

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

9013 Household Concept

Nature of the Proceedings:

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 separate household status for disabled persons. 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 July 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 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 Change

Statutory Authority

7 CFR 273.1(a)(2), *Household Concept - Elderly and Disabled Persons*

Background

On June 12, 2006, the United States Department of Agriculture (USDA) issued policy guidance clarifying that a disabled person may be considered a food stamp household separate from a person who resides with him or her and purchases and prepares food separately on the disabled person's behalf. The issue arose in litigation in Alabama.

Summary of Proposed Change

DSSM 9013.1, Household Definition: This policy clarification informs staff that severely disabled individuals who live with others but have someone prepare and purchase their meals separate and apart from others in the home can be a separate household.

Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. The Division of Social Services (DSS) has considered your comments and responds as follows.

As the "Summary" section recites, the impetus behind this initiative is a June 12, 2006 USDA policy letter. The policy letter authorizes a "severely disabled" applicant to qualify as a separate "household" under the Food Stamp program if the applicant arranges for another (even cohabitating) individual to purchase and prepare the applicant's food. This is advantageous to the person with the disability since the income of the other cohabitating individual(s) would not be counted towards the financial eligibility of the person with the disability. The proposed regulatory change to §9013.1 is well written and consistent with the policy letter. Although, it does not adopt "people first" language, the substance of the standard is fine. We endorse this regulatory change.

Agency Response: DSS thanks you for the endorsement.

Findings of Fact:

The Department finds that the proposed changes as set forth in the July 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 separate household status for disabled persons in the Food Stamp Program is adopted and shall be final effective September 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 8/14/07

(insert boilerplate)

DSS FINAL ORDER REGULATION #07-42

REVISIONS:

9013 Household Concept

[273.1]

A household may be composed of any of the following individual or groups of individuals:

1. an individual living alone;
2. an individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;
3. a group of individuals who live together and customarily purchase food and prepare meals together for home consumption;
4. an individual who is 60 years of age or older, living with others (and the spouse of such individual), who is unable to purchase and prepare meals because he/she suffers from a disability considered permanent under the Social Security Act or suffers from a non disease related, severe, permanent disability. However, the income (all income included under DSSM 9055) of the others with whom the individual resides (excluding the income of such individual's spouse) cannot exceed 165% of the poverty line. (Refer to the current October Cost-of-Living Adjustment Administrative Notice.)

9013.1 Household Definition

A) General Definition a household is composed of one of the following individuals or groups of individuals, provided they are not residents of an institution (except as otherwise specified in DSSM 9015), or are not boarders (as specified in DSSM 9013.3).

1. An individual living alone
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;
This includes severely disabled individuals who have someone purchase and prepare their meals for them (regardless of whether or not they are paid for the service). The disabled individuals are considered separate food stamp households, even if they live in the same home as the individual purchasing and preparing the meals for them. This household does not have to meet the 165 percent rule.
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

B) Special Definition the following individuals living with others or groups of individuals living together must be considered as customarily purchasing food and preparing meals together, even if they do not do so*.

1. Spouses who live together. Spouse refers to either of two individuals:
 - a. Who would be defined as married to each other under applicable State law; or
 - b. Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

* Same sex couples, for food stamp purposes, are not considered spouses and the presumption of purchasing food and preparing meals together would not apply to them.

2. Children 21 years of age and younger living with their parents. [Parents are defined as natural parent(s), adoptive parent(s), or step-parent(s)]

Children (other than foster care children) who are under 18 and live under the parental control of a non-parent, adult household member cannot be separate households.

Adult children (22 years of age and older) who live with their parents can be separate households if they purchase and prepare food separately.

3. Child(ren) living with a non-parent who has legal custody of the child(ren) will continue to be a member of the household for food stamp purposes even if a natural parent moves into the home. The non-parent must provide proof of legal custody. If the adult who has legal custody of the child chooses to let the child and natural parent purchase and prepare meals together, the child can become a member of the natural parent's food stamp household.

4. Joint custody - Children who live with parents in a joint custody situation can get food stamps with the parent who is the first to apply for food stamps. This also covers shared custody situations. If both parents are applying for the same child(ren), the parent who provides the majority of the meals (21 meals a week) will include the child as part of his/her food stamp household.

When the parent who provides the majority of the meals applies for food stamps after the other parent is already getting food stamps for children, he/she can include the children in their food stamp after they are removed from the other parent's case. The children are removed from the first parent's case and opened in the second parent's case no later than the second month after the month the second parent requests food stamps for the children.

5. When an individual resides a portion of the month with a food stamp household, the household can choose to include or exclude the individual from the food stamp household. If included, the income of the individual must be included and the individual cannot get benefits in another household or state.

Examples:

"A son works out of state but comes home every weekend. His mom can include or exclude him.

"A child lives in PA with her father. She comes to DE to live with her mom on weekends. Her mother can include her in her food stamp household as long as the child is not getting food stamps in PA.

"A child goes to a residential school and comes home every other weekend and holidays. The parents can include the child in their food stamp household.

6. Although a group of individuals living together and purchasing and preparing meals together constitutes a single household under the provisions of the above general definition, an otherwise eligible member of such a household who is 60 years of age or older and who is unable to purchase and prepare meals because (s)he suffers from a disability considered permanent under the Social Security Act, or suffers from a non-disease-related, severe, permanent disability, may be a separate household from the others based on the provisions of this section provided that the income (all income under DSSM 9055) of the others with whom the individual resides (excluding the income of the spouse of the elderly and disabled individual) does not exceed 165% of the poverty line. Only the spouse of the elderly and disabled individual is required to be included in the same household with the individual.

"Elderly or disabled member" means a member of a household who:

- a. is 60 years of age or older;
- b. receives Supplemental Security Income (SSI) benefits under Title XVI of Social Security Act or disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act;
- c. receives federally or State administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive benefits is based upon the disability or blindness criteria used under Title XVI of the Social Security Act;

- d. receives federally or State administered supplemental benefits under section 212(a) of Public Law 93 66;
- e. receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act;
- f. is a veteran with a service connected or non service connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under Title 38 of the United States Code;
- g. is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;
- h. is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self support under Title 38 of the United States Code; or
- i. is a surviving spouse or surviving child of a veteran and is considered by the VA to be entitled to compensation for service connected death or pension benefits for a non service connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act;
- j. received an annuity payment under Section 2(a)(l)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board, or Section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under Title XVI of the Social Security Act.
- k. is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income, disability related medical assistance under Title XIX of the Social Security Act, or disability-based State general assistance benefits provided that the eligibility to receive those benefits is based upon disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act.

"Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them.

Note: Some disabled persons optionally receive Federal Employee Compensation Act (FECA) payments in lieu of Civil Service Disability payments. Such persons are considered to meet the disability definition under this section. Some persons, however, receive FECA payments on a temporary basis while recovering from an on-the-job injury. Receipt of these temporary payments does not satisfy the disability definition. Therefore, verify which type of FECA payment a client receives.

Table 1: VERIFICATION OF DISABILITY

DISABILITY BASIS	VERIFICATION METHOD
b, c, d	Household must provide proof of benefit receipt.
f	Household must present a statement from the Veterans Administration which clearly indicates (1) that the disabled individual is receiving VA disability benefits for a service connected disability, and (2) that the disability is rated as total or paid at the total rate.
g, h	Household must prove that the disabled individual is receiving VA disability benefits.
e, i	Use SSA's most current list of disabilities considered permanent. If it is obvious that one individual has one of the listed disabilities, the item is considered verified. If disability is not obvious, the household must provide a statement from a physician or licensed or certified psychologist certifying that the individual has one of the non-obvious disabilities listed.

Table 1: VERIFICATION OF DISABILITY

j	Household must provide proof that individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board and has been determined to qualify for Medicare.
k	Household must provide proof of receipt of interim benefits pending receipt of SSI; or disability-related medical assistance under Title XIX of the SSA. Verify that the eligibility to receive these benefits is based upon disability or blindness criteria that are at least as stringent as those used under title XVI of the Social Security Act.

DSSM 9013.1 B(3)

9 DE Reg. 1077 (01/01/06)

10 DE Reg. 1003 (12/01/06)

9013.2 Non-Household Members

[273.1(b)]

For the purposes of defining a household under the provisions of this section, the following individuals will not be included as a member of the household unless specifically included as a household member under the special definition at DSSM 9013.1. If not included as a member of the household under the special definition, such individuals will not be included as a member of the household for the purpose of determining household size, eligibility or benefit level. The income and resources of such individuals will be handled in accordance with DSSM 9077. The following individuals (if otherwise eligible) may participate as separate households:

- 1) Roomers to whom a household furnishes lodging, but not meals, for compensation.
- 2) Live in attendants who reside with a household to provide medical, housekeeping, child care or similar personal services.
- 3) Other individuals who share living quarters with the household, but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

Some household members are ineligible to receive Program benefits under the provisions of the Food Stamp Act (such as certain aliens and certain students). Others may become ineligible for such reasons as being disqualified for committing an intentional Program violation or refusing to comply with a regulatory requirement. These individuals must be included as a member of the household for the purpose of defining a household under the definition in DSSM 9013.1. However, such individuals must not be included as eligible members of the household when determining the household's size for the purpose of comparing the household's monthly income with the income eligibility standard or assigning a benefit level by household size. The income and resources of such individuals will be handled in accordance with DSSM 9076. These individuals are not eligible to participate as separate households.

Ineligible individuals include the following:

- 1) Ineligible students who do not meet the eligible student requirement of DSSM 9010.
- 2) Ineligible aliens who do not meet the citizenship or eligible alien status requirements of DSSM 9032 or the eligible sponsored alien requirements of DSSM 9081.
- 3) Individuals disqualified for intentional Program violation per DSSM 2023.
- 4) Individuals disqualified for failure to provide a SSN per DSSM 9032.
- 5) Individuals who do not attest to their citizenship or alien status as required on the Form 100

application form.

- 6) Individuals found guilty of having made a fraudulent statement or misrepresentation to the identity and/or place of residence in order to receive the multiple benefits at the same time per DSSM 2024.
- 7) Individuals who are fleeing prosecution or custody for a felony or probation/parole violators per DSSM 2025.
- 8) Individuals convicted of trafficking food stamps of \$500 or more per DSSM 2026.
- 9) Individuals ineligible due to work requirements per DSSM 9018.
- 10) Individuals who are ineligible because of a drug-related felony conviction per DSSM 2027.
- 11) Individuals ineligible due to the time limit for Able-bodied Adults without Dependents per DSSM 9018.

9013.3 Boarders and Foster Care

[273.1(c)]

Boarders

Boarders are defined as individuals or groups of individuals residing with others and paying reasonable compensation to the others for lodging and meals (excluding residents of a commercial boarding house). Boarders are ineligible to participate in the Program independent of the household providing the board. They may participate as members of the household providing the boarder services to them, at such household's request.

In no event will boarder status be granted to those individuals or groups of individuals described in DSSM 9013.1 (B) which includes children living with parents.

The household with which a boarder resides (including the household of the proprietor of a boarding house) may participate in the program if the household meets all the eligibility requirements for program participation.

To determine if an individual is paying reasonable compensation for meals and lodging in making a determination of boarder status, only the amount paid for meals will be used, provided that the amount paid for meals is distinguishable from the amount paid for lodging. A reasonable monthly payment will be either of the following:

- 1) Boarders whose board arrangement is for more than two meals a day will pay an amount which equals or exceeds the maximum food stamp allotment for the appropriate size of the boarder household; or
- 2) Boarders whose board arrangement is for two meals or less per day will pay an amount which equals or exceeds two thirds of the maximum food stamp allotment for the appropriate size of the household.

An individual furnished both meals and lodging by a household but paying compensation of less than a reasonable amount to the household for such services will be considered a member of the household providing the services.

This means that a person paying reasonable compensation for meals is considered a boarder and can be included in the household's food stamp household if the household providing the boarder services wants them to be included. A person paying less than a reasonable amount to the household for meals must be included in the food stamp household of the household providing the service. Either way, the person paying for the meals cannot receive food stamps on their own separate from the household providing the service.

None of the income or resources of individuals determined to be boarders and who are not members of the household providing the boarder services will be considered available to such household. However, the amount of the payment that a boarder gives to a household will be treated as self employment income to the household.

The procedures for handling self employment income from boarders (other than such income received by a household that owns and operates a commercial boarding house) are set forth in DSSM 9074. The procedures for handling income from boarders by a household that owns and operates a commercial boarding house are also covered in DSSM 9074.6.

For program purposes, a commercial boarding house is defined as an establishment licensed as an enterprise

which offers meals and lodging for compensation. In project areas with licensing requirements, a commercial boarding house will be defined as a commercial establishment which offers meals and lodging for compensation with the intent of making a profit. The number of boarders residing in a boarding house will not be used to determine if a boarding house is a commercial enterprise.

Foster Care

Foster care individuals (children and adults) placed in the homes of relatives or other individuals or families by a Federal, State, or local governmental foster care program, shall be considered boarders. The foster care payments received by the household for such foster care boarders shall not be considered as available income to the household. The foster care payments are exempt from the computation of net self-employment income from boarders under DSSM 9074.

Foster care children/adult boarders may participate in the Food Stamp Program as members of the household providing the boarder services to them, at such household's request. If the household chooses the option to include the foster care individuals in their food stamp household, foster care payments received by the household shall be considered unearned income to the household and counted in their entirety in determining the household's income eligibility and benefit level.

11 DE Reg. 332 (09/01/07) (Final)