

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF SOCIAL SERVICES

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

### FINAL

### ORDER

### CHILD CARE SUBSIDY PROGRAM

#### 5302 Exceptions 5307 Dismissal of Requests

#### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies in the Division of Social Services Manual (DSSM) as it relates to the Child Care Subsidy Program. 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 March 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposed Changes

##### Statutory Authority

- The Child Care and Development Block Grant (part of Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996; and,
- Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act (OBRA) of 1981 establishes child care under the Social Services Block Grant (part of Categories 31 and 41).

##### Summary of Proposed Changes

1) DSSM 5302, *Exceptions: TANF, GA, Medicaid, EA*: is revised to clarify when adequate notice will be sent. This revision also updates an obsolete policy citation.

2) DSSM 5307, *Dismissal of Requests*: is revised to clarify that Fair Hearing rules apply to the Child Care program as well as other DSS programs.

#### Summary of Comments Received With Agency Response

No public comments were received.

#### Findings of Fact:

The Department finds that the proposed changes as set forth in the March 2007 *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 Child Care Subsidy Program is adopted and shall be final effective May 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 4/16/07

**DSS FINAL ORDER REGULATION #07- 22  
REVISIONS:**

**5300 Notices**

Written notice of an agency action to applicants and recipients, in addition to meeting the requirements of §5301 where applicable, will contain:

- 1) A statement of the client's right to a fair hearing as provided under this section.
- 2) The method by which (s)he may request a fair hearing.
- 3) A statement that (s)he may represent him/herself or that (s)he may be represented by counsel or by another person.

**5301 Adequate and Timely Notice to Recipients**

In cases involving an agency's proposed or intended action to discontinue, terminate, suspend or reduce assistance described in these rules, or to change the manner or form of payment, no action may be taken unless the following conditions are met:

1) Written notice must be provided to the client that is "adequate." Adequate means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request a fair hearing, and the circumstances under which assistance may be continued if a hearing is requested.

2) The written notice must be "timely." It must be mailed no later than ten (10) days before the date of action; that is, at least ten (10) days before the intended change would be effective. However, in the TANF program, when the Division of Social Services learns of facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through secondary sources, notice of a grant adjustment is timely if mailed at least five (5) days before the action would become effective.

3) Each recipient shall be advised of his/her liability for repayment of benefits received while awaiting a fair hearing if the agency's decision is upheld. Monthly reporting households receiving benefits while awaiting a hearing will continue to report monthly until the end of the certification period or the resolution of the fair hearing, whichever is first. However, if DSS did not receive a monthly report form from the household by the extended filing date and the household admits that it did not submit such a monthly report, benefits will not be continued. If the fair hearing concerns termination for non receipt of the monthly report by DSS, then a new complete monthly report for the month in question must be submitted by the household before benefits are continued. If the hearing request form is unclear whether the recipient wants continued benefits, they should be given.

If a recipient receives notice of termination due to his or her failure to submit a completed monthly report but subsequently submits one within the timely notice period, benefits will be provided based upon the information indicated on the report. If the information submitted on the monthly report results in a change in benefit amount or eligibility, another notice indicating the change and meeting the definition of an adequate notice must be provided. If a fair hearing is requested based upon this second notice, benefits must be continued at the level issued just prior to the notice of change.

The agency will provide continued benefits not later than five (5) working days from the day it received the household's request.

During the fair hearing period, the agency will adjust allotments to take into account reported changes except for the factor(s) on which the hearing is based.

4) Notices, including computer generated notices, must contain information needed for the claimant to determine from the notice alone the accuracy of the Division's action or intended action. At a minimum all notices will:

a) Indicate the action or proposed action to be taken (i.e., denial, reduction, or termination of assistance);

b) Provide citation(s) to the regulation(s) supporting the action being taken;

c) Provide a detailed individualized explanation of the reason(s) for the action being taken which includes, in terms comprehensible to the claimant, an explanation of why the action is being taken and, if the action is being taken because of the claimant's failure to perform an act required by a regulation, an explanation of what the claimant was required by the regulation to do and why his or her actions fail to meet this standard; and

d) If calculations of income or resources are involved, set forth the calculations used by the agency, including any disregards or deductions used in the calculations, explanations of what income and/or resources the agency considers available to the claimant and the source or identity of these funds, and the relevant eligibility limits and maximum benefit payment levels for a family or assistance unit of the claimant's size.

### **5302 Exceptions: TANF, GA, Medicaid, EA Child Care**

The agency may dispense with timely notice but will send adequate notice not later than the date of action when:

- 1) The agency has factual information confirming the death of the recipient or of the TANF payee when there is no relative available to serve as the new payee.
- 2) The recipient provides a clear written statement that assistance is no longer desired.
- 3) The recipient provides information which requires termination or reduction of assistance and the recipient has indicated in writing that (s)he understands that the action is a consequence of supplying the information.
- 4) The recipient has been admitted or committed to an institution (See §3010.9).
- 5) The recipient has been placed in skilled nursing care, intermediate care, or long term hospitalization.
- 6) The appellant's whereabouts are unknown and agency mail directed to him/her has been returned by the post office indicating no known forwarding address. If his/her whereabouts become known during the payment period, the client's check will be made available.
- 7) The recipient's case has been accepted for assistance in another state or for another category of assistance including SSI, and, that fact has been established by the Department.
- 8) When a child is no longer in the home, including when a child is removed from a home as a result of a judicial determination or voluntarily placed in foster care by his/her legal guardian.
- 9) A change in the level of medical care is prescribed by the recipient's physician.
- 10) The recipient files a timely completed monthly report; notices to reduce or terminate assistance must be mailed to arrive no later than the resulting payment or in lieu of the payment.
- 11) The recipient files a completed monthly report that is not timely (i.e., is not received by the DCIS processing deadline); the recipient must be notified promptly of any reduction in or termination of the amount of assistance.
- 12) In the Emergency Assistance Program, a special allowance has been granted for a specific period of time and the allowance has terminated or expired and the individual has been notified in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period.

### **10 DE Reg. 1703 (05/01/07) (Final)**

### **5303 Mass Review Actions**

When changes in either State or federal laws (i.e., Social Security increases) require automatic adjustments of classes for recipients, timely notice of such adjustments will be given which will be "adequate". To be adequate, notices must include a statement of the intended action, the reasons for such intended action, a statement of the specific change in law, and a statement of the circumstances under which a hearing may be obtained and assistance continued.

Mass change notices will also include:

- 1) The specific change in the individual's benefits;
- 2) A name and telephone number of a person to call for additional information;
- 3) The liability a food stamp household will incur for any overissued food stamp benefits if a fair hearing decision is adverse to the household.

### **5304 Jurisdiction**

An opportunity for a hearing will be granted to any applicant who requests a hearing because his/her claim for economic or medical assistance or food stamp assistance is denied or is not acted upon with reasonable promptness and to any recipient who is aggrieved by any action of the Division of Social Services such as actions to reduce benefits or to assign Food Stamp Program recipients to a specific employment and training component.

To be considered, a request for a hearing must be a clear expression in writing by the appellant or his/her representative to the effect that (s)he wants the opportunity to present his/her case to higher authority.

Only issues described in the notice of action sent to the appellant or issues fairly presented in the appellant's request for a fair hearing or in the Division's response in its hearing summary may be presented for the hearing officer's review at the hearing.

Appellants of actions taken in the Food Stamp Program may request a fair hearing orally, and, if so, will be informed that it is advisable to perfect the request by reducing it to writing. The staff member receiving an oral request will initiate procedures to begin the hearing process.

The freedom to make a request for a hearing will not be limited or interfered with in any way. The Division may provide assistance to appellants such as providing translators or a non-English explanation of the hearing process when required by federal regulations.

Except in the Food Stamp Program, a hearing need not be granted when either State or federal law requires automatic grant adjustments for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.

#### **5304.1 Jurisdiction for PASARR Hearings**

An individual who has been adversely affected by any determination made by either the Division of Mental Health (DMH) or the Division of Developmental Disabilities Services (DDDS) as a result of a pre-admission screening or an annual resident review (PASARR) of any applicant for or recipient of residential nursing services may appeal the determination decision under these rules. The hearing will be conducted by the Division of Social Services and the hearing decision is binding on the Department of Health and Social Services. For hearings on PASARR determinations which have a specific affect on Medicaid Program eligibility, DSS will appear as a witness for DDDS or DMH if requested by a party to the hearing. For appeals initiated by non-Medicaid claimants or appellants, the State's case will be presented by DDDS or by DMH as appropriate.

#### **5304.2 Nursing Facility Discharge Notice Hearings**

Consistent with 42 CFR 438.202 and 438.204 (a)(1), a person who has received a notice of intent to discharge or transfer a person from his/her residential nursing facility may take an appeal of the decision to the Division of Social Services.

#### **5304.3 Jurisdiction for Medicaid Managed Care Cases**

Recipients of medical services from the Division of Social Services may appeal an adverse decision of a Managed Care Organization (MCO) to the Division.

The MCO is responsible for the preparation of the hearing summary under §5312 of these rules and the presentation of its case and is subject to the rules, practices, and procedures enumerated herein.

The decision of the DSS hearing officer is a final decision of the Department of Health and Social Services and is binding on the MCO.

Nothing in these rules may operate to preclude an MCO from offering conciliation services or a grievance hearing prior to the fair hearing conducted by DSS.

#### **5304.4 Emergency Assistance Program Hearings**

Jurisdiction for hearings on decisions by the Division of State Services Centers on eligibility for emergency assistance under §6000 et seq. of these rules is with the Division of Social Services.

#### **5305 Time Limits**

Hearings are subject to the following time limits:

- 1) Time limit for requesting a hearing prior to action.

If a request for a hearing is filed within the timely notice period (the period between the date a notice is mailed and the effective date of the action), benefits will not be reduced or terminated pending a decision on the appeal.

- 2) Time limit for requesting a hearing after action.

If the client fails to reply within the time limit for a hearing prior to action, as required, the proposed action shall take effect. If (s)he requests a hearing after the action, a hearing shall be granted provided the request is received within 90 days from the effective date of action.

When a request for a hearing is not filed within 90 days of the date notice of an action is given, the hearing officer is without jurisdiction to hear an appeal and the time for taking an appeal will not be enlarged.

3) At any time within a certification period, a food stamp household may request a hearing to dispute its current level of benefits.

4) Under Delaware law and procedure, an appeal is filed when it is received and filed in the Division's hearing office, not at the moment it is placed in the mail.

***(Break in Continuity of Sections)***

**5307 Dismissal of Requests**

The hearing officer of the Division shall dismiss or deny a request for a Fair Hearing:

1) Where it has been withdrawn by the appellant in writing; or

2) Where the sole issue is one of State or federal law requiring automatic benefit adjustments for classes of TANF, GA, Child Care or Medicaid/Medical Assistance recipients (unless the reason for an individual appeal is incorrect grant computation); or

3) Where the appellant has abandoned his/her request by failing without good cause, to appear by him/herself or by an authorized representative at a scheduled hearing.

a) Good cause for failure to appear at a hearing may include, but is not limited to the following:

1. Death in the family;
2. Personal injury or illness;
3. Sudden and unexpected emergencies;
4. Failure to receive the hearing notice

4) The request is not received within the specified 90 day time period.

The hearing officer will notify both the appellant and the agency if a request for a hearing is dismissed.