



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

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

Permanent Rule
 Emergency Rule

Effective date of rule:

Permanent Rules

31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

Immediately upon filing.
 Later

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose:

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

Citation of existing rules affected by this order:

Repealed: None
Amended: WAC 388-513-1340
Suspended: None

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

Other authority: Social Security Act § 1611, 1902; CFR 435.725

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 09-06-079 on March 3, 2009.(date)
Describe any changes other than editing from proposed to adopted version: N/A

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: N/A

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted:

April 15, 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: April 20, 2009

TIME: 10:11 AM

WSR 09-09-101

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	<u>1</u>	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted in the agency's own initiative:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>1</u>	Repealed	___

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.