

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

FINAL

ORDER

DSSM: 3033 Interim Assistance Reimbursement

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 Delaware's Cash Assistance Program. 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 January 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Cash Assistance Program. The proposed change adds new policy language to the *Technical Eligibility for Cash Assistance* section. Specifically, the proposed rule requires clients to participate in the Interim Assistance Reimbursement process that allows Delaware to be reimbursed for cash assistance benefits paid to cash assistance recipients while their approval for SSI benefits was pending.

Statutory Authority

- Social Security Act, Section 1631(g), *Reimbursement to States for Interim Assistance Payments*
- 20 CFR §§416.1901 – 416.1922, *Interim Assistance Provisions*
- P. L. 94-365, *The authority to repay the State for interim assistance is made permanent*
- P.L. 100-203, *Extends interim assistance reimbursement to situations in which payments are made by States or political subdivisions to persons whose SSI payments were suspended or terminated and who subsequently are found to be eligible for such benefits. Also clarifies that the payment from which the interim assistance reimbursement is paid must be the first payment of benefits relating to the interim period.*

Background

Section 1631(g) of the Social Security Act provides that a state may enter into an agreement with the Social Security Administration (SSA) to have the SSA transmit an individual's Interim Assistance Reimbursement (IAR) payment directly to the state as reimbursement for interim assistance to a Supplemental Security Income (SSI) applicant while a decision upon his/her SSI application is pending. Delaware has an Interim Assistance Reimbursement agreement with the Social Security Administration.

Summary of Proposed New Rule

DSSM 3033.1, Interim Assistance Reimbursement – Requirements for Receipt of Cash Assistance by SSI Applicants: Interim Assistance Reimbursement (IAR) is the process used by the Social Security Administration to reimburse a State for the basic assistance provided by a State to an individual while either the individual's application for SSI was pending or during the period in which an individual's SSI benefits were suspended. A portion of the individual's SSI payments are sent to the State as reimbursement if: (1) the State has an agreement with SSA to participate in IAR, (2) the individual has given SSA written authorization to have his/her SSI payment

sent to the State as reimbursement, and (3) the individual is found eligible for SSI benefits or has had his/her benefits reinstated for the same period of suspense. Effective January 1, 2010, the proposed rule requires non-federally funded cash recipients to assign SSI benefits to the State for the purpose of reimbursing the State for assistance paid to the client while SSI eligibility determination was pending.

Summary of Comments Received With Agency Response

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. The Division of Social Services (DSS) has considered each comment and responds as follows.

These standards will implement the Federal law authorization for states to be reimbursed for "assistance financed from State ...funds and furnished for meeting basic needs" from a subsequent SSI award to a beneficiary. The GACEC would like to share the following observations.

First, the DSS regulation only applies to "non-federally funded cash assistance recipients". [§3033.1.1.] This would seemingly include General Assistance since it is State-funded. See 16 DE Admin. Code Part 3000, §3018. It may also include some Emergency Assistance. See 16 DE Admin. Code Part 6000, §6001. TANF is federally funded and seemingly not covered. For clarity, it would be helpful if DSS identified in the regulation or regulatory note which programs are included.

Agency Response: As you noted, the regulation only applies to non-federally funded cash assistance recipients. Currently the State's agreement with the Social Security Administration (SSA) allows Delaware to receive reimbursement only for assistance paid to General Assistance recipients who have been determined eligible for SSI. Delaware also uses State funds to pay for the cash assistance received by disabled TANF families who are not subject to the federal time limit for TANF assistance. The regulation was written with the flexibility to allow the State to seek an agreement with SSA to allow reimbursement for assistance paid for that and other populations that may be identified.

No change to the regulation was made as a result of this comment.

Second, it is common for employers and employer insurers to require employees placed on disability or a disability pension to sign an agreement to reimburse the employer/insurer from future SSDI and SSI funds. Such an individual who also receives State cash assistance could be beset by competing employer/insurer and DSS claims. If DSS has a legal basis for claiming priority to SSI benefits, it may wish to address this in the regulation or consider introducing legislation in this context. In a "worst case" scenario, the State would intercept benefits and an employer would demand reimbursement from the individual for the intercepted benefits based on a contract claim. Alternatively, the employer/insurer could suspend disability payments until the "shortfall" is repaid.

Agency Response: Thank you for identifying the potential issue of competing claims against an SSI recipient's assistance. We will initiate discussions with SSA to determine if a payment priority order is established and if there is a means to identify competing or additional claims against an SSI recipient's assistance.

No change to the regulation was made as a result of this comment.

Third, the federal law only allows DSS to retain authorized amounts defined in §1631(g)(3) and to pay the individual the balance. This concept is absent from the regulation. It would be preferable to include a reference to the reimbursable amount the State is entitled to retain and an affirmative recital that any balance will be paid to the individual within ten working days.

Agency Response: As you noted previously federal law allowed DSS to only retain authorized amounts defined in §1631(g)(3) and to pay the individual the balance. The SSA is instituting a new process named e-IAR, designed to automate the current IAR paper check process by utilizing an SSA secure website. More information about this new process can be found at the following website.

<http://www.ssa.gov/gso/gsowelcome.htm>.

In the past States would receive the entire initial SSI assistance payment and would forward to the client any

funds remaining after reducing the payment by the amount of State assistance the client received while their SSI application was pending. This new process results in SSA only sending the State the amount that represents the assistance received while the SSI application was in review. The remainder of the SSI assistance is paid directly to the client by SSA.

No change to the regulation was made as a result of this comment.

Findings of Fact:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding *Interim Assistance Reimbursement – Requirements for Receipt of Cash Assistance by SSI Applicants* is adopted and shall be final effective March 10, 2010.

Rita M. Landgraf, Secretary, DHSS, 2/8/10

DSS FINAL ORDER REGULATION #10-11 NEW:

3033 Interim Assistance Reimbursement

3033.1 Requirements for Receipt of Cash Assistance by SSI Applicants

This policy applies to non-federally funded cash assistance recipients who have applied or intend to apply for SSI benefits.

1. Cash assistance applicants and recipients who are also SSI applicants are required to assign a portion of the SSI benefits they receive to the Division of Social Services to reimburse DSS for cash assistance received by the SSI applicant.

Delaware has an Interim Assistance Reimbursement (IAR) agreement with the Social Security Administration (SSA). This agreement allows Delaware's Division of Social Services (DSS) to receive reimbursement for the cash assistance provided to SSI applicants while their SSI eligibility decision was pending. The money reimbursed to the State is taken from the SSI applicant's initial and retroactive SSI benefits.

2. To be eligible for cash assistance, SSI applicants must authorize reimbursement through the IAR agreement for cash assistance received while SSI eligibility determination is pending.
3. A cash recipient is considered an SSI applicant if one or more of the following conditions exists:
 - A. The cash recipient has applied for SSI and is waiting for an eligibility decision.
 - B. The cash recipient has applied for reinstatement of SSI benefits and is waiting for a decision.
 - C. The cash recipient has received a request from DSS or another state agency to apply for SSI benefits.
 - D. The cash recipient has reported they intend to apply for SSI benefits or reinstatement of SSI benefits.
4. SSI applicants assign their SSI benefits to DSS by completing and signing a DSS approved IAR authorization form.

A cash recipient is required to complete an IAR authorization form when:

- A. The client reports he or she intends to apply for SSI.
- B. The client has made an application or reapplication for SSI benefits.
- C. Documentation is provided from a health care provider that indicates the client is unable to work and the disability is expected to exceed 6 months in duration.
- D. The client has applied or intends to apply to have SSI benefits reinstated after suspension or termination.
- E. The IAR authorization form on file is more than 30 days old and the client has not applied for SSI.

F. The client is required to apply for SSI by DSS or another State agency.
13 DE Reg. 1209 (03/01/10) (Final)