
HOUSE BILL 3049

State of Washington

61st Legislature

2010 Regular Session

By Representative Dickerson; by request of Department of Social and Health Services

Read first time 01/21/10. Referred to Committee on Human Services.

1 AN ACT Relating to administrative review of public assistance
2 decisions; amending RCW 74.04.005 and 74.08.080; creating a new
3 section; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that there is
6 ambiguity contained in RCW 74.08.080. Technical amendments are also
7 necessary. The legislature finds that the ambiguity arises because of
8 the different classifications of individuals and department decisions
9 potentially covered by this section and ambiguity about what attorney
10 fees and costs are available. A statement clarifying the intent of the
11 legislature in enacting this statute will be helpful to the department,
12 the courts, and the public. The purpose of this act is to make
13 retroactive, remedial, curative, and technical amendments in order to
14 resolve any ambiguity about the legislature's original intent in
15 enacting RCW 74.08.080.

16 **Sec. 2.** RCW 74.04.005 and 2003 1st sp.s. c 10 s 1 are each amended
17 to read as follows:

1 For the purposes of this title, unless the context indicates
2 otherwise, the following definitions shall apply:

3 (1) "Public assistance" or "assistance"--Public aid to persons in
4 need thereof for any cause, including services, medical care,
5 assistance grants, disbursing orders, work relief, general assistance
6 and federal-aid assistance.

7 (2) "Department"--The department of social and health services.

8 (3) "County or local office"--The administrative office for one or
9 more counties or designated service areas.

10 (4) "Director" or "secretary" means the secretary of social and
11 health services.

12 (5) "Federal-aid assistance"--The specific categories of assistance
13 for which provision is made in any federal law existing or hereafter
14 passed by which payments are made from the federal government to the
15 state in aid or in respect to payment by the state for public
16 assistance rendered to any category of needy persons for which
17 provision for federal funds or aid may from time to time be made, or a
18 federally administered needs-based program.

19 (6)(a) "General assistance"--Aid to persons in need who:

20 (i) Are not eligible to receive federal-aid assistance, other than
21 food stamps or food stamp benefits transferred electronically and
22 medical assistance; however, an individual who refuses or fails to
23 cooperate in obtaining federal-aid assistance, without good cause, is
24 not eligible for general assistance;

25 (ii) Meet one of the following conditions:

26 (A) Pregnant: PROVIDED, That need is based on the current income
27 and resource requirements of the federal temporary assistance for needy
28 families program; or

29 (B) Subject to chapter 165, Laws of 1992, incapacitated from
30 gainful employment by reason of bodily or mental infirmity that will
31 likely continue for a minimum of ninety days as determined by the
32 department.

33 (C) Persons who are unemployable due to alcohol or drug addiction
34 are not eligible for general assistance. Persons receiving general
35 assistance on July 26, 1987, or becoming eligible for such assistance
36 thereafter, due to an alcohol or drug-related incapacity, shall be
37 referred to appropriate assessment, treatment, shelter, or supplemental
38 security income referral services as authorized under chapter 74.50

1 RCW. Referrals shall be made at the time of application or at the time
2 of eligibility review. Alcoholic and drug addicted clients who are
3 receiving general assistance on July 26, 1987, may remain on general
4 assistance if they otherwise retain their eligibility until they are
5 assessed for services under chapter 74.50 RCW. Subsection
6 (6)(a)(ii)(B) of this section shall not be construed to prohibit the
7 department from granting general assistance benefits to alcoholics and
8 drug addicts who are incapacitated due to other physical or mental
9 conditions that meet the eligibility criteria for the general
10 assistance program;

11 (iii) Are citizens or aliens lawfully admitted for permanent
12 residence or otherwise residing in the United States under color of
13 law; and

14 (iv) Have furnished the department their social security account
15 number. If the social security account number cannot be furnished
16 because it has not been issued or is not known, an application for a
17 number shall be made prior to authorization of assistance, and the
18 social security number shall be provided to the department upon
19 receipt.

20 (b) Notwithstanding the provisions of subsection (6)(a)(i), (ii),
21 and (c) of this section, general assistance shall be provided to the
22 following recipients of federal-aid assistance:

23 (i) Recipients of supplemental security income whose need, as
24 defined in this section, is not met by such supplemental security
25 income grant because of separation from a spouse; or

26 (ii) To the extent authorized by the legislature in the biennial
27 appropriations act, to recipients of temporary assistance for needy
28 families whose needs are not being met because of a temporary reduction
29 in monthly income below the entitled benefit payment level caused by
30 loss or reduction of wages or unemployment compensation benefits or
31 some other unforeseen circumstances. The amount of general assistance
32 authorized shall not exceed the difference between the entitled benefit
33 payment level and the amount of income actually received.

34 (c) General assistance shall be provided only to persons who are
35 not members of assistance units receiving federal aid assistance,
36 except as provided in subsection (6)(a)(ii)(A) and (b) of this section,
37 and will accept available services which can reasonably be expected to
38 enable the person to work or reduce the need for assistance unless

1 there is good cause to refuse. Failure to accept such services shall
2 result in termination until the person agrees to cooperate in accepting
3 such services and subject to the following maximum periods of
4 ineligibility after reapplication:

5 (i) First failure: One week;

6 (ii) Second failure within six months: One month;

7 (iii) Third and subsequent failure within one year: Two months.

8 (d) Persons found eligible for general assistance based on
9 incapacity from gainful employment may, if otherwise eligible, receive
10 general assistance pending application for federal supplemental
11 security income benefits. Any general assistance that is subsequently
12 duplicated by the person's receipt of supplemental security income for
13 the same period shall be considered a debt due the state and shall by
14 operation of law be subject to recovery through all available legal
15 remedies.

16 (e) The department shall adopt by rule medical criteria for general
17 assistance eligibility to ensure that eligibility decisions are
18 consistent with statutory requirements and are based on clear,
19 objective medical information.

20 (f) The process implementing the medical criteria shall involve
21 consideration of opinions of the treating or consulting physicians or
22 health care professionals regarding incapacity, and any eligibility
23 decision which rejects uncontroverted medical opinion must set forth
24 clear and convincing reasons for doing so.

25 (g) Recipients of general assistance based upon a finding of
26 incapacity from gainful employment who remain otherwise eligible shall
27 have their benefits discontinued unless the recipient demonstrates no
28 material improvement in their medical or mental condition. The
29 department may discontinue benefits when there was specific error in
30 the prior determination that found the recipient eligible by reason of
31 incapacitation. Recipients of general assistance based upon pregnancy
32 who relinquish their child for adoption, remain otherwise eligible, and
33 are not eligible to receive benefits under the federal temporary
34 assistance for needy families program shall not have their benefits
35 terminated until the end of the month in which the period of six weeks
36 following the birth of the recipient's child falls. Recipients of the
37 federal temporary assistance for needy families program who lose their
38 eligibility solely because of the birth and relinquishment of the

1 qualifying child may receive general assistance through the end of the
2 month in which the period of six weeks following the birth of the child
3 falls.

4 (h) No person may be considered an eligible individual for general
5 assistance with respect to any month if during that month the person:

6 (i) Is fleeing to avoid prosecution of, or to avoid custody or
7 confinement for conviction of, a felony, or an attempt to commit a
8 felony, under the laws of the state of Washington or the place from
9 which the person flees; or

10 (ii) Is violating a condition of probation, community supervision,
11 or parole imposed under federal or state law for a felony or gross
12 misdemeanor conviction.

13 (7) "Applicant"--Any person who is not an existing recipient and
14 who has made a request, or on behalf of whom a request has been made,
15 to any county or local office for assistance.

16 (8) "Recipient"--Any person receiving assistance and in addition
17 those dependents whose needs are included in the recipient's
18 assistance.

19 (9) "Standards of assistance"--The level of income required by an
20 applicant or recipient to maintain a level of living specified by the
21 department.

22 (10) "Resource"--Any asset, tangible or intangible, owned by or
23 available to the applicant at the time of application, which can be
24 applied toward meeting the applicant's need, either directly or by
25 conversion into money or its equivalent. The department may by rule
26 designate resources that an applicant may retain and not be ineligible
27 for public assistance because of such resources. Exempt resources
28 shall include, but are not limited to:

29 (a) A home that an applicant, recipient, or their dependents is
30 living in, including the surrounding property;

31 (b) Household furnishings and personal effects;

32 (c) A motor vehicle, other than a motor home, used and useful
33 having an equity value not to exceed five thousand dollars;

34 (d) A motor vehicle necessary to transport a (~~physically~~
35 ~~disabled~~) household member with a physical disability. This exclusion
36 is limited to one vehicle per (~~physically disabled~~) person with a
37 physical disability;

1 (e) All other resources, including any excess of values exempted,
2 not to exceed one thousand dollars or other limit as set by the
3 department, to be consistent with limitations on resources and
4 exemptions necessary for federal aid assistance. The department shall
5 also allow recipients of temporary assistance for needy families to
6 exempt savings accounts with combined balances of up to an additional
7 three thousand dollars;

8 (f) Applicants for or recipients of general assistance shall have
9 their eligibility based on resource limitations consistent with the
10 temporary assistance for needy families program rules adopted by the
11 department; and

12 (g) If an applicant for or recipient of public assistance possesses
13 property and belongings in excess of the ceiling value, such value
14 shall be used in determining the need of the applicant or recipient,
15 except that: (i) The department may exempt resources or income when
16 the income and resources are determined necessary to the applicant's or
17 recipient's restoration to independence, to decrease the need for
18 public assistance, or to aid in rehabilitating the applicant or
19 recipient or a dependent of the applicant or recipient; and (ii) the
20 department may provide grant assistance for a period not to exceed nine
21 months from the date the agreement is signed pursuant to this section
22 to persons who are otherwise ineligible because of excess real property
23 owned by such persons when they are making a good faith effort to
24 dispose of that property: PROVIDED, That:

25 (A) The applicant or recipient signs an agreement to repay the
26 lesser of the amount of aid received or the net proceeds of such sale;

27 (B) If the owner of the excess property ceases to make good faith
28 efforts to sell the property, the entire amount of assistance may
29 become an overpayment and a debt due the state and may be recovered
30 pursuant to RCW 43.20B.630;

31 (C) Applicants and recipients are advised of their right to a fair
32 hearing and afforded the opportunity to challenge a decision that good
33 faith efforts to sell have ceased, prior to assessment of an
34 overpayment under this section; and

35 (D) At the time assistance is authorized, the department files a
36 lien without a sum certain on the specific property.

37 (11) "Income"--(a) All appreciable gains in real or personal
38 property (cash or kind) or other assets, which are received by or

1 become available for use and enjoyment by an applicant or recipient
2 during the month of application or after applying for or receiving
3 public assistance. The department may by rule and regulation exempt
4 income received by an applicant for or recipient of public assistance
5 which can be used by him or her to decrease his or her need for public
6 assistance or to aid in rehabilitating him or her or his or her
7 dependents, but such exemption shall not, unless otherwise provided in
8 this title, exceed the exemptions of resources granted under this
9 chapter to an applicant for public assistance. In addition, for cash
10 assistance the department may disregard income pursuant to RCW
11 74.08A.230 and 74.12.350.

12 (b) If, under applicable federal requirements, the state has the
13 option of considering property in the form of lump sum compensatory
14 awards or related settlements received by an applicant or recipient as
15 income or as a resource, the department shall consider such property to
16 be a resource.

17 (12) "Need"--The difference between the applicant's or recipient's
18 standards of assistance for himself or herself and the dependent
19 members of his or her family, as measured by the standards of the
20 department, and value of all nonexempt resources and nonexempt income
21 received by or available to the applicant or recipient and the
22 dependent members of his or her family.

23 (13) For purposes of determining eligibility for public assistance
24 and participation levels in the cost of medical care, the department
25 shall exempt restitution payments made to people of Japanese and Aleut
26 ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian
27 and Pribilof Island Restitution Act passed by congress, P.L. 100-383,
28 including all income and resources derived therefrom.

29 (14) In the construction of words and phrases used in this title,
30 the singular number shall include the plural, the masculine gender
31 shall include both the feminine and neuter genders and the present
32 tense shall include the past and future tenses, unless the context
33 thereof shall clearly indicate to the contrary.

34 **Sec. 3.** RCW 74.08.080 and 1998 c 79 s 15 are each amended to read
35 as follows:

36 (1)(a) A public assistance applicant or recipient who is aggrieved
37 by a decision of the department or an authorized agency of the

1 department has the right to an adjudicative proceeding. A current or
2 former recipient who is aggrieved by a department claim that he or she
3 owes a debt for an overpayment of assistance or food stamps or food
4 stamp benefits transferred electronically, or both, has the right to an
5 adjudicative proceeding.

6 (b) An applicant or recipient has no right to an adjudicative
7 proceeding when the sole basis for the department's decision is a state
8 or federal law that requires an assistance adjustment for a class of
9 recipients.

10 (2) The adjudicative proceeding is governed by the Administrative
11 Procedure Act, chapter 34.05 RCW, and this subsection.

12 (a) The applicant or recipient must file the application for an
13 adjudicative proceeding with the secretary within ninety days after
14 receiving notice of the aggrieving administrative decision. If public
15 assistance is granted and the department subsequently reviews a
16 recipient's public assistance determination, each subsequent review and
17 decision is a new department decision for purposes of this section.

18 (b) The hearing shall be conducted at the department's local
19 (~~community services~~) office or other location in Washington
20 convenient to the appellant.

21 (c) The appellant or his or her representative has the right to
22 inspect his or her department file and, upon request, to receive copies
23 of department documents relevant to the proceedings free of charge.

24 (d) The appellant has the right to a copy of the (~~tape~~) audio
25 recording of the hearing free of charge.

26 (e) The department is limited to recovering an overpayment arising
27 from assistance being continued pending the adjudicative proceeding to
28 the amount recoverable up to the sixtieth day after the secretary's
29 receipt of the application for an adjudicative proceeding.

30 (f) If the final adjudicative order is made in favor of the
31 (~~appellant~~) applicant, assistance shall be paid from the date of
32 denial of the application for assistance or thirty days following the
33 date of application for temporary assistance for needy families or
34 forty-five days after date of application for all other programs,
35 whichever is sooner; or in the case of a recipient, from the effective
36 date of the department's local (~~community services~~) office decision.

37 (g) This subsection applies only to an adjudicative proceeding in
38 which the appellant is an applicant for or recipient of medical

1 assistance or the limited casualty program for the medically needy and
2 the issue is his or her eligibility or ineligibility due to the
3 assignment or transfer of a resource. The burden is on the department
4 to prove by a preponderance of the evidence that the person knowingly
5 and willingly assigned or transferred the resource at less than market
6 value for the purpose of qualifying or continuing to qualify for
7 medical assistance or the limited casualty program for the medically
8 needy. If the prevailing party in the adjudicative proceeding is the
9 applicant or recipient, he or she is entitled to reasonable attorney's
10 fees.

11 (3) When a person files a petition for judicial review as provided
12 in RCW 34.05.514 of an adjudicative order entered in a public
13 assistance program, no filing fee shall be collected from the person
14 and no bond shall be required on any appeal. In the event that the
15 superior court, the court of appeals, or the supreme court renders a
16 decision in favor of the appellant, said appellant shall be entitled to
17 reasonable attorneys' fees and costs. If a decision of the court is
18 made in favor of the (~~appellant~~) applicant, assistance shall be paid
19 from date of the denial of the application for assistance or thirty
20 days after the application for temporary assistance for needy families
21 or forty-five days following the date of application, whichever is
22 sooner; or in the case of a recipient, from the effective date of the
23 department's local (~~community services~~) office decision.

24 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately.

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