

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### FINAL

### ORDER

#### Medicaid for Workers with Disabilities

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) related to the Medicaid for Workers with Disabilities 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 September 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSED AMENDMENT

The proposed amends the Division of Social Services Manual (DSSM) to update the rules that describe the eligibility criteria for participation in the Medicaid for Workers with Disabilities (MWD) Program.

#### Statutory Authority

- 1902(a)(10)(A)(ii)(XV) of the Social Security Act, Working disabled individuals who buy into Medicaid under TWWIIA (Ticket to Work and Work Incentives Improvement Act of 1999) Basic Coverage Group; and,
- 1916(g) of the Social Security Act, Premiums - Working Disabled Individuals.

#### Summary of Proposed Amendment

- **DSSM 17900**, Medicaid for Workers with Disabilities provides a general description of the Medicaid for Workers with Disabilities (MWD) program. This revision changes the eligibility effective date from October 1, 2008 to October 1, 2009.
- **DSSM 17908**, Unearned Income Exclusion updates what income is considered as well as what is excluded. Unearned income is excluded up to \$956.00 per month for the individual.
- **DSSM 17911**, Financial Eligibility Determination updates the description of the income tests used to determine financial eligibility.
- **[DSSM 17912**, Retroactive Eligibility provides that eligibility cannot be retroactive prior to October 1, 2009.]

#### Fiscal Impact Statement

The projected estimate for Fiscal Year (FY) 2010 cost is \$1.4 million total funds.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered the following observations summarized below.

First, DMMA proposes to revise the implementation date for the program. It was originally expected to become operational in June, 2008. The final regulation adopted last Fall deferred the implementation date to October 1, 2008. See 12 **DE Reg.** 446, 450 (October 1, 2008). The summary of the latest proposal notes that budget

constraints have delayed implementation until October 1, 2009. Given the budget, some delay in implementation is understandable.

Second, the Councils had promoted adoption of a more liberal unearned income limit last Fall. In response, DMMA changed the monthly earned income cap from \$800 to \$904 subject to annual increases based on the Social Security Administration Cost of Living Adjustment (COLA). See 12 **DE Reg.** 446, 452 (October 1, 2008). DMMA now proposes to raise the cap to \$956 in recognition of the 2009 COLA increase. This favors applicants. The COLA is not expected to change in 2011.

SCPD endorses the proposed regulations since they favor applicants or are ostensibly justified by uncertainties about the FY 10 budget.

**Agency Response:** DMMA thanks the Council for their endorsement.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the September 2009 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the implementation of the Medicaid for Workers with Disabilities Program is adopted and shall be final effective November 10, 2009.

Rita M. Landgraf, Secretary, DHSS

#### **DMMA FINAL ORDER REGULATION #09-38**

##### **REVISIONS:**

##### **17900 Medicaid for Workers with Disabilities**

The Ticket to Work and Work Incentives Improvement Act of 1999 established an optional categorically needy eligibility group under Section 1902(a)(10)(A)(ii)(XV) of the Social Security Act. This eligibility group provides Medicaid coverage to certain employed individuals with disabilities. The rules in this section set forth the eligibility requirements under this group entitled Medicaid for Workers with Disabilities (MWD). The effective date for MWD is October 1, ~~2008~~ 2009.

**12 DE Reg. 446 (10/01/08)**

*(Break in Continuity of Sections)*

##### **17908 Unearned Income Exclusion**

Unearned income is excluded up to ~~\$904.00~~ 956.00 per month for the individual. There is no ~~\$904.00~~ 956.00 per month unearned income exclusion for a spouse who is not applying for MWD. This unearned income exclusion will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

*(Break in Continuity of Sections)*

##### **17911 Financial Eligibility Determination**

There are two income tests used to determine financial eligibility:

1. If the monthly unearned income of the individual exceeds ~~\$904.00~~ 956.00, the individual is ineligible. This unearned income limit will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

2. Countable income must be at or below 275% of the Federal Poverty Level for the appropriate family size (individual or couple).

##### **17912 Retroactive Eligibility**

The individual may be found eligible for up to three months prior to the month of application as described at DSSM 14920-14920.6 provided the premium requirements under MWD are met. Eligibility cannot be retroactive

prior to October 1, ~~2008~~ 2009.

**13 DE Reg. 654 (11/01/09) (Final)**