

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

FINAL

ORDER

DSSM: Food Supplement Program 9008 Residency

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Food Supplement Program regarding *Residency*. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the February 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 4, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding residency in the Food Supplement Program.

Statutory Authority

7 CFR §273.3, *Residency*

Summary of Proposed Change

DSSM 9008, *Residency*: The proposed rule is amended to be easier to read and understand. The changes clarify that residents can leave the state and remain eligible for food benefits during temporary absences when they intend to return to the state.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

In general, the standards appear to conform to the federal regulation, 7 C.F.R. 273.3. However, the GACEC and the SCPD have two recommendations for amendments.

First, the current regulation reads as follows:

Households will file applications for participation in specified office locations according to zip codes. However, an application filed at any office within the State will be considered filed the same day.

The proposed regulation reads as follows:

Individuals will file applications for benefits at local offices based on zip codes. Any office will accept an application and consider it filed the same day.

The proposed regulation could be interpreted as meaning only an application filed in the correct "zip code" office will be accepted and considered filed the same day. The use of the word "however" in the current regulation clarifies that the acceptance of an application in any office in the state is an exception to the first sentence. For clarity, it would be preferable to adopt the same approach in the new regulation. This would result in the following sentence: "However, any office will accept an application and consider it filed the same day."

Agency Response: DSS agrees with the need for clarity. The word "However" has been inserted in the final order regulation.

Second, the "Temporary Absences Out of State" section authorizes continued eligibility of benefits in multiple contexts. However, "hospitalizations that will exceed 30 days" are categorically disqualified from benefits continuation. This is objectionable. A household could take a 5+ week vacation, or a member could have a 5+ week absence to care for a sick family member without disqualification. It is unusual to impose a more restrictive standard on an individual who requires out-of-state hospitalization (e.g. for rehabilitation at Bryn Mawr Hospital for a traumatic brain injury or for intensive burn treatment at Chester-Crozier). It may also conflict with the ADA and State Equal Accommodations Act to apply more constrictive eligibility standards to persons with disabilities. Apart from military deployment, someone can be temporarily absent from the State with no 30-day cap for any reason except hospitalization. Council could not locate any such differentiation in the federal regulations.

Agency Response: The reason that hospitalizations are exempt from the *temporary absences out of state* rule is that per DSSM 9015 residents of an institution (for example, hospitals, prisons and nursing homes), where the institution provides them with the majority of their meals as part of the normal services, are not eligible.

Findings of Fact

The Department finds that the proposed changes as set forth in the February 2009 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Supplement Program policies regarding *Residency* is adopted and shall be final effective April 10, 2009.

March 13, 2009

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #09-12 REVISION

9008 Residency

[7 CFR 273.3]

~~A household shall live in the State in which it files an application for participation. Households will file applications for participation in specified office locations according to zip codes. However, an application filed at any office within the State will be considered filed the same day. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children, and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children will be handled in accordance with DSSM 9080. Do not impose any durational residency requirements. A fixed residence is not required. Nor will residency require an~~

~~intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes will not be considered residents. Migrant campsites satisfy the residency requirement.~~

~~When a household moves within the State, DSS will transfer the household's casefile to the new office and continue the household's certification without reapplication. The current office shall act on changes in household circumstances resulting from the move before transferring the casefile to the new office.~~

Individuals must live in Delaware to get food benefits from this state.

Filing Applications in Local Offices

Individuals will file applications for benefits at local offices based on zip codes. [However, Aa]ny office will accept an application and consider it filed the same day.

No Duplication of Benefits

An individual cannot participate as a member of more than one household in any month. There is an exception for individuals who are residents of shelters for battered women and children. Refer to DSSM 9080 for the rules for residents of shelters for battered women and children.

No Durational Requirements

There is no requirement for an individual to live in Delaware for any specific length of time. A fixed residence is not required. Residency rules do not require intent to reside permanently in Delaware. Migrant campsites meet the residency requirements.

Non-Residents

Individuals vacationing in Delaware are not considered as residents of this state.

Moving Within the State

When a household moves within the state, DSS will transfer the household's case file to the new office. The household's certification period continues without having to reapply. The current office will act on changes in household circumstances resulting from the move before transferring the case file to the new office.

Temporary Absences Out of State

Households that temporarily leave the state, maintain their Delaware residency and intend to return can continue to receive benefits. This includes, but is not limited to, households on vacation or taking care of a sick family member in another state. This does not include households that leave for military deployment or hospitalizations that will exceed 30 days.

Homeless Households

Homeless individual means an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

- A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);
- A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized (applied to individuals released from institutions who still need supervision, not prisoners considered to be detained under a Federal or State law while in a halfway house);
- A temporary accommodation in the residence of another individual if the accommodation is for no more than 90 days.
- The 90-day period starts at application or when the household reports a change.
- The 90-day period starts over when a household moves from one residence to another.

- If a homeless household leaves, for whatever reason, and returns to the same residence, the 90-day period will start over again.
- If a household has a break in receiving food benefits, the 90-day period will not start over if the household remains in the same residence. The 90-day period will start over if the household moved to another residence.

12 DE Reg. 1326 (04/01/09) (Final)