

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512(1) (31 Del.C. 512(1))  
16 DE Admin. Code 9018.2

### FINAL

### ORDER

#### Food Supplement Program

**DSSM: 9018.2 Time Limit for Able-bodied Adults Maintaining and Regaining ABAWD (Able-Bodied Adults Without Dependent) Eligibility**

#### 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, Maintaining and Regaining ABAWD Eligibility. 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 May 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2013 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, Time Limit for Able-bodied Adults Maintaining and Regaining ABAWD Eligibility.

#### Statutory Authority

7 CFR §273.24, Time Limit for Able-Bodied Adults

#### Background

Delaware's Food Supplement Program, formerly known as food stamps, is operated under the provisions of the Food and Nutrition Act of 2008, as amended, and is administered by the Food and Nutrition Service (FNS) under the United States Department of Agriculture (USDA). The Delaware Division of Social Services (DSS) is responsible for the administration of the Food Supplement Program (FSP), including, but not limited to certification of applicant households and issuance, control, and accountability of FSP benefits.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of food benefits to 3 months (consecutive or otherwise) in a 36-month period for ABAWDs who are not working, participating in, and complying with the requirements of a work program for 20 hours or more each week, or a workfare program. "ABAWDs" refers to Able-Bodied Adults Without Dependents.

Work registration is a technical eligibility factor for participation in the Food Supplement Program. Every able-bodied household member age 18-59, must work register unless otherwise exempt.

#### Summary of Proposed Changes

DSSM 9018.2, Time Limit for Able-bodied Adults Maintaining and Regaining ABAWD Eligibility: The intent of the proposed amendment is to clarify language to make the rules easier to understand and follow.

Additionally, the name of the section is changed to more accurately reflect the content of the policy.

The applicable federal citation is also added to the policy section.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGE(S)

The Associated Press, 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.

#### Associated Press

[This is in reference to] the new Food Supplement Program language changes regarding able-bodied adults in the

latest issue of the registry of regulations. Hoping you can tell me why DSS does not consider anyone over the age of 50 to be able-bodied (9018.2(3)(b)), and why an able-bodied adult is exempt from the work requirement simply by living in a house where someone receives food stamps and there is a person under 18 in the house as well (9018.2(3)(g)).

**Agency Response:** The policy published in the register refers to a sub-group of Food Supplement Program (FSP) recipients referred to as "Able-bodied Adults Without Dependent Children" (ABAWD). It is not about able-bodied adults as a whole.

ABAWDs are defined as "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."

Individuals receiving FSP must work or participate in a work program or a workfare program. If they don't meet this requirement for at least 3 months (consecutive or otherwise) in a 36 month period they are ineligible to receive food benefits. Some individuals are exempt from this time limit. Two groups of these are individuals are referenced in the question from the AP. Individuals under age 18 or 50 years of age or older do not have to meet the time limit. Also exempt from the 3 months' time limit are individuals who are part of a FSP household which contains an individual under the age of 18. These exemptions are FNS policy requirements (7 CFR 273.24).

The policy at 9018.2 was revised to clarify that individuals who meet the ABAWD definition are exempt from the 3 month time limit if the individual is part of a FSP household that contains a minor child. It does not mean a person may be an ABAWD if there is a minor in the house. Being in the house and being in the FSP household is an important distinction. Hence, the clarification.

### **GACEC and SCPD**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) have reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its Food Supplement Program regulation in the context of time limits for "Able-bodied adults without dependents".

The rationale is "to make the rules easier to understand and follow", to add a federal citation, and to change the name of the section to more accurately reflect the content of the policy. The revised regulation generally conforms to the federal regulation, 7 C.F.R. §273.24. The federal regulation implements a federal law limiting receipt of "food stamp" benefits to 3 months in a 36-month period for "able-bodied adults without dependents" (ABAWDs) who are not working or who are not exempt.

GACEC and SCPD endorse the proposed regulation subject to consideration of a minor revision to §9018.2, Section 4, as follows:

Good cause includes circumstances beyond the individual's control, such as, but not limited to: ...

This would clarify that the subsequent list is illustrative only and more closely conforms to the analogous federal standard, 7 C.F.R. §273.24(b)(2).

**Agency Response:** The text of the proposed regulation is amended as requested.

### **FINDINGS OF FACT**

The Department finds that the proposed changes as set forth in the May 2013 *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, Maintaining and Regaining ABAWD Eligibility, is adopted and shall be final effective July 10, 2013.

Rita M. Landgraf, Secretary, DHSS

### **DSS FINAL ORDER REGULATION #13-20**

#### **REVISION:**

#### **~~9018.2 Time Limit for Able-bodied Adults~~**

~~Individuals are ineligible to continue to receive food stamps if, during any 36-month period they received food stamps at least three (3) months (consecutive or otherwise) while they did not either:~~

- ~~- work at least 20 hours per week (averaged monthly which means 80 hours a month); or~~
- ~~- participate in a work program at least 20 hours per week; or~~
- ~~- work and participate in a work program for any combination of hours that totaled 20 hours per week; or~~
- ~~- participate and comply in a workfare program.~~

#### **Definitions**

~~Work is defined as:~~

- ~~- Work in exchange for money;~~

- Work in exchange for goods or services (in-kind work);
- Unpaid work which is verified; or
- Any combination of the above definitions.

Qualifying work programs include programs under:

- Workforce Investment Act;
- Trade Adjustment Assistance Act; or
- Employment and Training (except for job search or job search training programs).

### **Good Cause**

If the individual would have worked an average of 20 hours per week but missed some work for good cause, the individual shall be considered to have met the work requirements if:

- the absence from work is temporary; and
- the individual retains his or her job.

Good cause shall include circumstances beyond the individual's control, such as:

- illness;
- illness of another household member requiring the presence of the member;
- a household emergency; or
- the unavailability of transportation.

### **Exemptions**

Individuals are exempt from this work requirement if he or she:

- is under 18 or over 50 years of age; (The month after an individual turns 18 will be the first month the individual must start meeting the work requirements. The month an individual turns 50 years of age will start the exemption.)
- is medically certified as physically or mentally unfit for employment. A person is medically certified as physically or mentally unfit for employment if he or she:
- is receiving temporary or permanent disability benefits issued by governmental or private sources.
- is obviously mentally or physically unfit for employment.
- provides a statement from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist, a social worker, or any other medical personnel, that he or she is physically or mentally unfit for employment.
- a parent (natural, adoptive, or step) of a household member under age 18;
- is residing in a household where a household member is under age 18, even if the household member who is under 18;
- is pregnant (any trimester); or
- is otherwise exempt from work requirement under DSSM 9018.3.

### **Regaining Eligibility**

Individuals denied eligibility under this work requirement, or who would have been denied under this work requirement if they had reapplied, can regain eligibility if during a 30-day period the individual:

- works (paid or non-paid) for 80 hours or more;
- participates in and complies with a work program, as described above, for 80 hours or more;
- participates in any combination of work and participation in work program for a total of 80 hours;
- participates in a workfare program; or
- becomes exempt.

Individuals who regain eligibility based on the requirements above will remain eligible as long as they meet the above requirements.

Individuals who lose their employment or cease participation in work or work supplementation programs may continue to receive food stamps for up to three (3) consecutive months beginning from the date DSS is notified that work has ended.

The only remaining cure during the 36-month period is for the individual to:

- comply with the work requirements of this section; or
- to become exempt under other provisions of the requirement.

### **Treatment of Income and Resources**

The income and resources of an individual made eligible due to the time limit shall be handled according to DSSM 9076.2.

### **Benefits Received Erroneously**

If an individual subject to the time limit receives food stamp benefits erroneously, consider the benefits to have been received unless or until the individual pays it back in full.

### **Verification**

Verification is handled according to DSSM 9032.16 and DSSM 9038.

### **Reporting Requirements**

Individuals subject to the time limit must report changes in work hours below 20 hours per week, averaged monthly. Any work performed in a job that was not reported will be counted as work when determining countable months.

### **Countable Months**

Countable months are months during which an individual receives food stamps for the full month while not:

- exempt;
- meeting the work requirements;
- receiving prorated benefits.

## **9018.2 Maintaining and Regaining ABAWD Eligibility**

### 7 CFR 273.24

This policy applies to applicants for and recipients of the Food Supplement Program who are able-bodied adults who do not have dependent children living with them.

### **Definitions**

ABAWD (able-bodied adults without dependent children) means individuals without children in their FSP household who must work 20 hours a week and/or comply with certain work requirements in order to get food benefits.

Work is defined as:

- A. Work in exchange for money;
- B. Work in exchange for goods or services (in-kind work);
- C. Unpaid work which is verified; or
- D. Any combination of the above definitions.

Qualifying work programs include programs under:

- A. Workforce Investment Act;
- B. Trade Adjustment Assistance Act; or
- C. Employment and Training (except for job search or job search training programs).

Countable months are months during which an individual receives food benefits for the full month while not:

- A. Exempt
- B. Meeting the work requirements
- C. Receiving prorated benefits

### **1. Benefits for ABAWDs Are Time-Limited**

Able-bodied adults without dependent children (ABAWDs) can only receive 3 months of food benefits in a 36 month period if they do not meet the work requirements. When the individual meets a work requirement, he or she may get benefits longer than 3 months.

### **2. ABAWDs Must Meet Work Requirements**

An ABAWD meets the work requirement when he or she:

- A. Works at least 20 hours per week (averaged monthly which means 80 hours a month); or
- B. Participates in a work program at least 20 hours per week; or
- C. Works and participates in a work program for any combination of hours that totaled 20 hours per week; or
- D. Participates and complies with a workfare program.

### **3. ABAWDs May Be Exempted from Time Limits**

The following individuals are exempt from the 3 month limitation even if they do not meet the work requirements.

- A. An individual who is under age 18.

The month after the individual turns 18 is the first month he or she must start meeting the ABAWD work requirements.

B. An individual who is 50 years of age or older.

An individual is no longer considered an ABAWD the month he or she turns 50 years old.

C. An individual who is obviously mentally or physically unfit for employment.

D. An individual who is medically certified as physically or mentally unfit for employment.

This must be verified by a written statement from medical personnel.

E. An individual who is receiving temporary or permanent disability benefits issued by governmental or private sources.

F. An individual who is a parent (natural, adoptive, or step) of a household member under 18 years of age.

G. An individual who is living in a FSP household with a person who is under age 18, even if the person under 18 is not eligible for or receiving food benefits.

H. An individual who is pregnant.

I. An individual who is exempt from work requirements according to DSSM 9018.3.

#### **4. ABAWDs May Be Exempted for Good Cause**

If the individual would have worked an average of 20 hours per week but missed some work for good cause, consider the individual to have met the work requirements if:

A. The absence from work is temporary; and

B. The individual retains his or her job.

Good cause includes circumstances beyond the individual's control, such as [but not limited to]:

A. Illness;

B. Illness of household member requiring the presence of the ABAWD;

C. A household emergency; or

D. The unavailability of transportation.

#### **5. ABAWDs May Regain Eligibility**

Regaining eligibility applies to individuals who have received three ABAWD months then were closed or denied for failure to comply with ABAWD work requirements.

After closing, an individual can regain eligibility if during a 30-day period the individual:

A. Works (paid or non-paid) for 80 hours or more; or

B. Participates in and complies with a work program for 80 hours or more; or

C. Participates in and complies with a work supplementation program; or

D. Participates in any combination of work and participation in a work program for a total of 80 hours; or

E. Participates in a DSS workfare program; or

F. Becomes exempt for any reason.

#### **6. Resources and Income of ABAWDs Must be Counted**

The income and resources of individuals excluded from FSP eligibility because they have exhausted their ABAWD months are handled according to DSSM 9076.2.

#### **7. ABAWDs Must Verify Certain Information**

Verification is handled according to DSSM 9032 and DSSM 9038.

#### **8. ABAWDs Must Report Certain Work Changes**

Individuals subject to the time limit must report when their work hours fall below 20 hours per week, averaged monthly.

Any work performed in a job that was not reported will be counted as work when determining countable months.

#### **9. Benefits Received Erroneously Count as ABAWD Months**

If an individual subject to the time limit receives food benefits erroneously, consider the benefits to have been received.

Exception: If an individual pays back erroneously issued food benefits in full, that month is not counted as an ABAWD month.