

WSR 24-10-071
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed April 29, 2024, 12:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-108.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-449-0015 What medical evidence do I need to provide?

Hearing Location(s): On June 4, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than June 5, 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 June 4, 2024, 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 May 21, 2024, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments will streamline medical evidence rules for the aged, blind, or disabled cash assistance program to allow functional medical evidence to be obtained within 90 days from the date of disability review.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.043, 74.08.090, 74.08.335, and 74.08A.100.

Statute Being Implemented: Not applicable.

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: Aman Gill, P.O. Box 45470, Olympia, WA 98504, 360-407-4447.

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 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(4).

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

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

Scope of exemption for rule proposal:

Is fully exempt.

April 23, 2024

Katherine I. Vasquez
Rules Coordinator

SHS-5029.3

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0015 What medical evidence do I need to provide?

You must give us medical evidence of your impairment(s) and how they affect your ability to perform regular and continuous work activity. Medical evidence must be in writing and be clear, objective, and complete.

(1) Objective evidence for physical impairments means:

- (a) Laboratory test results;
- (b) Pathology reports;
- (c) Radiology findings including results of X-rays and computer imaging scans;
- (d) Clinical findings, including but not limited to ranges of joint motion, blood pressure, temperature or pulse, and documentation of a physical examination; and
- (e) Hospital history and physical reports and admission and discharge summaries; or
- (f) Other medical history and physical reports related to your current impairments.

(2) Objective evidence for mental impairments means:

- (a) Clinical interview observations, including objective mental status exam results and interpretation((-));
- (b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the diagnostic and statistical manual of mental disorders (DSM)((-));
- (c) Hospital, outpatient, and other treatment records related to your current impairments((-); and
- (d) Testing results, if any, including:
 - (i) Description and interpretation of tests of memory, concentration, cognition, or intelligence; or
 - (ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.

(3) Medical evidence sufficient for a disability determination must be from a medical professional described in WAC 388-449-0010 and must include:

- (a) A diagnosis for the impairment, or impairments, based on an examination performed by an acceptable medical source defined in WAC 388-449-0010 within five years of application;
- (b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-449-0005;
- (c) Documentation of how long a condition has impaired your ability to perform work related activities;
- (d) A prognosis, or written statement of how long an impairment will impair your ability to perform work related activities; and
- (e) A written statement from a medical professional (defined in WAC 388-449-0010) describing what you are capable of doing despite

your impairment (medical source statement) based on an examination performed within (~~ninety~~) 90 days of the date of application or (~~forty five days before the month of~~) disability review.

(4) We consider documentation in addition to objective evidence to support the acceptable medical source or treating provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.

(5) When making a disability decision, we don't use your report of symptoms as evidence unless objective evidence shows there is an impairment that could reasonably be expected to produce those symptoms.

(6) We don't use symptoms related to substance (~~abuse~~) use disorder or a diagnosis of (~~chemical dependency~~) substance use disorder when determining disability if we have evidence substance use is material to your impairment(s).

(7) We consider substance use to be material to your impairment(s) if you are disabled primarily because of (~~drug or alcohol abuse or addiction~~) a substance use disorder.

(8) If your impairment will persist at least (~~sixty~~) 60 days after you stop using drugs or alcohol, we do not consider substance use to be material to your impairment.

(9) If you can't obtain medical evidence sufficient for us to determine if you are likely to be disabled without cost to you, and you meet the other eligibility conditions in WAC 388-400-0060, we pay the costs to obtain objective evidence based on published payment limits and fee schedules.

(10) We determine the likelihood of disability based solely on the objective information we receive. We are not obligated to accept another agency's or person's decision that you are disabled or unemployable.