



RULE-MAKING ORDER PERMANENT RULE ONLY

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

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STATE OF WASHINGTON
FILED

DATE: August 14, 2023

TIME: 1:06 PM

WSR 23-17-066

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 department is adopting amendments to WAC 388-446-0015, "What is an Intentional program violation (IPV) and administrative disqualification hearings (ADH) for basic food?" These amendments align with federal regulations in 7CFR 273.16(e)(3) regarding administrative disqualification hearing notices and actions related to trafficked benefits.

Citation of rules affected by this order:

New: None
Repealed: None
Amended: WAC 388-446-0015
Suspended: None

Statutory authority for adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 43.20A.550

Other authority: 7 CFR 273.16(e)(3)

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 23-07-082 on March 15, 2023 (date).
Describe any changes other than editing from proposed to adopted version: N/A.

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

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Federal statute:	New	___	Amended	___	Repealed	___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	<u>1</u>	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___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New	___	Amended	___	Repealed	___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New	___	Amended	___	Repealed	___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	___	Repealed	___
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The number of sections adopted using:

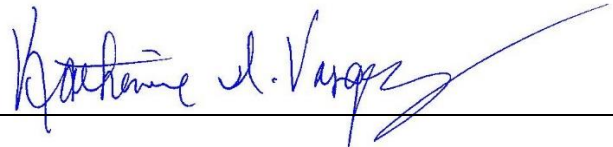
Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>1</u>	Repealed	___

Date Adopted: August 14, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearing (ADH) for basic food? (1)

An intentional program violation (IPV) is an act in which someone intentionally:

(a) Misrepresents, conceals, or withholds facts in order to be found eligible for benefits or to receive more benefits than their actual circumstances would allow including making a false statement regarding household circumstances;

(b) Acts in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations, any state statute, or WAC relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits including; or

(c) Attempts to buy, sell, steal, or trade food assistance benefits issued and accessed via electronic benefit transfer (EBT) cards, EBT card numbers or personal identification numbers (PINs), for cash or anything other than eligible food, alone or acting with others.

(2) If we suspect someone has committed an IPV we refer their case for an administrative disqualification hearing (ADH), unless:

(a) The case is currently referred for prosecution; or

(b) A court or prosecutor already took action against the person for the same or related facts.

(3) An administrative disqualification hearing (ADH) is a formal hearing to determine if a person committed an IPV. ADHs are governed by the rules found in chapter 388-02 WAC. However, rules in this section are the overriding authority if there is a conflict.

(4) A person suspected of an IPV may choose to waive their right to an ADH by signing a waiver of administrative disqualification hearing or a disqualification consent agreement that waives their right to the hearing and accept the IPV penalty under WAC 388-446-0020.

(5) If someone commits one or more IPV's and is suspected of committing another, we refer them for an ADH when the act of suspected violation occurred:

(a) After we mailed the disqualification notice to the client for the most recent IPV; or

(b) After criminal proceedings for the most recent IPV are concluded.

(6) When we refer a case for an administrative disqualification hearing (ADH), the office of administrative hearings (OAH) sends the person notice of the ADH at least (~~thirty~~) 30 days in advance of the hearing date. OAH sends the notice by certified mail, or personal service. The notice will contain the following information:

(a) The date, time, and place of the hearing;

(b) The charges against the person;

(c) A summary of the evidence, and how and where they may examine the evidence;

(d) A warning that a decision will be based entirely on the evidence the department provides if they fail to appear at the hearing;

(e) A statement that the person has (~~ten~~) 10 days from the date of the scheduled hearing to show good cause for failing to attend the hearing and to ask for a new hearing date;

(f) A warning that a determination of IPV will result in a disqualification period; and

(g) A statement that if we schedule a telephone hearing, they may request an in-person hearing by filing a request with the administrative law judge one week or more prior to the date of the hearing.

(h) If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

(7) The department may combine an ADH and a regular hearing when the reason for both hearings is related.

(8) The person or a representative has the right to one continuance of up to (~~thirty~~) 30 days if a request is filed (~~ten~~) 10 days or more prior to the hearing date.

(9) The administrative law judge (ALJ) will conduct the ADH and render a decision even if the person or representative fails to appear, unless within (~~ten~~) 10 days from the date of the scheduled hearing:

(a) The person can show good cause for failing to appear; and

(b) The person or representative requests the hearing be reinstated.

(10) We may change a scheduled telephone hearing to an in-person hearing if (~~this is requested by~~) the person or department representative requests this at least one week in advance. The person requesting a change less than one week in advance must show good cause for the requested change.

(11) The ALJ issues a final decision as specified in WAC 388-02-0215 through 388-02-0525. The decision determines whether the department had established with clear and convincing evidence that the person committed and intended to commit an IPV.

(12) The department and the client each have the right to request a reconsideration of the decision as specified in WAC 388-02-0610 through 388-02-0635. The final order or the reconsideration decision is the final agency decision.

(13) We will not implement a disqualification and continue benefits at the current amount if:

(a) The client can show good cause for not attending the hearing within (~~thirty~~) 30 days from the date the disqualification notice was mailed; and

(b) An administrative law judge determines the client had good cause; or

(c) The client requests reconsideration or files a petition for judicial review to appeal the disqualification as specified in WAC 388-02-0530 (1) or (4).