

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

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

FINAL

ORDER

FOOD STAMP PROGRAM

Income Deductions, Certification Period Lengths, Reporting Changes

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Income Deductions, Certification Period Lengths and Reporting Changes*. 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 August 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2008 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

The proposed changes described below amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Income Deductions, Certification Period Lengths and Reporting Changes*.

Statutory Authority

- Food, Conservation, and Energy Act of 2008, Title IV, Section 4103, *Supporting Working Families with Child Care Expenses* and Section 4105, *Facilitating Simplified Reporting*;
- 7 CFR §273.10(f), *Certification Periods*; and,
- 7 CFR §273.12, *Requirements for Change Reporting Households*.

Summary of Proposed Changes

The proposed changes amend the Food Stamp Program rules to implement the mandatory provisions of Section 4103 and Section 4105 of the Food, Conservation, and Energy Act of 2008 (the Farm Bill) that removes the cap on the deduction for dependent care expenses that allow working families with children to deduct the entire amount of child care expenses when calculating eligibility and benefit levels (**DSSM 9060**). The Division of Social Services (DSS) further proposes to simplify the reporting requirements for the elderly and disabled households with no earned income with a 12-month certification period (**DSSM 9068.1 and DSSM 9085**).

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Division of Social Services (DSS) has carefully considered and responds to the SCPD public comment summarized below.

SCPD endorses the proposed regulations and has the following observations.

First, federal law currently imposes a cap on the amount of the deduction for child and dependent care expenses in determining Food Stamp eligibility. On June 18, federal law was amended to remove the cap effective October 1, 2008. This is explained in a USDA policy letter. DSS is implementing this provision by deleting the cap.

Second, the federal law authorizes simplified reporting for households with seniors and persons with disabilities. Consistent with the attached July 1 summary from the Center on Budget and Policy Priorities, Section 4105 of the new federal law has the following result:

Reduces paperwork burdens on households with seniors and people with disabilities by allowing states to extend the "simplified reporting" option to them. Under the option, households in which all members are elderly or have a disability (and where no one has earnings) will be allowed to participate for 12-month periods; the only change in circumstances they will be required to report over the year will be if their household income rises above 130 percent of the poverty level. (Almost every state has adopted this policy for six-month periods for other households, as allowed under the 2002 farm bill.) *CBO 9-yr. cost: \$285 million*

Delaware already had a 12-month reporting period for households in which all members were elderly or persons with disabilities with no earned income. This will not change. ~~See~~ strike-out language and second bullet at the bottom of p 138. Otherwise, the amendments "track" the new federal law by requiring such households to report an increase in income only if it exceeds 130% of the poverty income guideline for the household.

Agency Response: DSS thanks the Council for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2008 *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 Stamp Program regarding *Income Deductions, Certification Period Lengths and Reporting Changes* is adopted and shall be final effective October 10, 2008.

Vincent P. Meconi, Secretary, DHSS, September 11, 2008

DSS FINAL ORDER REGULATIONS #08-40

REVISIONS:

9060 Income Deductions

[273.9(d)]

Deductions from income will be allowed only for the following household expenses:

A. **Standard Deduction** A standard deduction per household per month. (Refer to current October Cost-of-Living Adjustment Administrative Notice for amount of the standard deduction.)

B. **Earned Income Deduction** Twenty percent, (20%) of gross earned income as defined at DSSM 9056. Earnings excluded in DSSM 9058 and DSSM 9059 will not be included in gross earned income deduction.

(Do not allow the earned income deduction for income under a work supplementation program.)

C. **Excess Medical Deductions** That portion of unreimbursed medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is 60 years of age or over or disabled as defined in DSSM 9013.1. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction, but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction.

Allowable medical costs include: Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional, hospitalization, outpatient treatment, nursing home care (including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State).

Prescription drugs and over the counter medication when approved by a licensed practitioner or other qualified health professional. Also the cost of medical supplies and sick room equipment (including rental costs) are deductible (when approved by a licensed practitioner or other health professional). Health and hospitalization insurance are deductible, but health and accident insurance policies such as income maintenance or death or dismemberment policies are not deductible.

Any Medicare premiums, cost-sharing or spend down expenses incurred by Medicaid recipients, dentures, hearing aids and prosthetics are deductible as well as the costs of securing and maintaining a seeing eye or hearing dog including dog food and veterinary bills. Eye glasses prescribed by a physician skilled in eye disease or by an optometrist and the reasonable costs of transportation and lodging to obtain medical treatment or services are deductible.

Reasonable transportation and lodging costs to obtain medical treatment or services are limited to costs incurred in order to obtain such treatment. These costs are to be verified. Reasonable costs of transportation include, but are not limited to, trips to the doctor, dentist, to fill prescriptions for medicine, dentures, hearing aids or eye glasses. Allowance for mileage in privately-owned vehicles should be standard in a State. As for lodging costs, eligibility workers should use good ~~judgement~~ judgment in determining the reasonableness of such costs based on the area and average costs.

Maintaining an attendant, homemaker, home health aide, housekeeper, or child care services necessary due to age, infirmity, or illness are deductible costs. In addition, an amount equal to the one person food stamp allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment allowed shall be the amount in effect at the time of initial certification, and will not be updated until the time of the next scheduled recertification. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the costs shall be treated as a medical expense.

D. Dependent Care Payments for the actual costs for the care of a child or other dependent when necessary for a household member to seek, accept, or continue employment, comply with the employment and training requirements in DSSM 9018, or attend training or pursue education which is preparatory to employment. ~~The dependent care deduction for children under two (2) is higher than for children two (2) and older (Refer to the current October Cost of Living Adjustment Administrative Notice for the dependent care deductions.).~~

E. Child support payments deduction - Legally obligated child support payments made to or for, children who live outside of the household. Only child support payments that are legally obligated can be allowed as a deduction. This also includes:

a) Amounts paid out of the household's current income to make up for months in which the household did not meet its obligation, except for amounts paid through tax intercept, and

The value of legally binding child support that is provided in-kind, such as payment of rent directly to the landlord.

Payments provided for health care,

Payments for education,

Payments for recreation,

Payments for clothing,

Payments to meet other specific needs of a child or children, and

Payments to cover attorney's fee, interest, and court costs.

The following are examples of how to treat child support payments:

1. Mr. A is court ordered to pay Mrs. A \$100 a week in child support. He also pays \$30 a month child support for arrears to make up the months he was not able to pay. Mr. A is eligible for a \$463 ($\$100 \times 4.33 = \$433 + \30) child support deduction from his current income.
2. Mr. C is court ordered to pay Mrs. C \$800 a month in child support. He pays \$500 a month directly to the landlord for Mrs. C's rent and \$100 directly to the utility company for Mrs. C's electric. Mrs. C receives the \$200 balance in cash. Mr. C is eligible for a \$800 child support deduction from his current income.

Alimony payments are not included in the child support deduction.

F. Shelter Costs Monthly shelter costs in excess of 50% of the household's income after all other deductions in A, B, and C above have been allowed. The shelter deduction must not exceed the maximum excess shelter deduction limit. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the maximum excess shelter deduction.) This is applicable unless the household contains a member who is age sixty (60) or over, or disabled per DSSM 9013.1. Such households will receive an excess shelter deduction for the monthly costs that exceeds 50% of the household's monthly income after all other applicable deductions.

Shelter costs will include only the following:

1. Continuing charges for the shelter occupied by the household, including rent, mortgages, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments. A mortgage is defined as any loan which uses the house as collateral.

Households required to pay the "last month's rent" along with the first month's rent before they can move into the dwelling can claim both amounts in the month that the household is billed.

For example, a client rents an apartment in January and must pay January's and the next December's rent in January. Both rental amounts can be used for January's food stamp budget. A rent deduction would not be allowed in December since it was paid in January.

Households required to pay a security deposit before they move into a dwelling cannot claim the deposit as a shelter cost.

For example, a client rents a home and must pay a \$450 security deposit and the first month's rent before she moves in. The security deposit will be refunded when she moves out if the home is in good condition. She cannot claim the deposit as a shelter cost for food stamp purposes.

2. Property taxes, State and local assessments and insurance on the structure itself, but no separate costs for insuring furniture or personal belongings. If separate insurance costs for furniture or personal belongings are not identified, use the total. (Local assessments include, but are not limited to, regular school taxes and an annual school capitation tax.)

3. Mandatory Utility and Phone Allowances

- a. Heating and Cooling Standard Utility Allowance (HCSUA) - The HCSUA is mandatory for:
 - households that incur heating or cooling costs separate and apart from their rent or mortgage payments;
 - residents of private rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual usage or who are charged a flat rate;

- households receiving energy payments under the Low Income Home Energy Assistance (LIHEA);
- households receiving direct or indirect energy assistance payments like HUD utility reimbursements, other than LIHEA, that is excluded as income and who continue to incur any out-of-pocket heating or cooling expenses during any month in the previous twelve (12) months; and
- households living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs.

Heating costs must be verified to use the HCSUA. For cooling costs, you must verify the utility, like electricity, that provides the air conditioning. Accept the household's statement that they pay for cooling unless it is questionable.

b. Limited Utility Allowance (LUA) - The LUA is mandatory for households that incur costs for two non-heat or non-cooling utilities like electric, gas cooking, water, sewerage, well and septic tank installation and maintenance, telephone and garbage or trash collection.

c. One-utility Standard - The one-utility standard is mandatory for households that incur only one non-heat, non-cooling, or non-phone utility.

d. Telephone Allowance - The standard telephone allowance will be used for households billed only for a telephone regardless of their actual cost.

Refer to the current October Cost-of-Living Adjustment Administrative Notice for the standard utility and phone allowance amounts.

There is no proration of the utility or phone allowance when more than one household shares living quarters. This means when two or more households share living costs each household may receive full utility or phone allowance. There is no proration of the utility or phone allowances when you have prorated deemers like ineligible aliens.

4. The shelter costs of the home if not occupied by the household because of employment or training away from home, illness or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

A household that has both an occupied home and an unoccupied home is only entitled to one standard utility allowance.

5) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs will not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.

(Break in Continuity of Sections)

9068.1 Certification Period Length

DSS will assign the longest certification period possible according to each household's circumstances.

~~Households subject to change reporting where all members are elderly or disabled and have no earned income will be assigned a 12-month certification period.~~

~~Households subject to simplified reporting will be assigned a 6-month certification period. A shorter certification period of no less than 4 months can be assigned on a case-by-case basis if the household's circumstances warrant it.~~

- ~~• DSS will assign households subject to simplified reporting requirement a six-month certification period, except for elderly or disabled households with no earned income.~~
- ~~• DSS will assign households where all members are elderly or disabled with no earned income a 12-month certification period.~~
- ~~• DSS can assign a shorter certification period of no less than 4 months on a case-by-case basis if the household's circumstances warrant it.~~

2 DE Reg. 2271 (6/1/1999)

8 DE Reg. 114 (7/1/2004)

(Break in Continuity of Sections)

9085 Reporting Changes

[273.12]

Certified food stamp households are required to report the following changes in circumstances:

Simplified Reporting Requirements

The following reporting requirements are for all households ~~except those households where all members are elderly or disabled and without earned income:~~

- Households are required to only report income changes when the monthly income exceeds 130 percent of the poverty income guideline for the household size that existed at the time of the certification or recertification.
- When a household's monthly income exceeds the 130 percent of the poverty income guideline, the household is required to report that change within ten days after the end of the month that the household determines the income is over the 130 percent amount.
- Households will not have to report any changes in the household composition, residence and resulting changes in shelter costs, acquisition of non-excluded licensed vehicles, when liquid resources exceed \$2000.00 and changes in the legal child support obligation.

Additional reporting requirement for ABAWD individuals:

- Adults living in a home without any minor children, who are getting food stamps because they are working over 20 hours a week, must report when they start working less than 20 hours a week.

~~Change Reporting Requirements for households not eligible for the simplified reporting requirements above:~~

~~Change reporting households must report the following changes in circumstances by the 10th day of the month following the month of the change:~~

- ~~• Changes in the amount of gross unearned income of more than \$50, except changes in the public assistance grants. Changes reported in person or by telephone are to be acted upon in the same manner as those reported on the change report form;~~

- ~~A change in the source of income, including starting or stopping a job or changing jobs, if the change in employment causes a change in income.~~
- ~~All changes in household size, such as the addition or loss of a household member;~~
- ~~Changes in residence and the resulting changes in shelter costs;~~
- ~~The acquisition of a licensed vehicle not fully excludable under DSSM 9051 (for non-categorically eligible households);~~
- ~~When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of \$2,000 (for non-categorically eligible households);~~
- ~~Changes in the legal obligation to pay child support; and~~
- ~~Changes in work hours that bring an ABAWD individual below 20 hours per week, averaged monthly.~~

An applying household must report all changes related to its food stamp eligibility and benefits at the certification interview. ~~Changes, as provided in this Section,~~ listed above which occur after the interview but before the date of the notice of eligibility, must be reported by the household within ten (10) days of the date of the notice.

Only the reporting requirements in this Section and no other reporting requirements can be imposed by the Division.

10 DE Reg. 560 (09/01/06)

12 DE Reg. 462 (10/01/08) (Final)