

When DSHS Denies or Ends Your ABD for Medical Reasons

Can I get ABD?

The ABD program provides income and medical coverage if you are:

- Are age 65 or over, or
- Are blind or have a disability.

All of these must also be true: You

- Live in the State of Washington.
- Are a citizen or eligible immigrant.
- Have and give DSHS a Social Security number.
- Have income and resources within Department of Social and Health Services (DSHS) rules.

“Disabled” means you cannot work due to physical and/or mental conditions that have lasted or will last at least twelve months.

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- ❖ If DSHS denies you ABD because you have too much income or resources, or for any other non-medical reason, read [How to Fight a Denial of DSHS Public Assistance](#).
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You may need help getting and keeping DSHS benefits because you have:

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

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

What if DSHS denies or ends my ABD?

You can do any or all of these:

1. Ask for an administrative hearing.
2. Ask a DSHS supervisor to review and explain the decision.
3. Reapply.

When should I ask for an administrative hearing?

You have 90 days from the date of the denial or termination notice. Generally, DSHS has 45 days after you apply to decide if you should get ABD.

If they do not send you a notice within 45 days, ask for an administrative hearing for a decision about whether you can get ABD.

If DSHS is ending your ABD, you can keep getting it until the hearing process ends if you ask for a hearing within ten days **or** before the date your benefits will end.

How do I ask for a hearing?

- Write or call the Office of Administrative Hearings (OAH) at P.O. Box 42489, Olympia, WA 98504, phone 1-800-583-8261.
- Call or write your DSHS office.

When will the hearing take place?

If it is an emergency, call OAH. Ask them to schedule an **expedited** hearing as soon as possible.

Otherwise, your hearing will probably be 20 days or more after you ask for it.

Who runs the hearing?

An Administrative Law Judge (ALJ) who does not work for DSHS does.

What happens if I win at the hearing?

The ALJ will usually order the benefits paid effective the day DSHS denied them.

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- ❖ If you are representing yourself, read [Representing Yourself at an Administrative Hearing](#).
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What is explanation and review?

You can ask your DSHS worker to **explain** more about the decision before or after asking for a hearing. You may learn DSHS had wrong information or was missing information. If so, try to give the right information. Ask the worker for any help you need getting it. If you have to pay to get it, 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 decision. If you write the supervisor, they must write back within ten days. If that does not change the decision, write the head administrator of the local DSHS office. They also must write back in ten days.

Can I appeal the explanation and review?

There is no more appeal unless you also ask for an administrative hearing. The ten- and 90-day deadlines for continued benefits and appeal run while you work with DSHS.

Even if it seems like DSHS will fix your case, ask for a hearing just in case. You can withdraw the hearing request if things work out.

Should I reapply?

Yes. You can reapply for benefits any time. You can reapply even if you asked for a hearing.

You should reapply if any of these is true:

- You think DSHS correctly denied you but your situation has since changed.
- You have more information that might change their decision. Your worker or supervisor will only consider it if you reapply. You can reapply while also trying to use the new information in your hearing. **The approval of a new application probably will not go back** to the date you first applied or DSHS first denied you.

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 can point out that DSHS made a mistake or if you can give DSHS more complete medical information.

Before the hearing, the AHC must give you a packet of all evidence DSHS will use at the hearing. You can do a better job of getting ready for your hearing if you get started before getting this packet.

Make an appointment with the AHC to look at your file and discuss your case. Get copies of all medical reports and other documents DSHS used and created in making and explaining its decision.

If you are appealing a termination decision, ask to see all medical evidence in your DSHS file. There may be helpful medical information that DSHS did not put in the packet.

The DSHS notice denying or ending ABD should give at least one Washington Administrative Code (WAC) rule supporting their decision. Ask the AHC for any other rules they relied on. The ABD rules are in [WAC Chapter 388-449](#). Read them online at apps.leg.wa.gov/wac/default.aspx.

Ask the AHC

- To explain anything you do not understand about DSHS's decision.
- What evidence would change DSHS' decision. If you get them that evidence, DSHS may give you ABD without a hearing.
- Why the medical information does not prove you cannot work. What it would need to say to prove it.

If you cannot reach the AHC, or find the AHC is unreasonable, talk to the supervisor or administrator. If DSHS still does not agree, go to the hearing.

How do I prove I cannot work?

After you apply for ABD, DSHS reviews your medical and vocational information. It is usually on DSHS evaluation forms from doctors who examined you.

DSHS uses a five-step "Sequential Evaluation Process" (SEP) form following WAC rules. You must figure out what parts of the evaluations, and what step of the SEP,

show why DSHS is denying or ending your benefits. Read more in the Social Service Manual at www.dshs.wa.gov/esa/manuals/social-services.

If you think any doctor who did an evaluation for DSHS may help you on any point DSHS told you is important to the decision, ask the doctor for a letter of support. You might be able to get proof DSHS needs from your regular doctor, psychologist, nurse practitioner, or mental health worker. If you are a client of the Department of Vocational Rehabilitation (DVR), ask for copies of medical or vocational information in your DVR file that may help.

If you believe more medical evaluations would prove your case, ask DSHS to approve and pay for an evaluation. You must give a good reason for needing the evaluation. **Examples:**

- DSHS did not get evaluations of all your medical problems that they know about.
- You have a past medical problem you believe still keeps you from working. No one has evaluated it.
- An evaluation mentions medical problems outside the doctor's expertise, or recommends evaluations DSHS did not get.
- The doctors did not completely evaluate your medical condition or fill out the form for other reasons. **Examples:** They did not put how long they expect you to be unable to work. They left out medical conditions.
- DSHS says no medical evidence supports what a doctor said about your condition or how it limits your ability to work. Ask DSHS to check with the doctor or to say what testing you need. If you need more tests, ask DSHS to pay for them.

What if DSHS will not pay for more tests?

Call the OAH. Your Notice of Hearing lists the number. Ask for a pre-hearing conference. At that conference, you can ask the ALJ to order DSHS to pay for a second evaluation.

If the ALJ will not do this, try to get one from another doctor yourself. Try a doctor you have seen before. Ask your doctor to use DSHS's evaluation form. Ask DSHS for blank forms to bring to your doctors, or print them yourself from www.dshs.wa.gov/forms/eforms.shtml. Form 13-021 is for physical conditions. Form 13-865 is for mental health conditions.

You can also ask the ALJ at the hearing to order DSHS to pay for more evaluations. Getting more evaluations may help you settle or win.

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

If the AHC left out information from the packet that you think helps you, make a copy for the ALJ before the hearing. If you give the AHC a copy before the hearing, the AHC should get it to the ALJ for you.

At the hearing, give examples from your daily life. You should especially give examples of situations where you worked or tried to work. You can have people who know you well testify to what you can and cannot do.

Can I get legal help?

Call CLEAR, a toll-free intake, advice, and referral service run by the Northwest Justice Project: 1-888-201-1014 between 9:15 a.m. and 12:15 p.m. weekdays.

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