

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Chapter 5, §512
(31 Del.C., Ch. 5, §512)

FINAL

DSSM: 3000 Technical Eligibility for Cash Assistance

ORDER

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 Delaware's Temporary Assistance for Needy Families (TANF) programs specifically, *removing workfare requirements, removing clock extensions, and clearly defining hours for one- and two-parent families*. 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 February 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 2011 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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Temporary Assistance for Needy Families (TANF) programs, specifically, *removing workfare requirements, removing clock extensions, and clearly defining hours for one- and two-parent families*.

Statutory Authority

- 31 **Del.C.** §518, *Failure to comply with job placement, education, training, work eligibility, parenting or personal responsibility requirements*
- 31 **Del.C.** §501, *Legislative intent*
- 31 **Del.C.** §505(1), *Categories of Assistance - Aid to Families with Dependent Children*
- 31 **Del.C.** §512(1), *Administration*

Summary of Proposed Changes

This rule change removes workfare requirements from Division of Social Services (DSS) policy. Removing these restrictions to the types of activities caretakers can engage in as a requirement to receive TANF allows activities to be tailored to the needs, strengths, and goals of clients thereby increasing the likelihood of long term self-sufficiency and allowing the program to be more responsive to the unique needs of each recipient.

The rule change also eliminates the separate State program that provided additional months of TANF for those clients who continued to receive TANF while also employed at least 25 hours a month. This program is thought not to foster the idea that TANF is a transitional benefit and should not become a way of life. Finally, the policy changes clarify the expectations and required hours of mandatory participants in the TANF employment and training program.

The proposed changes affect the following policy sections:

DSSM 3002, *Time Limit, Temporary Welfare Program*

DSSM 3002, *Two-Parent Families - Time Limit, Temporary Welfare Program*

DSSM 3002.2, *Single Parent / Non-Parent Caretaker Families*

DSSM 3002.3, *Time Limits for Single Parent and Two Parent Families on Assistance Prior To 01/01/2000*

DSSM 3002.9, *Exceptions to the Time Limit Counter*

DSSM 3006.1.1, *Requiring Participation in Employment and training for One-Parent and single caretaker families*

DSSM 3006.1.2, *Requiring Participation in Employment and training for Two-Parent Families*

DSSM 3031, *Work For Your Welfare*

DSSM 3031, *Hours of Participation – One-Parent Families*

DSSM 3031.2, *Hours of Participation – Two-Parent Families*

DSSM 3031.3, *Reserved*

DSSM 3031.3.1, *Reserved*

DSSM 3031.3.2, *Reserved*

DSSM 3031.4, *Initiating Work for Your Welfare – Two-Parent Families*

DSS 3031.5, *Ending a Work for Welfare Placement*

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observation and recommendation summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

The Summary of Proposed Changes indicates that Delaware is experiencing an increase in its TANF rolls and the Division is attempting to "reduce the growth rate". At 771. The Division is currently experiencing a significant shortfall in its TANF budget. The GACEC and the SCPD would like to share the following observations.

First, in §3002, fourth paragraph, the comma after the word "Responsibility" should be deleted.

Agency Response: The suggested change will be made to the policy.

Second, in §3002.1A, the reference to "the caretaker is age 19 or older" should be reviewed. Earlier in the section, the reference is to "adults age 18 or older" and all other references in the regulation are to age 18 or older.

Agency Response: The policy will be corrected to read "age 18 or older".

Third, in §3006.1.1, Par. 6, substitute "(c)aretakers who fail" for (c)aretakers that fail".

Agency Response: The suggested change is already incorporated in the policy.

Fourth, there are pros and cons to the proposed substantive changes which may reduce the TANF growth rate. On the one hand, the budget deficit must be proactively addressed. On the other hand, restricting TANF eligibility may adversely affect potential and existing program participants.

Agency Response: Thank you for your analysis, the proposed policy change is in keeping with the time limited nature of the TANF program, but as you note may limit the availability of TANF for some participants.

Further analysis by Division staff resulted in changes to the rule as proposed at *DSSM 3006.1.1* and *DSSM 3006.1.2*. Language is inserted to further clarify/change expectations as follows.

DSSM 3006.1.1

- Item 2: The word "family" was replaced with "participant" to clarify that in a single parent household the plan is written for the work eligible participant.
- Item 3: The client must receive verbal and written instructions regarding required verifications. The instructions must not necessarily be incorporated into the employability plan.
- Item 4: The period to return verifications changed from 3 business days to 7 calendar days to reflect current procedures.
- Item 6: To clarify where verification of activities need to be submitted.

DSSM 3006.2.1

- Item 3: The client must receive verbal and written instructions regarding required verifications. The instructions must not necessarily be incorporated into the employability plan.
- Item 4 is revised to clarify policy and expectations.
- Item 5: The period to return verifications changed from 3 business days to 7 calendar days to reflect current procedures.
- Item 6: Substitute the word "parents" for "adults" to make it clear that the policy applies to both parents in a two-parent family.
- Item 7 is deleted for being too restrictive and limiting client options.
- Renumbered item 8: To foster self-sufficiency, the minimum requirement of countable employment and training activities for two-parent families is changed to 40 hours.
- Renumbered item 10: How parents are determined to be active is added to make the expectations and the mechanics of the policy clearer.

[Bracketed Bold language] indicates added text at the time the final order is issued.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the February 2011 Register of Regulations should be

adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Delaware's TANF programs, specifically *removing workfare requirements, removing clock extensions, and clearly defining hours for one- and two-parent families* is adopted and shall be final effective April 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #11-13 REVISIONS:

3002 Time Limit, Temporary Welfare Program

Cash benefits will be time-limited for households headed by two employable adults age 18 or older who are included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. ~~Families will receive these benefits only through participation in a pay-after-performance work experience position or if the adults are working and the family's countable income is below the need standard.~~

Time limits apply when three conditions are met:

- the caretaker is included in the grant,
- the caretaker is age 18 or older,
- the caretaker is employable.

When one or more of the conditions listed above is not met, the family receives benefits in the non-time limited program known as the Children's Program.

During the time-limited period, employable adult recipients will receive full cash benefits only as long as they fulfill their Contract of Mutual Responsibility~~[,]~~ and ~~participate in a pay-after-performance work experience program or they are working and family income is below the need standard of 75% of the Federal Poverty level. they are meeting the minimum weekly hours of required employment and training activities.~~

~~The pay-after-performance work experience position is intended for families who do not have unsubsidized employment. Determine the number of hours of work required by dividing the TANF benefit by the minimum wage. In addition, participants will be required to conduct up to ten (10) hours of job search each week. Failure to comply with the job search requirements will result in an employment and training sanction being applied as described in Section DSSM 3011.2.~~

Periodic Alerts to Families Regarding Time Remaining before the Family Reaches the Time Limit

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

3002.1 Two-Parent Families - Time Limit, Temporary Welfare Program

A. Delaware's Temporary Assistance for Needy Families Program (TANF), cash benefits are time-limited for households headed by two employable adults age 18 or older who are included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. ~~Families will receive these benefits only through participation in a pay-after-performance work experience position or if the adults are working at least 25 hours per week and the family has countable income below the need standard.~~

Time limits apply when three conditions are met:

- the caretaker is included in the grant,
- the caretaker is age ~~19~~ **18** or older,
- the caretaker is employable, and

When one or more of the conditions listed above is not met, the family receives benefits in the non-time limited program known as the Children's Program.

B. During the time-limited period, employable adult recipients will receive full cash benefits only as long as they fulfill their Contract of Mutual Responsibility, and ~~participate in a pay-after-performance work experience program or they are working and family income is below the need standard of 75% of the Federal Poverty level. they are meeting the minimum weekly hours of required employment and training activities~~

The pay after performance work experience position is intended for families who do not have unsubsidized employment. Determine the number of hours of work required by dividing the TANF benefit by the minimum wage. In addition, participants will be required to conduct up to ten (10) hours of job search each week. Failure to comply with the job search requirements will result in an employment and training sanction being applied as described in Section 3011.2.

C. Periodic Alerts to Families Regarding Time Remaining before the Family Reaches the Time Limit

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

3002.2 Single Parent / Non-Parent Caretaker Families

Delaware's Temporary Assistance for Needy Families Program (TANF), cash benefits are time-limited for households headed by an employable adult age 18 or older who is included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. Families will receive benefits only through participation in a pay after performance work experience position or if the adult is working at least 25 hours per week and the family has countable income below the need standard.

Time limits apply when three conditions are met:

- the caretaker is included in the grant;
- the caretaker is age 18 or older;
- the caretaker is employable.

When one or more of the conditions listed above is not met, the family receives benefits in the non-time-limited program known as the Children's Program.

3002.3 Time Limits For Single Parent and Two Parent Families On Assistance Prior To 01/01/2000

If a family was headed by an employable adult age 18 or older who was included in the grant and received Delaware's Temporary Assistance for Needy Families Program (TANF) cash benefits prior to 01/01/2000 they had a forty-eight (48) cumulative month time limit. This lifetime limit will still apply for those families. After twenty-four (24) cumulative months these families can only receive benefits if the adult is working at least twenty-five hours per week or through participation in a pay after performance work experience position. The family must still have countable income that is below the need standard. Families with a forty-eight (48) month cumulative time limit who reapply for assistance on or after 01/01/2000 can only receive benefits if the adult is working at least twenty-five hours per week or if through participation in a pay after performance work experience position.

Here are some examples:

1. Example: A family initially began receiving TANF on 08/01/97. The TANF case was closed 06/30/1998. The family applied for and received TANF benefits while the time limit was forty-eight months. The family used eleven (11) months of time limited TANF benefits. The family reapplies for benefits 02/01/2000. The family can receive up to thirty-seven (37) more cumulative months of TANF benefits in the time-limited program if and only if:
 - the employable adult is working at least twenty-five hours per week; or
 - by participating in a pay after performance work experience position; and
 - the family still has countable income that is below the need standard.

2. Example: A family had not received TANF benefits prior to 01/01/2000. The family applies for and it opened in TANF 03/01/2000. The family can only receive TANF benefits for up to thirty-six (36) cumulative months and only if:
 - the employable adult is working at least twenty-five hours per week; or
 - by participating in a pay after performance work experience position; and
 - the family still has countable income that is below the need standard.

(Break in Continuity of Sections)

3002.9 Exceptions To The Time Limit Counter

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 calls for a maximum sixty (60) month lifetime limit on the receipt of Temporary Assistance For Needy Families (TANF) benefits. A family that has an employable adult will be able to receive cash benefits that do not count to the State's thirty-six (36) month or forty-eight (48) month time limit if:

- The adult is working for twenty-five (25) hours or more per week; and
- The countable income of the family is still below the need standard.

The Federal time limit does not apply in these cases.

(Break in Continuity of Sections)

3006 TANF Employment and Training Program

3006.1.1 REQUIRING PARTICIPATION IN EMPLOYMENT AND TRAINING FOR ONE-PARENT AND SINGLE CARETAKER FAMILIES

This policy applies to TANF families headed by an employable single non-parent caretaker who is included in the grant or an employable single parent caretaker aged 18 or older.

1. Caretakers are required participate with a TANF employment and training vendor.
2. The vendor will develop an individualized employability plan for each **[family participant]**.
3. The employability plan will detail the weekly countable activities to be completed. ~~[and any verification requirements]~~ **The caretaker will receive verbal and written instructions of activity verification requirements].**
4. Verifications of activities are required to be submitted the week the activity occurred.

Exception: Verification of employment by paystub or by an employer form may be submitted up to ~~[three-business seven calendar]~~ days after they are received from the employer.

5. Caretakers are required to complete at least 30 hours of countable activities a week.

Exception: Single custodial parents caring for a child under six are required to complete at least 20 hours of countable activities a week.

6. Caretakers that fail to complete the activities or to provide the required verification **[to the employment and training program]** will be subject to a sanction.
 - A. Non-parent caretakers will be removed from the TANF grant
 - B. Single parent households are subject to the full family sanction rules.
7. The total number of hours the caretaker may engage in work experience or community service is limited by the Fair Labor Standards Act (FLSA).

The maximum required monthly hours of participation in work experience and community service is determined by dividing the combined monthly TANF and food benefits by the greater of the Federal or Delaware minimum wage.

3006.1.2 Requiring Participation in Employment and TRAINING FOR Two-Parent Families

This policy applies to TANF families headed by two employable adults aged 18 or older and who are both included in the TANF grant.

1. Two-Parent families are required to participate with a TANF employment and training vendor.
2. The vendor will design an individualized employability plan for each family.
3. The employability plan will detail the weekly countable activities to be completed. ~~[and any verification requirements]~~ **Parents will receive verbal and written instructions of activity verification requirements].**
4. ~~[Families that fail to complete the activities or to provide the required verification will be subject to a full family sanction. A family will receive a full family sanction when:~~
 - a. The family does not complete the required hours of planned activities in a week, or
 - b. The family does not submit the required verification of activities to the employment and training program.]
5. Verifications of activities are required to be submitted the week the activity occurred.

Exception: Verification of employment by paystub or by an employer form may be submitted up to ~~[three-business seven calendar]~~ days after they are received from the employer.

6. The two week pre-participation period is not met until both **[adults parents]** have attended an orientation at the

Employment and Training provider.

~~[7. Both adults in a two-parent family will be assigned to work with the same Employment and Training provider.~~

Exception: In cases of suspected domestic violence the adults in two-parent families may be assigned to different Employment and Training providers.

~~[87]. One participant may complete all of the required employment and training activities for the household.~~

~~[98]. Two-parent families are required to complete at least [30 40] hours of countable employment and training activities a week.~~

~~[109]. The total number of hours the adults in a two parent family may engage in work experience or community service is limited by the Fair Labor Standards Act (FLSA).~~

~~The maximum required monthly hours of participation in work experience or community service is determined by dividing the combined monthly TANF and food benefits by the higher of the Federal or the Delaware minimum wage.~~

~~[1110]. Two -parent families may receive child care designated for participants in the TANF Employment and Training if the following conditions are met:~~

~~A. Both adults are participating in verified countable activities.~~

~~B. Both adults are engaging in at least 20 hours of activities a week.~~

~~[The employment and training program will notify the Division of Social Services when the requirements of this policy are not met.]~~

(Break in Continuity of Sections)

3031 Work For Your Welfare RESERVED

~~When a family applies for TANF assistance they will be referred to the contractor to participate and complete their required two consecutive weeks of required hours (30, 35, or 55) in approved employment related activities.~~

~~All two-parent households, who are without employment, must enter a Work For Your Welfare activity to qualify for benefits. Single-parent adult recipients who reach their 22nd month of benefit and are without employment, and all eligible applicants on or after 01/01/2000, must enter a Work For Your Welfare activity to qualify for benefits. Additionally, all TANF recipients who are employed must have regular earnings of the current state minimum wage at twenty-five hours per week. (The current state minimum wage is \$6.15 per hour, which at 30 hours per week equals \$184.50 per week earnings.) A person who is employed but not earning at least the equivalent of the current state minimum wage at thirty hours per week will be considered mandatory for Work for Your Welfare. A contracted worker must receive his or her wages on a regular basis to be exempted from this requirement.~~

~~Work for Your Welfare is defined as a work experience (or community service) program that is subject to the Fair Labor Standards Act for minimum wage requirements in which participants work to earn their benefits. In addition, DSS requires each participant to complete 10 hours of approved employment related activities per week. The failure to complete the required 10 hours of approved activities will result in a full family sanction, closing the entire TANF case. For two-parent households, one parent must participate in the work for your welfare program in order to earn benefits. The second parent, unless exempt, must also participate in required employment related activities as defined by DSS and the DSS contractor. A work-eligible individual who participates in a work experience or community service program that is subject to the Fair Labor Standards Act (FLSA) minimum wage requirements cannot be required to participate in that work activity for more hours than the value of the welfare grant and food stamps divided by the minimum wage. Individuals or families who complete the required workfare calculated hour of participation under the minimum wage requirement of the FLSA will have satisfied the 20-hour per week core activity requirement, if the calculated participation hours fall short of 20 hours per week. Currently DSS operates the work for your welfare program under contract with a work for your welfare services provider. The provider assumes responsibility for the assessment, placement and monitoring of all work for your welfare participants in unsalaried work assignments. The work assignments are with public or nonprofit organizations. In return for their services, participants earn the amount of the benefit they are eligible to receive.~~

~~Work for your welfare is not preferable to participants obtaining unsubsidized employment. Though the work for your welfare assignment should be a safe assignment, it should not be more attractive than unsubsidized employment.~~

~~DSS is to ensure that no participants placed in work for welfare activities displace regular paid employees of any of the~~

organizations providing the placements.

Since placements are not voluntary, DSS expects participants to accept assignments unless the assignment represents an unreasonable health and safety risk (e.g., the participant has a health condition, which would be aggravated by the assignment).

Participants cannot appeal their assignments to work for your welfare work sites

3031.1 Hours of Participation One Parent Families RESERVED

Effective 10/1/98, participants in single parent households are required to work for up to 30 hours per week. The 30 hours are the maximum participation hours. DSS determines the actual hours of participation by dividing the TANF and Food Stamp benefits by the minimum wage. If the hours determined by dividing the grants by the minimum wage exceeds 30 hours per week, participants are to complete no more than the 30 hours maximum. In addition to these hours, every participant is expected to participate in 10 hours of approved employment related activities per week.

EXAMPLE: The TANF grant amount for two is \$270. Divided by the minimum wage (\$6.15), this equates to 52 hours per month for the TANF grant (always round down to the nearest whole number). The Food Stamp allotment amount is \$224. Divided by the minimum wage (\$6.15), this equates to 43 hours per month for the Food Stamp allotment. Together this would mean that the participant must work 95 hours per month. Divide the 95 monthly hours by 4.33 (number of weeks per month) to arrive at a weekly participation rate. 95 divided by 4.33 is 21 hours per week. So the above participant must participate 21 hours per week in a work-for-your welfare placement.

A work eligible individual who participates in a work experience or community service program that is subject to the Fair Labor Standards Act (FLSA) minimum wage requirements cannot be required to participate in that work activity for more hours than the value of the welfare grant and food stamps divided by the minimum wage. Individuals or families who complete the required workfare calculated hour of participation under the minimum wage requirement of FLSA will have satisfied the 20 hour per week.

EXAMPLE: A family of two has a grant of \$270. The grant, however, has been reduced by \$50.00 because of a CMR sanction. When DSS assigns this adult to work, the total performance hours are based on the grant amount of \$270 despite the \$50.00 sanction.

The 10 hours of approved employment related activities per week requirement still applies. The failure to complete the 10 hours of approved employment related activities is a sanctionable offense, resulting in a full TANF sanction which closes the entire TANF case.

Participants who fail to complete the hours required by dividing their grant by the minimum wage will have their entire TANF case closed.

Once DSS determines the hours participants are to work, the contractor will assign participants to a work site. At the work site, participants must complete their assigned hours within the time period determined by the contractor and the work site.

3031.2 Hours of Participation Two Parent Families RESERVED

Two parent households must participate in work for your welfare as soon as DSS determines the household eligible for benefits. In two parent households, one parent must participate at their assigned maximum performance hours (35 hours per week), and the second parent must participate in required employment related activities as determined by DSS and the DSS work for your welfare contractor, unless the second parent is otherwise exempt (e.g., caring for a disabled child or is incapacitated). DSS requires the second parent in the two parent household to go to the workfare contractor to be placed in approved employment related activities.

If the families of two parent households receive federally subsidized child care, together they must participate in at least 55 hours per week of required activity. In this case, one parent will do work for your welfare activity, and the second parent must participate in a sufficient number of hours with the work for your welfare contractor so that, when combined with the hours of the first parent, together they equal 55 hours. If the one parent in the two parent household who is participating in work for your welfare does not complete his/her required performance hours, the TANF case is closed. The case closes regardless of whether the second parent completed his/her required hours of employment related activities.

If the second parent does not complete or refuses to complete the required employment related activities, DSS will impose a TANF full family sanction which closes the entire TANF case.

A work eligible individual who participates in a work experience or community service program that is subject to the Fair Labor Standards Act (FLSA) minimum wage requirements cannot be required to participate in that work activity for more hours than the value of the welfare grant and food stamps divided by the minimum wage. Individuals or families who complete the required workfare calculated hour of participation under the minimum wage requirement of FLSA will have satisfied the 20 hour per week.

3031.4 Initiating Work For Your Welfare Two Parent Families RESERVED

For two parent families, only one parent will have to complete a work for your welfare assignment. DSS refer the family to the contractor at the time of application for TANF. In addition, the other parent in the family, unless exempt, must also participate in employment and training activities. Participation in Employment and Training for the required hours is required for two weeks prior to the receipt of benefits. DSS will send a letter to the family instructing them that one parent must report to a work for your welfare assignment and the other parent must participate with the work for your welfare contractor in a component other than work for your welfare. The family must decide which parent will complete the work for your welfare assignment and which parent will participate in employment and training activities with the work for your welfare contractor. In addition, the parent who participates in the work for your welfare assignment must also complete 10 hours of approved employment related activities per week.

3031.5 Ending a Work For Welfare Placement RESERVED

Work for welfare placements will end when any of the following circumstances occur:

- The participant secures a full-time, non-subsidized job or a part-time, non-subsidized job of 30 hours or more.
- The participant becomes exempt. Exemptions, however, can only occur if DSS declares participants unemployable, using the standard TANF definition for unemployable. In this case, DSS will transfer the participants to the Children's Program under TANF.
- The participant requests an end to benefits payments.
- When the time limit has been reached.

NOTE: Participants in either one parent or two parent households are exempt from work for your welfare participation if a parent is working 30 or more hours per week in a non-subsidized job.

14 DE Reg. 770 (02/01/11)

14 DE Reg. 1073 (04/01/11) (Final)