

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

PROPOSED

PUBLIC NOTICE

FOOD STAMP PROGRAM

Child Support Cooperation and Sanctions

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding the child support provisions.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSED CHANGES

Statutory Authority

- 7 CFR 273.11(o), *Custodial Parent's Cooperation with the State Child Support Agency*
- 7 CFR 273.11(c), *Treatment of Income and Resources of Certain Non-Household Members*

Summary of Proposed Changes

DSSM 9076.2 (Revision), *SSN Disqualification, Child Support Sanctions and Ineligible ABAWDs*: Currently TANF and Child Care require DSS applicants and recipients to cooperate with DCSE to get benefits. DSS is proposing to require the same cooperation for food stamp clients. The only difference is that only the custodial parent or responsible individual will be sanctioned for non-compliance, not the other household members. The sanctioned individual will have his/her income and deductions prorated like other prorated, sanctioned deemers.

DSSM 9094 (New), *Cooperation with the Division of Child Support Enforcement (DCSE)*: DSS is proposing to take the option to require custodial parents and other individuals responsible for the care of minor dependents to cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility for the Food Stamp Program.

Requiring the cooperation with child support will help facilitate the client towards self-sufficiency by identifying and locating absent parents, establishing paternity, and establishing support payments for the dependent children. Also, requiring cooperation may uncover unreported income. Child support payments may reduce the household's benefit; however, the household will have more money to spend on household expenses and food.

DSS PROPOSED REGULATION #07-59

REVISION:

9076.2 SSN Disqualification, Child Support Sanctions and Ineligible ABAWDs

Determine ~~as follows~~ the eligibility and benefit level of remaining household members of a household containing individuals determined ineligible due to:

- ~~Because of~~ disqualification for refusal to obtain or provide an SSN; ~~or~~
- non-cooperation with the Division of Child Support Enforcement; or
- ~~Because of~~ meeting the time limit for able-bodied adults without dependents.

1) Resources - The resources of such ineligible members continue to count in ~~their entirety~~ full to the remaining household members.

2) Income - Count a prorata share of the income of such ineligible members as income to the remaining members. This prorata share is calculated by first subtracting the allowable exclusions from the ineligible member's income and dividing the income evenly among the household members, including the ineligible members. All but the ineligible member's share is counted as income for the remaining household members. To get the prorated share, subtract the allowable income exclusions from the ineligible member's income, divide the amount by the household size, and use all the income except for the prorated share of the ineligible household member.

3) Deductible expenses - ~~The~~ Allow the earned income deduction ~~applies to~~ for the prorated share of income used by the remaining household members. ~~earned by such ineligible members which is attributed to their households. That portion of~~ Divide the household's allowable child support payment, shelter (except any utility allowances), and dependent care expenses, which are either paid by or billed to the excluded members, ~~will be divided~~ evenly among the household's members including the ineligible members. Allow ~~All~~ but the ineligible member's share ~~is counted~~ as a deductible child support payment, shelter (except any utility allowances), or minor care expense for the remaining household members.

4) Eligibility and benefit level - ~~Such~~ ineligible members will not be included ~~when~~ in determining their household's size ~~for the purposes of~~ when:

- a) Assigning a benefit level to the household;
- b) Comparing the household's monthly income with the income eligibility standards; or
- c) Comparing the household's resources with the resource eligibility limits.

(Break in Continuity of Sections)

9094 Cooperation with the Division of Child Support Enforcement (DCSE)

Cooperation as Condition of Eligibility

In order to get food stamp benefits, all applicants must cooperate with the Division of Child Support Enforcement (DCSE) to receive child support for minor children in their care. Custodial parents/caretakers cannot get food stamps if they fail to cooperate with DCSE. A custodial parent is a natural or adoptive parent who lives with his or her child, or a person who is living with and exercises parental control over a child under the age of 18.

Both applicants and recipients must cooperate, unless they can show good cause, in:

1. Identifying and locating absent parents;
2. Proving paternity for minor children born out of wedlock; and
3. Getting support payments and/or other properties for the minor child(ren).

DCSE is the single State agency that:

- Establishes paternity of and secures support for children born out of wedlock;
- Gets support from parents who have abandoned or deserted their children; and

- Enters into cooperative arrangements with appropriate courts and law enforcement officials in order to get support.

Applicants and recipients will be told of this requirement in writing at the time of application and recertification for continued benefits. DSS will refer caretakers to DCSE based on the following:

- DSS will refer a person to DCSE who is receiving food stamps and the food stamp assistance unit has children under the age of 18 with an absent parent(s).
- DSS will refer a person to DCSE who is receiving TANF or Child Care and the food stamp assistance unit has children not included in the TANF or Child Care case.
- DSS will not refer a person who is receiving TANF or Child Care and has cooperated as long as the assistance units contain the same persons.
- DSS will not refer a person who had good cause for not cooperating or made a good faith effort to cooperate as long as the assistance units contain the same persons.

Cooperation Responsibilities

Clients must cooperate with DCSE to get food stamp benefits. All families are required to provide enough information to permit DCSE to get child support on behalf of the family.

DCSE can make exceptions when the caretaker can prove that trying to get child support would create a danger to the caretaker or the children. This is called a good cause claim. The client is responsible to get proof to verify good cause claims.

DCSE can also determine a caretaker has cooperated when he/she makes a good faith effort to provide all the information he/she can about the non-custodial parent.

To cooperate with DCSE, applicants or recipients of food stamps must participate in the following activities, if required:

- To appear at an office of DSS or DCSE to give verbal or written information or written documents known to or possessed by the applicant or recipient;
- To appear as a witness in court or other hearings or proceedings; or
- To provide information or to confirm to the lack of information under penalty of perjury.

Penalties for Non-Cooperation

When a caretaker fails to cooperate with DCSE without good cause or fails to make a good faith effort to cooperate, that person will not get food stamp benefits. The sanction applies only to the caretaker, not the entire household.

Income, Expenses and Resources of Sanctioned Household Member

All resources of the sanctioned caretaker count toward the food stamp benefits. Income and expenses are prorated and count toward the food stamp benefits. See policy under 9076.2.

Curing the Child Support Sanction

To cure the child support sanction, the caretaker will provide enough information to permit DCSE to pursue child support collections on behalf of the minor children in his/her care. Once it is determined that the caretaker has cooperated, DSS will add him/her to the case.

Reopening the Sanctioned Person

Once DCSE provides proof that the caretaker cooperated, DSS will reopen him/her. The caretaker will be added to the case effective the month after the month he/she cooperated. The household's certification period is not shortened or extended because of the sanction.

Good Faith Effort

If the applicant or recipient cannot provide the minimum information required about the absent parent, DCSE may still determine the person as cooperating if the person completes a Good Faith Affidavit. The Affidavit lists the steps the caretaker took to get the information and what barriers the person faced.

Good Cause Determination

DCSE is responsible to determine if good cause for refusing to cooperate exists. When good cause exists, the person may get food stamp benefits and will not have to cooperate in support collection activities.

Claiming Good Cause for Non-Cooperation

DSS will tell applicants and recipients, at application and recertification, of the right to good cause as an exception to the cooperation requirement. DSS will also tell applicants and recipients about the reasons they have to claim good cause.

Caretakers will not have to cooperate if they believe that their cooperation would not be in the best interest of their child. They must give proof to support their claim.

DCSE may decide that a person has good cause for refusing to cooperate if one or more of the following conditions exist:

- Cooperation is likely to result in serious physical or emotional harm to the child;
- Cooperation is likely to cause physical or emotional harm to the person which is so serious as to reduce his/her capacity to care for the child adequately;
- The child was conceived as a result of incest or forcible rape;
- Legal proceedings for adoption of the child are pending before a court;
- The person is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep his/her child or give the child up for adoption;
- Cooperating with DCSE would make it more difficult for the person to escape domestic violence or unfairly penalize the person who is or has been victimized by such violence, or the person is at risk of further domestic violence. (Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.)

Proof of Good Cause Claim

It is the custodial parent's or responsible persons' responsibility to provide DCSE with the proof needed to determine whether they have good cause for refusing to cooperate. If the reason for claiming good cause is a fear of physical harm and it is impossible to obtain proof, DCSE may still be able to make a good cause decision after reviewing the claim.

The following are examples of acceptable kinds of proof DCSE can use to decide if good cause exists:

- A birth certificate or medical or law enforcement record which indicates that the child was conceived as the result of incest or forcible rape;
- A court document or other record which indicates the legal proceedings for adoption are pending before a court;
- A court, medical, criminal, psychological, child protection services, social services or law

enforcement record which indicates that the putative father or absent parent might inflict physical or emotional harm on the child or person;

- A medical record which indicates the emotional health history and present emotional health status of the person or the child; or, a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the person or child;
- A written statement from a public or licensed private social agency that the person is being assisted by the agency to resolve the issue of whether to keep the child or give him/her up for adoption; and
- Sworn statements from persons, including friends, neighbors, clergymen, social workers, and medical professionals who might know the conditions providing the basis of the good cause claim.

When requested, DCSE will try to help persons obtain necessary documents to support their claim.

Investigations of Good Cause Claim

The caretaker must give the necessary proof to DCSE within 20 days after claiming good cause. DCSE will give the parent or person more time if they decide that more than 20 days are required because of the difficulty in getting the proof.

DCSE may decide on the claim based on the proof which is given, or conduct a review to verify the claim. If DCSE decides they need to review the claim, DCSE may require the person to give information, such as the absent parent's name and address, to help the review. The DCSE will not contact the absent parent without first telling the person.

Delayed finding of good cause

DSS will not deny, delay, or discontinue assistance when DCSE has not made a decision on the good cause claim as long as the caretaker has given proof and other information needed by DCSE. DSS will follow the normal processing standards for these cases.

Administrative Hearings

Applicants and recipients have the right to request an administrative hearing if they disagree with the decision of non-cooperation made by DCSE. When caretakers request an administrative hearing regarding the decision of non-cooperation or failure by DCSE to accept good cause claims, DCSE will schedule and conduct the administrative hearing.

The caretaker can ask for a hearing by sending in his or her request in writing within 20 days to:

Administrative Hearing Officer – DCSE
P.O. Box 11564
Wilmington, DE 19805

The request should include the caretaker's name, case number, social security number and daytime telephone number.

11 DE Reg. 872 (01/01/08) (Prop.)