

WSR 23-02-028
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 28, 2022, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-21-071.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-450-0015 What types of income are not used by the department to figure out my benefits?, 388-470-0045 How do my resources count toward the resource limits for cash assistance?, and 388-470-0055 How do my resources count toward the resource limit for basic food?

Hearing Location(s): On February 7, 2023, 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/drivingdirections-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: No earlier February 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by February 7, 2023, at 5:00 p.m.

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, by January 24, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments clarify how the Washington working families tax credit will be treated for purposes of cash and food assistance program eligibility.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.300, 74.04.510, 74.08.090, and 74.08A.120.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Gary Fryer, P.O. Box 45470, Olympia, WA 98504-5470, 253-720-5306.

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. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... 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 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:
Is fully exempt.

December 22, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4956.1

AMENDATORY SECTION (Amending WSR 17-17-097, filed 8/18/17, effective 9/18/17)

WAC 388-450-0015 What types of income are not used by the department to figure out my benefits? (1) We do not count the following types of income when we determine your cash assistance and basic food benefits:

- (a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;
 - (b) Federal income tax refunds, ~~((and))~~ earned income tax credit (EITC), and Washington's working families tax credit (WFTC) payments in the month received;
 - (c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;
 - (d) Federal ~~((twenty-five dollar))~~ \$25 supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;
 - (e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;
 - (f) Energy assistance payments;
 - (g) Educational assistance we do not count under WAC 388-450-0035;
 - (h) Native American benefits and payments we do not count under WAC 388-450-0040;
 - (i) Income from employment and training programs we do not count under WAC 388-450-0045;
 - (j) Money withheld from a benefit to repay an overpayment from the same income source;
 - (k) Legally obligated child support payments received by someone who gets temporary assistance for needy families (TANF) or state family assistance (SFA) benefits;
 - (l) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as voluntary agency (VOLAG) payments;
 - (m) Payments we are directly told to exclude as income under state or federal law;
 - (n) Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; and
 - (o) Distributions for qualified disability expenses from an achieving a better life experience (ABLE) account;
- (2) For basic food only:

(a) We do not count the total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf; and

(b) We do count money withheld because you were overpaid for not meeting requirements of a federal, state, or local means tested programs such as temporary assistance for needy families (TANF), state family assistance (SFA), aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and supplemental security income (SSI).

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and 74.04.300. WSR 17-17-097, § 388-450-0015, filed 8/18/17, effective 9/18/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, 41.05.021, 74.09.035, 74.09.530, and 2011 1st sp.s. c 15, 2013 2nd sp.s. c 10, and the 2013 biennial budget. WSR 15-02-006, § 388-450-0015, filed 12/26/14, effective 1/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.04.770, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-08-002, § 388-450-0015, filed 3/21/12, effective 4/21/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapter 74.12 RCW, and The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. WSR 11-21-025, § 388-450-0015, filed 10/11/11, effective 10/29/11. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and Worker, Homeownership, and Business Assistance Act of 2009. WSR 10-17-103, § 388-450-0015, filed 8/17/10, effective 8/19/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and P.L. 107-171, section 4101. WSR 09-15-085 and 09-16-095, § 388-450-0015, filed 7/14/09 and 8/4/09, effective 11/15/09. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 74.08.090. WSR 09-09-103, § 388-450-0015, filed 4/20/09, effective 4/21/09; WSR 06-07-078, § 388-450-0015, filed 3/13/06, effective 5/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and Public Law 106-419. WSR 05-03-078, § 388-450-0015, filed 1/17/05, effective 2/17/05. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 02-14-022, § 388-450-0015, filed 6/21/02, effective 6/22/02. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530 and 2000 2nd sp.s. c 1 § 210(12). 01-18-006, § 388-450-0015, filed 8/22/01, effective 9/22/01. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-17-025, § 388-450-0015, filed 8/10/99, effective 10/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0015, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0590.]

AMENDATORY SECTION (Amending WSR 17-17-097, filed 8/18/17, effective 9/18/17)

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance? (1) We count the following resources to-

ward your assistance unit's resource limits for cash assistance to decide if you are eligible for benefits under WAC 388-470-0005:

- (a) Liquid resources not specifically excluded in subsection (2) of this section, including but not limited to:
 - (i) Cash on hand;
 - (ii) Money in checking or savings accounts;
 - (iii) Money market accounts or certificates of deposit (CD) less any withdrawal penalty;
 - (iv) Available retirement funds or pension benefits less any withdrawal penalty;
 - (v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
 - (vi) Available trusts or trust accounts;
 - (vii) Lump sum payments as described in chapter 388-455 WAC; and
 - (viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources;
- (b) The cash surrender value (CSV) of whole life insurance policies;
- (c) The CSV over ~~\$~~1,500 (~~dollars~~) of revocable burial insurance policies or funeral agreements;
- (d) The amount of a child's irrevocable educational trust fund that is over ~~\$~~4,000 (~~dollars~~) per child;
- (e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220;
- (f) Any real property like a home, land, or building not specifically excluded in this section;
- (g) The equity value of vehicles as described in WAC 388-470-0070;
- (h) Resources of a sponsor as described in WAC 388-470-0060;
- (i) Sales contracts; and
- (j) Personal property that is not:
 - (i) A household good;
 - (ii) Needed for self-employment; or
 - (iii) Of great sentimental value due to personal attachment or hobby interest.
- (2) The following types of liquid resources do not count when we determine your eligibility:
 - (a) Bona fide loans, including student loans;
 - (b) Basic food benefits;
 - (c) Income tax refunds for 12 months from the date of receipt;
 - (d) Earned income tax credit (EITC) in the month received and for up to 12 months;
 - (e) Advance earned income tax credit payments;
 - (f) Washington's working families tax credit (WFTC);
 - ~~((f))~~ (g) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;
 - ~~((g))~~ (h) Individual development accounts (IDAs) established under RCW 74.08A.220;
 - ~~((h))~~ (i) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a department decision;
 - ~~((i))~~ (j) Underpayments received under chapter 388-410 WAC;
 - ~~((j))~~ (k) Educational benefits that are excluded as income under WAC 388-450-0035;
 - ~~((k))~~ (l) The income and resources of an SSI recipient;

~~((l))~~ (m) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

~~((m))~~ (n) Foster care payments provided under Title IV-E, state foster care maintenance payments, or both;

~~((n))~~ (o) Adoption support payments;

~~((o))~~ (p) All funds in an achieving a better life experience (ABLE) account;

~~((p))~~ (q) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and

~~((q))~~ (r) Resources specifically excluded by federal law.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan to return to the home and are out of the home because of:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty;

(c) Indian lands held jointly with a tribe or land that can be sold only with the approval of the Bureau of Indian Affairs; and

(d) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment.

(4) Property excluded under subsection (3)(d)(iv) of this section used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(5) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(6) If you sell your home, you have 90 days to reinvest the sale proceeds into an exempt resource.

(7) If you do not reinvest within 90 days, we will determine whether there is good cause to allow more time. If we determine you have good cause, we will give you more time based on your circumstances. If you do not have good cause, we will count your sale proceeds as a resource. Some examples of good cause include:

(a) Closing on your new home is taking longer than anticipated;

(b) You are unable to find a new home that you can afford;

(c) Someone in your household is receiving emergent medical care;

(d) Your children are in school and moving would require them to change schools.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and 74.04.300. WSR 17-17-097, § 388-470-0045, filed 8/18/17, effective 9/18/17. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-470-0045, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapter 74.12 RCW, and The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. WSR 11-21-025, § 388-470-0045, filed 10/11/11, effective 10/29/11. Statutory Authority: RCW 74.08.090

and ARRA of 2009, Public Law 111-5, Section 5006(b); 42 C.F.R. 435.601, EEOICPA of 2000, Public Law 106398, Sec. 1, app., Title XXXVI (Oct. 30, 2000) (section 1 adopting as Appendix H.R. 5408), Section 3646 of the Appendix. WSR 10-15-069, § 388-470-0045, filed 7/16/10, effective 8/16/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 74.08.090. WSR 09-09-103, § 388-470-0045, filed 4/20/09, effective 4/21/09. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 03-05-015, § 388-470-0045, filed 2/7/03, effective 3/1/03; WSR 99-16-024, § 388-470-0045, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0045, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 17-17-097, filed 8/18/17, effective 9/18/17)

WAC 388-470-0055 How do my resources count toward the resource limit for basic food?

(1) For basic food, if your assistance unit (AU) is not categorically eligible (CE) under WAC 388-414-0001, we count the following resources toward your AU's resource limit to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources easily changed into cash, including but not limited to:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CD) less any withdrawal penalty;
- (iv) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- (v) Available trusts or trust accounts; and
- (vi) Lump sum payments, which is money owed to you from a past period of time that you get but do not expect to get on a continuing basis;

(b) Nonliquid resources, personal property, and real property not specifically excluded in subsection (2) of this section;

(c) Vehicles as described in WAC 388-470-0075; and

(d) The resources of a sponsor as described in WAC 388-470-0060.

(2) The following resources do not count toward the resource limit described in WAC 388-470-0005(8):

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A home you do not live in, if you plan to return to the home and are out of the home because of one or more of the following circumstances:

- (i) Employment;
- (ii) Training for future employment;
- (iii) Illness; or
- (iv) Natural disaster or casualty;
- (c) Property that:
 - (i) You are making a good faith effort to sell;
 - (ii) You intend to build a home on, if you do not already own a home;
 - (iii) Produces income consistent with its fair market value, even if used only on a seasonal basis;

- (iv) Is essential to the employment or self-employment of a household member;
 - (v) Is essential for the maintenance or use of an income-producing vehicle; or
 - (vi) Has an equity value equal to or less than half of the resource limit as described in WAC 388-470-0005;
 - (d) Household goods;
 - (e) Personal effects;
 - (f) Life insurance policies, including policies with cash surrender value (CSV);
 - (g) One burial plot per household member;
 - (h) One funeral agreement per household member, up to \$1,500 ((dollars));
 - (i) Pension plans or retirement funds not specifically counted in subsection (1) of this section;
 - (j) Sales contracts, if the contract is producing income consistent with its fair market value;
 - (k) Government payments issued for the restoration of a home damaged in a disaster;
 - (l) Indian lands held jointly with a tribe or land that can be sold only with the approval of the Bureau of Indian Affairs;
 - (m) Nonliquid resources that have a lien placed against them;
 - (n) Earned income tax credits (EITC) or Washington's working families tax credit (WFTC) for 12 months, if you were a basic food recipient when you got the EITC or WFTC and you remain on basic food for all 12 months (~~(i) For 12 months, if you were a basic food recipient when you got the EITC and you remain on basic food for all twelve months; or (ii) The month you get it and the month after, if you were not getting basic food when you got the EITC~~);
 - (o) Energy assistance payments or allowances;
 - (p) The resources of a household member who gets supplemental security income (SSI), temporary assistance for needy families (TANF), state family assistance (SFA), aged, blind, or disabled (ABD) cash assistance, or pregnant women assistance (PWA) benefits;
 - (q) Retirement funds or accounts that are tax exempt under the Internal Revenue Code;
 - (r) Education funds or accounts in a tuition program under Title 26 U.S.C. Sec. 529 or 530 of the federal Internal Revenue Code of 1986, as amended;
 - (s) All funds in an achieving a better life experience (ABLE) account;
 - (t) Resources specifically excluded by federal law; and
 - (u) Federal income tax refunds for 12 months whether or not you were receiving basic food assistance at the time you got the refund.
- (3) Property excluded under subsection (2)(c)(iv) of this section used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.
- (4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit. Exception: Federal tax refunds are not counted for 12 months even when mixed with countable resources.
- (5) If you sell your home, you have 90 days to reinvest the sale proceeds into an exempt resource. If you do not reinvest within 90 days, we will determine whether there is good cause to allow more time. If we determine you have good cause, we will give you more time

based on your circumstances. If you do not have good cause, we will count the sale proceeds as a resource. Some examples of good cause include:

- (a) Closing on your new home is taking longer than anticipated;
- (b) You are unable to find a new home that you can afford;
- (c) Someone in your household is receiving emergent medical care;
- (d) Your children are in school and moving would require them to change schools.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and RCW 74.04.300. WSR 17-17-097, § 388-470-0055, filed 8/18/17, effective 9/18/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.04.770, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-08-002, § 388-470-0055, filed 3/21/12, effective 4/21/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapter 74.12 RCW, and The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. WSR 11-21-025, § 388-470-0055, filed 10/11/11, effective 10/29/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and Public Law 110-234. WSR 08-18-043, § 388-470-0055, filed 8/29/08, effective 10/1/08. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 03-05-015, § 388-470-0055, filed 2/7/03, effective 3/1/03; WSR 99-16-024, § 388-470-0055, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0055, filed 7/31/98, effective 9/1/98.]