



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: January 29, 2010

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

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

RE: 13 DE Reg. 894 [DSS Proposed Interim Assistance Reimbursement Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS's) proposal to amend Delaware's Cash Assistance Program regulation. Federal law authorizes states to be reimbursed for "assistance financed from State ...funds and furnished for meeting basic needs" from a subsequent SSI award to a beneficiary. See attached §1631(g) of the Social Security Act. Delaware DSS is now proposing to adopt standards to implement this authorization. SCPD has the following observations.

First, the DSS regulation only applies to "non-federally funded cash assistance recipients". [§3033.1.1.] This would ostensibly include General Assistance since it is State-funded. See attached 16 DE Admin Code Part 3000, §3018. It may also include some Emergency Assistance. See attached 16 DE Admin Code Part 6000, §6001. TANF is federally funded and ostensibly not covered. For clarity, it would be helpful if DSS identified in the regulation or regulatory note which programs are included.

Second, it is common for employers and employer insurers to require employees placed on disability or a disability pension to sign an agreement to reimburse the employer/insurer from future SSDI and SSI funds. Such an individual who also receives State cash assistance could be beset by competing employer/insurer and DSS claims. If DSS has a legal basis for claiming priority to SSI benefits, it may wish to address this in the regulation or consider introducing legislation in this context. In a "worst case" scenario, the State would intercept benefits and an employer would reimbursement from the individual for the intercepted benefits based on a contract claim. Alternatively, the employer/insurer could suspend disability payments until the "shortfall" is repaid.

Third, the federal law only allows DSS to retain authorized amounts defined in §1631(g)(3) and to pay the individual the balance. This concept is absent from the regulation. It would be preferable to include a reference to the reimbursable amount the State is entitled to retain and an affirmative recital that any balance will be paid to the individual within 10 working days.

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
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

13reg894 dss-reimbursement 01-10

Reimbursement to States for Interim Assistance Payments

(g)(1) Notwithstanding subsection (d)(1) and subsection (b) as it relates to the payment of less than the correct amount of benefits, the Commissioner of Social Security may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a State (or a political subdivision thereof if agreed to by the Commissioner of Social Security and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished on behalf of the individual by the State (or political subdivision).

(2) For purposes of this subsection, the term "benefits" with respect to any individual means supplemental security income benefits under this title, and any State supplementary payments under section 1616 or under section 212 of Public Law 93-66^[89] which the Commissioner of Social Security makes on behalf of a State (or political subdivision thereof), that the Commissioner of Social Security has determined to be due with respect to the individual at the time the Commissioner of Social Security makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3). A cash advance made pursuant to subsection (a)(4)(A) shall not be considered as the first payment of benefits for purposes of the preceding sentence.

(3) For purposes of this subsection, the term "interim assistance" with respect to any individual means assistance financed from State or local funds and furnished for meeting basic needs (A) during the period, beginning with the month following the month in which the individual filed an application for benefits (as defined in paragraph (2)), for which he was eligible for such benefits, or (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits.

(4) In order for a State to receive reimbursement under the provisions of paragraph (1), the State shall have in effect an agreement with the Commissioner of Social Security which shall provide—

(A) that if the Commissioner of Social Security makes payment to the State (or a political subdivision of the State as provided for under the agreement) in reimbursement for interim assistance (as defined in paragraph (3)) for any individual in an amount greater than the reimbursable amount authorized by paragraph (1), the State (or political subdivision) shall pay to the individual the balance of such payment in excess of the reimbursable amount as expeditiously as possible, but in any event within ten working days or a shorter period specified in the agreement; and

(B) that the State will comply with such other rules as the Commissioner of Social Security finds necessary to achieve efficient and effective administration of this subsection and to carry out the purposes of the program established by this title, including protection of hearing rights for any individual aggrieved by action taken by the State (or political subdivision) pursuant to this subsection.

(5) The provisions of subsection (c) shall not be applicable to any disagreement concerning payment by the Commissioner of Social Security to a State pursuant to the preceding provisions of this subsection nor the amount retained by the State (or political subdivision).

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Title 16 3000 Technical Eligibility for Cash Assistance

3018 General Assistance (GA)

General Assistance is a State funded cash assistance program available to families and unemployable individuals who meet the financial eligibility requirements of the program and who are ineligible for TANF and SSI with the following exception:

A child's caretaker relative, who is otherwise eligible for GA and who is not the child's parent, may choose to receive GA instead of TANF.

EXAMPLE: A woman with no income is unemployable and is the caretaker of a seven year old niece. The woman may choose to receive GA for herself and be payee only for the TANF grant for her niece, or she may be included in the TANF unit with her niece.

Married or unmarried couples living with their children as a family unit that are not eligible for TANF or TANF-UP are technically eligible for GA.

EXAMPLE: A couple lives with their children as a unit. Both parents are healthy and unemployed. Neither parent meets work quarter requirements for TANF-UP. The family is technically eligible to receive GA.

3018.1 GA and SSI Recipients

An SSI recipient cannot receive GA payments for himself while receiving SSI, but may be a payee for a GA grant for others. The SSI recipient's income and resources are not considered available to meet the needs of any other person in the household.

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**Title 16
6000 Emergency Assistance Services**

6001 Legal Base

Provision is made by the Delaware General Assembly for payments for emergency needs. A limitation on payments of \$1,200 for emergency shelter certified by the Department of Health and Social Services (DHSS), \$450 for mortgage or rent assistance, and \$200 for other costs related to self-sufficiency of the household. The federal government provides funds under Title IV-A of the Social Security Act for emergency payments to families with children. Payments are allocated annually to simplify the program.

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