

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

FINAL

ORDER

Delaware Temporary Assistance for Needy Families - Employment and Training Program Requirements

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Delaware TANF Employment and Training Program requirements, specifically, *Sanctions and Curing Sanctions*. The Department's proceedings to amend its regulations 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 proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the March 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2014 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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Delaware TANF Employment and Training Program, specifically, *Sanctions and Curing Sanctions*.

Statutory Authority

- 45 CFR 261.13, *May an individual be penalized for not following an individual responsibility plan?*
- 45 CFR 261.14, *What is the penalty if an individual refuses to engage in work?*
- 45 CFR 261.15, *Can a family be penalized if a parent refuses to work because he or she cannot find child care?*
- 45 CFR 261.56, *What happens if a parent cannot obtain needed child care?*

Background

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193) provides funding to states through the Temporary Assistance for Needy Families (TANF) block grant. The TANF block grant is used to provide cash assistance, services and work programs for needy families, utilizing federal TANF funds along with state funds to develop and deliver services to needy families.

The 1996 PRWORA law also established the requirements that states must meet, including rules related to work requirements. Under the work provisions of the law, states must require recipients, with some exceptions, to engage in work, impose sanctions (by reducing or terminating benefits) if an individual refuses to participate in required work activities, and achieve a work participation rate measured in accordance with detailed provisions of the law. A state that fails to meet the work rate can be subject to fiscal penalty.

Summary of Proposal

The proposed changes reformat and clarify text for ease of readability. Also, a subsection was added and all section titles were renamed to more accurately reflect the section content.

The following policy sections in the Division of Social Services Manual (DSSM) are affected by the proposed changes:

DSSM 3100, ~~*Employment and Training and Work*~~ *Requiring Employment and Training Participation*

DSSM 3011.2, ~~*Sanctions for Failing to Comply with Requirements*~~ *Sanctioning for Not Meeting Employment and Training Requirements*

NEW DSSM 3011.2.1, *Sanctioning When Child Care Is Not Available*

DSSM 3011.3, ~~*Curing Sanction Penalties*~~ *Curing a Full Family Sanction*

Summary of Rule Changes

Delaware TANF families that receive a sanction as a result of not meeting their required employment and training hours are sanctioned. The current sanction rule requires that the TANF case be closed. The family must complete four (4) consecutive weeks of participation for the case to reopen; additionally the case must be closed at least one (1) month.

When examining TANF work participation rates it was discovered that many families begin to immediately re-participate and that the mandatory one month closure was a significant hardship since they were incurring expenses as the result of

participating. Additionally, these families while participating were not reflected in the TANF work participation rate because they were not receiving a grant.

The policy change would remove the requirement that the case be closed for at least one (1) month and reopen the TANF case at the beginning of the four (4) week participation period.

This change allows families to immediately reengage and potentially not see a reduction in their TANF grant, while also raising the TANF work participation rate by an estimated three (3) percent.

Approximately, thirty-two (32) more families a month will receive TANF benefits because of the rule change.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGE(S)

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. The Division of Social Services (DSS) has considered each comment and responds as follows.

SCPD & GACEC

As background, families participating in the program are generally subject to sanctions if they do not comply with work activity requirements. The current sanction protocol requires the TANF case to be closed, followed by 4 consecutive weeks of participation in work activities to justify reopening, and closure of the case for at least 1 month. DSS proposes to revamp this approach based on the following rationale:

When examining TANF work participation rates it was discovered that many families begin to immediately re-participate and that the mandatory one month closure was a significant hardship since they were incurring expenses as a result of participating. Additionally, these families while participating were not reflected in the TANF work participation rate because they were not receiving a grant.

The policy change would remove the requirement that the case be closed for at least one (1) month and reopen the TANF case at the beginning of the four (4) week participation period.

This change allows families to immediately reengage and potentially not see a reduction in their TANF grant, while also raising the TANF work participation rate by an estimate three (3) percent.

Approximately, thirty-two (32) more families a month will receive TANF benefits because of the rule change.

SCPD and GACEC endorse the proposed regulation since the primary change in standards promotes employment activities and program participation. However, we have two (2) observations.

Agency Response: Thank you for your endorsement.

First, a single custodial parent of a child under age 6 may qualify for an exemption from a sanction if child care is not available. Unavailability based on lack of a proximate day care option is based on the following standard (§3011.2., Par. 1.2a):

Appropriate child care is unavailable within a reasonable distance from their home or work. Reasonable distance is defined as care that is located in proximity to either a parent's place of employment or the parent's home; generally care that is within a one hour drive from either home or work.

We recommend that DSS reconsider the "one hour drive" standard. For example, if a single parent lived and worked in Wilmington, and child care were only available in Dover, that would be presumptively a "reasonable distance". This means the parent would have to drive 45 miles to drop off the child in Dover, drive 45 miles back to Wilmington to work, drive 45 miles back to Dover after work to pick up the child, and then drive 45 miles back to Wilmington with the child, an aggregate of 180 miles. The same analysis would apply to a single parent living and working in Georgetown who could only locate child care in Dover. The parent would have to drive 36 miles to drop off the child in Dover, drive 36 miles back to Georgetown to work, drive 36 miles back to Dover to pick up child after work, and then drive 36 miles back to Georgetown with the child, an aggregate of 144 miles. The "one hour distance" standard does not appear in the attached federal regulations, 45 C.F.R. §§261.15 and 261.56. DSS could adopt a different standard.

Agency Response: You recommended that DSS reconsider the "one hour drive" standard in regards to determining the availability of child care. DSS agrees that a more objective measure should be used and will amend §3011.2.1, Par. 2 to child care that is available within ten (10) miles of the home or place of employment.

Second, §3011.2.1, Par. 5, recites as follows: "While a parent may not be sanctioned as a result of child care being unavailable, the parent is not exempt from TANF work participation requirements or the TANF time limits." The statement that the parent who proves the unavailability of child care may not be sanctioned but "is not exempt from TANF work participation" is odd and ostensibly contradictory. If the parent proves a lack of available child care, the parent should logically be exempt from work participation. DSS may wish to review the accuracy of the recital.

Agency Response: Additionally you noted the following: "Second, §3011.2.1, Par. 5, recites as follows: "While a parent may not be sanctioned as a result of child care being unavailable, the parent is not exempt from TANF work participation requirements or the TANF time limits." The statement that the parent who proves the unavailability of child care may not be sanctioned but "is not exempt from TANF work participation" is odd and ostensibly contradictory. If the parent proves a lack of available child care, the parent should logically be exempt from work participation. DSS may wish to review the accuracy of the recital." The policy was attempting to relay that a family exempt due to the unavailability of child care

would still be reflected in the States federal work participation rate. This fact does not need to be reflected in this policy; therefore the reference to not being exempt from work participation requirements is stricken although the time limit remains in place.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2014 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Delaware TANF Employment and Training Program, specifically, *Sanctions and Curing Sanctions*, is adopted and shall be final effective August 10, 2014.

Rita M. Landgraf, Secretary, DHSS, July 21, 2014

DSS FINAL ORDER REGULATION #14-27

REVISIONS:

3011 ~~Employment and Training and Work~~ Requiring Employment and Training Participation

DSS expects work-eligible adults to participate in either employment or activities related to finding work (e.g. employment and training activities) for the required number of hours ~~30, 35, or 55~~ twenty (20), thirty (30), or forty (40) hours a week for two ~~(2)~~ consecutive weeks prior to TANF benefits being authorized. The TANF benefit will continue uninterrupted as long as the participation in work or work activities continues for the required number of hours per week (see sections ~~3006.2 3006, 3006.1, 30061.1, and 30061.2~~). ~~DSS also expects caretakers to cooperate as necessary with school and other officials to ensure satisfactory school attendance by dependent children under age 16. The failure of clients to maintain any of these activities represent sanctionable offenses.~~

3011.2 Sanctions for Failing to Comply With Requirements Sanctioning For Not Meeting Employment and Training Requirements

~~See Administrative Notice: A-7-99 Child Care Issues~~

~~Self-sufficiency requirements include those related to employment and training and work.~~

~~The penalty for noncompliance with the self-sufficiency requirements will be the closure of the entire TANF case for one month and a mandatory four consecutive weeks of participation. The four consecutive week participation is mandatory to cure the sanction and reopen the case. The case may remain closed longer than one month if the four consecutive weeks of participation have not been completed.~~

~~If the adult is deemed unemployable remove the sanction and enter the correct exemption. Then the case may be reopened for the length of time that the adult is not able to work.~~

~~The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be the closure of the TANF case for one month or until the individual obtains a job of equal or higher pay. If the individual participates for the required amount of hours in approved work related activities for four consecutive weeks the case can be reopened.~~

CMR Requirements	Sanctions
Employment and Training/ work and Workfare	TANF case closure for one full month plus four consecutive weeks of full participation prior to opening the case.
Child under 16 not attending school	A\$50.00 successive sanction for the teen not attending school when the parent does not work with the school to ensure school attendance.
Child 16 and over not attending school	The removal of the teen from the grant and the reduction in household size.
GMR requirements	An initial \$50.00 reduction in the TANF grant. If the participant has not complied, an additional \$50.00 reduction each month until compliance occurs.

~~Note: Under TANF regulations, Section 402(e)(2), DSS cannot impose sanctions when individuals refuse to participate in work or work-related activities if these individuals are single custodial parents with at least one child under age six, and these parents have demonstrated an inability to obtain needed child care. This provision neither makes parents exempt from participation in work activities, nor makes them exempt from time limits. It only restricts DSS authority to sanction.~~

~~Parents must demonstrate the following:~~

~~the unavailability of appropriate child care within a reasonable distance from their home or work (reasonable distance is~~

defined as care that is located in proximity to either a parent's place of employment or near the parent's home, generally care that is within one hour's drive);

the unavailability or unsuitability of informal child care by a relative or under other arrangements (unsuitability of informal care is defined as care that would not meet the physical or psychological needs of the child);

the unavailability of appropriate and affordable formal child care arrangements (affordable care is defined as care that would provide access to a full range of child care categories and types of providers; and appropriate care is care that meets the health and safety standards as defined by State licensing guidelines, as well as the needs of the parents and children).

Parents who claim an inability to obtain needed child care must contact a DSS worker to press their claim. Parents will have 10 days, either from the date when they first attempted to find child care or ten days from the date DSS instructed them to participate in work activities, to contact the worker. DSS staff will have 20 days to review and decide whether the parents have a legitimate claim. If DSS determines that the parents did not demonstrate their claim, workers are to impose the sanctions. DSS will not sanction parents who have demonstrated their claims. Document reasons in DCIS under Case Remarks.

This policy applies to cases in which one or more parents are required to participate in TANF employment and training activities.

1. The TANF Case Is Sanctioned When A Parent Does Not Complete Their Required Hours.
Each week clients are required to engage in and verify their participation in assigned employment and training activities. The TANF case is sanctioned when a client does not complete the required hours or does not submit the required verification of their hours for any week. The sanction known as a Full Family Sanction or Self-sufficiency Sanction is closure of the TANF case until the sanction is cured or the parent becomes exempt from employment and training requirements.
2. The TANF Case Is Sanctioned When A Needy Non-Parent Caretaker Does Not Complete Their Hours.
Each week clients are required to engage in and verify their participation in assigned employment and training activities. The TANF case is sanctioned when a needy non-parent caretaker does not complete the required hours or does not submit the required verification of their hours for any week. The sanction is removal of the caretaker from the grant until the sanction is cured or the caretaker becomes exempt from employment and training requirements.

3011.2.1 Sanctioning When Child Care Is Not Available

This policy applies to TANF cases with a single custodial parent caring for a child under age six and the parent is required to participate in TANF employment and training activities.

1. A Parent Who Is Unable To Obtain Child Care Is Not Sanctioned
A Full Family Sanction is not applied to a TANF case when the parent demonstrates that child care is not available.
2. A Parent Must Demonstrate Child Care Is Not Available.
Credible evidence of any one of the following conditions demonstrates that child care is not available.
 - a. Appropriate child care is unavailable within a reasonable distance from their home or work. Reasonable distance is defined as care that is located in proximity to either a parent's place of employment or the parent's home; generally care that is within ~~a one hour drive from~~ ten (10) miles of] either the home or work.
 - b. Informal child care by a relative or under other arrangements is unavailable or unsuitable. Informal care is considered unsuitable if the care would not meet the physical or psychological needs of the child.
 - c. An appropriate and affordable formal child care arrangement is not available.
Affordable care is defined as care that would provide access to a full range of child care categories and types of providers; appropriate care is care that meets the health and safety standards as defined by State licensing guidelines, as well as the needs of the parent and child.
3. A Parent Must Report That Child Care Is Not Available Within Ten (10) Days.
Parents who claim an inability to obtain needed child care must contact a DSS worker to press their claim. Parents have ten (10) days, either from the date when they first attempted to find child care or ten (10) days from the date DSS instructed them to participate in work activities.
4. DSS Will Decide On A Parent's Claim Of Child Care Unavailability Within Twenty (20) Days.
DSS staff have twenty (20) days to review and decide whether the parent's claim that child care is not available is legitimate. If DSS determines that the parents did not demonstrate their claim, DSS will impose applicable

sanctions if the family has not met the employment and training requirement. DSS workers will document in the client's record the client's claim and their legitimacy determination.

5. Families Are Not Exempt From ~~[TANF Work Requirements Or]~~ Time Limits

While a parent may not be sanctioned as a result of child care being unavailable, the parent is not exempt from ~~[TANF work participation requirements or]~~ the TANF time limits.

3011.3 ~~Curing Sanction Penalties~~ Curing a Full Family Sanction

~~Clients must keep appointments with Employment and Training staff, complete the Employability Development Plan and follow through with the recommendations of the Employment and Training staff for a minimum period of one month, including four consecutive weeks of the required amount of hours for that household 30,35, or 55 hours of participation.~~

~~Clients, unless indicated otherwise, must participate in the work and/or work related activities for a minimum period of four consecutive weeks.~~

~~EXAMPLE: A client fails to meet the required hours of participation and is sanctioned. In order to cure this sanction, the client must contact the Employment and Training staff, and follow through with her work activity for 30, 35, or 55 hours a week (client's required hours) for a minimum period of four consecutive weeks before the sanction is considered cured.~~

~~DSS expects employable adults to participate in either employment or activities related to finding work (e.g., employment and training activities) for TANF benefits to continue uninterrupted. Either an employable adult is working or is participating in activities to secure employment. The failure of clients to maintain either of these activities is a sanctionable offense.~~

This policy applies to TANF cases that have been sanctioned as a result of not meeting the TANF requirements for employment and training.

1. ~~Mandatory Employment And Training Participants Must Work With An Assigned Vendor.~~

To cure the sanction clients must work with an assigned employment and training vendor. The vendor will develop a plan with the client that specifies the weekly activities and hours the client must complete to be in compliance with the TANF program. Based on family composition clients are generally required to complete twenty (20), thirty (30), or forty (40) hours per week of approved activities.

2. ~~Clients Must Complete Four (4) Consecutive Weeks Of Participation.~~

To cure the Full Family Sanction clients must complete and submit required verification of their required activities and hours to the employment and training vendor. They must complete four (4) consecutive weeks of full participation.

For the TANF program purposes a week is a seven (7) day period which begins on Monday and ends on Sunday.

3. ~~The TANF Case Reopens At The Beginning Of The Four (4) Week Cure Period.~~

When the TANF family has remained technically and financially eligible for TANF during the cure sanction period, once the requirement of four (4) consecutive weeks of full and verified participation has been completed the TANF case will reopen effective the first day of the four (4) week cure sanction period.

18 DE Reg. 143 (08/01/14) (Final)