DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Social Services

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PROPOSED

PUBLIC NOTICE

Food Supplement Program Determining Income Deductions

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Determining Income Deductions*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by July 31, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Determining Income Deductions*.

Statutory Authority

- Agricultural Act of 2014, P.L. 113-79, enacted February 7, 2014
- 7 USC 2014(e)(6)(C), *Standard utility allowance*
- 7 CFR §273.9(d), *Income and deductions*

Background

Delaware's Food Supplement Program, formerly known as food stamps, is operated under the provisions of the Food and Nutrition Act of 2008, as amended, and is administered by the Food and Nutrition Service (FNS) under the United States Department of Agriculture (USDA). The Delaware Division of Social Services (DSS) is responsible for the administration of the Food Supplement Program (FSP), including, but not limited to certification of applicant households and issuance, control, and accountability of FSP benefits.

Please note that the Supplemental Nutrition Assistance Program (SNAP) is the federal name for the food benefit program. State programs may have different names.

Low Income Home Energy Assistance Program (LIHEAP) and Supplemental Nutrition Assistance Program (SNAP)

The connection between the Low Income Home Energy Assistance Program (LIHEAP) and Supplemental Nutrition Assistance Program (SNAP) was originally established in 1985 in order to provide a simpler way for States and applicants to determine household utility costs. Receipt of LIHEAP benefits is intended to serve as a reasonable proxy for the actual utility costs that a household incurs. As a result, in lieu of demonstrating actual utility costs, receipt of LIHEAP benefits may be used to trigger the higher heating and cooling Standard Utility Allowance (HCSUA), and thereby increase the SNAP deductions for which households may be eligible.

On February 7, 2014, President Obama signed the Agriculture Act of 2014 ("Act") referenced as the Farm Bill. Section 4006 of the Act requires that households receive a payment greater than twenty dollars ($20.00) annually in Low Income Heating Assistance Program (LIHEAP) benefits or in other similar energy assistance benefits in the current month or in the immediately preceding twelve (12) months in order to automatically qualify for the HCSUA based on receipt of LIHEAP. This change took effect thirty (30) days after enactment (March 10, 2014) and applies to certification periods that begin on or after that date.

This provision was intended to prevent the issuance of nominal LIHEAP payments in order to automatically qualify SNAP households for the SUA.

Summary of Proposed Changes

Food and Nutrition Service (FNS) regulations allow that States may accept receipt of Low Income Home Energy

Assistance Program (LIHEAP) benefits or other similar energy assistance benefits as verification of a utility expense. Verification of a utility expense allows a SNAP household to claim the Heating Cooling Standard Utility Allowance (HCSUA). For many households, claiming the HCSUA increases the amount of monthly food benefits the household receives.

The Agriculture Act of 2014, section 4006, created additional conditions households must meet to be able to claim the HCSUA as a result of receipt of LIHEAP. Specifically the LIHEAP payment must be greater than twenty dollars ($20.00), and the household member must have received the LIHEAP benefit in the current month or in the immediately preceding twelve (12) months.

FNS issued the following memorandum, dated April 7, 2014, to serve as formal guidance for use by State agencies as they implement the provisions of Section 4006:

http://www.fns.usda.gov/sites/default/files/LIHEAP_Questions_and_Answers.pdf

DSSM 9060, *Determining Income Deductions*: To be compliant with section 4006 of the Agriculture Act of 2014 the Division of Social Services (DSS) is amending policy 9060 to include that the LIHEAP payment must be greater than twenty dollars ($20.00), and the household member must have received the LIHEAP benefit in the current month or in the immediately preceding twelve (12) months.

The applicable federal citation is also revised to be more precise.

DSS PROPOSED REGULATION #14-22
REVISION:

9060 Determining Income Deductions

~~[273.9(d)]~~ 7 CFR 273.9(d)

This policy applies to all households applying for food benefits.
DSS will deduct the following from the household's income~~.~~:

- Standard deduction
- Earned income deduction
- Excess Medical
- Dependent Care
- Child Support Payments
- Shelter Costs
- Standard utility allowances
- Costs of Unoccupied Homes and Disaster Repairs.

A. GIVING THE STANDARD DEDUCTION

This policy applies to all Food Supplement Program (FSP) households with income.

1. Give each household a standard deduction that is deducted from any income the household has.
2. Food and Nutrition Service (FNS) determines the amount of the standard deduction published each October in the Cost-of-Living Adjustment Administrative Notice.

B. CALCULATING THE EARNED INCOME DEDUCTION

This policy applies to FSP households with earned income.

1. Allow all households with earned income a twenty percent (20%) earned income deduction.
2. Give the earned income deduction to self-employed individuals after the standard business deduction.

> Exception: Do not give the earned income deduction to individuals with rental income when they do not manage the property at least twenty (20) hours a week. The rental income is considered unearned income.

C. DETERMINING EXCESS MEDICAL DEDUCTION

This policy applies to individuals who are elderly or disabled and eligible for food benefits.

1. Give a medical deduction for unreimbursed medical expenses in excess of thirty-five dollars ($35.00) per month.
2. Give the medical deduction only to individuals who are age sixty (60) or older or receiving a disability payment.
3. Do not give the medical deduction to spouses or other persons receiving benefits as a dependent of the disabled recipient.

4. Give the medical deduction to persons receiving emergency SSI benefits based on presumptive eligibility.
5. Allow the following medical expenses as a deduction:
   - Medical and dental care, including psychotherapy and rehabilitation services, provided by a licensed practitioner or other qualified health professional.
   - Hospitalization, outpatient treatment, nursing home care (including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State).
   - Prescription drugs and over-the-counter medication when approved by a licensed practitioner or other qualified health professional.
   - Cost of medical supplies and sick room equipment (including rental costs) are deductible (when approved by a licensed practitioner or other health professional).
   - Health and hospitalization insurance are deductible, but health and accident insurance policies such as income maintenance or death or dismemberment policies are not deductible.
   - Medicare premiums, cost-sharing or spend down expenses incurred by Medicaid recipients,
   - Dentures, hearing aids and prosthetics.
   - Costs of securing and maintaining a seeing-eye or hearing dog, including dog food and veterinary bills.
   - Eye glasses prescribed by a physician skilled in eye disease or by an optometrist.
   - Reasonable costs of transportation and lodging in order to obtain medical treatment or services, which includes: trips to doctors or dentists, trips to fill prescriptions for medicine, dentures, hearing aids or eye glasses, and mileage using the standard state allowance privately-owned vehicles.
   - Maintaining an attendant, homemaker, home health aide, housekeeper, or child care services necessary due to age, infirmity, or illness.
   - An amount equal to the one-person food benefit allotment if the household furnishes the majority of the attendant's meals, update at recertification.

NOTE: If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, treat the costs as a medical expense.

D. DETERMINING DEPENDENT CARE DEDUCTION

This policy applies for households with dependent care expenses.

1. Allow the dependent care costs only when necessary for employment, training or educational purposes.

   Allow the dependent care costs when needed to:
   - Seek employment,
   - Accept employment,
   - Continue employment,
   - Comply with the employment and training requirements, or
   - Attend training or pursue education which is preparatory to employment.
2. Give the actual costs the household pays for the dependent care deduction.

E. HOMELESS SHELTER DEDUCTION

This policy applies to households in which all members are homeless and have limited shelter expenses.

1. Allow homeless households with limited shelter expenses a homeless shelter deduction of ~~$143~~ <u>one hundred forty-three dollars ($143.00)</u>.
2. Give homeless households the ~~$143~~ <u>one hundred forty-three dollars ($143.00)</u> homeless shelter deduction when their anticipated monthly shelter expenses are at or less than ~~$143~~ <u>one hundred forty-three dollars ($143.00)</u>.
3. Allow homeless households that incur monthly expenses greater than ~~$143~~ <u>one hundred forty-three dollars ($143.00)</u> the regular shelter expense deduction.
4. Do not give the homeless shelter deduction to households that are provided free housing and utilities or households that work for their shelter.

F. DETERMINING SHELTER DEDUCTION

This applies to households who have shelter costs.

1. Give a shelter deduction for costs that exceed <u>fifty percent (</u>50%<u>)</u> of the household's countable income up to the maximum excess shelter limit.
2. Give households with a member who is age sixty or older or disabled (Per DSSM 9013) the excess shelter deduction for costs that exceed <u>fifty percent (</u>50%<u>)</u> of the household's countable income with no limit.
3. Allow continuing charges for the shelter occupied by the household that lead to the ownership of the shelter.

Continuing charges will include:

- Rent,
- Mortgages,
- Condo and association fees,
- Loan repayments for the purchase of a mobile home,
- Second mortgages,
- Home equity loans. and
- Interest on such payments.

A mortgage is defined as any loan which uses the house as collateral.

4. Do not allow security deposits as a shelter deduction.
5. Allow property taxes, state and local assessments, and insurance on the structure of the dwelling as shelter deductions.
   - If separate insurance costs for furniture or personal belongings are not identified, use the total.
   - Local assessments include, but are not limited to, regular school taxes and an annual school capitation tax.

G. DETERMINING THE MANDATORY UTILITY AND PHONE ALLOWANCE

This policy applies to households with utility or phone expenses.

1. Give the heating and cooling standard utility allowance (HCSUA) to the following households:
   - Households that have heating or cooling costs separate and apart from their rent or mortgage payments.
   - Residents of private rental housing billed on a monthly basis by their landlords for actual usage or who are charged a flat rate;
   - Households receiving energy payments under the Low Income Home Energy Assistance Program (LIHEAP) <u>in the current month or in the immediately preceding twelve (12) months of an amount greater than twenty dollars ($20.00)</u>.
   - Households receiving energy direct or indirect energy assistance payments <u>of an amount greater than twenty dollars ($20.00)</u> ~~like HUD utility reimbursements~~, other than LIHEAP, that is excluded as income and who continue to incur any out-of-pocket heating or cooling expenses ~~during any month in the previous twelve (12) months; and~~ <u>in the current month or in the immediately preceding twelve (12) months; and</u>
   - Households living in public housing or other rental housing units that has central utility meters and charges the household only for excess heating or cooling costs.

   Accept the household's statement that they pay for cooling.
2. Give the limited utility allowance (LUA) to households that have costs for two non-heat or non-cooling utilities.
3. Give the one-utility standard to households that have only one non-heat, non-cooling, or non-telephone utility.
4. Give the telephone allowance to households with only telephone costs.
5. Do not prorate the utility or phone allowances when more than one household shares living quarters, including prorated deemers.

> NOTE: Refer to the current October Cost-of-Living Adjustment Administrative Notice for the standard utility and phone allowance amounts.

H. ALLOWING DEDUCTIONS FOR UNOCCUPIED HOMES AND DISASTER REPAIRS

This policy applies to households claiming expenses for unoccupied homes.

1. Allow shelter costs of the home if not occupied by the household for the following reasons:
   - Employment or training away from home,
   - Illness, or
   - Abandonment caused by a natural disaster or casualty loss.
2. Allow the shelter costs for the unoccupied home with the following conditions:
   - The household must intend to return to the home;
   - The current occupants of the home, if any, must not be claiming the shelter costs for food benefit purposes; and
   - The home must not be leased or rented during the absence of the household.
3. Give only one standard utility allowance to households that have both an occupied home and an unoccupied home.
4. Allow deductions for charges for the repair of the home substantially damaged or destroyed by a natural disaster such as a flood or fire with the following conditions:

A. Shelter costs will not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

B. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.

12 DE Reg. 462 (10/01/08)
13 DE Reg. 1464 (05/01/10)
18 DE Reg. 14 (07/01/14) (Prop.)