



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services, Economic Services Administration

- Preproposal Statement of Inquiry was filed as WSR:16-22-089; or
- Expedited Rule Making--Proposed notice was filed as WSR:___; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

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

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

The department is proposing to amend WAC 388-450-0015 "What types of income are not used by the department to figure out my benefits?", WAC 388-470-0045, "How do my resources count toward the resource limits for cash assistance?", and WAC 388-470-0055, "How do my resources count toward the resource limit for Basic Food?".

Hearing location(s):

Office Building 2
DSHS Headquarters
1115 Washington
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>

Date: **May 23, 2017** Time: **10:00 a.m.**

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850
Olympia, WA 98504
e-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
fax: (360) 664-6185

by: 5:00 p.m. May 23, 2017

Assistance for persons with disabilities: Contact:

Jeff Kildahl, DSHS Rules Consultant by May 9, 2017
Phone: (360) 664-6092 or TTY: (360) 664-6178
Email: KildaJA@dshs.wa.gov

Date of intended adoption: Not earlier than May 24, 2017
(Note: This is **NOT** the effective date)

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

The proposed amendments implement income and asset exclusions for Achieving a Better Life Experience (ABLE) tax-deferred accounts and associated distributions.

ABLE accounts are tax-deferred accounts created under the Achieving a Better Life Experience Act of 2014. ABLE accounts provide for tax-deferred savings (nondeductible contributions) of up to \$14,000 per year for individuals who became blind or disabled before age twenty-six. Distributions from an ABLE account can be used to cover qualified expenses including healthcare, education, community-based supports, employment training, assistive technology, housing, and transportation. Funds kept in and disbursed from ABLE accounts are exempt when determining eligibility for: Medicaid, Supplemental Security Income (SSI), and other federal means-tested programs such as Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP).

Reasons supporting proposal:

ABLE accounts are not included in current program rules and must be added.

Statutory authority for adoption:

RCW 74.04.050, RCW 74.04.055, RCW 74.04.057, RCW 74.04.510, RCW 74.08.090, 74.08A.120

Statute being implemented:

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION: Yes No
- Achieving a Better Life Experience Act of 2014

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 18, 2017

TIME: 10:50 AM

WSR 17-09-062

DATE

April 13, 2017

NAME (type or print)

Katherine Vasquez

SIGNATURE

TITLE

DSHS Rules Coordinator

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

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:	Erik Peterson	712 Pear Street, Olympia, WA 98504	(360) 725-4622
Implementation:	Erik Peterson	712 Pear Street, Olympia, WA 98504	(360) 725-4622
Enforcement:	Erik Peterson	712 Pear Street, Olympia, WA 98504	(360) 725-4622

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal 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.

These proposed rules do not have an economic impact on small businesses or non-profits. The proposed amendments only affect households served by DSHS who apply for or receive benefits under Basic Food, WASHCAP or the state-funded Food Assistance Program (FAP).

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:

These amendments are 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."

WAC 388-450-0015 What types of income are not used by the department to figure out my benefits? ((This section applies to cash assistance and Basic Food benefits.))

(1) ((There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are)) We do not count the following types of income when we determine your cash assistance and basic food benefits:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal income tax refunds and earned income tax credit (EITC) payments in the month received;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the american recovery and reinvestment act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(f) Energy assistance payments;

(g) Educational assistance we do not count under WAC 388-450-0035;

(h) Native American benefits and payments we do not count under WAC 388-450-0040;

(i) Income from employment and training programs we do not count under WAC 388-450-0045;

(j) Money withheld from a benefit to repay an overpayment from the same income source((. For Basic Food, we ~~do not~~ exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and SSI));

(k) Legally obligated child support payments received by someone who gets ((TANF/SFA)) temporary assistance for needy families (TANF) or state family assistance (SFA) benefits;

(l) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; ((and))

(m) Payments we are directly told to exclude as income under state or federal law((-));

(n) Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; and

(o) Qualified distributions from an achieving a better life experience (ABLE) account;

(2) For Basic Food only:

(a) We do not count the total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on ((their)) his or her behalf((-)); and

(b) We do count money withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as temporary assistance for needy families (TANF), state family assistance (SFA), aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and supplemental security income (SSI).

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance? (1) We count the following resources toward your assistance unit's resource limits for cash assistance to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) ~~((below. These are resources that are easily changed into cash. Some examples of liquid resources are))~~ of this section, including but not limited to:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit ~~((+CDs))~~ (CD) less any withdrawal penalty;
- (iv) Available retirement funds or pension benefits ~~((τ))~~ less any withdrawal penalty;
- (v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- (vi) Available trusts or trust accounts;
- (vii) Lump sum payments as described in chapter 388-455 WAC; or
- (viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources ~~((τ))~~ ;

(b) The cash surrender value (CSV) of whole life insurance policies ~~((τ))~~ ;

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements ~~((τ))~~ ;

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child ~~((τ))~~ ;

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220 ~~((τ))~~ ;

(f) Any real property like a home, land, or building ~~((s))~~ not specifically excluded in ~~((subsection (3) below.))~~ this section;

(g) The equity value of vehicles as described in WAC 388-470-0070 ~~((τ))~~ ;

(h) ~~((Personal property that is not:~~

~~(i) A household good;~~

~~(ii) Needed for self employment; or~~

~~(iii) Of "great sentimental value," due to personal attachment or hobby interest.~~

~~(i))~~ Resources of a sponsor as described in WAC 388-470-0060 ~~((τ))~~ ;

~~((j) For cash assistance only,))~~ (I) Sales contracts((τ)); and

(j) Personal property that is not:

(i) A household good;
(ii) Needed for self-employment; or
(iii) Of great sentimental value due to personal attachment or hobby interest.

(2) The following types of liquid resources do not count when we determine your eligibility:

- (a) Bona fide loans, including student loans;
- (b) Basic food benefits;
- (c) Income tax refunds for twelve months from the date of receipt;
- (d) Earned income tax credit (EITC) in the month received and for up to twelve months;
- (e) Advance earned income tax credit payments;
- (f) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;
- (g) Individual development accounts (IDAs) established under RCW 74.08A.220;
- (h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a ~~((decision of the))~~ department decision;
- (i) Underpayments received under chapter 388-410 WAC;
- (j) Educational benefits that are excluded as income under WAC 388-450-0035;
- (k) The income and resources of an SSI recipient;
- (l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;
- (m) Foster care payments provided under Title IV-E ~~((and/or))~~, state foster care maintenance payments, or both;
- (n) Adoption support payments;
- (o) All funds in an achieving a better life experience (ABLE) account.

(p) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and

~~((p))~~ (q) Resources specifically excluded by federal law.

(3) The following types of real property do not count when we determine your eligibility:

- (a) Your home and the surrounding property that you, your spouse, or your dependents live in;
- (b) A house you do not live in, if you plan ~~((on returning))~~ to return to the home and ~~((you))~~ are out of the home because of:
 - (i) Employment;
 - (ii) Training for future employment;
 - (iii) Illness; or
 - (iv) Natural disaster or casualty ~~((-))~~;
- (c) Indian lands held jointly with a tribe or land that can be sold only with the approval of the Bureau of Indian Affairs; and
- (d) Property that:
 - (i) You are making a good faith effort to sell;
 - (ii) You intend to build a home on, if you do not already own a home;
 - (iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or
 - (iv) A household member needs for employment or self-employment.

(4) Property excluded under ~~((this section and))~~ subsection (3)(c)(iv) of this section used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

~~((d) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.~~

~~(4))~~ (5) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

~~((5))~~ (6) If you sell your home, you have ninety days to reinvest the sale proceeds (~~from the sale of a home~~) into an exempt resource.

~~((a))~~ If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. If we determine you have good cause, we will give you more time based on your circumstances. If you do not have good cause, we will count your sale proceeds as a resource. Some examples of good cause (~~are~~) include:

~~((i))~~ (a) Closing on your new home is taking longer than anticipated;

~~((ii))~~ (b) You are unable to find a new home that you can afford;

~~((iii))~~ (c) Someone in your household is receiving emergent medical care; or

~~((iv))~~ (d) Your children are in school and moving would require them to change schools.

~~((b) If you have good cause, we will give you more time based on your circumstances.~~

~~(c) If you do not have good cause, we count the money you got from the sale as a resource.)~~

AMENDATORY SECTION (Amending WSR 12-08-002, filed 3/21/12, effective 4/21/12)

WAC 388-470-0055 How do my resources count toward the resource limit for basic food? (1) For basic food, if your assistance unit (AU) is not categorically eligible (CE) under WAC 388-414-0001, we count the following resources toward your AU's resource limit to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources(~~. These are resources that are easily changed into cash. Some examples of liquid resources are~~) easily changed into cash, such as:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit (~~((CDs))~~) (CD) less any withdrawal penalty;

(iv) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(v) Available trusts or trust accounts; or

(vi) Lump sum payments(~~. A lump sum payment is money owed to you from a past period of time that you get but do not expect to get on a continuing basis.~~) owed to you but you do not expect to receive on a continuing basis;

(b) Nonliquid resources, personal property, and real property not specifically excluded in subsection (2) (~~(below.)~~) of this section;

(c) Vehicles as described in WAC 388-470-0075(~~(-)~~); and

(d) The resources of a sponsor as described in WAC 388-470-0060.

(2) The following resources do not count toward your resource limit to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A ~~((house))~~ home you do not live in, if you plan ~~((on return- ing))~~ to return to the home and ~~((you))~~ are out of the home because of one or more of the following circumstances:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty~~((-))~~;

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis;

(iv) Is essential to the employment or self-employment of a household member~~((-. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing; or~~

(v) Is essential for the maintenance or use of an income-producing vehicle; or

(vi) Has an equity value equal to or less than half of the resource limit as described in WAC 388-470-0005~~((-))~~;

(d) Household goods;

(e) Personal effects;

(f) Life insurance policies, including policies with cash surrender value (CSV);

(g) One burial plot per household member;

(h) One funeral agreement per household member, up to fifteen hundred dollars;

(i) Pension plans or retirement funds not specifically counted in subsection (1) ~~((above))~~ of this section;

(j) Sales contracts, if the contract is producing income consistent with its fair market value;

(k) Government payments issued for the restoration of a home damaged in a disaster;

(l) Indian lands held jointly with ~~((the))~~ a tribe~~((,-))~~ or land that can be sold only with the approval of the Bureau of Indian Affairs;

(m) Nonliquid resources that have a lien placed against them;

(n) Earned income tax credits (EITC):

(i) For twelve months, if you were a basic food recipient when you got the EITC and you remain on basic food for all twelve months; or

(ii) The month you get it and the month after, if you were not getting basic food when you got the EITC~~((-))~~;

(o) Energy assistance payments or allowances;

(p) The resources of a household member who gets ~~((SSI, TANF/SFA, ABD assistance, or PWA))~~ supplemental security income (SSI), temporary assistance for needy families (TANF), state family assistance (SFA), aged, blind, or disabled (ABD) cash assistance, or pregnant women assistance (PWA) benefits;

(q) Retirement funds or accounts that are tax exempt under the Internal Revenue Code;

(r) Education funds or accounts in a tuition program under ~~((section))~~ Title 26 U.S.C. Sec. 529 or 530 of the federal Internal Revenue Code of 1986, as amended;

(s) All funds in an achieving a better life experience (ABLE) account;

(t) Resources specifically excluded by federal law; and

~~((t))~~ (u) Federal income tax refunds for twelve months whether or not you were receiving basic food assistance at the time you got the refund.

(3) Property excluded under subsection (2)(c)(iv) of this section used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit. ~~((Exception:))~~ Exception: Federal tax refunds are not counted for twelve months even when mixed with countable resources.

~~((4))~~ (5) If you sell your home, you have ninety days to reinvest the sale proceeds ~~((from the sale of a home))~~ into an exempt resource.

~~((a))~~ If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. If we determine you have good cause, we will give you more time based on your circumstances. If you do not have good cause, we will count the sale proceeds as a resource. Some examples of good cause ~~((are))~~ include the following:

~~((i))~~ (a) Closing on your new home is taking longer than anticipated;

~~((ii))~~ (b) You are unable to find a new home that you can afford;

~~((iii))~~ (c) Someone in your household is receiving emergent medical care; or

~~((iv))~~ (d) Your children are in school and moving would require them to change schools.

~~((b) If you have good cause, we will give you more time based on your circumstances.~~

~~(c) If you do not have good cause, we count the money you got from the sale as a resource.)~~