

## 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.2000 d.361, effective August 4, 2000.  
See: 32 N.J.R. 2020(a), 32 N.J.R. 3326(a).

## Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 46, Determination of Eligibility and Contribution to Care and Maintenance Requirements, expires on January 31, 2006. See: 37 N.J.R. 2326(a).

## 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Chapter 46, Application and Admission to Functional Services, was repealed and Chapter 46, Determination of Eligibility, was adopted as new rules by R.1990 d.409, effective September 17, 1990.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: Source and Effective Date. See, also, section annotations.

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## 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 application 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 a person 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 actively, that is, self-care, receptive and expressive language, learning, mobility, self-direction and 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 impairment 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.

“Family support” means those services described under N.J.A.C. 10:46C.

“Guardianship services” means those services and programs provided by the Division for the purpose of implementing its responsibility toward the individual with developmental disabilities for whom it is performing the services of guardianship of the person.

“Home adaptation” means renovations to the home within resources available to the Division to accommodate a person’s physical or sensory disability.

“Intake team” means at least two staff members, one who is the intake worker and one who is a psychologist, who are responsible to determine if the eligibility criteria contained in N.J.A.C. 10:46 have been met.

“Intake worker” means a professional employee of the Division who completes an appropriate program of training as provided by the Division. The program of training at a minimum includes orientation and instruction in identification of developmental disabilities, use of evaluation tools and interaction techniques.

“Medical information” means reports that have been provided by licensed practitioners which demonstrate the existence of a developmental disability as well as the individual’s current physical condition and significant medical history.

“Mental illness” means a current substantial disturbance of thought, mood, perception or orientation which significantly impairs judgement, behavior or capacity to recognize reality but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability. (P.L. 1987, c.116.)

“Mental impairment” means impairment in cognitive, neurological, sensory or cerebral functioning resulting from other than mental illness.

“Mental or physical impairment” means impairment in cognitive, neurological, sensory, cerebral or motor functioning resulting from other than mental illness.

“Other responsible party” means representative payee, trustee or executor, or guardian of the property, as applicable.

“Personal care” means assistance in essential daily activities such as bathing, dressing, transferring, toileting, feeding, grooming and hygiene.

“Physical impairment” means an impairment in motor functioning resulting from other than mental illness.

“Primary residence” means the individual’s living arrangement as follows: if he or she lives independently; if the individual resides with his or her family; or the residence of his or her family that is the home of record for official purposes (that is, voter registration, income tax, census,

etc.). Second homes or privately made residential placements cannot be considered to be a primary residence.

“Regional Administrator” means the staff member with administrative authority over community operations within several counties who oversee intake teams.

“Rehabilitation technology” means services which provide a systematic application of engineering methodology or scientific principles to meet the needs of, and address the barriers confronted by, individuals in areas that include education, employment, transportation, independent living, and recreation.

“Resident” means a person who is a domiciliary of New Jersey for other than a temporary purpose and who has expressed an intention to have his or her primary residence in the state.

“Residential placement” means that the individual’s living arrangement is funded, fully or partially, by the Division in an appropriately licensed program including, but not limited to, community residences as defined in N.J.A.C. 10:44A, private licensed facilities for persons with developmental disabilities, as defined in N.J.A.C. 10:47, and appropriately licensed out-of-State facilities under contract with the Division.

“Respite services” means a short-term arrangement to provide relief to the primary care giver(s) from continuous care of the person.

“Self-determination” means a service delivery system which allows an individual with developmental disabilities, in connection with his or her legal guardian, if any, family and selected friends to identify appropriate services and supports and determine how an individual budget, as well as personal, family and community resources, can be used to develop a support plan which may include living arrangements such as shared living, supported living and other individualized housing and allow the individual to be an integral part of their community.

“Supported employment” means paid employment for persons with developmental disabilities who, because of his or her disability, need ongoing support to perform in a work setting. Supported employment is conducted in work sites in which people without a disability are employed.

“Supported living” means a form of community residence as defined at N.J.A.C. 10:44A-1.3 in which the individual is responsible to pay for his or her room and board.

“Support services” mean services provided to developmentally disabled persons and their families that are generally of short term duration or are a specific type of care, treatment, training, assistance or device that will help the individual avoid the need for more intensive care which

would require coordination of a sequence of generic or specialized services.

“Team” means two or more Division employees and/or professionals holding appropriate certification and/or licensure in their respective fields who review recommendations regarding eligibility. The professions represented on the team may vary according to the presenting need for services. At least one member of the team shall have the following qualifications:

1. A doctor of medicine or osteopathy;
2. A registered nurse; or
3. A professional program staff person who is licensed, certified or registered, as applicable. If the professional program staff do not fall under the jurisdiction of State licensure, certification or registration requirements, he or she shall meet the following qualifications.
  - i. To be designated as an occupational therapist, an individual shall be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body;
  - ii. To be eligible as an occupational therapy assistant, an individual shall be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or other comparable body;
  - iii. To be eligible as a physical therapist, the individual shall be eligible for certification as a physical therapist by the American Physical Therapy Association or other comparable body;
  - iv. To be eligible as a physical therapy assistant, an individual shall be eligible for registration by the American Physical Therapy Association or be a graduate of a two-year college level program approved by the American Physical Therapy Association or other comparable body;
  - v. To be designated as a psychologist, an individual shall have at least a master’s degree in psychology from an accredited school;
  - vi. To be designated as a social worker, an individual must:
    - A. Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or
    - B. Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body;
  - vii. To be designated as a speech language pathologist or audiologist, an individual shall:

A. Be eligible for a certificate of clinical competence in Speech Language Pathology or Audiology granted by the American Speech Language Hearing Association or other comparable body; or

B. Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification;

viii. To be designated as a professional recreation staff, an individual shall have a bachelor’s degree in recreation or in a specialty area such as art, dance, music or physical education;

ix. To be designated as a professional dietician, an individual shall be eligible for registration by the American Dietetics Association;

x. To be designated as a human services professional, an individual must have at least a bachelor’s degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counselling and psychology).

“Waiver services” means those services not usually provided under the Medicaid program as long as these services are required to keep a person from being institutionalized. Under Federal law, Home and Community Based Services waivers (HCBS), also known as 1915(c) waivers for the section of the Social Security Act, allow states the flexibility to develop and implement alternatives to placing Medicaid eligible individuals in hospitals, nursing facilities and Intermediate Care Facilities for the Mentally Retarded (ICF/MR). In New Jersey, the HCBS waiver for people with developmental disabilities is called the Community Care Waiver. The Community Care Waiver allows the Division of Developmental Disabilities to provide services to an individual who, but for the provision of community services, would require the level of care in an Intermediate Care Facility for the Mentally Retarded/Developmentally Disabled (ICF/MR-DD). This ICF/MR-DD level of care is generally defined to mean that the individual is substantially functionally limited in three of six major life areas—also known as Activities of Daily Living (ADL)—one of which must be self-care. New Jersey has also chosen to use the higher income standard of institutionalized individuals for those who also receive services in the community, under the Community Care Waiver. This higher income standard of 300 percent of the Federal Benefit Rate for SSI allows individuals in the community with that income to receive waiver services. An individual must maintain their resources (assets) within the Medicaid eligibility limits, as of December 15, 2003, \$2,000 for an individual. Waiver services may include any of the following or any other services covered under the application of the Community Care Waiver to the Federal government:

1. Case Management;
2. Individual Supports;
3. Habilitation;

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.

#### 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 of eligibility for which they are entitled, primarily the Medicaid DDD Community Care Waiver, Social Security and SSI. The individual is also responsible to maintain Medicaid eligibility by ensuring that they have no more than \$2,000 in cash assets.

(b) The individual is required to make a good faith effort 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, after having complied with the requirements, he or she shall provide documentation of the denial to the Division, which shall be part of the client record. Eligibility for services shall not be denied under these instances, if the other eligibility criteria are met.

(c) Individuals must maintain eligibility for the Medicaid DDD Community Care Waiver (assets below \$2,000) in order to be 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 comply in 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 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.

#### 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 person has been placed in the State of New Jersey and that placement has been funded totally or partially by a public or private agency in another state, that person 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.

### 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 developmentally disabled persons" 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 a person 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 person 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.

### 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".

Regional Office  
1B Laurel Drive  
Flanders, NJ 07836  
(973) 927-2600

Counties of Jurisdiction  
Bergen, Hudson

Upper Central Regional Office  
59 Main Street  
West Orange, NJ 07052  
(973) 324-2000

Essex, Somerset, Union

Lower Central Regional Office  
Capital Place One  
222 S. Warren St.  
PO Box 700  
Trenton, NJ 08625-0700  
(609) 292-4500

Middlesex, Monmouth, Mercer,  
Ocean, Hunterdon

Southern Regional Office  
Community Services  
101 Haddon Avenue  
Suite 17  
Camden, NJ 08103-1485  
(856) 614-3400

Camden, Atlantic, Gloucester,  
Cumberland, Salem,  
Cape May, Burlington

## 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 the person an application.

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

Regional Office  
Northern Regional Office

Counties of Jurisdiction  
Sussex, Morris, Warren, Passaic,

(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".

### 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 recommendation, 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; or
2. Refer the matter to a second intake team, when there is disagreement among the first team concerning eligibility.

(e) The determination of the intake team(s) shall be made in writing within 10 working days and shall be based on specific findings.

(f) In cases where the matter is referred for further review, the intake team shall present the case record to the second team. The second team shall review the record and shall make a final determination.

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".

### 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 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 14 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).

**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 30 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).

**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
Arthur Brisbane Child Treatment Center	Individual Rates
Ann Klein Forensic Center	\$893.00 \$477.00
<u>STATE DEVELOPMENTAL CENTERS</u>	
Vineland Developmental Center	
Greenbrook Regional Center	Blended
North Jersey Developmental Center	Rate
Woodbine Developmental Center	per diem
New Lisbon Developmental Center	Average
Woodbridge Developmental Center	\$450.00
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).	