

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

FINAL

ORDER

Food Supplement Program: 2027 Disqualification of Individuals Convicted of Drug Related Offenses

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Disqualification of Individuals Convicted of Drug Related Offenses*. 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 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Disqualification of Individuals Convicted of Drug Related Offenses*.

Statutory Authority

- 146th General Assembly, Senate Bill #12, *An Act to Amend Title 31 of the Delaware Code Relating to the Food Stamp Program*
- 7 CFR §273.11(m), *Individuals Convicted of Drug-Related Felonies*

Background

Signed into law by the Governor on July 22, 2011, Senate Bill #12 (SB 12) removes the prohibition against persons convicted of any drug felony from receiving federal food benefit assistance.

Summary of Proposed Change

DSSM 2027, Disqualification of Individuals Convicted of Drug Related Offenses: SB 12 eliminated the bar to receipt of food benefits for those convicted of a felony drug conviction. This policy change removes text from the policy manual that says individuals convicted of a felony drug conviction are ineligible for food benefits. DSSM 2027 was inadvertently omitted when other related sections were removed from the manual.

SB 12 was effective upon the Governor’s signature. The rule affected benefits beginning July 1, 2011.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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. The Division of Social Services (DSS) has considered each comment and responds as follows.

As background, the Governor signed S.B. 12 on June 22, 2011 which removed a bar on Food Supplement Program eligibility of convicted drug felons. GACEC and SCPD supported that legislation given the correlation between drug usage and mental health conditions. In October 2011, DSS issued a proposed regulation implementing the new law. In commentary on that regulation, the Councils noted that DSS had overlooked 16 **DE Admin. Code** 2027 which retained the drug felon disqualification. In adopting a final regulation, the Division agreed to issue a new regulation to cover the oversight. [15 DE Reg. 451 (October 1, 2011) (proposed); 15 DE Reg. 1027, 1028 (January 1, 2012) (final)].

GACEC and SCPD endorse the proposed regulation since the Division is now issuing a proposed regulation eliminating the drug felon disqualification from 16 **DE Admin. Code** 2027.

Agency Response: DSS thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program (FSP), specifically, *Disqualification of Individuals Convicted of Drug Related Offenses* is adopted and shall be final effective May 10, 2012.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #12-16

REVISIONS:

2027 Disqualification of Individuals Convicted of Drug Related Offenses

For Cash Assistance:

Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of possession, use or distribution of controlled substances shall not be eligible for cash assistance.

This provision does not apply to individuals convicted of such offenses which occurred prior to August 22, 1996, the date of enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Determine income, resources, and deductions according to DSSM 4003.2 if the individual is a parent payee. Exclude the income and resources of the individual if the person is a non-parent payee.

For Food Stamps:

~~Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of distribution of controlled substances shall not be eligible for benefits under the food stamp program.~~

~~Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of possession or use of controlled substances shall not be eligible for benefits under the food stamp program unless they meet the following conditions:~~

1. ~~Is currently participating in a substance abuse treatment program approved by DHSS; or~~
2. ~~Is currently enrolled in a substance abuse treatment program approved by DHSS subject to a waiting list to receive available treatment, and the individual remains enrolled in the treatment program and enters the treatment program at the first available opportunity; or~~
3. ~~Has satisfactorily completed a substance abuse program approved by DHSS; or~~
4. ~~Is determined by a treatment provider licensee by DHSS not to need substance abuse treatment according to DHSS' guidelines; and~~
5. ~~Is complying with, or has already complied with all obligations imposed by the Court, including any substance abuse treatment obligations.~~

~~Individuals who regain eligibility for food stamps due to meeting the above conditions will be required to submit to quarterly random drug testing at the individual's own cost.~~

~~Individuals who return a clean drug test result free of controlled substances will continue to be eligible to get food stamps, if otherwise eligible.~~

~~Individuals who return an unclean drug test result, which shows the use of controlled substances, will be disqualified from receiving food stamps for one year. The period of ineligibility will remain in effect until the end of the one year. The individual must return a clean drug test result free of controlled substances before getting benefits again.~~

~~Individuals who fail to return a drug test result will be ineligible to receive food stamps until a clean drug test result is provided.~~

~~Such ineligible individuals will not be considered part of the household except that the income and resources of such individuals shall be considered to be income and resources of the household.~~

~~Determine the income, resources and deductions of these disqualified individuals according to 9076.1.~~

~~This provision does not apply to individuals convicted of such offenses that occurred prior to August 22, 1996, the date of enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.~~