



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John A. McNeal
Director

MEMORANDUM

DATE: January 30, 2019

TO: Ms. Nicole Cunningham, DMMA
Planning & Policy Development Unit

FROM: J. Todd Webb - Chairperson
State Council for Persons with Disabilities

RE: 22 DE Reg. 570 [DMMA Proposed Regulation Eligibility (1/1/19)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Medicaid and Medical Assistance's (DMMA) proposal to amend the Delaware Social Services Manual (DSSM) regarding eligibility determination, specifically, to align state and federal policy. This proposed regulation was published as 22 DE Reg. 570 in the January 1, 2019 issue of the Register of Regulations. SCPD has the following observations.

As background, Federal Medicaid law contains a special protection to help individuals who have been on SSI keep health insurance when they lose their SSI because they start receiving Social Security benefits on a parent's account that exceed the SSI payment amount. Unfortunately, the Delaware Medicaid regulation that implements this provision of the federal law contained an improper provision that required the person to have received their SSI before age 22. That provision has been amended to remove the restriction, but in a way that still leaves some unintended ambiguity.

Under the previous regulation, the State required that the person to have lost his or her SSI before the age of 22. That is not a requirement of the federal statute. Rather, the disability that gives rise to eligibility for Social Security benefits on parent's account has to exist before the person turned 22. The federal statute requires loss of SSI and current eligibility for Social Security benefits for a disability that began before age 22. They are required to have lost SSI, but do not need to have recovered it before age 22. There are many reasons why a person with a disability may not receive SSI before age 22 that are unrelated to their disability, such as income, resource or other non-disability related eligibility criteria.

The proposed change removes the impermissible requirement that existed in the previous regulation, but is still not entirely correct. It reads: “have been receiving SSI because of disability or blindness, which began before he or she attained the age of 22.”

It is not a requirement of the federal statute that the SSI be received because of disability that began before age 22. Therefore, SCPD recommends simply dropping the words after “SSI” in the above sentence. The statute requires loss of SSI and current eligibility for Social Security benefits for a disability that began before age 22. There is no need to inquire regarding the basis for receipt of SSI. If a person is receiving Social Security Disability benefits on the account of a parent, by definition, that means that he or she has established to the satisfaction of the SSA that the disability began before age 22. There is simply no need for the State to be involved in this inquiry.

SCPD endorses the proposed regulation (which provides positive change in the eligibility requirements for a vulnerable group of adults with disabilities), subject to an amendment which implements Council’s aforementioned recommendation.

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

cc: Mr. Steve Groff, DMMA
Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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