

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Sections 503(c),(d) and 512 (31 **Del.C.** §§503(c),(d) & 512)
16 **DE Admin. Code** 4006

FINAL

ORDER

TANF and GA Eligibility - Excluded Income

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Temporary Assistance for Needy Families (TANF) and General Assistance (GA), specifically, to revise eligibility policy related to excluded income. 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 August 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 3, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after October 11, 2019, Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual sections 4006, 4006.1 and 4006.2 regarding TANF and GA, specifically, to revise eligibility policy related to excluded income.

Statutory Authority

- Social Security Act, Title IV, Part A
- CFR, Title 45, Subtitle B, Chapter II
- 31 **Del.C.** §503(c),(d)
- 31 **Del.C.** §512

Background

Temporary Assistance for Needy Families (TANF) is a program that provides cash assistance and supportive services to assist families with children under age 18, helping them achieve economic self-sufficiency.

General Assistance (GA) is a state-funded program designed to provide cash assistance to low-income people who do not qualify for federally funded programs, such as TANF or Social Security benefits.

There are income and resource limits that apply to both TANF and GA. Some income may be excluded when determining financial eligibility and benefit amounts for TANF and GA.

Purpose

To improve the formatting and to list all types of excluded income in one policy.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on September 3, 2019.

Fiscal Impact Statement

The policy is currently in place and there are no new financial responsibilities.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: Two commenters suggested that DSS consider adding a policy of excluding small gifts from counting as income for TANF and GA recipients.

Agency Response: DSS appreciates the council's perspective on the small gifts counting as income for TANF and GA

recipients, but that income would be captured in the non-reoccurring lump sum payment and it would not count towards TANF and GA eligibility because of the amount.

Comment: Two commenters suggested the DSS policy on income exclusions should cross-reference DSSM 4005.1, which explains that the first \$50 of child support received in a month is disregarded in determining financial eligibility for TANF.

Agency Response: DSS has cross referenced DSSM 4005.1 as a related policy.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Governor's Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the August 2019 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Temporary Assistance for Needy Families (TANF) and General Assistance (GA), specifically, to revise eligibility policy related to excluded income, is adopted and shall be final effective October 11, 2019.

9/12/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, Secretary,
DHSS

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

4006 ~~Excluded~~ Excluding Income in TANF and GA Eligibility Determinations

45 CFR 233.20(a)

~~The following kinds of income are disregarded in DSS disregards the types of income listed in this policy when determining financial eligibility and grant amounts in for TANF and GA: GA.~~

- ~~• The value of USDA donated foods.~~
- ~~• The value of food benefits.~~
- ~~• Foster care payments made on behalf of foster children residing in the home.~~
- ~~• Payments made directly to a third party on behalf of a recipient.~~

~~EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company. This payment is not considered as income to the assistance unit.~~

- ~~• A one-time bonus payment of \$50.00 will be paid from Temporary Assistance for Needy Family funds to teens who graduate from high school by age 19. This bonus will be paid directly to the high school graduate. Disregard as income and resource the bonus payment, for TANF and Food Benefit purposes.~~
- ~~• A cash payment made to the TANF unit responsible for household bills by a non-unit member for his or her share of the common household expenses.~~
- ~~• Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:~~
 - ~~1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.~~
 - ~~2. If the loan is obtained from an individual or establishment not normally engaged in the business of making loans, obtain one of the following:~~
 - ~~a. Borrower's acknowledgement of obligation to repay; or~~
 - ~~b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or~~
 - ~~c. A written statement detailing borrower's plans to repay the loan when future anticipated income is~~

received.

- Money received in the form of a non-recurring lump sum payment is to be counted as a resource in the month received unless specifically excluded from consideration as a resource by other Federal law or regulations.
- Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Incentive payments or reimbursement for training-related expenses derived from participation in Institutional and Work Experience Training or special work projects.
- Benefits received under the nutrition program for the elderly or the Women, Infants, and Children Nutritional Program.
- All payments received under the VISTA program unless the value of the payment when adjusted to reflect the number of hours worked are equal to or greater than the minimum wage currently in effect under the Fair Labor Standards Act of 1938. In that case the income is treated as earned income and disregards applicable to the category of assistance are deducted from it.
- Payments distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, P.L. 93-134, or P.L. 94-540.
- 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.

- 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.
- 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.
- 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.).
- Payments of supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 of P.L. 93-113.
- Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203.
- Payments of Experimental Housing Allowance Program made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended.
- Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of P.L. 94-114.
- Housing subsidies provided under Section 8 of the U.S. Housing Act.
- Benefits paid to eligible households under the Home Energy Assistance Act of 1980.
- Home energy assistance based on need, such as, but not limited to home energy assistance from the following agencies:
 - Kingswood Community Center
 - Peoples' Settlement Association
 - Catholic Social Services, Inc.
 - Neighborhood House, Inc.
 - Community Housing, Inc.
 - Jewish Family Service of Delaware
 - Salvation Army
 - Community Action (Sussex County)
- Assistance from other agencies and organizations provided that no duplication exists between such other agency and that provided by DSS. To assure that non-duplication exists, determine that the aid granted by another agency is for a different purpose. For example, vocational rehabilitation provides cash allowances (usually \$25 per week) to reimburse clients for costs such as transportation related to their participation in a training program.
- For the TANF program: All federal tax refunds.
- Earned income tax credits (EITC).
- Income received from the Census Bureau April 01, 2000 through December 31, 2000.

1. The value of U.S. Department of Agriculture (USDA) donated foods.
2. The value of Supplement Nutrition Assistance Program (SNAP) food benefits.
3. Foster care payments made to the foster family for foster children residing in the home.
4. Supplemental Security Income (SSI) recipient's income and resources, including the SSI payment.
5. Third-party payments made on behalf of a client.
6. TANF program high school graduation bonus payments.
7. Contributions for shared living expenses by a non-unit member.
8. Any loans that must be repaid.
9. Earnings of a minor student who is in the assistance unit, including 18-year-old students for whom an adult is receiving a grant.
10. Non-recurring lump sum payments.
 - A. A non-recurring lump sum payment is a resource in the month received unless specifically excluded as a resource by other federal laws or regulations.
11. Incentive payments or reimbursements for training-related expenses from participation in institutional and work experience training or special work projects.
12. Benefits from nutrition programs for the elderly or the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).
13. AmeriCorps VISTA program payments.
 - A. The AmeriCorps VISTA program payment is not excluded if the payment value is equal to or greater than the Fair Labor Standards Act's current minimum wage for the hours worked. In that case, the income is treated as earned income. Disregards applicable to the category of assistance are deducted from the payment.
14. Temporary part-time U.S. Census Bureau employment income received during the census period.
15. Disaster and emergency assistance provided by federal, state, and local governments and disaster assistance organizations under P.L. 100-707.
16. Earned income tax credits (EITC).
17. All federal tax refunds (TANF only).
18. Assistance from other agencies and organizations provided that no duplication in assistance exists between the other agency and DSS.
 - A. To assure that non-duplication exists, case workers will determine that the assistance from the other agency is for a different purpose. For example, vocational rehabilitation provides cash allowances to reimburse clients for costs such as transportation related to their participation in a training program.
19. Supportive services payments or reimbursements for out-of-pocket expenses made to foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of

retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 under P.L. 93-113.

- 20. Need-based home energy assistance.**
- 21. Experimental Housing Allowance Program payments made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act as amended.**
- 22. Benefits paid to eligible households under the Low-Income Home Energy Assistance Act.**
- 23. Housing subsidies under Section 8 of the U.S. Housing Act.**
- 24. Receipts distributed to members of certain Indian tribes, which are referred to in Section 5 under P.L. 94-114.**
- 25. Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act under P.L. 92-203.**
- 26. 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. 1984).**
- 27. Payments distributed per capita to or held in trust for members of any Indian tribe under P.L. 92-254, P.L. 93-134, or P.L. 94-540.**
- 28. Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I. under P.L. 100-383.**
- 29. Restitution made to 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 under P.L. 100-383.**
- 30. Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.**
- 31. Financial assistance received from school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, educational loans, other loans that are expected to be repaid, and other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses (TANF only).**
- 32. Grants, loans, and earnings from federally financed college work study to undergraduate students for educational purposes that are made or insured by programs administered by the U.S. Commissions of Education (GA only).**
 - A. For other grants, loans, or unearned income that are contingent upon attending a school, college, university, or course of vocational training, the amount that is available for current living expenses is counted as income for GA. To determine the amount that is available for current living expenses:**
 - : Subtract the expenses for tuition, books, fees, equipment, special clothing needs, transportation to and from school, and child care necessary to attend school from the amount of the loan, grant, or other benefit;**
 - : Divide the balance by the number of months the amount available for living expenses is intended to cover to determine the countable monthly income.**
 - B. When a student's financial aid package includes both loans and grants that are completely disregarded and those that are countable after expenses are deducted, determine countable income for GA as follows:**
 - : Compare the expenses to the disregarded loans or grants;**
 - : If the expenses are less than or equal to the disregarded funds, all other grants and loans are budgeted as unearned income.**

[Related policies:
DSSM section 4005.1]

14 DE Reg. 1366 (06/01/11)

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

4006.1 Excluded Income – Grants and Loans to Students

~~Grants, Loans and Scholarships~~

~~Do not count Financial Assistance received from school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, educational loans, and other loans that are expected to be repaid as income for Temporary Assistance for Needy Families program purposes. Also exclude from TANF other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses. Continue to require documentation to verify the assistance received and its purpose.~~

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

4006.2 Excluded income – grants and loans to students – General Assistance

~~Grants and loans to undergraduate students for educational purposes that are made or insured by programs administered by the United States Commissions of Education are disregarded. These include Basic Educational Opportunity Grants (BEOG), Supplemental Education Opportunity Educational Grants (SEOG), National Direct Student Loans (NDSL), Guaranteed Student Loans (GSL), all funds provided under the National Defense Education Act, and earnings from federally financed college work study.~~

~~For other grants, loans, or unearned income that is contingent upon attending a school, college, university, or course of vocational training, that part that is available for current living expenses is counted as income. To determine the amount that is available, subtract expenses for tuition, books, fees, equipment, special clothing needs, transportation to and from school, and child care necessary to attend school from the amount of the loan, grant, or other benefit. Divide the balance by the number of months the income is intended to cover to determine budgetable monthly income.~~

~~NOTE: When a student's financial aid package includes both loans and grants that are completely disregarded and those that are countable after expenses are deducted, determine countable income as follows:~~

- ~~1. Compare expenses to disregarded loans or grants.~~
- ~~2. If expenses are less than or equal to disregarded funds, all other grants and loans are budgeted as unearned income.~~

23 DE Reg. 308 (10/01/19) (Final)