

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF SOCIAL SERVICES

Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)  
16 DE Admin. Code 2000

### FINAL

### ORDER

#### Food Supplement Program; Issuing Benefit Restorations

#### 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, *Issuing Benefit Restorations*. 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 2011 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2011 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, *Issuing Benefit Restorations*.

#### Statutory Authority

- 7 CFR §273.17, *Restoration of lost benefits*
- 45 CFR §233.20(a)(12), *Recoupment of overpayments and correction of underpayments for programs other than AFDC*

#### Summary of Proposed Changes

**DSSM 2011, ~~Benefit Restorations for Cash Assistance and Food Stamps~~ *Issuing Benefit Restorations*:** The name of the section is being changed to more clearly indicate the content of the policy. Policy is being reformatted for clarity and ease of readability. Federal citations are also added to the policy section.

#### 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 the comment and responds as follows:

The attached federal regulation (7 C.F.R. §273.17) contains the following provision:

(g) *Changes in household composition.* Whenever lost benefits are due a household and the household's membership has changed, the State agency shall restore the lost benefits to the household containing a majority of the individuals who were household members at the time the loss occurred. If the State agency cannot locate or determine the household which contains a majority of household members the State agency shall restore the lost benefits to the household containing the head of the household at the time the loss occurred.

This concept is not included in the State regulation. DSS may wish to consider its inclusion since household composition of Food Supplement Program participants may change on a relatively frequent basis.

**Agency Response:** The policy is revised by adding item 4 as follows:

#### 4. DHSS Issues Restorations When the Household Composition Changes

Issue benefit restorations even if a household's membership has changed. In this instance issue the restoration to the household containing a majority of the individuals who were household members at the time the loss occurred. If the agency cannot locate or determine the household which contains a majority of

household members, the agency will issue the restoration to the household containing the head of the household at the time the loss occurred.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the October 2011 *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, *Issuing Benefit Restorations* is adopted and shall be final effective January 10, 2012.

Date of Signature

Rita M. Landgraf, Secretary, DHSS

#### **DSS FINAL ORDER REGULATION #11-59 REVISIONS:**

##### **2011 ~~Benefit Restorations for Cash Assistance and Food Stamps~~ Issuing Benefit Restorations**

~~Benefit restorations must be made to correct an underpayment resulting from the Division's failure to act or to take appropriate action on available information. Requests for benefit restorations for one to three months must be approved and countersigned by the Operations Administrator. Requests for benefit restorations for more than three months from the date of the incorrect action must be approved and countersigned by the Chief Operations Administrator. Requests for benefit restorations beyond a period of one year require a fair hearing decision or court hearing. Benefit restorations are always subject to available funds. Benefit restorations are also subject to offsetting overpayments and claims owed by the family or household per DSSM 7002.1 and DSSM 7004.3~~

##### 7 CFR 273.17, 45 CFR 233.20(a)(12)

This policy applies to cash assistance and food benefit applicants and recipients that received less benefits than they were eligible to receive. The need for restoration may be identified by the client or DHSS. Eligibility for restoration may also be determined by a court or administrative hearing decision or a change in law.

##### 1. DSS Must Correct All Under-issuances

An under-issuance occurs when the amount of benefit that the household received was less than the benefit the household was entitled to receive. In these instances DSS will issue a benefit equal to the difference between what was received and what should have been received. This is called a restoration.

Exception: Restorations are not issued when funding is not available.

##### 2. Restorations Must Be Approved

Benefit restorations must be approved by a designated authority. The following are authorized to approve restorations as indicated.

A. Operations Administrator: approves 1 to 3 months of benefits.

B. Chief Administrator: approves 4 to 12 months of benefits.

C. Fair hearing or court decision: required for 13 or more months of benefits.

##### 3. DHSS Applies Restorations to Unpaid Overpayments and Claims

If the client has an unpaid overpayment or claim, the agency will first use the restoration to reduce the overpayment or claim. Any remaining funds are sent to the client. See DSSM 7002.1 and DSSM 9011.1.

##### **[4. DHSS Issues Restorations When the Household Composition Changes**

**Issue benefit restorations even if a household's membership has changed. In this instance issue the restoration to the household containing a majority of the individuals who were household members at the time the loss occurred. If the agency cannot locate or determine the household which contains a majority of household members, the agency will issue the restoration to the household containing the head of the household at the time the loss occurred.]**

**15 DE Reg. 1025 (01/01/12) (Final)**