



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES  
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**MEMORANDUM**

DATE: May 31, 2011

TO: Ms. Sharon L. Summers, DSS  
Policy, Program & Development Unit

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 14 DE Reg. 1203 [DSS Proposed Child Care Subsidy Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend and consolidate its Child Care Subsidy program standards in the context of cooperation with the Division of Child Support Enforcement (DCSE) in pursuing child support. The proposed regulation was published as 14 DE Reg. 1203 in the May 1, 2011 issue of the Register of Regulations.

SCPDs main concern with the proposal is the anemic approach to exempting caretakers from cooperating with the DCSE to secure child support. The Council previously addressed this issue in the context of Food Supplement Program child support cooperation standards. See attached January 30 and April 11, 2008 memos to DSS and final regulation published at 11 DE Reg. 1243 (March 1, 2008).

The current regulation contains the following standards which are being deleted:

11003.4.1 ...Exceptions can be made when the caretaker demonstrates that pursuit of child support would create a danger to the caretaker or the child(ren).

§11003.4.4. It is the responsibility of the Division of Child Support Enforcement (DCSE) to determine if there is an acceptable reason for refusing to cooperate. ...

It would be preferable to include an embellished "good cause" for failure to cooperate section akin to that adopted in the above 2008 Food Supplement Program regulation [subsequently repealed by 13 DE Reg. 1336 (April 1, 2010)]. See attachment. The proposed regulation does not even mention the possibility of good cause for refusing to cooperate. It limits consideration

(albeit by DCSE) of whether there is “good faith effort” to cooperate.

Moreover, DSS should advise beneficiaries of the right to invoke the “good cause” exemption. The 2008 regulation contained the following salutary recital:

DSS will tell applicants and recipients, at application and recertification, of the right to good cause as an exception to the cooperation requirement. DSS will also tell applicants and recipients about the reasons they have to claim good cause.

Finally, consistent with the Council’s 2008 recommendations, it would be preferable for DSS to retain the ultimate authority to determine if “good cause” for failure to cooperate exists.

Compare the revised 2008 standard:

When DSCE does not determine there is good cause for refusing to cooperate, DSS will review the case to ensure that good cause does not exist before sanctioning the individual.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: Ms. Elaine Archangelo  
Ms. Deborah Gottschalk  
Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

14reg1203 dss-child care sub 5-31-11

## MEMORANDUM

DATE: January 30, 2008

TO: Ms. Sharon L. Summers, DSS  
Policy, Program and Development Unit

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 11 DE Reg. 872 [DSS Food Stamp Child Support Cooperation Regulations]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its Food Stamp Program regulations regarding the child support provisions. The regulations were published as 11 DE Reg. 872 in the January 1, 2008 issue of the Register of Regulations. As background, The U.S. Department of Agriculture (USDA) offers states the option of requiring parents/caretakers to cooperate with the state's child support agency as a condition of receiving Food Stamps. The Division of Social Services (DSS) already requires such cooperation as a condition of participation in the TANF and child care programs. It now proposes to adopt the USDA option of requiring such cooperation as a condition of participation in the Food Stamp program. SCPD has the following observations.

First, there are pros and cons to requiring parents to cooperate with the Division of Child Support Enforcement (DCSE) to pursue child support. The attached article describes some negative concerns linked to New York City's requirement of child support cooperation as a prerequisite to participation in its child care subsidy program. The article notes that low income beneficiaries risk losing their jobs if they must take time off to participate in court proceedings. Moreover, immigrants often fear any involvement in the court system and that anxiety may prompt them to forego Food Stamps. On the positive side, DSS posits that the requirement "will help facilitate the client towards self-sufficiency" and "may uncover unreported income". At p. 873. Reasonable persons may differ on whether the pros outweigh the cons of this initiative.

Second, consistent with federal regulations, DSS authorizes exceptions to cooperation based on good cause. However, the DSS standards are sometimes narrower than the corresponding federal regulations. The DSS definition of "domestic violence" at the bottom of p. 875 is as follows:

Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.

Consistent with the attached 7 C.F.R. 273.11(o)(2)(i)(B), the federal definition of "domestic violence" is broader:

For purposes of this provision, the term "domestic violence" means the individual or child would be subject to physical acts that result in, or are threatened to result in, physical injury to the individual, sexual abuse, sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of, or attempt at physical or sexual abuse; mental abuse; or neglect or deprivation of medical care.

[emphasis supplied]

Contrary to the federal regulation, the DSS standard would disallow consideration of the following forms of domestic violence: 1) mental abuse; 2) neglect; and 3) deprivation of medical care. The DSS standard solely focuses on physical injury and sexual abuse and merits amendment.

Third, the federal regulation requires Delaware to waive the normal DCSE fees and costs of services if DSS implements this option. See attached 7 C.F.R. 273.11(o)(4). Consistent with the attached excerpt from the DCSE application, there is a \$25 annual processing fee which would ostensibly be precluded by the federal regulation. The DSS regulation should ensure conformity with 7 C.F.R. 273.11(o)(4) by including a recital that the DCSE shall not require payment of a fee or other cost for services from Food Stamp beneficiaries.

Fourth, the DSS regulation makes DCSE the final decision-maker of "good cause for refusing to cooperate" [§9094, Good Cause Determination]. In contrast, the federal regulations envision DSS as the final decision-maker with DCSE merely providing input:

(iii) Review by the State Child Support or TANF Agency. Prior to making a final determination of good cause for refusing to cooperate, the State agency will afford the State Child Support Agency or the agency which administers the program funded under Part A of the Social Security Act the opportunity to review and comment on the findings and the basis for the proposed determination and consider any recommendations from the State Child Support or TANF agency.

7 C.F.R. 273.11(o)(2)(iii). See also 7 C.F.R. 273.11(o)(2) ["Paragraph (o)(1) of this section shall not apply to the individual if good cause is found for refusing to cooperate, as determined by the State agency:..."]

Fifth, the DSS regulation ostensibly limits aggrieved Food Stamp beneficiaries to a DCSE hearing. See §9094, Administrative Hearing. Since DSS is the final decision-maker, the aggrieved Food Stamp beneficiary should be entitled to a DSS fair hearing authorized by 16 DE Admin Code 5000 and 9090.5.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: Ms. Elaine Archangelo  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

P&I/11reg872 dss-food stamp 1-08

## MEMORANDUM

DATE: April 11, 2008

TO: Ms. Sharon L. Summers, DSS  
Policy and Program Development Unit

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 11 DE Reg. 1243 [Final Food Stamp Child Support Cooperation Regulations]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) final Food Stamp Program regulations regarding child support provisions published as 11 DE Reg. 1243 in the March 1, 2008 issue of the Register of Regulations. SCPD commented on the proposed version of these regulations in January 2008 and appreciates that the Division adopted final regulations incorporating some amendments prompted by the Council's commentary.

First, SCPD shared some "pros and cons" to requiring parental cooperation with the DCSE as a condition of receipt of Food Stamps. In its response, DSS acknowledges the pros and cons but suggests that the requirement of cooperation should result in child support orders favoring custodial parents.

Second, SCPD observed that the "good cause" exemption for cooperation based on domestic violence was too narrow. The Division agreed and expanded the definition of "domestic violence" to conform to both federal regulations and other DSS standards.

Third, the SCPD noted that the regulations omitted a federal restriction on DCSE collection of fees and costs. In its response, DSS recites that DCSE has agreed to waive the normal \$25 application fee and \$25 collection fee when collections reach \$500.

Fourth, SCPD observed that the federal regulations contemplate DSS serving as the final decision-maker of good cause for failure to cooperate. In contrast, the State regulations indicated that the DCSE was the decision-maker. In response, DSS adopted an amendment to clarify that it would review any DCSE decision prior to DSS sanctioning a beneficiary.

Fifth, SCPD observed that the regulations ostensibly limited an aggrieved beneficiary to a DCSE hearing to the exclusion of a DSS fair hearing. DSS responded that it would provide notice to beneficiaries prior to imposition of any sanction for non-cooperation offering an opportunity for a DSS hearing. The "weakness" in this approach is that the actual regulation implies that the sole hearing is through the DCSE.

In summary, SCPD thanks the Division for considering its comments, but suggests that DSS reconsider its decision to not amend the actual text of the regulations to clarify that the DCSE hearing is not exclusive. As adopted, there is a single heading for "Administrative Hearings" (p. 1253) which a reasonable person would interpret as limiting aggrieved persons to a DCSE hearing.

cc: Ms. Elaine Archangelo  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

11reg1243 dss-food stamp 4-11-08

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# FINAL REGULATIONS

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1243

## DIVISION OF SOCIAL SERVICES

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

### ORDER

#### Food Stamp Program Child Support Cooperation and Sanctions

##### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding child support provisions. 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 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

##### Summary of Proposal

###### Statutory Authority

- 7 CFR 273.11(o), *Custodial Parent's Cooperation with the State Child Support Agency*
- 7 CFR 273.11(c), *Treatment of Income and Resources of Certain Non-Household Members*

###### Summary of Proposed Changes

**DSSM 9076.1 (Revision), *SSN Disqualification, Child Support Sanctions and Ineligible ABAWDs***: Currently TANF and Child Care require DSS applicants and recipients to cooperate with DCSE to get benefits. DSS is proposing to require the same cooperation for food stamp clients. The only difference is that only the custodial parent or responsible individual will be sanctioned for non-compliance, not the other household members. The sanctioned individual will have his/her income and deductions prorated like other prorated, sanctioned deemers.

**DSSM 9094 (New), *Cooperation with the Division of Child Support Enforcement (DCSE)***: DSS is proposing to take the option to require custodial parents and other individuals responsible for the care of minor dependents to cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility for the Food Stamp Program.

Requiring the cooperation with child support will help facilitate the client towards self-sufficiency by identifying and locating absent parents, establishing paternity, and establishing support payments for the dependent children. Also, requiring cooperation may uncover unreported income. Child support payments may reduce the household's benefit; however, the household will have more money to spend on household expenses and food.

##### Summary of Comments Received with Agency Response and Explanation of Changes

The following organizations offered public comments summarized below: Delaware Community Legal Aid Society (DECLASI); the Delaware's Victims' Rights Task Force (DVRTF); the Governor's Advisory Council for Exceptional Citizens (GACEC); the State Council for Persons with Disabilities (SCPD); and, the Delaware Coalition Against Domestic Violence (DCADV). The Division of Social Services (DSS) has carefully considered all comments and responds as follows.

###### DECLASI

I reject this proposal to link the FS benefits eligibility to DCSE cooperation. This rule will eliminate a lot of needy individuals from this program and create unnecessary barriers in addressing Hunger in America. What happens when the custodial parent cannot identify who is the father of her children even after all the required test

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to identify a father has been done. Presently, I am familiar with a case of a grandmother who has legal custody of 3 grandchildren and has been denied TANF because her daughter cannot identify who is the father of her children. Because the daughter cannot tell her who is the father of these children, the grandmother cannot tell DCSE who is the father of these children either. Yet, she has been denied TANF because according to DCSE the grandmother has failed to cooperate. The grandmother has been put in a position to support these children with her meager salary. Her only salvation, if you can call it that, is that she is getting FS. However, if the law changes you can imagine the predicament the custodial parent would face when having difficulties in identifying the absent parent. This is just an example of how unjust is to make this program so strict that needy children and families may go hungry when in fact this program was created to alleviate hunger in this country. Even with the Good Cause clause and the right of client to grieve this issue, the sad situations will be to see families and needy children denied FS until the issue is clarified.

In an effort to tightened these regulations to avoid non citizens from getting government benefits, as it was done under the Welfare Reform and subsequent regulations. Now, the Food Stamp Program has been targeted and more and more barriers to this program are put into place, the negative results would be in depriving our own needy US citizens' population from accessing the Food Stamp program with so many obstacles that basically prevents them from putting food on their tables.

**CLASI Comment:** I reject this proposal to link the FS benefits eligibility to DCSE cooperation. This rule will eliminate a lot of needy individuals from this program and create unnecessary barriers in addressing Hunger in America.

**Agency Response:** The proposed Food Stamp (FS) rule would only remove the caretaker who chooses not to cooperate with the Division of Child Support Enforcement (DCSE) from the FS allotment. Children are never removed from the allotment for reasons of non-cooperation with DCSE. The intent of the rule is to help caretakers of children with absent parents to obtain more income for the support of the children in their care and to establish the paternity of children that will benefit the children for the rest of their lives. (For example, if a child's paternity was never established and that absent parent dies, that child may not be able to get survivor benefits.)

**CLASI Comment:** What happens when the custodial parent cannot identify who is the father of her children even after all the required test to identify a father has been done?

**Agency Response:** The proposed policy has the following good faith effort provision that will cover those situations where the custodial parent or caretaker does not know who the father is.

Good Faith Effort

If the applicant or recipient cannot provide the minimum information required about the absent parent, DCSE may still determine the person as cooperating if the person completes a Good Faith Affidavit. The Affidavit lists the steps the caretaker took to get the information and what barriers the person faced.

**CLASI Comment:** Presently, I am familiar with a case of a grandmother who have legal custody of 3 grandchildren and has been denied TANF because her daughter cannot identify who is the father of her children. Because the daughter cannot tell her who is the father of these children, the grandmother cannot tell DCSE who is the father of these children either. Yet, she has been denied TANF because according to DCSE the grandmother has failed to cooperate. The grandmother have been put in a position to support these children with her meager salary. Her only salvation, if you can call it that, is that she is getting FS. However, if the law changes you can imagine the predicament the custodial parent would face when having difficulties in identifying the absent parent. This is just an example of how unjust is to make this program so strict that needy children and families may go hungry when in fact this program was created to alleviate hunger in this country.

**Agency Response:** Scenarios such as this one are the types that the good faith effort policy will cover. As stated above, the needy children will not go hungry because DSS will only deem the caretaker uncooperative with DCSE. DSS will only remove the adult from the FS case; the children will continue to get food stamps.

**CLASI Comment:** Even with the Good Cause clause and the right of client to grieve this issue, the sad situations will be to see families and needy children denied FS until the issue is clarified.

**Agency Response:** As stated above, DSS will not deny Food Stamp benefits to any child due to non-cooperation with DCSE.

**CLASI Comment:** In an effort to tightened these regulations to avoid non-citizens from getting government

benefits, as it was done under the Welfare Reform and subsequent regulations. Now, the Food Stamp Program has been targeted and more and more barriers to this program are put into place, the negative results would be in depriving our own needy US citizens' population from accessing the Food Stamp program with so many obstacles that basically prevents them from putting food on their tables.

**Agency Response:** Requiring clients to cooperate with DCSE is not a barrier to the Food Stamp Program. DSS will process Food Stamps the same way we currently process benefits with an assumption that the caretaker will cooperate with DCSE. There is no loss of benefit to the children and no loss of benefit to the caretaker until DCSE determines the caretaker is non-cooperative. An individual's refusal to cooperate without good cause is the real barrier. Mandating cooperation with DCSE is a vehicle used to help the children get the support from their absent parent(s) that they are entitled to and to help families become more self-sufficient. It also helps to ensure that households received the correct amount of Food Stamp benefits.

#### **DVRTF**

Consistent with federal regulations, DSS authorizes exceptions to cooperation based on good cause. However, the DSS standards are sometimes narrower than the corresponding federal regulations. The DSS definition of "domestic violence" at the bottom of p. 875 is as follows:

Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.

Consistent with the attached 7 C.F.R. 273.11(o)(2)(i)(B), the federal definition of "domestic violence" is broader:

For purposes of this provision, the term "domestic violence" means the individual or child would be subject to physical acts that result in, or are threatened to result in, physical injury to the individual, sexual abuse, sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of, or attempt at physical or sexual abuse; mental abuse; neglect or deprivation of medical care.

Contrary to the federal regulation, the DSS standard would disallow consideration of the following forms of domestic violence: 1) mental abuse; 2) neglect; and 3) deprivation of medical care. The DSS standard solely focuses on physical injury and sexual abuse and merits amendment.

The DVRTF would appreciate the Division's consideration of expansion of the DSS definition of domestic violence to comply with the broader federal standards.

**Agency Response:** DSS will expand the definition of domestic violence to include the language cited under 7 CFR 273.11(o)(2)(i)(B) and the domestic violence policy for the TANF program outlined in 3010.2.2 through 3010.2.4, as indicated by [Bracketed Bold Language] in the final order regulation.

#### **GACEC and SCPD**

As background, the U.S. Department of Agriculture (USDA) offers states the option of requiring parents/caretakers to cooperate with the state's child support agency as a condition of receiving Food Stamps. The Division of Social Services (DSS) already requires such cooperation as a condition of participation in the TANF and child care programs. It now proposes to adopt the USDA option of requiring such cooperation as a condition of participation in the Food Stamp program. We have the following observations.

First, there are pros and cons to requiring parents to cooperate with the Division of Child Support Enforcement (DCSE) to pursue child support. The attached article describes some negative concerns linked to New York City's requirement of child support cooperation as a prerequisite to participation in its child care subsidy program. The article notes that low income beneficiaries risk losing their jobs if they must take time off to participate in court proceedings. Moreover, immigrants often fear any involvement in the court system and that anxiety may prompt them to forego Food Stamps. On the positive side, DSS posits that the requirement "will help facilitate the client towards self-sufficiency" and "may uncover unreported income". At p. 873. Reasonable persons may differ on whether the pros outweigh the cons of this initiative. We anticipate there could be some financial impact and assume a fiscal analysis has been done. In addition, we expect this to impact the workload of the employees that will implement this process.

**Agency Response:** DSS agrees there are pros and cons to requiring the cooperation of child support for

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any program. Caretakers already must cooperate with Child Support in order to participate in the TANF and child care subsidy program. Medicaid requires the cooperation with Child Support to get medical support. The Division of Child Support Enforcement (DCSE) reports that caretakers are cooperating with DCSE so they can receive child care subsidies. DCSE reports they have received court orders varying from the minimum of \$86 a month to \$400 a month.

Second, consistent with federal regulations, DSS authorizes exceptions to cooperation based on good cause. However, the DSS standards are sometimes narrower than the corresponding federal regulations. The DSS definition of "domestic violence" at the bottom of p. 875 is as follows:

Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.

Consistent with the attached 7 C.F.R. 273.11(o)(2)(i)(B), the federal definition of "domestic violence" is broader:

For purposes of this provision, the term "domestic violence" means the individual or child would be subject to physical acts that result in, or are threatened to result in, physical injury to the individual, sexual abuse, sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of, or attempt at physical or sexual abuse; *mental abuse*; or *neglect or deprivation of medical care*.

[emphasis supplied]

Contrary to the federal regulation, the DSS standard would disallow consideration of the following forms of domestic violence: 1) mental abuse; 2) neglect; and 3) deprivation of medical care. The DSS standard solely focuses on physical injury and sexual abuse. This could benefit from amendment.

**Agency Response:** As previously noted, DSS will expand the definition of domestic violence to include the language cited under 7 CFR 273.11(o)(2)(i)(B) and the domestic violence policy for the TANF program outlined in 3010.2.2 through 3010.2.4, as indicated by [Bracketed Bold Language] in the final order regulation.

Third, the federal regulation requires Delaware to waive the normal DCSE fees and costs of services if DSS implements this option. See attached 7 C.F.R. 273.11(o)(4). Consistent with the attached excerpt from the DCSE application, there is a \$25 annual processing fee which would apparently be precluded by the federal regulation. The DSS regulation should ensure conformity with 7 C.F.R. 273.11(o)(4) by including a recital that the DCSE shall not require payment of a fee or other cost for services from Food Stamp beneficiaries.

**Agency Response:** DSS and DCSE have agreed that DCSE will waive both the \$25 application fee and the \$25 collection fee when collections reach \$500 for all food stamp clients.

Fourth, the DSS regulation makes DCSE the final decision-maker of "good cause for refusing to cooperate" [§9094, Good Cause Determination]. In contrast, the federal regulations envision DSS as the final decision-maker with DCSE merely providing input:

(iii) Review by the State Child Support or TANF Agency. Prior to making a final determination of good cause for refusing to cooperate, the State agency will afford the State Child Support Agency or the agency which administers the program funded under Part A of the Social Security Act the opportunity to review and comment on the findings and the basis for the proposed determination and consider any recommendations from the State Child Support or TANF agency.

7 C.F.R. 273.11(o)(2)(iii). See also 7 C.F.R. 273.11(o)(2) ["Paragraph (o)(1) of this section shall not apply to the individual if good cause is found for refusing to cooperate, as determined by the State agency..."]

**Agency Response:** DSS and DCSE staff always work together to make sure a sanction is appropriate before removing an individual. DSS is adding language regarding this effort as indicated by [Bracketed Bold Language] in the final order regulation.

Fifth, the DSS regulation ostensibly limits aggrieved Food Stamp beneficiaries to a DCSE hearing. See

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§9094, Administrative Hearing. Since DSS is the final decision-maker, the aggrieved Food Stamp beneficiary should be entitled to a DSS fair hearing authorized by 16 DE Admin Code 5000 and 9090.5.

**Agency Response:** DSS automatically sends the regular DSS Fair Hearing request form with each notice when DSS takes action to sanction individuals for non-cooperation. DCSE offers individuals an opportunity to have an administrative hearing to dispute the findings made by the DCSE and will attempt resolve the dispute before the hearing. Clients can still request a fair hearing with DSS.

### DCADV

This writing constitutes the Delaware Coalition Against Domestic Violence's (DCADV) comments regarding the Division of Social Services' (DSS) proposed DSSM 9076.2 and DSSM 9094. DCADV is a non-profit agency with a primary purpose to conduct systemic advocacy on behalf of domestic violence victims/survivors and their children. DCADV has, in this capacity, enjoyed a fruitful working relationship with DSS regarding TANF, economic justice and empowerment for victims and survivors of domestic violence. The results of our collaborative work have included successful training and policy initiatives. Unfortunately, neither DCADV nor the DSS TANF staff with whom DCADV has worked extensively, has been involved in the crafting of proposed DSSM 9076.2 or 9094. Accordingly, DCADV submits these comments in response to the Department of Health and Social Services' general solicitation.

DCADV has two major concerns regarding the proposed DSSM 9076.2 and DSSM 9094. DCADV's initial concern is that enactment of the proposed policies will substantially narrow the definition of "domestic violence" as that term is authorized by the Code of Federal Regulations and captured in current DSS policy. DCADV's second concern is that the process outlined in proposed DSSM 9094 allows DCSE to unwittingly place a recipient in harm's way. These two concerns are discussed in more detail, below.

#### Proposed DSSM 9076.2 and 9094 Provide a Substantially Narrowed Definition of Domestic Violence

Proposed DSSM 9094 would require that natural, adoptive and other custodial parents "cooperate" with the Division of Child Support Enforcement (DCSE) by performing a number of acts in order to help DCSE obtain sources of family income. Those acts include: (1) supplying sufficient information to identify and locate children's putative parents; (2) prove paternity of putative parents; (3) assist in obtaining payments or property from putative parents; (4) appear at an office of DSS or DCSE to give verbal or written information or written documents; (5) appear as a witness in court or other hearings or proceedings; and (6) provide information (or confirm the lack thereof) under penalty of perjury. It is believed that the Department of Health and Social Services, as evidenced by the good faith exception to the cooperation requirements included in proposed DSSM 9094, recognizes that engaging in those enumerated acts could be unsafe for domestic violence victims/survivors. Proposed DSSM 9094 in fact allows DCSE and DSS to waive the requirement for persons who are victims of domestic violence. The concern, however, is that proposed DSSM 9094's definition of "domestic violence" is too narrow.

- Proposed DSSM 9094 inappropriately limits domestic violence to physical injury and/or sexual assault. The proposed policy states that:

Domestic violence for purposes of this provision means that the person [e.g. the natural, adoptive or custodial parent] or child would be subject to **physical acts that result in, or are threatened to result in, physical injury or sexual abuse.** (Please refer to the "Good Cause Determination" provision of Proposed DSSM 9094. Please note that all bolded and italicized type reflects emphasis supplied by DCADV.)

- Proposed DSSM 9094's definition of domestic violence is narrower than the definition of domestic violence set forth in the Code of Federal Regulations. In its DSSM 9094 summary statement DSS cites 7 CFR 273.11 (o) as the federal statutory authority upon which proposed DSSM 9094 is based. 7 CFR 273.11 (o), in addition to physical or sexual abuse, specifically includes "**mental abuse; or neglect or deprivation of medical care**" in its definition of domestic abuse. (See specifically 7 CFR 273.11 (o) (B)).
- Proposed DSSM 9094's definition of domestic violence is narrower than DSS' current domestic violence policy. (Please see the attached DSS domestic violence policy at paragraphs 3010 through 3010.2.5).
- DSS policy at 3010.2.3 states that:

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Domestic violence occurs when one spouse, domestic partner or significant other tries to maintain power and control over the other person. The perpetrator of the violence may use physical, verbal or sexual violence to maintain power and control over the victim.

- DSS policy at 3010.2.3 enumerates the following, again with emphasis supplied to the original text, as specific acts which "shall be considered to be domestic violence":
  - mental or emotional abuse;
  - neglect or deprivation of medical care; or
  - stalking.
- DSS policy at 3010.2.3 further provides the following list (specifically described by DSS as "not . . . all encompassing") as "examples . . . of how domestic violence may look":
  - A husband who cuts up his wife's clothing so she has nothing to wear to work;
  - A partner who constantly tells his partner that she is worthless or calls her names in private or in public; or
  - A partner who has to know her partner's every movement and gets furious for not knowing those movements;
  - A partner who doesn't allow his partner to go out without him; or
  - A partner who constantly calls or shows up at this partner's job to interfere with her work.
- Proposed DSSM 9094 limits its scope to assisting only those persons who are attempting to escape domestic violence, while DSS's current domestic violence policy properly provides that the good faith waiver exists in order to avoid having recipients comply with requirements that "make it more difficult for the family to escape and/or remain safe from the violence". (Please refer to DSSM 3010.2.5).
- It is DCADV's understanding that DSS and DCSE are two divisions of DHSS. It is also DCADV's understanding that DSS operates both the TANF and the Food Stamp Program. 7 CFR 273.11 (o) provides that a State agency's ability to disqualify a person for failure to cooperate with child support enforcement is limited by the provisions of 7 CFR 273.11 (o) (2). 7 CFR 273.11 (o) (2) (i) (C) specifically provides that a person shall not be disqualified if the person "meets any good cause criteria identified by the State agency". 7 CFR 273.11 (o) (2) (i) (C) continues by asserting that "These [good faith] criteria will be defined in consultation with the Child Support Agency or TANF program, whichever is appropriate, and identified in the State plan according to Sec. 272.2 (d) (xiii)." DCADV submits that DSS (not DCSE) is the DHSS agency identified in the noted state plan. DCADV submits that proposed DSSM 9094 should be rewritten in order to conform to DSS' definitions and descriptions of "domestic violence" found in the TANF policy at 3010 through 3010.2.5.

DCADV objects to proposed DSSM 9079076.2 and 9094 because, as discussed above, those provisions conflict with the reality and dynamics of domestic violence as they are aptly captured at DSSM 3010 through 3010.2.5. DCADV submits that confusion, high federal reporting errors, inappropriate denial of benefits to domestic violence victims/survivors and their children, staff frustration, and safety risks to domestic violence victims/survivors and their children could ensue as a result of the failure of the proposed provisions to duplicate the outlined definition and examples of domestic violence found at DSSM 3010 through 3010.2.5.

Proposed DSSM 9094 Would Permit DCSE Staff to Affirmatively Contact Abusers And Thereby Potentially Place Domestic Violence Victims/Survivors and Their Children In Harm's Way.

The Investigations of Good Cause Claim provision of proposed DSSM 9094 is very dangerous. That provision seemingly authorizes DCSE to contact abusers in order to satisfy itself that abuse has taken place. The Federal Code of Regulations does not authorize a state child support agency to contact domestic violence abusers in order to satisfy itself that the claim of abuse is legitimate. To do so would undermine the very protections that the "good cause" provisions seek to provide. The investigation authorized by the CFR is properly limited to a "review of" the evidence provided by the recipient (i.e. court orders, police reports, social service agency reports, etc.). The CFR does not authorize child support agencies to conduct independent investigations of abuse.

For all of the reasons noted above (and for other reasons like the use of confusing and otherwise unclear language choices), DCADV urges DSS to decline to adopt proposed DSSM 9076.2 and 9094. Additionally, DCADV

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notes that it is willing to work with DSS to craft language which would more adequately address safety concerns of domestic violence victims/survivors and their children.

**Agency Response:** As previously noted, DSS will expand the definition of domestic violence to include the language cited under 7 CFR 273.11(o)(2)(i)(B) and the domestic violence policy for the TANF program outlined in 3010.2.2 through 3010.2.4, as indicated by [Bracketed Bold Language] in the final order regulation.

## Findings of Fact:

The Department finds that the proposed changes as set forth in the January 2008 *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 the Division of Child Support Enforcement provisions of the Food Stamp Program is adopted and shall be final effective March 10, 2008.

Vincent P. Meconi, Secretary, DHSS, February 13, 2008

## DSS PROPOSED REGULATION #08-09 REVISION:

### 9076.2 SSN Disqualification, Child Support Sanctions and Ineligible ABAWDs

Determine ~~as follows~~ the eligibility and benefit level of remaining household members of a household containing individuals determined ineligible due to:

- ~~Because of~~ disqualification for refusal to obtain or provide an SSN; or
- ~~non-cooperation with the Division of Child Support Enforcement; or~~
- ~~Because of~~ meeting the time limit for able-bodied adults without dependents.

1) Resources - The resources of such ineligible members continue to count in ~~their entirety~~ full to the remaining household members.

2) Income - Count a prorata share of the income of such ineligible members as income to the remaining members. ~~This prorata share is calculated by first subtracting the allowable exclusions from the ineligible member's income and dividing the income evenly among the household members, including the ineligible members. All but the ineligible member's share is counted as income for the remaining household members. To get the prorated share, subtract the allowable income exclusions from the ineligible member's income, divide the amount by the household size, and use all the income except for the prorated share of the ineligible household member.~~

3) Deductible expenses - ~~The~~ Allow the earned income deduction ~~applies to~~ for the prorated share of income ~~used by the remaining household members, earned by such ineligible members which is attributed to their households. That portion of~~ Divide the household's allowable child support payment, shelter (except any utility allowances), and dependent care expenses, which are either paid by or billed to the excluded members, ~~will be divided evenly among the household's members including the ineligible members. Allow~~ All but the ineligible member's share ~~is counted~~ as a deductible child support payment, shelter (except any utility allowances), or minor care expense for the remaining household members.

4) Eligibility and benefit level - ~~Such~~ if ineligible members will not be included ~~when~~ in determining their household's size ~~for the purposes of~~ when:

- a) Assigning a benefit level to the household;
- b) Comparing the household's monthly income with the income eligibility standards; or
- c) Comparing the household's resources with the resource eligibility limits.

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*(Break in Continuity of Sections)*

### 9094 Cooperation with the Division of Child Support Enforcement (DCSE)

#### Cooperation as Condition of Eligibility

In order to get food stamp benefits, all applicants must cooperate with the Division of Child Support Enforcement (DCSE) to receive child support for minor children in their care. Custodial parents/caretakers cannot get food stamps if they fail to cooperate with DCSE. A custodial parent is a natural or adoptive parent who lives with his or her child, or a person who is living with and exercises parental control over a child under the age of 18.

Both applicants and recipients must cooperate, unless they can show good cause, in:

1. Identifying and locating absent parents;
2. Proving paternity for minor children born out of wedlock; and
3. Getting support payments and/or other properties for the minor child(ren).

DCSE is the single State agency that:

- : Establishes paternity of and secures support for children born out of wedlock;
- : Gets support from parents who have abandoned or deserted their children; and
- : Enters into cooperative arrangements with appropriate courts and law enforcement officials in order to get support.

Applicants and recipients will be told of this requirement in writing at the time of application and recertification for continued benefits. DSS will refer caretakers to DCSE based on the following:

- : DSS will refer a person to DCSE who is receiving food stamps and the food stamp assistance unit has children under the age of 18 with an absent parent(s).
- : DSS will refer a person to DCSE who is receiving TANF or Child Care and the food stamp assistance unit has children not included in the TANF or Child Care case.
- : DSS will not refer a person who is receiving TANF or Child Care and has cooperated as long as the assistance units contain the same persons.
- : DSS will not refer a person who had good cause for not cooperating or made a good faith effort to cooperate as long as the assistance units contain the same persons.

#### Cooperation Responsibilities

Clients must cooperate with DCSE to get food stamp benefits. All families are required to provide enough information to permit DCSE to get child support on behalf of the family.

DCSE can make exceptions when the caretaker can prove that trying to get child support would create a danger to the caretaker or the children. This is called a good cause claim. The client is responsible to get proof to verify good cause claims.

DCSE can also determine a caretaker has cooperated when he/she makes a good faith effort to provide all the information he/she can about the non-custodial parent.

To cooperate with DCSE, applicants or recipients of food stamps must participate in the following activities, if required:

- : To appear at an office of DSS or DCSE to give verbal or written information or written documents known to or possessed by the applicant or recipient;
- : To appear as a witness in court or other hearings or proceedings; or
- : To provide information or to confirm to the lack of information under penalty of perjury.

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## Penalties for Non-Cooperation

When a caretaker fails to cooperate with DCSE without good cause or fails to make a good faith effort to cooperate, that person will not get food stamp benefits. The sanction applies only to the caretaker, not the entire household.

## Income, Expenses and Resources of Sanctioned Household Member

All resources of the sanctioned caretaker count toward the food stamp benefits. Income and expenses are prorated and count toward the food stamp benefits. See policy under 9076.2.

## Curing the Child Support Sanction

To cure the child support sanction, the caretaker will provide enough information to permit DCSE to pursue child support collections on behalf of the minor children in his/her care. Once it is determined that the caretaker has cooperated, DSS will add him/her to the case.

## Reopening the Sanctioned Person

Once DCSE provides proof that the caretaker cooperated, DSS will reopen him/her. The caretaker will be added to the case effective the month after the month he/she cooperated. The household's certification period is not shortened or extended because of the sanction.

## Good Faith Effort

If the applicant or recipient cannot provide the minimum information required about the absent parent, DCSE may still determine the person as cooperating if the person completes a Good Faith Affidavit. The Affidavit lists the steps the caretaker took to get the information and what barriers the person faced.

## Good Cause Determination

DCSE is responsible to determine if good cause for refusing to cooperate exists. When good cause exists, the person may get food stamp benefits and will not have to cooperate in support collection activities. [When DCSE does not determine there is good cause for refusing to cooperate, DSS will review the case to ensure good cause does not exist before sanctioning the individual.]

## Claiming Good Cause for Non-Cooperation

DSS will tell applicants and recipients, at application and recertification, of the right to good cause as an exception to the cooperation requirement. DSS will also tell applicants and recipients about the reasons they have to claim good cause.

Caretakers will not have to cooperate if they believe that their cooperation would not be in the best interest of their child. They must give proof to support their claim.

DCSE may decide that a person has good cause for refusing to cooperate if one or more of the following conditions exist:

- : Cooperation is likely to result in serious physical or emotional harm to the child;
  - : Cooperation is likely to cause physical or emotional harm to the person which is so serious as to reduce his/her capacity to care for the child adequately;
  - : The child was conceived as a result of incest or forcible rape;
  - : Legal proceedings for adoption of the child are pending before a court;
  - : The person is currently being assisted by a public or licensed private social agency to resolve the
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## FINAL REGULATIONS

issue of whether to keep his/her child or give the child up for adoption:

- : Cooperating with DCSE would make it more difficult for the person to escape domestic violence or unfairly penalize the person who is or has been victimized by such violence, or the person is at risk of further domestic violence. (Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.); sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual acts or activities; threats of, or attempts at physical or sexual abuse; mental abuse; or neglect or deprivation of medical care.)
- The individual meets the good cause criteria outlined for the Temporary Assistance for Needy Families (TANF) policy outlined in DSSM 3010.2.2 – 3010.2.4]

### Proof of Good Cause Claim

It is the custodial parent's or responsible persons' responsibility to provide DCSE with the proof needed to determine whether they have good cause for refusing to cooperate. If the reason for claiming good cause is a fear of physical harm and it is impossible to obtain proof, DCSE may still be able to make a good cause decision after reviewing the claim.

The following are examples of acceptable kinds of proof DCSE can use to decide if good cause exists:

- : A birth certificate or medical or law enforcement record which indicates that the child was conceived as the result of incest or forcible rape;
- : A court document or other record which indicates the legal proceedings for adoption are pending before a court;
- : A court, medical, criminal, psychological, child protection services, social services or law enforcement record which indicates that the putative father or absent parent might inflict physical or emotional harm on the child or person;
- : A medical record which indicates the emotional health history and present emotional health status of the person or the child; or, a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the person or child;
- : A written statement from a public or licensed private social agency that the person is being assisted by the agency to resolve the issue of whether to keep the child or give him/her up for adoption; and
- : Sworn statements from persons, including friends, neighbors, clergymen, social workers, and medical professionals who might know the conditions providing the basis of the good cause claim.

When requested, DCSE will try to help persons obtain necessary documents to support their claim.

### Investigations of Good Cause Claim

The caretaker must give the necessary proof to DCSE within 20 days after claiming good cause. DCSE will give the parent or person more time if they decide that more than 20 days are required because of the difficulty in getting the proof.

DCSE may decide on the claim based on the proof which is given, or conduct a review to verify the claim. If DCSE decides they need to review the claim, DCSE may require the person to give information, such as the absent parent's name and address, to help the review. The DCSE will not contact the absent parent without first telling the person.

### Delayed finding of good cause

DSS will not deny, delay, or discontinue assistance when DCSE has not made a decision on the good cause claim as long as the caretaker has given proof and other information needed by DCSE. DSS will follow the normal processing standards for these cases.

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### Administrative Hearings

Applicants and recipients have the right to request an administrative hearing if they disagree with the decision of non-cooperation made by DCSE. When caretakers request an administrative hearing regarding the decision of non-cooperation or failure by DCSE to accept good cause claims, DCSE will schedule and conduct the administrative hearing.

The caretaker can ask for a hearing by sending in his or her request in writing within 20 days to:

Administrative Hearing Officer – DCSE  
P.O. Box 11564  
Wilmington, DE 19805

The request should include the caretaker's name, case number, social security number and daytime telephone number.

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311, 2501, 2304(15)(c) and 2312  
(18 Del.C. §§311, 2501, 2304(15)(c) & 2312)  
18 DE Admin. Code 906

### ORDER

#### 906 Use of Credit Information [Formerly Regulation 87]

Proposed Regulation 906 relating to the use of credit scores in setting insurance premiums in automobile, motorcycle, boat and personal watercraft, snowmobiles and other recreational vehicles, homeowners, mobile-homeowners, manufactured homes and non-commercial dwelling fire insurance for personal or family protection, was first published in the *Delaware Register of Regulations* on November 1, 2007 with the original comment period open until December 4, 2007 and a public hearing on that same date. Public notice of proposed Regulation 906 was given in the *Register of Regulations* and two newspapers of general circulation in conformity with Delaware law. As a result of the public comment received, substantive changes were made to the proposed regulation and it was resubmitted for public comment. An amended proposed Regulation 906 was published in the *Delaware Register of Regulations* on January 1, 2008 with the comment period open until February 3, 2008.

#### Summary of the Evidence and Information Submitted

Public comment was received from the State Council for Persons with Disabilities, which endorsed the proposed regulations subject to two grammatical changes which are non-substantive and have been made.

The following summaries include comments received from Property Casualty Insurers Association of America, Nationwide Insurance, and State Farm Mutual Automobile Insurance Company:

1. The language of Section 5.1 of the regulation regarding not using credit reports that are more than two years old may be misinterpreted to prohibit insurers from relying on the residual effect of an insurance score based on a credit report obtained when the policyholder applied for coverage.
2. The phrase "credit information" is undefined and should be replaced with the phrase "consumer report" or "credit score," and the phrase "credit report" should in some cases be replaced with the terms "credit score" or "insurance score."
3. Notice of a consumer's right to request an insurance score review should be provided when the policy is issued and not at the time of application.
4. The requirement that annual notice of a policyholder's right to request an insurance score review be included with the policyholder's insurance renewal may be confusing, since the proposed regulation refers to

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penalties for those participants who chose not to comply with the program but still offer services to participants who need Employment and Training services.

**Summary of Comments Received With Agency Response**

No public comments were received by the promulgating agency.

**Findings of Fact:**

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend *Food Benefit E & T Program* policies regarding *Work Registration Requirements, Non-Compliance with Food Stamp Work Requirements, and Voluntary Quit* provisions are adopted and shall be final effective April 10, 2010.

Rita M. Landgraf, Secretary, DHSS

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 1033 (13 DE Reg. 1033). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**DSSM: Food Benefit Employment & Training Program**

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**DIVISION OF SOCIAL SERVICES**

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

**DSSM: 9094 Cooperation with the Division of Child Support Enforcement (DCSE)**

**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 Delaware's Food Supplement 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 February 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 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 Changes**

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Food Supplement Program.

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### Statutory Authority

7 CFR §271.2, *Definitions*; and,  
7 CFR §273.11(o), *Custodial Parent's Cooperation with the State Child Support Agency*

### Summary of Proposed Changes

**DSSM 9094:** *Redesignate DSSM 9094 from Cooperation with the Division of Child Support Enforcement to Definitions.* The Division of Social Services (DSS) is removing the current contents of DSSM 9094, *Cooperation with the Division of Child Support Enforcement (DCSE)* because DSS did not implement this according to our original plans and has decided not to implement this option in the Food Supplement Program. This section is not in DSSM policy, only in the Administrative Code. DSS is replacing this entire section with *Definitions*. The definitions compiled in DSSM 9094 are used throughout the Food Supplement Program rules found in Section 9000.

### Summary of Comments Received with Agency Response

No public comments were received by the promulgating agency.

### Findings of Fact:

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

**THEREFORE, IT IS ORDERED,** that the proposed regulation to amend the Division of Social Services Manual (DSSM) to *Redesignate DSSM 9094 from Cooperation with the Division of Child Support Enforcement to Definitions* is adopted and shall be final effective April 10, 2010.

Rita M. Landgraf, Secretary, DHSS

\*Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 1040 (13 DE Reg. 1040). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

DSSM: 9094 Cooperation with the Division of Child Support Enforcement (DCSE)

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### DIVISION OF SOCIAL SERVICES

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

DSSM: 11003.2.1, TANF and Transitional Work Program Sanctions

### ORDER

### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding *TANF and Transitional Work Program Sanctions*. The Department's proceedings 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 public comment pursuant to 29 Delaware Code Section 10115 in the February 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public