



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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August 12, 2010

The Honorable Rita Landgraf
Office of the Secretary
Administration Building
1901 N. DuPont Highway
New Castle, DE 19720

RE: DSS Final Child Subsidy Program Child Support Cooperation Regulation [15 DE Reg. 92 (July 1, 2011)]

Dear  Secretary Landgraf:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Services (DSSs) final Child Care Subsidy Program regulation regarding *Cooperating with Child Care* published as 15 DE Reg. 92 in the July 1, 2011 issue of the Register of Regulations. SCPD commented on the proposed version of this regulation in May 2011. The Council encouraged DSS to include explicit provisions to protect participants reluctant to cooperate with pursuit of child support based on fear of domestic violence/retribution. A copy of the May 31 SCPD letter is attached for facilitated reference. The Division has now adopted a final regulation with no changes. SCPD respectfully requests that the Department of Health and Social Services (DHSS) revisit this issue based on the following observations.

In a nutshell, DSS defers to the Division of Child Support Enforcement to address lack of cooperation based on fear of domestic violence/retribution:

Since 2008, DSS and specifically the Division of Child Support Enforcement (DCSE) has taken into consideration that domestic violence is a major barrier to cooperating with child support and has taken into account the wider criteria which establishes valid reasons for exemptions from cooperation. DCSE is the division charged with making determinations of what criteria is adequate to determine whether a care taker or child may be in danger from the absent parent. They have certain rules that must be adhered to prior to letting DSS know if enough information or cooperation has been collected. No change to the regulation was made as a result of this comment.

The “weaknesses” in this approach are twofold.

First, the DSS regulation imposes mandatory sanctions on beneficiaries who are “guilty” of undefined DCSE cooperation requirements:

11003.4. Failure of a parent/caretaker to cooperate with and provide information to the DCSE will result in the case being sanctioned. This means the child care case will close until the applicant or recipient has complied with all DCSE requirements.

Second, the “DCSE requirements” are not regulatory and unknowable. The DHSS website contains zero DCSE regulations and the DCSE website contains no readily discoverable child support cooperation standards. This system is affirmatively misleading to applicants for the child subsidy program since the only published regulation mandates full cooperation with DCSE with no disclosure of exemption based on fear of domestic violence. Victims of domestic violence will be deterred from pursuing subsidized child care based on the belief that they will have to affirmatively pursue child support through DCSE with no disclosure of eligibility for exemption.

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

Sincerely,



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

cc: Ms. Elaine Archangelo, DSS
Ms. Deborah Gottschalk, DHSS
Ms. Sharon Summers, DSS
Ms. Stephanie Hamilton, Victim Rights Task Force
Ms. Carol Post, Delaware Coalition Against Domestic Violence
Mr. Noel Duckworth, Delaware Coalition Against Domestic Violence
Ms. Bridget Poulle, Domestic Violence Coordinating Council
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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MEMORANDUM

DATE: May 31, 2011

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

FROM: Daniese McMullin-Powell, ^{DMP/KIT} 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

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