

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

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

FINAL

ORDER

TANF Employment & Training Program, Division of Social Services Manual (DSSM) 3006.1

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to provide information of public interest with respect to the Temporary Assistance for Needy Families (TANF) Employment & Training Program regarding mandatory participants. The Department’s proceedings 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 public comment pursuant to 29 **Delaware Code** Section 10115 in the September 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2008 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 purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding mandatory participants in the Temporary Assistance for Needy Families (TANF) Employment & Training Program.

Statutory Authority

- 45 CFR §261.2(n)(2)(i), *Work-eligible individual*
- 45 CFR §261.22(c)(1), *How will we determine a State’s overall work rate?*

Background

Reference is made to the final rule reauthorizing the TANF Program at 73 FR 6821 (Federal Register, Volume 73, Page 6821, and dated February 5, 2008). This final rule implements changes to the Temporary Assistance for Needy Families (TANF) program required by the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109-171). The DRA reauthorized the TANF program through Fiscal Year (FY) 2010.

The DRA required States to implement certain work requirements effective October 1, 2006. The DRA included provisions to ensure consistent measurement of work participation rates, including defining work activities, determining the circumstances under which a parent who resides with a child who is a recipient of assistance should be required to participate in work activities. It also required States to establish and maintain work participation verification procedures. The effective date of the final rule is October 1, 2008.

Summary of Proposed Changes

DSSM 3006.1, *Mandatory Participants*: The rule defines a parent needed to remain home to care for a family member with a disability as not “work-eligible” if there is medical documentation to support the need for the parent to remain in the home to provide that care. The text is also reformatted to increase clarity.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens (GACEC), the State Council for Persons with Disabilities (SCPD), Delaware Community Legal Aid Society, Inc. (DECLASI) and the Delaware Coalition Against Domestic Violence (DCADV) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

GACEC & SCPD

The Councils note that there are three (3) important federal provisions applicable to persons with disabilities.

First, the federal regulations [attached 73 Fed Reg. at 6775] stress that persons with disabilities exempt from employment and training requirements can still voluntarily opt to take advantage of vocational programs. Under such circumstances, the State must provide reasonable accommodations. Id. In the related context of parents caring for a child with a disability, the State is also obligated to assist with provision of child care if the parent wishes to work:

We would like to stress that this exclusion for a parent caring for a disabled family member does not absolve the State of its responsibility to help TANF recipients find appropriate child care, including care for children with disabilities....A State may not exclude a child who has a disability from available child care, if doing so would prevent the parent from gaining needed skills, finding work, and moving the family out of dependency.

73 Fed. Reg. at 6801 (attached). DSS implements this federal mandate through the last two sentences in proposed Section 3006.1:

Individuals who are exempt from Employment and Training requirements can volunteer to participate in the Employment and Training Program. Individuals with disabilities will be afforded the same access and opportunities, including reasonable accommodations, to participate in the Employment and Training programs.

We recommend the following amendments:

Individuals who are exempt from Employment and Training requirements can volunteer to participate in the Employment and Training Program. Individuals with disabilities will be afforded the same access, *supports* and opportunities, including reasonable accommodations, to *ensure effective participation* ~~participate~~ in the Employment and Training programs.

The amendments would cover supports such as child care for children with disabilities and conform more closely to regulatory commentary compiled at 73 Fed. Reg. at 6775.

Agency Response: DSS appreciates the comments submitted and will add the suggested *supports* text.

Second, the federal regulation provides states with the option of exempting both SSI and SSDI beneficiaries from mandatory participation in Employment and Training related activities. See attached 73 Fed Reg at 6798 and 6822. This is based on recognition that the SSA has determined that such individuals are incapable of engaging in substantial gainful activity. DSS may wish to consider incorporating the exemption in its regulation.

Agency Response: DSS currently exempts those individuals who are unable to work under revised DSSM 3006.1, as follows: 2) a~~An~~ individual determined unemployable by a health care professional.

Third, consistent with attached 45 C.F.R. 261.2(n), HHS exempts "a parent providing care for a disabled family member living in the home, provided there is medical documentation to support the need for the parent to remain in the home to care for the disabled family member." Background is provided in the attached 73 Fed. Reg. at 6796 and 6800-6801. DSS implements this provision through proposed Section 3006.1 which appears to conform to the federal regulation.

Agency Response: DSS appreciates the comment.

CLASI and DCADV

While we generally agree that the proposed changes clarify and restate DSS policy in regard to the TANF program in Delaware, we believe a few changes and clarifications would make the proposed changes to DSSM 3006 consistent with other regulations applicable to this program.

First, the proposed regulation provides for an exemption for a single parent caring for a child under 12 months of age. We have two concerns. First, why only single parents? Shouldn't this exemption apply to one parent in a two parent household rather than neither? If the distinction is made to comply with the Deficit Reduction Act work participation rate, the State should fund these families with MOE funds. That way, one parent can be home with the child under 12 months while the other is subject to the required Employment and Training related activities. This change would provide all children whose parent receives TANF assistance in Delaware to have one parent home with them during the first year, rather than just those children whose caregiver is a single parent.

Agency Response: This exemption was adopted by DSS on October 1, 2006. The proposed change is to clarify that policy. This is what is allowable under 45 CFR §261.22 (c)(1), *A State has the option of not requiring a single custodial parent caring for a child under age one to engage in work.*

Please note that under DSSM 3006.2, two parent families who do not receive federally funded child care assistance must only participate and combined total of 35 hours in TANF Employment and Training activities. These hours can be accomplished by one parent and would enable the other parent to stay in the home to care for the children as described in your above recommendation. Additionally, this option would enable the parent to stay in the home longer than twelve months.

The second concern with the proposed DSSM 3006.1(1) is the lifetime limit of 12 months. This lifetime limit should explicitly provide for a good cause exception, as defined in DSSM 3001(1), "[t]he adult recipient has 'good cause' when either a circumstance or condition exists in either her/his personal or family situation beyond which she/he has no control, and which would prevent cooperation and/or participation."

Agency Response: The policy is limited to those guidelines stated in 45 CFR §261.22 (c)(2) *At State option, we will disregard a family with such a parent from the participation rate calculation for a maximum of 12 months.*

A third concern is the use of the term "parent" in proposed DSSM 3006.1(4). DSSM 3004, uses "caretaker relative" and defines the term as follows:

- Any relative by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child. The degree of relationship is as follows: a parent (1st degree), grandparent (2nd degree), sibling (2nd degree), great-grandparent (3rd degree), uncle or aunt (3rd degree), nephew or niece (3rd degree), great-great-grandparent (4th degree), great-uncle or aunt (4th degree), first cousin (4th degree), great-great-great-grandparent (5th degree), great-great uncle or aunt (5th degree), or a first cousin once removed (5th degree).
- Any other persons named in the above groups whose relationship to one of the child's parents is established by legal adoption;
- The spouse of any person named in the above groups even though the marriage terminated by death or divorce.

Thus, the use of the term "relative caretaker" would be consistent with other, related, regulations and would apply to any caretaker of a disabled family member rather than just a parent. It is not unusual for a non parent to care for a disabled family member (especially if the caretaker is an adult child caring for their parent) and there is no reason for non parents to be treated differently than parents. It is cheaper for the State to allow a non parent to receive assistance to care for a disabled family member than to require the disabled person to attend a program or stay in a care facility so the potential caretaker can comply with Employment and Training requirements.

Agency Response: 73 Fed Reg. 6800 (February 5, 2008) specifically addresses the question of allowing non-parental relatives such as aunts, uncles and grandparents to use this exemption. As stated, under the regulation "...a non-parental relative who receives assistance must be work eligible". For this reason DSS has limited this exemption to parents.

Finally, proposed DSSM 3006.1(3) would be more clear if rather than simply stating that some victims of Domestic Violence are exempted, it referenced DSSM 3010.2 which provides a definition and creates the full exemption from participation in the Contract of Mutual Responsibility.

Agency Response: DSS will add text to the proposed policy which references DSSM 3010.2.1 through DSSM 3010.2.5.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the TANF Employment and Training Program regarding mandatory participants is adopted and shall be final effective November 10, 2008.

Vincent P. Meconi, Secretary, DHSS, November 14, 2008

DSS FINAL ORDER REGULATION #08-47

REVISIONS:

3006 TANF Employment and Training Program

Delaware's Temporary Assistance ~~For~~ for Needy Families (TANF) welfare reform effort is based on the idea that TANF is a transitional benefit and should not become a way of life. The Division maintains that the way for persons to avoid TANF dependency is for them to find and maintain employment.

3006.1 Mandatory Participants

(45 CFR §261.2 (n)(2)(i))

All adult caretakers and other adults in the assistance unit who are not exempt must participate in Employment and Training related activities. The ~~two~~ four possible exemptions are:

[4 A] ~~a~~ A single [custodial] parent caring for a child under 12 months of age. ~~or~~ This exemption has a lifetime limit of 12 months.

[2 B] ~~a~~An individual determined unemployable by a health care professional.

[3 C] On a case-by-case basis, clients who are victims of Domestic Violence. [see DSSM 3010.2.1 through DSSM 3010.2.5]

[4 D] A parent caring for a disabled family member* who lives in the home.

* A parent or spouse can be excluded to care for a **child** or a **spouse** as long as the following conditions apply:

1. The parent is biological, adoptive or step.
2. The parent or spouse lives in the home with the child.
3. The need for such care is supported by medical documentation.
4. The spouse of a parent can use the caring for exemption even though the marriage is terminated by death or divorce.

Children age 16 or older who are not attending school must participate in work or other alternative activities, e.g., GED.

Individuals who are exempt from Employment and Training requirements can volunteer to participate in the Employment and Training Program. Individuals with disabilities will be afforded the same access[, **supports**] and opportunities, including reasonable accommodations, to participate in the Employment and Training programs.

12 DE Reg. 793 (12/01/08) (Final)