



RULE-MAKING ORDER EMERGENCY RULE ONLY

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 17, 2024

TIME: 8:57 AM

WSR 24-21-091

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

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) October 18, 2024

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 extending emergency amendments to WAC 388-449-0080, “*Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?*” These amendments are necessary to better align Aged, Blind, or Disabled (ABD) program rules with Social Security Administration’s revision of the definition of “past relevant work,” by reducing the relevant work period from 15 to five years.

Citation of rules affected by this order:

- New: None
- Repealed: None
- Amended: WAC 388-449-0080
- Suspended: None

Statutory authority for adoption: RCW 41.05.021, 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.100, 74.09.035, 74.09.530, 74.62.030

Other authority: CFR 404.1560 and 416.965

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: Emergency adoption of these rules is necessary to better align Aged, Blind, or Disabled (ABD) program rules with Social Security Administration (SSA) federal regulations. Effective June 22, 2024, SSA revised the definition of “past relevant work” by reducing the relevant work period from 15 to five years.

Related emergency rules are in place via WSR 24-13-110.

The department is concurrently proceeding with the permanent rule making process, refer to CR-101 filed as WSR 24-13-124 on June 20, 2024, and CR-102 filed as WSR 24-18-038 on August 26, 2024.

**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 ____

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

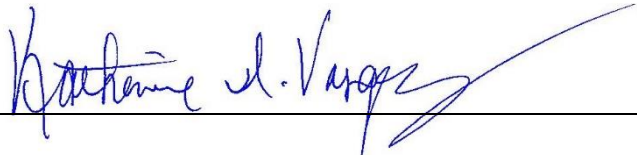
New ____ Amended ____ Repealed ____

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

New ____ Amended ____ 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	1	Repealed	____

Date Adopted: October 15, 2024	Signature: 
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?

(1) If we neither deny disability at Step 1 or 2 nor approve it at Step 3, we consider our assessment of your physical and/or mental functional capacity, per WAC 388-449-0020 and 388-449-0030, to determine if you can do work you have done in the past.

(2) We evaluate your work experience to determine if you have relevant past work and transferable skills. "Relevant past work" means work:

(a) Defined as substantial gainful activity per WAC 388-449-0005;

(b) You have performed in the past (~~fifteen~~) five years; and

(c) You performed long enough to acquire the knowledge and skills necessary to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation, we compare:

(a) The exertional, nonexertional, and skill requirements of the job based on the Appendix C of the Dictionary of Occupational Titles; and

(b) Current cognitive, social, exertional, and nonexertional factors that significantly limit your ability to perform past work.

(4) We deny disability when we determine that you are able to perform any of your relevant past work.

(5) We approve disability when you are fifty-five years of age or older and don't have the physical, cognitive, or social ability to perform past work.