

Exception to Rule (ETR)

Introduction

The Department of Social and Health Services (DSHS) is able to give you some types of benefits even if you don't meet all of the requirements. This is called an "exception to a rule" or "ETR". DSHS considers ETR requests on a case-by-case basis and approves requests only in limited circumstances. Below are examples of programs or benefits DSHS may consider for ETRs:

- Temporary Assistance for Needy Families (TANF) including Workfirst
- Childcare
- General Assistance
- Alcohol and Drug Addiction Treatment and Support Act (ADATSA)
- Medical or dental services or related equipment (some different rules apply)
- Medical assistance *eligibility* decisions
- COPES or Medicaid Personal Care (MPC) benefits

ETRs, Fair Hearings and Deadlines

In most situations, you should request a fair hearing in addition to an ETR if DSHS denies, reduces, or stops your DSHS benefits. Be aware of these deadlines:

- ✓ ETR requests (other than for medical or dental services) do not have specific deadlines. Preparing the request and getting information to support your request can take time though, so you should act immediately.
- ✓ DSHS must receive ETR requests for medical or dental services in writing within 90 days of the date on the notice denying DSHS payment for the service.
- ✓ DSHS and/or the Office of Administrative Hearings (OAH) must receive requests for a fair hearing within 90 days of the date when you received written notice stating that your benefits were denied, reduced, or terminated.
- ✓ If DSHS is stopping (terminating) benefits, and you want to keep getting the service or benefit until you get a fair hearing decision, you must request a fair hearing and "continued benefits" within **10 days** of the DSHS notice or before the date the service or benefit stops. Be aware that DSHS can ask you to pay back up to 60 days worth of continued benefits only if you lose your appeal.
- ✓ If you miss your deadline, you may still appeal or request an ETR. However, you may need to show that you had a good reason, or "good cause," for missing the deadline. For example, you were in the hospital and were unable to file an appeal.

If you request a fair hearing, you will want to receive the decision on your ETR before the hearing. If your fair hearing is scheduled to occur before you think you will receive a decision on the ETR, contact the assigned Fair Hearing Coordinator (FHC) and the Office of Administrative Hearings (OAH) and request that your hearing be continued to a later date. Explain to the FHC and OAH that you are waiting for a decision on an ETR request regarding

the same issue. Contact information for the FHC and OAH should be on the hearing notice. Or, to contact your local OAH office, go to <http://www.oah.wa.gov/officesContacts.shtml>.

Is an ETR right for me?

ETR requests not involving medical or dental services

When deciding whether or not to approve your ETR request, DSHS considers the following factors. You can find this rule in WAC 388-440-0001, available at your local library or online at <http://apps.leg.wa.gov/WAC/default.aspx?cite=388-440-0001>.

- ✓ The exception would not go against federal or state law;
- ✓ Your situation differs from the majority;
- ✓ The exception is in the interest of the overall economy and your welfare;
- ✓ And either
 - The ETR increases opportunities for you to function effectively; or
 - You have an impairment or limitation that makes it very difficult to use the normal eligibility or payment process.

Example: The maximum for emergency assistance for housing and utilities is \$750. Your child is on a ventilator in your home, and you are behind on utility bills by \$1,000. You received a shut-off notice for the power. You will be able to afford the monthly charges in the future, but you cannot make up the back bills. Without electricity to run the ventilator, your child's safety will be threatened. You may request an ETR for additional emergency assistance to keep your electricity on.

Example: Your COPES or MPC in-home care hours are reduced at your yearly CARE assessment. For more information about CARE tool assessments, see our publication called "[*Understanding Your CARE Tool Assessment*](#)." Some examples of when to request an ETR include:

- You have multiple, extreme, or constant behaviors that require additional time or supervision and make care extremely difficult.
- You have a medical condition that is not listed by DSHS as clinically complex, but your condition has the same impact on your ability to care for yourself as a condition that is listed. For example, you have a rare chromosomal disease, that has the same functional impact as Cerebral Palsy, but you will not receive the same number of in-home care hours as someone who has Cerebral Palsy.

ETR requests involving noncovered medical and dental services

When deciding whether or not to approve your ETR request, the Health and Recovery Services Administration (HRSA, formerly known as the Medical Assistance Administration) looks at the following factors listed under [WAC 388-501-0160](#):

- ✓ The requested service is not excluded under state law;
- ✓ The item(s) or services fall within accepted standards of good medical practice;

- ✓ The requested service or equipment will result in a lower overall cost of care;
- ✓ You followed certain procedural steps (see below);
- ✓ Your clinical condition is so different from the majority that there is no other Medicaid service or item that would meet your needs as well for less money; and
- ✓ The medical services DSHS would pay for under their rules have not or would not work for you.

Example: Your dentist recommends a dental procedure to treat a calcium growth on the inside of your mouth, and DSHS denies coverage. In most people the growth is harmless, but in your case, you are unable to have dentures fitted for your mouth. You can request an ETR, showing that your situation is rare, removal is the only treatment available, and removal will be cheaper in the long run because it will prevent you from developing further medical problems.

Example: Your doctor recommends botox injections to treat a rare medical condition that affects the use of your muscles. DSHS denies coverage, because your condition is rare or the medical treatment is considered experimental. You may request an ETR and argue that there is no other treatment that works as well and costs less, and that the treatment will result in a lower overall cost of care by allowing you to live independently without the aid of a care provider.

How do I request an ETR?

Ask your case manager to request an ETR for you. If your case manager refuses to do so, you can request an ETR on your own. Send your ETR request, and any supporting documentation, to your case manager or, if you are requesting the ETR on your own, to the ETR Coordinator for your Community Services Office (CSO), DDD office, or Home and Community Services Office. To learn the ETR Coordinator's name, contact your local office.

For medical and dental ETR requests, you should send your request and supporting documentation directly to:

HRSA
 P.O. Box 45506
 Olympia, Washington, 98504-5506

Your medical and or dental providers may also submit the ETR request on your behalf. For more information, contact the HRSA Customer Service Center at 1-800-562-3022.

What documentation do I need to prepare and send to DSHS?

Your ETR request should include:

- ✓ A letter to DSHS explaining why you should receive an ETR and how your situation meets each of the requirements for granting an ETR.
- ✓ Documents or evidence supporting your ETR request, including a statement or records from your doctor, dentist, care providers, or other medical professionals.

When preparing your request, remember:

- ✓ Your request should cite (give the number for) the rule that you want DSHS to except you from. [example of a cite: [WAC 388-106-0030](#)]

- ✓ ETR requests for medical and dental services must be submitted in writing within 90 days of the date of the written notice denying authorization for the service.

The following examples of client letters and requests for statements from medical professionals are attached to this publication. They should be changed to meet your specific situation.

- **Appendix A** - A form letter requesting an ETR for benefits (other than medical or dental services).
- **Appendix B** - A form letter requesting an ETR for noncovered medical or dental services.
- **Appendix C** - An example of a request for a statement and documentation from your doctor or dentist.

Once I request an ETR, how long will it take for DSHS to notify me of their decision?

For ETR requests other than medical or dental services, you should receive the decision in writing within 10 days of 1) the decision to file your ETR request if you requested that a case manager submit your ETR request, and 2) DSHS's decision to approve or deny your ETR request.

For ETR requests for medical or dental services, HRSA has 15 working days to give you written notice of its decision. HRSA may also request additional information, and it must receive this information with 30 days of the request. HRSA will then approve or deny the ETR request within 5 business days.

Can I continue to receive my benefits while I wait for a decision on my ETR?

You cannot receive continued benefits if you request only an ETR and not a fair hearing.

If you request a fair hearing within 10 days of the date on the DSHS notice informing you that your benefits are being reduced or terminated, you may get continued benefits until an Administrative Law Judge (ALJ) makes a decision in your case. If the tenth day happens before the end of the month, you have until the end of the month to ask for a fair hearing and still be able to get continued benefits. If you lose your fair hearing, DSHS may ask you to pay back up to 60 days of assistance.

What can I do if my ETR is denied?

In general, under DSHS regulations, there is no right to fair hearing for a denial of an ETR. If you do not agree with the department's decision regarding your ETR, you may file a complaint with DSHS. A complaint is not the same thing as a fair hearing and does not include the opportunity to present your case in front of a judge. Complaints should first be submitted to a department supervisor and then to the department administrator. DSHS is required to respond with a decision within ten days. See [WAC 388-426-0005](#).

If you have been receiving additional in-home personal care hours (beyond what you would have gotten under the CARE assessment) and the ETR for those additional care hours is later reduced or terminated, you do have a right to a hearing regarding the reduction or termination in services

under DSHS regulations. See [WAC 388-825-120](#) (for clients of DDD) or [WAC 388-106-1315](#) (for all other clients receiving in-home personal care services through DSHS). If you have not been receiving additional hours through an ETR, and your initial ETR request is denied, you may want to talk to a lawyer about your right to a hearing for an ETR denial.

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, September 2007.

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APPENDIX A

(Name)

(Street Address)

(City, State Zip)

(Date)

(DSHS Employee)

DSHS

(Street Address)

(City, State Zip)

RE: ETR request to increase AREN payments, Client ID # (XXX)

Dear *(DSHS Employee)*,

I am requesting an Exception to Rule (ETR), under WAC 388-440-0001 and WAC 388-436-0002, to receive additional emergency assistance for housing and utility expenses. I previously received AREN (Additional Requirements for Emergent Needs) benefits to prevent me and my family from becoming homeless. Although my AREN benefits are limited to \$750 dollars in a 12-month period, I need additional AREN benefits because I have received a shut-off notice from the utility company for my unpaid bills. If my electricity is turned off, my disabled son's life will be at risk.

I am a single mother with three children. One of my children, Scott, has a spinal cord injury that requires him to be on a ventilator at home. If Scott is not on a ventilator, he is at immediate risk of suffocation and possibly death.

My utility costs last year exceeded \$750. Since Scott's accident, I have been unable to work as much as I used to. We have less income, and I have been unable to pay for our many medical and child care bills. My sister will be moving in with us soon to help me care for Scott. Because of this, I will be able to work more and pay my utility bills in the future.

I meet all of the ETR requirements for increased AREN benefits. Specifically:

1. I do not know of any federal or state law that would prohibit or contradict the granting of an ETR.
2. My situation is unique (different from the majority). I was unable to pay my utility bills because I had to take care of my disabled son and was unable to work full-time. There is no one else available to help me take care of Scott. Also, Scott's medical equipment must remain functioning at all times; if our power is shut-off, my son could die.
3. Increased AREN benefits are economical and in my family's welfare. Granting an ETR for increased AREN benefits will be cheaper in the long run, because it will

prevent future hospitalizations and homelessness. My son will not require expensive emergency hospital care if his medical equipment remains functioning.

4. Increased AREN benefits will increase opportunities for my family to function effectively, because they will allow me to maintain the stability of my household. My family will not be forced to move and find other housing, which could put my son's health at risk. Our family is just beginning to come out of this crisis. Once my sister moves in, I can return to my regular work schedule. Scott will be able to continue to recover from his trauma.

Thank you for considering my ETR request for additional emergency assistance with my utility expenses. I look forward to hearing from you soon.

Sincerely,

(Your name)

APPENDIX B

(Name)

(Street Address)

(City, State Zip)

(Date)

(ETR Coordinator)

DSHS

(Street Address)

(City, State Zip)

RE: ETR request for tori (calcium deposit) removal, Client ID # (XXX)

Dear *(ETR Coordinator)*,

I am requesting an Exception to Rule (ETR) for the denial of my request for coverage of tori (calcium deposit) removal. The Health and Recovery Services Administration (HRSA) has denied my request for this dental procedure because it is not covered under WAC 388-535-1265(2)(y).

My dentist, Dr. Jane Smith, has informed me that I have large calcium deposits on my lower jaw. Unless the calcium deposits are removed, I will be unable to have dentures placed in my mouth. I have diabetes and I have very specific dietary needs. Without dentures, I would have no teeth and I would be unable to chew fruit and vegetables. I would be unable to manage my diabetes, and my health would be at risk.

I meet all of the ETR requirements for medical services under WAC 388-501-0160. Specifically:

1. The requested service is not excluded under state statute.
2. Tori removal falls within accepted standards of good medical practice.
3. Tori removal will result in a lower overall cost of care. With dentures, I am less likely to develop jaw disorders that will require further dental treatment. If I am able to manage my diabetes, I am less likely to require emergency medical care.
4. My clinical condition is different from the majority. Unlike other people, I have multiple medical conditions that could get worse if I do not receive coverage for this dental procedure. The dentures would help me from developing painful jaw problems and help keep my diabetes under control.
5. There is no other Medicaid service or item that would meet my needs as well for less money, and other medical services DSHS would pay for would not work for me. Unless the calcium

deposits are removed, the dentist cannot make denture molds for my mouth. There are no other alternative services or procedures.

To support this request, I have included statements and medical records from my dentist and my primary care doctor. Thank you for considering my ETR request. I look forward to hearing from you soon.

Sincerely,

(Your name)

APPENDIX C

(Name)
(Street Address)
(City, State Zip)

(Date)

(Medical Provider)
(Hospital)
(Street Address)
(City, State Zip)

Dear (Medical Provider),

As you know, the Department of Social and Health Services (DSHS) has denied coverage for my request for calcium deposit (tori) removal on the basis that this dental procedure is not covered by DSHS. I am trying to get the most complete and accurate medical information to show that this dental procedure is “medically necessary” and that it would qualify under an Exception to Rule (ETR) request.

“Medically necessary” is defined as a service or equipment that is: “...reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service.”

In order to qualify for an ETR, I must show that the requested service or equipment:

- ✓ **Falls within accepted standards of good medical practice;**
- ✓ **Results in a lower overall cost of care;**
- ✓ **My clinical condition is different from the majority and there is no equally effective, less costly covered service or equipment that meets my needs; and**
- ✓ **Covered medical services indicated for me have been medically ineffective or inappropriate.**

Will you please let me know if my request for tori removal is consistent with the “medically necessary” definition and the standards for an ETR request? Because there is a fair hearing approaching soon, I am hoping that you could provide me with a written statement addressing the issues above, and any supporting medical records, as soon as possible.

Sincerely,

(Name)