

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF SOCIAL SERVICES

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

### PROPOSED

### PUBLIC NOTICE

#### DSSM: Food Benefit Employment & Training Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding provisions of the Food Benefit Employment & Training Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 2, 2010.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

#### SUMMARY OF PROPOSED CHANGE

The proposed changes described below amend policies in the Division of Social Services Manual (DSSM) regarding the Food Benefit Employment & Training Program.

#### Statutory Authority

7 CFR §273.7, Work provisions

#### Summary of Proposed Changes

These revisions incorporate the most recent federal policy changes effected by the provisions of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), enacted on February 17, 2009.

**DSSM 9018.1**, Work Registration Requirements; **DSSM 9021.1, 9021.2, 9021.3, 9021.4, Failure to Comply: and, DSSM 9026, 9026.1, 9026.2, 9026.3, 9026.4, 9026.5**, Voluntary Quit: Federal requirements no longer require the Food Benefit Employment and Training (E & T) program to be mandatory. DSS policy will change from mandatory participation in Food Benefit E & T activities to voluntary. The proposed amendments remove the penalties for those participants who choose not to comply with the program while still offering services to participants who need Employment and Training services.

#### DSS PROPOSED REGULATIONS #10-05

#### REVISIONS:

##### 9018.1 Work Registration Requirements

No physically and mentally fit individual over the age of 15 and under the age of 60 shall be eligible to participate in the food ~~stamp~~ supplement program if the individual:

- refuses, at the time of application and every 12 months thereafter, to register for employment;
- ~~refuses without good cause to participate in an employment and training program;~~
- refuses without good cause to accept an offer of employment at a site not subject to a strike or lockout at the time of refusal, at a wage not less than the higher of
  1. the applicable Federal or State minimum wage; or

2. 80% of the wage that would have governed had the minimum hourly rate been applicable to the offer of employment.
- refuses without good cause to provide DSS with sufficient information to allow DSS to determine the employment status or the job availability of the individual;
  - voluntarily and without good cause quits a job or reduces the hours of work so the individual is working less than 30 hours per week; or
  - fails to comply with a work supplementation program.

***(Break In Continuity of Sections)***

**9021~~Failure to Comply~~ RESERVED**

**9021.1 ~~Non-Compliance with Food Stamp Work Requirements~~**

If DSS determines that an individual other than the head of household as defined in DSSM 9014 has refused or failed without good cause to comply with the requirements imposed by this section, that individual is ineligible to participate in the Food Stamp Program according to the periods of ineligibility listed under DSSM 9021.1. The individual is treated as an ineligible household member per DSSM 9013.2.

Determine the income, resources, and deductions of these ineligible household members according to 9076.1. If the head of household fails to comply, the entire household is ineligible to participate.

**9021.2 ~~Periods of Ineligibility (Sanction Periods)~~**

When an individual fails to comply with a work requirement, voluntarily quits a job or voluntarily reduces work hours to less than 30 hours per week and becomes ineligible to participate in the food stamp program, the periods of ineligibility are as follows:

- First violation, the individual will remain ineligible until the later date of when the individual complies with the work requirement or a one month period after the date of ineligibility.
- Second violation, the individual will remain ineligible until the later date of when the individual complies with the work requirement or a three month period after the date of ineligibility.
- Third violation, the individual will remain ineligible until the later date of when the individual complies with the work requirement or a six month period after the date of ineligibility.
- When the individual is the head of household and fails to comply with a work requirement, voluntarily quits a job or voluntarily reduces work hours to less than 30 hours per week, the entire household becomes ineligible to participate in the food stamp program. The periods of ineligibility are as follows:
- First violation, the household will remain ineligible until the later date of when the head of household complies with the work requirement or a one month period after the date of ineligibility.
- Second violation, the household will remain ineligible until the later date of when the head of household complies with the work requirement or a three month period after the date of ineligibility.
- Third violation, the household will remain ineligible until the later date of when the head of household complies with the work requirement or a six month period after the date of ineligibility.

The periods of ineligibility are the minimum periods that must be served. If an individual complies before the end of the sanction period, the minimum period of ineligibility must be served. Individuals cannot cure the sanctions before the minimum sanction periods are served. After the minimum sanction periods are served, the individual must comply before they can receive benefits again, except for voluntary quit provisions, unless they become exempt from work registration through DSSM 9018.3, other than through exemption based on items (3) or (5) of that section. If any household member who failed to comply joins another household as head of household, that entire new household is ineligible for the remainder of the sanction period. If the member who failed to comply joins another household where (s)he is not head of household, the individual is ineligible for the appropriate period of ineligibility listed above.

Determine whether good cause for the job quit non-compliance exists, per DSSM 9025 and 9026.3. Within ten (10) days of the DSS determination that the non-compliance was without good cause, provide the individual or household with a notice of adverse action. The notice must contain the particular act of non-compliance committed, the proposed sanction period, and a statement that the individual or household may reapply at the end of the sanction period. Include information describing the action which can be taken to end or avoid the sanction.

The sanction period begins with the first month following the expiration of the adverse notice period, unless a

fair hearing is requested. Each individual or household has a right to a fair hearing to appeal a denial, reduction or termination of benefits due to a determination of non-exempt status, or a DSS determination of failure to comply with the work registration or employment and training requirements of this section. Individuals or households may appeal DSS actions such as exemption status, the type of requirement imposed, or DSS refusal to make a finding of good cause, if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters.

DSS or its designee operating the relevant component should receive sufficient advance notice to either permit the attendance of a representative will be available for questioning over the phone during the hearing. Allow the household to examine its employment component case file at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Information not released to a household may not be used by either party at the hearing. The results of the fair hearing are binding on DSS.

### **9021.3 Failure to Comply With a Comparable TANF Employment and Training or Unemployment Compensation Work Requirement**

A household containing a member who was exempt from work registration in accordance with because of registration for work under TANF Employment and Training or Unemployment Compensation (UC) and who fails to comply with a TANF Employment and Training or UC requirement comparable to a food stamp work registration or employment and training program requirement will be treated as though the member had failed to comply with the corresponding food stamp requirements.

If DSS learns that a household member has refused or failed without good cause to comply with an TANF Employment and Training or UC requirement, determine whether the requirement was comparable. Similarly, if the household reports the loss or denial of TANF or UC or if DSS otherwise learns of such loss or denial, determine whether the loss or denial was caused by a determination by the administering agency that a household member refused or failed without good cause to comply with the work requirement and, if so, whether the requirement was comparable to the work registration or employment and training requirement. The TANF Employment and Training or UC requirement is not comparable if it places responsibilities on the household which exceed those imposed by the food stamp work registration or FNS approved employment/training program requirements.

If DSS determines that the requirement is comparable, the individual or household (if the individual who committed the violation is the head of household) will be sanctioned in accordance with the following provisions. Provide the individual or household with a notice of adverse action per DSSM 9006 within ten (10) days of learning of the household member's noncompliance with the UC or TANF Employment and Training requirement. The notice must comply with the requirements of DSSM 9021.1.

An individual or household will not be sanctioned if the non-complying member meets one of the work registration exemptions provided in DSSM 9018.3 other than the exemptions provided in items 3 and 5 of that section. Household members who fail to comply with a comparable TANF Employment and Training or UC requirement will lose their exemption under items 3 and 5 of DSSM 9018.3 and must register for work if required to do so in DSSM 9018.1.

If the Division's determination of noncompliance with a comparable TANF Employment and Training or UC work requirement leads to a denial or termination of the individual's or household's food stamp benefits, the individual or household has a right to appeal the decision in accordance with the provisions of DSSM 9021.

A sanctioned individual or household may resume participation in the Program in accordance with DSSM 9021.4.

### **9021.4 Ending Disqualifications**

Following the end of the period of ineligibility for non-compliance with the work registration or employment and training requirements, participation may resume if the ineligible individual or household applies again and is determined eligible. Eligibility may be reestablished during the sanction period and the individual or household may (if otherwise eligible) be permitted to resume participation if the individual or head of household becomes exempt from the work requirement or is no longer a member of the household. An individual who has been sanctioned for non-compliance may be permitted to resume participation during the period of ineligibility (if otherwise eligible) by becoming exempt from work registration.

Before the individual or household can resume getting benefits, the individual or head of household must become exempt from work registration or comply with the work requirements. The minimum sanction periods must

~~be served regardless of when the individual or head of household complies with the following appropriate requirements:~~

- ~~1) Refusal to register—registration of the household member;~~
- ~~2) Refusal to report to an employer to whom referred—reporting to this employer if work is still available or to another employer to whom referred;~~
- ~~3) Refusal to respond to a request from the DSS or its designee requiring supplemental information regarding employment status or availability for work—compliance with the request;~~
- ~~4) Refusal to accept a bona fide offer of suitable employment to which referred—acceptance of the employment if still available to the participant, or securing other employment which yields earnings per week equivalent to the refused job, or securing any other employment of at least 30 hours per week or securing employment of less than 30 hours per week but with weekly earnings equal to the Federal minimum wage multiplied by 30 hours;~~
- ~~5) Refusal to comply with a DSS (or its designee) assignment as part of an FNS approved employment/training program—compliance with the assignment or an alternative assignment~~

***(Break In Continuity of Sections)***

**9026 Voluntary Quit**

~~[273.7(n)]~~ 7 CFR 273.7

No individual who voluntarily quits his/her most recent job, or ~~reduceds~~ work hours to less than 30 hours per week, without good cause will be eligible to participate in the Food Stamp Supplement Program (FSP) as specified below.

At the time of application, explain to the applicant the consequences of the individual quitting his or her job without good cause.

**9026.1 Application Processing**

1) When a household files an application for participation or when a participating household reports the loss of a source of income, determine whether any household member voluntarily quit a job. Benefits will not be delayed beyond the normal processing times specified in DSSM 9028 pending the outcome of this determination. This provision applies only if the employment involved 30 hours or more per week or provided weekly earnings at least equivalent to the Federal minimum wage multiplied by 30 hours; the quit occurred within ~~60~~ 30 days prior to the date of application or anytime thereafter; and the quit was without good cause. Changes in employment status that result from terminating a self-employment enterprise or resigning from a job at the demand of the employer will not be considered as a voluntary quit for the purpose of this subsection.

An employee of the Federal Government or of a state or local government, who participates in a strike against such government and is dismissed from his or her job because of participation in the strike, will be considered to have voluntarily quit a job without good cause.

2) In the case of an applicant household, determine whether any currently unemployed (i.e., employed less than 30 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 30 hours) household member who is required to register for work has voluntarily quit his or her most recent job within the last ~~60~~ 30 days. If DSS learns that a household has lost a source of income after the date of application but before the household is certified, determine whether a voluntary quit occurred.

3) In the case of a participating household, determine whether any household member voluntarily quit his or her job or reduced his or her hours, while participating in the ~~Program~~ FSP.

~~4) If the determination of voluntary quit is established, determine if that member is the head of the household per DSSM 9014 or another household member.~~

~~54)~~ Upon a determination that the ~~head of household~~/individual voluntarily quit employment, determine if the voluntary quit was with good cause as defined in DSSM 9026.3 4. In the case of an applicant household, if the voluntary quit was without good cause, the ~~household's~~ individual's application for participation will be denied and the appropriate period of ineligibility imposed per DSSM ~~9024.2~~ 9026.2.

~~Provide the applicant household with a notice of denial informing the household of the following items:~~

- ~~• The proposed disqualification period;~~

- Its right to reapply at the end of the period of ineligibility, and
- Its right to a fair hearing.

If DSS determines that ~~an~~ the head of a participating household/individual voluntarily quit his/her job or reduced his/her work hours while participating in the program or discovers a quit or reduction of work hours which occurred within ~~sixty (60)~~ thirty (30) days prior to application or between application and certification, provide a notice of adverse action within ten (10) days after the determination of a voluntary quit is made. The notification must contain the proposed period of ineligibility and must specify that the ~~household~~ individual may reapply at the end of the sanction. The periods of ineligibility are imposed according to DSSM 9024.2 9026.2, and ~~is~~ are effective upon the issuance of the notice of denial.

If a voluntary quit or reduction in work effort occurs in the last month of a certification period, or it is determined in the last 30 days of the certification period, the individual must be denied recertification for a period equal to the appropriate ~~mandatory disqualification~~ period of ineligibility. The beginning of the ~~disqualification~~ sanction starts with the first day after the last certification period ends and continues for the length of the ~~disqualification~~ sanction period, regardless of whether the individual reapplies for food ~~stamps~~ benefits.

#### Example:

~~It is determined that a participating individual quit his job without good cause in the last month of the certification period. The individual does not reapply for benefits. The individual is disqualified for three months starting with the first day after the certification period ended.~~

- ~~If the individual reapplies before the three month period ended, the individual is denied benefits due to the voluntary quit sanction.~~
- ~~If the individual reapplies after the three month period has ended, the disqualification period has been served and eligibility can be determined.~~

~~Each household has a right to a fair hearing to appeal a reduction or termination of benefits due to a determination that the household's head voluntarily quit his/her job without good cause. If the participating household requests a fair hearing and the Division's determination is upheld, the disqualification period begins with the first month after the hearing decision is rendered.~~

~~Household heads who have been disqualified for quitting a job will carry their sanction with them if they join a new household as its head. The new household will be ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it per DSSM 9021.4.~~

65) If an application for participation is filed in the ~~third last~~ last month of ~~disqualification~~ the sanction period, use the same application for the denial of benefits in the remaining month of ~~disqualification~~ the sanction and certification for any subsequent month(s) if all other eligibility criteria are met.

### **9026.2 Periods of Ineligibility (Sanction Periods)**

When an individual voluntarily quits a job or voluntarily reduces work hours to less than 30 hours per week and becomes ineligible to participate in the Food Supplement Program, the periods of ineligibility are as follows:

- First violation, the individual will remain ineligible for a one month period after the date of ineligibility.
- Second violation, the individual will remain ineligible for a three month period after the date of ineligibility.
- Third violation, the individual will remain ineligible for a six month period after the date of ineligibility.

Determine whether good cause for the job quit exists, per DSSM 9025 and 9026.4. Within ten (10) days of the DSS determination that the non-compliance was without good cause, provide the individual with a notice of adverse action. The notice must contain the particular act of non-compliance committed, the proposed sanction period, and a statement that the individual may reapply at the end of the sanction period. Include information describing the action that can be taken to end or avoid the sanction.

The sanction period begins with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. Individuals may appeal DSS actions such as DSS refusal to make a finding of good cause.

If the individual with the job quit sanction moves to another food benefit household, the sanction would follow the person.

#### **9026.23 Exemptions From Voluntary Quit Provisions**

Persons exempt from the full-time work registration provisions are also exempt from voluntary quit provisions (See DSSM 9018.3).

#### **9026.34 Good Cause**

Good cause for leaving employment includes the good cause provisions found in DSSM 9025 and resigning from a job that does not meet the suitability criteria specified at DSSM 9022. Good cause for leaving employment also includes:

- 1) Discrimination by an employer based on age, race, sex, color, disability, religious beliefs, national origin, or political beliefs;
- 2) Work demands or conditions that under continued employment would be unreasonable, such as working without being paid on schedule;
- 3) Acceptance by the head of household of employment, or enrollment at least half-time in any recognized school, training program or institution of higher education, that requires the head of household to leave employment;
- 4) Acceptance by another household member of employment or enrollment at least half-time in any recognized school, training program, or institution of higher education in another county which requires the household to move and thereby requires the head of household to leave employment;
- 5) Resignations by persons under the age of 60 which are recognized by the employer as retirement;
- 6) Employment which becomes unsuitable by not meeting the criteria specified in DSSM 9022 after the acceptances of such employment;
- 7) Acceptance of a bona fide offer of employment of more than 30 hours a week or in which the weekly earnings are equivalent to the federal minimum wage multiplied by 30 hours which, because of circumstances beyond the control of the head of household, subsequently either does not materialize or results in employment of less than 30 hours a week or weekly earnings of less than the federal minimum wage multiplied by 30 hours; and
- 8) Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food ~~stamp~~ benefits between jobs, particularly in cases where work may not yet be available at the new job site. Even though employment at the new site has not actually begun, the quitting of previous employment will be considered as with good cause if it is part of the pattern of that type of employment.

#### **9026.45 Voluntary Quit Verification**

~~To the extent that~~ If the information given by the household is questionable as defined in DSSM 9033, request verification of the household's statements. The primary responsibility for providing verification as provided in DSSM 9035.1 rests with the household. If it is difficult or impossible for the household to obtain documentary evidence in a timely manner, offer assistance ~~will be offered~~ to the household to obtain the needed verification. Acceptable sources of verification include but are not limited to the previous employer, employee associations, union representatives, and grievance committees or organizations. Whenever DSS can not obtain documentary evidence ~~cannot be obtained~~, substitute a collateral contact.

The Division is responsible for obtaining verification from acceptable collateral contacts provided by the household. If the household and the Division are unable to obtain requested verification from these or other sources because the cause for the quit resulted from circumstances that for good reason cannot be verified, such as a resignation from employment due to discrimination practices or unreasonable demands by an employer or because the employer cannot be located, the household will not be denied access to the Food ~~Stamp~~ Supplement Program.

#### **9026.56 Ending a Voluntary Quit or a Reduction in Work Hours ~~Disqualification Sanction~~**

Following the end of the ~~disqualification sanction~~ period as defined in DSSM 9024.2 9026.2, a household an individual may begin participation in the program if ~~it~~ he or she applies again and is determined eligible.

~~Eligibility may also be re-established during a disqualification period and the household will, if otherwise eligible, be permitted to resume participation, if the violator becomes exempt from the work registration requirements through DSSM 9018.3 other than through exemptions based on items (3) and (5) of that section. Should a household which has been determined to be non-compliant without good cause split into more than one~~

~~household, the sanction will follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household is ineligible for the balance of the period of ineligibility.~~

During the sanction period, if an individual is found exempt from work registration under DSSM 9018.3, the sanction would no longer apply.

**13 DE Reg. 1033 (02/01/10) (Prop.)**