STATE OF WASHINGTON
HEALTH CARE AUTHORITY
BOARD OF APPEALS

In Re:	)	Docket No. 02-2017-HCA-08264
	)	
[APPELLANT]	)	**REVIEW DECISION AND FINAL ORDER**
	)	
Appellant	)	Medical Assistance Eligibility—LTC

I. NATURE OF ACTION

1. The Department of Social and Health Services (Department or DSHS) was unable to determine whether [APPELLANT] (Appellant) and her spouse were eligible for Medicaid[1]-funded long-term care (LTC) and denied their application. The Appellant and her spouse reapplied for LTC benefits and DSHS determined that the Appellant was eligible, effective [DATE]. The Appellant asked for a hearing about the eligibility effective date.

2. After converting the hearing originally scheduled for [DATE], to a prehearing conference, followed by an Appellant-requested continuance of that prehearing conference, which was agreed upon by the parties and granted, and then a prehearing conference on [DATE], Administrative Law Judge (ALJ) Stephen Leavell of the Office of Administrative Hearings (OAH) in Spokane held a hearing on [DATE]. Crystal Lynn represented DSHS [APPELLANT REP 1], an attorney at law licensed in North Carolina, represented [FACILITY] Spokane and, by extension, the Appellant. [APPELLANT] moved to dismiss, arguing that the Appellant's request for hearing was untimely. Exhibits 1 through 13 and A through M were admitted to the hearing record. Sworn testimony was provided by: (1) [APPELLANT] and (2) [NAME 1], the Appellant's daughter and power of attorney. The hearing record closed [DATE].

3. The OAH mailed an *Initial Order* on [DATE]. In this decision, the ALJ wrote the following in the "Order Summary" section: "[t]he department's motion to dismiss for lack of

[1] Also known as medical assistance and Washington Apple Health. WAC 182-500-0070 and WAC 182-500-0120.

jurisdiction is granted?" In the Conclusions of Law of the *Initial Order*, the ALJ wrote, "[t]he appellant did not request a hearing within 90 days of the date that the department mailed the denial of the application for long term care benefits." He further wrote that "…the denial failed to adequately give the correct WAC for the reasons for a denial," citing WAC 182-503-0050 and the other agency rules included in the denial notice. The ALJ then inexplicably ordered that "[t]he Health Care Authority's action is REVERSED and REMANDED to the department to calculate the appellant's LTC benefits starting [DATE]."

4. On [DATE], the DSHS representative timely[2] filed a petition for review of the *Initial Order* with the Health Care Authority (HCA) Board of Appeals (BOA). She argues that the ALJ did not conclusively address the issue of whether jurisdiction existed in this matter and, if it does, he did not provide an opportunity for the agency to present evidence and witness testimony regarding the appropriate start date for the Appellant's LTC benefits. The DSHS representative also argues that the ALJ noted during the hearing that the only issue under consideration on [DATE] was jurisdiction and that, if jurisdiction was established, another hearing would be scheduled to address the merits. She asks that the HCA BOA "…dismiss the matter of denial letter dated [DATE] for lack of jurisdiction, as the appellant did not timely file an appeal." She also asks the undersigned to remand the matter of the Appellant's second application to the OAH for a hearing on the merits, with admitted evidence and witnesses. In addition, the DSHS representative filed a *Motion for Stay* with her petition for review, asking to stay the requirement in the *Initial Order* that the Department calculate benefits back to [DATE], the need for which is obviated by the instant order.

5. The Appellant's representative did not file a petition for review, but he timely[3]

[2] Pursuant to WAC 182-526-0580, the HCA BOA must receive a written request for review or a request for extension of the filing deadline within 21 days following the date on which the *Initial Order* was issued.
[3] Per WAC 182-526-0590(2), the HCA BOA must receive a response to a petition for review or a request to extend the filing deadline within seven business days of mailing the notice of a request for review. The *Notice of Request for Review and Time to Respond* in this matter was mailed to the parties on [DATE].

filed a response to the Department's petition on [DATE]. In his response, he argues that the ALJ's *Initial Order* should be upheld as there was purportedly jurisdiction to hear this matter and the agency's [DATE], denial notice was allegedly defective.

II. FINDINGS OF FACT[4]

To determine the adequacy and appropriateness of the ALJ's Findings of Fact in this matter and to make any necessary modifications to those findings, the undersigned reviewed the entire hearing record. No ruling by the ALJ on the admissibility of proffered evidence is overruled or altered unless that is made explicit in this *Review Decision and Final Order.* When making the Conclusions of Law in this *Review Decision and Final Order*, the undersigned considered the following facts:

1. The Appellant, born [DATE], resides at [FACILITY]—Spokane (GSS-S), a nursing home in Washington State.[5] On [DATE], DSHS received an application for LTC nursing home coverage signed by the Appellant's daughter and co-power of attorney (POA), [NAME 1], on the Appellant's behalf.[6]

2. On [DATE], DSHS received notice that [APPELLANT REP 2], an attorney with [LAW FIRM], was representing the Appellant.[7] [APPELLANT REP 2] references a [DATE], letter from DSHS in this correspondence,[8] but that [DATE], document is not included in the current hearing record. The [DATE], DSHS letter requested additional information from the Appellant regarding the Appellant's financial accounts, a family LLC, trusts, a timeshare bill of sale, LTC insurance, and any transfers made within the previous five years.[9] This information was due to

[4] A finding of fact is an assertion that evidence shows something occurred or exists, independent of an assertion of its legal effect. *State v. Williams*, 96 Wn.2d 215, 221 (1981) and *State v. Neidergang*, 43 Wn. App. 656, 658-59 (1986). Findings of fact characterized as conclusions of law are reviewed as findings of fact. *Redmond v. Kezner*, 10 Wn. App. 332, 343 (1973).
[5] Exhibit 2 at 1 and 2.
[6] Exhibit 2 at 5; exhibit A at 2; and testimony of Crystal Lynn.
[7] Exhibit 4.
[8] *Id.*
[9] *Id.* and exhibit A at 4-6.

DSHS by [DATE], but the due date was extended to [DATE], at [NAME 1] request on [DATE].[10] [APPELLANT REP 2] provided some of the information requested by DSHS in his [DATE], notice of appearance.[11]

3. While the Appellant's LTC application was still pending, her husband, [NAME 2], born [DATE], but who passed away in [DATE], also applied for LTC nursing home benefits on [DATE].[12] [APPELLANT REP 2] assisted with his application and requested that it be coordinated with the Appellant's [DATE] application.[13]

4. On [DATE], DSHS staff telephoned [APPELLANT REP 2] office for clarification on some of the information received from him and the information still needed.[14] DSHS also sent a letter on [DATE], requesting additional information, with a due date of [DATE].[15] On [DATE], DSHS staff reviewed the information submitted by [APPELLANT REP 2] and determined that there were still unresolved issues and a lack of information to determine eligibility.[16] Given that the initial application was submitted in [DATE] and the number of requests for more information that was not provided, DSHS staff decided to deny the Appellant's request.[17]

5. In letters, dated [DATE], DSHS notified the Appellant, [NAME 1], [NAME 2] (the Appellant's other daughter and co-POA), [APPELLANT REP 2], and the Appellant's husband that the Appellant and her husband were not eligible to receive benefits for the months of [DATE] through [DATE] because they had not provided the requested information, citing WAC 182-503-0050, WAC 388-400-0070, WAC 388-458-0020,

[10] Exhibit A at 6.
[11] *See* exhibit A at 4-6 and exhibit 4.
[12] Exhibit 5 and exhibit 13.*See also* exhibit A at
[13] Exhibit 5 at 1.
[14] Exhibit A at 8-9.
[15] Exhibit A at 9.
[16] *Id.* (noting, for example, "…suspect burial assigned irrevocable but no proof, and did not received [*sic*] TPL forms for LTC ins as rqd…").
[17] *Id.*

WAC 388-472-0005, WAC 388-490-0005, WAC 388-492-0020, and WAC 388-406-0030.[18] The information requested but not received and the date it was requested are described in detail in the notice.[19] This letter advised that they could stop the denial by providing the requested information to DSHS by [DATE].[20] This letter also advised the Appellant, her spouse, and their representatives that they had the right to an administrative hearing and that they needed to ask for this hearing within 90 days of receipt of the letter.[21]

6. On [DATE], the Appellant's representative provided some additional information for DSHS to reconsider the [DATE], denial.[22] DSHS completed its review of this new information on [DATE], but there was still missing information, for example, about the LLC transfer and how excess funds were spent from [DATE] to [DATE].[23] DSHS staff contacted [APPELLANT REP 2] office to inquire further, but [APPELLANT REP 2] office could not address the questions that day so the caseworker shared that DSHS still could not make a determination about financial eligibility and the Appellant would need to reapply.[24]

7. In letters, dated [DATE], DSHS notified the Appellant, [NAME 1], [NAME 2], [APPELLANT REP 2], and the estate of the Appellant's husband that DSHS had reviewed the information submitted for reconsideration of the [DATE], application.[25] This letter noted that additional questions were raised by the new information and financial eligibility still could not be determined.[26] This letter goes on to describe those additional questions and states that the DSHS denial of [DATE], still stands because a financial eligibility determination could not be made during the reconsideration period due to these outstanding questions.[27] This letter

[18] Exhibit 6.
[19] *Id.*
[20] *See, e.g.*, exhibit 6 at 2.
[21] *Id.* and 3-4.
[22] Exhibit 8 at 2 and exhibit A at 11.
[23] Exhibit A at 12.
[24] *Id.*
[25] Exhibit 7.
[26] *Id.* at 1.
[27] *Id.* at 2.

advised that the Appellant could reapply for benefits using the enclosed application.[28]

8. In a letter, dated [DATE], from [APPELLANT REP 2] to DSHS, [APPELANT REP 2] stated, "I do not want to further delay this process to appeal."[29] In a follow-up telephone call with [APPELLANT REP 2] about this letter, a DSHS caseworker advised him that the Appellant would need to reapply for benefits.[30] He "…expressed discontent…" so the caseworker also offered that the Appellant could appeal the decision, but "…he noted that he does not want to appeal…"[31] The Appellant, her spouse, and their representatives did not ask for a hearing related to either the [DATE], DSHS denial notice or the [DATE], reconsideration letter within 90 days of receiving either document.

9. On [DATE], a new attorney, [APPELLANT REP 3], who was authorized by [NAME 1] on April 22, 2016, to represent the Appellant, filed a new application with DSHS for LTC benefits on behalf of the Appellant and her deceased spouse.[32] Prior to this, a DSHS employee spoke with [APPELLANT REP 3] on [DATE], and advised him of the missing information from the previous application, which he said he would address.[33] Several calls between DSHS, [APPELLANT REP 2], [APPELLANT REP 3], an insurance agent, and the Appellant's daughter took place over the next few months, and [APPELLANT REP 3] submitted 22 pages of verification on [DATE].[34]

10. In a letter, dated [DATE], DSHS notified the Appellant and GSS-S that the Appellant was approved for LTC nursing home coverage, effective [DATE], and for categorically needy medical assistance coverage, effective [DATE].[35] This letter set out the Appellant's participation costs and explained that she was retroactively approved for three months of

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[28] *Id.*
[29] Exhibit 8 at 2 and testimony of Crystal Lynn.
[30] Exhibit 9.
[31] *Id.* and exhibit A at 18.
[32] Exhibit 10 and exhibit 11.
[33] Exhibit A at 18.
[34] Exhibit A at 19-24.
[35] Exhibit 1 at 4-7 and exhibit 12. *See also* exhibit A at 24.

nursing home coverage prior to the date of her [DATE] application.[36] The letter also describes how the agency determined and calculated her financial eligibility.[37] In addition, the letter notes that the agency is unable to provide LTC coverage for the Appellant's deceased husband because he died before the start of the three-month retroactive LTC eligibility period.[38] Finally, the Appellant was also approved for payment of her Medicare premiums and was entitled to a refund of any premiums she may have paid since [DATE].[39]

11. On [DATE], which was exactly 90 days after issuance of the [DATE], DSHS approval letter, [APPELLANT REP 1] filed a request for hearing with the OAH.[40] He wrote, in pertinent part:

> Please be advised that this law firm serves as counsel for [FACILITY] Spokane, an authorized representative of the [APPELLANT] ("the [APPELLANT") with regard to their Medical Assistance benefits, in the above-referenced matter. By this letter, [FACILITY] Spokane herein appeals the [DATE] notice regarding the effective date of approval on the appeal, as well as a prehearing conference to discuss the issues…[41]

12. [APPELLANT REP 1] argued at the hearing that the Appellant's and her spouse's LTC benefits should have started in [DATE]. The DSHS representative countered that the Appellant's right to challenge the denial of benefits from [DATE] through [DATE] expired when they did not request a hearing on that decision within 90 days, and that the ALJ therefore did not have jurisdiction to address that issue.

III. CONCLUSIONS OF LAW

1. **General Authority.** The petition for review of the *Initial Order* was timely filed and is otherwise proper.[42] The ALJ had jurisdiction to determine whether the Appellant had a

[36] Exhibit 1 at 4-5 and exhibit 12 at 1-2.
[37] Exhibit 1 at 5-7 and Exhibit 12 at 2-4.
[38] Exhibit 1 at 5 and Exhibit 12 at 2.
[39] *Id.*
[40] Exhibit 1.
[41] *Id.*
[42] WAC 182-526-0575 and -0580.

right to hearing and to rule on the agency's motion to dismiss.[43] Chapters 182-503, -512, and -513 WAC implement portions of Chapter 74.09 RCW, Chapter 74.39 RCW, and Chapter 74.39A RCW. The authority to promulgate rules related to eligibility for medical assistance services, including LTC institutional services,[44] to carry out the purposes of Chapter 74.09 RCW, and to grant hearings regarding eligibility determinations is granted to the agency in RCW 41.05.021(1)(m)(iv), RCW 74.09.520, RCW 74.09.530, RCW 74.09.575, RCW 74.09.595, and RCW 74.09.741. Administrative hearings and subsequent administrative review of the ALJs' *Initial Orders* are subject to the statutes and regulations found at Chapter 34.05 RCW, Chapter 10-08 WAC, and Chapter 182-526 WAC. Jurisdiction exists to review the *Initial Order* and to enter the agency's *Review Decision and Final Order*.[45] Jurisdiction exists to review the *Initial Order* and to enter the agency's *Review Decision and Final Order*.[46]

2. The HCA is now the designated single state agency for administering the Washington State Medicaid program.[47] The federal Centers for Medicare and Medicaid Services generally mandate that HCA, as the single state Medicaid agency, retain final decision-making authority over all Medicaid matters, [48] including eligibility for LTC services.[49] The HCA may collaborate with other state agencies and other entities to carry out its duties,[50] which HCA did

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[43] Chapter 34.12 RCW; Chapter 10-08 WAC; and WAC 182-526-0215(2)(c) and (m).
[44] *See* RCW 74.09.520(1)(d).
[45] Chapter 34.05 RCW and RCW 74.09.741.
[46] Chapter 34.05 RCW; RCW 41.05A.170(3); WAC 182-526-0218; WAC 182-526-0530(2); WAC 182-526-0570; and WAC 182-526-0600(1).
[47] RCW 74.09.530(1)(a). *See also* 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10; RCW 41.05.021(1)(m); and RCW 74.09.010 note (stating

> **Agency transfer -- 2011 1st sp.s. c 15**: "(1) All powers, duties, and functions of the department of social and health services pertaining to the medical assistance program and the medicaid purchasing administration are transferred to the health care authority to the extent necessary to carry out the purposes of this act. All references to the secretary or the department of social and health services in the Revised Code of Washington shall be construed to mean the director or the health care authority when referring to the functions transferred in this section….
> (4) All rules and all pending business before the department of social and health services pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the health care authority…").

[48] 42 C.F.R. § 431.10 and the Washington Medicaid State Plan at http://hca.wa.gov/about-hca/apple-health-medicaid/medicaid-title-xix-state-plan.
[49] RCW 41.05.021(1)(m)(iv); RCW 74.09.520(1) (defining the term "medical assistance" and describing what it entails); and RCW 74.09.530(1)(b).
[50] RCW 74.09.080(1) and RCW 74.09.530(1)(d). *See also* RCW 41.05.021(m)(iii) (authorizing the HCA Director to

with DSHS in this matter. The undersigned was designated by Dorothy F. Teeter, HCA Director, to enter the final administrative order in this matter.[51]

3. It is well settled that an ALJ's or a Review Judge's authority to render a decision in an administrative hearing is limited to that which is specifically provided for in the authorizing statute(s) or Washington Administrative Code (WAC) provision(s).[52] "The power of an administrative tribunal to fashion a remedy is strictly limited by statute."[53]

4. In an adjudicative proceeding such as this, the undersigned has the same authority as the ALJ to enter Findings of Fact, Conclusions of Law, and Orders.[54] The Washington Administrative Procedure Act also states that the undersigned Review Judge has the same decision-making authority when deciding and entering the *Review Decision and Final Order* as the ALJ had while presiding over the hearing and deciding and entering the *Initial Order*, unless the Review Judge or a provision of law limits the issue(s) subject to review.[55] This includes the authority to make credibility determinations, weigh the evidence, and change or set aside the ALJ's findings of fact.[56] This is because "…administrative review is different

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enter into agreements with DSHS for administration of the Title XIX (Medicaid) and Tile XXI (CHIP) medical programs); RCW 43.20A.865 (directing the DSHS Secretary to enter into agreements with the HCA Director to administer and divide responsibilities related to the Medicaid program); and RCW 74.09.741(4) and (5) (giving an applicant or recipient the option of filing a hearing request with either the Department or HCA, and describing an appellant's right to a consolidated adjudicative proceeding when more than one agency has rendered a decision).

[51] *See* RCW 41.05.021(1) (stating that the HCA Director "…may delegate any power or duty vested in him or her by law, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW").

[52] *Skagit Surveyors & Eng'rs, L.L.C. v. Friends of Skagit County*, 135 Wn.2d 542, 558 (1998), and *Taylor v. Morris,* 88 Wn.2d 586, 588 (1977). *See also State Ex rel. Tarver v. Smith*, 78 Wn.2d 152, 159 (1970), *cert denied,* 402 U.S. 1000 (1971) (stating that a public assistance applicant's or recipient's hearing right is limited to grievances directly related to eligibility for, or the amount of, public assistance benefits, not general complaints or grievances over collateral matters) and WAC 182-526-0216.

[53] *Id.* at 558.

[54] WAC 182-526-0600(1); WAC 182-526-0215; and WAC 182-526-0520. *See also* RCW 34.05.464(4); *Tapper v. Employment Security*, 122 Wn.2d 397 (1993), *superseded by statute on other grounds*, RCW 50.04.294 (2003), and *overruled on other grounds by Markam Group, Inc. v. Employment Sec. Dep't,* 148 Wn. App. 555, 562 (2009); and *Northwest Steelhead and Salmon Council of Trout Unlimited v. Washington State Dept. of Fisheries,* 78 Wn. App 778 (1995).

[55] RCW 34.05.464(4). *See also* WAC 182-526-0600(1).

[56] *See Hardee v. Dep't of Soc. & Health Servs.,* 152 Wn. App. 48, 59 (2009), *aff'd,* 172 Wn.2d 1 (2011). *See also Regan v. Dep't of Licensing*, 130 Wn. App. 39, 59 (2005) and *Hardee v. Dep't of Soc. & Health Servs.,* 172 Wn.2d 1, 18-19 (2011) (stating that:

> When reviewing the factual findings and conclusions of an ALJ,
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> > "The reviewing officer shall exercise all the decision-making power that the

from appellate review."[57] The undersigned Review Judge does not have the same relationship to the ALJ as an Appellate Court Judge has to a Trial Court Judge or that a Trial Court Judge has to a Review Judge in terms of the level of deference owed by the Review Judge to the presiding ALJ's findings of fact.[58] The Review Judge's authority to substitute his or her judgment for that of the presiding ALJ on matters of fact as well as law is the difference.[59] However, if the ALJ specifically identifies any findings of fact in the *Initial Order* that are based substantially on the credibility of evidence or demeanor of the witnesses,[60] a Review Judge must give due regard to the ALJ's opportunity to observe the witnesses when reviewing those factual findings by the ALJ and making his or her own determinations.[61] This does not mean a Review Judge must defer to an ALJ's credibility findings, but they must be considered.[62]

5. Review Judges must personally consider the whole record or such portions of it as may be cited by the parties.[63] Consequently, the undersigned has considered the adequacy, appropriateness, and legal correctness of all initial Findings of Facts, Conclusions of Law, documents in the hearing file, such as admitted evidence and any written arguments, and

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> reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing. In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officer's opportunity to observe the witnesses."
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> *Tapper*, 122 Wn.2d at 404 (emphasis omitted) (quoting RCW 34.05.464(4)); *see also* WAC 170-03-0620 (providing the Department's own definition of the Review Judge's authority). Regardless of whether "[i]t would perhaps be more consistent with traditional modes of review for courts to defer to factual findings made by an officer who actually presided over a hearing," the legislature chose otherwise. *Tapper*, 122 Wn.2d at 405. "[I]t is not our role to substitute our judgment for that of the Legislature." *Id.* at 406. The findings of fact relevant on appeal are the reviewing officer's findings of fact – even those that replace the ALJ's. *Id.* Here, the Review Judge meticulously reviewed the evidence, as well as the ALJ's factual findings, and appropriately substituted her own findings when warranted…(footnotes omitted)).

[57] *Kabbae*, 144 Wn. App. at 441 (explaining that this is because the final decision-making authority rests with the agency head). *See also Messer v. Snohomish County Bd. of Adjustment*, 19 Wn. App. 780, 787 (1978) (stating that "[t]he general legal principles which apply to appeals from lower to higher courts do not apply to administrative review of administrative determinations").

[58] *See, e.g., Tapper,* 122 Wn. 404-05, and Andersen, *The 1988 Washington Administrative Procedure Act – An Introduction,* 64 Wash. L. Rev. 781, 816 (1989).

[59] *Id.*

[60] RCW 34.05.461(3).

[61] RCW 34.05.464(4) and WAC 182-526-0600(1).

[62] *Hardee*, 152 Wn. App. at 59.

[63] RCW 34.05.464(5).

previous proceedings and orders in this particular matter, regardless of whether any party has asked that they be reviewed. Because the ALJ is directed to decide the issues *de novo*,[64] the undersigned has also decided the issues *de novo*.[65] The undersigned has given due regard to the ALJ's opportunity to observe the witnesses, but has independently decided the case.

6. **Standard & Burden of Proof.** The standard of proof refers to the amount of evidence needed to prove a party's position.[66] The default standard of proof in an HCA hearing is a preponderance of the evidence.[67] A preponderance of the evidence means that it is more likely than not that something happened or exists.[68] The burden of proof[69] is borne by the party attempting to persuade the ALJ that his or her position is correct.[70]

7. **Applicable Law.** ALJs and Review Judges must first apply the HCA and/or Department rules adopted in the WAC to resolve an issue.[71] If there is no agency WAC governing the issue, the ALJ and the Review Judge must resolve the issue based on the best legal authority and reasoning available, including that found in federal and Washington constitutions, statutes and regulations, and court decisions.[72] The ALJ and the Review Judge may not declare any rule invalid, and challenges to the legal validity of a rule must be brought *de novo* (anew) in a court of proper jurisdiction.[73]

8. **Issues.** The issues in this matter are whether:

(1) The Appellant timely requested a hearing on the Department's denial of

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[64] WAC 182-526-0215(1).
[65] RCW 34.05.464(4) and WAC 182-526-0600(1). *See also Hardee*, 152 Wn. App. at 59.
[66] WAC 182-526-0485.
[67] *Id.*
[68] *Id*.
[69] *Schaffer v. Weast*, 546 U.S. 49, 56 (U.S. 2005) (stating:

> The term 'burden of proof' is one of the "slipperiest member[s] of the family of legal terms." 2 *J. Strong, McCormick on Evidence* § 342, p 433 (5th ed. 1999) (hereinafter McCormick). Part of the confusion surrounding the term arises from the fact that historically, the concept encompassed two distinct burdens: the "burden of persuasion," i.e., which party loses if the evidence is closely balanced, and the "burden of production," i.e., which party bears the obligation to come forward with the evidence at different points in the proceeding. *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 272, 114 S. Ct. 2251, 129 L. Ed. 2d 221 (1994)).

[70] WAC 182-526-0480(2).
[71] WAC 182-526-0220(1).
[72] WAC 182-526-0220(2).
[73] WAC 182-526-0216.

eligibility for LTC benefits for the Appellant and her spouse from [DATE] through [DATE] due to a failure to submit the requested information following their [DATE] and [DATE] applications, and
(2) The Department correctly determined the Appellant's LTC eligibility start date as [DATE], following the agency's [DATE] approval of eligibility based on the Appellant's [DATE] application.

The undersigned addresses these two issues separately below.

9. **Timeliness of Hearing Request Regarding Denial of LTC Eligibility for [DATE] through [DATE].** *Jurisdiction*. The Washington Administrative Procedure Act mandates that agencies commence an adjudicative proceeding when a hearing required by law or constitutional right is requested timely.[74] RCW 74.09.741(4) grants applicants or recipients the right to an administrative hearing to contest aggrieving agency action if he or she requests a hearing within 90 calendar days of receiving notice of the agency's action.[75] In this matter, the Appellant and her representatives were notified by DSHS in letters, dated [DATE], and again on [DATE], after reconsideration, about the denial of her and her husband's LTC eligibility for the months of [DATE] through [DATE] due to their failure to provide the information necessary to determine their eligibility. The Appellant did not request a hearing to dispute this denial decision for this time period until [DATE].

10. Neither RCW 34.05.440(1) nor RCW 74.09.741(4) include any exceptions, even if good cause or reason exists for missing the filing deadline to request a hearing. This means that the right to request a hearing automatically lapses 90 days after receipt of the Department's notice. The evidence shows that the Appellant and her representatives received the [DATE] and [DATE] notices.

11. ALJs and Review Judges have extremely limited statutory, regulatory, or equitable discretion to excuse late filing of a hearing request, even if good cause may exist.

[74] RCW 34.05.413(2).
[75] *See also* 42 C.F.R. § 431.221 (stating that the state Medicaid agency "…must allow the applicant or beneficiary a reasonable time, not to exceed 90 days from the date that the notice is mailed, to request a hearing").

An ALJ has authority under RCW 34.05.413(2) and RCW 74.09.741(4) to conduct a full hearing and render a decision on the merits of a case only when a timely hearing request has been submitted; both the ALJ and the Review Judge have no authority to grant exceptions to this statutory timeliness requirement.[76] Neither the ALJ nor the undersigned can grant the Appellant any relief, including a hearing to dispute the Department's [DATE] and [DATE] notices.

12. Because the Appellant's hearing request was not filed timely, there was no jurisdiction for the ALJ or the undersigned to consider the denial of eligibility for [DATE] through [DATE]. Regarding administrative agencies,

> "jurisdiction" generally may be defined as a power given by law to hear and decide controversies. In administrative law, the term jurisdiction has three aspects: (1) personal jurisdiction, referring to the agency's authority over the parties and intervenors involved in the proceedings; (2) subject matter jurisdiction, referring to an agency's power to hear and determine the causes of a general class of cases to which a particular case belongs; and (3) the agency's scope of authority under statute. If an administrative agency lacks the statutory power to consider a matter, then the agency is without subject matter jurisdiction.[77]

13. Before holding a full hearing and deciding the substantive issues presented, a decision maker must first determine whether he or she has jurisdictional authority to adjudicate the contested issue. The concept of jurisdiction applies to both courts and administrative agencies.[78] The Legislature sets the bounds of the agency's adjudicative authority in the enabling statute. That is,

> [i]f a statute authorizes an administrative agency to act in a particular situation, it necessarily confers upon the agency authority to determine whether the situation is one in which the agency is authorized to determine the coverage of the statute… a tribunal having general subject matter jurisdiction of a case possesses authority to determine its own jurisdiction…[79]

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[76] *See* RCW 34.05.413(2) and RCW 74.09.741(4).
[77] 2 Am Jur 2d *Administrative Law* § 281 (2010) (footnotes omitted).
[78] *See Inland Foundry v. Air Pollution Auth*., 98 Wn. App. 121, 124 (1999) (citing *Okanogan Wilderness League, Inc. v. Town of Twisp*, 133 Wn.2d 769, 788-89 (1997)).
[79] 2 Am Jur 2d *Administrative Law* § 284 (2010) (footnotes omitted).

14. Subject matter jurisdiction can be raised at any time.[80] Further, "[a]n agency does not have discretion in determining whether or not it has subject matter jurisdiction; subject matter jurisdiction either exists or it does not."[81] As noted in *Riley v. Sturdevant*, 12 Wn. App. 808, 810, (1975), "[e]ven in the absence of a contest, where there is a question as to jurisdiction, [the] court has a duty to itself raise the issue." Finally, "…agencies have only such adjudicatory jurisdiction as is conferred on them by statute. Their jurisdiction is dependent entirely upon the validity and the terms of the statutes reposing power in them, and they cannot confer jurisdiction on themselves."[82] Absent subject matter jurisdiction, an administrative tribunal may do nothing other than enter an order of dismissal.[83]

15. Statutory time limits for requesting a hearing are mandatory and jurisdictional; this is true in administrative settings as well as in the courts.[84] Failure to timely appeal results in automatic dismissal due to lack of jurisdiction.[85] The Washington Administrative Procedure Act states that "[f]ailure of a party to file an application for an adjudicative proceeding within the time limit or limits established by statute or agency rule constitutes a default and results in the loss of that party's right to an adjudicative proceeding..."[86] An agency shall commence an adjudicative proceeding only when both of the following two conditions are satisfied: (1) a hearing is required based on law or constitutional right and (2) the hearing is requested

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[80] *J.A. v. Dep't of Soc. & Health Servs*., 120 Wn. App. 654, 657 (2004).
[81] *Amoco Prod. Co. v. Wyoming State Bd. of Equalization*, 7 P.3d 900, 904 (Wyo. 2000) (citing *Weller v. Weller*, 960 P.2d 493, 495 (Wyo. 1998)).
[82] 2 Am Jur 2d *Administrative Law* § 282 (2010) (footnotes omitted).
[83] *Inland Foundry Co.,* 98 Wn. App. at 123-24.
[84] *Rust v. Wash. State College*, 11 Wn. App. 410, 415 (1974) (citing *Lewis v. Department of Labor & Indus.,* 46 Wn.2d 391 (1955); *Smith v. Department of Labor & Indus.,* 1 Wn.2d 305 (1939); and *Nafus v. Department of Labor & Indus.,* 142 Wash. 48 (1927)). *See also Rutcosky v. Bd. of Trs.*, 14 Wn. App. 786, 788-89 (1976). As noted either explicitly or implicitly in the legal authorities cited throughout this *Review Decision and Final Order*, subject matter jurisdiction may be conferred only by the Constitution or statute. *See ZDI Gaming, Inc. v. State*, 173 Wn.2d 608, 616 (2012); *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 319 (2003); and *Okanogan*, 133 Wn.2d at 789 and 792 (1997) (Durham, C.J., concurring) (stating that "[b]ecause the Legislature confers jurisdiction, it may necessarily condition that grant and a court has no power to assume jurisdiction greater than that conveyed by the statute" and that an act must be construed as imposing no jurisdictional limitations "…if the legislature has shown no indication of its intention to limit jurisdiction…" (quoting 21 C.J.S. *Courts* § 13(b) (1990) (footnotes omitted))).
[85] *Clark v Selah Sch. Dist.*, 53 Wn. App. 832, 836-37 (1989).
[86] RCW 34.05.440(1).

timely.[87]

16. Although hearing rights may be granted to clients whose LTC coverage is denied, a hearing may take place only if the hearing is requested within the prescribed timeframe. RCW 34.05.413(1) provides that "[w]ithin the scope of its authority, an agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction." RCW 34.05.010(1) defines an adjudicative proceeding as a proceeding before an agency in which an opportunity for hearing before that agency is required by statute. RCW 74.09.741(4) requires an applicant or recipient to file a hearing request on the aggrieving decision within 90 days.[88]

17. In this case, DSHS notified the Appellant, her spouse, and their representatives on [DATE], and [DATE], about the denial of LTC eligibility for [DATE] through [DATE] due to lack of information, and the Appellant did not request a hearing on those decisions until [DATE]. This was well over 90 days later. Because the Appellant was required by RCW 34.05.413(2) to make a timely request in order to have a full administrative hearing on DSHS's actions and because she failed to request a hearing within 90 days of receiving notice, as required by RCW 74.09.741(4), neither the ALJ nor the undersigned had jurisdiction to hear or decide the substantive merits of whether DSHS's decision to deny LTC eligibility for [DATE] through [DATE] to the Appellant and her spouse was correct. The only authority either the ALJ or the undersigned has is to dismiss that particular issue for lack of jurisdiction. [89]

18. *Discretion & Good Cause*. The Appellant implicitly argued that the ALJ and the undersigned have discretionary authority to excuse the Appellant's failure to timely file a request for hearing based on good cause, pursuant to WAC 182-526-0020 and WAC 182-526-0035(3).

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[87] RCW 34.05.413(2).
[88] RCW 34.05.413(3) authorizes an agency to adopt rules governing procedures for filing a hearing request, including that the application be filed within specified time limits. *See also* 42 C.F.R. § 431.221 (stating that the state Medicaid agency "…must allow the applicant or beneficiary a reasonable time, not to exceed 90 days from the date that the notice is mailed, to request a hearing").
[89] *Inland Foundry Co.,* 98 Wn. App. at 123-24.

This is incorrect. The specific statute that grants applicants or recipients a hearing right on aggrieving medical assistance decisions does not authorize such discretion or mention an exception to the filing requirements for good cause. The ALJ and the undersigned cannot imply or add language that is not included in an otherwise clear and unambiguous statutory or regulatory provision.[90]

19. WAC 182-526-0220(1) requires the undersigned to "…first apply the applicable program rules…" and, if no rule program rule applies, to "…decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, and court decisions."[91] In this case, none of the applicable program rules specifically state when an individual applicant or recipient must request a hearing, but RCW 74.09.741(4) is directly on-point and is the best legal authority available. It specifically states that an applicant or recipient must file a hearing request within 90 days of receiving notice of an aggrieving decision. Similarly, 42 C.F.R. § 431.221(d) states that the state Medicaid agency "…must allow the applicant or beneficiary a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing." Neither this state statute nor this federal Medicaid regulation includes an exception for good cause to request a hearing within 90 days and so the undersigned cannot apply such an exception.[92]

20. WAC 182-526-0035(3) states that "[i]f the party who requests the hearing misses a deadline that party may lose its right to a hearing or appeal of a decision." The use of the term "may" in WAC 182-526-0035(3) does not mean the ALJ and the undersigned have discretion

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[90] *See, e.g., State v. Watson*, 146 Wn.2d 947, 955 (2002) (stating:

> We have consistently held that an unambiguous statute is not subject to judicial construction and have declined to insert words into a statute where the language, taken as a whole, is clear and unambiguous. We will not add to or subtract from the clear language of a statute even if we believe the Legislature intended something else but did not adequately express it (internal citations omitted)).

and *State v. Burke*, 92 Wn.2d 474, 478 (1979) (stating that rules of statutory construction apply to the interpretation of administrative rules and regulations).

[91] WAC 182-526-0220(2).

[92] *See Watson*, 146 Wn.2d at 955 and *Burke*, 92 Wn.2d at 478.

over whether to dismiss the Appellant's hearing request as untimely. Both the applicable state statute and federal regulation in this matter—which take precedence over the more general procedural rules in Chapter 182-526 WAC[93]—mandate, by use of the term "must" in RCW 74.09.741(4) and 42 C.F.R. § 431.221(d), filing of an applicant's or recipient's hearing request no later than 90 days after receipt of the aggrieving decision. In accordance with *ejudsem generis* ("of the same kind or class"[94]), which is a rule of statutory construction, the more specific laws for medical assistance eligibility denials, which limit any discretion that may be afforded in WAC 182-526-0035(3), apply more directly. This is because *ejudsem generis* requires that general statutory provisions appearing in connection with precise, specific provisions "…be accorded meaning and effect only to the extent that the general terms suggest items or things similar to those designated by the precise or specific terms."[95] It is well established that specific provisions of a statute or regulation must prevail over more general provisions.[96] This means "...specific terms modify or restrict the application of general terms..." and that the mandatory provisions in RCW 74.09.741(4) and 42 C.F.R. § 431.221(d), which are program-specific, take precedence over the more general procedural rule at WAC 182-526-0035(3).

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[93] *See* WAC 182-526-0005(3) (stating that "[i]f there is a conflict between this chapter and specific program rules, the specific program rules prevail…"); WAC 182-526-0095(4) (stating that "[p]rogram rules or statutes may require a specific method and location for sending a written request for hearing"); and WAC 182-526-0220(1) (stating that "[a]dministrative law judges (ALJs) and review judges must first apply the applicable program rules adopted in the Washington Administrative Code (WAC)").

[94] *Black's Law Dictionary* 631 (10th Ed. 2014).

[95] *See State v. Thompson*, 38 Wn.2d 774, 777 (1951) and *Beckman v. State Dept. of Social and Health Services*, 102 Wn. App. 687, 692 (2000).

[96] *See, e.g., Kustura v. Dep't of Labor & Indus.,* 169 Wn.2d 81, 88 (2010) (quoting *Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm'n, 123 Wn.2d 621, 630 (1994),* which quoted *General Tel. Co. of Northwest, Inc. v. Utilities & Transp. Comm'n*, 104 Wn.2d 460, 464, (1985), stating, "[a] specific statute will supersede a general one when both apply"); *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 447 (1975) (stating, "…this interpretation is supported by the familiar rule of construction that where there is a conflict between one statutory provision which deals with a subject in a general way and another provision which deals with the same subject in a specific manner, the latter will prevail"); and *Johnson v. Dep't of Corr.*, 164 Wn. App. 769, 778, note 14 (2011) (quoting *In re Marriage of Sagner*, 159 Wn. App. 741, 748, "[w]e resolve any apparent conflict between statutes by using the established rule of statutory construction that favors specific statutory language over general provisions"), *review denied*, 171 Wn.2d 1026 (2011)). *See also State v. Burke*, 92 Wn.2d 474, 478 (1979) (stating that rules of statutory construction apply to the interpretation of administrative rules and regulations).

21. *Notice*. At a minimum, due process requires notice and an opportunity to be heard.[97] Sufficient notice is not a mere formality; notices must satisfy constitutional due process standards before the merits of a matter may be considered.[98] Many courts have held that inadequate notices are invalid.[99] However, the notices in this matter were not inadequate.

22. Per WAC 182-518-0015(1), the agency sends written notice when more information, pursuant to WAC 182-503-0050,[100] is required to determine if an individual is eligible for Washington Apple Health coverage.[101] DSHS sent the Appellant such notices in 2015 in compliance with WAC 182-518-0015 and provided at least 10 days in order to respond as required by WAC 182-518-0015(3).[102] When requested by the Appellant, DSHS also granted additional time for the Appellant to submit the requested information per WAC 182-518-0015(3).

23. Per WAC 182-518-0010, the agency issues written notice when coverage is denied, including the date(s) of the denial, specific reasons, specific rules or statutes that support or require the decision, a list of information that was requested but not provided, the date on which the information was requested and when it was due, the option for reconsideration if requested within 30 days, and administrative hearing rights. In this matter, the [DATE], denial letter issued by DSHS to the Appellant included these necessary notice

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[97] *See* U.S. CONST. amend. V, XIV; WASH. CONST. art. I, §3; and *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 768, 871 P.2d 1050 (1994)). *See also Unthaksinkun v. Porter*, 2011 U.S. Dist. LEXIS 111099, 56-57 (2011) (explaining that the Ninth Circuit has held that "[d]ue process requires notice that gives an agency's reason for its action in sufficient detail that the affected party can prepare a responsive defense" (citing *Barnes v. Healy*, 980 F.2d 572, 579 (9th Cir. 1992) (citing *Goldberg v. Kelly*, 397 U.S. 254, 267-68, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970))).
[98] *See, e.g., id.* and *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 14 (1978) (holding that "[t]he purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending 'hearing'" (citing, e.g., *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974); *Morrissey v. Brewer*, 408 U.S. 471, 486-487 (1972); *In re Gault*, 387 U.S. 1, 33 (1967); *Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 171-172 (1951) (Frankfurter, J., concurring))).
[99] *See, e.g.,Turner v. Ledbetter*, 906 F.2d 606, 609 (11th Cir. 1990); *Turner v. Walsh*, 435 F.Supp. 707, 713-714 (W.D.Mo. 1977), *aff'd per curiam*, 574 F.2d 456 (8th Cir. 1978); and *id*. *See also Morales v. McMahon*, 223 Cal.App.3d 184 (Cal. App. 4th Dist.1990) and *Banks*, 525 F.2d at 842-43 (affirming a lower court order granting a preliminary injunction to enjoin the government from, among other things, reducing food stamp benefits of recipients who received inadequate notices of the reductions until such time that adequate notices were provided).
[100] NOTE: The version of WAC 182-503-0050 applicable in this matter is found at WSR 14-07-059, effective April 14, 2014, through March 19, 2017 (*see* WSR 17-06-007) per WAC 182-526-0220(3), which requires the undersigned to apply the program rule in effect on the date of the agency's action (i.e., [DATE], and [DATE]).
[101] *See also* WAC 388-406-0030 and WAC 388-458-0020.
[102] *See also* WAC 388-406-0030(1)(b) and WAC 388-458-0020(3).

elements. The Department's letter explained that the Appellant failed to provide the requested information and so the Appellant's and her spouse's eligibility for LTC coverage for [DATE] through [DATE] could not be determined and was thus denied. This notice also cited WAC 182-503-0050 ("Washington Apple Health—Verification requirements"), WAC 388-400-0070 ("Who is eligible for referral to the housing and essential needs (HEN) program?"), WAC 388-458-0020 ("You get a request letter when we need more information"), WAC 388-472-0005 ("What are my rights and responsibilities?"), WAC 388-490-0005 ("The department requires proof before authorizing benefits for cash and Basic Food"), WAC 388-492-0020 ("What are WASHCAP food benefits and what do I need to know about WASHCAP?"), and WAC 388-406-0030 ("Do I need to submit other information after I apply for benefits?").

24. Former WAC 182-503-0050,[103] WAC 388-458-0020, WAC 388-472-0005(1)(f), and WAC 388-406-0030 all specifically relate to agency requests for additional information and/or the consequences (i.e., denial) if such information is not provided, which was the precise basis of the Department's [DATE], decision to deny LTC eligibility for [DATE] through [DATE]. Former WAC 182-503-0050(1) explicitly authorizes the agency to ask for verification of information, in accordance with WAC 182-518-0015, when an individual applies for services[104] and also permits the agency to give an applicant more time to provide such information per former WAC 182-503-0050(2)(d)(iii).[105] Former WAC 182-503-0050(2)(d)(v) further states,

> If we do not timely receive your information, we determine your eligibility based on all the information we have received on or before the date of the decision, including information we obtained from the various data sources listed in (b) of this subsection. *If we cannot determine your eligibility, we deny or terminate your WAH coverage and send you a notice that states when we will reconsider the application as described in WAC 182-503-0080*.[106]

[103] WSR 14-07-059, effective April 14, 2014, through March 19, 2017 (*see* WSR 17-06-007), which, per WAC 182-526-0220(3), must be applied in this matter because it was the version of this program rule in effect on the date of the agency's action (i.e., [DATE], and [DATE]).
[104] *See also* former WAC 182-503-0050(4)(c) (WSR 14-07-059).
[105] WSR 14-07-059. *See also* WAC 182-518-0010(3)(c).
[106] *Id.* (italicized emphasis added).

In accordance with WAC 182-503-0080(4)(a), as referenced in former WAC 182-503-0050(2)(d)(v), the Department's [DATE], notice stated that the DSHS would reconsider the denial decision and the Appellant would not have to file a new application if the Appellant submitted the information needed to decide her eligibility within 30 days (i.e., by [DATE]).

25. The Appellant submitted more information by the stated deadline, but the additional information provided still was not sufficient to determine her and her spouse's eligibility, as set forth in the Department's [DATE], notice, stating that the [DATE], denial decision still stood. At that point the only option the Appellant had for DSHS to further Reconsider the [DATE], decision to deny LTC eligibility for [DATE] through [DATE] was to request a hearing within 90 days of the date of the denial letter per WAC 182-503-0080(4)(b), or she could file a new application. The Appellant's attorney at that time unambiguously declined to ask for a hearing to appeal the agency's [DATE], and [DATE], denial of LTC coverage for the Appellant and her spouse. This was not due to insufficient notice because the notice was not defective as explained above, and it confirms the conclusion above that there is no jurisdiction to dispute the Department's denial of LTC eligibility for the Appellant and her spouse prior to [DATE]. This is because the deadline for requesting such a hearing to challenge that denial decision expired long before the Appellant's [DATE], hearing request.

26. **Correct LTC Eligibility Start Date**. Generally, the date when payment begins for LTC services is when those services are authorized.[107] Pursuant to WAC 388-106-0045, such authorization occurs when an individual is assessed in CARE, is found financially and functionally eligible for services, has given consent for services and approved the plan of care, *and* has chosen a provider qualified for payment. In this case, the Appellant was not found financially eligible for LTC services until some period of time after submission of the Appellant's second application on [DATE], and thus authorization and payment for LTC services could not

[107] WAC 182-513-1100 (defining of "authorization date").

occur until the time when financial eligibility, as one of the four required criteria in WAC 388-106-0045, was determined. However, WAC 388-106-0360 is specific to payment for nursing facility services rather than LTC services in general, which are addressed by WAC 388-106-0045, and determination of the payment authorization date for nursing facility care is less stringent. WAC 388-106-0360 states, in pertinent part,

> (3) If you become financially eligible for medicaid after you have been admitted, the department pays for your nursing facility care beginning on the date of:
> (a) Request for assessment or financial application, whichever is earlier;
> (b) Nursing facility placement; or
> (c) When you are determined financially eligible, whichever is later.
> (4) Exception: Payment back to the request date is limited to three months prior to the month that the financial application is received.[108]

27. In this case, the Appellant was already at the nursing facility when she applied for Medicaid, thus satisfying WAC 388-106-0360(3). The hearing record is not clear when the Appellant may have requested an assessment per WAC 388-106-0360(3)(a) or when she was placed in the nursing facility per WAC 388-106-0360(3)(b), but the Appellant's most recent financial application was filed with DSHS on [DATE], in satisfaction of WAC 388-106-0360(3)(a), and she was determined financially eligible on [DATE], in satisfaction of WAC 388-106-0360(3)(c).[109] Per the exception described at WAC 388-106-0360(4), payment for a financially eligible Medicaid client may be made for a maximum of up to three months before the month that the financial application was received.[110] Given that the Appellant's most recent financial application was submitted in [DATE] and she was in a nursing facility during the three preceding months, DSHS correctly determined that the Appellant was financially eligible for LTC nursing facility coverage, effective [DATE]. This is the earliest date under WAC 388-106-0360 that the Appellant could be eligible for LTC nursing facility coverage given the facts in this particular

[108] WAC 388-106-0360.
[109] As noted above, there is no jurisdiction to review the Department's denial of the Appellant's [DATE], or her husband's [DATE], financial application for LTC eligibility from [DATE] through [DATE] because the Department's denial was not timely appealed.
[110] *See also* WAC 182-503-0070(3) and WAC 182-504-0005.

matter. The Appellant's spouse passed away in the month prior to [DATE], and thus was correctly found ineligible for nursing facility coverage starting in [DATE].

28. The undersigned has considered the *Initial Order* and the hearing record. Any arguments in the petition for review or response that are not specifically addressed in this decision have been duly considered, but are found to lack merit or to not substantially affect a party's rights. The procedures and time limits for seeking reconsideration or judicial review of this decision are in the attached statement.

[*THIS SECTION INTENTIONALLY LEFT BLANK*]

IV. DECISION AND ORDER

1. The *Initial Order* is ***reversed***. The agency's motion to dismiss the hearing regarding the Department's denial of eligibility for long-term care coverage for the Appellant and her spouse from [DATE] through [DATE] is **granted**. There is no jurisdiction to hear that matter because the Appellant did not timely request a hearing regarding that denial for that time period.

2. The Department correctly determined that the Appellant became eligible for long-term care coverage, effective [DATE], and that the Appellant's spouse was not eligible at that time because he passed away in [DATE].

Mailed on the ____27th____ day of July 2017.

DIAMANTA TORNATORE
Review Judge/Board of Appeals

Attached: Reconsideration/Judicial Review Information

Copies have been sent to: Bessie LaShaw, Appellant
[APPELLANT REP 1], Appellant Representative
Crystal Linn, Agency Representative, MS: B32-27
Stacy Graff, Program Administrator, MS: 45600
Stephen Leavell, ALJ, [CITY] OAH