WAC 182-513-1367 Hardship waivers. (1) This section defines undue hardship for long-term services and supports (LTSS) and specifies the request, approval, denial, and other processes for hardship waivers.

(2) Undue hardship.

(a) Undue hardship exists when, without LTSS benefits, the client is unable to obtain:

(i) Medical care to the extent that health or life is endangered; or

(ii) Food, clothing, shelter or other basic necessities of life.

(b) Undue hardship does not exist when:

(i) The denial or termination of LTSS inconveniences the client or restricts the client's lifestyle but does not seriously deprive the client of the items described under (a) of this subsection;

(ii) The denial or termination of LTSS is because of a period of ineligibility under WAC 182-513-1363, and the asset was transferred by a person or entity handling the financial affairs of the client denied or terminated from LTSS, unless the department has found evidence of financial exploitation; or

(iii) The client's situation meets undue hardship under (a) of this subsection because of restrictions placed in a trust by that client, either personally or through a spouse, guardian, conservator, court, or another person authorized to act on behalf of that client through a power of attorney document (attorney-in-fact).

(3) A hardship waiver may be requested when a client is denied or terminated from LTSS under the following scenarios:

(a) A period of ineligibility under WAC 182-513-1363 was established for a client, and that client, who transferred the assets, or on whose behalf the assets were transferred, either personally or through a spouse, guardian, conservator, or another person authorized to act on behalf of that client through a power of attorney document (attorney-in-fact), has exhausted all reasonable means including legal remedies to recover the assets or the value of the transferred assets that caused the period of ineligibility;

(b) A client was denied or terminated from LTSS due to exceeding the home equity standard under WAC 182-513-1350, and the client cannot legally access the excess equity; or

(c) The client was denied or terminated from LTSS due to the application of rules regarding trusts under chapter 182-516 WAC, except that if the application of rules regarding trusts under chapter 182-516 WAC results in a period of ineligibility under WAC 182-513-1363, then (a) of this subsection applies instead of (c) of this subsection.

(4) Process to request a hardship waiver.

(a) A hardship waiver may be requested by:

(i) The client;

(ii) The client's spouse;

(iii) The client's authorized representative; or

(iv) With the consent of the client, a representative of the medical institution in which the client resides.

(b) The hardship waiver request must:

(i) Be in writing;

(ii) State the reason for requesting the hardship waiver;

(iii) Be signed by the requestor and include the requestor's name, address, and telephone number. If the request is being made on behalf of a client, then that client's name, address, and telephone number must be included;

(iv) Be made within 30 days of the date of denial or termination of LTSS; and

(v) Returned to the originating address on the denial or termination letter.

(c) If additional information is needed to determine whether or not to approve a hardship waiver, then, within 15 days of receipt of the request for the hardship waiver, the agency or the agency's designee sends the client a written notice requesting additional information under WAC 182-503-0050.

(5) Standards to approve a hardship waiver request.

(a) Period of ineligibility: If a client was denied or terminated from LTSS under WAC 182-513-1363 (the scenario described in subsection (3)(a) of this section) and undue hardship under subsection (2) of this section is found to exist, then the agency or the agency's designee approves a hardship waiver.

(b) Excess home equity: If a client was denied or terminated from LTSS under WAC 182-513-1350 (the scenario described in subsection (3)(b) of this section) and undue hardship under subsection (2) of this section is found to exist, then the agency or the agency's designee approves a hardship waiver.

(c) Trusts.

(i) The client's home is in a revocable trust: If a client was denied or terminated from LTSS under chapter 182-516 WAC (the scenario described in subsection (3)(c) of this section), then the agency or the agency's designee approves a hardship waiver for up to 90 days if the following conditions are met:

(A) The client is an institutionalized individual;

(B) The home would otherwise meet the exclusion criteria in WAC 182-512-0350 (1)(b), but it is in a revocable trust; and

(C) The client must submit in writing to the agency or the agency's designee that, in order to exclude the home under WAC 182-512-0350 (1)(b), the home will be retitled out of the revocable trust to the client, the client's spouse, or both, within 90 days.

(ii) All other denials or terminations of LTSS due to trusts: If a client was denied or terminated from LTSS under subsection (3)(c) of this section, and undue hardship under subsection (2) of this section is found to exist, then the agency or the agency's designee approves a hardship waiver.

(6) If the hardship is approved:

(a) The agency or the agency's designee sends a notice within 15 days of receiving all information needed to approve the hardship waiver. The hardship waiver approval notice specifies a time period for which the undue hardship waiver is approved.

(b) Any changes in a client's situation that led to the approval of a hardship waiver must be reported to the agency or the agency's designee within 30 days of the change per WAC 182-504-0110.

(c) If the hardship waiver is approved under subsection (5)(c)(i) of this section, the client must provide verification by the 90th day after the hardship waiver approval that the home has been retitled out of the revocable trust to the client, the client's spouse, or both.

(7) If the hardship waiver is denied:

(a) The agency or the agency's designee sends a denial notice within 15 days of receiving the hardship waiver request or the request for additional information. The notice will state the reason why the hardship waiver was not approved.

(b) The denial notice has instructions on how to request an administrative hearing. The agency or the agency's designee must receive

an administrative hearing request within 90 days of the date of the adverse action.

(8) The agency or the agency's designee may revoke approval of an undue hardship waiver if any of the following occur:

(a) A client, or the client's authorized representative, fails to provide timely information or resource verifications as it applies to the hardship waiver when requested by the agency or the agency's designee per WAC 182-503-0050 and 182-504-0105;

(b) The lien or legal impediment that restricted access to home equity in excess of the home equity limit is removed; or

(c) Circumstances for which the undue hardship was approved have changed.

(9) If there is a conflict between this section and chapter 182-526 WAC, this section prevails.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 25-04-040, s 182-513-1367, filed 1/29/25, effective 3/1/25. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-513-1367, filed 1/30/18, effective 3/2/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1367, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as WAC 182-513-1367, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-513-1367, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, Section 1917 (c)(2)(D) of the Social Security Act (42 U.S.C. 1396p (c)(2)(D), and Section 6011(d) of the federal Deficit Reduction Act of 2005. WSR 07-17-005, § 388-513-1367, filed 8/2/07, effective 9/2/07.]