

March 20, 2013

Thomas N. Moe, Director
Department of Veterans Services
77 South High Street, 17th Floor
Columbus, Ohio 43215

SYLLABUS:

2013-007

1. A county veterans service commission may not consider the dollar value of Supplemental Nutrition Assistance Program benefits an applicant receives when determining the applicant's need for financial assistance, and, thus, a commission may not request an applicant to disclose such information as income.
2. A county veterans service commission may inquire whether a financial assistance applicant is aware of the Supplemental Nutrition Assistance Program.



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OPINION NO. 2013-007

Thomas N. Moe, Director
Department of Veterans Services
77 South High Street, 17th Floor
Columbus, Ohio 43215

Dear Director Moe:

You have requested an opinion whether a county veterans service commission may consider the dollar value of Supplemental Nutrition Assistance Program (“SNAP”) benefits an applicant receives when determining the applicant’s need for financial assistance, and, thus, whether a commission may request an applicant to disclose such information as income. You further ask, if a county veterans service commission may not request that disclosure, may it inquire whether the applicant has applied for SNAP benefits for the limited purpose of determining whether the applicant is aware of the program.

County Veterans Service Commissions and Financial Assistance

We begin with a discussion of county veterans service commissions and the services they provide. A veterans service commission must be established in each county. R.C. 5901.02. Typically, each county veterans service commission is composed of five members who are residents of the county and are honorably discharged veterans.¹ *Id.*; 2012 Op. Att’y Gen. No. 2012-019, at 2-165. A veterans service commission is a part of the county government, 2012 Op. Att’y Gen. No. 2012-035, at 2-309, and is charged with providing various services to veterans and the families of veterans, including financial assistance and burial and cremation services, *see generally* R.C. 5901.03 (duties of a county veterans service commission); R.C. 5901.11 (determination of funds needed to provide financial assistance); R.C. 5901.16 (purchase of burial plots for indigent veterans); R.C. 5901.25 (county veterans service commission to contract for the burial or cremation of indigent veterans); 2012 Op. Att’y Gen. No. 2012-035, at 2-309; 2012 Op. Att’y Gen. No. 2012-019, at 2-165.

An applicant for financial assistance from a county veterans service commission must be:

¹ In some circumstances, a county veterans service commission may be composed of more than five members. *See* R.C. 5901.021.

a veteran, an active-duty member of the armed forces of the United States, or the spouse, surviving spouse, dependent parent, minor child, or ward of a veteran or active-duty member of the armed forces of the United States, who has been a bona fide resident of the county in which application is being made for at least three months.

R.C. 5901.08. In addition, an applicant for financial assistance must provide a statement of “the applicant’s household income and the amount of real and personal taxable property, stocks, bonds, moneys on hand loaned or deposited in any bank or elsewhere, shares in building associations, mortgages, notes, or other articles of value from which the applicant derives an income or revenue.” R.C. 5901.09(A). The statement of income shall be made on a form provided to the applicant by the county veterans service commission. *Id.* County veterans service commissions have “broad discretion ... to determine, in a reasonable manner, the bases upon which they will grant assistance.” 1998 Op. Att’y Gen. No. 98-029, at 2-161. It is in this context that we consider whether the dollar value of SNAP benefits may be considered income to the applicant when financial assistance is sought from a county veterans service commission.

Supplemental Nutrition Assistance Program

Before determining whether SNAP benefits may be considered income to a financial assistance applicant, let us briefly examine SNAP at the federal, state, and local levels. Nutrition assistance was initially authorized by Congress through the creation of the Food Stamp Program in 1964, a jointly administered program by the United States Department of Agriculture and state agencies. The Food Stamp Act of 1964, Pub. L. No. 88-525, § 2, 78 Stat. 703, 703; *Griffin v. Coler*, 667 F.Supp. 1233, 1235 (C.D. Ill. 1986). Under the Food Stamp Program, an eligible household was issued a coupon allotment that was used to purchase food from approved retail stores. The Food Stamp Act of 1964, Pub. L. No. 88-525, § 4(a), 78 Stat. 703, 704. Participation in the program was limited to “those households whose income [was] determined to be a substantial limiting factor in the attainment of a nutritionally adequate diet.” *Id.* at § 5(a).

In 2008, the Food Stamp Program was renamed the “Supplemental Nutrition Assistance Program.” Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 4001, 122 Stat. 1651, 1853, codified at 7 U.S.C.S. §§ 2011, *et seq.* Under SNAP, just as under the Food Stamp Program, eligible households are issued an allotment that may be used to purchase food. 7 U.S.C.S. § 2013(a). Today, allotments (or SNAP benefits) are issued to recipients on electronic benefit transfer cards. 7 U.S.C.S. § 2016(a). Participation in SNAP continues to be limited to “those households whose incomes and other financial resources, held singly or in joint ownership, are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.” 7 U.S.C.S. § 2014(a).

In Ohio, SNAP is administered by the Director of Job and Family Services. R.C. 5101.54(A). R.C. 5101.54 sets forth the tasks that the Department of Job and Family Services may undertake in the administration of SNAP at the state level. Funds from the federal reimbursement of expenses incurred by the state in the administration of SNAP are deposited into a SNAP fund within the state treasury. R.C. 5101.541. All expenses related to the administration of SNAP are paid from the SNAP fund. *Id.*

SNAP benefits are distributed to recipients by each county department of job and family services under the supervision of the Department of Job and Family Services. R.C. 329.042.

Consideration of SNAP Benefits by a Veterans Service Commission

We will now address whether a county veterans service commission may consider the dollar value of SNAP benefits an applicant receives when determining the applicant's need for financial assistance, and, thus, whether a commission may request an applicant to disclose such information as income. 7 U.S.C.S. § 2017(b) provides:

[t]he value of benefits that may be provided under [7 U.S.C.S. §§ 2011, *et seq.*] shall not be considered income or resources for *any purpose under any* Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs, and no participating State or political subdivision thereof shall decrease *any assistance* otherwise provided an individual or individuals because of the receipt of benefits under [7 U.S.C.S. §§ 2011, *et seq.*]. (Emphasis added.)

7 C.F.R. § 272.1(a) reiterates the prohibition of 7 U.S.C.S. § 2017(b) and provides:

[t]he coupon allotment provided any eligible household shall not be considered income or resources *for any purpose under any* Federal, State, or local laws, including, but not limited to, laws on taxation, welfare, and public assistance programs. No participating State or political subdivision shall decrease *any assistance* otherwise provided an individual or individuals because of the receipt of a coupon allotment. (Emphasis added.)

The proscriptions of 7 U.S.C.S. § 2017(b) and 7 C.F.R. § 272.1(a) are explicit and mandatory. Use of the word "shall" in a statute or regulation indicates "that the directive is mandatory unless other statutory language evidences a clear and unequivocal intent to the contrary." 2009 Op. Att'y Gen. No. 2009-047, at 2-347 (citing *Dep't of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992)). Nothing in either 7 U.S.C.S. § 2017(b) or 7 C.F.R. § 272.1(a) indicates a clear and unequivocal intent that "shall" should be construed to be permissive language. Furthermore, although the statute and regulation identify laws on "taxation, welfare, and public assistance programs" as purposes for which SNAP benefits may not be considered income, the list is not exhaustive. 7 U.S.C.S. § 2017(b) and 7 C.F.R. § 272.1(a) indicate that SNAP benefits shall not be considered income for "*any purpose under any* Federal, State, or local laws, including, but not limited to" the subjects listed. (Emphasis added.)

Courts interpreting 7 U.S.C.S. § 2017(b) have concluded that benefits awarded under 7 U.S.C.S. §§ 2011, *et seq.* may not be considered income in determining an applicant's need for other forms of financial assistance provided by a state. See *Foster v. Ctr. Twp., LaPorte Cty.*, 527 F. Supp. 377, 379 (N.D. Ind. 1981); *Pastrick v. Geneva Twp., Jennings Cty.*, 474 N.E.2d 1018, 1022 (Ind. App. Ct. 1985) ("it is absolutely uncontested ... that the value of food stamps may not be considered when determining an applicant for poor relief's income"); *Gooderham v. Adult & Family Serv. Div.*, 64 Ore.

App. 104, 113, 667 P.2d 551 (App. Ct. 1983) (“[i]t is clear that a reduction in public assistance because of an individual’s receipt of food stamps is prohibited by the statute”). In prohibiting the inclusion of SNAP benefits in a recipient’s income, Congress sought to ensure that the nutrition assistance serves as a supplement to, and not a substitute for, any other financial assistance available to a recipient from a state, other political subdivisions, or government entities. *Foster v. Ctr. Twp., LaPorte Cty.*, 527 F. Supp. at 379 (“the congressional policy reflected in the adoption of 7 U.S.C.S. § 2017(b) was to guarantee that food stamps would be available not in substitution for, but in addition to, any welfare payments already provided by states”). The advantage of receiving SNAP benefits would be negated if the value of the SNAP benefits reduced other forms of assistance a recipient was eligible to receive. 7 U.S.C.S. § 2017(b) bars not only the enactment of statutes, ordinances, or rules that consider SNAP benefits as income to the recipient, but it also proscribes the effect of a state or political subdivision decreasing assistance a recipient of SNAP benefits would otherwise be eligible to receive. *Gooderham v. Adult & Family Serv. Div.*, 64 Ore. App. at 115 (“[7 U.S.C.S. § 2017(b)] does not merely make illegal state *statutes and rules* lowering benefits because of receipt of food stamps, but rather says that the state cannot *decrease assistance* otherwise provided because of the food stamp allotment”).

As a state that has elected to participate in SNAP, Ohio, and its political subdivisions, must comply with the terms of 7 U.S.C.S. §§ 2011, *et seq.* See 7 U.S.C.S. § 2020(g) (consequence of a state’s failure to comply with 7 U.S.C.S. §§ 2011, *et seq.*); R.C. 329.042 (SNAP benefits distributed by a county department of job and family services “shall be distributed ... in accordance with the Food and Nutrition Act of 2008 [7 U.S.C.S. §§ 2011, *et seq.*] and regulations issued thereunder”); R.C. 5101.54(A) (SNAP shall be administered “in accordance with the Food and Nutrition Act of 2008 [7 U.S.C.S. §§ 2011, *et seq.*]”); *Peppers v. McKenna*, 81 F.R.D. 361, 364 (N.D. Ohio 1977) (“[h]aving [chosen to participate in the Food Stamp Act of 1964 and the AFDC program], the state must maintain a system that complies with both Acts ... and with valid regulations issued by the Secretary of the Department of Health, Education and Welfare in AFDC cases ... and by the Secretary of the Department of Agriculture in food stamp cases”); 1994 Op. Att’y Gen. No. 94-084, at 2-418 (“states that choose [to participate in a federal program] must comply with the requirements imposed by federal law”).

Therefore, in response to your first question, we conclude that a county veterans service commission may not consider the dollar value of SNAP benefits an applicant receives when determining the applicant’s need for financial assistance, and, thus, a commission may not request an applicant to disclose such information as income. When determining an applicant’s need for financial assistance, the inclusion of SNAP benefits in the applicant’s income reduces that applicant’s perceived need for assistance. This, in turn, reduces the amount of financial assistance for which an applicant is deemed eligible. This decrease in the amount of financial assistance from a veterans service commission for which an applicant is eligible is precisely the consequence prohibited by 7 U.S.C.S. § 2017(b) and 7 C.F.R. § 272.1(a).

We now address your second question, whether a county veterans service commission may request an applicant to disclose whether he has applied for SNAP benefits for the limited purpose of determining whether the applicant is aware of the program. This inquiry is meant to ensure that

applicants for financial assistance from a county veterans service commission are also made aware of other programs, such as SNAP, that are available to them.

It is well established that county veterans service commissions are “vested with a special public trust to see that those who have served our country ... and their families are kept from indigency.” *Lynch v. Gallia Cty. Bd. of Comm’rs*, 79 Ohio St. 3d 251, 258, 1997-Ohio-392, 680 N.E.2d 1222; 2012 Op. Att’y Gen. No. 2012-019, at 2-165; *see also* 2008 Op. Att’y Gen. No. 2008-033, at 2-346 (“[u]nder R.C. Chapter 5901, the county [veterans service commission] is the branch of county government with responsibility for caring for the needs of indigent veterans and their families”). One of the statutory duties of a county veterans service commission is “[e]stablishing programs of outreach and coordination with other agencies to enhance available services to veterans within the county.” R.C. 5901.03(E). Prior Attorney General opinions have read R.C. 5901.03(E) to impose a duty on a county veterans service commission to “establish programs that make ‘a systematic attempt, working together with other agencies, to increase available services specifically to veterans within the county.’” 2011 Op. Att’y Gen. No. 2011-047, at 2-378; 2001 Op. Att’y Gen. No. 2001-033, at 2-198. Thus, a county veterans service commission has a responsibility to work with other agencies to increase services available to veterans within the county served by the commission.

Inquiring whether a financial assistance applicant is aware of SNAP benefits is consistent with the duties of a county veterans service commission. If after inquiring, it is determined that the applicant is unaware of SNAP, a county veterans service commission may provide information concerning the existence of the program and how to apply for the benefits. In providing that information, a county veterans service commission is simply improving a veteran’s awareness of assistance programs and discharges its duty to care for the needs of indigent veterans and their families. Therefore, we conclude that a county veterans service commission may inquire whether a financial assistance applicant is aware of SNAP.

Conclusions

In sum, it is my opinion, and you are hereby advised that:

1. A county veterans service commission may not consider the dollar value of Supplemental Nutrition Assistance Program benefits an applicant receives when determining the applicant’s need for financial assistance, and, thus, a commission may not request an applicant to disclose such information as income.

2. A county veterans service commission may inquire whether a financial assistance applicant is aware of the Supplemental Nutrition Assistance Program.

Very respectfully yours,

A handwritten signature in black ink that reads "Michael Dewine". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

MICHAEL DEWINE
Ohio Attorney General