

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

ORDER

Delaware Temporary Assistance for Needy Families (TANF) Employment and Training Program

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 Delaware TANF Employment and 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 December 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2010 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

The proposed change described below amends Delaware's Temporary Assistance for Needy Families (TANF) Employment and Training (E & T) Program policies in the Division of Social Services Manual (DSSM) regarding *Mandatory Participants*. This change clarifies the rules for parents accessing the right to be exempted from TANF E & T requirements when the parent is caring for their child who is less than 12 months old and the parent is a single custodian parent. The Code of Federal Regulations (CFR) at 45 CFR §261.2 (n)(2)(i) gives States the option to exempt parents caring for a child under 12 months of age for up to 12 months in the lifetime of the parent. The policy change eliminates the opportunity for parents with this exemption to volunteer to participate in E&T but maintains access to the E&T programs through mandatory participation.

Statutory Authority

45 CFR §261.2(n)(2)(i), *What definitions apply to this part?*

45 CFR §§261.22(c)(1) and (c)(2), *How will we determine a State's overall work rate?*

Summary of Proposed Change

Effective February 1, 2010, single custodian parents caring for a child under 12 months of age will be exempted from employment and training for up to a lifetime limit of 12 months. Single custodian caretakers are automatically granted an exemption from employment and training if months within their lifetime limit are available. This rule change allows a parent to request not to be exempted and to be mandatory for employment and training activities. Once a parent is mandatory she or he may not return to exempted status. A parent who is mandatory for employment and training will become exempted from E&T activities if a new biological/step/or adoptive child under 12 months of age enters the home.

The proposed changes affect the following policy sections:

DSSM 3006.1, *Mandatory Participants*

DSSM 3006.2, *TANF Employment and Training Participation and Participation Rates*

DSSM 3006.2.1, *TANF Employment and Training Participants Who Count for TANF Participation According to the Provisions of Delaware's Temporary Assistance for Needy Families.*

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 observations and recommendations summarized below. DSS has considered each comment and responds as follows:

As background, under the TANF program, most participants are required to engage in employment or training activities. By federal regulation, states are given the option of exempting parents of children under 12 months of age. The current DSS regulation [16 DE Admin Code 3006.1A] establishes such an exemption. DSS proposes to amend the regulation to explicitly authorize parents of children under 12 months of age to waive the exemption. GACEC and SCPD have the following observations.

First, DSS may wish to check the reference to 45 C.F.R. §261.2(n)(2)(i) at the beginning of Section 3006.1. Consistent with the attachments, the correct reference may be 45 C.F.R. §261.22(c).

Second, the Councils have previously promoted offering E&T-exempt participants the option of participating in the program on a voluntary basis. See discussion at 12 DE Reg. 793, 794 (December 1, 2008). The last two sentences in existing Section 3006.1 already recite that exempt individuals can volunteer to participate in the E&T program. The proposed amendments to §3006.1A provide some specific standards to implement this option in the context of parents of children under 12 months of age. The standards are prescriptive and require participants to meet E&T standards within 14 calendar days of waiving the exemption or face sanctions. The "Summary of Proposed Change" section also notes that participants cannot "opt in and out": "Once a parent is mandatory she or he may not return to exempted status." We recommend that DSS reconsider this approach in favor of allowing withdrawal of a waiver for good cause. Changed circumstances may affect a new parent's ability to care for a baby and participate in E&T activities. For example, relatives who agreed to provide free child care may change their mind. The baby may develop a chronic illness or frequent sicknesses prompting the need for unanticipated parental involvement.

Agency Response: In regards to your recommendations regarding proposed regulations, as suggested the reference in the existing policy 3006.1 will be updated to reference the work-eligible definition at 45 CFR §261.2 (n) and the States' option to not mandate participation of a single parent caring for a child less than 12 months olds at 45 CFR §261.22(c). Additionally, your agency recommended that DSS allow parents the opportunity to become exempt from work requirements following the waiver of their exemption if good cause exists. The TANF program currently considers the circumstances described in your letter for all mandatory employment and training participants. In the case of extended illness of a child, parents may be exempted from employment training if they provide verification from a healthcare provider that they are needed in the home to care for a child. Additionally, every TANF recipient may receive up to 2 absent days a month to accommodate short term crisis situations. Finally, in addition to state funded child care services, TANF recipients can arrange to complete some job readiness assignments at home if a short term circumstance arises that prevents the participant from attending the program. Given these safeguards it is the Division's belief that the supports needed to address short term crises are currently available to all recipients.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware TANF Employment and Training Program policies regarding *Mandatory Participants* is adopted and shall be final effective February 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATIONS #11-03

REVISIONS:

3006.1 Mandatory Participants

~~[(45 CFR §261.2 (n)(2)(i))~~ 45 CFR §261.22(c)]

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

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

A. A single custodial parent caring for a child less than 12 months of age may be exempted from employment and training activities for up to 12 months in the lifetime of the parent.

Single custodial parents who are caring for a child less than 12 months of age and who have not reached their 12 month limit will be exempted from employment and training activities unless they waive their employment and training exemption.

Parents who waive their employment and training exemption are subject to all the conditions and rules of the employment and training program. Parents who waive their employment and training exemption cannot be exempted for caring for a child less than 12 months of age again unless a new biological, step, or adopted child less than 12 months of age is added to the TANF case.

Parents who waive their employment and training exemption must meet the required employment training hours based on their family composition within 14 calendar days of waiving their exemption. Cases which fail to meet the employment and training requirement are subject to a full family sanction.

B. An individual determined unemployable by a health care professional.

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

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.

3006.2TANF Employment and Training Participation and Participation Rates

Under the Temporary Assistance ~~For~~ for Needy Families Block Grant, DSS is required to meet the following work participation rates with respect to all families that include an adult or minor child head of household receiving assistance:

ALL FAMILIES

Fiscal Year	Minimum Participation Rate	Required weekly hours of participation
2002 and after	50%	30 hours

TWO PARENT FAMILIES

Fiscal Year	Minimum Participation Rate	Required weekly hours of participation
1999 and after	90%	35 hours
		55 hrs a week if receiving Federal Child Care Subsidy

DSS may face a lower work participation rate if it experiences a net caseload reduction compared to FY 2005.

Example: If it is determined that DSS' average monthly caseload in FY 2006 was 4 percentage points lower than average monthly caseloads in FY 2005, then, rather than having to meet a 50% work participation rate requirement in FY 2006, the rate would be lowered by 4 percentage points to 46%.

To be counted toward meeting the work participation rate, each individual must meet the required number of hours each week.

Single parents who are not working 30 hours a week or ~~making~~ earning an equivalent of 30 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities must equal at least a minimum average of 30 hours a week; and, at least 20 of the hours per week must come from participation in federally defined core activities.

Single parent/caretaker TANF recipients with a child in the TANF household under six are deemed to be engaged in work for a month if the recipient is engaged in federally defined core work activities for an average of at least 20 hours per week during the month.

Two-parent families where one parent is not working at least 35 hours a week or ~~making~~ earning the equivalent of 35 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities must equal an average of at least 35 hours a week; and, at least 30 of the hours per week must come from participation in federally defined core activities.

Two-parent families who receive federally funded Purchase of Care services who are not working at least 55 hours a week or ~~making~~ earning the equivalent of 55 hours times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities for one parent must equal 35 hours a week. Combined hours of participation in work and work related activities must equal an average of at least 55 hours a week. Of the average 55 hours a week the participants must average at least 50 hours a week of federally defined core activities.

Teen parents are required to attend school, work, or participate in the employment and training activities. Secondary, post-secondary, vocational, training school, and participation in a GED program meets participation requirements for the month and is the equivalent to work. If they are not attending one of the above types of school or working for 30 hours a week they must participate in employment and training activities for 20 or 30 hours a week.

Single custodial parents with a child under 12 months of age are able to receive an exemption from Employment and Training requirements for a total of 12 months in their lifetime. ~~These 12 months can be used any time the parent has a child less than 12 months of age. Once the youngest child reaches 12 months of age, the parents are required to participate in Employment and Training. If they are already working the equivalent of their required Employment and Training hours (20, 30, 35, 55), the DCIS II system will code them as volunteers for Employment and Training.~~

REQUIRED EMPLOYMENT AND TRAINING HOURS

The monthly participation rate is calculated as follows:

Family Composition	Required Hours Per Week	Minimum #Required Core Hours
Single Parent Family		
A. With child under 12 months*	0	0

B. <u>A.</u> With a child under 6 years old	20	20
C. <u>B.</u> No children under 6 years old	30	20
Two Parent Family		
A. Not receiving subsidized child care	35	30
B. Receiving subsidized child care	55	50
* subject to 12 month lifetime limit		

Numerator: # of TANF families with a work-eligible- individual who meet the participation requirement for the month
divided by

Denominator: # of TANF families that include a work-eligible individual, less # of families sanctioned in that month for failure to participate in work (for up to 3 months in preceding 12 month period), less the number of non-needy caretaker households, less the number of single custodial parents opting to use one of the 12 months allowable exemptions for caring for a child under one year of age. A parent can only use this exemption for a total of 12 months in ~~their~~ his/her lifetime.

See 3006.2 TANF Employment and Training Participation and Participation Rates - History

3006.2.1 TANF Employment and Training Participants Who Count for TANF Participation

According to provisions of Delaware's Temporary Assistance for Needy Families, the following individuals must participate in work related activities and are included in the denominator for calculating the Federal participation rates.

- Work-eligible individuals as defined in DSS TANF policy;
- Work-eligible adults in the Time-Limited Temporary program;
- Work-eligible adults for whom the Contract of Mutual Responsibility specifies the employment-related activities that will be required;
- Work-eligible adults who are not exempt because they are medically unable to participate; and
- ~~Work-eligible adults who are not exempt because they used their 12 month limit of child care for a child under one year of age.~~
- Single custodial parents caring for a child less than 12 months of age who have waived their employment and training exemption or are no longer eligible for an exemption.

14 DE Reg. 826 (02/01/11)