

5. Aged individuals: Persons who are age 65 years or older.

6. Disabled individuals: Persons who have been medically determined to meet the criteria of disability as set forth at N.J.A.C. 10:71-3.10 through 3.13.

7. Blind individuals: Persons who have been medically determined to meet the criteria of blindness as set forth at N.J.A.C. 10:71-3.10 through 3.13.

Emergency Amendment, R.1988 d.96, effective February 2, 1988 (expired April 2, 1988).

See: 20 N.J.R. 548(a).

Added (a)6.-8.

Adopted Concurrent Proposal, R.1988 d.212, effective May 16, 1988.

See: 20 N.J.R. 548(a), 20 N.J.R. 1103(a).

Amended by R.1989 d.397, effective August 7, 1989.

See: 21 N.J.R. 965(a), 21 N.J.R. 2383(a).

Provisions on eligibility of newborn added at (b).

Emergency Amendment, R.1991 d.223, effective March 28, 1991 (operative April 1, 1991; expires May 27, 1991).

See: 23 N.J.R. 1200(a).

Deleted obsolete language and adopted Federally required coverage pursuant to Omnibus Budget Reconciliation Act of 1989.

Adopted Concurrent Proposal, R.1991 d.302, effective May 24, 1991.

See: 23 N.J.R. 1200(a), 23 N.J.R. 1945(a).

Provisions of emergency amendment R.1991 d.223 readopted without change.

Amended by R.1991 d.483, effective October 7, 1991.

See: 23 N.J.R. 1889(a), 23 N.J.R. 3028(a).

In (a)3: revised text to clarify eligibility for newborns of Medicaid eligible women in Medicaid recipients. Added text regarding presumptively eligible pregnant women who have been found ineligible for the month the child was born.

Amended by R.1992 d.484, effective December 7, 1992.

See: 24 N.J.R. 1860(a), 24 N.J.R. 4378(a).

Eligibility expanded to include children of specified ages born after September 30, 1983.

Amended by R.1997 d.379, effective September 15, 1997.

See: 29 N.J.R. 2541(a), 29 N.J.R. 4136(a).

In (a)1i, added the last sentence.

Amended by R.1998 d.116, effective January 30, 1998 (operative February 1, 1998; to expire July 31, 1998).

See: 30 N.J.R. 713(a).

In (a), rewrote 2.

Adopted concurrent proposal, R.1998 d.426, effective July 24, 1998.

See: 30 N.J.R. 713(a), 30 N.J.R. 3034(a).

Readopted provisions of R.1998 d.116 without change.

Amended by R.1999 d.253, effective August 2, 1999.

See: 31 N.J.R. 97(a), 31 N.J.R. 2203(b).

In (a)3, added a second sentence.

10:72-3.5 Household unit

(a) The term "household unit" means those persons whose income is counted in the determination of eligibility under the provisions of this chapter. The following persons, if they reside with the program applicant or beneficiary, shall be considered members of the household unit:

1. In the case of a pregnant woman:

i. The pregnant woman and the unborn child (or children, when it is medically verified that there is more than one fetus);

ii. The pregnant woman's spouse;

iii. The pregnant woman's natural or adoptive children under the age of 21;

iv. The blood-related siblings (including those of half-blood) of the pregnant woman's children who are under the age of 21; and

v. The natural or adoptive father of any children in the household unit.

2. In the case of an infant:

i. The child;

ii. The child's natural or adoptive parents;

iii. The child's blood-related (including half-blood) and adoptive siblings under the age of 21; and

iv. At the option of the applicant, the child's stepparent. If the applicant elects not to include the stepparent in the household unit, his or her income will not be included in the determination of eligibility except to the extent that he or she makes it available to the eligible members.

3. In the case of an aged, blind, or disabled individual, the household unit will consist of that individual and his or her spouse if the spouse resides with the aged, blind, or disabled individual. In the case of a blind or disabled child, the household unit will consist of only that child; however, the income and resources of the child's parents will be deemed to that child in accordance with N.J.A.C. 10:72-4.4(d).

4. Any person who is in receipt of Work First New Jersey/TANF or SSI or who has applied for and been found eligible for Medicaid based on eligibility for those cash assistance programs will not be included in the household unit. Any person whose income and resources have been deemed to an eligible SSI beneficiary shall likewise not be included in the household unit unless that person is applying for benefits under this chapter.

5. Any person in (a)1 and 2 above shall be included in the household unit even though he or she is in an AFDC-related Medically Needy budget unit in accordance with N.J.A.C. 10:70-3.5. Likewise, any person in (a)1 and 2 above required by N.J.A.C. 10:70-3.5 to be included in an AFDC-related Medically Needy budget unit, shall be included in that budget unit even if he or she is included in a household unit under the provisions of this section. Any aged, blind, or disabled person eligible under the provisions of this chapter or who is eligible for Medically Needy (or pending spend-down) will not be included in the household unit of a pregnant woman or child.

6. A spouse shall not be included in the household unit of an aged, blind, or disabled individual if the spouse is himself or herself in the household unit of an eligible pregnant woman or infant under the provisions of this chapter, or is in the budget unit of an eligible AFDC-related Medically Needy case (including eligible pending spend-down). Note: Resources of a spouse of an aged, blind, or disabled individual will be deemed to that indi-

vidual in accordance with N.J.A.C. 10:72-4.5 even though the spouse is not in the household unit.

Emergency Amendment, R.1988 d.96, effective February 2, 1988 (expired April 2, 1988).

See: 20 N.J.R. 548(a).

Substantially amended.

Adopted Concurrent Proposal, R.1988 d.212, effective May 16, 1988.

See: 20 N.J.R. 548(a), 20 N.J.R. 1103(a).

Amended by R.1995 d. 539, effective October 16, 1995.

See: 27 N.J.R. 2527(a), 27 N.J.R. 3956(a).

Amended by R.1998 d.116, effective January 30, 1998 (operative February 1, 1998; to expire July 31, 1998).

See: 30 N.J.R. 713(a).

In (a), substituted a reference to Work First New Jersey/TANF for a reference to AFDC in the first sentence of 4.

Adopted concurrent proposal, R.1998 d.426, effective July 24, 1998.

See: 30 N.J.R. 713(a), 30 N.J.R. 3034(a).

Readopted provisions of R.1998 d.116 without change.

10:72-3.6 Third party liability

Program applicants and beneficiaries are required to identify to the county welfare agency any third party (individual, entity, or program) that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or beneficiary.

Amended by R.1998 d.116, effective January 30, 1998 (operative February 1, 1998; to expire July 31, 1998).

See: 30 N.J.R. 713(a).

Adopted concurrent proposal, R.1998 d.426, effective July 24, 1998.

See: 30 N.J.R. 713(a), 30 N.J.R. 3034(a).

Readopted provisions of R.1998 d.116 without change.

10:72-3.7 Persons sanctioned under AFDC rules

Persons who would be ineligible for AFDC using the rules in existence as of July 16, 1996 or due to the imposition of a sanction of ineligibility for a factor of AFDC eligibility that does not apply in Medicaid (such as noncooperation with work registration or WIN requirements) shall have eligibility determined under this chapter without regard to the sanction. (For persons ineligible for AFDC due to a period of ineligibility imposed as a result of the receipt of lump sum income, see N.J.A.C. 10:72-4.3(c)).

Amended by R.1998 d.116, effective January 30, 1998 (operative February 1, 1998; to expire July 31, 1998).

See: 30 N.J.R. 713(a).

Substituted "would be ineligible for AFDC using the rules in existence as of July 16, 1996 or" for "are ineligible for AFDC" in the first sentence.

Adopted concurrent proposal, R.1998 d.426, effective July 24, 1998.

See: 30 N.J.R. 713(a), 30 N.J.R. 3034(a).

Readopted provisions of R.1998 d.116 without change.

10:72-3.8 Application for other benefits

(a) As a condition of eligibility for the Medicaid program, applicants and beneficiaries are required to take all necessary steps to obtain any annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Applicants and beneficiaries must avail themselves of any health insurance coverage available to the household unit at no cost, such as coverage provided by an employer at no cost.

1. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation and pensions, Social Security benefits, and unemployment compensation. They do not include AFDC, Supplemental Security Income (SSI), or General Assistance.

Amended by R.1998 d.116, effective January 30, 1998 (operative February 1, 1998; to expire July 31, 1998).

See: 30 N.J.R. 713(a).

Adopted concurrent proposal, R.1998 d.426, effective July 24, 1998.

See: 30 N.J.R. 713(a), 30 N.J.R. 3034(a).

Readopted provisions of R.1998 d.116 without change.

Case Notes

Petitioner's income caused ineligibility for Medicaid benefits. *L.H. v. DMAHS*, 93 N.J.A.R.2d (DMA) 107.

10:72-3.9 Inmates of public institutions

(a) Any person who is an inmate of a public institution is ineligible for the Medicaid program.

(b) Any person who is incarcerated in a Federal, State, or local correction facility (prison, jail, detention center, reformatory, etc.) is not eligible for the Medicaid program.

10:72-3.10 Emergency services for aliens and limited prenatal care for aliens

(a) Any alien who is not an eligible alien as specified in N.J.A.C. 10:72-3.2(c) and (d), shall be ineligible for Medicaid benefits. Any such alien shall be, if a resident of New Jersey and if he or she meets all other Medicaid eligibility requirements, entitled to Medicaid coverage for the treatment of an emergency medical condition only.

1. An emergency medical condition is one of sudden onset that manifests itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- i. Placing the patient's health in serious jeopardy;
- ii. Serious impairment to bodily functions; or
- iii. Serious dysfunction of any bodily organ or part.

2. An emergency medical condition shall include all labor and delivery for a pregnant woman. It does not include routine prenatal or post-partum care.

3. Services related to an organ transplant procedure are not covered under services available for treatment of an emergency medical condition.

(b) Limited prenatal care shall be provided by the Division to alien pregnant women who would be eligible for New Jersey Care . . . Special Medicaid Programs or NJ FamilyCare services but for their immigration status. Services available through NJSPCP shall be limited to pregnancy-related services provided at a clinic or at a hospital, and shall include primary care, radiology, and clinical laboratory services or, in the case of radiology and clinical laboratory services, ordered by a clinic. In addition, pregnancy-related pharmaceuticals dispensed at a clinic or a hospital are covered. No other services shall be provided.

1. Services available through NJSPCP shall be limited to pregnancy-related services provided at a clinic or at a hospital, including primary care, radiology, and clinical laboratory services, or, in the case of radiology and clinical laboratory services, ordered by a clinic. In addition, pregnancy-related pharmaceuticals dispensed at a clinic or a hospital shall be covered. No other services shall be provided. Services eligible for reimbursement shall be directly related to the beneficiary's primary diagnosis. The eligible beneficiary's primary diagnosis shall be one or more of the pregnancy-related diagnostic codes 640 through 648.9 or V22 through V23.89, as found in the ICD-9-CM (International Classification of Diseases).

i. Labor and delivery services shall not be covered by the NJSPC program, but may be provided through the Medical Emergency Payment Program for Aliens, in accordance with the provisions of N.J.A.C. 10:49-5.4.

2. Eligible services, as described in (b)1 above, shall be reimbursed if the services were rendered to an eligible individual on or after July 1, 2001 and before the termination of the NJSPC program.

3. When the appropriated funds have been expended, the program will terminate.

Emergency New Rule, R.1999 d.254, effective July 12, 1999 (to expire September 10, 1999).

See: 31 N.J.R. 2252(a).

Adopted concurrent proposal, R.1999 d.345, effective September 10, 1999.

See: 31 N.J.R. 2252(a), 31 N.J.R. 2880(a).

Readopted provisions of R.1999 d.245, with changes to (b) effective October 4, 1999.

Amended by R.2002 d.297, effective September 16, 2002.

See: 34 N.J.R. 1400(a), 34 N.J.R. 3269(a).

Rewrote (b).

eficiaries shall be based on 110 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with Sections 1902(a)(10)(E)iii of the Social Security Act, 42 U.S.C. 1396a. Effective January 1, 1995, the income limits will be set at 120 percent of the Federal poverty level.

(c) Income limits for pregnant women and children under the age of one year covered under the provisions of this chapter shall be based on 185 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be one-twelfth of 185 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(d) In order to be eligible for Medicaid benefits under the provisions of this chapter, monthly household income (as determined by this chapter) must be equal to or less than the income limit established in (a), (b) or (c) above as applicable.

1. If a pregnant woman is determined to be income eligible during any month prior to the end of her pregnancy, she, if otherwise eligible, will continue eligible without regard to changes in the household unit's income for the term of her pregnancy, including the 60-day period beginning with the last day of the pregnancy whether or not the pregnancy results in a live birth. If the income change results from the addition of a new household member, the new income is not considered through the 60-day period beginning with the last day of the pregnancy.

i. The child resulting from the pregnancy will be eligible for Medicaid without regard to changes in the household unit's income for a period of not less than 60 days and up to a period of one year, so long as the mother remains eligible for Medicaid, or would remain eligible if pregnant, and the child remains in the mother's custody.

ii. A pregnant woman who, during the course of the pregnancy, was receiving or would have been eligible to receive AFDC benefits using the eligibility rules in existence as of July 16, 1996. Medicaid Special, or Medicaid for the Unborn is deemed to have met the income requirements of this chapter.

2. With the exception in (d)1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

(e) Effective with the first month of coverage, earned income eligibility limits for participants in the NJ WorkAbility program shall be 250 percent or less of the Federal

SUBCHAPTER 4. FINANCIAL ELIGIBILITY

10:72-4.1 Income eligibility limits

(a) Income limits for Medicaid for aged, blind, and disabled persons (except for specified low-income Medicare beneficiaries), covered under the provisions of this chapter will be based on 100 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be $\frac{1}{2}$ of the annual poverty income guideline rounded down to the next whole dollar amount for household unit sizes of one and two for aged, blind, and disabled individuals. The annual revision to the Federal poverty income guideline will be effective for purposes of this section with the first day of the year for which the poverty income guideline is promulgated.

(b) Effective with the first month of coverage, January 1, 1993, income limits for specified low-income Medicare ben-

poverty level and unearned income 100 percent or less of the Federal poverty level (see 42 U.S.C. § 9902(2)), and as specified in N.J.A.C. 10:72-9.4.

Emergency Amendment, R.1988 d.96, effective February 2, 1988 (expired April 2, 1988).

See: 20 N.J.R. 548(a).

Added (b)1ii.

Adopted Concurrent Proposal, R.1988 d.212, effective May 16, 1988.

See: 20 N.J.R. 548(a), 20 N.J.R. 1103(a).

Emergency Amendment, R.1991 d.223, effective March 28, 1991 (operative April 1, 1991; expires May 27, 1991).

See: 23 N.J.R. 1200(a).

Adopted Federally required coverage pursuant to Omnibus Budget Reconciliation Act of 1989.

Adopted Concurrent Proposal, R.1991 d.302, effective May 24, 1991.

See: 23 N.J.R. 1200(a), 23 N.J.R. 1945(a).

Provisions of emergency amendment R.1991 d.223 readopted without change.

Emergency Amendment, R.1991 d.445, effective July 29, 1991 (expires September 27, 1991).

See: 23 N.J.R. 2543(a).

In (b): added "aged one through five years" regarding children covered; added new (c), recodifying existing (c) as new (d).

Adopted Concurrent Proposal, R.1991 d.526, effective October 21, 1991.

See: 23 N.J.R. 2453(a), 23 N.J.R. 3144(a).

Provisions of emergency amendment R.1991 d.445 adopted without change.

Administrative Correction to (b).

See: 24 N.J.R. 851(a).

Added "133 percent of" to text regarding the poverty income guideline.

Amended by R.1992 d.364, effective September 21, 1992.

See: 24 N.J.R. 2145(a), 24 N.J.R. 3343(a).

Child's eligibility for Medicaid extended.

Amended by R.1992 d.484, effective December 7, 1992.

See: 24 N.J.R. 1860(a), 24 N.J.R. 4378(a).

Revised (a).

Amended by R.1993 d.369, effective July 19, 1993.

See: 25 N.J.R. 1042(b), 25 N.J.R. 3217(a).

Public Notice: Increase in eligibility limits.

See: 29 N.J.R. 3088(a).

Amended by R.1998 d.116, effective January 30, 1998 (operative February 1, 1998; to expire July 31, 1998).

See: 30 N.J.R. 713(a).

In (a), deleted "as well as children six years of age or older" following "beneficiaries," in the first sentence, and deleted "and for the appropriate family size for children aged six years or over" at the end of the second sentence; deleted former (c); recodified former (d) as (c); and recodified former (e) as (d), deleted a reference to (d) in the introductory paragraph, rewrote 1ii, and substituted a reference to (d)1 for a reference to (e)1 in 2.

Adopted concurrent proposal, R.1998 d.426, effective July 24, 1998.

See: 30 N.J.R. 713(a), 30 N.J.R. 3034(a).

Readopted provisions of R.1998 d.116 without change.

Special amendment, R.2002 d.31, effective December 26, 2001 (to expire June 26, 2002).

See: 34 N.J.R. 600(a).

Added (e).

Amended by R.2002 d.317, effective September 16, 2002.

See: 34 N.J.R. 600(a), 34 N.J.R. 1402(a), 34 N.J.R. 3270(a).

Case Notes

Reasonable basis existed for use of income multiplier to determine eligibility under Medical Assistance and Health Service Act. P.P. v. New Jersey Dept. of Human Services, Div. of Medical Assistance and Health Services, 280 N.J.Super. 1, 654 A.2d 471 (A.D.1994), certification denied 142 N.J. 452, 663 A.2d 1359.

10:72-4.2 Prospective budgeting of income

(a) The county welfare agency shall establish the best estimate of income that will be available to the household unit.

1. The best estimate of income shall be based on an average of the household unit's income for the full two-month period preceding the date of application or redetermination. Adjustments shall be made to the estimated income to reflect changes in income that either have occurred or which are reasonably anticipated to occur which would affect the household unit's income during a period of eligibility.

10:72-4.3 Countable income: pregnant women and infants

(a) Except as specified below, countable income for pregnant women and infants under the provisions of this chapter shall include the income of all members of the household unit as determined at N.J.A.C. 10:72-3.5(a)1 and 2, and shall be determined in accordance with regulations applicable to income in the AFDC-C program in effect as of July 16, 1996 (see N.J.A.C. 10:82).

1. The maximum income limits as provided for at N.J.A.C. 10:82-1.2(d) do not apply.
2. Neither the \$30.00 nor the one-third disregard of earned income at N.J.A.C. 10:82-2.8(a)3 and 10:82-4.4(c) apply.
3. The deeming of stepparent income at N.J.A.C. 10:82-2.9(d) does not apply. (See N.J.A.C. 10:72-3.5(a)2 regarding the inclusion or exclusion of the stepparent in the household unit.)
4. The deeming of an alien sponsor's income at N.J.A.C. 10:82-3.13 does not apply.

(b) Nonrecurring lump sum income received by a household unit of a pregnant woman or infant shall be added to any other income received by the household unit in that month. The total shall be divided by the income eligibility limit applicable to the household. The result will be the number of months the eligible members of the household unit shall be ineligible to receive Medicaid under the provisions of this chapter. Any remaining income from this calculation is treated as if it were unearned income in the first month following the period of ineligibility. No period of ineligibility shall apply to a pregnant women eligible under the provisions of this chapter.

1. The period of ineligibility shall begin the first month subsequent to the month the nonrecurring income is received or, if there is insufficient time to provide timely adverse action notice, the following month.
2. Once established, the period of ineligibility may be reduced only in accordance with the AFDC provisions for shortening a period of ineligibility as found at N.J.A.C. 10:82-4.15(a)5. The basis for a determination to shorten the period of ineligibility shall be fully documented in the case record.