

WSR 22-18-035

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 29, 2022, 3:32 p.m., effective October 1, 2022]

Effective Date of Rule: October 1, 2022.

Purpose: The department of social and health services (DSHS) division of child support (DCS) is amending the following sections in chapter 388-14A WAC to 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). DCS is also making other changes regarding the 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.

Citation of Rules Affected by this Order: Amending WAC

388-14A-4300, 388-14A-4302, 388-14A-4303, and 388-14A-4304.

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

Adopted under notice filed as WSR 22-15-057 on July 15, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: August 29, 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.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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.]