



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: September 16, 2022

TIME: 11:47 AM

WSR 22-19-060

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

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) September 17, 2022

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 continuing emergency amendments to WAC 388-400-0060, Who is eligible for aged, blind or disabled (ABD) cash assistance?; WAC 388-400-0070, Who is eligible for referral to the housing and essential needs (HEN) program?; WAC 388-434-0005, How often does the department review my eligibility for benefits?; WAC 388-449-0001, What are the disability requirements for the aged, blind, or disabled (ABD) program?; WAC 388-449-0150, When does my eligibility for aged, blind, or disabled (ABD) cash benefits end?; WAC 388-449-0200, Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)?; WAC 388-452-0005, Do I have to be interviewed in order to get cash and basic food benefits?; WAC 388-478-0006, The clothing, personal maintenance, and necessary incidentals (CPI) payment standard for cash assistance.; and WAC 388-478-0033, What are the payment standards for aged, blind, or disabled (ABD) cash assistance?

Effective September 1, 2022, individuals aged 21-64 residing in a public mental institution are potentially eligible for the ABD program if they meet all other eligibility criteria. If ABD is approved, individuals are eligible for a clothing, personal maintenance, and necessary incidentals (CPI) monthly grant up to \$41.62.

This emergency is a continuation of language filed under WSR 22-18-066, keeping in place emergency language necessary to supersede section 388-400-0060, that was adopted permanent under WSR 22-17-080 and became effective September 17, 2022.

Citation of rules affected by this order:

- New: None
- Repealed: None
- Amended: 388-400-0060; 388-400-0070; 388-434-0005; 388-449-0001; 388-449-0150; 388-449-0200; 388-452-0005; 388-478-0006; 388-478-0033
- Suspended: None

Statutory authority for adoption: [RCW 74.04.005, RCW 74.04.050, RCW 74.04.055, RCW 74.04.057, RCW 74.04.510, RCW 74.04.655, RCW 74.04.770, RCW 74.04.805, RCW 74.08.043, RCW 74.08.090, RCW 74.08.335, RCW 74.08A.100, RCW 74.62.030, and RCW 74.04.0052.

Other authority: Supplemental Operating Budget (Chapter 297, Laws of 2022)

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.

Reasons for this finding: Adoption of emergency amendments is necessary to implement ABD eligibility changes, effective September 1, 2022, as funded within the Supplemental Operating Budget (Chapter 297, Laws of 2022).

The department is actively taking appropriate steps to adopt the rule as permanent, and filed notice of its intent under **WSR** 22-17-114

**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	___	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 on 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	<u>9</u>	Repealed	___
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The number of sections adopted using:

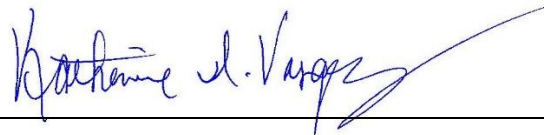
Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>9</u>	Repealed	___

Date Adopted: September 15, 2022

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-400-0060 Who is eligible for aged, blind, or disabled (ABD) cash assistance? (1) The aged, blind, or disabled (ABD) cash assistance program provides a state-funded cash stipend and a referral to the housing and essential needs (HEN) program under WAC 388-400-0065 to eligible low-income individuals.

(2) You are eligible for ABD if you:

(a) Are:

(i) At least ~~((sixty-five))~~ 65 years old;

(ii) Blind as defined by the Social Security Administration (SSA); or

(iii) Likely to be disabled as defined in WAC 388-449-0001 through 388-449-0100; and

(b) Are at least ~~((eighteen))~~ 18 years old or, if under ~~((eighteen))~~ 18, a member of a married couple;

(c) Are in financial need according to ABD cash income and resource rules in chapters 388-450, 388-470, and 388-488 WAC. We determine who is in your assistance unit according to WAC 388-408-0060;

(d) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;

(e) Meet the citizenship and alien status requirements under WAC 388-424-0015;

(f) Provide a Social Security number as required under WAC 388-476-0005;

(g) Reside in the state of Washington as required under WAC 388-468-0005;

(h) Sign an interim assistance reimbursement authorization agreeing to repay the monetary value of general assistance, disability lifeline, or aged, blind, or disabled benefits subsequently duplicated by supplemental security income benefits as described under WAC 388-449-0200, 388-449-0210, and 388-474-0020; and

(i) Report changes of circumstances as required under WAC 388-418-0005 ~~((and))~~.

~~((j) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.))~~

(3) You aren't eligible for ABD if you:

(a) Are eligible for temporary assistance for needy families (TANF) benefits;

(b) Are eligible for state family assistance (SFA) benefits;

(c) Refuse or fail to meet a TANF or SFA eligibility rule;

(d) Refuse or fail to pursue federal aid assistance, including but not limited to medicaid, without good cause;

(e) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause;

(f) Refuse or fail to follow through with the SSI application as required in WAC 388-449-0200 without good cause;

(g) Refuse or fail to participate in vocational rehabilitation services as required in WAC 388-449-0225 without good cause;

(h) Are eligible for supplemental security income (SSI) benefits;

(i) Are an ineligible spouse of an SSI recipient; or

(j) Failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

(4) If you reside in a public institution, as defined in WAC 182-500-0050, and meet all other requirements, your eligibility for ABD depends on the type of institution. (~~A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.~~)

- (a) You may be eligible for ABD if you are (~~(i) A) a patient in a public ((medical)) institution((; or)) .~~
~~((ii) A patient in a public mental institution and:~~
~~(A) 65 years of age or older; or~~
~~(B) 20 years of age or younger.~~

~~(5)) (b) You aren't eligible for ABD ((when)) if you are in the custody of or confined in a public ((institution)) correctional facility such as a state ((penitentiary)) prison, or city, county, or tribal jail including placement in a work release program.~~

AMENDATORY SECTION (Amending WSR 20-19-006, filed 9/3/20, effective 10/4/20)

WAC 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program? (1) You are eligible for referral to the housing and essential needs (HEN) program if you:

- (a) Apply for cash assistance as detailed in WAC 388-406-0010;
(b) Complete an interview with the department;
(c) Are incapacitated as defined in WAC 388-447-0001 through 388-447-0100;
(d) Are at least ((eighteen)) 18 years old or, if under ((eighteen)) 18, legally emancipated or a member of a married couple;
(e) Are in financial need according to income rules in chapter 388-450 WAC and resource requirements in RCW 74.04.005 and chapter 388-470 WAC. We determine who is in your assistance unit according to WAC 388-408-0070;
(f) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;
(g) Meet the citizenship and alien status requirements for ABD cash assistance under WAC 388-424-0015;
(h) Meet the Social Security number verification requirement for cash assistance under WAC 388-476-0005;
(i) Meet the residency requirement for cash assistance under WAC 388-468-0005;
(j) Meet verification requirements for cash assistance detailed in WAC 388-490-0005.
(k) To remain eligible for HEN referral, you must also:
(i) Report changes in your circumstances as required for cash assistance under WAC 388-418-0007; and
(ii) Complete and return eligibility reviews we send you under WAC 388-434-0005.

(2) You are not eligible for referral to the HEN program if you:

- (a) Are eligible for temporary assistance for needy families (TANF) program;
(b) Refuse or fail to meet a TANF rule without good cause;
(c) Refuse or fail to cooperate in obtaining federal aid assistance, including but not limited to medicaid, without good cause;

(d) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-447-0120;

(e) Are eligible for supplemental security income (SSI) benefits and receiving a state supplemental payment (SSP) under WAC 388-474-0012;

(f) Are an ineligible spouse of an SSI recipient;

(g) Refuse or fail to follow a Social Security Administration (SSA) program rule or application requirement without good cause and SSA denied or terminated your benefits;

(h) Are terminated from ABD for refusing or failing to sign an interim assistance reimbursement authorization agreement under WAC 388-400-0060;

(i) Are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony as described in WAC 388-442-0010; or

(j) Are disqualified from receiving cash assistance due to a conviction related to unlawful practices in obtaining cash assistance as described in WAC 388-446-0005.

(3) If you reside in a public institution, as defined in WAC 182-500-0050, and meet all other requirements, your eligibility for referral to the HEN program depends on the type of institution. (~~(A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.)~~)

(a) You may be eligible for referral to the HEN program if you are ~~((+))~~ a patient in a public institution.

~~((i) A patient in a public medical institution; or~~

~~(ii) A patient in a public mental institution and are sixty-five years of age or older.)~~)

(b) You aren't eligible for referral to the HEN program if you are in the custody of or confined in a public ~~((institution))~~ correc-tional facility such as a state ~~((penitentiary))~~ prison, or city, county, or tribal jail, including placement in a work release program.

AMENDATORY SECTION (Amending WSR 21-07-082, filed 3/17/21, effective 4/17/21)

WAC 388-434-0005 How often does the department review my eligi-bility for benefits? (1) If you receive cash assistance, the depart-ment reviews your eligibility for assistance at least once every ~~((twelve))~~ 12 months.

(2) If you receive ABD cash assistance and reside in a public in-stitution, as defined in WAC 182-500-0050, the department reviews your eligibility at least once every 24 months.

~~((+2))~~ (3) When it is time for your eligibility review, the de-partment requires you to complete a review. We use the information you provide to determine your eligibility for all assistance programs.

~~((+3))~~ (4) If you complete an interview for assistance with a department representative and sign the printed interactive interview declaration (IID) form, you do not have to complete a separate review form.

~~((+4))~~ (5) For cash assistance, an eligibility review form or the IID must be dated and signed by both spouses, or both parents of a child in common when the parents live together.

((5)) (6) We may review your eligibility at any time if we decide your circumstances need to be reviewed sooner.

((6)) (7) At your review, we look at:

(a) All eligibility requirements under WAC 388-400-0005 through 388-400-0030;

(b) Changes since we last determined your eligibility; and

(c) Changes that are anticipated for the next review period.

((7)) (8) You are responsible for attending an interview if one is required under WAC 388-452-0005.

((8)) (9) If you do not complete the eligibility review for cash assistance, we consider you to be withdrawing your request for continuing assistance and your cash assistance benefits will end.

((9)) (10) We will send you written notice as described under chapter 388-458 WAC before assistance is suspended, terminated, or a benefit error is established as a result of your eligibility review.

((10)) (11) When you need a supplemental accommodation under WAC 388-472-0010, we will help you meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 22-07-020, filed 3/8/22, effective 4/8/22)

WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program? (1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" refer to the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Disabled" means the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which has lasted or can be expected to last for a continuous period of not less than ((twelve)) 12 months with available treatment or result in death.

(d) "Physical impairment" means a diagnosable physical illness.

(e) "Mental impairment" means a diagnosable mental disorder. We exclude any diagnosis of or related to a substance use disorder.

(2) We determine if you are likely to be disabled when:

(a) You apply for ABD cash benefits;

(b) You become employed;

(c) You obtain work skills by completing a training program; or

(d) We receive new information that indicates you may be employable.

(3) We determine you are likely to be disabled if:

(a) You are determined to meet SSA disability criteria by the Social Security Administration (SSA);

(b) You are determined to meet SSA disability criteria by disability determination services (DDDS) based on the most recent DDDS determination;

(c) The Social Security Administration (SSA) stops your supplemental security income (SSI) payments solely because you are not a citizen;

(d) You are eligible for services through the developmental disabilities administration (DDA) for a medical condition that is expected to last ((twelve)) 12 months or more or result in death;

(e) You are eligible for long-term care services from the aging and long-term support administration for a medical condition that is expected to last ~~((twelve))~~ 12 months or more or result in death; ~~((or))~~

(f) You have been civilly committed to eastern or western state hospital;

(g) You have been placed in eastern or western state hospital for an offense you have been found not guilty by reason of insanity; or

~~((f))~~ (h) You are approved through the sequential evaluation process (SEP) defined in WAC 388-449-0005 through 388-449-0100. The SEP is the sequence of five steps. Step 1 considers whether you are currently working. Steps 2 and 3 consider medical evidence and whether you are likely to meet or equal a listed impairment under Social Security's rules. Steps 4 and 5 consider your residual functional capacity and vocational factors such as age, education, and work experience in order to determine your ability to do your past work or other work.

(4) If you have a physical or mental impairment and you are impaired by a substance use disorder and do not meet the other disability criteria in subsections (2)(a) ~~((through))~~ (d) ~~((above))~~ of this section, we decide if you are eligible for ABD cash by applying the sequential evaluation process described in WAC 388-449-0005 through 388-449-0100. You aren't eligible for ABD cash benefits if you are disabled primarily because of a substance use disorder.

(5) In determining disability, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling, and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting, maintaining appropriate behavior, and adapting to changes in a routine work setting.

(6) We determine you are not likely to meet SSI disability criteria if SSA denied your application for SSI or Social Security Disability Insurance (SSDI) based on disability in the last ~~((twelve))~~ 12 months unless:

(a) You file a timely appeal with SSA;

(b) SSA decides you have good cause for a late appeal; or

(c) You give us medical evidence of a potentially disabling condition that SSA did not consider or medical evidence confirming your condition has deteriorated.

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

WAC 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end? (1) The maximum period of eligibility for ABD cash is ~~((twenty-four))~~ 24 months before we must review additional medical evidence. If you remain on ABD cash at the end of the ~~((twenty-four))~~ 24 month period, we determine your eligibility using current medical evidence.

- (2) If your application for SSI is denied:
- (a) We review your eligibility for the ABD cash program;
 - (b) We stop your benefits if you do not provide proof you have filed an appeal with SSA within (~~sixty~~) 60 days of a SSI denial for not being disabled.
- (3) We stop your benefits after the final decision on your application for SSI/SSA benefits or if you fail to follow through with any part of the SSI/SSA application or appeals process.
- (4) We review your eligibility for the ABD cash program when you discharge from a public institution, as defined in WAC 182-500-0050.

AMENDATORY SECTION (Amending WSR 22-07-020, filed 3/8/22, effective 4/8/22)

WAC 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)? (1) You may receive ABD benefits while you are waiting to receive supplemental security income (SSI) benefits only when you:

- (a) Have filed your SSI application with the Social Security Administration (SSA), follow through with SSA directions and requirements to process your application including keeping all interview and consultative examination appointments, and do not withdraw your application;
- (b) Agree to assign the initial or reinstated SSI payment to us provided under WAC 388-449-0210;
- (c) Are otherwise eligible according to WAC 388-400-0060; and
- (d) Meet disability criteria listed in WAC 388-449-0001.

(2) To demonstrate your impairments are disabling despite medical treatment, you must participate in medical treatment for the impairments that keep you from working, unless you have a good cause. Good cause includes, but is not limited to, the following reasons:

- (a) The treatment provider has identified a risk that the treatment may cause further limitations or loss of a function or an organ and you are not willing to take that risk;
- (b) Treatment is not available because you can't obtain it without cost to you;
- (c) You are so fearful of the treatment that your fear could interfere with the treatment or reduce its benefits; or
- (d) You practice an organized religion that prohibits the treatment.

(3) If you refuse or fail to participate in medical treatment without good cause, your benefits may end and you will remain ineligible until you reapply and provide proof you are pursuing treatment as recommended.

(4) ABD recipients who reside in a public institution as defined in WAC 182-500-0050, are not subject to the requirements of subsections (1)(a)-(b) of this section. These requirements will be addressed at discharge.

WAC 388-452-0005 Do I have to be interviewed in order to get cash and basic food benefits? (1) You or your authorized representative must have an interview with the department:

(a) At initial certification, unless you meet requirements in subsection (9) of this section; and

(b) At least once every (~~twelve~~) 12 months, unless you meet the requirements in subsections (8)(b) or (9) of this section.

(2) You will have just one interview even if you are applying for or are having a review for benefits from more than one program.

(3) We hold interviews either in person or over the phone.

(4) If we do not interview you on the same day that we receive your application, we will schedule an interview appointment for you or have you contact us by phone during our business hours to complete your interview.

(5) If we schedule an interview, we will set your appointment to allow you at least (~~ten~~) 10 days after the interview to provide needed verification:

(a) Before the end of the (~~thirty~~) 30-day processing period for applications; or

(b) Before your certification period ends for eligibility reviews or recertifications.

(6) If you miss your first interview and ask for another interview within (~~thirty~~) 30 days of the date you applied for benefits, we schedule a second interview or have you call us and complete the interview over the phone.

(7) If you must have an interview for benefits, you or someone who can give us the information we need about your AU must participate in the interview. You may ask any person you choose to help with your interview.

(8) For basic food only:

(a) Your authorized representative as described in WAC 388-460-0005 may take your place during your interview.

(b) We may waive the interview requirement at recertification if the household meets the elderly simplified application project (ESAP) criteria:

(i) All members of the household are elderly or disabled, as defined in WAC 388-400-0040;

(ii) No mandatory or applying household members have earned income;

(iii) The paper or electronic eligibility review is complete;

(iv) The household has provided all necessary verification or the verification is available through interfaces available to the department; and

(v) No information provided is unclear or incomplete requiring a request for verification.

(9) For ABD cash assistance, we may waive the interview requirement at application and recertification if you reside in a public institution, as defined in WAC 182-500-0050.

AMENDATORY SECTION (Amending WSR 20-20-007, filed 9/24/20, effective 10/25/20)

WAC 388-478-0006 The clothing, personal maintenance, and necessary incidentals (CPI) payment standard for cash assistance. Payment standards for assistance units (AU) in certain facilities and medical institutions are based on the need for clothing, personal maintenance, and necessary incidentals (CPI).

(1) The CPI (~~cash assistance~~) payment standard for recipients of cash assistance is:

(a) (~~Forty one dollars and 62 cents~~) \$41.62 for eligible persons in medical institutions as defined in WAC 182-500-0050; or

(b) (~~Thirty eight dollars and 84 cents~~) \$38.84 for eligible persons in one of the following facilities as defined in WAC 182-513-1100:

(i) Adult residential care (ARC) facility;

(ii) Adult residential rehabilitation centers (ARRC);

(iii) Adult residential treatment facility (ARTF);

(iv) Enhanced adult residential care facility (EARC); or

(v) Developmental disability administration (DDA) group home facilities.

(2) The CPI payment standard for recipients of ABD cash assistance who reside in a public institution as defined in WAC 182-500-0050, is \$41.62.

~~((2))~~ (3) When a person's living situation is other than (the medical institutions defined in WAC 182-500-0050 and group facilities defined in WAC 182-513-1100) what is listed in subsections (1) or (2) of this section, refer to the following:

(a) WAC 388-478-0020 for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA);

(b) WAC 388-478-0027 for pregnant women assistance (PWA); or

(c) WAC 388-478-0033 for aged, blind, or disabled (ABD).

AMENDATORY SECTION (Amending WSR 22-16-082, filed August 1, 2022, effective September 1, 2022)

WAC 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance? (1) The maximum monthly payment standards for aged, blind, or disabled (ABD) cash assistance program assistance units are:

Assistance Unit Size	Payment Standard
1	\$417
2	\$528

(2) ABD clothing, personal maintenance, and necessary incidentals (CPI) payment standards are listed in WAC 388-478-0006.