

WSR 22-07-020

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 8, 2022, 2:15 p.m., effective April 8, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?, and 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)?, to clarify that persons eligible for services through the developmental disabilities administration (for a medical condition expected to last 12 months or more or result in death) are eligible for ABD. Amendments also clarify good cause for not participating in medical treatment for one's disabling condition(s).

Citation of Rules Affected by this Order: Amending WAC 388-449-0001 and 388-449-0200.

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, 74.08A.100, 74.09.035, 74.09.530, 74.62.030, 41.05.021.

Adopted under notice filed as WSR 21-21-031 on October 11, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: March 8, 2022.

Katherine I. Vasquez  
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**SHS-4886.3**

AMENDATORY SECTION (Amending WSR 15-03-031, filed 1/12/15, effective 2/12/15)

**WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?** (1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" refer to the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Disabled" means the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which has lasted or can be expected to last for a continuous period of not less than twelve months with available treatment or result in death.

(d) "Physical impairment" means a diagnosable physical illness.

(e) "Mental impairment" means a diagnosable mental disorder. We exclude any diagnosis of or related to ~~((alcohol or drug abuse or addiction))~~ a substance use disorder.

(2) We determine if you are likely to be disabled when:

(a) You apply for ABD cash benefits;

(b) You become employed;

(c) You obtain work skills by completing a training program; or

(d) We receive new information that indicates you may be employable.

(3) We determine you are likely to be disabled if:

(a) You are determined to meet SSA disability criteria by the Social Security Administration (SSA);

(b) You are determined to meet SSA disability criteria by disability determination services (DDDS) based on the most recent DDDS determination;

(c) The Social Security Administration (SSA) stops your supplemental security income (SSI) payments solely because you are not a citizen;

(d) You are eligible for services through the developmental disabilities administration (DDA) for a medical condition that is expected to last twelve months or more or result in death;

(e) You are eligible for long-term care services from the aging and long-term support administration for a medical condition that is expected to last twelve months or more or result in death; or

~~((e))~~ (f) You are approved through the sequential evaluation process (SEP) defined in WAC 388-449-0005 through 388-449-0100. The SEP is the sequence of five steps. Step 1 considers whether you are currently working. Steps 2 and 3 consider medical evidence and whether you are likely to meet or equal a listed impairment under Social Security's rules. Steps 4 and 5 consider your residual functional capacity and vocational factors such as age, education, and work experience in order to determine your ability to do your past work or other work.

(4) If you have a physical or mental impairment and you are impaired by ~~((alcohol or drug addiction))~~ a substance use disorder and do not meet the other disability criteria in subsection (2)(a) through (d) above, we decide if you are eligible for ABD cash by applying the sequential evaluation process described in WAC 388-449-0005 through 388-449-0100. You aren't eligible for ABD cash benefits if you are disabled primarily because of ~~((alcoholism or drug addiction))~~ a substance use disorder.

(5) In determining disability, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling, and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting,

maintaining appropriate behavior, and adapting to changes in a routine work setting.

(6) We determine you are not likely to meet SSI disability criteria if SSA denied your application for SSI or Social Security Disability Insurance (SSDI) based on disability in the last twelve months unless:

- (a) You file a timely appeal with SSA;
- (b) SSA decides you have good cause for a late appeal; or
- (c) You give us medical evidence of a potentially disabling condition that SSA did not consider or medical evidence confirming your condition has deteriorated.

[Statutory Authority: 2014 c 218, 2011 1st sp.s. c 15, 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, and 74.09.530. WSR 15-03-031, § 388-449-0001, filed 1/12/15, effective 2/12/15. 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, and 2013 2nd sp.s. c 10. WSR 13-24-040, § 388-449-0001, filed 11/26/13, effective 1/1/14. 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, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-449-0001, filed 4/27/12, effective 6/1/12.]

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

**WAC 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)?** (1) You may receive ABD benefits while you are waiting to receive supplemental security income (SSI) benefits only when you:

(a) Have filed your SSI application with the Social Security Administration (SSA), follow through with SSA directions and requirements to process your application including keeping all interview and consultative examination appointments, and do not withdraw your application;

(b) Agree to assign the initial or reinstated SSI payment to us provided under WAC 388-449-0210;

(c) Are otherwise eligible according to WAC 388-400-0060; and

(d) Meet disability criteria listed in WAC 388-449-0001.

(2) To demonstrate your impairments are disabling despite medical treatment, you must participate in medical treatment for the impairments that keep you from working, unless you (~~meet one of~~) have a good cause. Good cause includes, but is not limited to, the following (~~good cause~~) reasons:

(a) The treatment provider has identified a risk that the treatment may cause further limitations or loss of a function or an organ and you are not willing to take that risk;

(b) Treatment is not available because you can't obtain it without cost to you;

(c) You are so fearful of the treatment that your fear could interfere with the treatment or reduce its benefits; or

(d) You practice an organized religion that prohibits the treatment.

(3) If you refuse or fail to participate in medical treatment without good cause, your benefits (~~will~~) may end and you will remain ineligible until you reapply and provide proof you are pursuing treatment as recommended.

[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, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-449-0200, filed 4/27/12, effective 6/1/12.]