

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 9013.1

FINAL

ORDER

Food Supplement Program - Household Definition

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 the Food Supplement Program, specifically, *Household Definition*. 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 June 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 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 Food Supplement Program, specifically, *Household Definition*.

Statutory Authority

- 7 CFR §273.1, *Household concept*
- 13 **Del.C.** §101, *Void and voidable marriages*
- 13 **Del.C.** §129, *Equal treatment of marital relations*

Background

Delaware's Food Supplement Program, formerly known as food stamps, is operated under the provisions of the Food and Nutrition Act of 2008, as amended, and is administered by the Food and Nutrition Service (FNS) under the United States Department of Agriculture (USDA). The Delaware Division of Social Services (DSS) is responsible for the administration of the Food Supplement Program (FSP), including, but not limited to certification of applicant households and issuance, control, and accountability of FSP benefits.

Summary of Proposed Changes

In the Food Supplement Program (FSP), spouses living together are considered a food benefit household even if they do not purchase and prepare meals together. The current policy does not recognize same gender spouses. Delaware law requires policies be consistent for same gender spouses and non-same gender spouses. The policy is modified to be consistent for all spouses regardless of gender; all spouses who live together are considered as purchasing and preparing meals together even if they do not do so.

Therefore, policy at **DSSM 9013.1(B)(1)(b)**, *Household Definition* is amended by striking the language prohibiting same gender couples from being considered spouses. The applicable federal citation is also added to the policy section.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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.

GACEC & SCPD

As background, legislation (H.B. 75) was enacted in 2013 which resulted in adoption of the following statute:
§129. Equal Treatment of Marital Relationships.

- (a) All laws of this State applicable to marriage or married spouses or the children of married spouses, whether derived from statutes, administrative rules or regulations, court rules, governmental policies, common law, court decisions, or any other provisions or sources of law, including n equity, shall apply equally to same-gender and different-gender married couples and their children.

Title 13 **Del.C.** §129.

The existing federal [7 C.F.R. 273.1] and State regulations covering eligibility for the Food Supplement Program define a "household" as including "spouses" who live together regardless of whether they customarily purchase food and prepare meals together. The current State regulation contains the following provision excluding "same-sex" couples from being considered "spouses":

Same sex couples, for food stamp purposes, are not considered spouses and the presumption of purchasing food and preparing meals together would not apply to them.

At 1146.

Given the above §129, DSS is deleting this provision so same-gender spouses would be treated the same as different-gender spouses for purposes of eligibility for benefits under the Food Supplement Program.

GACEC and SCPD endorse the proposed regulation since the revision is necessary to conform to the statute.

Agency Response: DSS thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the June 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 the Food Supplement Program (FSP), specifically, *Household Definition* is adopted and shall be final effective August 10, 2014.

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

DSS FINAL ORDER REGULATION #14-28

REVISION:

9013.1 Household Definition

7 CFR 273.1

A) General Definition - a household is composed of one of the following individuals or groups of individuals, provided they are not residents of an institution (except as otherwise specified in DSSM 9015), or are not boarders (as specified in DSSM 9013.3).

1. An individual living alone
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

This includes severely disabled individuals who have someone purchase and prepare their meals for them (regardless of whether or not they are paid for the service). The disabled individuals are considered separate food stamp households, even if they live in the same home as the individual purchasing and preparing the meals for them. This household does not have to meet the 165 percent rule.

3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

B) Special Definition - the following individuals living with others or groups of individuals living together must be considered as customarily purchasing food and preparing meals together, even if they do not do so*.

1. Spouses who live together. Spouse refers to either of two individuals:
 - a. Who would be defined as married to each other under applicable State law; or
 - b. Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

* ~~Same sex couples, for food stamp purposes, are not considered spouses and the presumption of purchasing food and preparing meals together would not apply to them.~~

2. Children 21 years of age and younger living with their parents. [Parents are defined as natural parent(s), adoptive parent(s), or step-parent(s)]

Children (other than foster care children) who are under 18 and live under the parental control of a non-parent, adult household member cannot be separate households.

Adult children (22 years of age and older) who live with their parents can be separate households if they purchase and prepare food separately.

3. Child(ren) living with a non-parent who has legal custody of the child(ren) will continue to be a member of the household for food stamp purposes even if a natural parent moves into the home. The non-parent must provide proof of legal custody. If the adult who has legal custody of the child chooses to let the child and natural parent purchase and prepare meals together, the child can become a member of the natural parent's food stamp household.

4. Joint custody – Children who live with parents in a joint custody situation can get food stamps with the parent who is the first to apply for food stamps. This also covers shared custody situations. If both parents are applying for the same child(ren), the parent who provides the majority of the meals (21 meals a week) will include the child as part of his/her food stamp household.

When the parent who provides the majority of the meals applies for food stamps after the other parent is already getting food stamps for children, he/she can include the children in their food stamp after they are removed from the other parent's case. The children are removed from the first parent's case and opened in the second parent's case no later than the second month after the month the second parent requests food stamps for the children.

5. When an individual resides a portion of the month with a food stamp household, the household can choose to include or exclude the individual from the food stamp household. If included, the income of the individual must be included and the individual cannot get benefits in another household or state.

Examples:

A son works out of state but comes home every weekend. His mom can include or exclude him.

A child lives in PA with her father. She comes to DE to live with her mom on weekends. Her mother can include her in her food stamp household as long as the child is not getting food stamps in PA.

A child goes to a residential school and comes home every other weekend and holidays. The parents can include the child in their food stamp household.

6. Although a group of individuals living together and purchasing and preparing meals together constitutes a single household under the provisions of the above general definition, an otherwise eligible member of such a household who is 60 years of age or older and who is unable to purchase and prepare meals because (s)he suffers from a disability considered permanent under the Social Security Act, or suffers from a non-disease-related, severe, permanent disability, may be a separate household from the others based on the provisions of this section provided that the income (all income under DSSM 9055) of the others with whom the individual resides (excluding the income of the spouse of the elderly and disabled individual) does not exceed 165% of the poverty line. Only the spouse of the elderly and disabled individual is required to be included in the same household with the individual.

"Elderly or disabled member" means a member of a household who:

- a. is 60 years of age or older;
- b. receives Supplemental Security Income (SSI) benefits under Title XVI of Social Security Act or disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act;
- c. receives federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive benefits is based upon the disability or blindness criteria used under Title XVI of the Social Security Act;
- d. receives federally or State-administered supplemental benefits under section 212(a) of Public Law 93-66;
- e. receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act;
- f. is a veteran with a service-connected or non-service connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under Title 38 of the United States Code;
- g. is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;
- h. is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38 of the United States Code; or
- i. is a surviving spouse or surviving child of a veteran and is considered by the VA to be entitled to compensation for service-connected death or pension benefits for a non- service connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act;
- j. received an annuity payment under Section 2(a)(l)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board, or Section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under Title XVI of the Social Security Act.

k. is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income, disability related medical assistance under Title XIX of the Social Security Act, or disability-based State general assistance benefits provided that the eligibility to receive those benefits is based upon disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act.

"Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them.

Note: Some disabled persons optionally receive Federal Employee Compensation Act (FECA) payments in lieu of Civil Service Disability payments. Such persons are considered to meet the disability definition under this section. Some persons, however, receive FECA payments on a temporary basis while recovering from an on-the-job injury. Receipt of these temporary payments does not satisfy the disability definition. Therefore, verify which type of FECA payment a client receives.

VERIFICATION OF DISABILITY

DISABILITY BASIS

VERIFICATION METHOD

b, c, d

Household must provide proof of benefit receipt.

f

Household must present a statement from the Veterans Administration which clearly indicates (1) that the disabled individual is receiving VA disability benefits for a service-connected disability, and (2) that the disability is rated as total or paid at the total rate.

g, h

Household must prove that the disabled individual is receiving VA disability benefits.

e, i

Use SSA's most current list of disabilities considered permanent. If it is obvious that one individual has one of the listed disabilities, the item is considered verified. If disability is not obvious, the household must provide a statement from a physician or licensed or certified psychologist certifying that the individual has one of the non-obvious disabilities listed.

j

Household must provide proof that individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board and has been determined to qualify for Medicare.

k

Household must provide proof of receipt of interim benefits pending receipt of SSI; or disability-related medical assistance under Title XIX of the SSA. Verify that the eligibility to receive these benefits is based upon disability or blindness criteria that are at least as stringent as those used under title XVI of the Social Security Act.

9 DE Reg. 1077 (01/01/06)

10 DE Reg. 1003 (12/01/06)

11 DE Reg. 332 (09/01/07)

18 DE Reg. 147 (08/01/14) (Final)