



STATE OF DELAWARE
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MEMORANDUM

DATE: March 30, 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. 1174 [DSS Proposed Cash Assistance Overpayments & Food Supplement Program Household Claims]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSSs) proposal to amend its policies regarding Delaware's Cash Assistance and Food Supplement programs published as 13 DE Reg. 1174 in the March 1, 2010 issue of the Register of Regulations. DSS currently has a single set of regulations covering overpayments and recovery in the contexts of cash assistance programs (e.g. TANF; GA) and the Food Supplement Program (FSP). DSS is proposing to adopt separate regulatory standards in these contexts. A revised "7000" section will cover cash assistance and a new "9095" section will cover the FSP. SCPD has the following observations.

First, in Section 7003.1, the word "claim" should be deleted.

Second, in other contexts, it is common to waive recovery of overpayments if relatively small in amount or collection is not cost effective. For example, the Social Security Administration will waive an overpayment up to \$1,000. The FSP authorizes non-collection if the overpayment is \$125 or less [§9095.5] or a claim balance is less than \$25 [§9095.11C]. This concept is absent from Part 7000. Therefore, DSS staff would have no discretion but to process small overpayments of even \$1.00. DSS should consider incorporating an authorization to disregard overpayments if the amount is small and/or collection would not be cost effective.

Third, §7003.1 is subject to confusion. It could be interpreted in two ways based on the use of bullets and co-equal references to "and" and "or":

A. One interpretation is that there are 3 independent bases for referral to the DOJ:

1. intentional violation and net overpayment exceeds \$1000; or
2. interstate fraud; or
3. repeat offender of \$500 or more.

B. The other interpretation is that there is 1 basis for referral with 3 subparts. Referral would occur only if there is intentional violation characterized by one of the following: 1) net overpayment exceeds \$1,000; 2) interstate fraud; or 3) repeat offender.

A repeat non-intentional offender over \$500 would be referred to the DOJ under the first interpretation but not the second interpretation.

Fourth, the FSP regulation (§9095.10) includes an authorization to “compromise a claim” to facilitate DSS collection within a reasonable period of time. This concept is absent from the Part 7000 regulation for cash assistance overpayments. DSS should consider incorporating an authorization in Section 7004.1 (which covers restitution and reimbursement) to consider “compromise of claim”.

Fifth, SCPD believes the reference to “7004.2 Case Changes” should be deleted. Moreover, there are duplicate references to “7004.1 Methods of Collecting Cash Assistance Overpayments”.

Sixth, §9095.1C) recites that each adult member of a household is responsible for paying an “overpayment” claim. This is based on 7 C.F.R. 273.18(a)(4). See also §9095.6D.2. Section 9095.6C recites that notice of the claim is effected by providing “the household with a one-time notice of adverse action...”. This is based on 7 C.F.R. 273(e). SCPD’s concern is that a single notice to a “household” may not reach an 18 year old adult living with parents or relatives. The 18 year old would not be notified of the time period to request a hearing which then lapses. The 18 year old would then be subject to wage attachment, state tax intercept, etc. based on §9095.13G without effective notice and opportunity to challenge the underlying “claim”. Recognizing that DSS is adopting the federal regulation verbatim, it still may be the better practice to send separate notices to each adult member of a household. Otherwise, there may be a lack of due process.

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

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