



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services, Aging and Disability Services Administration

- Preproposal Statement of Inquiry was filed as WSR 09-01-142; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: (Describe Subject)

The department is amending WAC 388-513-1340, Determining excluded income for long-term care (LTC) services.

Hearing location(s):

Office Building 2 - Auditorium
 (DSHS Headquarters)
 1115 Washington
 Olympia, WA 98504
 Public parking at 11th and Jefferson. A map is available at:
<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>
 or by calling 360-664-6094.

Date: **April 7, 2009** Time: **10:00 a.m.**

Submit written comments to:

Name: DSHS Rules Coordinator
 Address: PO Box 45850, Olympia WA, 98504-5850
 Delivery: 4500 – 10th Ave. SE, Lacey, Washington 98503
 E-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
 Fax: (360) 664-6185

by
5 p.m. on April 7, 2009

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by March 24, 2009
 TTY (360) 664-6178 or (360) 664-6094 or
 by e-mail at johnsjl4@dshs.wa.gov

Date of intended adoption: Not earlier than April 8, 2009
 (Note: This is **NOT** the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

DSHS is amending WAC 388-513-1340 as follows:

- Adding interest or dividend income as an exclusion, except for the community spouse of an institutionalized client.
- Adding current child support payments received from an absent parent for a minor child who is not institutionalized.
- Removing exclusions based on federal rules.

Reasons supporting proposal:

See above.

Statutory authority for adoption: RCW 74.04.050;
 74.04.057; 74.08.090; 74.09.500; 74.09.530

Statute being implemented: RCW 74.04.050; 74.04.057;
 74.08.090; 74.09.500; 74.09.530; Social Security Act Sec.
 1611, 1902; CFR 435.725

Is rule necessary because of a:

- | | | |
|-------------------------|---|--|
| Federal Law? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION: Social Security Act
 Sec. 1611, 1902; CFR 435.725

DATE
 February 25, 2009

NAME (type or print)
 Stephanie Schiller

SIGNATURE

TITLE
 DSHS Rules Coordinator

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED**

**DATE: March 03, 2009
 TIME: 11:13 AM**

WSR 09-06-079

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Department of Social and Health Services

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Lori Rolley	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2271
Implementation.... Lori Rolley	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2271
Enforcement..... Lori Rolley	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2271

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No. Explain why no statement was prepared.

The Department has analyzed the rules and determined that no new costs will be imposed on small businesses or non-profit organizations.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No: Please explain:

Rules are exempt, per RCW 34.05.328(5)(b)(vii), relating only to client medical or financial eligibility.

AMENDATORY SECTION (Amending WSR 00-01-087, filed 12/14/99, effective 1/14/00)

WAC 388-513-1340 Determining excluded income for long-term care (LTC) services. This section describes income the department excludes when determining a client's eligibility and participation in the cost of care for LTC services with the exception(~~(s)~~) described in subsection(~~(s (30) and (33))~~) (31).

- (1) Crime victim's compensation;
- (2) Earned income tax credit (EITC);
- (3) Native American benefits excluded by federal statute (refer to WAC 388-450-0040);
- (4) Tax rebates or special payments excluded by other statutes;
- (5) Any public agency's refund of taxes paid on real property and/or on food;
- (6) Supplemental security income (SSI) and certain state public assistance based on financial need;
- (7) The amount a representative payee charges to provide services when the services are a requirement for the client to receive the income;
- (8) The amount of expenses necessary for a client to receive compensation, e.g., legal fees necessary to obtain settlement funds;
- (9) Any portion of a grant, scholarship, or fellowship used to pay tuition, fees, and/or other necessary educational expenses at any educational institution;
- (10) Child support payments received from an absent parent for a ~~((minor))~~ child ~~((who is not institutionalized))~~ living in the home are considered the income of the child;
- ~~(11) ((The amount of expenses related to impairments of a permanently and totally disabled client that allow the client to work;~~
- ~~(12) The amount of expenses related to blindness that allow the client to work;~~
- ~~(13))~~ Self-employment income allowed as a deduction by the Internal Revenue Service (IRS);
- ~~((14))~~ (12) Payments to prevent fuel cut-offs and to promote energy efficiency that are excluded by federal statute;
- ~~((15))~~ (13) Assistance (other than wages or salary) received under the Older Americans Act;
- ~~((16))~~ (14) Assistance (other than wages or salary) received under the foster grandparent program;
- ~~((17))~~ (15) Certain cash payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;
- ~~((18))~~ (16) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement that are left to accumulate and become part of the separately identified burial funds set aside;
- ~~((19))~~ (17) Tax exempt payments received by Alaska natives

under the Alaska Native Settlement Act established by P.L. 100-241;
((+20+)) (18) Compensation provided to volunteers in ACTION programs under the Domestic Volunteer Service Act of 1973 established by P.L. 93-113;

((+21+)) (19) Payments made from the Agent Orange Settlement Fund or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

((+22+)) (20) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;

((+23+)) (21) Restitution payment, and interest earned on such payment to a civilian of Japanese or Aleut ancestry established by P.L. 100-383;

((+24+)) (22) Payments made under sections 500 through 506 of the Austrian General Social Insurance Act;

((+25+)) (23) Payments made from *Susan Walker v. Bayer Corporation, et, al.*, 95-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds;

((+26+)) (24) Payments made from the Ricky Ray Hemophilia Relief Fund Act of 1998 established by P.L. 105-369;

((+27+)) (25) Payments made under the Disaster Relief and Emergency Assistance Act established by P.L. 100-387;

((+28+)) (26) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

((+29+)) (27) Payments made to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act;

~~((+30+)) Interest earned from payments described in subsections (24) through (29) is considered available and counted as nonexcluded income))~~ (28) Interest or dividends received by the client is excluded as income. Interest or dividends received by the community spouse of an institutional individual is counted as income of the community spouse. Dividends and interest are returns on capital investments such as stocks, bond, or savings accounts. Institutional status is defined in WAC 388-513-1320;

((+31+)) (29) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible client, e.g., chore services;

((+32+)) (30) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent;

(b) Unusual medical expenses, aid and attendance allowance, and housebound allowance, with the exception described in subsection ((+33+)) (31);

((+33+)) (31) Benefits described in subsection ((+32+)(b)) (30)(b) for a client who resides in a state veterans' home and has no dependents are excluded when determining eligibility, but are considered available when determining participation in the cost of care.