DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

FINAL

ORDER

DSSM 9060: Determining Income Deductions

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 the Food Supplement Program. 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 March 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

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

Statutory Authority

- Food and Nutrition Act of 2008, Section 5(d)(6)
- 7 CFR §273.9(d), Income deductions

Summary of Proposed Changes

DSSM 9060: *Determining Income Deductions*: The purpose and effect of the proposed changes is: 1) to treat child support payments as an income deduction; and, 2) to add new homeless shelter deduction policy. The Division of Social Services (DSS) has elected to treat child support payments as an income exclusion off the gross income, instead of a deduction off the net income, which will allow more households to participate in the Food Supplement Program (FSP). DSS has also elected to allow a homeless shelter deduction of $143.00 for homeless households with limited shelter expenses, which will give some homeless households more benefits. Additional changes are proposed to reformat and reorganize original text to simplify language and improve readability.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) reviewed the Division of Social Services (DSS) proposal to amend the income deduction standards of the Food Supplement Program (FSP). As the "Summary of Proposed Changes" indicates, there are two major changes which are highlighted below. Since the changes benefit recipients, we **endorse** the amendments. However, we would like to clarify that references to income in the initial section refer to "gross" income, not "net" income. The superseded regulation (e.g. §9060B) explicitly referred to "gross" income.

DSS is opting to treat child support payments as an income exclusion from gross income rather than a deduction from net income. This favors the obligor and expands eligibility. The relevant federal regulations, 7 C.F.R. 273.9(b)(17) and 273.9(d)(5), provide states with this option.

Second, DSS is opting to allow a shelter deduction of $143 for homeless households with limited shelter expenses. This should result in an increase in benefits to affected households.

Agency Response: You are correct that the references in the proposed sections do refer to gross income and not net income. DSS agrees that treating child support as income exclusion and having a homeless shelter deduction will allow more households to be eligible for food benefits and may give some an increase in benefits. Thank you for your endorsement. No change to regulation was made as a result of these comments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program (FSP), specifically, *Income Deductions*, is adopted and shall be final effective May 10, 2010.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #10-22
REVISIONS:

9060 Determining Income Deductions

[273.9(d)]

~~Deductions from income will be allowed only for the following household expenses:~~

~~A. Standard Deduction - A standard deduction per household per month. (Refer to current October Cost-of-Living Adjustment Administrative Notice for amount of the standard deduction.)~~

~~B. Earned Income Deduction - Twenty percent, (20%) of gross earned income as defined at DSSM 9056. Earnings excluded in DSSM 9058 and DSSM 9059 will not be included in gross earned income deduction.~~

~~(Do not allow the earned income deduction for income under a work supplementation program.)~~

~~C. Excess Medical Deductions - That portion of unreimbursed medical expenses in excess of $35 per month, excluding special diets, incurred by any household member who is 60 years of age or over or disabled as defined in DSSM 9013.1. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction, but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction.~~

~~Allowable medical costs include: 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. Also the 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.~~

~~Any Medicare premiums, cost-sharing or spend down expenses incurred by Medicaid recipients, dentures, hearing aids and prosthetics are deductible as well as the 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 and the reasonable costs of transportation and lodging to obtain medical treatment or services are deductible.~~

~~Reasonable transportation and lodging costs to obtain medical treatment or services are limited to costs incurred in order to obtain such treatment. These costs are to be verified. Reasonable costs of transportation include, but are not limited to, trips to the doctor, dentist, to fill prescriptions for medicine, dentures, hearing aids or eye glasses. Allowance for mileage in privately-owned vehicles should be standard in a State. As for lodging costs, eligibility workers should use good judgment in determining the reasonableness of such costs based on the area and average costs.~~

~~Maintaining an attendant, homemaker, home health aide, housekeeper, or child care services necessary due to age, infirmity, or illness are deductible costs. In addition, an amount equal to the one person food stamp allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment allowed shall be the amount in effect at the time of initial certification, and will not be updated until the time of the next scheduled recertification. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the costs shall be treated as a medical expense.~~

~~D. Dependent Care - Payments for the actual costs for the care of a child or other dependent when necessary for a household member to seek, accept, or continue employment, comply with the employment and training requirements in DSSM 9018, or attend training or pursue education which is preparatory to employment.~~

~~E. Child support payments deduction - Legally obligated child support payments made to or for, children who live outside of the household. Only child support payments that are legally obligated can be allowed as a deduction. This also includes:~~

~~a) Amounts paid out of the household's current income to make up for months in which the household did not meet its obligation, except for amounts paid through tax intercept, and~~

~~The value of legally binding child support that is provided in-kind, such as payment of rent directly to the landlord.~~

~~Payments provided for health care,~~
~~Payments for education,~~
~~Payments for recreation,~~
~~Payments for clothing,~~
~~Payments to meet other specific needs of a child or children, and~~
~~Payments to cover attorney's fee, interest, and court costs.~~

~~The following are examples of how to treat child support payments:~~

~~1. Mr. A is court ordered to pay Mrs. A $100 a week in child support. He also pays $30 a month child support for arrears to make up the months he was not able to pay. Mr. A is eligible for a $463 ($100 x 4.33= $433 +$30) child support deduction from his current income.~~

~~2. Mr. C is court ordered to pay Mrs. C $800 a month in child support. He pays $500 a month directly to the landlord for Mrs. C's rent and $100 directly to the utility company for Mrs. C's electric. Mrs. C receives the $200 balance in cash. Mr. C is eligible for a $800 child support deduction from his current income.~~

~~Alimony payments are not included in the child support deduction.~~

~~F. Shelter Costs - Monthly shelter costs in excess of 50% of the household's income after all other deductions in A, B, and C above have been allowed. The shelter deduction must not exceed the maximum excess shelter deduction limit. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the maximum excess shelter deduction.) This is applicable unless the household contains a member who is age sixty (60) or over, or disabled per DSSM 9013.1. Such households will receive an excess shelter deduction for the monthly costs that exceeds 50% of the household's monthly income after all other applicable deductions.~~

~~Shelter costs will include only the following:~~

~~1. Continuing charges for the shelter occupied by the household, including rent, mortgages, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments. A mortgage is defined as any loan which uses the house as collateral.~~

~~Households required to pay the "last month's rent" along with the first month's rent before they can move into the dwelling can claim both amounts in the month that the household is billed.~~

~~For example, a client rents an apartment in January and must pay January's and the next December's rent in January. Both rental amounts can be used for January's food stamp budget. A rent deduction would not be allowed in December since it was paid in January.~~

~~Households required to pay a security deposit before they move into a dwelling cannot claim the deposit as a shelter cost.~~

~~For example, a client rents a home and must pay a $450 security deposit and the first month's rent before she moves in. The security deposit will be refunded when she moves out if the home is in good condition. She cannot claim the deposit as a shelter cost for food stamp purposes.~~

~~2. Property taxes, State and local assessments and insurance on the structure itself, but no separate costs for insuring furniture or personal belongings. 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.)~~

~~3. Mandatory Utility and Phone Allowances~~

~~a. Heating and Cooling Standard Utility Allowance (HCSUA) - The HCSUA is mandatory for:~~

- ~~households that incur heating or cooling costs separate and apart from their rent or mortgage payments;~~
- ~~residents of private rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual usage or who are charged a flat rate;~~
- ~~households receiving energy payments under the Low Income Home Energy Assistance (LIHEA);~~
- ~~households receiving direct or indirect energy assistance payments like HUD utility reimbursements, other than LIHEA, 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~~
- ~~households living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs.~~

~~Heating costs must be verified to use the HCSUA. For cooling costs, you must verify the utility, like electricity, that provides the air conditioning. Accept the household's statement that they pay for cooling unless it is questionable.~~

~~b. Limited Utility Allowance (LUA) - The LUA is mandatory for households that incur costs for two non-heat or non-cooling utilities like electric, gas cooking, water, sewerage, well and septic tank installation and maintenance, telephone and garbage or trash collection.~~

~~c. One-utility Standard - The one-utility standard is mandatory for households that incur only one non-heat, non-cooling, or non-phone utility.~~

~~d. Telephone Allowance - The standard telephone allowance will be used for households billed only for a telephone regardless of their actual cost.~~

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

~~There is no proration of the utility or phone allowance when more than one household shares living quarters. This means when two or more households share living costs each household may receive full utility or phone allowance. There is no proration of the utility or phone allowances when you have prorated deemers like ineligible aliens.~~

~~4. The shelter costs of the home if not occupied by the household because of employment or training away from home, illness or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, 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 stamp purposes; and the home must not be leased or rented during the absence of the household.~~

~~A household that has both an occupied home and an unoccupied home is only entitled to one standard utility allowance.~~

~~5) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. 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. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.~~

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 FSP households with income.

1. Give each household a standard deduction that is deducted from any income the household has.
2. 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 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 $35 per month.
2. Give the medical deduction only to individuals who are age 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.
2. Give homeless households the $143 homeless shelter deduction when their anticipated monthly shelter expenses are at or less than $143.
3. Allow homeless households that incur monthly expenses greater than $143 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 50% 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 50% 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);
   - Households receiving energy direct or indirect energy assistance payments 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

- 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) (Final)