

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 4002, 4006, 8026 & 8030

FINAL

ORDER

Delaware's Temporary Assistance for Needy Families (TANF) and Refugee Cash Assistance (RCA) Programs

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 Delaware's Temporary Assistance for Needy Families (TANF) and Refugee Cash Assistance programs specifically, *Excluded Income and Excluded Resources*. 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 April 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Temporary Assistance for Needy Families (TANF) and Refugee Cash Assistance programs specifically, *Excluded Income and Excluded Resources*.

Statutory Authority

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312)

Background

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) made changes in the manner federal tax refunds may be considered when determining eligibility for federally funded programs. The law includes a provision that mandates disregarding tax refunds received after December 31, 2009, as income and as resources (for a period of 12 months) in programs funded in whole or in part with federal funds. Under the new law, the total amount of a federal tax refund received after December 31, 2009 – regardless of whether the refund is the result of a refundable credit, over-withholding, or both – is disregarded as income and resources in the month received. This resource exclusion is to last for 12 months from the date of receipt of the refund.

Summary of Proposed Change

The proposed change in policy brings Delaware's TANF and Refugee Cash Assistance programs into compliance with new federal law. Federal tax refunds received after December 31, 2009 are disregarded as income the month they are received and disregarded as a resource for 12 months from date of receipt.

The proposed changes affect the following policy sections:

DSSM 4002.5, *Excluded Resources*

DSSM 4006, *Excluded Income*

DSSM 8026.5, *Excluded Resources*

DSSM 8030, *Excluded Income*

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observation and recommendation summarized below. DSS has considered each comment and responds as follows.

The amendments would result in the disregard of federal income tax refunds from countable income and resources for a period of twelve (12) months following the month of receipt. The proposed regulation was published as 14 DE Reg. 1011

in the April 1, 2011 issue of the *Register of Regulations*.

GACEC and SCPD endorse the proposed regulation since the changes would benefit participants in the TANF and RCA programs.

Agency Response: DSS thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 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 TANF and Refugee Cash Assistance programs specifically, *Excluded Income and Excluded Resources* is adopted and shall be final effective June 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATIONS #11-20 REVISIONS:

4002.5 Excluded Resources

The equity value of real and personal property owned by a family budget group cannot exceed \$10,000.00 for TANF cases or \$1,000.00 for General Assistance cases. Resources excluded from the resource limitation are:

1. The home which is the usual residence of the family budget group.
2. Automobiles:

An automobile is defined as any motorized vehicle used:

- A. for transportation via public roadways or
- B. to produce income.

The automobiles owned by members of a cash assistance household are disregarded.

3. One burial plot for each member of the assistance unit.

4. Bona fide funeral agreements (e.g., pre paid burial contracts) up to a total of \$1,500.00 for each member of the budget group.

NOTE: If a funeral agreement valued in excess of \$1,500.00 includes both prepaid burial expenses and a burial plot, the worker will require that the client provide an itemized statement of the estimated value of the plot and the expenses. The value of the burial plot is an excluded resource and will be considered separately from the value of the prepaid expenses.

5. Basic maintenance items essential for day-to-day living such as clothes, furniture, and other similarly essential items.

6. For a period not to exceed six months, real property that is not used as a residence (see DSSM 4002.6).

7. Tools and equipment necessary to produce income in a self employment enterprise, even if the owner is not engaged in business currently, but plans to continue it at a future date.

8. Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100 -707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

9. Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I. of P.L. 100 383.

10. Restitution made by any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100 383.

11. Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

12. All federal income tax refunds, including Earned Income Tax Credits (EITC), including Advance EITC.

Applicants:

Disregard as a resource EITC payments received in the month of application or in the month preceding the month of application. Any remaining EITC amounts received before this period are a resource.

Recipients:

Disregard as a resource for the month in which the EITC is received and the following month. After this period, any remaining amounts are a resource.

The refund is disregarded regardless of whether the refund is a result of a refundable credit, over withholding, or both.

Federal tax refunds received during the previous 12 month period by any case member are disregarded.

13. Cash Value of Life Insurance Policies.

14. The designated Education and Business Account (EBIA) is excluded up to the \$5000 maximum. In addition to the current resource limit, Delaware's Temporary Assistance For Needy Families Program (TANF) and General Assistance (GA) Program families will be allowed to establish special Education and Business Investment Accounts (EBIA) of up to \$5000.00, including interest.

Do not consider funds in such accounts as a resource for TANF, GA, or ~~Food Stamp~~ food benefit purposes. Withdrawals from such accounts as a resource must be for approved purposes, count the money as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include, education expenses, employment start-up needs, entrepreneurship, and to purchase a vehicle or home. If staff is unsure if the withdrawal meets an approved purpose, contact the ~~policy unit~~ Policy Unit for clarification.

Furthermore, a Saving for Education, Entrepreneurship, and Downpayment (SEED) accounts is considered an EBIA account and is excluded up to the \$5000.00 limit.

(Break in Continuity of Sections)

4006 Excluded Income

- The following kinds of income are disregarded in determining financial eligibility and grant amounts in TANF and GA:
- The value of USDA donated foods.
- The value of food ~~stamps~~ benefits.
- Foster care payments made on behalf of foster children residing in the home.
- Payments made directly to a third party on behalf of a recipient.

EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company. This payment is not considered as income to the assistance unit.

- A one-time bonus payment of \$50.00 will be paid from, Delaware's Temporary Assistance For Needy Families Program funds to teens who graduate from high school by age 19. This bonus will be paid directly to the high school graduate. Disregard as income and resource the bonus payment, for TANF and Food ~~Stamp~~ Benefit purposes.
- A cash payment made to the TANF unit responsible for household bills by a non-unit member for his or her share of the common household expenses.
- Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:
 1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.
 2. If the loan is obtained from an individual or establishment not normally engaged in the business of making loans, obtain one of the following:
 - a. Borrower's acknowledgement of obligation to repay; or
 - b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or
 - c. A written statement detailing borrower's plans to repay the loan when future anticipated income is received.
- Money received in the form of a non-recurring lump sum payment is to be counted as a resource in the month received unless specifically excluded from consideration as a resource by other Federal law or regulations.
- Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Incentive payments or reimbursement for training related expenses derived from participation in Institutional and Work Experience Training or special work projects.
- Benefits received under the nutrition program for the elderly or the Women, Infants, and Children Nutritional Program.
- All payments received under the VISTA program unless the value of the payment when adjusted to reflect the number of hours worked is are equal to or greater than the minimum wage currently in effect under the Fair Labor Standards Act of 1938. In that case the income is treated as earned income and disregards applicable to the category of assistance are deducted from it.
- Payments distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, P.L. 93-134, or P.L. 94-540.
- Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

- Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I. of P.L. 100-383.
- Restitution made by any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100-383.
- Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E. D. N. Y.).
- Payments of supportive services or reimbursement of out of pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 of P.L. 93-113.
- Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203.
- Payments of Experimental Housing Allowance Program made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended.
- Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of P.L. 94-114.
- Housing subsidies provided under Section 8 of the U.S. Housing Act.
- Benefits paid to eligible households under the Home Energy Assistance Act of 1980.
- Home energy assistance based on need, such as, but not limited to home energy assistance from the following agencies:
 - Kingswood Community Center
 - Peoples' Settlement Association
 - Catholic Social Services, Inc.
 - Neighborhood House, Inc.
 - Community Housing, Inc.
 - Jewish Family Service of Delaware
 - Salvation Army
 - Community Action (Sussex County)
- Assistance from other agencies and organizations provided that no duplication exists between such other agency and that provided by DSS. To assure that non-duplication exists, determine that the aid granted by another agency is for a different purpose. For example, vocational rehabilitation provides cash allowances (usually \$25 per week) to reimburse clients for costs such as transportation related to their participation in a training program.
- For the TANF program: All federal tax refunds.
- Earned Income Tax Credits (EITC).
- Income received from the Census Bureau April 01, 2000 through December 31, 2000.

(Break in Continuity of Sections)

8026.5 Excluded Resources

The equity value of real and personal property owned by a family budget group cannot exceed \$1,000.00. Resources excluded from the \$1,000.00 resource limitation are:

1. The home which is the usual residence of the family budget group.
2. One automobile, the equity value of which does not exceed \$1,500.00. The equity value is the difference between the automobile's fair market value and the amount still owed for it. The equity value in excess of \$1,500.00 is counted towards the \$1,000.00 resource limitation. The entire equity value of other automobiles owned by the individual is counted as a resource.

NOTE: The fair market value of an automobile is determined by finding the car's trade-in value in the NADA Used Car Guide. If the client disagrees with this valuation, he/she may obtain a statement of the car's value from an automobile dealer.

The increased value of a motor vehicle specially equipped with devices for the handicapped is not counted. Farm vehicles that are used to produce income are excluded from consideration as a resource.

EXAMPLE: A client owns a car which has a fair market value of \$5,000.00. The client owes \$3,000.00 on it. The car's equity value is \$2,000.00. Its resource value for financial assistance purposes is \$500.00 (\$2,000.00 - \$1,500.00).

3. One burial plot for each member of the assistance unit.
4. Bona fide funeral agreements (e.g., pre-paid burial contracts) up to a total of \$1,500.00 for each member of the budget group.

NOTE: If a funeral agreement valued in excess of \$1,500.00 includes both prepaid burial expenses and a burial plot, the worker will require that the client provide an itemized statement of the estimated value of the plot and the expenses. The value of the burial plot is an excluded resource and will be considered separately from the value of the prepaid expenses.

5. Basic maintenance items essential for day-to-day living such as clothes, furniture, and other similarly essential items.
6. For a period not to exceed six months, real property that is not used as a residence (see DSSM 8026.6).
7. Tools and equipment necessary to produce income in a self-employment enterprise, even if the owner is not engaged in business currently, but plans to continue it at a future date.
8. Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

9. All federal income tax refunds, including Earned Income Tax Credits (EITC), including Advance EITC.

Applicants:

~~Disregard as a resource EITC payments received in the month of application or in the month preceding the month of application. Any remaining EITC amounts received before this period are a resource.~~

Recipients:

~~Disregard as a resource for the month in which the EITC is received and the following month. After this period, any remaining amounts are a resource.~~

The refund is disregarded regardless of whether the refund is a result of a refundable credit, over withholding, or both.

Federal tax refunds received during the previous 12 month period by any case member are disregarded.

10. A sponsor's resources cannot be considered available solely because the person is serving as a sponsor.
11. Cash value of Life Insurance Policies.

(Break in Continuity of Sections)

8030 Excluded income

The following kinds of income are disregarded in determining financial eligibility and grant amounts in RCA:

- The value of USDA donated foods.
- The value of food ~~stamps~~ benefits.
- Foster care payments made on behalf of foster children residing in the home.
- Payments made directly to a third party on behalf of a recipient.

EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company. This payment is not considered as income to the assistance unit.

- Earnings received by children under the Summer Youth Program of the Job Training Partnership Act of 1982 for a period not to exceed six (6) months.
- A cash payment made to the RCA unit responsible for household bills by a non-unit member for his or her share of the common household expenses.
- Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:

1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.
2. If the loan is obtained from an individual or establishment not normally engaged in the business of making loans, obtain one of the following:
 - a. Borrower's acknowledgement of obligation to repay; or
 - b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or
 - c. A written statement detailing borrower's plans to repay the loan when future anticipated income is received.
 - Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

- Incentive payments or reimbursement for training related expenses derived from participation in Institutional and Work Experience Training or special work projects under the Work Incentive Program.
- Benefits received under the nutrition program for the elderly or the Women, Infants, and Children Nutritional Program.
- All payments received under the VISTA program unless the value of the payment when adjusted to reflect the number of hours worked ~~is~~ are equal to or greater than the minimum wage currently in effect under the Fair Labor Standards Act of 1938. In that case the income is treated as earned income and disregards applicable to the category of assistance are deducted from it.
- Payments distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, P.L. 93-134, or P.L. 94-540.
- Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

- Payments of supportive services or reimbursement of out-of pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 of P.L. 93-113.
- Housing subsidies provided under Section 8 of the U.S. Housing Act.
- Benefits paid to eligible households under the Home Energy Assistance Act of 1980.
- Home energy assistance based on need, such as, but not limited to home energy assistance from the following agencies:
Kingswood Community Center
Peoples' Settlement Association
Catholic Social Services, Inc.
Neighborhood House, Inc.
Community Housing, Inc.
Jewish Family Service of Delaware
Salvation Army
Community Action (Sussex County)
- Assistance from other agencies and organizations provided that no duplication exists between such other agency and that provided by DSS. To assure that non-duplication exists, determine that the aid granted by another agency is for a different purpose. For example, vocational rehabilitation provides cash allowances (usually \$25 per week) to reimburse clients for costs such as transportation related to their participation in a training program.
- All federal tax refunds, including Earned Income Tax Credits (EITC).
- Income of an individual acting as a refugee's sponsor.
- Income received from the Census Bureau from April 1, 2000 through December 31, 2000

14 DE Reg. 1366 (06/01/11) (Final)