



COMMUNITY LEGAL AID SOCIETY, INC.

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Submitted via email: Nicole.M.Cunningham@delaware.gov

Nicole M. Cunningham
Planning, Policy and Quality Unit
Division of Medicaid and Medical Assistance
1901 North DuPont Highway
P.O. Box 906
New Castle, Delaware 19720-0906

RE: Proposed Regulations on Determining Special Needs and Income Eligibility for Child Care

Dear Ms. Cunningham:

Community Legal Aid Society, Inc. (CLASI) appreciates the opportunity to comment on proposed regulations regarding the determination of special needs and income eligibility for child care. CLASI is a statewide, nonprofit law firm whose mission is to combat injustice through creative and persistent advocacy on behalf of vulnerable and underserved Delawareans. CLASI is also Delaware's designated Protection and Advocacy agency for people with disabilities. As a legal aid program, CLASI works directly with low-income families who qualify for child care benefits.

The proposed regulations should be revised to include more comprehensive methods of considering fluctuations in income. DSS should also expand low-income families' access to waivers of copayments. Lastly, the sliding fee scale, which is referenced in the proposed regulations, should be revised in accordance with federal regulations.

Fluctuating Income

We urge DSS to include more measures to account for fluctuating income in determining financial eligibility for families. Under federal regulations, states must establish eligibility processes that take into account irregular fluctuations in earnings so that temporary increases in income do not affect eligibility. See 45 CFR 98.21(c). Averaging a family's earnings over three months may be too short of a period to ensure that the average is an accurate reflection of annual income. For example, a parent may find seasonal employment that lasts three months or longer but is unavailable the rest of the year. The US Department of Health and Human Service's Child Care and Development Fund (CCDF) guide for state administrators emphasizes:



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“[F]amilies may experience a temporary spike in income due to working increased hours (e.g., retail at the holidays, tourism in summer) over a short period, yet those earnings are not representative of the family’s income over the course of a year...[t]o ensure that salary and wage information is reflective of annual income, a State has the option of averaging the family earnings over a period of time (e.g., looking at the family’s earnings over a 12 month period, rather than a shorter period of time).”¹

Some other states, such as New York and Florida, average earnings over a period greater than three months for families with fluctuating income. New York averages income from a period between three to six months, while Florida averages earnings over the previous 12 months.² Additionally, when verifying income, DSS should ask whether a parent or caretaker anticipates a change in income or experienced an unusual circumstance that is not likely to recur, such as overtime that will not be available in the future. DSS should then adjust its estimate of monthly income by, for example, excluding inconsistent overtime pay. Here at CLASI, we have seen how clients with sporadic or anomalous overtime pay experience problems with their child care benefits due to a temporary rise in earnings that are not representative of annual income.

Child Care Copayments

DSS should waive child care copayments for families whose net income falls at or below the federal poverty level (FPL), not just for families with net incomes below 40% of FPL. States have discretion to waive copayments for families with incomes up 100% of FPL in an effort to maintain affordable copayments that do not bar families from receiving assistance. See 45 CFR 98.45(k)(4). Affordable copayments allow families to access stable and high-quality child care. Broadening eligibility for fee waivers will help ensure that copayments are not a burden for low-income families and help promote continuity of care.

The proposed regulations also refer to the sliding fee scale in DSSM 11004.7.1, which must be revised in order to comply with federal regulations. The current fee scale in the DSS Manual shows what percentage of the cost of care a family will pay based on family size and income. However, the CCDF Final Rule prohibits copayments that are based on the cost of care. Fee scales may be “based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of subsidy payment.” See 45 CFR 98.45(k)(2).

¹ CCDF Fundamentals for State and Territory Administrators, August 2017, at 36-37.

² See Florida 2019-2021 CCDF State Plan and New York 2019-2021 CCDF State Plan.



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Conclusion

We appreciate your consideration of CLASI's recommendations. Please contact me at jkye@declasi.org or 302-476-8504 with any questions.

Sincerely,

/S/

Jennifer Kye
Supervising Attorney