

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: 9094 Cooperation with the Division of Child Support Enforcement (DCSE)

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 Delaware's Food Supplement 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 Tuesday, 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 CHANGES

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Food Supplement Program.

Statutory Authority

7 CFR §271.2, *Definitions*; and,

7 CFR §273.11(o), *Custodial Parent's Cooperation with the State Child Support Agency*

Summary of Proposed Changes

DSSM 9094: *Redesignate DSSM 9094 from Cooperation with the Division of Child Support Enforcement to Definitions.* The Division of Social Services (DSS) is removing the current contents of DSSM 9094, *Cooperation with the Division of Child Support Enforcement (DCSE)* because DSS did not implement this according to our original plans and has decided not to implement this option in the Food Supplement Program. This section is not in DSSM policy, only in the Administrative Code. DSS is replacing this entire section with Definitions. The definitions compiled in DSSM 9094 are used throughout the Food Supplement Program rules found in Section 9000.

DSS PROPOSED REGULATIONS #10-02

REVISIONS:

Title 16

9000 Food Stamp Program

~~9094 Cooperation with the Division of Child Support Enforcement (DCSE)~~

~~Cooperation as Condition of Eligibility~~

~~In order to get food stamp benefits, all applicants must cooperate with the Division of Child Support Enforcement (DCSE) to receive child support for minor children in their care. Custodial parents/caretakers cannot get food stamps if they fail to cooperate with DCSE. A custodial parent is a natural or adoptive parent who lives with his or her child, or a person who is living with and exercises parental control over a child under the age of 18.~~

Both applicants and recipients must cooperate, unless they can show good cause, in:

1. Identifying and locating absent parents;
2. Proving paternity for minor children born out of wedlock; and
3. Getting support payments and/or other properties for the minor child(ren).

DCSE is the single State agency that:

- Establishes paternity of and secures support for children born out of wedlock;
- Gets support from parents who have abandoned or deserted their children; and
- Enters into cooperative arrangements with appropriate courts and law enforcement officials in order to get support.

Applicants and recipients will be told of this requirement in writing at the time of application and recertification for continued benefits. DSS will refer caretakers to DCSE based on the following:

- DSS will refer a person to DCSE who is receiving food stamps and the food stamp assistance unit has children under the age of 18 with an absent parent(s).
- DSS will refer a person to DCSE who is receiving TANF or Child Care and the food stamp assistance unit has children not included in the TANF or Child Care case.
- DSS will not refer a person who is receiving TANF or Child Care and has cooperated as long as the assistance units contain the same persons.
- DSS will not refer a person who had good cause for not cooperating or made a good faith effort to cooperate as long as the assistance units contain the same persons.

Cooperation Responsibilities

Clients must cooperate with DCSE to get food stamp benefits. All families are required to provide enough information to permit DCSE to get child support on behalf of the family.

DCSE can make exceptions when the caretaker can prove that trying to get child support would create a danger to the caretaker or the children. This is called a good cause claim. The client is responsible to get proof to verify good cause claims.

DCSE can also determine a caretaker has cooperated when he/she makes a good faith effort to provide all the information he/she can about the non-custodial parent.

To cooperate with DCSE, applicants or recipients of food stamps must participate in the following activities, if required:

- To appear at an office of DSS or DCSE to give verbal or written information or written documents known to or possessed by the applicant or recipient;
- To appear as a witness in court or other hearings or proceedings; or
- To provide information or to confirm to the lack of information under penalty of perjury.

Penalties for Non-Cooperation

When a caretaker fails to cooperate with DCSE without good cause or fails to make a good faith effort to cooperate, that person will not get food stamp benefits. The sanction applies only to the caretaker, not the entire household.

Income, Expenses and Resources of Sanctioned Household Member

All resources of the sanctioned caretaker count toward the food stamp benefits. Income and expenses are prorated and count toward the food stamp benefits. See policy under 9076.2.

Curing the Child Support Sanction

To cure the child support sanction, the caretaker will provide enough information to permit DCSE to pursue child support collections on behalf of the minor children in his/her care. Once it is determined that the caretaker has cooperated, DSS will add him/her to the case.

Reopening the Sanctioned Person

Once DCSE provides proof that the caretaker cooperated, DSS will reopen him/her. The caretaker will be added to the case effective the month after the month he/she cooperated. The household's certification period is

not shortened or extended because of the sanction.

Good Faith Effort

If the applicant or recipient cannot provide the minimum information required about the absent parent, DCSE may still determine the person as cooperating if the person completes a Good Faith Affidavit. The Affidavit lists the steps the caretaker took to get the information and what barriers the person faced.

Good Cause Determination

DCSE is responsible to determine if good cause for refusing to cooperate exists. When good cause exists, the person may get food stamp benefits and will not have to cooperate in support collection activities. When DCSE does not determine there is good cause for refusing to cooperate, DSS will review the case to ensure good cause does not exist before sanctioning the individual.

Claiming Good Cause for Non-Cooperation

DSS will tell applicants and recipients, at application and recertification, of the right to good cause as an exception to the cooperation requirement. DSS will also tell applicants and recipients about the reasons they have to claim good cause.

Caretakers will not have to cooperate if they believe that their cooperation would not be in the best interest of their child. They must give proof to support their claim.

DCSE may decide that a person has good cause for refusing to cooperate if one or more of the following conditions exist:

- Cooperation is likely to result in serious physical or emotional harm to the child;
- Cooperation is likely to cause physical or emotional harm to the person which is so serious as to reduce his/her capacity to care for the child adequately;
- The child was conceived as a result of incest or forcible rape;
- Legal proceedings for adoption of the child are pending before a court;
- The person is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep his/her child or give the child up for adoption;
- Cooperating with DCSE would make it more difficult for the person to escape domestic violence or unfairly penalize the person who is or has been victimized by such violence, or the person is at risk of further domestic violence. (Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.); sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual acts or activities; threats of, or attempts at physical or sexual abuse; mental abuse; or neglect or deprivation of medical care.)
- The individual meets the good cause criteria outlined for the Temporary Assistance for Needy Families (TANF) policy outlined in DSSM 3010.2.2—3010.2.4

Proof of Good Cause Claim

It is the custodial parent's or responsible persons' responsibility to provide DCSE with the proof needed to determine whether they have good cause for refusing to cooperate. If the reason for claiming good cause is a fear of physical harm and it is impossible to obtain proof, DCSE may still be able to make a good cause decision after reviewing the claim.

The following are examples of acceptable kinds of proof DCSE can use to decide if good cause exists:

A birth certificate or medical or law enforcement record which indicates that the child was conceived as the result of incest or forcible rape;

A court document or other record which indicates the legal proceedings for adoption are pending before a court;

A court, medical, criminal, psychological, child protection services, social services or law enforcement record which indicates that the putative father or absent parent might inflict physical or emotional harm on the child or person;

A medical record which indicates the emotional health history and present emotional health status of the person or the child; or, a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the person or child;

A written statement from a public or licensed private social agency that the person is being assisted by the agency to resolve the issue of whether to keep the child or give him/her up for adoption; and

Sworn statements from persons, including friends, neighbors, clergymen, social workers, and medical professionals who might know the conditions providing the basis of the good cause claim.

When requested, DCSE will try to help persons obtain necessary documents to support their claim.

Investigations of Good Cause Claim

The caretaker must give the necessary proof to DCSE within 20 days after claiming good cause. DCSE will give the parent or person more time if they decide that more than 20 days are required because of the difficulty in getting the proof.

DCSE may decide on the claim based on the proof which is given, or conduct a review to verify the claim. If DCSE decides they need to review the claim, DCSE may require the person to give information, such as the absent parent's name and address, to help the review. The DCSE will not contact the absent parent without first telling the person.

Delayed finding of good cause

DSS will not deny, delay, or discontinue assistance when DCSE has not made a decision on the good cause claim as long as the caretaker has given proof and other information needed by DCSE. DSS will follow the normal processing standards for these cases.

Administrative Hearings

Applicants and recipients have the right to request an administrative hearing if they disagree with the decision of non-cooperation made by DCSE. When caretakers request an administrative hearing regarding the decision of non-cooperation or failure by DCSE to accept good cause claims, DCSE will schedule and conduct the administrative hearing.

The caretaker can ask for a hearing by sending in his or her request in writing within 20 days to:

Administrative Hearing Officer—DCSE

P.O. Box 11564

Wilmington, DE 19805

The request should include the caretaker's name, case number, social security number and daytime telephone number.

9094 DEFINITIONS

[7 CFR 271.2]

The following terms are used in the Food Supplement Program (FSP).

Able-bodied Adults Without Dependent Children (ABAWD) are individuals without children in their FSP household who must work and/or comply with certain work requirements for 20 hours a week in order to get food benefits.

Adequate notice means a written notice that includes:

- A. a statement of the action the agency has taken or intends to take;
- B. the reason for the intended action;
- C. the household's right to request a fair hearing;
- D. the name of the person to contact for additional information;
- E. the availability of continued benefits; and
- F. the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household.

Administrative Terminal is the eFunds system through which DSS staff can obtain EBT card and account information.

Alien Status Verification Index (ASVI) is the automated database used by States to verify immigration statuses from the Immigration and Naturalization Service (INS).

Allotment is the total dollar value of food benefits a household receives each month.

Application is the form completed by a household member or authorized representative to apply for food benefits, cash assistance, child care or medical assistance programs.

ASSIST is Delaware's electronic application. The acronym stands for Application for Social Services and Internet Screening Tool.

Authorized Representative is an individual the household authorizes to act on behalf of the household in the application process, in obtaining food benefits, and in using the EBT card. This individual has access to the household's EBT benefit account. This individual can be a nonhousehold member or a household member, like a spouse, who is a secondary cardholder.

Benefit Status: This is a code that indicates the status of the benefit in the Administrative Terminal.

Boarders: Individuals or groups of individuals residing with others and paying reasonable compensation to the others for lodging and meals.

Card Number: The card number is on the front of the EBT card. The first six digits are the same for all of Delaware's cards. This number is called the Primary Account Number (PAN).

Card Status: An EBT card may be active or inactive. The card status for a replacement card can indicate stolen, lost, payee changed, name changed, damaged, undelivered, deactivated/cancelled or bad address.

Categorically Eligible Household is any household where all members receive or are authorized to receive TANF/GA/RCA and/or SSI benefits, or the household income is at or under 200% of the FPL for their household size. The household is considered categorically eligible for food stamps. These households meet the resource test.

Certification period means the period of time in which a household is eligible to receive benefits.

Claim is the amount owed due to an over-issuance of food benefits.

Date Available: Benefits are available at 6:00 a.m. on the date specified in the Administrative Terminal. Regular monthly food benefits are available according to a seven day staggered schedule based on the case head's last name. Benefits start staggering on the fifth calendar day of each month.

Date of Entry (Date of admission) means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

Deeming means using a portion of an ineligible household member's income or resources for the remaining household members.

Destitute Households - Migrant or seasonal farm worker households that have little or no income at the time of application and are in need of immediate food assistance.

Disaster (for Assistance) - A major disaster is any natural catastrophe such as a hurricane or drought, fire, flood, or explosion, which the President declares the severity and magnitude warrants disaster assistance.

Drug addiction or alcoholic treatment and rehabilitation program means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center, licenses by DHSS.

eFunds Customer Support: The Customer Support Unit receives phone calls from participants to check balances, report lost or stolen cards, report problems with a retailer, and request new PINs. The CSU number is 1-800-526-9099.

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 the 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 the 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 Pub. L. 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;
- I. Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a 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. "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; or

- J. Receives an annuity payment under: section 2(a)(1)(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)(1)(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 Supplemented Security Income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based State general assistance benefits provided that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the State agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

Electronic Benefit Transfer (EBT) is the method used for issuing and accessing FSP benefits through the use of a card similar to a debit card.

Eligible foods mean:

- A. Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption;
- B. Seeds and plants to grow foods for the personal consumption of eligible households;
- C. Meals prepared and delivered by an authorized meal delivery service to households eligible to use EBT benefits to purchase delivered meals; or meals served by an authorized communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining;
- D. Meals prepared and served by a drug addiction or alcoholic treatment and rehabilitation center to narcotic addicts or alcoholics and their children who live with them;
- E. Meals prepared and served by a group living arrangement facility to residents who are blind or disabled as defined under Elderly or Disabled member;
- F. Meals prepared by and served by a shelter for battered women and children to its eligible residents; and
- G. Meals prepared for and served by an authorized public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) that feeds homeless persons.

Emergency (for Federal Assistance) - An emergency is any occasion when the President determines that Federal assistance is needed to supplant State and local efforts to save lives, protect property, assure public health and safety, or to lessen the threat of a catastrophe.

Expedited Service means food benefits must be available to the household no later than the seventh calendar day following the date an applicant files an application.

Expunged Benefits: Benefits in client accounts not used for 365 days that are removed from the account forever.

Filing Date means the date DSS receives the application form as long as the form contains the applicant's name and address, and the signature of a responsible household member or the household's representative, a signed Request for Assistance, or an application from ASSIST.

FNS means the Food and Nutrition Service of the U.S. Department of Agriculture.

FNS Number: A unique number assigned to retailers by FNS indicating that the retailer is eligible to accept FSP benefits.

Group Living Arrangement means a public or private nonprofit residential setting, certified by the State, which serves no more than sixteen residents. To be eligible for food benefits, a resident of such a group living arrangement must be blind or disabled as defined under Elderly or Disabled member.

Head of Household is the individual who is an adult parent of children of any age selected by the household or the principal wage earner if selected by DSS.

Hold Amount: When an EBT manual voucher transaction is used, the retailer obtains an authorization number from eFunds. eFunds puts a hold on the participant's food benefit account. Once an accept reason is assigned to the voucher, the hold amount is deducted from the participant's benefit balance and this field becomes blank.

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

- A. A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);
- B. A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized;
- C. A temporary accommodation for not more than 90 days in the residence of another individual; or
- D. A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

Homeless Meal Provider is a public or private nonprofit establishment (e.g., soup kitchens, temporary shelters) that feeds homeless persons.

Ineligible Alien means an undocumented alien or a documented alien who does not meet a qualified and eligible status.

Intentional Program Violation (IPV) occurs when an individual breaks a FSP rule and is found guilty by a court or an administrative disqualification hearing, or signs a waiver to be disqualified to avoid prosecution.

Low-income Household means a household whose annual income does not exceed 125 percent of the Office of Management and Budget poverty guidelines.

Manual Entries: If an EBT card or POS machine is damaged, the card number can be keyed manually to complete the transaction.

Manual Voucher: Retailers use paper vouchers when the eFunds system is not available. Retailers who are not eligible to have POS terminals also use these vouchers. A voucher has a unique number, which identifies the voucher. This field is completed only if the transaction displayed in the Administrative Terminal is an off-line voucher.

Mass Changes are certain changes initiated by the State or Federal government, which may affect the entire caseload or significant portions of the caseload such as annual cost-of-living adjustments, shelter/dependent care deduction and periodic cost-of-living adjustments to RSDI and SSI benefits.

Meal Delivery Service (like Meals on Wheels) is a service agencies contract with for the preparation and delivery of meals at low prices to elderly persons and the physically or mentally handicapped who are unable to adequately prepare all of their meals.

Minimum Benefit means the minimum monthly amount of food benefits that eligible one- and two-person households receive.

Notice of Expiration is a notice sent to a household at the end of its certification period notifying a household of what they need to do to continue to get benefits.

Over-issuance means the amount of benefits a household received that exceeded the amount the household was eligible to receive.

PAN: The Primary Account Number is the 16-digit number on the EBT card, also called the card number.

PIN (Personal Identification Number): A PIN is a four digit secret code that allows the user to access benefits when using the EBT card. No one can use the card but the participant as long as the participant does not give the PIN to anyone.

PIN Info: The Card Maintenance screen in the Administrative Terminal displays whether or not the household selected a PIN and the method of selection. Yes, means a household selected a PIN. Fails is the number of times the PIN entered has failed that day. Chg Count is the number of times the household changed the PIN. Method is how the household selected the PIN.

Point-of-Sale (POS) Terminal: A POS is the device a participant uses to make transactions at the stores. The POS machine reads the card and allows the participant to buy food with the food benefits.

Prospective Budgeting means the computation of a household's food benefit for an issuance month based on an estimate of income and circumstances which will exist in that month.

Quality Control Review means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the food benefit allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.

Recertification is a review conducted at the end of a person's certification period that requires an application, interview and verification of current circumstances.

Residents of Institution means an individual who resides in an institution where the institution provides him or her with the majority of his or her meals (over 50% of three meals daily) as part of the institution's normal services.

Riverside Rule is a rule that requires states to keep food benefits at the same level when a household's TANF/RCA benefits have been reduced or terminated due to the household's failure to perform an action required under

the TANF/RCA program or fraud.

Shelter for Battered Women and Children means a public or private nonprofit residential facility that serves battered women and their children.

Simplified FSP (SFSP) is a program that permits a state to substitute certain FSP rules with TANF and RCA rules and procedures.

Simplified Reporting means the only reporting requirement for households is when their income exceeds the 130% FPL threshold for the household size established at the time of intake or recertification.

Sponsored alien means an alien for whom a person has executed an affidavit of support [INS Form I-864 or I-864A] on behalf of the alien according to section 213A of the INA.

Sponsor means a person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

Spouse refers to either of two individuals: (1) Those defined as married to each other under applicable State law; or (2) Those living together and representing themselves as married to relatives, friends, neighbors, or employers.

Stale Benefits: Benefits not used by a household within 60, 90 or 230 days.

State Income and Eligibility Verification System (IEVS) is a system of information acquisition and exchange for purposes of income and eligibility verification that meets the requirements of section 1137 of the Social Security Act, generally referred to as the IEVS.

Supplemental Nutrition Assistance Program (SNAP) is the Federal name for the former Food Stamp Program.

Supplemental Security Income (SSI) is a means-tested monthly cash payment made under the authority of the Social Security Act for aged, blind and disabled individuals.

Systematic Alien Verification for Entitlements (SAVE) means the INS program whereby State agencies may verify the validity of documents provided by aliens applying for food benefits by obtaining information from a central data file.

Thrifty Food Plan means the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child 6 through 8, and a child 9 through 11 years of age, determined in accordance with the USDA Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition. In order to develop maximum food stamp allotments, the Secretary shall make household size and other adjustments in the Thrifty Food Plan taking into account economies of scale and other adjustments as required by law.

Trafficking means the buying or selling of food benefits for cash or consideration other than eligible food or the exchange of firearms, ammunition, explosives, or controlled substances.

Under-issuance means an amount of benefit that the household was entitled to receive that was less than the benefit the household actually received.

Verification is the use of third party information or documentation to establish the accuracy of statements on the application.

Work for Your Welfare is a work experience program in which participants work to earn their benefits.

13 DE Reg. 1040 (02/01/10) (Prop.)