

Department of Social and Health Services

Olympia, Washington

**Social Service Manual**

Revision # 95

**CATEGORY:** Incapacity Determination – Review of Incapacity

[http://www.dshs.wa.gov/manuals/socialservices/sections/incap\\_F\\_review.shtml](http://www.dshs.wa.gov/manuals/socialservices/sections/incap_F_review.shtml)

Issued: **May 23, 2011**

Revision Author: M. Shane Riddle

Division: CSD

Phone (360) 725-4352

Email [riddlms@dshs.wa.gov](mailto:riddlms@dshs.wa.gov)

**Summary:** Added details regarding Adequate Notice and Equal Access to the Worker Responsibility section.

## INCAPACITY DETERMINATION - REVIEW OF INCAPACITY

---

Revised March 25, 2011

---

[WAC 388-448-0160](#) When do my disability lifeline benefits end?

[WAC 388-448-0180](#) How do we redetermine your eligibility when we decide you are eligible for general assistance expedited Medicaid (GAX)?

[Previous Error](#)

[Receiving Medical Evidence](#)

[No Current Medical](#)

[Material Improvement](#)

[Employment](#)

[School Attendance](#)

[Completion of the Review](#)

WAC 388-448-0160

## **WAC 388-448-0160 When do my disability lifeline benefits end?**

1. The maximum period of eligibility for disability lifeline is twelve months before we must review incapacity.
  - a. We use current medical evidence and the expected length of time before you are capable of gainful employment to decide when your benefits will end.
  - b. If you meet the incapacity criteria in WAC 388-448-0001(1) (a) through (e), you must provide information about your cooperation and progress with treatment or agency referrals we required to WAC 388-448-0130.
2. Your benefits stop at the end of your incapacity period unless you provide additional medical evidence that demonstrates during your current incapacity period that there was no material improvement in your impairment. No material improvement means that your impairment continues to meet the progressive evaluation process criteria in [WAC 388-448-0010](#) through [WAC 388-448-0110](#), excluding the requirement that your impairment(s) prevent employment for ninety days.
3. The medical evidence must meet all of the criteria defined in [WAC 388-448-0030](#).
4. We use medical evidence received after your incapacity period had ended when:
  - a. The delay was not due to your failure to cooperate; and
  - b. We receive the evidence within thirty days of the end of your incapacity period; and
  - c. The evidence meets the progressive evaluation process criteria in [WAC 388-448-0010](#) through [WAC 388-448-0110](#).
5. Even if your condition has not improved, you aren't eligible for disability lifeline when:
  - a. We receive current medical evidence that doesn't meet the progressive evaluation process criteria in [WAC 388-448-0035](#) through [WAC 388-448-0110](#); and
  - b. Our prior decision that your incapacity met the requirements was incorrect because:
    - i. The information we had was incorrect or not enough to show incapacity; or
    - ii. We didn't apply the rules correctly to the information we had at that time.

This is a reprint of the official rule as published by the [Office of the Code Reviser](#). If there are previous versions of this rule, they can be found using the [Legislative Search page](#).

## **WORKER RESPONSIBILITIES**

1. Review incapacity:
  - a. At the end of the period of incapacity.
  - b. When you get information that affects the person's employability.
  - c. If there was an error in the previous incapacity determination.
2. Decide what information is needed to complete the review by examining the person's medical records and treatment progress.
3. Request an IARA as part of the review process if we have not yet obtained an IARA and the person

has applied for SSI. See SSIF, [Section C. Interim Assistance Reimbursement Agreement \(IARA\)](#).

**NOTE:** All Social Workers working with individuals who are potentially eligible for SSI must ensure the IARA is signed, dated, and filed timely with the Social Security Administration.

4. Send the Notice of Information Required for Incapacity Review, DSHS [14-217](#), ~~to the person~~. ~~You must:~~
  - a. **Provide Adequate Notice:** Send the 14-217 between six and eight weeks prior to the incapacity review date (around the 10th of the month prior to the incapacity review month).
  - a-b. **Ensure the Incapacity Review Notice complies fully with the person's current Equal Access Plan.**
  - b-c. Specify the information needed for the review.
  - c-d. ~~The~~ **Establish the** deadline for ~~the person to provide~~ ~~ing the~~ **current** medical **evidence information** ~~is~~ as the 10th of the month of incapacity review, or the first business day following the 10th if the 10<sup>th</sup> ~~of the month falls falls~~ on a holiday or weekend.

**NOTE:** ~~Benefits cannot be terminated unless adequate notice is provided. Adequate Notice includes both a timely 14-217 and full compliance with the person's current Equal Access Accommodation Plan.~~

#### EXAMPLE

~~Jerry transfers into the CSO during his Incapacity Review month. The worker reviews the case record and discovers Jerry was not sent a 14-217 and therefore did not receive adequate notice. After reviewing his case record and Equal Access plan, the worker sends Jerry an appropriate 14-217. The worker notifies financial that a one month extension is necessary due to lack of adequate notice using the 14-118.~~

5. If the person has seen the provider within 45 days prior to the month of incapacity review, obtain copies of chart notes and a narrative summary.

**NOTE:** Only authorize a new medical evaluation after determining the person's current chart notes are insufficient to determine incapacity.

#### Previous Error

When reviewing incapacity, determine if there was an error in the previous incapacity ~~decision~~ decision. If there was an error:

1. Assess how the error affected the previous incapacity determination.

2. Decide if the person remains incapacitated.
3. Let the Financial Worker know if there is a potential overpayment.

**NOTE:** "Previous error" does not necessarily mean that mistakes were made in the original decision, rather the outcome would have been to deny incapacity if all relevant information had been available and reviewed at the time of the decision.

When you discover that an error was made in a prior incapacity decision and the person should not have been previously approved, AND the available evidence indicates that the person does not qualify, deny incapacity. Document how the error makes the person ineligible. If the available medical evidence does not clearly indicate a lack of incapacity, document the error and proceed with reviewing incapacity.

#### **EXAMPLE**

A person's incapacity was originally approved per WAC 388-448-0001 (2) (in-patient to out-patient treatment for mental disorder). When reviewing the case and preparing to notify the person about the need for an incapacity review, you discover that the diagnosis was "drug-induced psychosis" and the discharge plan was for chemical dependency follow-up care at the local community health agency. The agency provides both behavioral health and chemical dependency treatment. The rule was applied in error because the person was not participating in out-patient mental health treatment and the person is ineligible per WAC 388-448-0010 (4) as their incapacity is solely related to substance abuse. Explain on the 14-118 the reason for the denial and indicate to the Financial Worker that there may be an overpayment.

#### **EXAMPLE**

Incapacity was approved based on a physical exam and chest X-ray interpretation by a family physician. A cardiologist conducted a follow-up exam and based on the specialist's findings the person's impairments aren't incapacitating and the original decision would have been to deny if the specialist's information had been available. Explains the details for denial on the DSHS 14-118 sent to financial to close the case.

### **Receiving Medical Records**

**NOTE:** When the medical evidence meets criteria WAC 388-448-0160 (4) (a-c) above, benefits are re-opened to the first of the month after incapacity ended. There will NOT be a loss of benefits to the person in this situation.

1. Decide if the medical evidence provided is:
  - a. From an acceptable source of primary medical evidence.
  - b. Based on an evaluation of the medical condition within 45 days of the incapacity review.

- c. Contains objective medical evidence.
2. Follow the [Progressive Evaluation Process](#) to determine if the person meets incapacity criteria.

### No Current Medical

**NOTE:** There must be current medical evidence supporting continued incapacity before authorizing any GA benefits beyond the review month.

1. When you receive medical evidence, complete the incapacity review before the 15th so that if there is a denial the person receives adequate notice.
2. If no current medical evidence is received by the first business day following the due date for medical evidence (usually the 11th or the first business day following), issue a 14-118 to deny incapacity.

### Material Improvement

1. Complete the [Progressive Evaluation Process](#).
2. A decision denying incapacity at review means there is **material improvement**.
3. When there is no material improvement in the person's incapacity, use the information provided for the review or medical treatment references to decide the next incapacity review date.

#### EXAMPLE

Willie was previously determined incapacitated based on a physical impairment with a "moderate" severity rating. The new medical evaluation indicates that condition has healed so impairment no longer exists, but Willie has another, previously unclaimed physical problem. The second impairment has a "moderate" severity rating but does not qualify Willie according to the PEP. There is material improvement because there is no impairment that meets PEP criteria at review.

#### EXAMPLE

Karen has a physical impairment that permanently limits her to light work. She has successfully completed vocational rehabilitation and the vocational counselor verified Karen is now able to perform some light work jobs. While Karen's physical impairment will not change, material improvement is established through denial of incapacity at Step 6.

#### EXAMPLE

Robert has a chronic mental impairment and was determined to be incapacitated based on

global assessment of functioning (GAF) 45 (marked severity). At incapacity review, the psychologist's evaluation states Robert's condition remains chronic but his symptoms and behavior have been stabilized to a global severity of "moderate", with two mild and three moderate limitations on social functioning.

## Employment

1. If you become aware that the person has returned to work, obtain the following information:
  - a. Name of employer,
  - b. Employment start date, and
  - c. Job title and specific duties.
2. Notify financial services of the person's employment.
3. If the person is still financially eligible, you must determine if the person is capable of gainful employment.

## School Attendance

1. Assess the mental and physical demands of the school program and compare these to the mental and physical requirements of employment with the individual's medical profile.
2. Resolve any conflicts between these with the medical treatment provider, and document the conversation.
3. After assessing the person's capabilities, alter the incapacity decision, case plan, and treatment and referral monitoring as appropriate.

## EXAMPLE

Janet's is studying to become a registered nurse. The expectations of the nursing program include attendance at and participation in lab three full days per week, class attendance two full days per week, with an expected level of performance for both lab and class work. Failure to meet the expectations will result in dismissal from the program. In this example, the pressures and demands of attending school **aren't** under the control of the client. Janet is able to meet all of the expectations of this school program despite her diagnosis of bipolar disorder, and isn't incapacitated.

## EXAMPLE

Oscar is taking liberal arts courses at a community college. Oscar attends class sporadically due to his anxiety and depression symptoms, but maintains the minimum GPA as required for continued enrollment. In this example, the pressures and demands of attending school **are** under the control of the client. Oscar's school attendance by itself cannot be the basis for determining that he is employable. Oscar also has physical impairments that limit him to light work and it is determined he meets incapacity requirements at this time, but a referral to DVR may be appropriate.

### **WAC 388-448-0180 How do we redetermine your eligibility when we decide you are eligible for general assistance expedited Medicaid (GAX)?**

1. The maximum period of eligibility for GAX is twelve months before we must review additional medical evidence. If you remain on GAX at the end of the twelve-month period, we determine your eligibility using current medical evidence.
2. If your application for SSI is denied, and the denial is upheld by an SSI/SSA administrative hearing, we change your program eligibility from GAX to GAU if you do not provide proof you have filed an appeal with SSI/SSA appeals council within sixty days of your hearing decision.
3. We change your program eligibility from GAX to GAU after the final SSI/SSA determination or if you fail to follow through with any part of the SSI/SSA appeals process.

This is a reprint of the official rule as published by the [Office of the Code Reviser](#). If there are previous versions of this rule, they can be found using the [Legislative Search page](#).

### **Completion Of The Review**

1. Use DSHS 14-118, Incapacity Decision to notify financial services of the decision.
2. For incapacity approvals:
  - a. Follow the procedures in Incapacity Determination – [Case Management](#) section to create a new DL Case Plan and give a copy to the person. For the most effective plan, meet with or phone the person to assess what the new plan should be.
  - b. Complete the 14-332, Disability Assessment. The Disability Assessment may be completed at the end of the PEP or by itself. If it indicates need for a expedited Medicaid / SSI facilitation referral, follow the procedures in SSI Facilitation section D. [Disability Lifeline - Expedited Medicaid](#).
3. For incapacity denials:
  - a. Use DSHS 14-118, Incapacity Decision to notify financial services of the decision. Give a clear and concise description of why the person does not meet incapacity criteria.
  - b. Provide [information and referral services](#). Let the person know if there are other resources other than DL that may be helpful.