

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

20200.2 Excluded Income

PROPOSED

PUBLIC NOTICE

Long Term Care Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. This proposal gives direction for the eligibility process on German Reparation payments received by institutionalized individuals.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by May 31, 2005.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

Summary of the Proposed New Rule

Citations

- The Medicaid Act 1902 (r) (1) (A): Reparation Payments, Federal Republic of Germany
- Social Security Transmittal 91 ADM -23: Treatment of German Reparation Payments Received by Institutionalized Individuals
- POMS SI 01130.610: Payments to Victims of Nazi Persecution
- POMS SI 00830.710: Payments to Victims of Nazi Persecution

Rules are expanded in DSSM 20310.10 and DSSM 20200.2 that exclude German Reparation payments as income and resources for eligibility and post eligibility calculations.

DSS PROPOSED REGULATION #05-20

REVISIONS:

DSSM 20200.2 Excluded income

Excluded income is ~~an amount~~ money which is income by definition but does not count in determining eligibility. Some income is excluded when determining eligibility, but ~~must~~ may be included when calculating patient pay amount. The following items are excluded income:

- (a) Victims compensation payments from a State established fund.
- (b) German reparations payments. These payments are not counted in the eligibility nor post eligibility process.
- (c) Effective 9/1/91 Austrian social insurance payments specifically based on wage credits granted under Paragraphs 500-506 of the Austrian General Social Insurance Act.
- (d) Japanese-American, Japanese-Canadian and Aleutian restitution payments.
- (e) Agent orange settlement payments.
- (f) Impairment-related work expenses.
- (g) Radiation Exposure Compensation Trust Fund payments.
- (h) Cash or other assistance received under a Federal statute because the President has declared a major disaster.
- (i) Payments made under the Netherlands' Act on Benefits for Victims of Persecution 1940-1945 (acronym WUV).
- (j) Income of Native Americans ~~income~~ derived from tribal trust lands; and effective 1/1/94, up to \$2,000 per year in payments derived from individual interests in Indian trust or restricted land.

(Break in Continuity of Sections)

DSSM 20310.10 Reparations

~~Unspent German or Austrian reparations payments may be excluded only if including them in resources would affect eligibility.~~

German Reparation payments must not be considered available in the eligibility or post eligibility treatment of income and resources. They can no longer be applied toward the personal needs allowance, community spouse income allowance, family member allowance nor cost of care. If German reparations payments are retained beyond the month of receipt, they must be considered exempt resources whether received while the person was in the community or after becoming institutionalized. These funds should be kept separate from other income and resources. Interest earned on these resources must be considered available income.

8 DE Reg. 1565 (05-01-05)