

WSR 25-05-038

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed February 11, 2025, 2:09 p.m., effective March 14, 2025]

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

Purpose: The department of social and health services is adopting amendments to WAC 388-410-0030 How does the department calculate and set up my basic food, FAP, or WASHCAP overpayment? These amendments clarify that overpayments due to intentional trafficking of food benefits will represent the entire value of the benefits determined to have been trafficked.

Citation of Rules Affected by this Order: Amending WAC 388-410-0030.

Statutory Authority for Adoption: RCW 43.20A.550, 43.20B.630, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: 7 C.F.R. 273.18 (c)(2).

Adopted under notice filed as WSR 25-01-136 on December 17, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: February 11, 2025.

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Rules Coordinator

SHS-5061.1

AMENDATORY SECTION (Amending WSR 17-13-006, filed 6/8/17, effective 7/9/17)

WAC 388-410-0030 How does the department calculate and set up my basic food, FAP, or WASHCAP overpayment? (1) We calculate the amount of your basic food, Washington combined application project (WASHCAP), or food assistance program for legal immigrants (FAP) overpayment by counting ~~((the difference between))~~:

(a) The difference between the benefits your assistance unit (AU) received ~~((+))~~ and

~~((b) The))~~ the benefits your AU should have received.

(b) The entire amount trafficked when the overpayment was incurred due to trafficking as defined in WAC 388-446-0020 (3)(c).

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

(a) Had correct and complete information; and

(b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and 388-418-0007, you do not receive the earned income deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) We must set up an inadvertent household error or administrative error overpayment if:

(a) We discovered the overpayment through the federal quality control process;

(b) The overpayment is over (~~(eighty-five dollars)~~) \$85 and you currently receive basic food, FAP, or WASHCAP benefits; or

(c) The overpayment is over (~~(one hundred twenty-five)~~) \$125 dollars and you do not currently receive basic food, FAP, or WASHCAP benefits.

(5) We do not set up an inadvertent household error or administrative error overpayment if all of the following are true:

(a) We did not discover the overpayment through the federal quality control process;

(b) You do not currently receive basic food, FAP, or WASHCAP benefits; and

(c) The total amount your household was overpaid was (~~(one hundred twenty-five dollars)~~) \$125 or less.

(6) If you have an inadvertent household error that we referred for prosecution or an administrative disqualification hearing, we will not set up or start collecting the overpayment if doing so could negatively impact this process.

(7) We must set up an intentional program violation overpayment based on the results of an administrative disqualification hearing under chapter 388-02 WAC, unless:

(a) Your AU has repaid the overpayment; or

(b) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

(8) We must calculate the overpayment amount:

(a) For an administrative error overpayment - up to (~~(twelve)~~) 12 months prior to when we became aware of the overpayment;

(b) For an inadvertent household error overpayment - for no more than (~~(twenty-four)~~) 24 months before we became aware of the overpayment; and

(c) For intentional program violation (IPV) overpayments - from the month the IPV first occurred as determined under WAC 388-446-0015, but no more than six years before we became aware of the overpayment.

(9) If we paid you too few basic food, FAP, or WASHCAP benefits for a period of time, we will use the amount we underpaid your AU to reduce your overpayment if:

(a) We have not already issued you benefits to replace what you were underpaid; and

(b) We have not used this amount to reduce another overpayment.

(10) We will send you an overpayment notice under RCW 43.20B.630 and 7 C.F.R. Sec. 273.18. We send notices as required under chapter 388-458 WAC. If all adult AU members live at the same address, we serve an overpayment notice on the head of household.

(11) The overpayment becomes an established (set-up) debt in one of the following ways:

- (a) By operation of law if you do not respond within ~~((ninety))~~ 90 days of service of the overpayment notice;
- (b) By administrative order if you timely request a hearing; or
- (c) By written agreement.

(12) You may request a hearing to contest an overpayment of your basic food, FAP, or WASHCAP benefits.

(a) The hearing may include issues such as whether you were overpaid, whether we calculated the amount of the overpayment correctly, and the type of the overpayment.

(b) The administrative law judge (ALJ) does not have the authority to compromise, terminate, write-off, defer, or otherwise waive the overpayment claim or recovery of the claim.

(13) If the overpayment has been referred for prosecution in accordance with WAC 388-446-0001(4), you may request that the administrative hearing related to the overpayment be postponed.