

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

FINAL

ORDER

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 resources. 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 CHANGE

The purpose of the proposed change is to increase the resource limit for Delaware's Temporary Assistance for Needy Families (TANF) program from \$1,000 to \$10,000. Exclude from the resource limit, value of automobiles owned by members of TANF and General Assistance (GA) households.

Statutory Authority

- Social Security Act §402, Eligible States; State Plan
- 31 Del.C §503, Eligibility for assistance; amount; method of payment
- Delaware TANF State Plan, Definition of Needy Families

Summary of Proposed Change

DSSM 4002.2, Available Resources; **DSSM 4002.5**, Excluded Resources; and, **DSSM 4002.6**, Disposal of Real Property: The proposed regulations: 1) widens the availability of the TANF and GA program to a larger number of low income families in Delaware; 2) allows TANF participants to accumulate assets thus improving their ability to maintain self-sufficiency at times of financial crisis/hardship and to decrease the likelihood of returning to the TANF program; and, 3) reduces the administrative burden of researching and verifying automobile ownership and calculating automobile equity value.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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.

First, DSS proposes to significantly increase the countable resource cap for the TANF program from \$1,000 to \$10,000. The rationale is to allow "TANF participants to accumulate assets thus improving their ability to maintain self-sufficiency at times of financial crisis/hardship and to decrease the likelihood of returning to the TANF program". At 379. This rationale for expanding resource limits is consistent with SCPD December 19, 2008 commentary on Food Supplement Program regulations published at 12 **DE Reg.** 744 (December 1, 2008). In commenting on proposed expanded resource standards for the Food Supplement Program, the Council attached a publication containing the following rationale for expanding resource caps:

On a bipartisan basis, policymakers agree that asset development is important to helping low-income

Americans transition out of poverty. Accumulating assets allows low-income individuals to mitigate material hardships during periods of unemployment or illness, suffer less of a decline in their living standard during retirement, or make investments in their own education or housing that increase their financial stability.

Second, DSS proposes to disregard the value of automobiles owned by members of the assistance household for both the TANF and GA programs. This is in contrast to the current standards which only exclude a percentage of the equity value of 1 automobile.

SCPD endorses the proposed regulations subject to the following two caveats.

A. If not well defined elsewhere in its regulations, DSS should consider adding a definition of "automobile". For example, is a truck or motorcycle included within the scope of an "automobile" for purposes of the resource regulation?

B. DSS is deleting the following sentence: "Farm vehicles that are used to produce income are excluded from consideration as a resource." DSS should consider retaining this sentence. A tractor, backhoe, or other vehicle used in farming may not be considered an "automobile". Therefore, it would be preferable to maintain the separate exclusion.

Agency Response: As suggested, DSS will add a definition of automobiles at DSSM 4002.5. We believe this new definition addresses your concern that the term "automobile" could be construed to exclude trucks or motorcycles and that vehicles used in farming and other income producing ventures which were previously excluded from the resource limit should remain excluded.

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) as it relates to financial responsibility regarding available and excluded resources is adopted and shall be final effective November 10, 2009.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #09-43 REVISIONS:

4002.2 Available Resources

Any income or resource which a client actually has on hand for immediate use is an available resource. Examples are, cash on hand, checking accounts, any form of savings or bank accounts, State and Federal Income Tax Refunds.

Savings:

The special Education and Business Investment Accounts are not counted as available resources unless withdrawals are made for non-approved purposes. See DSSM 4002.5 #14.

A family budget group is not eligible for ~~cash assistance~~ General Assistance if its available resources exceed \$1,000.00.

A family budget group is not eligible for TANF if its available resources exceed \$10,000.00.

Available resources must be documented in the case record.

(Break in Continuity of Sections)

4002.5 Excluded Resources

The equity value of real and personal property owned by a family budget group cannot exceed ~~\$1,000.00~~ \$10,000.00 for TANF cases or \$1,000.00 for General Assistance cases. Resources excluded from the ~~\$1,000.00~~

resource limitation are:

1. The home which is the usual residence of the family budget group.

FOR DELAWARE'S TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROGRAM

2. Exclude the equity value of a primary automobile, up to the annually adjusted Food Stamp program's fair market value of vehicles which is excluded in determining the household resources. The excluded amount effective October 1996 is \$4,650. The equity value is the difference between the automobile's fair market value and the amount still owed for it. The equity value in excess of \$4,650.00 is counted towards the \$1,000.00 resource limitation. The entire equity value of other automobiles owned by the individual is counted as a resource.

NOTE: The fair market value of an automobile is determined by finding the car's trade-in value in the NADA Used Car Guide. If the client disagrees with this valuation, he/she may obtain a statement of the car's value from a automobile dealer.

FOR GENERAL ASSISTANCE

One automobile, the equity value of which does not exceed \$1,500.00. The equity value is the difference between the automobile's fair market value and the amount still owed on it. The equity value in excess of \$1,500.00 is counted towards the \$1,000.00 resource limitation. The entire equity value of other automobiles owned by the individual is counted as a resource.

The increased value of a motor vehicle specially equipped with devices for the handicapped is not counted. Farm vehicles that are used to produce income are excluded from consideration as a resource.

2. Automobiles:

[An automobile is defined as any motorized vehicle used:

A. for transportation via public roadways or

B. to produce income.]

The automobiles owned by members of a cash assistance household are disregarded

3. One burial plot for each member of the assistance unit.

4. Bona fide funeral agreements (e.g., pre paid burial contracts) up to a total of \$1,500.00 for each member of the budget group.

NOTE: If a funeral agreement valued in excess of \$1,500.00 includes both prepaid burial expenses and a burial plot, the worker will require that the client provide an itemized statement of the estimated value of the plot and the expenses. The value of the burial plot is an excluded resource and will be considered separately from the value of the prepaid expenses.

5. Basic maintenance items essential for day-to-day living such as clothes, furniture, and other similarly essential items.

6. For a period not to exceed six months, real property that is not used as a residence (see DSSM 4002.6).

7. Tools and equipment necessary to produce income in a self employment enterprise, even if the owner is not engaged in business currently, but plans to continue it at a future date.

8. Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100 707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

9. Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I of P.L. 100 383.

10. Restitution made by any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100 383.

11. Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

12. Earned Income Tax Credits (EITC), including Advance EITC.

Applicants:

Disregard as a resource EITC payments received in the month of application or in the month preceding the

month of application. Any remaining EITC amounts received before this period are a resource.

Recipients:

Disregard as a resource for the month in which the EITC is received and the following month. After this period, any remaining amounts are a resource.

13. Cash Value of Life Insurance Policies

14. The designated Education and Business Investment Account (EBIA) is excluded up to the \$5,000.00 maximum. In addition to the current resource limit, Delaware's Temporary Assistance For Needy Families Program (TANF" and General Assistance (GA) Program families will be allowed to establish special Education and Business Investment Accounts (EBIA) of up to \$5000.00, including interest.

Do not consider funds in such accounts as a resource for TANF, GA or Food Stamp purposes. Withdrawals from such accounts must be for approved purposes. If funds are withdrawn for non-approved purposes, count the money as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include education expenses, employment start-up needs, entrepreneurship, and to purchase a vehicle or home. If staff ~~are~~ is unsure if the withdrawal meets an approved purpose, contact the policy unit for clarification.

Furthermore, a Saving for Education, Entrepreneurship and Downpayment (SEED) accounts is considered an EBIA account and is excluded up to the \$5000.00 limit.

9 DE Reg. 1374 (03/01/06)

4002.6 Disposal of Real Property

Real property that is not used as a residence is excluded as a resource for a period not to exceed six months if the following conditions are met:

1. The family is making a good faith effort to sell the property. This effort must be documented in the case record. Examples of acceptable documentation include a current newspaper sales advertisement, or a current sales contract with a real estate firm; and
2. The family signs Form 212, an agreement to dispose of the property and to repay the assistance received during the exemption period.

The amount of assistance that must be repaid after the property is sold is determined as follows:

1. Compare the net proceeds of the sale plus the value of other countable resources available at the time the exemption period began to the ~~\$1,000~~ program resource limit.
2. If the amount is less than \$1,000 ~~for GA, or \$10,000.00 for TANE~~, there is no overpayment.
3. If the amount is more than ~~\$1,000~~ the program resource limit, the amount of the proceeds that is in excess of ~~\$1,000~~ the resource limit is recovered as an overpayment. Note: The amount recovered cannot exceed the assistance that was received. Any proceeds in excess of the amount to be recovered are considered as an available resource to the family.
4. If the property is not sold within six months, the assistance case must be closed. All the assistance payments are overpayments.
5. If the assistance case is closed for some other reason during the six month exemption period and the property has not been sold, all payments are overpayments.

NOTE: The exemption period runs for six calendar months. If the assistance case closes and the client reapplies during this period, the exemption will continue for the remainder of the initial six month period.

13 DE Reg. 663 (11/01/09) (Final)