

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

FINAL

ORDER

DSSM 2023 Disqualification Hearings

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 the Food Stamp Program and Temporary Assistance for Needy Families (TANF). The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10113 and its authority as prescribed by 31 **Delaware Code** Section 512.

Nature of the Exempt Regulation:

Citations

- 29 **Del.C.** §10113, *Adoption of Regulations; Exemptions*
- Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (P.L. 104-193), Section 813, *Doubled Penalties for Violating Food Stamp Program Requirements*
- 7 CFR §273.16, *Disqualification for Intentional Program Violation*

Summary of Proposed Changes

This exempt regulation corrects a technical error at DSSM 2023.5, *Disqualification Hearings*. When DSSM 2023.2 was revised to show the new disqualification periods as a result of the PRWORA of 1996, DSSM 2023.5, inadvertently, was not revised also. To ensure rule consistency, the disqualification hearings rule for individuals found to have committed an intentional Program violation at DSSM 2023.5 is revised.

DSS is not changing existing policies or procedures.

Findings of Fact:

The Department finds that these changes are exempt from the procedural requirements of the Administrative Procedures Act (Title 29 Chapter 101).

THEREFORE, IT IS ORDERED, that the proposed revision regarding disqualification for intentional program violation for Food Stamps and TANF be adopted informally as an exempt regulation and shall become effective March 10, 2007.

Vincent P. eoni, Secretary, DHSS, February 15, 2007

DSS EXEMPT REGULATION #07 - 10 REVISIONS:

2023.2 Disqualification Penalties

Individuals found to have committed intentional Program violation either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative hearing or a disqualification consent agreement in cases referred for prosecution, will be ineligible to participate in the Program for:

1. A period of **one year** (12 months) for the first violation;
2. A period of two years (24 months) for the second violation; or for the first time found guilty of

selling and purchasing controlled substances with food stamps;

3. **Permanently** for the third violation; or for the second time found guilty of selling and purchasing controlled substances with food stamps; or for the first time found guilty of selling and purchasing firearms, ammunition or explosives with food stamps, or for the first time convicted of trafficking in Food Stamp benefits valued at \$500 or more.

One or more intentional Program violation disqualifications which occurred prior to the implementation of these penalties will be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

If a court fails to impose a disqualification period for the intentional Program violation, impose the disqualification penalties specified in this Section unless it is contrary to the court order. Disqualify only the individual found to have committed intentional Program violation and not the entire household. The remaining household members shall agree to make restitution within 10 days of the date the written demand letter is mailed or the household's monthly allotment will be reduced. If the remaining household members agree to make restitution, but fail to do so, impose an allotment reduction on the household's monthly allotment. The remaining household members, if any, will begin restitution during the period of disqualification imposed by DSS or a court of law. All restitutions will be made in accordance with established procedures for cash repayment, allotment reduction, or EBT benefits for repayment.

(Break In Continuity of Sections)

2023.5 Disqualification Hearings

Conduct administrative disqualification hearings for individuals accused of intentional Program violation in accordance with the requirements outlined in this Section.

1. Consolidation of administrative disqualification hearing with fair hearing.

DSS may combine a fair hearing and an administrative disqualification hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice that hearings will be combined. If the disqualification hearing and the fair hearing are combined, follow the timeframes for conducting disqualification hearings. If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not intentional Program violation has occurred, the household will lose its right to a subsequent fair hearing on the amount of the claim. However, upon household request, allow the household to waive the 30-day advance notice period required by this Section when the disqualification hearing and fair hearing are combined.

2. Disqualification hearing procedures

At the disqualification hearing, the hearing official will advise the household member or representative that they may refuse to answer questions during the hearing.

Within 90 days of the date the household member is notified in writing that a hearing initiated by DSS has been scheduled, DSS will conduct the hearing, arrive at a decision, and notify the household member of the decision. The household member or representative is entitled to a postponement of the scheduled hearing, provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. However, the hearing will not be postponed for more than a total of 30 days and DSS may limit the number of postponements to one. If the hearing is postponed, the above time limits will be extended for as many days as the hearing is postponed. Written rules of procedure for DSS disqualification hearings are available to interested parties.

3. Advance notice of hearing.

Provide written notice to the household member suspected of intentional Program violation at least 30 days in advance of the date a disqualification hearing initiated by DSS has been scheduled. The notice will be mailed certified mail-return receipt requested and will contain at a minimum:

- a. The date, time, and place of the hearing;
- b. The charge(s) against the household member;
- c. A summary of the evidence, and how and where the evidence can be examined;
- d. A warning that the decision will be based solely on information provided by the

DSS office if the household member fails to appear at the hearing;

e. A statement that the household member or representative will have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

f. A warning that a determination of intentional Program violation will result in a ~~six-month~~ 12-month disqualification for the first violation, ~~42-month~~ 24-month disqualification for the second violation, and permanent disqualification for the third violation, and a statement of which penalty the Division believes is applicable to the case scheduled for a hearing;

g. A listing of the household member's rights as contained in DSSM 5000;

h. A statement that the hearing does not preclude the State or Federal Government from prosecuting the household member for intentional Program violation in a civil or criminal court action, or from collecting the overissuances; and

i. If there is an individual or organization available that provides free legal representation, the notice will advise the household member of the availability of the service.

A copy of DSS' published hearing procedures will be attached to the 30-day advance notice or the advance notice will inform the household of its right to obtain a copy of the Division's published hearing procedures upon request.

4. Scheduling of hearing.

The time and place of the hearing will be arranged so that the hearing is accessible to the household member suspected of intentional Program violation. If the household member or its representative cannot be located or fails to appear at a hearing initiated by DSS without good cause, the hearing will be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intentional Program violation, but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision will no longer remain valid and the Division will conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. The household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

5. Participation while awaiting a hearing.

A pending disqualification hearing will not affect the individual's or the household's right to be certified and participate in the Program. Since the Division cannot disqualify a household member for intentional Program violation until the hearing official finds that the individual has committed an intentional Program violation, determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. For example, if the misstatement or action for which household member is suspected of intentional Program violation does not affect the household's current circumstances, the household would continue to receive its benefits based on the latest certification action or be recertified/redetermined based on a new application and its current circumstance. However, the household's benefits will be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. Reduce or terminate the household's benefits if DSS has documentation which substantiates that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of intentional Program violation and the resulting disqualification hearing) and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, the Division may have facts which substantiate that a household failed to report a change in its circumstances even though DSS has not yet demonstrated that the failure to report involved an intentional act of Program violation.

6. Criteria for determining intentional Program violation.

The hearing authority will base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, or intended to commit, intentional Program violation as defined in DSSM 2023.3.

7. Decision format.

The hearing authority's decision will specify the reasons for the decision, identify the supporting evidence, identify the pertinent FNS/ACF regulation, and respond to reasoned arguments made by the household member or representative.

8. Imposition of disqualification penalties.

If the hearing authority rules that the household member has committed intentional Program violation, the household member will be disqualified in accordance with the disqualification periods specified in DSSM 2023.2 beginning with the first month which follows the date the household member receives written notification of the hearing decision. When the Chief Administrator is notified of the positive administrative hearing or prosecution actions, the Chief Administrator will notify the appropriate staff.

Effect the disqualification action per DSSM 2023 and 9076.1. Remove the ineligible member(s). Continue to count the member's income and resources to determine eligibility and benefit amount.

Individual members no longer receiving benefits at the time of the intentional program violation decision will be notified of the disqualification and the period of time they are ineligible to receive benefits.

Place the copy of the client notice inside the front cover of the case record to "flag" the disqualified participant for the duration of the sanction.

However, if the act of intentional Program violation which led to the disqualification occurred prior to notification of the disqualification periods specified in DSSM 2024.2, the household member will be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional Program violation repeated over a period of time will not be separated so that separate penalties can be imposed. No further administrative appeal procedure exists after an adverse State level hearing. The determination of intentional Program violation made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

Once a disqualification penalty has been imposed against an individual the period of disqualification will continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household will continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

9. Notification of hearing decision.

If the hearing official finds that the household member did not commit intentional Program violation, provide a written notice which informs the household member of the decision.

If the hearing official finds that the household member committed intentional Program violation, provide written notice to the household member prior to disqualification. The notice will inform the household member of the decision and the reason for the decision. In addition, the notice will inform the household member of the date disqualification will take effect. Provide written notice to the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in DSSM 9076.1. A written demand letter for restitution, as described in DSSM 7000 will also be provided.

10 DE Reg. 1441 (03/01/07) (Final)