



**STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES**

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The Honorable John Carney
Governor

John A. McNeal
Director

MEMORANDUM

DATE: February 27, 2019

TO: Ms. Nicole Cunningham, DMMA
Planning, Policy and Quality Unit

FROM: ^{JTW/20} Mr. J. Todd Webb - Chairperson
State Council for Persons with Disabilities

RE: 22 DE Reg. 652 [DHSS/Division of Social Services Application Process (February 1, 2019)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend the DSS Manual to update the sections on the application process for DSS benefit programs to modernize the language and make it more understandable. For example, the term "food stamps" has been updated to "food benefits." This proposed regulation was published as 22 DE Reg. 652 in the February 1, 2019 issue of the Register of Regulations.

Most of the proposed changes are not significant substantively, and they do improve the formatting and clarity of the manual. However, SCPD has the following observations and recommendations on the proposed regulations since Council believes DSS could still make further policy changes to improve the application process and use more accurate terminology concerning language access.

Section 2000 and Right to Same-Day Filing

The updated version of Subsection 2000(C)(ii) states that DSS will inform applicants of their (1) potential eligibility for assistance; (2) right to an eligibility decision within a reasonable time; and (3) right to appeal any DSS eligibility decision. SCPD recommends that DSS remove the policy of notifying applicants about "potential eligibility for assistance."

Rather than stating that DSS will inform applicants about their potential eligibility, the DSS Manual should explicitly note that DSS will encourage people contacting a DSS office about

benefits to apply on that day. The problem with a policy of informing applicants about potential eligibility is that some applicants might be given erroneous information indicating that they are not eligible for benefits. These applicants might then be dissuaded from completing the application process when they are actually entitled to benefits they critically need. To ensure that DSS is giving all applicants equal opportunity to undergo the eligibility determination process, the DSS Manual should instruct DSS offices to encourage all potential applicants to apply for benefits, regardless of potential eligibility.

Subsection 20001.1 and Application Assistance by DSS

Under Subsection 20001.1(1)(E), “Submitting Applications,” the proposed changes do not adequately address situations in which DSS should help an applicant with the application process. Under federal regulations governing SNAP eligibility requirements, state agencies must ensure that SNAP offices establish procedures that best serve households with special needs, “such as, but not limited to, households with elderly or disabled members, households in rural areas with low-income members, homeless individuals...households with adult members who are not proficient in English...”¹ The proposed language, however, only states that applicants “[w]ill be assisted by DSS in completing the application process if hospitalized or ill.” This policy is too narrow and should be expanded to require DSS to also assist persons who may be elderly, have a disability, be homeless, speak limited English, or otherwise have good cause for assistance.

Additionally, while the current version of the DSS Manual explains that “[i]f an applicant is hospitalized or is ill, provisions for completing the application process at the hospital or in the client’s home will be made by the local intake office,” the revised version no longer includes this explanation. SCPD urges DSS to specify in the updated manual that DSS will make reasonable accommodations to help individuals with the application process, which may include accommodations to allow completion of the application process (including interviews) at the client’s home or other locations.

Subsection 2000.2 and Language Access for Limited English Proficient (LEP) Applicants

The updated subsection on interviewing applicants with limited English proficiency is an improvement over existing policies, but it still requires significant improvement. DSS’ revised policies now explicitly state that “DSS will offer translation services to applicants who cannot speak English.” They also discuss how the “translator” is “preferably a translator available through the Division’s contracted language services.”

While the SCPD supports DSS’ efforts to include policies that clarify it should offer language assistance services, the proposed language uses incorrect terminology. Translation refers to written language assistance, whereas oral language assistance should be referred to as

¹ 7 CFR § 273.2(a).

interpretation.² Further, the term “applicants who cannot speak English” is too simplistic and should be replaced with “applicants who are limited English proficient” or “applicants with limited English proficiency.” The DSS Manual in Section 1000 already includes an accurate definition of “limited English proficient” that tracks the definition used in federal guidance on language access: “Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English may be limited English proficient.” This distinction in terms is significant because, for example, an applicant might be able to generally speak English but might not understand it well enough to undergo an interview without an interpreter. DSS should also provide an interpreter whenever applicants request one.

The proposed language regarding DSS-provided interpreters is also inadequate. It is unclear what DSS means when it notes that an interpreter will “preferably” be one available through a contracted language service. When would DSS use a non-contracted interpreter? Who would DSS consider to be an acceptable alternative? DSS must also include a policy stating that it will not ask friends or family members accompanying LEP applicants to interpret, nor will it require LEP applicants to provide their own interpreters. DSS’ default policy should be to always use certified, trained interpreters.

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

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

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² See p. 5 of “Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs,” US Department of Justice (May 2011), available at https://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf.