

STATE WAIVER REQUEST

1. **Waiver Serial Number (if applicable):**
2. **Type of request:** Initial
3. **Regulatory citation:** 7 CFR § 273.16(e) Disqualification for Intentional Program violation
4. **State:** DE
5. **Region:** MARO
6. **Regulatory requirements:**

Disqualification for Intentional Program Violation (IPV) regulations at 7 CFR§ 273.16 (e) (2) (iv)

Disqualification hearing procedures. Within 90 days of the date the household member is notified in writing that a State or local hearing initiated by the State agency has been scheduled, the State agency shall conduct the hearing, arrive at a decision and notify the household member and local agency of the decision. The household member or representative is entitled to a postponement of the scheduled hearing, provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. However, the hearing shall not be postponed for more than a total of 30 days and the State agency may limit the number of postponements to one. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

7. **Description of alternative procedures:**

This request results directly from the March 13, 2020 state of emergency (SoE) and March 22, 2020 stay-at-home order implemented in Delaware due to the coronavirus pandemic. Delaware asks FNS to retroactively grant this waiver from March 13, 2020, until the Delaware SoE is lifted.

Delaware is asking FNS to (a) waive the requirement to conduct the hearing, arrive at the decision and notify the household member/local agency of the decision within 90 days; (b) grant the Fair Hearing Office authority to postpone the scheduling/rescheduling of administrative disqualification appeals already received by DSS until the SoE expires; (c) and extend the due date of the decision for as many days as the hearing is postponed.

Alternative procedures include:

- Effective March 16, 2020, ARMS ceased submitting requests for administrative disqualification (ADH) hearings.
- Effective March 19, 2020, the Fair Hearing Office cancelled all scheduled in person hearings due to implementation of the SoE.
- Fair Hearing office believes that individuals are not harmed by the delay of ADH hearings, in that:
 - Disqualification penalties are not imposed until after the hearing decision is sent to the household member.
 - Individuals may participate in the SNAP program until disqualification penalties are imposed.

Delaware is asking FNS to grant DSS the authority to postpone hearings for more than 30 days and expand the time frame in which tasks associated with a filed ADH hearing must be completed. The proposed time limit extensions (aka timely action on appeals) will be calculated by adding the number of days the request has been postponed to the date the appeal is received to arrive at the due date of the decision.

For example: If the state level hearing is postponed due to the state of emergency for 20 days, notification of the hearing decision will be required within 110 days of the request for a hearing.

8. Justification for request:

A SoE became effective in Delaware on March 13, 2020 at 8:00 A.M. As ordered on March 22, 2020, Delaware is also currently operating under a stay-at-home declaration for non-essential staff due to the COVID-19 pandemic. Granting this request will allow Delaware the opportunity to redeploy staff to complete essential tasks.

Delaware will ensure applicants and participants are notified of their right to a hearing after the state of emergency is lifted ends. All DSS staff have not been provided VPN access. Even with VPN access, staff cannot remotely complete hearing summaries as database systems storing essential information needed to process these documents cannot be accessed remotely. Further, staff who do not personally own home computers will not be issued state laptops as surplus inventory does not exist. Lastly, a relevant portion of our appellant population does not have access to telephones or computers. Thus, they are unable to submit documents electronically. Nor can they leave their homes to access these resources elsewhere.

9. Anticipated impact on households and State agency operations:

Delaware requests this waiver to ensure our most vulnerable citizens are not further needlessly harmed by circumstances beyond their control. Delaware is implementing a myriad of stopgap measures to ensure an adequate standard of living for all, particularly, members of our low- and no-income communities. Immediate support is needed and requested from our federal partners.

State agencies are also impacted by the depletion of available work force due to COVID-19. Unprecedented numbers of state employees are missing work due to circumstances beyond their control. Some, but not all, are able to work remotely. Our current hearing model is an in-person model. Although we have the capability to conduct hearings via telephone, this ability is hampered since staff is only able to compile/complete hearing summaries while in the office as some systems cannot be remotely accessed. Further, printing and mailing decisions via USPS will be difficult when not in the office. Each step of the hearing process is impeded by the SoE and stay at home order.

DSS would like the opportunity to redeploy staff to other functional areas to improve the speed at which benefits are made available to applicants.

For these reasons, Delaware seeks permission from FNS to waive the regulatory requirements found at #6, above.

10. Caseload information, including percent, characteristics, and quality control error rate for affection portion (if applicable):

Delaware currently has 58,457 Households on SNAP. The Fair Hearing Office is in possession of 5 pending ADH appeals that have not been scheduled and 36 ADH appeals that will require rescheduling. Delaware anticipates receiving additional appeal requests for benefits that were denied/discontinued/negatively impacted before the state of emergency was imposed.

The Fair Hearing Office currently handles hearings for other programs, including SNAP, Cash Assistance, Food Benefits, Child Care, and Medicaid. Waiver requests are pending with the appropriate federal agencies for these programs.

11. Anticipated implementation date and time period for which waiver is needed:

Requesting retroactive approval from March 13, 2020 through the last date of the SoE.

12. Proposed quality control review procedures:

Delaware proposes the following internal quality control procedures. The ADH appeals that fall under this waiver request will be maintained on a separate log. When hearings resume, the hearings office will collaborate with ARMS, as feasible and to the extent possible, to track and monitor appeals through every phase of the process: Scheduling hearings, conducting hearings, and issuing decisions according to the terms outlined in this waiver. If this waiver is granted, the steps outlined below will be followed.

- Date the ADH appeal request is received from ARMS
- Date the hearing scheduling notice is mailed to the parties
- Date the hearing is scheduled
- Date the decision is due
- Date the decision is received
- Date(s) the decision is reviewed
- Date the decision is mailed to the parties
- If applicable, Date an appeal is filed with Delaware Superior Court

13. Signature and title of requesting official:



Title: Deputy Director, Division of Social Services

Email for transmission of response: Thomas.Hall@delaware.gov

14. Date of request: 4/13/20

15. State agency staff contact (name/email/telephone):

Thomas Hall/Thomas.Hall@delaware.gov/302-255-9605

16. Regional office contact person (to be completed by FNS regional office):