

WSR 22-15-057
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed July 15, 2022, 3:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-049.

Title of Rule and Other Identifying Information: The department is proposing to change WAC 388-14A-4300 What can I do if I think I'm paying more than the custodial parent is spending for day care or other special expenses for my child?, 388-14A-4302 Who participates in a hearing on petition for reimbursement?, 388-14A-4303 What happens at a hearing on petition for reimbursement?, and 388-14A-4304 What happens if the judge determines that I have paid too much for day care and special expenses?

Hearing Location(s): On August 23, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are held virtually, see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than August 24, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on August 23, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tencza@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00 p.m. on August 9, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will clarify applicable lookback periods and statutes of limitations for daycare expenses under *In re: the Marriage of Blackburn*, 12 Wn.App.2d 798, 460 P.3d 202 (2020). Division of child support (DCS) is also updating circumstances in which a daycare overpayment hearing is applicable, various hearing procedures, and how notices are sent by DCS and the office of administrative hearings. Rules are necessary to ensure compliance with recent case law regarding the lookback periods and statutes of limitations that apply to claims for daycare expenses that were previously paid. Rules are also necessary to improve efficiencies and clarify daycare-related hearing and notice policies and procedures.

Reasons Supporting Proposal: This rule making is necessary to bring child support daycare rules in line with recent case law under *In re: [the] Marriage of Blackburn*, 12 Wn.App.2d 798, 460 P.3d 202 (2020) regarding the statute of limitations as it applies to daycare reimbursement requests. It also updates our procedures around daycare overpayment hearings and notice requirements.

Statutory Authority for Adoption: RCW 26.23.035, 26.23.110, and 34.05.220.

Statute Being Implemented: RCW 26.19.080, 26.23.035, and 26.23.110.

Rule is necessary because of state court decision, *In re: the Marriage of Blackburn*, 12 Wn.App.2d 798, 460 P.3d 202 (2020).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: DSHS, Economic services administration, DCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brady Horenstein, Rules Coordinator, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5291.

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 are exempt under RCW 34.05.328 (5)(b)(vii) rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

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.

Is exempt under RCW 19.85.025(4) because the proposed amendments do not impact small business and impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

Explanation of exemptions: These rules are exempt under RCW 34.05.328 (5)(b)(vii) rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

July 12, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4936.2

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-4300 What can I do if I think I'm paying more than the custodial parent is spending for day care or other special expenses for my child? (1) When a court or administrative child support order requires a ((A)) noncustodial parent (NCP) to pay a fixed monthly amount for day care or special child rearing expenses, an NCP who has paid child support under a court or administrative order and believes that day care or special child rearing expenses were not actually incurred in the amount of the order may file ((an application for)) a petition for reimbursement. This petition requests the division of child support (DCS) set an administrative hearing to determine if an overpayment of at least ((twenty)) 20 ((per cent)) percent has occurred and how the overpayment should be reimbursed.

((a)) (2) A petition for reimbursement ((may)) must cover a ((twelve)) 12-month period((; and)).

((b)) (a) The ((twelve)) 12-month period may be:

- (i) A calendar year; or
 - (ii) The ~~((twelve))~~ 12-month period following the anniversary date of the support order; or
 - (iii) The ~~((twelve))~~ 12-month period following an adjudication under this section.
- ~~((e))~~ (b) ~~((Twelve))~~ 12-month periods under this section may not overlap.
- ~~((2))~~ (3) The ~~((application))~~ petition must be in writing and at a minimum state:
- (a) The ~~((twelve))~~ 12-month time period to be considered;
 - (b) The date of the order requiring the payment of day care or special child rearing expenses;
 - (c) The amounts required by the court or administrative order for day care or special child rearing expenses for that time period;
 - (d) The amounts actually paid by the NCP for that time period;
 - (e) The total amount of day care or special child rearing expenses which the NCP claims the custodial parent (CP) actually incurred for that time period;
 - (f) The NCP's proportionate share of the expenses actually incurred; and
 - (g) The amount of reimbursement for overpayment to which the NCP claims to be entitled for that time period.
- (4) An NCP must file a petition for reimbursement within two years of the alleged overpayment in order to be entitled to reimbursement under WAC 388-14A-4300 through 388-14A-4304 and RCW 4.16.130. The effective date of the petition is the date DCS receives the written request.
- ~~((3) The effective date of a hearing request is the date DCS receives the written request.))~~
- ~~((4) WAC 388-14A-4300 through 388-14A-4304 apply only to amounts paid during the twelve month period ending May 31, 1996 or later.))~~
- (5) When a court or administrative child support order requires an NCP to pay variable day care or special child rearing expenses and the fixed monthly amount of day care or special child rearing expenses was calculated in a notice of support owed, an NCP who believes they overpaid such expenses:
- (a) May request an annual review of the notice of support owed under WAC 388-14A-3330; and
 - (b) Is not entitled to a hearing on a petition for reimbursement under WAC 388-14A-4300 through 388-14A-4304.

[Statutory Authority: RCW 74.08.090, 34.05.220, 26.23.035, 74.20A.310. WSR 01-03-089, § 388-14A-4300, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-376.]

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-4302 Who participates in a hearing on petition for reimbursement? (1) The ~~((division of child support (DCS)))~~ office of administrative hearings (OAH) sends notice of a hearing under this subsection to the noncustodial (NCP) and to the custodial parent (CP). (2) The NCP and the CP participate in the hearing as independent parties with the same procedural rights.

[Statutory Authority: RCW 74.08.090, 34.05.220, 26.23.035, 74.20A.310. WSR 01-03-089, § 388-14A-4302, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-376.]

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-4303 What happens at a hearing on petition for reimbursement? (1) The noncustodial parent (NCP) has the burden of proving the amounts actually paid by the NCP under the order.

(2) The custodial parent (CP) has the burden of proving the amounts actually incurred for day care and special child rearing expenses.

(3) The CP is not required to provide the address of the day care provider unless the administrative law judge (ALJ) finds that the information may be disclosed under the standards set forth in WAC 388-14A-2105 for the disclosure of the address of the CP.

(4) The division of child support (DCS) and the parties may enter a consent order or agreed settlement instead of proceeding to hearing any time a parent has requested a hearing on a petition for reimbursement. See WAC 388-14A-3600 for the rules regarding consent orders and agreed settlements.

~~((4))~~ (5) If the NCP fails to appear for the hearing, upon proof of service of the notice of hearing the ALJ issues an order of default against the NCP and dismisses the petition for reimbursement.

~~((5))~~ (6) If the CP fails to appear for the hearing, upon proof of service of the notice of hearing the ALJ issues an order of default against the CP and may either hold~~((s))~~ a hearing on the merits of the petition for reimbursement or issue a consent order.

~~((6))~~ (7) A hearing under this subsection is for the limited purpose of determining whether the amount paid by the NCP exceeds the NCP's proportionate share of the amount actually incurred for day care and special child rearing expenses.

(a) If the ALJ determines that the overpayment amounts to ~~((twenty))~~ 20 percent or more of the NCP's share of annual day care and special child rearing expenses, the ALJ enters an order stating:

(i) The ~~((twelve))~~ 12-month time period in question;

(ii) The amount of the overpayment; and

(iii) The method ~~((by which the overpayment shall be reimbursed by the CP))~~ of reimbursement as set forth at WAC 388-14A-4304.

(b) If the ALJ determines that the overpayment amounts to less than ~~((twenty))~~ 20 percent of the NCP's share of annual day care and child rearing expenses, the ALJ enters an order stating:

(i) Whether the NCP has overpaid or underpaid the day care and special child rearing expenses;

(ii) If an overpayment has occurred, by what percentage of the annual proportionate share; and

(iii) That reimbursement under this section is denied for that ~~((twelve))~~ 12-month period.

[Statutory Authority: RCW 74.08.090, 34.05.220, 26.23.035, 74.20A.310. WSR 01-03-089, § 388-14A-4303, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-376.]

AMENDATORY SECTION (Amending WSR 05-07-087, filed 3/16/05, effective 4/16/05)

WAC 388-14A-4304 What happens if the judge determines that I have paid too much for day care and special expenses? (1) If at a hearing under WAC 388-14A-4303, the administrative law judge (ALJ) decides that the custodial parent (CP) has not incurred costs in the amount paid by the noncustodial parent (NCP), any ordered overpayment reimbursement may be applied (~~(an-as)~~) as an offset to any nonassistance child support arrears owed by the NCP on that case only. If there is no nonassistance debt owed on the case, the reimbursement must be in the form of a credit against the NCP's future child support obligation:

(a) Spread equally over (~~(a-twelve)~~) one 12-month period starting the month after the administrative order becomes final; or

(b) When the future support obligation will end under the terms of the order in less than (~~(twelve)~~) 12 months, spread equally over the life of the order; or

(c) With the consent of the CP, in the form of a direct reimbursement by the CP to the NCP.

(2) The NCP may not pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments unless:

(a) Specifically agreed to by the CP; and

(b) Specifically agreed to in writing by DCS for periods when the CP or the dependent child receives public assistance.

[Statutory Authority: RCW 26.19.080, 34.05.220, 74.08.090, 74.20A.310. WSR 05-07-087, § 388-14A-4304, filed 3/16/05, effective 4/16/05. Statutory Authority: RCW 74.08.090, 34.05.220, 26.23.035, 74.20A.310. WSR 01-03-089, § 388-14A-4304, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-376.]