

# How to Fight a Denial or Termination of Eligibility for the Housing and Essential Needs (HEN) Referral Program for Medical Reasons

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## What is the HEN program?

It can provide non-cash help for people unable to work. You must meet its income and incapacity requirements.

HEN can pay for housing costs and give you “essential needs” items. See [Help for People Unable to Work: ABD and HEN](#).

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- ❖ Read this if you get or want HEN **but not ABD**. If you get or want both and DSHS has denied or ended your ABD, read [ABD Denial/Termination: Medical Reasons](#).
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## When can I get HEN Services?

DSHS must first determine you are eligible for HEN assistance. Then they refer you to a local HEN provider who decides if you qualify for their services. Info about local HEN providers is at [HEN Provider List](#). If you get ABD (Aged Blind Disabled) benefits, you are eligible for HEN.

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- ❖ If DSHS denies you HEN because they say you have too much income or resources, or gives a reason other than your medical condition, see [How to Fight a Denial of DSHS Public Assistance](#).
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## Can I get help applying?

If you need help getting or keeping DSHS benefits, DSHS may have to offer you extra services and protections before denying or terminating (ending) your eligibility for the HEN program. Ask for help if you have:

- A physical or mental disability.
- Problems reading or writing.
- Problems speaking or understanding English.
- Problems from drug or alcohol use.
- Other problems.

See [DSHS Help for People with Disabilities: Necessary Supplemental Accommodations](#).

## DSHS denied or ended my eligibility for the HEN program. What can I do?

Any or all of these:

- Ask for an Administrative Hearing.
- Ask a DSHS supervisor to review and explain the decision.
- Reapply.

## What are the WAC rules in my denial or termination letter?

The DSHS letter should refer to at least one [Washington Administrative Code \(WAC\)](#) rule supporting DSHS's decision. The HEN referral incapacity rules are in [WAC 388-447](#).

## When and how do I ask for an Administrative Hearing?

You have 90 days from the date of the denial or termination notice to ask for a hearing. Generally, DSHS has 45 days to decide if you are

incapacitated and eligible for HEN. If they do not send you a letter within 45 days of your application, you can ask for an administrative hearing for a decision about your eligibility for HEN. If they are terminating (ending) your HEN benefits and services, you can keep getting them until the hearing process is complete if you ask for your hearing within ten days or before the date your benefits will end.

You can ask for an Administrative Hearing by doing any of these:

- Writing or calling the Office of Administrative Hearings (OAH) at P.O. Box 42489, Olympia, WA 98504, phone: 1-800-583-8261.
- Calling or writing your DSHS office.

If it is an emergency, call the OAH and ask them to hold the hearing as soon as possible. This is an "expedited" hearing. Otherwise, your hearing will probably be 20 days or more after the date you request it.

### **Who holds the administrative hearing?**

An Administrative Law Judge (ALJ) who does not work for DSHS holds the hearing and writes a decision. If you win, the ALJ usually will order the benefits paid effective the date DSHS denied them.

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- ❖ If you are representing yourself, get [Representing Yourself at an Administrative Hearing](#).
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### **How do I ask for an explanation and review?**

Before or after asking for a hearing, ask your DSHS worker to **explain** more about the decision. You may learn DSHS had the wrong

info, or was missing info. Try to provide the info. Ask the worker if you need help getting it. If it costs money to get the info, ask DSHS to pay or if they will accept other proof.

You can also ask the worker's supervisor for a meeting to **review** the HEN Referral Program denial. If you write the supervisor, the supervisor must write back within ten days. If that does not change the decision, you can write the head administrator of the local DSHS office. The administrator also must write back in ten days.

If you disagree with what the worker, supervisor, and administrator decide, your last option is to ask for an Administrative Hearing.

### **Would it help to reapply?**

It might. You can reapply for benefits at any time, even if you have asked for a Hearing. You should reapply if:

- You think DSHS was correct to deny you. Your situation has since changed.
- You have info that might change the decision. Your DSHS worker or supervisor will only consider it if you reapply. You can reapply while also trying to use the new info in your administrative hearing. The approval of a new application probably will not go back to the date you first applied, or to the date DSHS first denied you HEN.

### **I asked for a hearing. Now what?**

Contact the Administrative Hearing Coordinator (AHC) at the local DSHS office. The AHC represents DSHS in the hearing. Many cases settle beforehand if you point out that DSHS made a mistake or you get more medical info.

When you first contact the AHC, ask

- Why the medical info does not prove you cannot work.
- What it needs to say to prove it.

Call the AHC. Ask for an appointment to look at your file and discuss your case. Get copies of all medical reports and other documents in your file DSHS used or created in making and explaining its decision. If your case is a termination of eligibility for HEN, ask to review all medical reports and documents in your DSHS file that helped win eligibility in the first place.

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- ❖ DSHS may not put in the administrative hearing packet medical info favorable to you. (See next section.)
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Ask the AHC for any other rules DSHS used in its decision besides the rules its notice stated. The HEN referral incapacity rules are in [WAC 388-447](#). You can read them at the DSHS office, your public library, or online at <http://apps.leg.wa.gov/wac/default.aspx>.

Ask the AHC to explain anything about DSHS's decision you do not understand. Ask what evidence would change DSHS' decision. If you get that evidence, DSHS may change its decision without a hearing.

### **I cannot reach the AHC. What should I do?**

If you cannot reach or believe the AHC is unreasonable, ask to speak to the supervisor or office administrator. If that does not change things, present your case to the ALJ at the Administrative Hearing.

### **What is an administrative hearing packet?**

Before the hearing, the AHC must give you an Administrative Hearing packet with details about their case and **all** documents DSHS will use as evidence. Start getting ready for your hearing before getting this packet.

### **How do I prove I am unable to work?**

To determine your eligibility or continued eligibility for HEN, DSHS reviews your medical and vocational info. This info is usually on DSHS physical or psychiatric/psychological evaluation forms from doctors who examined you. DSHS uses an eight-step "Progressive Evaluation Process" (PEP) form following WAC rules. You must figure out what parts of the evaluations and step of the PEP show DSHS's reason for denying or ending your eligibility for HEN.

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- ❖ Learn more about how DSHS incapacity specialists use the PEP. Look at their [Social Services Manual](#).
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### **Should I get a letter from a doctor?**

If you think any doctor who did an evaluation for DSHS may support you on any point DSHS has said is important, ask that doctor for a letter of support. If you have a regular treating doctor, psychologist, nurse practitioner, or mental health worker, they may be able to provide the proof DSHS says it needs.

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- ❖ If you are a client of the Department of Vocational Rehabilitation (DVR), ask your DVR counselor for copies of all medical or vocational info in your DVR file that may help.
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## Can I get another medical evaluation?

If you believe more medical evaluations will prove your case, ask DSHS to set this up and pay for it. You must have good reason why you need the evaluation to review your ability to work.

Some **examples**:

- DSHS made their decision without getting evaluations of all your medical problems they know about.
- You have a history of a medical problem you still believe keeps you from working. No one evaluated it.
- The DSHS evaluation forms a doctor filled out mention medical problems outside that doctor's expertise, or recommend more evaluations that DSHS did not get.
- You have other reason to believe the doctors who did DSHS reports did not completely evaluate your medical condition or fill out the form completely. (**Examples**: They did not put how long they expect you to be unable to work. They left out medical conditions.)
- DSHS says there is no objective medical evidence supporting what a doctor has said about your condition, or how it keeps you from working. Ask them to follow up with the doctor or tell you what testing you need. If you need further tests, ask DSHS to pay for them.

## DSHS refuses to pay for more evaluations before my hearing. What can I do?

Call the OAH. (The number is on your Hearing Notice.) Ask for a pre-hearing conference where

you can ask the ALJ to order DSHS to pay for another evaluation.

If the ALJ does not order DSHS to pay, try to get an evaluation from another doctor yourself. Try seeing a doctor you saw in the past.

Even if DSHS does not pay for the evaluation, you can ask your own doctor to use DSHS's evaluation form. Its format makes it easy to apply DSHS's criteria to your doctor's opinions. Ask DSHS for copies of the forms to hand-deliver to your doctors or print them yourself from <http://www.dshs.wa.gov/forms/eforms.shtml>. (Look for forms 13-021 and 13-865.)

Finally, you can ask the ALJ at the hearing to order DSHS to pay for more evaluations. Any further evaluations you get may persuade the AHC to settle the case or rule for you at the hearing.

## The AC did not include in the hearing packet info that I think helps my case. What can I do?

Make a copy for the ALJ of the helpful info before the hearing. If you give the AHC a copy before the hearing, the AHC should be able to get it to the ALJ for you.

## What should I say at the hearing?

If you cannot settle your case beforehand, you should testify at the hearing about how your medical problems limit what you can do. The WAC rules, DSHS evaluation forms, PEP form, and Administrative Hearing packet will help you focus.

At the hearing, give examples from your daily life, especially where you worked or tried. It may

help to have one or more people who know you well testify to what you can and cannot do.

### **How can I get legal help?**

You may be able to get assistance by calling CLEAR, a toll-free intake, advice, and referral

service run by the Northwest Justice Project. To contact CLEAR, call toll free 1-888-201-1014 9:15 a.m. - 12:15 p.m., weekdays. You can also apply for help at <http://nwjustice.org/get-legal-help>.

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