

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

Child Care Subsidy Program: Determining Technical 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 the Child Care Subsidy Program, specifically, *Determining Technical 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 July 2012 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced July 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining Technical Eligibility for Child Care*.

Statutory Authority

45 CFR §98.20, *A child's eligibility for child care services*

Summary of Proposed Changes

DSSM 11003, ~~Eligibility Requirements~~ *Determining Technical Eligibility for Child Care*: The name of the section is changed to more accurately indicate the content of the policy. This policy section is reformatted and clarifying language is also provided to make the rules easier to understand and follow. Specifically, this regulatory action adds the eligibility requirement that parents/caretakers must be Delaware residents. The applicable federal citation is also added to the policy section.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGE(S)

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.

First, §3.C refers to "(o)btaining status as a a sy lee." The error appears in both the printed and on-line version of the regulation. Based on the current Administrative Code version of the regulation, the reference should be "(o)btaining status as an asylee." The Webster's Dictionary definition of an "asylee" is attached.

Agency Response: The reference "obtaining status as an asylee" has been corrected.

Second, as noted above, the Summary of Proposed Changes indicates that the regulation is being reformatted for clarity. Unfortunately, while the current regulation contains punctuation, the proposed version omits corresponding punctuation. Consider the following:

- Subsection 1.A. should have a concluding period.
- Subsections 1.B. 1-6 omit semicolons and Subsection 1.B. 7. should have a concluding period.
- Subsection 2.A. omits a semicolon; Subsection 2.B. should conclude with "; or"; and Subsection 2.C. should have a concluding period.
- Subsections 3.A. and B. lack concluding semicolons.
- Subsections 3.C.A. omits a concluding semicolon;
- Subsection 3.C.B. should conclude with "; or"; and
- Subsection 3.C.C. lacks a concluding period.

Agency Response: According to the Gregg Reference manual, the suggested punctuation is not required in this style

of writing. No change to the regulation was made as a result of this comment.

Third, the Division should consider converting Subsections 1.C., Pars. A-C, to Pars. 1-3. Compare Subsection 1.B., Pars. 1-7.

SCPD endorses the proposed regulation subject to consideration of the above recommended edits.

Agency Response: DSS is unable to address this recommendation as your letter refers to 1.C. and there is no paragraph labeled 1.C.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2012 *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 Child Care Subsidy Program, specifically, *Determining Technical Eligibility for Child Care* is adopted and shall be final effective September 10, 2012.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #12-39

REVISION:

11003 Eligibility Requirements Determining Technical Eligibility for Child Care

45 CFR 98.20

PRWORA 401 and 402

~~DSS provides child care services to eligible Delaware families with a children) who resides in the home and who is under the age of 13, or children 13 to under 19 who are physically or mentally incapable of caring for themselves or are active with the Division of Family Services.~~

~~Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option, the Division may choose to use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years from the date of obtaining status as either a refugee, a sy lee, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who have worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction.~~

~~The Division will provide Child Care services for eligible families where there is at least one U.S. citizen or legal alien in the family. If one member of the family is a U.S. citizen or legal alien and they meet both technical and financial eligibility criteria Child Care Services can be provided. The Division will evaluate non-U.S. citizen cases on an individual basis.~~

~~Non-US citizens referred to the Child Care subsidy program through the Division of Family Services, due to a protective need, are eligible to receive services regardless of their citizenship status.~~

~~A family needs service when parents/ caretakers are required to be out of the home, or are reasonably unavailable (may be in the home but cannot provide supervision, such as a parent works a third shift, is in the home, but needs to rest), and no one else is available to provide supervision.~~

~~A. Parents/caretakers need service to:~~

- ~~1. accept employment,~~
- ~~2. keep employment,~~
- ~~3. participate in a training component, as part of one of the DSS Employment and Training programs, leading to employment,~~
- ~~4. participate in an education component, as part of one of the DSS Employment and Training programs,~~
- ~~5. work and the other parent/caretaker or adult household member is chronically ill or incapacitated,~~
- ~~6. have someone care for the children because of a parent/caretaker special need.~~

~~B. A children) needs service to:~~

- ~~1. provide for a special need (physical or emotional disabilities, behavior problems, or developmental delays, etc.);~~
- ~~2. provide protective supervision in order to prevent abuse or neglect.~~

~~In addition to having an eligible child and a child care need, certain DSS Child Care programs require parents/ caretakers to meet income limits. Under certain other Child Care programs, DSS guarantees child care. These financial requirements along with other technical requirements help determine the parent/caretaker's child care category. Categories relate to the funding sources used by DSS to pay for Child Care services. The following sections discuss the technical requirements for child care services based on category and need.~~

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

1. Parents/Caretakers Must Meet Certain Criteria

To be technically eligible parents/caretakers must have a need that requires them to be out of the home or reasonably unavailable to provide supervision (e.g., a medical condition, needing rest because of working a third shift, etc.).

- A. Parents/Caretakers must be Delaware residents
- B. Parents/Caretakers need services to meet one of the following:
 - 1. Accept or keep a job
 - 2. Participate in a DSS Employment and Training program
 - 3. Participate in the Transitional Work Program
 - 4. Participate in job search
 - 5. Have a break in education/training
 - 6. Prevent child abuse or neglect as referred by DFS
 - 7. Provide care for the children) when the parents/caretakers have a special need

2. Children Must Meet Certain Criteria

Children may be eligible if they:

- A. Live in the home and are under the age of 13
- B. Live in the home and are age 13 to 18 **and** are physically or mentally incapable of caring for themselves
- C. Are active with and referred by the Division of Family Services

3. Non-Citizens May Qualify for Child Care

Non-citizens may qualify if[

- A. **At least one U.S. citizen or legal alien lives in the household**
- B. ~~bB]~~ oth parents/caretakers meet technical and financial eligibility criteria[. **and they meet at least one of the following criteria.**
- C. The following aliens qualify for a period of five years from the date of:]
 - ~~[A1]~~ Obtaining status as a refugee [or]
 - ~~[B2]~~ Obtaining status as a[n] asylee [or]
 - ~~[C3]~~ Their deportation being withheld
 - ~~[BD]~~ They are aliens admitted as permanent residents who have worked 40 qualifying quarters
 - ~~[CE]~~ They, their spouses or unmarried dependent children are honorably discharged veterans or on active military duty.

~~[Qualified aliens may qualify for a period of five years from the date of:]~~

9 DE Reg. 572 (10/01/05)

10 DE Reg. 1007 (12/01/06)

15 DE Reg. 47 (07/01/12)

16 DE Reg. 319 (09/01/12) (Final)