

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 9076

FINAL

ORDER

Food Supplement Program; Treatment of Income and Resources of Certain Non-Household Members

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, *Treatment of Income and Resources of Certain Non-Household Members*. 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, *Treatment of Income and Resources of Certain Non-Household Members*.

Statutory Authority

7 CFR §273.11(c), *Treatment of Income and Resources of Certain Non-Household Members*

Summary of Proposed Changes

DSSM 9076, *Treatment of Income and Resources of Certain Non-Household Members* and **DSSM 9076.1**, *Intentional Program Violation, Felony Drug Conviction or Fleeing Felon Disqualifications or and Work Requirement Sanctions*: Senate Bill (SB) 12 of the 146th General Assembly eliminated the bar to receipt of food benefits for those convicted of a felony drug conviction. This policy change removes text from the policy manual that says individuals convicted of a felony drug conviction are ineligible for food benefits. SB 12 was effective upon the Governor's signature on June 22, 2011 and affects benefits beginning July 1, 2011.

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 each comment and responds as follows:

First, the Governor signed the attached S.B. 12 on June 22, 2011. The bill removes the bar on Food Supplement Program eligibility of convicted drug felons. The DSS regulation implements the legislation by removing an ineligibility reference in §9076.1 based on a drug related felony conviction. However, the title to §9076.1 still contains a reference to "Felony Drug Conviction" which should be deleted.

Agency Response: Correction made and the text "Felony Drug Conviction or" is removed.

Second, the attached 16 **DE Admin. Code** 2027 still contains a bar on Food Supplement Program eligibility for convicted drug felons. DSS should consider proposing an amendment to this regulation to conform to S.B. 12.

Agency Response: The correction will be made.

Third, revised §9076.1 otherwise conforms to the attached corresponding federal regulation, 7 C.F.R. §273.11(c)(1).

Agency Response: Thank you.

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, *Treatment of Income and Resources of Certain Non-Household Members* is adopted and shall be final effective January 10, 2012.

Date of Signature

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #11-57 REVISIONS:

9076 Treatment of Income and Resources of Certain Non-Household Members

~~[273.11(c)]~~

~~During the period of time that a household member cannot participate because (s)he:~~

~~Is an ineligible alien;~~

~~Is ineligible because of disqualification for an intentional Program violation;~~

~~Is ineligible because of disqualification for or refusal to obtain or provide an SSN; or~~

~~Is ineligible for failing to sign the application attesting to his/her citizenship or alien status.~~

~~Is ineligible because of having made a fraudulent statement or misrepresentation to the identity and/or place of residence in order to receive multiple benefits at the same time per DSSM 2024;~~

~~Is ineligible for being a fleeing felon or probation/parole violator per DSSM 2025.~~

~~Is ineligible for being convicted of trafficking food stamps of \$500 or more per DSSM 2026.~~

~~Is ineligible due to work requirements per DSSM 9018.~~

~~Determine the eligibility and benefit level of any remaining household members in accordance with the procedures outlined in this section.~~

~~7 CFR 273.11(c)~~

~~During the period of time that a household member cannot participate for the reasons below, determine the eligibility and benefit level of any remaining household members in accordance with sections 9076.1 through 9076.4.~~

~~The household member cannot participate because he or she is:~~

~~1. An ineligible alien.~~

~~2. Disqualified for an intentional Program violation.~~

~~3. Disqualified for or refusal to obtain or provide an SSN.~~

~~4. Ineligible for failing to sign the application attesting to his/her citizenship or alien status.~~

~~5. Ineligible because of having made a fraudulent statement or misrepresentation of his or her identity in order to receive multiple benefits at the same time per DSSM 2024.~~

~~6. Ineligible because of having made a fraudulent statement or misrepresentation about his or her place of residence in order to receive multiple benefits at the same time per DSSM 2024.~~

~~7. Ineligible for being a fleeing felon or probation/parole violator per DSSM 2025.~~

~~8. Ineligible for being convicted of trafficking food benefits of \$500 or more per DSSM 2026.~~

~~9. Ineligible due to work requirements per DSSM 9018.~~

~~10. Ineligible due to the time limit for Able-bodied Adults without Dependents per DSSM 9018.2.~~

9076.1 Intentional Program Violation, ~~[Felony Drug Conviction or]~~ Fleeing Felon Disqualifications ~~or~~ and Work Requirement Sanctions

~~Determine as follows the eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of the disqualifications or sanctions listed below:~~

~~Is ineligible because of disqualifications for an intentional Program violation;~~

~~Is ineligible because of having made a fraudulent statement or misrepresentation to the identity and/or place of residence in order to receive multiple benefits at the same time;~~

~~Is ineligible for being a fleeing felon or probation/parole violator;~~

~~Individuals who are ineligible because of a drug-related felony conviction per DSSM 2027;~~

~~Is ineligible for being convicted of trafficking food stamps of \$500 or more.~~

~~1) Income, resources and deductible expenses – the income and resources of the ineligible household member(s) continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, child support payment, and excess shelter deductions continue to apply to the remaining household members.~~

~~2) Eligibility and benefit level – the ineligible member is not included when determining the household's size for the purpose of:~~

~~a) Assigning a benefit level to the household;~~

~~b) Comparing the household's monthly income with the income eligibility standards; or~~

~~e) Comparing the household's resources with the resource eligibility limits. Ensure that no household's food stamp allotment is increased as a result of the exclusion of one or more household members.~~

7 CFR 273.11(c)

For households containing individuals determined ineligible because of the disqualifications or sanctions listed below, determine the eligibility and benefit level of any remaining household members as follows:

Disqualifications or Sanctions

1. Disqualified for an intentional Program violation.
2. Ineligible because of having made a fraudulent statement or misrepresentation of his or her identity in order to receive multiple benefits at the same time.
3. Ineligible because of having made a fraudulent statement or misrepresentation about his or her place of residence in order to receive multiple benefits at the same time.
4. Ineligible for being a fleeing felon or probation/ parole violator.
5. Ineligible for being convicted of trafficking food benefits of \$500 or more.

Eligibility and Benefit Determination

1. Income, resources and deductible expenses
 - A. Count all the income and resources of the ineligible household member(s) in the eligibility and benefit determination.
 - B. Apply all allowable earned income and deductions to the entire household. Include all deductions the ineligible household member would receive if he or she was included in the household size. Count the following deductions:
 1. Standard
 2. Medical
 3. Dependent care
 4. Child support payment
 5. Excess shelter
2. Eligibility and benefit level

Do not include the ineligible member when determining the household's size when:

 - A. Assigning a benefit level to the household.
 - B. Comparing the household's monthly income with the income eligibility standards.
 - C. Comparing the household's resources with the resource eligibility limits. Ensure that no household's food benefit is increased as a result of the exclusion of one or more household members.