

WSR 23-20-091
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed October 2, 2023, 12:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-024.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-418-0005 How will I know what changes to report?, 388-470-0005 How do resources affect my eligibility for cash assistance and basic food?, 388-470-0045 How do my resources count toward the resource limits for cash assistance?, and 388-470-0070 How vehicles are counted toward the resource limit for cash assistance.

Hearing Location(s): On November 7, 2023, at 10:00 a.m., virtually via Microsoft Teams or call in. Please see the department of social and health services (DSHS) website for the most up-to-date information.

Date of Intended Adoption: Not before November 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 November 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 October 24, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective February 1, 2024, these amendments will expand resource exemptions for community services division cash programs and increase the cash resource limit from \$6,000 to \$12,000. These amendments are necessary to implement 2SHB 1447 (chapter 418, Laws of 2023). As needed, amendments also make additional changes required to improve clarity, update policy, or better align rule language with state and federal law or regulations.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090.

Statute Being Implemented: 2SHB 1447 (chapter 418, Laws of 2023).

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: Patrick Budde, P.O. Box 45470, Olympia, WA 98504-5770, 360-764-0068.

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 amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this 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 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed rules do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

September 27, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-5002.1

AMENDATORY SECTION (Amending WSR 20-02-018, filed 12/19/19, effective 1/20/20)

WAC 388-418-0005 How will I know what changes to report? (1)

You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

(a) If you receive **cash** benefits, you need to tell us if:

(i) You move;

(ii) Someone moves out of your home;

(iii) Your total gross monthly income goes over the:

(A) (~~Payment standard~~) Income limit under WAC (~~(388-478-0033)~~) 388-478-0090 if you receive ABD cash or HEN referral; or

(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;

(iv) You have liquid resources more than (~~six thousand dollars~~) \$12,000; or

(v) You have a change in employment, you need to tell us if:

(A) You get a job or change employers;

(B) Your schedule changes from part-time to full-time or full-time to part-time;

(C) You have a change in your hourly wage rate or salary; or

(D) You stop working.

(b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:

(i) You move;

(ii) The child you are caring for moves out of the home;

(iii) Anyone related to the child you are caring for moves into or out of the home;

(iv) There is a change in the recipient child's earned or unearned income unless they are in school full-time as described in WAC 388-450-0070;

(v) The recipient child has liquid resources more than (~~six thousand dollars~~) \$12,000;

(vi) A recipient child in the home becomes a foster child; or

(vii) You legally adopt the recipient child.

(2) If you do not receive cash assistance but you do receive benefits from basic food, you must report changes for the people in your assistance unit under chapter 388-408 WAC, and tell us if:

(a) Your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060;

(b) You or a member of your household receives substantial lottery or gambling winnings in a single game that is equal to or over the elderly or disabled resource limit under WAC 388-470-0005 (8)(a); or

(c) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 has their hours at work go below (~~twenty~~) 20 hours per week.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, 74.08A.250, and 7 C.F.R. 273.11(r), 84 F.R. 15083. WSR 20-02-018, § 388-418-0005, filed 12/19/19, effective 1/20/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 19-01-105, § 388-418-0005, filed 12/18/18, effective 2/1/19. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.010, 74.08A.250 and 2017 c 20. WSR 18-09-017, § 388-418-0005, filed 4/10/18, effective 7/1/18. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 7 U.S.C. § 2015, and 7 C.F.R. § 273.12 (a)(5)(v). WSR 15-09-036, § 388-418-0005, filed 4/9/15, effective 5/10/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 2011 1st sp.s. c 42, and 2011 1st sp.s. c 36. WSR 12-04-051, § 388-418-0005, filed 1/30/12, effective 3/1/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. WSR 11-02-071, § 388-418-0005, filed 1/5/11, effective 2/5/11; WSR 10-07-007, § 388-418-0005, filed 3/4/10, effective 4/4/10. Statutory Authority: RCW 74.04.050, 74.04.055, and 2007 c 522. WSR 07-20-042, § 388-418-0005, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. WSR 05-19-060, § 388-418-0005, filed 9/16/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 44.04.280. WSR 05-09-021, § 388-418-0005, filed 4/12/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-21-026, § 388-418-0005, filed 10/13/04, effective 11/13/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 04-06-026, § 388-418-0005, filed 2/23/04, effective 3/25/04; WSR 03-21-028, § 388-418-0005, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 01-11-109, § 388-418-0005, filed 5/21/01, effective 7/1/01; WSR 99-23-034, § 388-418-0005, filed 11/10/99, effective 1/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-418-0005, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 23-07-095, filed 3/17/23, effective 4/17/23)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance and basic food? (1) The following definitions apply to this chapter:

- (a) **"We"** means the department of social and health services.
- (b) **"You"** means a person applying for or getting benefits from the department.
- (c) **"Fair market value"** or **"FMV"** means the price at which you could reasonably sell the resource.
- (d) **"Equity value"** means the FMV minus any amount you owe on the resource.
- (e) **"Community property"** means a resource in the name of the husband, wife, or both.
- (f) **"Separate property"** means a resource of a married person that one of the spouses:
- (i) Had possession of and paid for before they were married;
 - (ii) Acquired and paid for entirely out of income from separate property; or
 - (iii) Received as a gift or inheritance.
- (2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or basic food when:
- (a) It is a resource we must count under WAC 388-470-0045 for cash assistance or WAC 388-470-0055 for basic food;
 - (b) You own the resource and we consider you to own a resource if:
 - (i) Your name is on the title to the property; or
 - (ii) You have property that does not have a title;
 - (c) You have control over the resource, which means the resource is actually available to you; and
 - (d) You could legally sell the resource or convert it into cash within 20 days.
- (3) For cash assistance, you must try to make your resources available even if it will take you more than 20 days to do so, unless:
- (a) There is a legal barrier; or
 - (b) You must petition the court to release part or all of a resource.
- (4) When you apply for assistance, we count your resources as of:
- (a) The date of your interview, if you are required to have an interview; or
 - (b) The date of your application, if you are not required to have an interview.
- (5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.
- (6) For cash assistance, there is an equity value resource limit of (~~(\$6,000)~~) \$12,000.
- (7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for basic food.
- (8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for basic food:
- (a) \$4,250 if your AU has either an elderly or disabled individual; or
 - (b) \$2,750 for all other AUs.
- (9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:
- (a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.
 - (b) For basic food, we count the entire amount unless you can prove that the entire amount is not available to you.

(10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household;

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of a resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 23-07-095, § 388-470-0005, filed 3/17/23, effective 4/17/23; WSR 22-09-040, § 388-470-0005, filed 4/13/22, effective 5/14/22; WSR 19-01-105, § 388-470-0005, filed 12/18/18, effective 2/1/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-470-0005, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-470-0005, filed 1/2/15, effective 2/2/15. 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, § 388-470-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 11-37, "Supplemental Nutrition Assistance Program FY 2012 Asset Limit Increase for Households with and [an] Elderly or Disabled Member." WSR 11-24-028, § 388-470-0005, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 03-05-015, § 388-470-0005, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0005, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 23-06-039, filed 2/23/23, effective 3/26/23)

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance? (1) We count the following resources toward 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))~~ (v) Available trusts or trust accounts;
- ~~((vii))~~ (vi) Lump sum payments as described in chapter 388-455 WAC; and
- ~~((viii))~~ (vii) 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 of revocable burial insurance policies or funeral agreements;
- (d) The amount of a child's irrevocable educational trust fund that is over \$4,000 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);
 - (g) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;
 - (h) Individual development accounts (IDAs) established under RCW 74.08A.220;
 - (i) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a department decision;
 - (j) Underpayments received under chapter 388-410 WAC;
 - (k) Educational benefits that are excluded as income under WAC 388-450-0035;
 - (l) The income and resources of an SSI recipient;
 - (m) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

- (n) Foster care payments provided under Title IV-E, state foster care maintenance payments, or both;
- (o) Adoption support payments;
- (p) All funds in an achieving a better life experience (ABLE) account;
- (q) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect;
- (r) Retirement funds or pension benefits; and
- ~~((r))~~ (s) 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, 74.04.300, 74.04.510, 74.08.090, 74.08A.120, and 82.08.0206. WSR 23-06-039, § 388-470-0045, filed 2/23/23, effective 3/26/23. 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 Crea-

tion 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 19-01-105, filed 12/18/18, effective 2/1/19)

WAC 388-470-0070 How vehicles are counted toward the resource limit for cash assistance. (1) A vehicle is any device for carrying persons and objects by land, water, or air.

(2) The entire value of a licensed vehicle needed to transport a physically disabled assistance unit member is excluded.

(3) The ((equity)) entire value of one vehicle ((up to 10,000 dollars)) is excluded when the vehicle is used by the assistance unit or household as a means of transportation.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 19-01-105, § 388-470-0070, filed 12/18/18, effective 2/1/19. 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, § 388-470-0070, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. WSR 02-17-030, § 388-470-0070, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0070, filed 7/31/98, effective 9/1/98. Formerly WAC 388-506-0610.]