



RULE-MAKING ORDER

CR-103E (July 2011) (Implements RCW 34.05.350)

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

Emergency Rule Only

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify)

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

- Yes
 - No
- If Yes, explain:

Purpose: Amendments in Title 388 WAC remove medical references, support the creation of the Housing and Essential Needs (HEN) Referral Program and remove references to the Alcohol and Drug Addiction Treatment and Support Act (ADATSA). These amendments are currently in effect via emergency rule-making filed on May 29, 2014 as WSR 14-12-041.

The 2E2SHB 1738, Laws of 2011, designated the Health Care Authority as the single state agency responsible for the administration and supervision of Washington's medical assistance programs. HCA re-codified medical assistance program rules to Title 182 WAC. Accordingly, the Department must eliminate corresponding rules and medical references under Title 388 WAC. Amendments also support the creation of the new HEN Referral program created under SHB 2069 (2013 legislative session) and also remove references related to ADATSA, as the Legislature did not appropriate funds for ADATSA. Beginning January 1, 2014, ADATSA-related Medical Care Services recipients are Medicaid eligible under the Affordable Care Act.

Additional amendments spell out the acronym, ABD, identifying it as the Aged, Blind or Disabled program. The department is in the process of proposing amendments to these rules permanently via the regular rulemaking process. The CR-102 Proposed Rule Making was filed on June 03, 2014 via WSR 14-12-076. The public hearing was held on July 22, 2014. The department is in the process of reviewing comments received during the public hearing comment period.

Citation of existing rules affected by this order:

Repealed: None

Amended: 388-406-0005, 388-406-0035, 388-406-0045, 388-418-0005, 388-424-0010, 388-424-0015, 388-436-0030, 388-450-0015, 388-450-0025, 388-450-0040, 388-450-0156, 388-450-0162, 388-450-0170, 388-472-0005 and 388-473-0010.

Suspended: None

Statutory authority for adoption: 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.

Other authority: 2E2SHB 1738, Chapter 15, Laws of 2011; Substitute House Bill 2069; and RCW 41.05.021, 74.04.050, 74.08.090, 74.09.035, 74.09.530, and the 2013 Biennial Budget.

EMERGENCY RULE

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.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: See attachment.

Date adopted:

September 22, 2014

NAME (TYPE OR PRINT)

Katherine Vasquez

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 24, 2014

TIME: 1:05 PM

WSR 14-20-043

**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	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>15</u>	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

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

New	_____	Amended	_____	Repealed	_____
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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>15</u>	Repealed	_____

Attachment to CR-103E

Reasons for finding:

Amendments remove medical references. More specifically, 2E2SHB 1738, Laws of 2011, designated the Health Care Authority as the single state agency responsible for the administration and supervision of Washington's medical assistance programs. DSHS worked with HCA to repeal medical assistance program rules under chapter 388 WAC in support of HCA's efforts to re-codify medical assistance program rules under chapter 182 WAC. HCA re-codified medical assistance program rules at chapter 182 WAC, effective 10/1/2013. Accordingly, the Department must eliminate corresponding rules under chapter 388 WAC. Amendments remove references to the ADATSA program, because the Legislature did not appropriate funds for the ADATSA program. Beginning January 1, 2014, ADATSA-related Medical Care Services recipient are Medicaid eligible under the Affordable Care Act. Amendments also support the creation of the new Housing and Essential Needs (HEN) Referral program created under Substitute House Bill 2069, which was signed by the Governor on June 30, 2013.

The department is in the process of proposing amendments to these rules permanently via the regular rulemaking process. The CR-102 Proposed Rule Making was filed on June 03, 2014 via WSR 14-12-076. The public hearing was held on July 22, 2014. The department is in the process of reviewing comments received during the public hearing comment period.

(Amending WSR 12-04-051, filed 1/30/12, effective 3/1/12)

AMENDATORY SECTION (Amending WSR 12-04-051, filed 1/30/12, effective 3/1/12)

WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and Basic Food benefits? (1) Countable income is all income your assistance unit (AU) or your child-only means-testing AU has after we subtract the following:

- (a) Excluded or disregarded income under WAC 388-450-0015;
 - (b) For **cash assistance**, earned income incentives and deductions allowed for specific programs under WAC 388-450-0170 and 388-450-0175;
 - (c) For **Basic Food**, deductions allowed under WAC 388-450-0185;
- and
- (d) Income we allocate to someone outside of the assistance unit under WAC 388-450-0095 through 388-450-0160.

(2) Countable income includes all income that we must deem or allocate from financially responsible persons who are not members of your AU under WAC 388-450-0095 through 388-450-0160.

(3) Starting November 1, 2011, we may apply child-only means-testing to determine eligibility and your payment standard amount.

(a) Child-only means-testing applies when you are a nonparental relative or unrelated caregiver applying for or receiving a nonneed-based TANF/SFA grant for a child or children only, unless at least one child was placed by a state or tribal child welfare agency and it is an open child welfare case.

(b) For the purposes of child-only means-testing only, we include yourself, your spouse, your dependents, and other persons who are financially responsible for yourself or the child as defined in WAC 388-450-0100 in your assistance unit (AU). We call this your child-only means-testing AU.

(c) As shown in the chart below, we compare your child-only means-testing AU's total countable income to the current federal poverty level (FPL) for your household size to determine your child-only means-testing payment standard. Your child-only means-tested payment standard is a percentage of the payment standards in WAC 388-478-0020.

If your countable child-only means-testing AU income is:	Your child-only means-tested payment standard is equal to the following percentage of the payment standards in WAC 388-478-0020:
200% FPL or less	100%
Between 201% and 225% of FPL	80%
Between 226% and 250% of FPL	60%
Between 251% and 275% of FPL	40%
Between 276% and 300% of FPL	20%
Over 300% of the FPL	The children in your care are not eligible for a TANF/SFA grant.

(d) If the children in your care qualify for a TANF/SFA grant once the child-only means-test is applied, the child's income is budgeted against the child-only means-tested payment standard amount.

~~((e) If the children in your care do not qualify for a TANF/SFA grant once the child only means test is applied, they may still qualify for medical assistance as described in WAC 388-408-0055 and WAC 388-505-0210.))~~

(4) For **cash assistance**:

(a) We compare your countable income to the payment standard in WAC 388-478-0020 and 388-478-0033 or, for child-only means-tested cases, to the payment standard amount in subsection (3) of this section.

(b) You are not eligible for benefits when your AU's countable income is equal to or greater than the payment standard plus any authorized additional requirements.

(c) Your benefit level is the payment standard and authorized additional requirements minus your AU's countable income.

(5) For **Basic Food**, if you meet all other eligibility requirements for the program under WAC 388-400-0040, we determine if you meet the income requirements for benefits and calculate your AU's monthly benefits as specified under Title 7 Part 273 of code of federal regulations for the supplemental nutrition assistance program (SNAP). The process is described in brief below:

(a) How we determine if your AU is income eligible for Basic Food:

(i) We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

(ii) We then compare your AU's countable monthly income to the net income standard under WAC 388-478-0060.

(A) If your AU is categorically eligible for Basic Food under WAC 388-414-0001, your AU can have income over the gross or net income standard and still be eligible for benefits.

(B) If your AU includes a person who is sixty years of age or older or has a disability, your AU can have income over the gross income standard, but must have income under the net income standard to be eligible for benefits.

(C) **All other AUs** must have income at or below the gross and net income standards as required under WAC 388-478-0060 to be eligible for Basic Food.

(b) How we calculate your AU's monthly Basic Food benefits:

(i) We start with the maximum allotment for your AU under WAC 388-478-0060.

(ii) We then subtract thirty percent of your AU's countable income from the maximum allotment and round the benefit down to the next whole dollar to determine your monthly benefit.

(iii) If your AU is eligible for benefits and has one or two persons, your AU will receive at least the minimum allotment as described under WAC 388-412-0015, even if the monthly benefit we calculate is lower than the minimum allotment.

WAC 388-406-0005 Can I apply for cash(~~(, medical,)~~) or Basic Food? (1) You can apply for any benefit the department offers, including cash assistance(~~(, medical assistance,)~~) or Basic Food.

(2) You must meet certain eligibility requirements in order to receive a program benefit.

(3) You can apply for someone else if you are:

(a) A legal guardian, caretaker, or authorized representative applying for:

(i) A dependent child; or

(ii) An incapacitated person(~~(; or~~

~~iii) Someone who is deceased~~)).

(b) Applying for someone who cannot apply for some other reason. We may ask why the applicant is unable to apply on their own behalf.

(4) (~~If you get supplemental security income (SSI), you do not need to apply for medical benefits. We automatically open medical benefits for you.~~

~~(5))~~ A person or agency may apply for aged, blind, or disabled (ABD) cash (~~(or medical assistance)~~) for you if:

(a) You temporarily live out-of-state; and

(b) You are a Washington state resident.

(~~(6))~~ (5) When you are confined or incarcerated in a Washington state public institution, you may apply for cash (~~(or medical assistance)~~) if you meet the following criteria:

(a) You are confined by or in the following public institutions:

(i) Department of corrections;

(ii) City or county jail; or

(iii) Institution for mental diseases (IMD).

(b) Staff at the public institution provide medical records including diagnosis by a mental health professional that you have a mental disorder (as defined in the Diagnostic and Statistical Manual of Psychiatric Disorders, most recent edition) that affects your thoughts, mood or behavior so severely that it prevents you from performing any kind of work.

(~~(7) We will make an eligibility determination for medical assistance prior to your release from confinement and will authorize medical benefits upon your release from confinement when you:~~

~~(a) Meet the criteria of subsection (6) in this section; and~~

~~(b) Were receiving medicaid immediately before confinement or within the five years prior to confinement.~~

~~(8) If you meet the criteria in subsection (6) but did not receive medicaid within the five years prior to confinement, the department will process your request for medical assistance within the time frames in WAC 388-406-0035.~~

~~(9) If you are applying for assistance for a youth leaving incarceration in a juvenile rehabilitation administration or county juvenile detention facility, you may apply for assistance within forty-five days prior to release. We will process your application for medical assistance when we receive it, and if eligible, we will authorize medical benefits upon the youth's release from confinement.)~~

AMENDATORY SECTION (Amending WSR 12-06-070, filed 3/6/12, effective 4/6/12)

WAC 388-406-0035 How long does the department have to process my application? (1) We must process your application as quickly as possible. We must respond promptly to your application and to any information you give us. We cannot delay processing your request by using the time limits stated in this section as a waiting period for determining eligibility.

(2) Unless your eligibility determination is delayed for good cause under WAC 388-406-0040, we process your application for benefits within thirty calendar days, except:

~~(a) ((If you are pregnant, we must process your application for medical within fifteen working days;~~

~~(b))~~ If you are applying for aged, blind, or disabled (ABD) cash assistance, ~~((alcohol or drug addiction treatment (ADATSA), or medical assistance))~~ or a referral to the housing and essential needs (HEN) program, we must process your application within forty-five calendar days unless there is good cause as described in WAC 388-406-0045(~~+~~ and

~~(c) If you are applying for medical assistance that requires a disability decision, we must process your application within sixty calendar days)).~~

(3) For calculating time limits, "day one" is the date following the date:

(a) The department received your application for benefits under WAC 388-406-0010;

(b) Social Security gets a request for food benefits from a Basic Food assistance unit in which all members either get or are applying for supplemental security income (SSI);

(c) You are released from an institution if you get or are authorized to get SSI and request Basic Food through Social Security prior to your release.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-406-0045 Is there a good reason my application for cash ((~~or medical~~)) assistance has not been processed? If your application for cash ((~~or medical~~)) assistance is not processed within the time limits under WAC 388-406-0035, the department must decide if there is a good reason for the delay. This good reason is also called "good cause."

(1) We do not have a good reason for not processing your application for TANF or SFA within thirty days if:

(a) We did not give or send you a notice of what information we needed to determine your eligibility within twenty days from the date of your application;

(b) We did not give or send you a notice that we needed additional information or action within five calendar days of the date we learned that more information was needed to determine eligibility;

(c) We did not process your application within five calendar days from getting the information needed to decide eligibility; and

(d) We decide good cause exists but do not document our decision in the case record on or before the time limit for processing the application ends.

(2) We do have a good reason for not processing your application timely if:

(a) You do not give us the information or take an action needed for us to determine eligibility;

(b) We have an emergency beyond our control; or

(c) There is no other available verification for us to determine eligibility and the eligibility decision depends on information that has been delayed such as:

(i) Medical documentation;

(ii) For cash assistance, extensive property appraisals; or

(iii) Out-of-state documents or correspondence.

~~(3) ((For medical assistance, good cause exists only when the department otherwise acted promptly at all stages of the application process.~~

~~(4)))~~ For aged, blind, or disabled (ABD) cash assistance, or a referral to the housing and essential needs (HEN) program, good cause exists if you apply when you are confined in a Washington state public institution as defined in WAC 388-406-0005 (6)(a).

AMENDATORY SECTION (Amending WSR 12-04-051, filed 1/30/12, effective 3/1/12)

WAC 388-418-0005 How will I know what changes to report? (1)

You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

~~((1))~~ (a) If you receive ~~((assistance from any of the programs listed in subsection (1), you must report changes for people in your assistance unit under chapter 388-408 WAC, based on the **first** program you receive benefits from.~~

~~(a) If you receive **long term care** benefits such as a home and community based waiver (Basic, Basic Plus, CORE, Community Protection, COPEs, New Freedom, Medically Needy), care in a medical institution (nursing home, hospice care center, state veterans home, ICF/MR, RHC) or hospice, you must tell us if you have a change of:~~

~~(i) Residence;~~

~~(ii) Marital status;~~

~~(iii) Living arrangement;~~

~~(iv) Income;~~

~~(v) Resources;~~

~~(vi) Medical expenses; and~~

~~(vii) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.~~

~~(b) If you receive medical benefits based on age, blindness, disability (SSI related medical), or ADATSA benefits, you need to tell us if:~~

~~((i) You move;~~

~~(ii) A family member moves into or out of your home;~~

~~(iii) Your resources change; or~~

~~(iv) Your income changes. This includes the income of you, your spouse or your child living with you.~~

~~(c) If you receive)) cash benefits, you need to tell us if:~~

- ~~(i) You move;~~
- ~~(ii) Someone moves out of your home;~~
- ~~(iii) Your total gross monthly income goes over the:~~
 - ~~(A) Payment standard under WAC 388-478-0033 if you receive ABD cash; or~~
 - ~~(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;~~
- ~~(iv) You have liquid resources more than four thousand dollars;~~

or

- ~~(v) You have a change in employment. Tell us if you:~~
 - ~~(A) Get a job or change employers;~~
 - ~~(B) Change from part-time to full-time or full-time to part-time;~~
 - ~~(C) Have a change in your hourly wage rate or salary; or~~
 - ~~(D) Stop working(; ~~or~~~~
 - ~~(E) See WAC 182-504-0100 for medical care services reporting requirements).~~

~~((d)) (b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:~~

- ~~(i) You move;~~
- ~~(ii) The child you are caring for moves out of the home;~~
- ~~(iii) Anyone related to you or to the child you are caring for moves into or out of the home;~~
- ~~(iv) There is a change in the earned or unearned income of anyone in your child-only means-testing assistance unit, as defined in WAC 388-450-0162 (3)(b). You do not need to report changes in earned income for your dependent children who are in school full-time (see WAC 388-450-0070).~~
- ~~(v) There is a change in the recipient child's earned or unearned income (see WAC 388-450-0070 for how we count the earned income of a child);~~
- ~~(vi) The recipient child has liquid resources more than four thousand dollars;~~
- ~~(vii) A recipient child in the home becomes a foster child; or~~
- ~~(viii) You legally adopt the recipient child.~~

~~((e) If you receive **family medical** benefits, you need to tell us if:~~

- ~~(i) You move;~~
- ~~(ii) A family member moves out of your home; or~~
- ~~(iii) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.))~~

~~(2) If you do not receive cash assistance ((from any of the programs listed in subsection (1))), but you do receive Basic Food benefits((from any of the programs listed in subsection (2))), you must report changes for the people in your assistance unit under chapter 388-408 WAC(, based on all the benefits you receive.~~

~~(a) If you receive **Basic Food** benefits, you)). You need to tell us if:~~

~~((i) If your)) (a) Your household is a categorically eligible household as defined under WAC 388-414-0001, tell us if your total gross monthly income is more than two hundred percent of the federal poverty level; or~~

~~((ii))~~ (b) For all other households tell us if your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; or

~~((iii))~~ (c) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 has their hours at work go below twenty hours per week.

~~((b) If you receive **children's medical** benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) A family member moves out of the house.~~

~~(c) If you receive **pregnancy medical** benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) You are no longer pregnant.~~

~~(d) If you receive **other medical** benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) A family member moves out of the home.)~~

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-424-0010 Citizenship and alien status-Eligibility for TANF(~~(, medicaid, and CHIP)~~). (1) To receive temporary assistance for needy families (TANF)(~~(, medicaid, or children's health insurance program (CHIP) benefits)~~), an individual must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

(a) A United States (U.S.) citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien";

(e) A victim of trafficking; or

(f) A Hmong or Highland Lao.

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF(~~(, medicaid, and CHIP)~~).

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF(~~(, medicaid, or CHIP)~~) for five years after obtaining status as a qualified alien unless the criteria in WAC 388-424-0006(4) are met.

(4) ~~((A lawfully present "nonqualified alien" child or pregnant woman as defined in WAC 388-424-0001 who meet residency requirements as defined in WAC 388-468-0005 may receive medicaid or CHIP.~~

~~(5))~~An alien who is ineligible for TANF(~~(, medicaid or CHIP)~~) because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program)(~~(and WAC 388-438-0110 (alien medical program))~~); or

(b) State-funded cash (~~(or chemical dependency benefits)~~) as described in WAC 388-424-0015 (state family assistance (SFA), and aged, blind, or disabled (ABD) cash(~~(, and the Alcohol and Drug Addiction~~

~~Treatment and Support Act (ADATSA)), and medical benefits as described in WAC 182-503-0532; or~~

~~(c) Pregnancy medical benefits for noncitizen women as described in WAC 388-462-0015(3); or~~

~~(d) State-funded apple health for kids as described in WAC 388-505-0210(5)).~~

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-424-0015 Immigrant eligibility restrictions for the state family assistance, ABD cash((,)) and PWA((, ~~and ADATSA~~)) programs. (1) To receive state family assistance (SFA) benefits, you must be:

(a) A "qualified alien" as defined in WAC 388-424-0001 who is ineligible for TANF due to the five-year bar as described in WAC 388-424-0006(3); or

(b) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005, including a noncitizen American Indian who does not meet the criteria in WAC 388-424-0001.

(2) To receive aged, blind, or disabled (ABD) cash or pregnant women assistance (PWA) benefits, you must be:

(a) A U.S. citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking as defined in WAC 388-424-0001; or

(e) A nonqualified alien described in WAC 388-424-0001 who:

(i) Has verified their intent to stay in the United States indefinitely; and

(ii) The United States Immigration and Customs Enforcement is not taking steps to enforce their departure.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-436-0030 How does my eligibility for other possible cash benefits impact my eligibility for CEAP? (1) You are ineligible for CEAP if you, or a household member, are eligible for any of the following programs:

(a) TANF or SFA, unless the family has had its case grant terminated due to WAC 388-310-1600;

(b) Pregnant women assistance (PWA);

(c) RCA;

(d) Aged, blind, or disabled (ABD) cash;

(e) Supplemental security income (SSI);

~~((f) Medical assistance for those applicants requesting help for a medical need;~~

~~(g)) (f) Food assistance for those applicants requesting help for a food need;~~

((h)) (g) Housing assistance from any available source for those applicants requesting help for a housing need;

((i)) (h) Unemployment compensation, veteran's benefits, industrial insurance benefits, Social Security benefits, pension benefits, or any other source of financial benefits the applicant is potentially eligible to receive.

(2) The department may require the applicant, or anyone in the assistance unit, to apply for and take any required action to receive benefits from programs described in the above subsection (1)(a) through (h).

(3) The department may not authorize CEAP benefits to any household containing a member who is:

(a) Receiving cash benefits from any of the following programs:

(i) TANF/SFA;

(ii) PWA;

(iii) RCA;

(iv) DCA; or

(v) ABD cash.

(b) Receiving reduced cash benefits for failure to comply with program requirements of TANF/SFA, or RCA.

(4) The department may authorize CEAP to families reapplying for TANF/SFA who are not eligible for TANF cash benefits under WAC 388-310-1600 until they complete the four week participation requirement.

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

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(~~(, children's, family, or pregnancy medical,)~~) 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:

(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 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) (~~For cash and Basic Food:~~) Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household;

(o) **For Basic Food only:** 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 behalf.

~~((p) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.~~

~~(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.))~~

AMENDATORY SECTION (Amending WSR 12-06-070, filed 3/6/12, effective 4/6/12)

WAC 388-450-0025 What is unearned income? This section applies to cash assistance((7)) and food assistance(~~, and medical programs for families, children, and pregnant women~~)).

(1) Unearned income is income you get from a source other than employment or self-employment. Some examples of unearned income are:

(a) Railroad retirement;

(b) Unemployment compensation;

(c) Social Security benefits (including retirement benefits, disability benefits, and benefits for survivors);

(d) Time loss benefits as described in WAC 388-450-0010, such as benefits from the department of labor and industries (L&I); or

(e) Veteran Administration benefits.

(2) For food assistance we also count the total amount of cash benefits due to you before any reductions caused by your failure (or the failure of someone in your assistance unit) to perform an action required under a federal, state, or local means-tested public assistance program, such as TANF/SFA, ABD assistance, PWA, and SSI.

(3) When we count your unearned income, we count the amount you get before any taxes are taken out.

WAC 388-450-0040 Native American benefits and payments. This section applies to TANF/SFA, RCA, PWA, ABD cash, (~~medical,~~) and food assistance programs.

(1) The following types of income are not counted when a client's benefits are computed:

(a) Up to two thousand dollars per individual per calendar year received under the Alaska Native Claims Settlement Act, P.L. 92-203 and 100-241;

(b) Income received from Indian trust funds or lands held in trust by the Secretary of the Interior for an Indian tribe or individual tribal member. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(c) Income received from Indian (~~judgement~~) judgment funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(d) Up to two thousand dollars per individual per calendar year received from leases or other uses of individually owned trust or restricted lands, P.L. 103-66;

(e) Payments from an annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, made to a Puyallup Tribe member upon reaching twenty-one years of age; and

(f) Payments from the trust fund established by the P.L. 101-41 made to a Puyallup Tribe member.

(2) Other Native American payments and benefits that are excluded by federal law are not counted when determining a client's benefits. Examples include but are not limited to:

(a) White Earth Reservation Land Settlement Act of 1985, P.L. 99-264, Section 16;

(b) Payments made from submarginal land held in trust for certain Indian tribes as designated by P.L. 94-114 and P.L. 94-540; and

(c) Payments under the Seneca Nation Settlement Act, P.L. 101-503(~~;~~ and

~~(d) For medical assistance, receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations)).~~

WAC 388-450-0156 When am I exempt from deeming? (1) If you meet any of the following conditions, you are **permanently** exempt from deeming and we do not count your sponsor's income or resources against your benefits:

(a) The Immigration and Nationality Act (INA) does not require you to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with United States Citizenship and Immigration Services (USCIS):

- (i) Refugee;
- (ii) Parolee;
- (iii) Asylee;
- (iv) Cuban/Haitian entrant; or
- (v) Special immigrant from Iraq or Afghanistan.

(b) You were sponsored by an organization or group as opposed to an individual;

(c) You do not meet the alien status requirements to be eligible for benefits under chapter 388-424 WAC;

(d) You have worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. We do not count a quarter of work toward this requirement if the person working received TANF, food stamps, Basic Food, SSI, CHIP, ~~((or))~~ nonemergency medicaid benefits, or Washington Apple Health coverage. We count a quarter of work by the following people toward your forty qualifying quarters:

- (i) Yourself;
- (ii) Each of your parents for the time they worked before you turned eighteen years old (including the time they worked before you were born); and
- (iii) Your spouse if you are still married or your spouse is deceased.

(e) You become a United States (U.S.) Citizen;

(f) Your sponsor is dead; or

(g) If USCIS or a court decides that you, your child, or your parent was a victim of domestic violence from your sponsor and:

- (i) You no longer live with your sponsor; and
- (ii) Leaving your sponsor caused your need for benefits.

(2) You are exempt from the deeming process while you are in the same AU as your sponsor ~~((+~~

~~(3) For children and pregnancy medical programs, you are exempt from sponsor deeming requirements)).~~

~~((4))~~ (3) For Basic Food, you are exempt from deeming while you are under age eighteen.

~~((5))~~ (4) For state family assistance, aged, blind, or disabled (ABD) cash, pregnant women assistance (PWA) ~~((7))~~ and state-funded Basic Food benefits, ~~((and state-funded medical assistance for legal immigrants))~~ you are exempt from the deeming process if:

(a) Your sponsor signed the affidavit of support more than five years ago;

(b) Your sponsor becomes permanently incapacitated; or

(c) You are a qualified alien according to WAC 388-424-0001 and you:

(i) Are on active duty with the U.S. armed forces or you are the spouse or unmarried dependent child of someone on active duty;

(ii) Are an honorably discharged veteran of the U.S. armed forces or you are the spouse or unmarried dependent child of an honorably discharged veteran;

(iii) Were employed by an agency of the U.S. government or served in the armed forces of an allied country during a military conflict between the U.S. and a military opponent; or

(iv) Are a victim of domestic violence and you have petitioned for legal status under the Violence Against Women Act.

((+6+)) (5) If you, your child, or your parent was a victim of domestic violence, you are exempt from the deeming process for twelve months if:

(a) You no longer live with the person who committed the violence; and

(b) Leaving this person caused your need for benefits.

((+7+)) (6) If your AU has income at or below one hundred thirty percent of the federal poverty level (FPL), you are exempt from the deeming process for twelve months. This is called the "indigence exemption." You may choose to use this exemption or not to use this exemption in full knowledge of the possible risks involved. See risks in subsection (9) below. For this rule, we count the following as income to your AU:

(a) Earned and unearned income your AU receives from any source; and

(b) Any noncash items of value such as free rent, commodities, goods, or services you receive from an individual or organization.

((+8+)) (7) If you use the indigence exemption, and are eligible for a federal program, we are required by law to give the United States attorney general the following information:

(a) The names of the sponsored people in your AU;

(b) That you are exempt from deeming due to your income;

(c) Your sponsor's name; and

(d) The effective date that your twelve-month exemption began.

((+9+)) (8) If you use the indigence exemption, and are eligible for a state program, we do not report to the United States attorney general.

((+10+)) (9) If you choose not to use the indigence exemption:

(a) You could be found ineligible for benefits for not verifying your sponsor's income and resources; or

(b) You will be subject to regular deeming rules under WAC 388-450-0160.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-450-0170 Does the department provide an earned income deduction as an incentive for persons who receive TANF/SFA to work? This section applies to TANF/SFA, RCA((7)) and PWA((, —and medical programs for children, pregnant women, and families except as specified under WAC 388-450-0210)).

(1) If a client works, the department only counts some of the income to determine eligibility and benefit level.

(2) We only count fifty percent of your monthly gross earned income. We do this to encourage you to work.

(3) If you pay for care before we approve your benefits, we subtract the amount you pay for those dependent children or incapacitated adults who get cash assistance with you.

(a) The amount we subtract is:

(i) Prorated according to the date you are eligible for benefits;

(ii) Cannot be more than your gross monthly income; and

(iii) Cannot exceed the following for each dependent child or incapacitated adult:

Dependent Care Maximum Deductions		
Hours Worked Per Month	Child Two Years of Age & Under	Child Over Two Years of Age or Incapacitated Adult
0 - 40	\$ 50.00	\$ 43.75
41 - 80	\$ 100.00	\$ 87.50
81 - 120	\$ 150.00	\$ 131.25
121 or More	\$ 200.00	\$ 175.00

(b) In order to get this deduction:

(i) The person providing the care must be someone other than the parent or stepparent of the child or incapacitated adult; and

(ii) You must verify the expense.

AMENDATORY SECTION (Amending WSR 12-06-070, filed 3/6/12, effective 4/6/12)

WAC 388-472-0005 What are my rights and responsibilities? For the purposes of this chapter, "we" and "us" refer to the department and "you" refers to the applicant or recipient.

(1) If you apply for or get cash, a referral to the housing and essential needs(HEN) program, or food(~~or medical~~) assistance benefits you have the right to:

(a) Have your rights and responsibilities explained to you and given to you in writing;

(b) Have us explain the legal use of DSHS benefits to you;

(c) Be treated politely and fairly no matter what your race, color, political beliefs, national origin, religion, age, gender, disability or birthplace;

(d) Request benefits by giving us an application form using any method listed under WAC 388-406-0010. You can ask for and get a receipt when you give us an application or other documents;

(e) Have your application processed as soon as possible. Unless your application is delayed under WAC 388-406-0040, we process your application for benefits within thirty days, except:

(i) If you are eligible for expedited services under WAC 388-406-0015, you get food assistance within seven days. If we deny you expedited services, you have a right to ask that the decision be reviewed by the department within two working days from the date we denied your request for expedited services;

(ii) (~~If you are pregnant and otherwise eligible, you get medical within fifteen working days;~~

~~(iii))~~ Aged, blind, or disabled (ABD) assistance, or (~~alcohol or drug addiction treatment (ADATSA), or medical assistance~~) referral

to the housing and essential needs (HEN) program, may take up to forty-five days~~((; and~~

~~(iv) (iii) Medical assistance requiring a disability decision may take up to sixty days)).~~

(f) Be given at least ten days to give us information needed to determine your eligibility and be given more time if you ask for it. If we do not have the information needed to decide your eligibility, then we may deny your request for benefits;

(g) Have the information you give us kept private. We may share some facts with other agencies for efficient management of federal and state programs;

(h) Ask us not to collect child support (~~(or)~~) (which includes medical support, as defined in WAC 388-14A-1020) if you fear the non-custodial parent may harm you, your children, or the children in your care;

(i) Ask for extra money to help pay for temporary emergency shelter costs, such as an eviction or a utility shutoff, if you get TANF;

(j) Get a written notice, in most cases, at least ten days before we make changes to lower or stop your benefits;

(k) Ask for an administrative hearing if you disagree with a decision we make. You can also ask a supervisor or administrator to review our decision or action without affecting your right to a fair hearing;

(l) Have interpreter or translator services given to you at no cost and without delay;

(m) Refuse to speak to a fraud investigator. You do not have to let an investigator into your home. You may ask the investigator to come back at another time. Such a request will not affect your eligibility for benefits; and

(n) Get help from us to register to vote.

(2) If you get cash(~~(,)~~) or food(~~(, or medical)~~) assistance, you are responsible to:

(a) Tell us if you are (~~(pregnant, in need of immediate medical care,~~) experiencing an emergency such as having no money for food, or facing an eviction so we can process your request for benefits as soon as possible;

(b) Report the following expenses so we can decide if you can get more food assistance:

(i) Shelter costs;

(ii) Child or dependent care costs;

(iii) Child support that is legally obligated;

(iv) Medical expenses; and

(v) Self-employment expenses.

(c) Report changes as required under WAC 388-418-0005 and 388-418-0007.

(d) Give us the information needed to determine eligibility;

(e) Give us proof of information when needed. If you have trouble getting proof, we help you get the proof or contact other persons or agencies for it;

(f) Cooperate in the collection of child support (~~(or medical support)~~) unless you fear the noncustodial parent may harm you, your children, or the children in your care;

(g) Apply for and get any benefits from other agencies or programs prior to getting cash assistance from us;

(h) Complete reports and reviews when asked;

(i) Look for, get, and keep a job or participate in other activities if required for cash or food assistance;

(j) ~~((Give your Provider One services card to your medical care provider;~~

~~(k))~~ Cooperate with the quality control review process;

~~((l))~~ (k) Keep track of your EBT card for cash and food assistance and keep your personal identification number (PIN) secure. If you receive multiple replacement EBT cards, this may trigger an investigation to determine if you are trafficking benefits as described under WAC 388-412-0046 (2)(d); and

~~((m))~~ (l) Use your cash and food assistance benefits only as allowed under WAC 388-412-0046.

(3) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you comply with the requirements of this section.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-473-0010 What are ongoing additional requirements and how do I qualify? "Ongoing additional requirement" means a need beyond essential food, clothing, and shelter needs and is necessary to help you continue living independently.

(1) We may authorize ongoing additional requirement benefits if you are active in one of the following programs:

(a) Temporary assistance for needy families (TANF), or tribal TANF;

(b) State family assistance (SFA);

(c) Pregnant women assistance (PWA);

(d) Refugee cash;

(e) Aged, blind, or disabled (ABD) cash assistance; or

(f) Supplemental security income (SSI).

(2) You apply for an ongoing additional requirement benefit by notifying staff who maintain your cash ~~((or medical))~~ assistance that you need additional help to live independently.

(3) We authorize ongoing additional requirement benefits only when we determine the item is essential to you. We make the decision based on proof you provide of:

(a) The circumstances that create the need; and

(b) How the need affects your health, safety and ability to continue to live independently.

(4) We authorize ongoing additional requirement benefits by increasing your monthly cash assistance benefit.

(5) We use the following review cycle table to decide when to review your need for the additional benefit(s).

REVIEW CYCLE	
Program	Frequency (Months)
TANF/RCA	6 Months
ABD	12 Months
SSI	24 Months
All	Any time need or circumstances are expected to change

(6) Monthly payment standards for ongoing additional requirements are described under WAC 388-478-0050.