



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: February 28, 2018

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

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 21 DE Reg. 639 [DSS Final Regulation Relative Child Care (2/1/18)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services (DSS) final regulation to amend the Delaware Social Services Manual (DSSM) 11002.4, Persons Eligible for Child Care Assistance, and DSSM 11004 Application Processing, with the stated goal of “clarify[ing] policy related to determination of eligibility.” The proposed regulation was published as 21 DE Reg. 639 in the February 1, 2018 issue of the Register of Regulations.

As background, the Division of Social Services administers a child care subsidy program through both state and federal grants. This program, sometimes referred to as “Purchase of Care” provides subsidies to families for child care expenses. The program is especially helpful for families of children with special needs because it allows payments to individuals for child care when group child care is not available, and extends the benefit to children over age 12 who have special needs and for whom child care is very difficult to find. It also supports parents or other caretakers with disabilities who need to place their children in child care due to their own needs. The SCPD sent the following observations.

First, the amendment of 11002.4 eliminates a lengthy regurgitation of the PRWOA definitions of eligible and ineligible immigration status, and also deletes specific categories of eligibility. The amendment then sets out a much more simplified list of eligibility criteria. The revised language does not alter the eligibility criteria for this program. To be eligible, children must be under 13 or over 13 and incapable of self-care as determined by a medical professional. Children must also be citizens, qualified aliens (defined elsewhere) or referred by DFS.

The next section further extends eligibility to children who are in need of protective services, homeless or in foster care; however, it is unclear whether this is irrespective of age or alien status. The regulation would benefit from language clarifying that this group of children is eligible irrespective of age or immigration status, if that is the case.

Subsection 2 lists the eligibility requirements for parents and Caretakers which includes those who “report a special need.” It might be beneficial to cross-reference the definition of “special need” in 11003.7.8.

The second set of amendments to section 11004 “Applying for Child Care Assistance” again seeks to simplify the language describing the application process. The language contemplates allowing case workers to conduct an “informal” review of eligibility, and make a disposition that a potential applicant is ineligible, without issuing a written decision and without the person having any right to appeal. The proposed language in paragraph 2 indicates that “Parents and caretakers who appear to be eligible may complete a formal application process.” Unfortunately, case handlers make mistakes and potential applicants can be erroneously and unnecessarily discouraged from filing applications that would trigger a formal decision and a right to appeal. Some of the eligibility rules are complex (such as alien status) and some aspects of eligibility, such as having a special need, are subjective and not suitable for an informal decision by a case worker. Families who are told they probably not eligible by a case worker are not likely to pursue an application. The policy needlessly and unfairly skews the process against families.

These provisions violate due process requirements and also make erroneous denials of services much more likely. The SCPD recommends that DSS revise the final regulation to require an application be processed for each family that asks for services. This would be consistent with other benefits programs and also with due process requirements.

The SCPD would like to reiterate our concern regarding this one size fits all approach to family needs and request that DSS issue additional regulations clarifying its obligation to provide accommodations for families with special needs.

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

cc: Mr. Ray Fitzgerald, DSS
Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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