for direct physical assistance ~~((from another person on a daily basis))~~ with toileting, bathing, eating, dressing, or mobility on a daily basis.

(i) ~~((You require more))~~ "Direct physical assistance" means more than ~~(("setting up" the))~~ task set up ~~((to enable you to perform the task independently))~~ and support to physically transfer to the task are required.

(ii) ~~((You must require direct physical assistance for more than transferring in and out of wheelchair, in and out of the bath or shower, and/or on and off of the toilet.~~

~~(iii) Your ability to be mobile is your ability to move yourself from place to place, not your ability to walk. For instance, if you can transfer in and out of a wheelchair and are independently mobile in a wheelchair, you do not meet the requirement for direct physical assistance with mobility)~~ "Mobility" means the ability to move from place to place independently regardless of the use of mobility aides.

(2) Any of the following can be used as documentation of ~~((your))~~ direct physical assistance needs:

(a) The comprehensive assessment reporting evaluation (CARE) tool or other department assessments that measure direct assistance needs in the areas specified above;

(b) Assessments and reports from educational or healthcare professionals that ~~((are current and consistent with your current functioning))~~ describe direct assistance needs;

(c) In the absence of professional reports or assessments, DDA may document its own observation of ~~((your))~~ direct assistance needs ~~((along with reported))~~ and information reported by ~~((family and others))~~ people familiar with you.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0910 What is the purpose of ICAP? The ~~((purpose of the))~~ ICAP ~~((is to assess your))~~ assesses adaptive skills in the areas of motor ~~((skills)),~~ personal living ~~((skills)),~~ social, ~~((and))~~ communication ~~((skills)),~~ and community living ~~((skills)).~~

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0920 What sections of the ICAP does DDA or a contracted designee ~~((contracted with DDA))~~ complete and score? (1) DDA ~~((or a designee contracted with DDA))~~ completes the adaptive behavior portion of the ICAP.

(2) There is ~~((a computer generated))~~ an age-based broad independence score of your adaptive skills in the areas of motor ~~((skills)),~~ personal living ~~((skills)),~~ social, ~~((and))~~ communication ~~((skills)),~~ and community living ~~((skills, based on your age)).~~

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0930 How does DDA ~~((or a designee contracted with DDA))~~ administer the ICAP? (1) DDA or a contracted designee ~~((contracted with DDA))~~ completes the adaptive section of the ICAP by interviewing a qualified respondent who has ~~((known you for at least three months and who sees you on a day-to-day basis. You cannot be the respondent for your own ICAP))~~ an established relationship with you. The qualified respondent must be someone who has interacted with you on a regular basis for at least three months.

(2) DDA or a contracted designee (~~((contracted with DDA))~~) will choose the respondent and may interview more than one respondent to ensure that information is complete and accurate.

(3) DDA or a contracted designee (~~((contracted with DDA))~~) will ask (~~((you to demonstrate some of the))~~) for a skills ((in order)) demonstration to evaluate (~~((what skills you are able to perform))~~) current functioning. (~~((DDA or a designee contracted with DDA cannot administer the ICAP if no respondent is identified and available.))~~)

(4) DDA cannot administer the ICAP when:

(a) There is no respondent identified and available. You cannot be the respondent for your own ICAP.

(b) There is a previous, valid ICAP or adaptive skills test score from the past 36 months.

AMENDATORY SECTION (Amending WSR 24-01-119, filed 12/19/23, effective 1/19/24)

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 with developmental delays after your third birthday, your eligibility expires on your 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 DDA receives your reapplication less than 60 days before your expiration date and 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 if DDA is unable to locate you to provide written notification that eligibility is expiring.~~

(7) ~~There is no appeal right to eligibility expiration.))~~ If you are enrolled before your third birthday with developmental delay(s), your eligibility expires on your fourth birthday.

(2) If you are enrolled with developmental delays on or after your third birthday, your eligibility expires on your 20th birthday.

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

(4) If your eligibility expires, you must reapply to stay enrolled with DDA.

(5) DDA eligibility will expire and DDA paid services will stop if DDA receives your reapplication less than 60 days before the expiration date and does not have sufficient time to make a determination.

(6) Eligibility will be reinstated if DDA determines you are eligible after an expiration date. You are reenrolled on the date a new determination is made.

(7) Eligibility will expire if DDA is unable to locate you to provide written notice of expiration.

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

AMENDATORY SECTION (Amending WSR 24-01-119, filed 12/19/23, effective 1/19/24)

WAC 388-823-1010 When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA? (1) While DDA may review your eligibility at any time, DDA will review your eligibility:

(a) ~~((If you are))~~ At age 19 ~~((and: (i) Your))~~ when the most recent eligibility determination was completed before ~~((your 16th birthday; and))~~ age 16.

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

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

(d) If the evidence used to make the most recent eligibility determination is insufficient, contains an error, or appears fraudulent.

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

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

(2) DDA will notify you in writing at least six months before your eligibility review date.

~~((If DDA does not receive all of the documentation necessary to determine you are eligible during))~~ (3) When a review((, DDA will terminate your)) occurs and there is insufficient information to determine your eligibility, DDA can disenroll you:

(a) On your 20th birthday if ((the review is because you are)) it is an age 19 review; or

(b) 90 days after ((DDA requests)) the information is requested, if the review is because:

(i) ~~((You have requested a))~~ A paid service is requested;

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

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

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

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-1060 How ((will)) does DDA notify me of its decision? DDA will notify you and your legal representative or ((one)) other responsible ((party)) parties - verbally and in writing - of ((its)) a determination of eligibility, ineligibility, or expiration of eligibility per WAC 388-825-100.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-1070 What are my appeal rights ((to a department decision that I am not eligible to be a client of)) if found DDA ineligible? ((Your appeal rights to a department decision that you are not eligible to be a DDA client because you do not meet the requirements for a developmental disability as outlined in chapter 388-823 WAC)) If found DDA ineligible due to not meeting requirements under this chapter, your appeal rights are limited to those described in WAC 388-825-120 through 388-825-165.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-1080 If found DDA ((decides that I do not meet the requirements for eligibility)) ineligible, can I reapply ((for another decision))? If DDA decides that you do not meet the requirements for eligibility, ((as defined in this chapter,)) DDA will ((only)) accept a new application if:

(1) ((Your eligibility)) Eligibility was terminated because DDA could not locate you and you have ((subsequently)) since contacted DDA;

(2) ((Your eligibility)) Eligibility was terminated because you ((lost residency in the state of)) were not a Washington ((and you)) state resident but have since reestablished residency;

(3) DDA eligibility requirements have changed since your most recent eligibility determination;

(4) ((You have)) There is additional or new diagnostic or relevant testing information ((relevant to the determination)) that DDA did not previously review ((for the previous determination of eligibility)). DDA will accept an adaptive skills test result as new information if it reflects adaptive functioning due to your developmental disability.

((a) The only acceptable new information considered is diagnostic information, FSIQ tests, or adaptive skills tests.

(b) DDA will only accept adaptive skills tests as new information if you provide evidence that your prior scores were invalid or if you provide evidence of a loss of functioning related to your qualifying condition.

(c) DDA will not administer an ICAP if you have a previous, valid ICAP or adaptive skills test score that is current within the past thirty-six months.)

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|------------------|--|
| WAC 388-823-0720 | What evidence do I need of my FSIQ? |
| WAC 388-823-0730 | If I have more than one FSIQ score, what criteria will DDA use to select the FSIQ for determining eligibility? |
| WAC 388-823-0770 | What evidence do I need of developmental delays? |
| WAC 388-823-0940 | What happens if DDA or a designee contracted with DDA cannot identify a qualified respondent? |
| WAC 388-823-1000 | Once I become an eligible DDA client, is there a time limit to my eligibility? |
| WAC 388-823-1030 | How will I know that my eligibility is expiring or is due for review? |
| WAC 388-823-1090 | If I am already eligible, how do these new rules affect me? |
| WAC 388-823-1100 | How do I complain to DDA about my services or treatment? |