

HOW TO FIGHT YOUR GAU TERMINATION FOR MEDICAL REASONS

When you start getting General Assistance Unemployable (GAU) benefits, the local Department of Social and Health Services (DSHS) welfare office uses the medical evidence that proves you are incapacitated (unable to work) to decide how soon they should review your case. After the review, they may send you a letter saying that they will terminate (stop) your benefits. **The most important thing to know is that you must ask for a fair hearing soon, usually within 10 days after DSHS mails the letter, to keep getting your benefits while you appeal.** This publication is about DSHS stopping your GAU because they no longer believe that your medical condition prevents you from working. If your GAU is being stopped because DSHS says you have too much income or resources, see our publication [How to Fight a Public Assistance Termination or Reduction](#).

If you need help to get or keep DSHS benefits, DSHS may be required to offer you extra services and protections before they deny your application. This could be because you have a physical or mental disability; problems reading or writing; problems speaking or understanding English; problems from drug or alcohol use; or other problems. If you think you need extra help, see our publication called [Necessary Supplemental Accommodations \(NSA\)](#).

What can I do if I get a termination letter?

You may ask for a fair hearing, may apply again, or may do both. If DSHS did not send you a letter before your benefits stopped, you should ask for a fair hearing and tell the fair hearing coordinator you never got notice. The law requires DSHS to send you a letter explaining why they are stopping your benefits.

1. Fair Hearing

You have up to 90 days from the date of the notice to request a hearing. However, if you want to make sure that you will continue to receive benefits *ask for the fair hearing right away, within ten days from the date of the termination or reduction notice.

You can ask for a fair hearing by writing or calling the Office of Administrative Hearings at P.O. Box 42489, Olympia, WA 98504, phone: 1-800-583-8261. Or you may ask for one by calling or writing your DSHS office. If it is an emergency, you may ask to have your hearing held as soon as possible by calling the OAH. This is called an “expedited” hearing. Otherwise, your hearing will probably be 20 days or more after you ask for it.

A hearing will be held and a written decision will be made by an Administrative Law Judge who does not work for DSHS. If you win your hearing and you did not receive continued benefits pending the hearing,

the Administrative Law Judge will order the benefits reinstated effective the day that DSHS terminated them. *If you get continued benefits and lose your hearing, DSHS can bill you for an overpayment of up to two months worth of the continued benefits.*

After you ask for a hearing, you can ask your DSHS social (incapacity) worker to explain more about the decision. You may learn that DSHS had the wrong information or was missing some information. If so, try to provide the information. Ask your social worker for any help you need to get it. If it would cost you money to get the information, ask DSHS to pay for it or if there is some other proof they would accept. You may also ask the worker's supervisor for a meeting to review the termination. If you write to the supervisor, he or she must write back within 10 days. If that doesn't change the decision, you can write the head (administrator) of the local DSHS office, who also must write back in 10 days. **If you disagree with what the worker, supervisor, and administrator decide, there is no more appeal unless you also request a fair hearing.**

2. *Reapply.*

You may apply again for benefits at any time, even if you have requested a fair hearing. But **approval of a new application may not cover all the time since your termination.** Reasons for reapplying include:

- you think DSHS may have been correct to terminate you before but your circumstances have changed; or
- you have more information that might change the decision, but your DSHS worker or supervisor refuses to consider it unless you apply again. You can apply again while also trying to use the new information in your fair hearing.

What should I do after I request my hearing?

Contact the Fair Hearing Coordinator (FHC) at the local DSHS office. The FHC will represent DSHS in the hearing. Many cases can be settled before the hearing by pointing out how DSHS made a mistake or by getting more complete medical information. Before the hearing, the FHC must prepare and give you a fair hearing packet that gives details about their case and includes all of the documents that DSHS will present as evidence. You can prepare better for your hearing if you get started before you get the packet. Phone the FHC and ask for an appointment to look at your file and discuss your case. Get copies of all the medical reports and other documents in your file that DSHS got and made in deciding your case (there could be medical information favorable to you that DSHS doesn't include in the packet). The termination letter should give at least one Washington Administrative Code (WAC) rule that DSHS believes supports its decision. Ask the FHC for any other rules that DSHS relied on. The GAU rules are in WAC [Chapter 388-448](#). You may read the rules at the DSHS office or your public library, or online at <http://www.leg.wa.gov/wac/>. Ask the FHC to explain anything about DSHS's decision that you do not understand, and ask what evidence would convince DSHS to change its decision. Then, if you can,

get that evidence. If you cannot reach the FHC, or if you believe he or she is unreasonable, ask to speak to the supervisor or to the administrator of the DSHS office. If DSHS still does not agree with you, present your case to the judge at the fair hearing.

When may DSHS stop GAU benefits for medical reasons?

Until September 2003, DSHS had to show that your medical condition had clearly improved since your last review, or that DSHS made a mistake when it first approved you. However, the Washington State Legislature changed the law to allow DSHS to stop your GAU at the time of review unless your current medical evidence proves that there was “no material improvement” in your medical or mental condition.

DSHS’s rules say that there is “no material improvement” if the evidence shows that your overall medical and mental condition still meets the requirements for incapacity in DSHS’s “Progressive Evaluation Process” (PEP). PEP is described in WAC 388-448-0040 through -0110. DSHS will also stop your benefits if they do not get any medical information by the review deadline that they gave you. They should not, but sometimes do, stop benefits because they say the new medical information is incomplete or inconclusive (the phrase often used is that “there is no clear, objective evidence” of your claimed medical condition). In those cases DSHS should not decide against you until they have obtained enough medical evidence to fully review your condition. If DSHS says there is no objective medical evidence supporting what a doctor has said about your condition or how it limits your ability to work, ask them to follow up with the doctor or tell you what specific testing is needed, then authorize payment for that testing.

How do I argue that I should still get GAU?

DSHS decides whether you are able to work by first getting medical and vocational information, usually on DSHS physical or psychiatric/psychological evaluation forms from one or more doctors who have treated or examined you. Then they use a seven-step PEP form that is based on the WAC Chapter 388-448 rules. You need to figure out what parts of the evaluations, and what step of PEP, show DSHS’s reason for stopping your benefits. (*DSHS should not be able to use the old law and stop your benefits simply because they believe they made a mistake in approving you in the first place. They must first get current evaluations of your medical and mental conditions that they know about.*)

If DSHS says that you have not proven that there has been no material improvement in your condition, you can either try to use DSHS’s own records to show that they are incorrect, or get other medical information that supports you. The issue is whether you are now able to work in a regular, competitive work setting on a day-to-day basis, considering your overall physical and mental condition.

How can I get and use more medical evidence?

If you think any doctor who did an evaluation for DSHS in this review may support you on any point that DSHS has told you is important to their decision, ask him or her for a letter of support. If you have a regular treating doctor, psychologist, nurse practitioner, or mental health worker, you may be able to get from them the proof that DSHS says it needs. The law requires DSHS to give great weight to the opinion of your treating physician. If you are a client of DVR (Vocational Rehabilitation), ask your DVR counselor for copies of all the medical or vocational information in your file there. If you find helpful information in those records, use it to try and convince the FHC to settle your case. If that fails, use it at your hearing.

If you believe that you need more medical evidence to prove your case, ask DSHS to arrange and pay for obtaining it. You have to give a good reason why the evidence is needed to completely review your ability to work. Some examples are:

- If DSHS made their decision without getting a new evaluation of all your medical problems that they know about;
- If you have a new physical or mental problem since DSHS last approved you;
- If you have a history of a medical problem which you still believe prevents you from working but which was not evaluated for this review;
- If any doctor's DSHS evaluation form mentions medical problems that are outside that doctor's expertise, or recommends more evaluation that DSHS did not get;
- If you have some other reason to believe that the doctors who did DSHS reports did not completely evaluate your medical condition.
- If DSHS is stopping your GAU for contradictory evidence or "lack of objective medical evidence" supporting your claim.

If DSHS refuses to pay for more evidence before your hearing, you may phone the OAH (the number is listed on your Notice of Hearing) and ask to speak with an administrative law judge. If the judge does not order DSHS to pay for a further evaluation, you can try to get an evaluation from another doctor yourself. You may want to try seeing a doctor you saw in the past. Any further evaluations you get may persuade the FHC to settle the case or persuade the judge at the hearing. Finally, you may ask the judge at the hearing itself to order DSHS to pay for more evaluation.

How do I present my case at the hearing?

If you cannot settle your case, bring to the hearing your copies of the FHC's fair hearing packet and all other medical evidence and other documents that you want the ALJ to consider. Our publication [Representing Yourself at a Fair Hearing](#) gives general information about how to prepare, how to submit your documents as exhibits, and how to present your case in any fair hearing. At a

GAU hearing, be ready to testify in detail about how your medical problems limit what you are able to do. The WAC rules, the DSHS evaluation forms, the PEP form, and the fair hearing packet will help you understand what issues to focus on. Give examples of how your medical and mental conditions affect you throughout your daily life, especially in situations where you worked or tried to. It can also help to have one or more people who know you well testify to what they have observed that you are able and unable to do.

How can I get legal help?

You can begin by calling CLEAR, a toll-free intake, advice, and referral service run by the Northwest Justice Project. Call toll free 1-888-201-1014 between 9:30 a.m. and 12:30 p.m., Monday through Friday, or between 3:30 p.m. and 6:15 p.m. on Tuesday. TTY callers can leave messages anytime toll-free at 1-888-201-9737 and will be called back.

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