

WSR 24-03-124
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Office of the Secretary)
(Board of Appeals)
[Filed January 19, 2024, 5:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-24-017.

Title of Rule and Other Identifying Information: WAC 388-02-0020
What does good cause mean? and 388-02-0085 Do you have a right to a hearing?

Hearing Location(s): On February 27, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the department of social and health services (DSHS) website <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: No earlier than February 28, 2024.

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 February 27, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay, email Tencza@dshs.wa.gov, by 5:00 p.m. on February 13, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Provide statutory definition of "good cause" for late-filed hearing requests in public assistance cases.

Reasons Supporting Proposal: New state statute, effective July 1, 2023.

Statutory Authority for Adoption: RCW 34.05.220, 34.05.220(4), 43.17.060, 43.20A.075, and 74.08.080(2).

Statute Being Implemented: RCW 74.08.080(2).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rule amendments define "good cause" for late-filed hearing requests in public assistance cases, based on recent statutory changes to RCW 74.08.080(2).

Name of Proponent: DSHS, board of appeals, office of the secretary, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Marc Lampson, 1115 Washington Street S.E., Olympia, WA 98504, 360-664-6093.

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. The proposed rule amendments define "good cause" for late-filed hearing requests in public assistance cases, based on recent statutory changes, with no costs anticipated to anyone. These rules are 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 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule amendments define "good cause" for late-filed hearing requests in public assistance cases, based on recent statutory changes to RCW 74.08.080(2). These amendments do not impact small businesses. They only impact DSHS public assistance clients and applicants.

Scope of exemption for rule proposal:

Is fully exempt.

January 19, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5007.1

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0020 What does good cause mean? (1) Good cause is a substantial reason or legal justification for failing to appear, to act, or respond to an action. To show good cause, the ALJ must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline.

(2) Good cause may include, but is not limited to, the following examples.

(a) You ignored a notice because you were in the hospital or were otherwise prevented from responding; or

(b) You could not respond to the notice because it was written in a language that you did not understand.

(3) For purposes of public assistance cases, good cause has the same meaning as described in RCW 74.08.080. Good cause for not requesting a hearing before the deadline may include, but is not limited to: Military deployment, medical reasons, housing instability, language barriers, or domestic violence.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0085 Do you have a right to a hearing? (1) You have a right to a hearing only if a law or DSHS rule gives you that right. If you are not sure, you should request a hearing to protect your right.

(2) Some DSHS programs may require you to go through an informal administrative process before you can request or have a hearing. The notice of DSHS action sent to you should include information about this requirement if it applies.

(3) You have a limited time to request a hearing. The deadline for your request varies by the DSHS program involved. You should submit your request right away to protect your right to a hearing, even if you are also trying to resolve your dispute informally. For public assistance cases, if an applicant or recipient does not file a request for a hearing within 90 calendar days after receiving notice of an aggrieving decision, the request may still be filed within one year of the aggrieving decision upon a showing of good cause. For purposes of public assistance cases, as defined in RCW 74.08.080, good cause for not requesting a hearing before the deadline may include, but is not limited to: military deployment, medical reasons, housing instability, language barriers, or domestic violence.

(4) If you request a hearing, one is scheduled.

(5) If DSHS or the ALJ questions your right to a hearing, the ALJ decides whether you have that right.

(6) If the ALJ decides you do not have a right to a hearing, your request is dismissed.

(7) If the ALJ decides you do have a right to a hearing, the hearing proceeds.