

# 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 Supplement Program: 2027 Disqualification of Individuals Convicted of Drug Related Offenses**

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 policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Disqualification of Individuals Convicted of Drug Related Offenses*.

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 & 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 March 31, 2012.

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 PROPOSAL**

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Disqualification of Individuals Convicted of Drug Related Offenses*.

#### **Statutory Authority**

- 146<sup>th</sup> General Assembly, Senate Bill #12, *An Act to Amend Title 31 of the Delaware Code Relating to the Food Stamp Program*
- 7 CFR §273.11(m), *Individuals Convicted of Drug-Related Felonies*

#### **Background**

Signed into law by the Governor on July 22, 2011, Senate Bill #12 (SB 12) removes the prohibition against persons convicted of any drug felony from receiving federal food benefit assistance.

#### **Summary of Proposed Change**

**DSSM 2027**, *Disqualification of Individuals Convicted of Drug Related Offenses*: SB 12 eliminated the bar to receipt of food benefits for those convicted of a felony drug conviction. This policy change removes text from the policy manual that says individuals convicted of a felony drug conviction are ineligible for food benefits. DSSM 2027 was inadvertently omitted when other related sections were removed from the manual.

SB 12 was effective upon the Governor's signature. The rule affected benefits beginning July 1, 2011.

#### **DSS PROPOSED REGULATION #12-03**

#### **REVISIONS:**

#### **2027 Disqualification of Individuals Convicted of Drug Related Offenses**

##### *For Cash Assistance:*

Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of possession, use or distribution of controlled substances shall not be eligible for cash assistance.

This provision does not apply to individuals convicted of such offenses which occurred prior to August 22, 1996, the date of enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Determine income, resources, and deductions according to DSSM 4003.2 if the individual is a parent payee. Exclude the income and resources of the individual if the person is a non-parent payee.

##### *For Food Stamps:*

~~Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of distribution of controlled substances shall not be eligible for benefits under the food stamp program.~~

Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of possession or use of controlled substances shall not be eligible for benefits under the food stamp program unless they meet the following conditions:

1. Is currently participating in a substance abuse treatment program approved by DHSS; or
2. Is currently enrolled in a substance abuse treatment program approved by DHSS subject to a waiting list to receive available treatment, and the individual remains enrolled in the treatment program and enters the treatment program at the first available opportunity; or
3. Has satisfactorily completed a substance abuse program approved by DHSS; or
4. Is determined by a treatment provider licensee by DHSS not to need substance abuse treatment according to DHSS' guidelines; and
5. Is complying with, or has already complied with all obligations imposed by the Court, including any substance abuse treatment obligations.

Individuals who regain eligibility for food stamps due to meeting the above conditions will be required to submit to quarterly random drug testing at the individual's own cost.

Individuals who return a clean drug test result free of controlled substances will continue to be eligible to get food stamps, if otherwise eligible.

Individuals who return an unclear drug test result, which shows the use of controlled substances, will be disqualified from receiving food stamps for one year. The period of ineligibility will remain in effect until the end of the one year. The individual must return a clean drug test result free of controlled substances before getting benefits again.

Individuals who fail to return a drug test result will be ineligible to receive food stamps until a clean drug test result is provided.

Such ineligible individuals will not be considered part of the household except that the income and resources of such individuals shall be considered to be income and resources of the household.

Determine the income, resources and deductions of these disqualified individuals according to 9076.1.

This provision does not apply to individuals convicted of such offenses that occurred prior to August 22, 1996, the date of enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

**15 DE Reg. 1277 (03/01/12) (Prop.)**