

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF SOCIAL SERVICES**  
**Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)**

**FINAL**

**ORDER**

**Temporary Assistance for Needy Families (TANF) – Joint Custody**

**Nature of the Proceedings**

Delaware Health and Social Services (“Department”) / Division of Social Services (DSS) initiated proceedings the Division of Social Services Manual (DSSM) as it relates to Joint Custody and TANF. 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 December 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary of Proposed Regulation**

**Citation**

Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996

**Background**

There are often situations when two parties want to receive TANF benefits for the same child at the same time. In most circumstances, the party that has physical custody and cares for the child most of the time will be able to receive the TANF benefits. When the parties have joint custody or shared custody, determining which party can receive those benefits is more difficult.

**Summary of Proposal**

DSSM 3004.1.1, *Joint Custody*: Adds specific language to describe the criteria and procedures for determining which party receives TANF when two parties have joint custody or shared custody.

**Summary of Comments Received with Agency Response with Explanation of Changes**

The State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS considered each comment and responds as follows:

First, in recent years the Family Court has issued “shared custody” as well as “joint custody” orders. The Division may wish to clarify in its definition of “joint custody” that is intended to also cover “shared custody” situations.

Second, the regulation offers conflicting or ambiguous guidance on the authorized applicant for TANF in joint custody context. On the one hand, the fourth full paragraph establishes a “first to file” approach irrespective of primary residence. On the other hand, the sixth paragraph establishes a primary residence standard and only applies a “first to file” approach if residency is equally split.

This apparent conflict should be resolved. SCPD recommends that DSS consider the attached analogous Maryland regulation for its Temporary Cash Assistance (TCA) Program. It is clear and concise:

**Joint Custody**

- A. Allow a child to receive assistance in only one TCA household
- B. With joint custody, apply the following rules:

- 1. When the child spends the majority of the time with one parent, that parent may receive TCA if otherwise eligible.
- 2. When the child spends equal time with both parents:

- The parents decide who applies for TCA, or if they cannot agree
- The parent who applies first claims the child.

**Agency Response:** First, the agency recognizes and points out that our similar terms may have different definitions than the courts. Second, DSS sees no conflict in the guidance on the authorized applicant for TANF in the joint custody context. The overall premise is that when there is joint custody, the first party to apply and be determined eligible will receive TANF for the child. This will always be the case **except** when both parents wish to apply *at the same time*. In these cases, the agency leans in favor of the parent who maintains the primary residence of the child. To clarify the agency's intent, the sentence **[This also covers shared custody situations.]** and the phrase **[at the same time]** in bracketed bold type has been added to DSSM 3004.1.1.

#### **Findings of Fact**

The Department finds that the proposed changes as set forth in the December 2005 *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 Joint Custody and TANF is adopted and shall be final effective February 10, 2006.

Vincent P. Meconi, Secretary, DHSS, January 13, 2006

#### **DSS FINAL ORDER REGULATION #06-04**

**NEW:**

#### **DSSM 3004.1.1 Joint Custody**

The home exists even if the responsible caretaker relative or child is temporarily absent per DSSM 3023.4, 3023.5, and 3023.6 for TANF purposes. Joint custody cases can complicate deciding if a child is eligible for TANF and with which specified relative.

The Division of Social Services uses the following terms and definitions. (Note: The court system may use similar terms having different definitions.)

Joint Custody-Two parties are given the control to make major life decisions for a child. Joint custody exists when two parties are given, by court decree, the responsibility for making the major decisions in a child's life. **[This also covers shared custody situations.]** (This is not meant to be an exhaustive list but a guide. There may be other decisions that fall into this category.) Major life decisions revolve around:

- Religious upbringing;
- Medical treatment options; and
- Education.
  
- Primary Residence - The physical home/location of the child the majority of the time. The court may indicate which party should maintain a primary residence for the child. This decision is often with one party but can sometimes be an equal split between the adults seeking custody. A court decree indicating that one party has the primary residence does not automatically mean only that party is permitted to apply for and receive TANF for that child.
- Day-to-Day Care and Control- The person(s) who provide the care for the child the majority of the time. These care decisions do not necessarily rise to the level of major life decisions but they are the ones that the responsible adult makes on a daily basis.

The Division of Social Services provides that in joint custody situations, the first party to apply for and have eligibility determined for TANF can receive it for that child. This is permitted, whether or not the party in the joint custody case has the primary residence of the child. We allow this situation because the child will have just one parent providing the day-to-day care or no parent providing the day-to-day care at any given time. This only applies in joint custody cases.

When both parties in the joint custody arrangement wish to receive TANFB [at the same time]:

- Determine with whom the child resides most of the time; and
- Determine who maintains the day-to-day care and control of the child.

The party with whom the child resides most of the time and the party who maintains the daily care and control of the child will be able to receive TANF for that child. If both parties have equal time and decision making for the child each month, then the party that applies first will be able to receive the TANF benefits.

**9 DE Reg. 1235 (02/01/06) (Final)**