

CHAPTER 46**DETERMINATION OF ELIGIBILITY AND
CONTRIBUTION TO CARE AND MAINTENANCE
REQUIREMENTS****Authority**

N.J.S.A. 30:4-23, 30:4-25.2 and 30:6D-23 et seq.

Source and Effective Date

R.2005 d.391, effective October 18, 2005.
See: 37 N.J.R. 2326(a), 37 N.J.R. 4443(b).

Chapter Expiration Date

Chapter 46, Determination of Eligibility and Contribution to Care and Maintenance Requirements, expires on October 18, 2010.

Chapter Historical Note

Chapter 46, Application and Admission to Functional Services, was adopted and became effective prior to September 1, 1969.

Chapter 46, Application and Admission to Functional Services, was repealed and Chapter 46, Determination of Eligibility, was adopted as new rules by R.1990 d.409, effective September 17, 1990. See: 21 N.J.R. 3712(a), 22 N.J.R. 3030(a).

Pursuant to Executive Order No. 66(1978), Chapter 46, Determination of Eligibility, was readopted as R.1995 d.511, effective August 17, 1995. See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

Subchapter 5, Offers by the Division, Subchapter 6, Termination, and Subchapter 7, Appeals Process, were adopted as new rules by R.1998 d.468, effective September 8, 1998. See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

Pursuant to Executive Order No. 66(1978), Chapter 46, Determination of Eligibility and Contribution to Care and Maintenance Requirements, was readopted as R.2000 d.361, effective August 4, 2000. See: 32 N.J.R. 2020(a), 32 N.J.R. 3326(a).

Chapter 46, Determination of Eligibility and Contribution to Care and Maintenance Requirements, was readopted by R.2005 d.391, effective October 18, 2005. See: Source and Effective Date. See, also, section annotations.

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**APPENDIX. NEW JERSEY DEPARTMENT OF HUMAN
SERVICES CALENDAR YEAR 2003****SUBCHAPTER 1. GENERAL PROVISIONS****10:46-1.1 Purpose; authority**

(a) Pursuant to N.J.S.A. 30:1-12, 30:4-27.2, 30:4-25.2, Application for determination of eligibility, N.J.S.A. 30:4-25.9, 30:6D-1 et seq. (P.L. 1985, c.145) and 30:4-60 et seq. (P.L. 1995, c.155), the Division of Developmental Disabilities, Department of Human Services (Division), intends this chapter to establish guidelines and criteria for determination of eligibility for services, to individuals with developmental disabilities. The applicant shall apply for all benefits for which he or she may be eligible. The Division shall not provide services when those services may be available through other sources. Before the Division offers services covered under the waiver, the individual and/or representative payee is responsible to apply through the Division for the Medicaid DDD Community Care Waiver and comply with all the requirements of eligibility for these benefits. The individual is also responsible to maintain eligibility for those benefits by ensuring they have no more than \$2,000 in cash assets. All other eligibility criteria in this chapter remain the same.

(b) When an individual receives residential services from the Division, they are required to contribute to the cost of care and maintenance. The requirements and financial ability of the individual and that of their legally responsible relatives to contribute to the cost of care and maintenance are set forth in N.J.A.C. 10:46D, Contributions for Care.

(c) The availability of services shall be limited to the Division's funding in a given fiscal year.

(d) When a person is determined eligible for services, he or she may receive those State-funded services that are available at that time.

(e) The eligible person shall be notified by the Division of the availability of waiver services. At that time, the Division will provide the application for the Medicaid DDD Community Care Waiver.

(f) Any person under the age of 18 who is determined by the Division to be eligible for ICF/MR services may be found eligible for the Medicaid DDD Community Care Waiver without deeming of the family's income. The eligible person shall be notified by the Division of the availability of waiver services. At that time, the Division will provide the applica-

tion for the Medicaid DDD Community Care Waiver. The individual shall meet all other eligibility requirements.

(g) To the extent practicable, written material shall be provided in the individual's primary language and in alternate formats as needed.

Amended by R.1998 d.468, effective September 8, 1998.

See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

Rewrote the section.

Amended by R.2003 d.476, effective December 15, 2003.

See: 35 N.J.R. 3015(a), 35 N.J.R. 3783(a), 35 N.J.R. 5556(a).

Rewrote the section.

10:46-1.2 Scope

The provisions of this chapter shall apply to all individuals making application to the Division for services under N.J.S.A. 30:4-165.1 et seq.

Amended by R.1998 d.468, effective September 8, 1998.

See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

Added the second and third sentences.

Amended by R.2000 d.361, effective September 5, 2000.

See: 32 N.J.R. 2020(a), 32 N.J.R. 3326(a).

Administrative change.

Amended by R.2003 d.476, effective December 15, 2003.

See: 35 N.J.R. 3015(a), 35 N.J.R. 3783(a), 35 N.J.R. 5556(a).

Deleted the last two sentences.

10:46-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Application" means the form available at Division offices (see N.J.A.C. 10:46-3.2(a)). The term includes any supporting documentation necessary to the making of an informed determination with regard to applicant eligibility, including medical information. Supporting documentation may include, but is not limited to, educational, psychiatric, psychological, vocational, rehabilitation or social service records.

"Appropriate program of training" means that program of training which at a minimum includes orientation and instruction in identification of developmental disabilities, use of evaluation tools and interaction techniques.

"Assistive devices" mean supports provided to aid in moving and positioning an individual while personal care is given, or which aid in communication.

"Benefits" means all current and future sources of cash and health assistance from Federal, State or private entities including, but not limited to, Social Security, SSI, Medicare, Medicaid DDD Community Care Waiver, State and Federal funds and any third party support pursuant to State, rule order or by contract.

"Case management" means the linking and coordination of services across family, agency and professional lines to develop and attain goals and objectives embodied in the Individual Habilitation Plan. It involves monitoring of and

advocating for the individual's needs with individual and family participation.

"Challenge grant" refers to a program in which the Division provides funds to an agency, which may be used in combination with other resources available to the individual, which will meet the individual's needs sufficiently to allow the individual to be removed from the waiting list.

"Child" means a person under 18 years of age.

"Commissioner" means the Commissioner of the State Department of Human Services.

"Counselling" means advice or guidance provided by a person knowledgeable about services to persons with developmental disabilities.

"Developmental disability" means a severe, chronic disability of an individual which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifest before age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations before the age of 22 in three or more of the following areas of major life activity:
 - i. Self-care;
 - ii. Receptive and expressive language;
 - iii. Learning;
 - iv. Mobility;
 - v. Self-direction; and/or
 - vi. Capacity for independent living or economic self-sufficiency; and
5. Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

6. Developmental disability includes, but is not limited to, severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met.

"Director" means the Director of the Division of Developmental Disabilities.

"Division" means the Division of Developmental Disabilities.

"Educational and related services" means those programs and/or therapies that are provided to a pupil in association with a free appropriate education.

4. Respite Care;
5. Integrated Therapeutic Network; and
6. Environmental/Vehicle Accessibility Adaptations.

Amended by R.1995 d.511, effective September 18, 1995.

See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

Amended by R.1998 d.468, effective September 8, 1998.

See: 30 N.J.R. 1737(a), 30 N.J.R. 2169(a), 30 N.J.R. 3271(a).

Inserted "Assets or resources", "Assignment", "Burial fund", "Challenge grant", "Consumer price index (CPI)", "Cost of care and maintenance", "Dependent", "Disposable income", "Family", "Family maintenance standard (FMS)", "Income", "Legally responsible relative (LRR)", "Marginal income", "Medical cost standard (MCS)", "Other responsible party", "Self-determination", "Supported living", "Termination of services" and "Treasury Formula-DDD".

Amended by R.1999 d.311, effective September 7, 1999.

See: 31 N.J.R. 95(a), 31 N.J.R. 2633(b).

Inserted "Assistive devices", "Family support", "Home adaptation", "Personal care", "Regional Administrator", "Rehabilitation technology", "Respite services", and "Supported employment".

Amended by R.1999 d.405, effective November 15, 1999.

See: 31 N.J.R. 1890(a), 31 N.J.R. 3632(a).

Inserted "Fixed income" and "Plan to achieve self support (PASS)".

Amended by R.2000 d.315, effective August 7, 2000.

See: 32 N.J.R. 157(a), 32 N.J.R. 2899(a).

Inserted "Primary residence".

Amended by R.2000 d.361, effective September 5, 2000.

See: 32 N.J.R. 2020(a), 32 N.J.R. 3326(a).

Rewrote "Self-determination".

Amended by R.2003 d.476, effective December 15, 2003.

See: 35 N.J.R. 3015(a), 35 N.J.R. 3783(a), 35 N.J.R. 5556(a).

Rewrote the section.

Amended by R.2005 d.391, effective November 21, 2005.

See: 37 N.J.R. 2326(a), 37 N.J.R. 4443(b).

In definition "Developmental disability", rewrote introductory paragraph 4 and added 4i through vi.

Case Notes

When denying application for services, Department of Human Services, Division of Developmental Disabilities, improperly interpreted "mental impairment" component of "developmental disability" as requiring proof of a neurological injury or mental retardation; such a view was too cramped in light of regulation's expansive definition that focused on the impact of the condition upon the applicant. *D.D. v. New Jersey Div. of Disabilities*, 351 N.J.Super. 308, 798 A.2d 148.

Applicant for services from the Department of Human Services, Division of Developmental Disabilities, does not have the burden of proving a definitive cause or source of "mental impairment," which is component of "developmental disability" required for services eligibility. *D.D. v. New Jersey Div. of Disabilities*, 351 N.J.Super. 308, 798 A.2d 148.

Division of Developmental Disabilities should have promulgated a rule about eligibility standards before using the standards. *T.L. v. Division of Developmental Disabilities*, Dept. of Human Services, 243 N.J.Super. 476, 580 A.2d 272 (A.D.1990).

Disability was "chronic" despite the fact that the question about the man's ability was recent. *T.L. v. Division of Developmental Disabilities*, Dept. of Human Services, 243 N.J.Super. 476, 580 A.2d 272 (A.D.1990).

Applicant whose IQ exceeded cutoff level was ineligible for developmental disability services. *R.S. v. Department of Human Services*, 96 N.J.A.R.2d (DDD) 66.

Profoundly retarded and multiply handicapped man whose day program placement was insufficient to meet his needs would be allowed to transfer to more suitable program. *S.G. v. Division of Developmental Disabilities*, 96 N.J.A.R.2d (DDD) 51.

Applicant for services qualified as developmentally disabled and thus was entitled to those services. *J.D. v. Division of Developmental Disabilities*, 96 N.J.A.R.2d (DDD) 32.

Profoundly retarded man could not change domicile. *K.H. v. Division of Developmental Disabilities Department of Human Resources*, 93 N.J.A.R.2d (DDD) 1.

SUBCHAPTER 2. ELIGIBILITY CRITERIA

10:46-2.1 General eligibility

(a) An individual must be determined eligible for services under this chapter before the Division can provide services. In order to receive waiver services (a Federal Medicaid program), the individual and/or representative payee is responsible to make application for all benefits and comply with the requirements to continue eligibility for all benefits for which they are entitled, primarily the Medicaid DDD Community Care Waiver, Social Security and SCI. The individual is also responsible to maintain Medicaid eligibility by ensuring he or she has no more than \$2,000 in cash assets.

(b) The individual is required to apply for these benefits, primarily the Medicaid DDD Community Care Waiver, Social Security and SSI and comply with all the requirements of those programs, for which he or she may be eligible. If the individual is denied benefits and can take no action to become eligible for those benefits, he or she shall provide documentation of the denial to the Division, which shall be part of the client record. Eligibility for waiver services shall not be denied under these instances, if the other eligibility criteria are met.

(c) Individuals must keep assets below \$2,000 in order to remain eligible for waiver services. If eligibility is lost because assets are over \$2,000, the individual or representative payee will be notified that they have 30 days to comply with the asset requirement, in order to continue in a waiver program. If the individual or representative payee does not comply, they will receive notification that they will no longer be eligible for waiver services if they do not reduce their assets below \$2,000 within an additional 60 days. Loss of eligibility for the Medicaid DDD Community Care Waiver will mean the individual will be eligible for only those State-funded services that are available at that time. If at any time during this period, the individual reestablishes eligibility by lowering their assets, the individual will be able to remain in the waiver service.

(d) When an individual receives residential services from the Division, they are also required to contribute to the cost of care and maintenance. The requirements and financial ability of the individual and that of their legally responsible relatives to contribute to the cost of care and maintenance are set forth in N.J.A.C. 10:46D, Contributions for Care.

(e) With regard to a child, the substantial functional limitation(s) shall be evaluated according to expectations based upon the child's chronological age.

(f) With regard to an individual who has entitlements to a free public education pursuant to N.J.S.A. 18A:1-1 et seq., who is otherwise eligible, the expenses of educational and related services shall not be borne by the Division.

(g) If a determination has been made by a local district board of education or a court of competent jurisdiction that an individual's educational needs can only be appropriately served in a living situation other than the individual's home, then the expenses of that residential placement shall not be borne by the Division.

(h) For applicants who present documentation of mental retardation, the criteria for establishing the presence of mental retardation shall be an IQ score of less than 70, demonstrated as follows:

1. The person has an IQ score of 60 to 69; and
 - i. There is an impairment in adaptive behavior; and/or
 - ii. There is a chronic medical problem; and/or
 - iii. There is an impairment in behavioral, sensory or motor function and in the ability to perform basic skills; or
2. The person has an IQ score of 59 or below.

Amended by R.1995 d.511, effective September 18, 1995.

See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

Amended by R.1998 d.468, effective September 8, 1998.

See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

In (a), added "contingent upon cooperation with the financial assessment investigation and payment of any fees assessed" at the end; and added (f) through (k).

Amended by R.2003 d.476, effective December 15, 2003.

See: 35 N.J.R. 3015(a), 35 N.J.R. 3783(a), 35 N.J.R. 5556(a).

Rewrote the section.

Amended by R.2005 d.391, effective November 21, 2005.

See: 37 N.J.R. 2326(a), 37 N.J.R. 4443(b).

Rewrote (a) through (c) and (g).

Case Notes

Court must undertake to determine appropriate disposition, other than incarceration, of developmentally disabled juvenile, and should require the Division of Developmental Disabilities, and others, to assist in the formulation of a treatment plan. State in Interest of R.M., 141 N.J. 434, 661 A.2d 1277 (1995).

Profoundly retarded man could not change domicile. K.H. v. Division of Developmental Disabilities Department of Human Resources, 93 N.J.A.R.2d (DDD) 1.

10:46-2.2 Residency

(a) It shall be the responsibility of the individual applying for eligibility or his or her legal guardian, to establish residency in the State of New Jersey. Residency shall be determined in the following manner:

1. A competent individual applying for eligibility shall be a resident of the State if he or she lives in the State as his or her primary residence.

2. For minors, who are under 18 years of age, the place where the parents or legal guardian live shall determine the residence of the minor.

3. For adults, who are 18 years and older, incapacitated and have a general guardianship, the incapacitated individual's residence will be that of the legal guardian unless the conditions listed in (a)3i below have been met. This paragraph also applies to persons placed as minors upon reaching 18 years of age.

i. For incapacitated individuals applying for services whose legal guardian lives outside New Jersey, the guardian shall document that the incapacitated individual has established residency by establishing:

(1) That the incapacitated individual lives in New Jersey;

(2) That the incapacitated individual did not relocate to New Jersey for the purpose of obtaining services from the State of New Jersey; and

(3) Through good faith that the incapacitated individual applying for services intends to live in New Jersey. Objective factors that provide evidence of good faith include:

(A) The length and likely duration of the incapacitated individual's residence in New Jersey (that is, the individual has resided in New Jersey for more than two years, he or she expresses no plans to move from New Jersey);

(B) The incapacitated individual's financial or other connections to the locale (that is, the individual is employed locally, has local bank accounts, attends religious services); and

(C) The incapacitated individual's subjective attachment to his or her living arrangements (that is, friends in the area, use of community recreational facilities).

(b) If the incapacitated individual is admitted to services and the guardian moves out-of-State, the incapacitated individual may remain in Division services. Additionally, the legal guardian is free to request a discharge from services or an interstate transfer.

(c) If any individual has been placed in the State of New Jersey and that placement is funded totally or partially by a public or private agency in another state, that individual shall not be considered a resident of New Jersey.

(d) For persons applying for services whose legal guardian is in the U.S. military service, residency may be established when the guardian declares his or her home of record to be New Jersey.

(e) For individuals applying for services who are not U.S. citizens, the following must be satisfied to establish residency:

1. The individual must be a permanent alien resident, or his or her legal guardian must be a U.S. citizen or a permanent alien resident; and
2. The individual or his or her guardian must be a resident of New Jersey.

New Rule, R.2000 d.315, effective August 7, 2000.
See: 32 N.J.R. 157(a), 32 N.J.R. 2899(a).

Former N.J.A.C. 10:46-2.2, Presumptive eligibility, recodified to N.J.A.C. 10:46-2.3.

Amended by R.2005 d.391, effective November 21, 2005.
See: 37 N.J.R. 2326(a), 37 N.J.R. 4443(b).

In (c), substituted "individual" for "person" throughout and substituted "is" for "has been" following "placement."

10:46-2.3 Presumptive eligibility

(a) If the applicant appears to be eligible for services and manifests an emergent need for services from the Division, then such a person may be declared presumptively eligible by the Regional Administrator. The determination of presumptive eligibility shall be made within five days of initial contact for services. The eligibility determination process shall be completed subsequent to the admission to service. If the person is found ineligible and has been receiving services under presumptive eligibility, immediate referral shall be made to the appropriate agency or agencies for services. That individual or his or her guardian shall be notified in writing that services will cease in 30 days.

(b) If the individual appeals the decision of ineligibility in accordance with N.J.A.C. 10:48-1, the individual may continue to receive services until a Final Decision is rendered by the Division Director.

Amended by R.1999 d.311, effective September 7, 1999.
See: 31 N.J.R. 95(a), 31 N.J.R. 2633(b).

In (a), substituted "Regional Administrator" for "Division Director or his or her designee".
Recodified from N.J.A.C. 10:46-2.2 by R.2000 d.315, effective August 7, 2000.

See: 32 N.J.R. 157(a), 32 N.J.R. 2899(a).

Former N.J.A.C. 10:46-2.3, Services, recodified to N.J.A.C. 10:46-2.4.

10:46-2.4 Services

(a) Services for individuals with developmental disabilities means specialized services or specialized adaptations of generic services provided by a public or private agency, organization or institution and directed toward the alleviation of a developmental disability or toward the social, personal, physical or economic habilitation or rehabilitation of an individual with a developmental disability and includes case management, diagnosis, evaluation, treatment, personal care, domiciliary care, special living arrangements, training, vocational training, recreation, counseling of the individual with the disability and his family, information and referral services and transportation services.

(b) Respite service shall not be considered placement for the purposes of N.J.A.C. 10:46B.

(c) For applicants who apply for Family Support, the requirements of N.J.A.C. 10:46A shall apply.

(d) Assistive devices may be made available to persons who live independently, in the home of a relative or in a home licensed under N.J.A.C. 10:44B, as follows:

1. The assistive device is not available through an alternate-funding source; and

2. Assistive devices shall remain the property of the Division.

(e) Home adaptation shall not be provided to persons determined presumptively eligible. Home adaptation may be provided once the individual is found eligible for services.

(f) Respite services may be provided in the home or through a home licensed under N.J.A.C. 10:44A or 10:44B.

Amended by R.1995 d.511, effective September 18, 1995.

See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

Amended by R.1998 d.468, effective September 8, 1998.

See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

Rewrote (f).

Amended by R.1999 d.311, effective September 7, 1999.

See: 31 N.J.R. 95(a), 31 N.J.R. 2633(b).

Rewrote the section.

Recodified from N.J.A.C. 10:46-2.3 by R.2000 d.315, effective August 7, 2000.

See: 32 N.J.R. 157(a), 32 N.J.R. 2899(a).

Former N.J.A.C. 10:46-2.4, Determination of financial ability to pay, recodified to N.J.A.C. 10:46-2.5.

Amended by R.2005 d.391, effective November 21, 2005.

See: 37 N.J.R. 2326(a), 37 N.J.R. 4443(b).

In (a), substituted "Services for individuals with developmental disabilities" for "Services for developmentally disabled persons".

Case Notes

Discussion of standard for classification of children as sustainable under former regulations. *Levine v. New Jersey Dept. of Institutions and Agencies*, 84 N.J. 234, 418 A.2d 229 (1980).

10:46-2.5 (Reserved)

New Rule, R.1998 d.468, effective September 8, 1998.

See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

Amended by R.1999 d.405, effective November 15, 1999.

See: 31 N.J.R. 1890(a), 31 N.J.R. 3632(a).

Rewrote (o).

Recodified from N.J.A.C. 10:46-2.4 and amended by R.2000 d.315, effective August 7, 2000.

See: 32 N.J.R. 157(a), 32 N.J.R. 2899(a).

In (e), (f) and (o), inserted references to N.J.A.C. 10:46-2.6. Former N.J.A.C. 10:46-2.5, Treasury Formula-DDD, recodified to N.J.A.C. 10:46-2.6.

Repealed by R.2003 d.476, effective December 15, 2003.

See: 35 N.J.R. 3015(a), 35 N.J.R. 3783(a), 35 N.J.R. 5556(a).

Section was "Determination of financial ability to pay".

10:46-2.6 (Reserved)

New Rule, R.1998 d.468, effective September 8, 1998.

See: 30 N.J.R. 1737(a), 30 N.J.R. 2169(a), 30 N.J.R. 3271(a).

Administrative change.

See: 30 N.J.R. 4376(a).

Amended by R.1999 d.405, effective November 15, 1999.

See: 31 N.J.R. 1890(a), 31 N.J.R. 3632(a).

Rewrote (k).

Administrative change.

See: 31 N.J.R. 4260(a).

Recodified from N.J.A.C. 10:46-2.5 by R.2000 d.315, effective August 7, 2000.

See: 32 N.J.R. 157(a), 32 N.J.R. 2899(a).

Administrative change.

See: 32 N.J.R. 4461(a).

Administrative change.

See: 33 N.J.R. 4353(a).

Administrative change.

See: 34 N.J.R. 4439(b).

Administrative change.

See: 36 N.J.R. 185(a).

Administrative correction.

See: 37 N.J.R. 2542(a).

Section was "Treasury Formula-DDD".

offer to refer the person to an appropriate agency. If the person wishes to pursue the services of the Division, the intake worker shall send an application and information concerning services.

(d) Applications shall be made to a regional office of the Division. Forms and instructions may be obtained by writing to or calling the appropriate regional office serving the county where the individual lives below:

Northern Regional Office

(serving Morris, Sussex and Warren Counties)

1-B Laurel Drive

Flanders, NJ 07836

(973) 927-2600

Fax: (973) 927-2689

(serving Bergen, Hudson and Passaic Counties)

100 Hamilton Plaza

Room 905

Paterson, NJ 07505

(973) 977-4004

Fax: (973) 279-5069

Upper Central Regional Office

(serving Somerset and Union Counties)

59 Main Street

West Orange, NJ 07052

(973) 324-2000

Fax: (973) 324-2022

(serving Essex County)

153 Halsey St., 2nd Floor

PO Box 47013

Newark, NJ 07101

(973) 693-5080

Fax: (973) 648-3999

Lower Central Regional Office

(serving Mercer, Middlesex and Hunterdon Counties)

109 North Broad Street

PO Box 706

Trenton, NJ 08625

(609) 292-4500

Fax: (609) 292-4219

(serving Monmouth and Ocean Counties)

Juniper Plaza, Suite 1-11

3499 Rt. 9 North

Freehold, NJ 07728

(732) 863-4500

Fax: (732) 863-4406

Southern Regional Office

(serving Burlington and Camden Counties)

2 Echelon Plaza

221 Laurel Road

Suite 210

Voorhees, NJ 08043

(856) 770-5900

Fax: (856) 770-5935

(serving Cumberland, Salem, Atlantic and Cape May Counties)

Route 30 & Elvins Avenue

Hammonton, NJ 08037

(609) 561-5070

Fax: (609) 561-1895

SUBCHAPTER 3. APPLICATION

10:46-3.1 Who may apply

(a) Application for services under this chapter may be made by the following persons:

1. An adult on his or her own behalf;
2. The parents or guardian of a minor;
3. An agency, public or private, on behalf of a minor of whom it has care and custody;
4. A court having jurisdiction over a minor;
5. The guardian of an adjudicated incompetent adult; or
6. A court of competent jurisdiction on behalf of an adult person who appears to be developmentally disabled.

(b) For applicants who apply for Family Support, the requirements of N.J.A.C. 10:46A shall apply.

Amended by R.1995 d.511, effective September 18, 1995.

See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

Case Notes

Court must undertake to determine appropriate disposition, other than incarceration, of developmentally disabled juvenile, and should require the Division of Developmental Disabilities, and others, to assist in the formulation of a treatment plan. State in Interest of R.M., 141 N.J. 434, 661 A.2d 1277 (1995).

10:46-3.2 Where to apply for DDD eligibility

(a) Application shall be made to the regional offices of the Division. The initial contact may be made to an intake worker by telephone, in writing or by appearing in person.

(b) If the intake worker determines that the request is for the services of the Division he or she shall send or give the individual an application.

(c) If the intake worker determines that the request is for services not offered by the Division, the intake worker shall

(e) If the person for whom eligibility is sought does not live in New Jersey at the time of the application, the applicant shall indicate if they presently receive services from a state agency in the state where the individual resides. To apply for services from the State of New Jersey under the Interstate Compact on Mental Health (N.J.S.A. 30:7B-1 et seq.), the request shall be sent to the Regional Assistant Director c/o Division of Developmental Disabilities, PO Box 726, Trenton, NJ 08625-0726. The request shall be forwarded to the appropriate regional office for a determination of eligibility. All information required in N.J.A.C. 10:46-3 shall

be provided. All notice requirements contained in N.J.A.C. 10:46-4.2 shall be followed.

Amended by R.1995 d.511, effective September 18, 1995.

See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

Amended by R.2000 d.361, effective September 5, 2000.

See: 32 N.J.R. 2020(a), 32 N.J.R. 3326(a).

In (d), changed addresses and telephone numbers; and in (e), substituted a reference to the Regional Assistant Director for a reference to the Administrative Practice Officer.

Amended by R.2003 d.476, effective December 15, 2003.

See: 35 N.J.R. 3015(a), 35 N.J.R. 5556(a).

In (d), substituted "Capital Place One" for "240 W. State Street" and inserted "Community Services" preceding "101 Hadden Avenue".

Amended by R.2005 d.391, effective November 21, 2005.

See: 37 N.J.R. 2326(a), 37 N.J.R. 4443(b).

Rewrote (d).

10:46-3.3 How to apply

(a) Application shall be made on forms supplied by the Division.

(b) Minimum information submitted shall include, but not be limited to:

1. Social data, such as name, address, telephone number, social security number, and present living arrangement;

2. Medical information;

3. Present program or employment type;

4. Name, address and telephone number of the individual, if someone other than the person on whose behalf application is being made;

5. Presenting request, such as the specific service(s) that may be desired if known by the individual; and

6. Information for the individual's financial information sheet including basic information such as social security number and the amount and type of benefits received, and those documents as required in N.J.A.C. 10:46D, Contributions for Care.

(c) Accommodations shall be made available by the Division for applicants who cannot complete the application by him or herself. Applications may be taken in sites other than the regional office. Applications may be taken at any site which will facilitate the determination of eligibility.

(d) It is the responsibility of the applicant to cooperate with the Division in obtaining required records by signing consent to release of information forms and identifying persons or agencies known by the applicant to be in possession of the needed records.

(e) An application shall be deemed complete when there is sufficient information to make a determination of eligibility.

Amended by R.1998 d.468, effective September 8, 1998.

See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

In (b), substituted references to individuals for references to applicants in 4 and 5, and added 6.

Amended by R.2003 d.476, effective December 15, 2003.

See: 35 N.J.R. 3015(a), 35 N.J.R. 5556(a).

In (b)6, amended N.J.A.C. reference.

10:46-3.4 Reapplication

(a) An individual who has been found ineligible by the Division may apply for services again at any time if:

1. The individual is under the age of 22 and he or she has obtained a new evaluation(s) which supports that the eligibility criteria are met; or

2. The individual is over the age of 22 and he or she has obtained a new evaluation(s) which clearly documents information directly related to the developmental period prior to age 22 which supports that the eligibility criteria are met.

(b) The individual shall provide a copy of that evaluation(s) for review by the Division. The Division shall review the evaluation and notify the individual within 30 working days whether a new application for services will be accepted.

(c) As used in this section, "evaluation" means a formal assessment using standardized measures by a professional, such as a physician, psychologist or other individual who can appropriately evaluate the individual's condition to determine whether the individual has a developmental disability.

New Rule, R.2002 d.113, effective June 3, 2002.

See: 33 N.J.R. 2433(a), 34 N.J.R. 1924(b).

SUBCHAPTER 4. DETERMINATION PROCESS

10:46-4.1 Determination

(a) A Division intake worker shall begin a case file upon receipt of an application for determination of eligibility for services.

(b) The intake worker shall assist in completion of the application upon request of the applicant.

(c) Upon receipt of an application, including all necessary documentation, the intake team shall make a decision, in writing, based upon specific findings regarding eligibility pursuant to N.J.A.C. 10:46-2.

(d) The intake team may make a decision concerning eligibility. If there is a question of eligibility, the intake team may:

1. Conduct a face to face interview within 30 days if additional information is needed; or

2. Request peer consultation in reaching a final decision.

(e) The decision of the intake team(s) shall be communicated, in writing, within 10 working days and shall be based upon specific findings.

Amended by R.1995 d.511, effective September 18, 1995.
See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).
Amended by R.1999 d.311, effective September 7, 1999.
See: 31 N.J.R. 95(a), 31 N.J.R. 2633(b).

Rewrote (c) and (d), in (e), deleted "Intake worker or" preceding "intake team(s)", and in (f), substituted "team" for "worker".
Amended by R.2005 d.391, effective November 21, 2005.
See: 37 N.J.R. 2326(a), 37 N.J.R. 4443(b).

In (c), substituted "decision" for "recommendation"; in (d)1, added "if additional information is needed"; rewrote (d)2; in (e), substituted "decision" for "determination" and "communicated" for "made"; deleted (f).

10:46-4.2 Notice requirements

(a) Division staff shall notify the applicant, in writing, of the status of the eligibility determination no more than 60 days from receipt of an application for determination of eligibility for services.

(b) If the eligibility decision cannot be made within 60 days from receipt of an application for determination of eligibility for services, the applicant shall be advised, in writing, as to the specific reasons why a determination cannot be made, and shall be informed of the status of the application at least every 30 days. The written notice shall include the name and telephone number of a Division staff member for the person to contact regarding services.

(c) If the applicant is determined eligible, Division staff shall notify the applicant, in writing, within 10 working days of the determination and such notice shall include information regarding the service(s) deemed most suitable by the intake worker or the intake team.

1. If the most appropriate service as determined by the Intake worker or the Intake team is not immediately available, the Division shall provide an alternate service.

2. The Division shall also place the eligible individual's name on a waiting list for day or residential services in accordance with N.J.A.C. 10:46C.

(d) If the individual is determined ineligible, the Division shall notify the individual, in writing, within 10 working days of the determination. Such notification shall include specific criteria that were not met by the individual, and shall also include information regarding the individual's right to appeal the determination pursuant to N.J.A.C. 10:48-1. The individual shall bear the burden of proof and the burden of persuasion.

Amended by R.1995 d.511, effective September 18, 1995.
See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).
Amended by R.1998 d.468, effective September 8, 1998.
See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

In (d), substituted references to individuals for references to applicants throughout, and substituted a reference to 14 days for a reference to 10 working days in the first sentence; and added (e) through (g).

Amended by R.1999 d.311, effective September 7, 1999.

See: 31 N.J.R. 95(a), 31 N.J.R. 2633(b).

In (b), added a second sentence.

Amended by R.2000 d.361, effective September 5, 2000.

See: 32 N.J.R. 2020(a), 32 N.J.R. 3326(a).

Rewrote (a); in (b), rewrote the first sentence; and in (c)2, inserted "for day or residential services" following "list".

Amended by R.2003 d.476, effective December 15, 2003.

See: 35 N.J.R. 3015(a), 35 N.J.R. 5556(a).

Deleted (e) through (g).

Amended by R.2005 d.391, effective November 21, 2005.

See: 37 N.J.R. 2326(a), 37 N.J.R. 4443(b).

In the introductory paragraph of (c), added "working" preceding "days"; in (d), substituted "10 working days" for "14 days."

Case Notes

Eligibility application may be signed by anyone providing for care and custody of a child if the parent or guardian is not available. In re: Guardianship Services Regulations, 198 N.J.Super. 132, 486 A.2d 888 (App.Div.1984), affirmed as modified 103 N.J. 619, 512 A.2d 453 (1986).

SUBCHAPTER 5. OFFERS BY THE DIVISION

10:46-5.1 Offer of placement

When an individual receives residential services from the Division, as well as applying for benefits, they are also required to contribute to the cost of care and maintenance. The requirements and financial ability of the individual and that of their legally responsible relatives to contribute to the cost of care and maintenance are outlined in N.J.A.C. 10:46D, Contributions for Care.

Repeal and New Rule, R.2003 d.476, effective December 15, 2003.

See: 35 N.J.R. 3015(a), 35 N.J.R. 5556(a).

Section was "Offer of placement".

SUBCHAPTER 6. APPEALS PROCESS

10:46-6.1 Appeals

(a) If the individual is determined by the Division not to meet the criteria for eligibility, the Division shall notify the individual, in writing, within 10 working days of the determination.

1. The notice shall include specific criteria which were not met by the individual.

2. The notice shall include information regarding the individual's right to appeal the determination of ineligibility pursuant to N.J.A.C. 10:48-1. Such appeals shall be deemed to be contested matters.

Amended by R.1999 d.405, effective November 15, 1999.

See: 31 N.J.R. 1890(a), 31 N.J.R. 3632(a).

In (b)1, rewrote the first sentence of the introductory paragraph.

Recodified from N.J.A.C. 10:46-7.1 and amended by R.2003 d.476, effective December 15, 2003.

See: 35 N.J.R. 3015(a), 35 N.J.R. 5556(a).

Former N.J.A.C. 10:46-6.1, Notice of termination, repealed. Deleted (b) through (e).

Amended by R.2005 d.391, effective November 21, 2005.

See: 37 N.J.R. 2326(a), 37 N.J.R. 4443(b).

In the introductory paragraph of (a), decreased working days from "30" to "10."

APPENDIX

**NEW JERSEY DEPARTMENT OF HUMAN SERVICES
CALENDAR YEAR 2003
PATIENT PAYMENT RATES FOR
STATE INSTITUTIONS AND PROGRAMS
(Pursuant to N.J.S.A. 30:4-23 et seq.)**

<u>STATE PSYCHIATRIC HOSPITALS</u>	<u>PATIENT RATE (PER DIEM)</u>
Greystone Park Psychiatric Hospital	Blended Rate
Trenton Psychiatric Hospital	per diem
Ancora Psychiatric Hospital	Average
Senator Garret Hagedorn Center for Geriatrics	\$441.00
	Individual Rates
Arthur Brisbane Child Treatment Center	\$893.00
Ann Klein Forensic Center	\$477.00

STATE DEVELOPMENTAL CENTERS

Vineland Developmental Center	
Greenbrook Regional Center	
North Jersey Developmental Center	Blended Rate per
Woodbine Developmental Center	diem Average
New Lisbon Developmental Center	\$450.00
Woodbridge Developmental Center	
Hunterdon Developmental Center	

RESIDENTIAL FUNCTIONAL SERVICES

	Individual Rates
	\$223.00
New Rule, R.1998 d.468, effective September 8, 1998.	
See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).	
Administrative change.	
See: 30 N.J.R. 4376(a).	
Administrative change.	
See: 31 N.J.R. 4260(a).	
Administrative change.	
See: 32 N.J.R. 4461(a).	
Administrative change.	
See: 33 N.J.R. 4353(a), 34 N.J.R. 4439(b).	