



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON  
FILED

DATE: November 12, 2019

TIME: 10:12 AM

WSR 19-23-038

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

**Effective date of rule:**

**Permanent Rules**

31 days after filing.

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

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

Yes  No If Yes, explain:

**Purpose:** The DSHS Division of Child Support (DCS) is amending WAC 388-14A-3323 to correct two typographical errors in two subsections of that rule. The amended rule makes the following changes: in subsection (4) the word “more” is replaced with “less”; and in subsection (5) the word “less” is replaced with “more”. WAC 388-14A-3323 is titled: “What happens in a hearing on a notice of support owed served under WAC 388-14A-3311?”.

DCS may serve a *Notice of Support Owed* under RCW 26.23.110 when a support order provides that a parent is required to pay a portion of certain costs incurred on behalf of a child or children covered by the order but does not reduce the costs to a fixed dollar amount. The *Notice of Support Owed* does not modify the underlying support order; it results in an administrative order which sets the amount owed by the parent as a sum certain, either as a lump sum reimbursement or as an ongoing sum certain amount to be paid each month, or both. DCS uses the *Notice of Support Owed* process to determine sum certain amounts owed by the Noncustodial Parent (NCP) to the Custodial Parent (CP) for childcare or daycare (depending on the terminology of the underlying order), and also to determine sum certain amounts owed by either the NCP or the CP to the other for medical support.

Once the “original” administrative order requiring ongoing monthly payments is established pursuant to a *Notice of Support Owed*, RCW 26.23.110(12)(a) provides that DCS must provide for an “annual review” of that order at the request of one of the parties. Additionally, DCS may perform an annual review on its own initiative. The annual review includes a reconciliation based on the actual costs incurred over the time period since the administrative order was entered, to determine if (1) the amounts established by the administrative order were accurate, or (2) the actual costs were greater than, or less than, the amounts set in the order.

WAC 388-14A-3323 deals with administrative hearings on a *Notice of Support Owed* for daycare/childcare expenses concerning either an original *Notice of Support Owed* or an annual review of an administrative order based on a prior *Notice of Support Owed*. For hearings regarding an annual review, the current rule has created issues due to an inadvertent reversal of the terms “less” and “more” in subsections (4) and (5) of the rule as described above. A literal (and admittedly, correct) reading of these subsections limits DCS’ ability to provide a meaningful reconciliation if the parties have an administrative hearing in front of an Administrative Law Judge (ALJ).

This amendment carries out the intent of the statute (RCW 26.23.110) and the rule by allowing an ALJ to give the appropriate relief in an administrative hearing based on an annual review when the ALJ determines that the parent who was obligated to pay either overpaid or underpaid, once the actual expenses incurred are known.

**Citation of rules affected by this order:**

New: None  
Repealed: None  
Amended: WAC 388-14A-3323  
Suspended: None

**Statutory authority for adoption:** RCW 34.05.353(4), RCW 26.09.015(20), RCW 26.18.170(21), RCW 26.23.050, RCW 26.23.110(14), RCW 43.20A.550, RCW 74.04.055, RCW 74.04.057, RCW 74.08.090, RCW 74.20A.310

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 19-15-082 on July 18, 2019 (date).

Describe any changes other than editing from proposed to adopted version: None

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

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Web site:  
Other:

**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 \_\_\_

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

New \_\_\_ Amended 1 Repealed \_\_\_

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

New \_\_\_ Amended 1 Repealed \_\_\_

**The number of sections adopted using:**

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

**Date Adopted:** November 12, 2019

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



**WAC 388-14A-3323 What happens in a hearing on a notice of support owed served under WAC 388-14A-3311?** (1) A hearing on a notice of support owed served under WAC 388-14A-3311 is subject to WAC 388-14A-3320 and this section.

(2) A hearing on a notice of support owed served under WAC 388-14A-3311 is only for the purpose of determining the amounts owed by the noncustodial parent (NCP) that are not stated as a fixed dollar amount in the underlying support order, either as part of the monthly support obligation or for nonmedical expenses of the children. See WAC 388-14A-3324 for the rules concerning a hearing on a notice of support owed for medical support.

(3) The administrative law judge (ALJ) must determine some or all of the following, depending on what was requested in the notice of support owed:

(a) The amount of monthly support as a fixed dollar amount;

(b) Any accrued arrears;

(c) Any difference between the NCP's obligation under a previous notice of support owed and his or her actual obligation after actual income or expenses are considered; and

(d) The amount of the NCP's share of nonmedical expenses for the children, including:

(i) The amount that the NCP must pay each month as his or her ongoing share of daycare and child care expenses for the children; and

(ii) Whether the custodial parent (CP) has provided sufficient proof of payment of daycare and child care expenses for the children; and

(iii) The amount of NCP's accrued debt for daycare and child care expenses.

(4) If the ALJ determines that the NCP's obligation under a previous notice of support owed is (~~more~~) less than his or her actual obligation under the order after actual expenses or income are considered, the ALJ may not set a payment schedule on the support debt.

(5) If the ALJ determines that the NCP's obligation under a previous notice of support owed is (~~less~~) more than his or her actual obligation under the order after actual expenses or income are considered, and the parties cannot agree on how the overpayment may be credited or repaid, the ALJ must enter an order providing that any difference may be:

(a) Applied as an offset to any nonassistance child support arrears owed by the NCP to the CP.

(b) In the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order.

(c) Paid in the form of a direct reimbursement by the CP to the NCP, but only with the consent of the CP, unless support has been assigned to the state.