




COMMONWEALTH of VIRGINIA

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TO: DUKE STOREN, Commissioner
Virginia Department of Social Services

FROM: ELLEN FULMER MALENKE 
Assistant Attorney General

DATE: February 21, 2018

SUBJECT: Regulation Section - 22VAC40-601-70 (Revise Guidelines for Counting
Income Toward SNAP eligibility)

I am in receipt of the attached SNAP regulations. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state and federal law.

This final stage regulatory action follows proposed language to add a new section §70, to 22VAC40-601. Section 22VAC40-601-70 will reduce countable income used in determining eligibility for Supplemental Nutrition Assistance Program (SNAP) benefits or used to determine the amount of SNAP benefits received. The amounts paid by SNAP household members for child support, pursuant to a court or administrative order, will be excluded as income in SNAP calculations. Changing how child support payments are allowed will not likely result in higher SNAP benefit amounts for households that pay support but, income exclusions for support amounts paid could potentially result in fewer households being denied SNAP benefits for having income amounts that exceed the allowable income limits.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority.

It is my view that this regulation is not exempt from but is subject to the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about these regulations, please contact me at 786-4856.

cc: Kim F. Piner, Esquire
Attachment

Project 4595 - Final

DEPARTMENT OF SOCIAL SERVICES

Income Exclusion for Legally Obligated Child Support Payments

22VAC40-601-70. Income exclusion for legally obligated child support payments.

Legally obligated child support payments paid by a SNAP household member to or for a nonhousehold member will be allowed as an exclusion from countable income for SNAP purposes.