

How to Petition for Superior Court Review

When should I use this packet?

This information relates to DSHS cases like TANF, Medicaid (including long term care), Food Assistance, licensing, and child care. Use this packet if you already had a fair hearing with an Administrative Law Judge (ALJ). If you disagree with something DSHS does and have NOT yet had a fair hearing, use our publication called, [Representing Yourself at a Fair Hearing](#), available from our web site, www.washingtonlawhelp.org, or from CLEAR or your local legal services office.

Introduction

If you disagree with the final administrative decision, you may appeal your case to Superior Court. The appeal is called a "Petition for Review of an Administrative Order." You may file your appeal in either the Superior Court of the county where you live or in Thurston County Superior Court in Olympia.

This packet explains when and how to petition the Superior Court for review. This is not an easy process. Do not get discouraged. You may need to read this several times or ask someone about it. You can find the laws regarding petitions for judicial review in [RCW 34.05.510](#) through [.598](#). This packet includes forms you can use for Petition for Review of an Administrative Order and Declaration of Service.

Do I have to use the administrative process first?

Yes. Before you file a Petition for Review in Superior Court, you must finish the administrative appeals process. If you do

not, the Superior Court cannot hear your case. There are two steps in the administrative process:

- 1) a fair hearing with an Administrative Law Judge (ALJ) from the Office of Administrative Hearings, and
- 2) a Board of Appeals (BOA) Review. If the ALJ's decision is called a "Final Order," skip this step.

If the ALJ's written decision is called an "Initial Order," you must appeal to the BOA before you can file in Superior Court. This is confusing, but it is very important. For more information, see [WAC 388-02-0217](#) and [388-02-0600](#).

What is the deadline for filing a Petition for Review?

You must **file and serve** a Petition for Review **within thirty (30) days of the final administrative order**. The 30 days starts from the date on the decision, **not** the date you got it. The instructions below explain what the Petition must say, how and where to file it, who must get copies of the petition (service), and how to serve it.

What are the general rules about Petitions?

As a general rule, you can only raise issues and arguments in your petition that you raised at the fair hearing. There are a few exceptions to this rule, including:

- new facts that you could not have discovered before, if you are challenging a DSHS rule (WAC), or
- if you were not notified of the fair hearing.

For more information about raising new issues, see [RCW 34.05.554](#).

Also, you cannot put new evidence (facts) into the record except in very limited circumstances. Generally, the Judge reviews only testimony and documents filed in the administrative process. You can sometimes add new facts if you could not have discovered them earlier, or if the judge or DSHS improperly kept the facts out of the record. If important facts are missing, the court can “remand” (send back) the case to get those facts. For more information on new evidence, see [RCW 34.05.562](#).

If you are arguing that a DSHS rule is invalid, you must prove specific reasons for that. See [RCW 34.05.570 \(2\)](#).

The burden is on you to prove your case. The court will change the decision for limited reasons only. Those reasons are listed in section 6 of the attached Petition for Review form and in [RCW 34.05.570 \(3\)](#).

What is in the Petition?

The Petition must have the following information. If at all possible, you should type your petition. If not, print neatly. We included some of this information on the attached Petition form:

1. Your name and mailing address;
2. The name and mailing address of the agency whose decision you disagree with (already printed on the attached form);
3. A statement identifying the decision you are appealing by agency (DSHS), type (usually “Final Order”), issuing agency (“Board of Appeals” or “Office of Administrative Hearings”), the date it was issued, and the docket number (the number on the

upper right-hand side of the first page of the order).

4. Identification of the parties in the fair hearing (usually you and DSHS);
5. A statement that the petition is timely filed with the proper court, that you have exhausted the administrative remedies, and that you are the person who is aggrieved by the decision that you are appealing (already printed on the attached form).
6. The reasons you think the decision is wrong. Use the blank lines on the form. If you need more room, write “see attached” in these lines. Then attach an extra sheet titled “Petition, Paragraph 6.”
7. What you are asking the court to do. Examples of specific relief are:
 - a. "I ask the court to reverse the administrative decision and grant me TANF benefits without a sanction back to the date DSHS sanctioned me;" or
 - b. "I ask the court to reverse the administrative decision and reinstate my TANF benefits back to January 1, 2010;" or
 - c. "I ask the court to change the administrative decision and stop DSHS from collecting the overpayment."
8. Attach a copy of your fair hearing decision. If that decision is an “Initial Order,” also attach your Final Order from the BOA.

How do I file the Petition?

Make three copies of your Petition for Review and attachments.

File the original with the Superior Court Clerk. You may file it either in your own county or in Thurston County. The Clerk will stamp it with a number. Put that number on the three copies, too. Most clerks also have a date stamp you can use on your copies to show when you filed them. There is no charge for filing the petition. [RCW 74.08.080\(3\)](#)

How do I serve the Petition?

In addition to filing your petition for review with the court, you must serve copies of your petition on DSHS, the Office of the Attorney General, and any other parties. To serve DSHS, you must deliver a copy of the petition to the DSHS Board of Appeals (BOA). You may hand-deliver the petition or send it by mail that gives proof of receipt. The physical location of the BOA is: Blake Office Bldg. East, 2nd Floor, 4500 10th Ave. SE, Lacey, WA 98503. The phone numbers are (360) 664-6100 or toll free, 1-877-351-0002, or TTY (360) 664-6178. The mailing address of the BOA is:

DSHS Board of Appeals
PO Box 45803
Olympia, WA 98504-5803.

To serve the Office of the Attorney General and any other parties, you may send a copy of the Petition for Review by regular mail. You may serve the Office of the Attorney General by hand delivery to: Office of the Attorney General, 7141 Cleanwater Dr. SW, Tumwater, WA 98504. The mailing address is:

Office of the Attorney General
P.O. Box 40124
Olympia WA 98504-0124

Keep the Post Office's proof that you mailed the envelope.

You must file and serve your Petition for Review of an Administrative Order within thirty (30) days of the date on the final administrative order. Whether you serve in person or by mail, DSHS and the Attorney General **must** get the petition by the deadline.

Keep the final copy of the Petition for yourself.

How do I prove that the Petition was served?

Save the post office receipt(s) showing delivery for proof of any documents you serve by mail. For any hand-delivered documents, you must have the person who served them sign a "Declaration of Service." Use the form at the end of this packet.

What happens after I have filed the Petition?

1. The Record - In about a month, you will receive a copy of the documents and decisions from your fair hearing and BOA review (if any). There should be information about how to get a copy of a written transcript (a typed-out version of the hearing itself, including testimony of witnesses). You should get the transcript if you think the facts are not correctly written in the decision. You may not need it if you agree with the facts as written. If you are low-income, you will not have to pay for the transcript.

2. The State's Representative - An Assistant Attorney General (AAG) will represent DSHS. The AAG will send you a "Notice of Appearance" with his/her name, address, and phone number. After you get this notice of appearance, you must send a copy of any further papers that you file with the court to this AAG. This is your first chance to try and settle the case with the state's lawyer (the AAG.) Call her/him and talk about why you think the administrative decision is wrong. The AAG might contact you as well. The AAG represents DSHS. S/he cannot give you legal advice.
3. Setting Your Case for Trial - Next, you will need to set your case for a hearing in the Superior Court so a judge can hear and decide the case. Every county does this differently. Contact the Clerk's Office of the Superior Court where you filed your case. Ask how to set a Petition for Review case for trial. The paper you need to fill out will probably be called a "Note (or Notice) for Trial Setting." The Clerk will have the right form. You need to fill out the form and make two copies. **File the original with the Court Clerk. Send a copy to the AAG (and any other parties). Keep a copy for yourself.**
4. Settlement Negotiations - You may contact the AAG to try to settle your case before or after setting it for trial. If you get a settlement you are satisfied with, be sure the agreement is in writing, signed by you, the AAG, and any other parties, and filed in the court file. The written agreement should state that

the matter is resolved and that your case should be dismissed.

5. The Trial: Proceeding if Settlement Fails - If you are unable to settle your case, it will go to trial unless you decide not to go forward and dismiss it. You need to go to the court on the scheduled date and tell the judge why you think you should get the relief you have asked for. (See "What is in the Petition?" # 7 for examples of relief). The burden is on you to prove DSHS was wrong. If you can, review the laws that apply to your case, especially [RCW 34.05.570 \(1\)](#) and (3). Tell the judge why you believe the law and/or rules support your claim. You will not be able to bring witnesses or introduce new evidence. The judge will base the decision on the evidence presented at the fair hearing by both you and DSHS and the reasons that you have given the judge as to why you believe you should win.

How can I get help?

- Apply online with [CLEAR*Online](http://nwjustice.org/clear-online) - <http://nwjustice.org/clear-online> or
- Call CLEAR at 1-888-201-1014

CLEAR is Washington's toll-free, statewide intake, advice and referral service for low-income people looking for free legal help with civil legal problems.

- **Outside King County:** Call 1-888-201-1014 weekdays from 9:10 a.m. until 12:25 p.m. CLEAR works with a language line to provide free interpreters as needed. If you are deaf or hard of hearing, call 1-888-

201-1014 using your preferred TTY or Video relay service.

- **King County:** Call 211 for information and referral to a legal services provider Monday through Friday from 8:00 am – 6:00 pm. Or call (206) 461-3200, or the toll-free number 1-877-211-WASH (9274). 211 works with a language line to provide free interpreters as needed. If you are deaf or hard of hearing, call 1-800-833-6384 or 711. You will be connected to a relay operator at no cost, who will then connect you with 211. You may also find information on King County legal service providers on 211's website: www.resourcehouse.com/win211/.
- **If you are age 60 or Over:** Call CLEAR*Sr. at 1-888-387-7111, regardless of your income.

Also, some lawyers offer a free consultation and advertise this in the yellow pages of your local phone book. Sometimes lawyers will take these types of cases because if they win the case they can get attorneys' fees from the losing party (the State).

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF _____

No. _____

PETITION FOR REVIEW

NO FILING FEE REQUIRED
(RCW 74.08.080(3)(a))

Petitioner

vs.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL & HEALTH
SERVICES,

Respondent

1. The Petitioner, _____ [Name of Petitioner], whose mailing address is _____, petitions for review pursuant to RCW 34.05.510 et seq. and RCW 74.08.080, of an administrative agency decision.

2. The decision is from the Department of Social and Health Services (DSHS). Their address is: DSHS Board of Appeals, P.O. Box 45803, Olympia, WA 98504-5803.3.

At issue is the fair hearing decision of the DSHS, docket number _____, which was issued on _____, 20____. A copy of the decision is attached to this

1 Petition.

2 4. The parties in the hearing were Petitioner herein and the Department of Social and Health
3 Services.

4 5. This Petition for Review is timely filed with the proper court. Petitioner has exhausted
5 administrative remedies and is aggrieved by the final decision of the agency. 6. Petitioner is
6 entitled to relief pursuant to RCW 34.05.570(3) because _____
7 _____

8 _____ and based on one or more of the following:

- 9 (a) the order, or the statute or rule on which the order is based, is in violation of
10 constitutional provisions on its face or as applied; or
- 11 (b) the order is outside the statutory authority or jurisdiction of the agency conferred
12 by any provision of law; or
- 13 (c) the agency has engaged in unlawful procedure or decision making process, or has
14 failed to follow a prescribed procedure; or
- 15 (d) the agency has erroneously interpreted or applied the law; or
- 16 (e) the order is not supported by evidence that is substantial when viewed in light of the
17 whole record before the court; or
- 18 (f) the agency has not decided all issues requiring resolution by the agency; or
- 19 (g) a motion to disqualify the administrative law judge was made and was properly
20 denied or, if no motion was made, facts are shown to support the granting of such a
21 motion that were not known and were not reasonably discoverable by the challenging
22 party at the appropriate time for making such a motion; or
- 23 (h) the order is inconsistent with a rule of the agency unless the agency explains the
24 inconsistency by stating facts and reasons to demonstrate a rational basis for
inconsistency; or
- (i) the order is arbitrary or capricious.

7. **WHEREFORE**, Petitioner asks the Court for judgment:

A. Changing the fair hearing decision and granting other relief as follows:

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B. Awarding costs to Petitioner;

C. Awarding any further relief this Court deems proper.

DATED: _____
_____ Petitioner

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF _____

Petitioner

vs.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL & HEALTH
SERVICES,

Respondent

No. _____

**DECLARATION OF PERSONAL
SERVICE**

(No Mandatory Form Developed)

On _____ (date) in _____ County, Washington, I served the
Petition for Judicial Review in the above-entitled action on Respondent by handing to and
leaving with said Respondent a true and correct copy of said document.

I certify under penalty of perjury under the laws of the State of Washington that the
foregoing statements are true.

Dated: _____

Place: _____

Signature