

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

FINAL

ORDER

Food Stamp Program

9006.3 Exceptions From Notice

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding exemptions from adverse action notices. 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 October 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Change

Statutory Authority

7 CFR 273.13(b), *Exemptions from Notice*

Summary of Proposed Change

DSSM 9006.3, *Exemptions from Notice*: The policies of the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA) states that mail returned as undeliverable for whatever reason requires DSS to send a Request for Contact form to the household to clarify their living arrangement before DSS can close the case for whereabouts unknown. The agency is removing language in the current rule that requires terminating a case without timely notice when the post office returns mail with no forwarding address. This information is incorrect. This rule is also being amended to reflect typographical and rule number corrections.

Summary of Comments Received with Agency Response with Explanation of Change(s)

The State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. The Division of Social Services (DSS) has considered your comments and responds as follows.

First, it is difficult to determine the rationale for the revisions. The APA contemplates that agencies will describe the "substance" and "issues" underlying a proposed regulation:

The notice shall describe the nature of the proceedings, including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act and reference to any other regulations that may be impacted or affected by the proposal.

Title 29 **Del.C.** §10115(a)(1).

In contrast, DSS provides no information describing the amendments or rationale for proposal. This undermines the public's ability to comment on the initiative. DSS may wish to prospectively consider including more information about the substance and issues underlying proposed amendments.

Agency Response: Due to a publication error, the text for the “Summary of Proposed Change” was omitted from the Proposed Regulation that appeared in the October 1, 2007 issue of the Delaware *Register*. The correct information was immediately restored on October 2, 2007. DSS regrets this omission and apologizes for the inconvenience this may have caused.

Second, §9006.3 directs that no notice of adverse action be provided to beneficiaries under certain circumstances. DSS proposes to delete the following basis for withholding notice: “DSS mail has been returned by the post office indicating no known forwarding address”. The underlying federal regulation [7 C.F.R. 273.13 (attached)] includes the following standard:

(c) *Optional notice.* The State agency may, at its option, send the household an adequate notice as provided in paragraph (b)(3) of this section when the household’s address is unknown and mail directed to it has been returned by the post office indicating no known forwarding address.

The federal Department of Agriculture has provided additional direction through the attached excerpt from a Question and Answer Guidance document on its website. It recites as follows:

Question K-8

Suppose the local office has lost contact with the household. Perhaps the post office returned mail. What should the local office do?

Answer K-8

Until 7 C.F.R. 273.12(c)(3), the Request for Contact, becomes effective, the state agency must issue an advance or adequate notice of adverse action and terminate the household’s participation. However, before doing so, it would be prudent to try to locate the household in another way, since the notice will probably never reach the household.

When 7 C.F.R. 273.12(c)(3) becomes effective, the state agency will have to issue a request for contact and then issue a notice before terminating the household’s participation. But again, another attempt, such as a telephone call, would be prudent.

Either way, the state agency has the option of sending an adequate, rather than advance, notice (please see 7 C.F.R. 273.13(c)).

The federal standards ostensibly encourage attempts to notify a household of adverse action and offer DSS the discretion to issue written notice even when prior mail has been returned by the post office with no forwarding address. SCPD endorses the proposed amendment since it favors beneficiaries.

Agency Response: DSS agrees that the agency should attempt to notify a household of pending adverse action when mail has been returned by the post office indicating no forwarding address. For this reason, DSS is removing the sentence in question. DSS is writing operational procedures for staff to follow when mail is returned to the local offices using existing policy under 9085.5 Unclear Information. When information about a change in a household’s circumstances is unclear and DSS cannot determine the effect on the household’s benefit, DSS will try to clarify the change before taking action to close a case.

Third, DSS proposes to amend a reference in §9006.3(10) to correct a citation by substituting DSSM 7004.1 for DSSM 7000:

Do not provide individual notices of adverse action when:

(10) Converting a household from cash repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in DSSM ~~7000~~ 7004.1.

Substantively, the concept underlying this provision is unobjectionable since it is based on 7 C.F.R. §273.13(b)(10). Moreover, since there is no discrete §7000 (only a chapter 7000), it makes sense to amend the citation. However, since DSSM 7004.3 addresses failure to comply with a repayment agreement in much more detail than DSSM 7004.1, DSS may wish to consider amending the reference to either refer solely to "DSSM 7004.3" or to both "DSSM 7004.1 and DSSM 7004.3".

Agency Response: DSS will amend the citation from 7004.1 to 7004.3, as recommended, which is the correct citation.

Findings of Fact

The Department finds that the proposed changes as set forth in the October 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to exceptions from adverse action notices in the Food Stamp Program is adopted and shall be final effective December 10, 2007.

Vincent P. Meconi, Secretary, DHSS, November 14, 2007

DSS FINAL ORDER REGULATION #07-55

REVISIONS:

9006.3 ~~Exceptions~~ Exemptions From Notice

[273.13(b)]

Do not provide individual notices of adverse action when:

- 1) The State initiates a mass change (see DSSM 9086);
- 2) The Division determines, based on reliable information, that all members of a household have died or that the household has moved from the project area; ~~or DSS mail has been returned by the post office indicating no known forwarding address;~~
- 3) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the allotment would terminate;
- 4) The household's allotment varies from month to month within the certification period to take into account changes which were anticipated at the time of certification and the household was so notified at the time of certification;
- 5) The household jointly applied for TANF/ GA/RCA and food stamp benefits and has been receiving food stamp benefits pending the approval of the TANF/GA/RCA grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the TANFIGA grant;
- 6) A household member is disqualified for intentional Program violation in accordance with DSSM 2023, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. The notice requirements for individuals or households affected by intentional Program violation disqualifications are explained in DSSM 2023.
- 7) DSS has assigned a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the postponed verification and that DSS may act on the verified information without further notice as provided in DSSM 9041.
- 8) DSS must change the household's benefits back to the original benefit level as required in DSSM 9085.
- 9) DSS is terminating the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement if the facility loses either its certification from DHSS or has its status as an authorized representative suspended due to FNS disqualifying it as a retailer. Residents of group living arrangements applying on their own behalf are still eligible to participate.
- 10) Converting a household from cash repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in DSSM 7000 ~~7004.1~~ **7004.3**
- 11) The household voluntarily requests in writing or in the presence of a case worker, that its participation be terminated. If the household does not provide a written request, send the household a letter

confirming the voluntary withdrawal. Written information does not entail the same rights as a notice of adverse action except that the household may request a fair hearing.

12) DSS determines, based on reliable information, that the household will not be residing in the project area and, therefore, will be unable to obtain its next allotment. Inform the household of its termination no later than its next scheduled issuance date. Do not delay terminating the household's participation in order to provide advance notice.

If the following conditions are met, dispense with the timely notice requirement in DSSM 9006.2. However, the household must be notified that its benefits will be reduced or terminated no later than the date the household receives, or would have received its allotment:

- a) The household reports the information which results in the reduction or termination.
- b) The reported information is in writing. Information reported on a TANF monthly report form will satisfy this requirement.
- c) Based solely upon the household's written information, DSS can determine the household's allotment or ineligibility.
- d) The household retains its right to a fair hearing.
- e) The household retains its right to continued benefits by requesting a fair hearing within the time period provided by the notice of adverse action.
- f) The Division continues the household's previous benefit level, if required, within five working days of the household's request for a fair hearing.

11 DE Reg. 795 (12/01/07) (Final)