

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

FINAL

ORDER

DSSM: 9029 Household Cooperation

Nature of the Proceedings:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Household Cooperation*. 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 January 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulation to be produced by January 31, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulation.

Summary of Proposed Change

The proposed changes described below amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Household Cooperation*.

Statutory Authority

- 7 CFR §273.12(c)(3), *State agency action on changes – unclear information*;
- 7 CFR §273.16 (e)(2)(iii), *Disqualification hearing procedures*;
- 7 CFR §273.16 (f)(1)(ii)(B), *Advance notification*.

Summary of Proposed Change

DSSM 9029, Household Cooperation: The United States Department of Agriculture/Food and Nutrition Service (USDA/FNS) published an administrative notice informing the Division of Social Services (DSS) that States cannot close client food supplement benefits due to non-cooperation with fraud investigators. FNS requested that DSS remove this language from state policy.

Management has already advised staff that they cannot close a food supplement case due to non-cooperation with Audit and Recovery Management Services (ARMS). If staff closes a food supplement case for non-cooperation with ARMS, it causes a negative error if reviewed by Quality Control. The worker must send the client a *Request for Contact* form and allow the client ten days to clarify or verify the information that is in question. The client must cooperate with the DSS worker in providing the information.

Summary of Comments Received with Agency Response and Explanation of Changes

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. DSS has considered each comment and responds as follows.

First, since persons with disabilities may have difficulty fulfilling DSS standards due to cognitive or mental health limitations, standards which give the benefit of the doubt to the beneficiary merit endorsement. See, e.g., the following guidance: "If there is any question whether the household has merely failed to cooperate, as opposed to refused to cooperate, the DSS worker will not deny the household."

Agency Response: DSS thanks you for the endorsement.

Second, the following sentence is grammatically infirm: "After DSS a denial or termination for refusal to cooperate," We believe it should read: "After a DSS denial or termination for refusal to cooperate,"

Agency Response: DSS agrees. The final order regulation reflects the suggested change.

Third, it is somewhat difficult to follow the regulations since there are no numerical subparts. DSS may wish to consider inserting numerical subparts for ease of reference.

Agency Response: DSS agrees. The final order regulation shows the numerical subparts for ease of reference.

Fourth, the last two sentences read as follows:

When a person, organization, or agency outside the household fails to cooperate with request for verification, DSS will not determine the household to be ineligible. The worker will document the case record.

For individuals identified as non-household members in DSSM 9013.2, DSS will not consider them as individuals outside the household.

We had difficulty understanding the rationale for the last sentence. DSSM 9013.2 generally identifies roomers and live-in attendants as non-household members. Under the above two sentences, if such roomers or live-in attendants fail to cooperate, the household could be determined ineligible. DSS may wish to consider whether it intends this result. DSS may also wish to consider whether use of the double negative "will not determine the household to be ineligible" facilitates clarity.

Agency Response: The structure of this section has been reorganized and new language added to facilitate clarity and understanding.

Findings of Fact:

The Department finds that the proposed change as set forth in the January 2009 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Food Supplement Program regarding *Household Cooperation* is adopted and shall be final effective March 10, 2009.

Rita M. Landgraf, Secretary, DHSS

**DSS FINAL ORDER REGULATION #09-10
REVISION:**

9029 Household Cooperation

[7 CFR 273.2(d)]

~~To determine eligibility, the application form must be completed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate in completing this process, the application will be denied at the time of refusal.~~

~~To be denied, the household must refuse to cooperate, not merely fail to cooperate or be unable to do so. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process.~~

~~The household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility. A subsequent review of eligibility includes, but is not limited to, reviews generated by reported changes, applications for recertifications, reviews of cases certified under disaster food stamp procedures and current eligibility reviews conducted by Audit and Recovery Management Services (ARMS). Benefits will not be terminated for refusal to cooperate with ARMS investigations of past eligibility.~~

~~Once denied or terminated for refusal to cooperate, the household may reapply but will not be determined eligible until it cooperates. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household should not be denied, and DSS shall provide assistance.~~

~~The household may voluntarily withdraw its application at any time prior to the determination of eligibility. Such action will be documented in the case record to include the reason for withdrawal and that contact was made with the household to confirm the withdrawal. Advise the household of its right to reapply at any time.~~

~~Do not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. Do not consider individuals identified as non-household members in DSSM 9013 as individuals outside the household.~~

[A. Households are required to cooperate in the application process in order to receive food benefits.]

The household or its authorized representative must complete the application, have an interview, and verify certain information on the application before DSS can determine eligibility.

If the household refuses to cooperate in completing this process, DSS will deny the application at the time the household refuses to cooperate.

[B.] DSS will not deny a case because a household merely failed to cooperate or was unable to cooperate. DSS must determine that the household refused to cooperate. Before DSS can make a determination of refused to cooperate, the household must:

- "be able to cooperate,
- "clearly demonstrate that it will not take actions that it can take, and
- "fail to take required actions to complete the application process.

[If there is any question as to whether the household merely failed to cooperate, as opposed to refused to cooperate, the DSS worker will not deny the household.

The worker must provide assistance.

C.] DSS will determine the household ineligible if it refuses to cooperate in any subsequent review of its eligibility. A subsequent review of eligibility includes, but is not limited to:

- "reviews generated by reported changes,

- "applications for recertification, and
- "reviews of cases certified under disaster FSP procedures.

After [a] DSS [a] denial or termination for refusal to cooperate, the household may reapply and must cooperate before determined eligible. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the DSS worker will not deny the household. The worker must provide assistance.

The household may voluntarily withdraw its application at any time before the determination of eligibility.

[D. If a household withdraws its application, the worker will:]

- ~~[The worker will]~~ document the case record to include the reason for withdrawal.
- ~~[The worker will]~~ contact the household to confirm the withdrawal and document the case record.
- ~~[The worker will]~~ advise the household of its right to reapply at any time.

~~[When a person, organization or agency outside of the household fails to cooperate with request for verification, DSS will not determine the household to be ineligible.~~

E. DSS will not determine the household to be eligible when a person, organization or agency outside of the household fails to cooperate with a request for verification.]

The worker will document the case record.

[Non-household members, like roomers, live-in attendants or others sharing the residence, are not considered as living outside the household for the purposes of this policy. This means the failure of a non-household member to cooperate could cause the household to be ineligible.

~~For individuals identified as non-household members in DSSM 9013.2, DSS will not consider them as individuals outside the household.]~~