



COMMONWEALTH of VIRGINIA

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TO: MARGARET SCHULTZE, Commissioner
Virginia Department of Social Services

FROM: ERIC J. REYNOLDS *ER*
Assistant Attorney General

DATE: April 1, 2014

SUBJECT: New Regulation Section - 22 VAC40-601 (SNAP)

I am in receipt of the attached regulation regarding eligibility of ineligible immigrants for the Supplemental Nutrition Assistance Program (SNAP). 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.

The new regulation section - 22VAC40-601-70 - is being added to change the method for evaluating income and deductible expenses in determining eligibility for SNAP benefits for households that contain persons who do not meet the immigration eligibility requirements to receive SNAP benefits. Federal regulations at 7 C.F.R. 273.4 outline eligibility requirements for persons who are not citizens. The new section requires the full amount of income and deductible expenses of ineligible immigrants to be used to determine SNAP eligibility, as opposed to a prorated amount of their income and expenses, as was used previously. The new section is consistent with policies for the Medicaid and Temporary Assistance for Needy Families programs.

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 786-3450.

cc: Kim F. Piner, Esquire
Attachment

DEPARTMENT OF SOCIAL SERVICES

Revise Guidelines for Counting Income Toward SNAP Eligibility

22VAC40-601-70. Income calculation method of ineligible [immigrants aliens] .

The income [and resources] of an ineligible alien shall count in [their its] entirety, and the ineligible alien's deductible expenses shall continue to apply to the remaining household members. The requirements of this section do not apply to those aliens described in 7 CFR 273.11(c)(3)(i)(A) through (G).