

WSR 22-14-106
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed July 6, 2022, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-083.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance?, 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?, 388-447-0130 What referral to the housing and essential needs (HEN) program rules may the department implement during a state of emergency?, and 388-449-0230 What aged, blind, or disabled (ABD) program rules may the department implement during a state of emergency?

Hearing Location(s): On August 9, 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/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than August 10, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by August 9, 2022, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov [Tencza@dshs.wa.gov], by July 26, 2022, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments, currently in place via emergency adoption (WSR 22-13-171), eliminate the mid-certification review (MCR) requirement for recipients of the ABD and HEN referral program.

Reasons Supporting Proposal: Effective July 1, 2022, the supplemental operating budget provides funding for the elimination of MCR requirement for all ABD and HEN referral program recipients.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.09.530, and 74.62.030.

Statute Being Implemented: 2021-2023 Supplemental operating budget (section 205(21), chapter 297, Laws of 2022).

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: Erin Summers, P.O. Box 45470, Olympia, WA 98504, 253-307-2118.

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, "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 34.05.328 (5)(b)(vii).

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

July 5, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4933.1

AMENDATORY SECTION (Amending WSR 20-19-006, filed 9/3/20, effective 10/4/20)

WAC 388-400-0060 Who is eligible for aged, blind, or disabled (ABD) cash assistance? (1) The aged, blind, or disabled (ABD) cash assistance program provides a state-funded cash stipend and a referral to the housing and essential needs (HEN) program under WAC 388-400-0065 to eligible low-income individuals.

(2) You are eligible for ABD if you:

(a) Are:

(i) At least (~~sixty-five~~) 65 years old;

(ii) Blind as defined by the Social Security Administration (SSA); or

(iii) Likely to be disabled as defined in WAC 388-449-0001 through 388-449-0100; and

(b) Are at least (~~eighteen~~) 18 years old or, if under (~~eighteen~~) 18, a member of a married couple;

(c) Are in financial need according to ABD cash income and resource rules in chapters 388-450, 388-470, and 388-488 WAC. We determine who is in your assistance unit according to WAC 388-408-0060;

(d) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;

(e) Meet the citizenship and alien status requirements under WAC 388-424-0015;

(f) Provide a Social Security number as required under WAC 388-476-0005;

(g) Reside in the state of Washington as required under WAC 388-468-0005;

(h) Sign an interim assistance reimbursement authorization agreeing to repay the monetary value of general assistance, disability lifeline, or aged, blind, or disabled benefits subsequently duplicated by supplemental security income benefits as described under WAC 388-449-0200, 388-449-0210, and 388-474-0020; and

(i) Report changes of circumstances as required under WAC 388-418-0005 (~~and~~).

(~~(j) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.~~)

(3) You aren't eligible for ABD if you:

- (a) Are eligible for temporary assistance for needy families (TANF) benefits;
- (b) Are eligible for state family assistance (SFA) benefits;
- (c) Refuse or fail to meet a TANF or SFA eligibility rule;
- (d) Refuse or fail to pursue federal aid assistance, including but not limited to medicaid, without good cause;
- (e) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause;
- (f) Refuse or fail to follow through with the SSI application as required in WAC 388-449-0200 without good cause;
- (g) Refuse or fail to participate in vocational rehabilitation services as required in WAC 388-449-0225 without good cause;
- (h) Are eligible for supplemental security income (SSI) benefits;
- (i) Are an ineligible spouse of an SSI recipient; or
- (j) Failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

(4) If you reside in a public institution and meet all other requirements, your eligibility for ABD depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for ABD if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and:

(A) (~~Sixty-five~~) 65 years of age or older; or

(B) (~~Twenty~~) 20 years of age or younger.

(5) You aren't eligible for ABD when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement in a work release program.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.805, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.62.030, and 2020 c 322. WSR 20-19-006, § 388-400-0060, filed 9/3/20, effective 10/4/20. Statutory Authority: RCW 74.04.050, 74.040.055 [74.04.055], 74.04.057, 74.08.090, and 2018 c 48. WSR 18-18-007, § 388-400-0060, filed 8/23/18, effective 9/23/18. 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, § 388-400-0060, 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, § 388-400-0060, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 20-20-004, filed 9/24/20, effective 10/25/20)

WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits? (1) A **mid-certification review** (MCR) is a form we send you to ask about your current circumstances. We use the answers you give us to decide if you are still eligible for benefits and to calculate your monthly benefits.

(2) If you receive cash assistance or basic food benefits, you must complete a mid-certification review unless you meet one of the exceptions below:

(a) You **do not** have to complete a mid-certification review for cash assistance if you:

(i) ~~((Only r))~~ Receive ((R)) refugee ((C)) cash ((A)) assistance as described under WAC 388-400-0030;

(ii) Receive aged, blind, or disabled (ABD) program assistance as described under WAC 388-400-0060; ~~((and are age sixty-five or older; or))~~

(iii) Receive a referral to the housing and essential needs (HEN) program as described under WAC 388-400-0070; or

~~((iii))~~ (iv) Have a review period of six months or less.

(b) You **do not** have to complete a mid-certification review for basic food if:

(i) Your assistance unit has a certification period of six months or less; or

(ii) All adults in your assistance unit are elderly or disabled and have no earned income.

(3) **When we send the review form:**

If you must complete a MCR ...	We send your review form ...
(a) For one program such as basic food.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(b) For two or more programs, and all programs have a 12-month certification or review period.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(c) For basic food and another program when either program has a certification or review period between six and ((twelve)) <u>12</u> months.	In the fifth month of your basic food certification period when you receive basic food and another program. You must complete your review by the 10th day of month six of your basic food certification.

(4) If you must complete a mid-certification review, we send you the review form with questions about your current circumstances. You can choose to complete the review in one of the following ways:

(a) **Complete the form and return it to us.** For us to count your mid-certification review as complete, you must take all of the steps below:

(i) Complete the review form, telling us about changes in your circumstances we ask about;

(ii) Sign and date the form;

(iii) Give us proof of any changes you report. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;

(iv) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and

(v) Mail or turn in the completed form and any required proof to us by the due date on the review.

(b) **Complete the mid-certification review over the phone.** For us to count your mid-certification review as complete, you must take all of the steps below:

(i) Contact us at the phone number on the review form, telling us about changes in your circumstances we ask about;

(ii) Give us proof of any changes you report. We may be able to verify some information over the phone. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;

(iii) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and

(iv) Mail or turn in any required proof to us by the due date on the review.

(c) **Complete the application process for another program.** If we approve an application for another program in the month you must complete your mid-certification review, we use the application to complete your review when the same person is head of household for the application and the mid-certification review.

(5) If your benefits change because of what we learned in your mid-certification review, the change takes effect the next month even if this does not give you (~~ten~~) 10 days notice before we change your benefits.

(6) If you do not complete your required mid-certification review, we stop your benefits at the end of the month the review was due.

(7) **Late reviews.** If you complete the mid-certification review after the last day of the month the review was due, we process the review as described below based on when we receive the review:

(a) **Mid-certification reviews you complete by the last day of the month after the month the review was due:** We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the review.

(b) **Mid-certification reviews you complete after the last day of the month after the month the review was due:** We treat this review as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510 and 2020 c 357. WSR 20-20-004, § 388-418-0011, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510 and 2011 c 15. WSR 13-09-034, § 388-418-0011, filed 4/11/13, effective 6/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and Public Law 109-171, TANF Interim Final Rule published in the Federal Register - Volume 71, No. 125 on June 29, 2006. WSR 08-02-053, § 388-418-0011, filed 12/28/07, effective 2/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 06-24-025 and 07-01-023, § 388-418-0011, filed 11/29/06 and 12/8/06, effective 10/1/07; WSR 06-13-043, § 388-418-0011, filed 6/15/06, effective 7/17/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 05-09-020, § 388-418-0011, 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 04-19-134, § 388-418-0011, filed 9/21/04, effective 10/1/04.]

AMENDATORY SECTION (Amending WSR 21-07-004, filed 3/4/21, effective 4/4/21)

WAC 388-447-0130 What referral to the housing and essential needs (HEN) program rules may the department implement during a state of emergency? During a declared state of emergency, the department may implement the following rules to help mitigate impacts to clients:

(1) Postpone review of your HEN referral program eligibility beyond the ~~((twelve))~~ 12 month period if the department determines you are not eligible for the aged, blind, or disabled (ABD) program at the time of your incapacity review. The postponement of this review may occur retroactively to the date the governor declares a state of emergency.

(2) Accept a diagnosis of a medically determinable impairment from a "supplemental medical evidence" source in subsection (2) of WAC 388-447-0005, or the predictive risk intelligence system (PRISM).

(3) Accept functional medical evidence beyond ~~((ninety))~~ 90 days of the date of application or incapacity review, or otherwise waive the requirement of WAC 388-447-0010 (3)(c) in its entirety.

(4) Suspend or waive eligibility review requirements detailed in WAC 388-434-0005 for referral to the HEN program.

~~((5) Suspend or waive mid-certification review requirements detailed in WAC 388-418-0001 for referral to the HEN program.))~~

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.09.530, 74.08A.100. WSR 21-07-004, § 388-447-0130, filed 3/4/21, effective 4/4/21.]

AMENDATORY SECTION (Amending WSR 21-07-004, filed 3/4/21, effective 4/4/21)

WAC 388-449-0230 What aged, blind, or disabled (ABD) program rules may the department implement during a state of emergency? During a declared state of emergency, the department may implement the following rules to help mitigate impacts to clients:

(1) Postpone review of your ABD cash eligibility beyond the ~~((twenty-four))~~ 24 month period required in WAC 388-449-0150. The postponement of this review may occur retroactively to the date the governor declares the state of emergency.

(2) Accept a diagnosis of a medically determinable impairment from a "treating medical source" in subsection (2) of WAC 388-449-0010, or the predictive risk intelligence system (PRISM).

(3) Accept functional medical evidence beyond ~~((ninety))~~ 90 days of the date of application or ~~((forty-five))~~ 45 days before the month of disability review, or otherwise waive the requirement of WAC 388-449-0015 (3)(e) in its entirety.

(4) Suspend or waive eligibility review requirements detailed in WAC 388-434-0005 for the ABD program.

~~((5) Suspend or waive mid-certification review requirements detailed in WAC 388-418-0001 for the ABD program.))~~

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090,

74.08.335, 74.09.530, 74.08A.100. WSR 21-07-004, § 388-449-0230, filed 3/4/21, effective 4/4/21.]