

WSR 22-09-055
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed April 18, 2022, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-14-116.

Title of Rule and Other Identifying Information: The department proposes amending WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?

Hearing Location(s): On May 24, 2022, 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/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>; or virtual. Due to the impacts of the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than May 25, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov [Tencza@dshs.wa.gov], fax 360-664-6185, by May 24, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules coordinator, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov [Tencza@dshs.wa.gov], by May 10, 2022, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments more closely align rule with federal regulations that permit households to select who may use their food assistance benefits to purchase food for the household.

Reasons Supporting Proposal: Supplemental Nutrition Assistance Program regulations 7 C.F.R. §§ 273.2 (n) (3) and 274.7(a), permit households to select who is allowed to purchase food for the household.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510.

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 98504-5470, 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. 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.

April 14, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4918.1

AMENDATORY SECTION (Amending WSR 20-23-044, filed 11/12/20, effective 12/13/20)

WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits? (1) What is the purpose of DSHS cash benefits?

(a) DSHS cash assistance benefits are provided to low-income residents who qualify for public assistance programs. These benefits are intended to help pay for basic living expenses as described under RCW 74.04.770. TANF cash grants must be used for the sole benefit of the children, and we may require proof that you are using your TANF cash assistance to benefit your children as allowed under RCW 74.12.260.

(b) Your electronic benefit transfer (EBT) card or cash assistance benefits may only be used by you, an eligible member of your household, an authorized non-member, or an authorized representative/protective payee for the purposes of your cash assistance program. You are not allowed to sell, attempt to sell, exchange, or donate your EBT card or benefits to any other person or entity.

(i) An authorized non-member is a person selected, by the household, to use the EBT card and make purchases for the sole benefit of the household, on behalf of the household, on an as-needed basis.

(c) You may use your cash benefits to pay a reasonable amount of basic living expenses such as:

- (i) Shelter;
- (ii) Utilities such as heating, telephone, water, sewer, garbage, and recycling;
- (iii) Food;
- (iv) Transportation;
- (v) Clothing;
- (vi) Household maintenance;
- (vii) Personal hygiene;
- (viii) Employment_ or school-related items; and
- (ix) Other necessary incidentals and items.

(d) It is (~~not legal~~) illegal to use electronic benefit transfer (EBT) cards or cash obtained with EBT cards to:

- (i) Gamble. Gambling includes:
 - (A) The purchase of lottery tickets;
 - (B) The purchase of pull tabs;
 - (C) Use of punch boards;
 - (D) Purchase of bingo cards;
 - (E) Betting on horse racing;
 - (F) Participating in casino games; and
 - (G) Participating in other games of chance as found in chapters 9.46, 67.16 and 67.70 RCW.

(ii) Purchase cigarettes as defined in RCW 82.24.010 or tobacco products as defined in RCW 82.26.010;

(iii) Purchase any items regulated under Title 66 RCW;

(iv) Purchase or participate in any activities in any of the following locations:

(A) Taverns licensed under RCW 66.24.330;

(B) Beer/wine specialty stores licensed under RCW 66.24.371, except if the store is an authorized supplemental nutrition assistance program or women, infants, and children retailer;

(C) Nightclubs licensed under RCW 66.24.600;

(D) Bail bond agencies regulated under chapter 18.185 RCW;

(E) Gambling establishments licensed under chapter 9.46 RCW;

(F) Tattoo, body piercing, or body art shops regulated under chapter 18.300 RCW;

(G) Adult entertainment venues with performances that contain erotic material where minors under the age of (~~eighteen~~) 18 are prohibited under RCW 9.68A.150;

(H) Any establishments where persons under the age of (~~eighteen~~) 18 are not permitted.

(e) If you use your electronic benefit transfer (EBT) card or cash obtained from your EBT card illegally we may:

(i) Assign a protective payee to manage your cash assistance benefits under WAC 388-460-0035;

(ii) For households receiving TANF, require proof that your benefits are being used for the benefit of the children in the household;

(iii) Terminate your cash benefits; or

(iv) Pursue legal action, including criminal prosecution.

(2) What is the purpose of DSHS food assistance benefits?

(a) DSHS food assistance benefits, including those from the basic food program, state funded basic food program for legal immigrants (FAP), Washington state combined application project (WASHCAP), and transitional food assistance (TFA), help low-income individuals and families have a more nutritious diet by providing food assistance benefits through EBT cards for eligible households to buy groceries.

(b) You, members of your household, an authorized non-member, or an authorized representative may use your food assistance benefits to buy food items for your household from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. Department of Agriculture Food and Nutrition Service (FNS).

(i) An authorized non-member is a person selected by the household to use the EBT card and make purchases for the sole benefit of the household, on behalf of the household, on an as-needed basis.

(c) You can use your food assistance benefits to buy items such as:

(i) Breads and cereals;

(ii) Fruits and vegetables;

(iii) Cheese, milk, and other dairy products;

(iv) Meats, fish, poultry, and eggs;

(v) Most other food items that are not prepared hot foods; and

(vi) Seeds and plants that produce food.

(d) It is (~~not legal~~) illegal to:

(i) Give your EBT card or benefits to anyone who is not in your food assistance household, not an authorized non-member, or not your authorized representative.

(ii) Use food benefits for any purpose other than to buy food for eligible household members.

(iii) Exchange food benefits for anything of value (trafficking). Examples of illegal trafficking include exchanging (~~food benefits~~)

or attempting to exchange food benefits for cash, drugs, weapons, or anything other than food from an authorized retailer.

(iv) Sell, attempt to sell, exchange, or donate an EBT card, EBT card number, personal identification numbers (PINs), or any benefits to any person or entity.

(v) Buy, attempt to buy, or steal someone's EBT card, EBT card number, or PIN.

(vi) Sell or trade any food that was purchased using food assistance benefits for cash, drugs, alcohol, tobacco products, firearms, or anything of value.

(vii) Use food benefits to buy nonfood items such as cigarettes, tobacco, beer, wine, liquor, household supplies, soaps, paper products, vitamins, medicine, or pet food.

(viii) Commit any other act in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations or any Washington state administrative code relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits.

(e) If you intentionally misuse food assistance benefits, you may be:

(i) Disqualified for an intentional program violation under WAC 388-446-0015 and 388-446-0020. If you are disqualified you will lose your benefits for at least one year and up to a lifetime. The disqualification continues even if you move to another state.

(ii) Subject to fines.

(iii) Subject to legal action, including criminal prosecution. DSHS will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking in food assistance/SNAP benefits.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08.580 and 7 C.F.R. §§ 271.2 and 273.16. WSR 20-23-044, § 388-412-0046, filed 11/12/20, effective 12/13/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. §§ 271.2 and 273.16. WSR 19-03-054, § 388-412-0046, filed 1/10/19, effective 2/10/19. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 271.2. WSR 14-05-063, § 388-412-0046, filed 2/18/14, effective 3/21/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-412-0046, filed 9/13/11, effective 10/14/11.]