

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11003

FINAL

ORDER

Determining Special Needs and Income Eligibility for Child Care

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Child Care, specifically, to determine special needs and income eligibility for child care. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2020 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Purpose

The proposed rules explain technical and financial eligibility requirements for the Child Care Subsidy Program.

Statutory Authority

- 45 CFR 98.20 (a)
- 45 CFR 98.21 (c)

Background

DSS is revising the eligibility requirements for the Child Care Subsidy Program based on the reauthorization of the Child Care and Development Block Grant Act, which mandated new eligibility requirements for child care assistance. DSS has changed the formatting of the policies so that the policies are easier for DSS staff, stakeholders, and the public to understand.

DSS is proposing to remove DSSM 11003.6 "Determining Income Eligibility" as it is a redundant policy and the information can be found in DSSM 11003.9.1 "Determining Income Eligibility for Child Care" and DSSM 11003.7.8 "Determining Special Needs for Child Care."

DSS is proposing to remove DSSM 11003.7.7 "Income Waiver" as it is a redundant policy and the information can be found in DSSM 11003.7.8 "Determining Special Needs for Child Care."

DSS is proposing to amend DSSM 11003.9.1 "Determining Income Eligibility for Child Care" to include the current process that DSS staff are to follow when determining financial eligibility for the Child Care Subsidy Program. DSS updated the countable and excluded income sections to include current income requirements for the program, and a section on the net income test for parent copayments was added.

NOTE: Regulations 11003.6, 11003.7.7 and 11003.9.1 are being published as final. Regulations 11003.6, 11003.7.7, and 11003.9.1 were originally proposed with 11003.7.8 at 23 DE Reg. 531 (01/01/20) (Prop.). Regulation 11003.7.8 was published separately as final in the Delaware Register of Regulations at 24 DE Reg. 164 (08/01/20) (Final).

Summary

Effective for services provided on and after January 11, 2021 Delaware Health and Social Services/Division of Social Services proposes to amend sections 11003.6, 11003.7.7 and 11003.9.1 of the Division of Social Service Manual regarding Child Care, specifically, to determine special needs and income eligibility for child care.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 31, 2020.

Fiscal Impact Statement

DSS amended the eligibility policies to provide clear and accurate directions on the eligibility requirements for the Child Care Subsidy Program. These policies are currently in place and there are no new financial responsibilities associated with the amended eligibility policies.

The following summarized comments were received:

Comment: One commenter recommended including 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

Agency Response: DSS has amended DSSM 11003.9.1(3) to change the period from three months to "three to six months of family's income." A section will be added to the policy that will provide guidance to DSS staff on calculating overtime pay.

Comment: One commenter suggested DSS 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.

Agency Response: Families that apply for child care subsidy have two opportunities for a waived copayment based on income and household size.

DSS uses a gross income test to determine if a family's gross income is at or below 70% of the FPL. If the family's gross income is at or below 70% of the FPL, DSS will waive the family's copayment.

DSS uses a net income test when a family's income is over 70% of the FPL. For the net income test, DSS deducts the family's shelter and utility costs from their gross income to determine if the family's net income falls below 40% of the FPL. If the family's net income is below 40% of the FPL, DSS determines that the family has an "excessive financial burden" and will waive the family's copayment.

DSS is preparing to publish amendments to DSSM 11004.7 and DSSM 11004.7.1 to update the policies with information on the new copayment structure and the excessive financial burden net income test. Text regarding the parent fee and the sliding fee scale will be removed.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Community Legal Aid Society, Inc.

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the January 2020 *Register of Regulations* should be adopted with additions. The Department finds that the proposed addition does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 Del.C. §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding Child Care, specifically, to determine special needs and income eligibility for child care, is adopted and shall be final effective January 11, 2021.

12/11/2020

Date of Signature

Molly K. Magarik, Secretary, DHSS

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

~~11003.6 Determining Income Eligibility~~

~~45 CFR 98.20~~

~~This policy applies to applicants for and recipients of child care assistance.~~

~~1. Gross Income Is Capped~~

~~Gross monthly income must be equal to or less than 200% of the Federal Poverty Limit for the family size.~~

~~2. Income Requirement~~

~~The income requirement applies to all income eligible child care programs.~~

~~Exception: Families referred by and active with the Division of Family Services do not have to meet the income limit.~~

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

11003.7.7 Income Waiver

~~DSS will waive the 200 percent income eligibility limitation for families when the child is receiving or needs to receive protective services. The need for care in this instance is coordinated with the Division of Family Services and is part of a range of services being provided to and/or required of the parent to help ensure the protection of the child.~~

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

11003.9.1 Determining Income Eligibility for Child Care

~~45 CFR 98.11(b)(2) 45 CFR 98.21(c)~~

~~A. Countable income. All sources of income, earned (such as wages) and unearned (such as child support, Social Security income, etc.) are countable income when determining a family's monthly gross income. Monthly gross income includes the following:~~

~~1. Money earned from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses. Count the amount earned before deductions are made for taxes, bonds, pensions, union dues, etc. This is gross income. Wages need to be equal to the federal minimum wage or an equivalent.~~

~~Earnings from self-employment are counted after applying a standard deduction for self-employment expenses. To get the self-employment deduction, self-employed households must verify at least one business cost to produce income.~~

~~Self-Employment Standard Deduction for Producing Income~~

~~The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October. The standard deduction is considered the cost to produce income.~~

~~2. Social Security pensions, Supplemental Security Income, Veteran's benefits, public assistance payments, net rental income, unemployment compensation, workers compensation, pensions, annuities, alimony, adoption assistance, disability benefits, military allotments, Rail Road Retirement, and child support.~~

~~B. Disregarded Income~~

~~Monies received from the following sources are not counted:~~

~~1. per capita payments to or funds held in trust for any individual in satisfaction of a judgment of Indian Claims Commission or the Court of Claims;~~

~~2. payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the Act;~~

~~3. money received from the sale of property such as stocks, bonds, a house or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds are counted as income from self-employment);~~

~~4. withdrawal of bank deposits;~~

~~5. money borrowed or given as gifts;~~

~~6. capital gains;~~

- ~~7. the value of USDA donated foods;~~
- ~~8. the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;~~
- ~~9. any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;~~
- ~~10. loans or grants such as scholarships obtained and used under conditions that preclude their use for current living costs;~~
- ~~11. any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act;~~
- ~~12. home produce used for household consumption;~~
- ~~13. all of the earned income of a child under age 18 who is a student who is working but is not a full-time employee (such as high school students who are employed full-time during summer);~~
- ~~14. all payments derived from participation in projects under the Food Benefit Employment & Training (FB E&T) program or other job training programs;~~
- ~~15. all Vista income; and~~
- ~~16. all income derived as a Census taker.~~

Resources (such as cars, homes, savings accounts, life insurance, etc.) are not considered when determining financial eligibility or the parent fee.

This policy outlines how DSS determines income eligibility for applicants and recipients of the Child Care Subsidy Program.

- 1. DSS will determine income eligibility for the Child Care Subsidy Program when a family submits a completed and signed application and completes an interview for child care assistance.**
- 2. Case workers must verify the past 30 days of income received by the family.**
- 3. If a family's income fluctuates, DSS will average the last three [to six] months of the family's income [and exclude temporary income (such as overtime, bonus, or holiday pay)] for eligibility determination.**
- 4. DSS considers all gross earned and unearned income received by the family when determining child care eligibility.**
 - A. Gross income is the amount of earned and unearned income before deductions such as taxes, bonds, pensions, and union dues.
 - B. To be eligible for child care assistance, a family's gross monthly income must be equal to or less than 185% of the Federal Poverty Level (FPL) for the family size.
- 5. DSS counts the following income when determining child care [eligibility, eligibility:]**
 - A. Earned income, including, but not limited to:
 - i. Wages and salary;
 - ii. Armed forces pay;
 - iii. Commissions, tips, and piece-rate payments; [and]
 - iv. Self-employment earnings.
 - a. Self-employment earnings are counted after applying a standard deduction for self-employment expenses.
 - b. Self-employed clients must verify at least one business cost to receive the self-employment deduction.
 - c. Self-employment earnings must be equal to the federal minimum wage.

- B. Unearned income, including, but not limited to:
- i. Social Security benefits, including Social Security Disability Income (SSDI), Supplemental Security Income (SSI), and Retirement, Survivors, and Disability Insurance (RSDI);
 - ii. Veteran's benefits and military allotments;
 - iii. Public assistance payments, including Temporary Assistance for Needy Families (TANF);
 - iv. Net rental income;
 - v. Unemployment compensation;
 - vi. Workers' compensation;
 - vii. Pensions;
 - viii. Railroad retirement;
 - ix. Annuities; [and]
 - x. Alimony and child support.

6. DSS excludes the following income when determining child care [eligibility, eligibility:]

- A. The value of U.S. Department of Agriculture (USDA) donated [foods, foods;]
- B. The value of Supplement Nutrition Assistance Program (SNAP) food [benefits, benefits;]
- C. The value of supplemental food assistance under the Child Nutrition Act of 1966 and the National School Lunch Act, as [amended, amended;]
- D. The value of homegrown produce used for household [consumption, consumption;]
- E. The earned income of a child under the age of 18 years old who is a [student, student;]
- F. All AmeriCorps VISTA [income, income;]
- G. Temporary U.S. Census Bureau employment income received during the census [period, period;]
- H. Temporary income received by a family that may determine the family to be over 85% of the State Median Income [(SMI), (SMI);]
- i. The family must submit documentation of when the income will end.
 - ii. The temporary work period cannot exceed 90 days.
- I. The money received from the sale of property such as stocks, bonds, a house, or a [car, car;]
- i. If the client is in the business of selling such property, the net proceeds are counted as income from self-employment.
- J. Withdrawals from bank [accounts, accounts;]
- K. Money borrowed or received as a [gift, gift;]
- L. Capital [gains, gains;]
- M. Federal income tax [returns, returns;]
- N. Non-recurring lump sum payments (e.g. a lump sum child support [payment, payment];)
- O. Any payments derived from participation in activities under the Food Benefit Employment &

Training program or other job training [~~programs~~, programs;]

P. Loans or grants, such as scholarships obtained and used under conditions that preclude their use for current living [~~costs~~, costs;]

Q. Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education [~~Act~~, Act;]

R. Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of Indian Claims Commission or the Court of [~~Claims~~, Claims;]

S. Payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the [~~Act~~, Act; and]

T. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

7. DSS does not consider resources such as cars, homes, savings accounts, or life insurance when determining income eligibility for child care assistance.

8. Once eligibility has been established, DSS will complete a net income test to determine if the family will have a copayment for child care assistance.

A. Net income is the total income counted in the child care budget after shelter and utility deductions have been applied.

B. The net income test determines if the family has an excessive financial burden. DSS will waive the copayment if the family's income falls below 40% of the FPL per DSSM 11004.7.1.

9 DE Reg. 564 (10/01/05)

11 DE Reg. 1488 (05/01/08)

14 DE Reg. 178 (09/01/10)

24 DE Reg. 704 (01/01/21) (Final)