

10:87-7.6 Assigning certification periods

Households that receive their annual support from self-employment and have no other source of income shall be certified in accordance with N.J.A.C. 10:87-6.26(f).

Amended by R.1989 d.121, effective February 21, 1989.

See: 20 N.J.R. 2689(a), 21 N.J.R. 511(b).

Recodified (a)1.-2. as (b)-(c).

Recodified from N.J.A.C. 10:87-7.9 and amended by R.2004 d.181, effective May 17, 2004.

See: 36 N.J.R. 28(a), 36 N.J.R. 2425(a).

In former (a), deleted the designation and rewrote the paragraph; deleted (b) and (c). Former N.J.A.C. 10:87-7.6, Determining monthly income from self-employment, repealed.

10:87-7.7 Treatment of income and resources of non-household members

(a) During the period of time that a household member cannot participate because he or she is an ineligible alien, disqualified due to intentional program violation, refused to obtain and provide a social security number, refused to comply with a work registration requirement, or is ineligible for failing to sign the declaration attesting to his or her citizenship or alien status, the eligibility and benefit level of the remaining household member(s) shall be determined in accordance with this section.

(b) The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of disqualification for intentional program violation, voluntary quit or reduction of work, duplicate participation in the Program, trafficking, being a fleeing felon or parole violator, convicted of possession, use, or distribution of a controlled substance, or refusal to comply with a work registration requirement shall be determined as follows:

1. The resources of the ineligible household member(s) shall continue to be counted in their entirety to the remaining household members.
2. The income of the ineligible household member(s) shall continue to be counted in its entirety and the entire household's allowable 20 percent earned income, standard, medical, dependent care, child support payments, and excess shelter deductions shall continue to apply to the remaining household members.
3. The ineligible member(s) shall not be included when determining the household's size for the purpose of:
 - i. Comparing the household's resources with the resource eligibility limits;
 - ii. Comparing the household's monthly income with the income eligibility standards; or
 - iii. Assigning a benefit level to the household. The CWA shall ensure that no household's benefit allotment is increased solely as a result of the exclusion of one or more household members.

(c) The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible for being an ineligible alien, for failing to sign the declaration attesting to his or her citizenship or alien status, for not meeting the able-bodied adults without dependents (ABAWDS) work activity requirement (N.J.A.C. 10:87-10.20), or because of disqualification for refusal to obtain or provide a Social Security number shall be determined as follows:

1. The resources of such ineligible member(s) shall continue to count in their entirety to the remaining household members.

2. A pro rata share of the income of such ineligible member(s) shall be counted as income to the remaining member(s). This pro rata share is calculated by first subtracting the allowable exclusions (see N.J.A.C. 10:87-5.9) from the ineligible members' income and then dividing the income evenly among the household members, including the ineligible member(s). All but the ineligible members' share is counted as income to the remaining household members.

3. The 20 percent earned income deduction shall apply to the prorated income earned by such ineligible members which is attributed to their households. That portion of the household's allowable shelter, child support payments, and dependent care expenses which are either paid by or billed to the ineligible member(s) shall be divided evenly among the household members, including the ineligible member(s). All but the ineligible members' share is counted as a deductible child support payment, shelter and/or dependent care expense for the remaining household members.

4. The ineligible member(s) shall not be included when determining the household's size for purposes of:

- i. Comparing the household's resources with the resource eligibility limits;
- ii. Comparing the household's monthly income with the income eligibility standard; or
- iii. Assigning a benefit level to the household.

(d) Whenever an individual is determined to be ineligible within the household's certification period, the CWA shall determine the eligibility or ineligibility of the remaining household members based, insofar as possible, on information in the case record and shall take the following action:

1. If a household's benefits are reduced or terminated within the certification period because one of its members was excluded because of disqualification for intentional program violation, the CWA shall notify the remaining members of their eligibility and benefit level at the same time the excluded member is notified of his or her disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits, unless the issue of the

amount of the claim was addressed at the time of the administrative disqualification hearing.

2. If a household's benefits are reduced or terminated within the certification period for reasons other than an Intentional Program Violation disqualification, the CWA shall issue a notice of adverse action in accordance with N.J.A.C. 10:87-9.5(c)1i which informs the household of the ineligibility, the reason for the ineligibility, the eligibility and benefit level of the remaining members, and the action the household shall take to end the ineligibility.

(e) For those non-household members who are ineligible for reasons other than those set forth at N.J.A.C. 10:87-2.3(c), such as ineligible students (see N.J.A.C. 10:87-2.3(a)2), the income and resources of the non-household member shall not be considered available to the household with whom the individual resides.

1. Cash payments from the nonhousehold member to the household will be considered income under the normal income procedures at N.J.A.C. 10:87-5.5.

2. Vendor payments, as defined at N.J.A.C. 10:87-5.9(a)2, shall be excluded as income.

3. If the household shares deductible expenses with the nonhousehold member, only the amount actually paid or contributed by the household shall be deducted as household expenses. If payments or contributions cannot be differentiated, the expenses shall be prorated evenly among persons actually paying or contributing to the expense and only the household's pro rata share deducted.

4. When the earned income of one or more household members and the earned income of a nonhousehold member are combined into one wage, the income of the household members shall be determined as follows:

i. If the household's share can be identified, the CWA shall count that portion due to the household as earned income.

ii. If the household's share cannot be identified, the CWA shall prorate the earned income among all those whom it was intended to cover and count that prorated portion to the household.

(f) Nonhousehold members shall not be included when determining household size for the following purposes:

1. Assigning a benefit level;
2. Comparing the household's monthly income with the income eligibility standards; or
3. Comparing household resources with the resource eligibility limits.

Amended by R.1981 d.97, effective April 9, 1981.

See: 13 N.J.R. 96(c), 13 N.J.R. 228(a).

(a): "or failure ... N.J.A.C. 10:87-3.20(d)" deleted.

(a)5i deleted.

(a)5ii renumbered as (a)5i.

Amended by R.1983 d.223, effective May 31, 1983. See: 15 N.J.R. 629(a), 15 N.J.R. 1033(a).

Originally adopted as an Emergency Rule, R.1983 d.116, effective March 31, 1983, operative April 1, 1983. The amendment is pursuant to the Food Stamp Act Amendments of 1982 (P.L. 97-253) and the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

Full descriptions of treatment of income and resources of "excluded" as opposed to "disqualified" household members.

Amended by R.1989 d.121, effective February 21, 1989.

See: 20 N.J.R. 2689(a), 21 N.J.R. 511(b).

Substantially amended.

Amended by R.1990 d.565, effective November 19, 1990.

See: 22 N.J.R. 2219(a), 22 N.J.R. 3486(a).

Specified how to treat the income and resources of individuals who fail to attest to their citizenship or alien status when determining the eligibility and benefit level of remaining household members, in accordance with the Federal regulations at 7 CFR 273.11; established the dependent care deduction as a separate deduction from the shelter deduction.

Amended by R.1991 d.247, effective May 6, 1991.

See: 23 N.J.R. 179(a), 23 N.J.R. 1412(b).

In (a) and (b): added phrase, "... refused/refusal to comply with work registration requirement ..."

Amended by R.1998 d.498, effective October 5, 1998.

See: 30 N.J.R. 1928(a), 30 N.J.R. 3669(b).

In (b), rewrote the introductory paragraph, and inserted a reference to child support payments in 2; and in (c), inserted "for not meeting the able-bodied adults without dependents (ABAWDS) work activity requirement (N.J.A.C. 10:87-10.25)," following "status," in the introductory paragraph, and inserted a reference to child support payments in the second sentence of 3.

As amended, R.1983 d.223, effective May 31, 1983.

See: 15 N.J.R. 629(a), 15 N.J.R. 1033(a).

Originally adopted as an Emergency Rule, R.1983 d.116, effective March 31, 1983, operative April 1, 1983. The amendment is pursuant to the Food Stamp Act Amendments of 1982 (P.L. 97-253) and the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

Language added about combined incomes of household and non-household members.

Amended by R.1989 d.121, effective February 21, 1989.

See: 20 N.J.R. 2689(a), 21 N.J.R. 511(b).

Added (b).

Recodified from N.J.A.C. 10:87-7.14 and 10:87-7.15 and amended by R.2004 d.181, effective May 17, 2004.

See: 36 N.J.R. 28(a), 36 N.J.R. 2425(a).

Rewrote the section. Former N.J.A.C. 10:87-7.7, Capital gains, recodified to N.J.A.C. 10:87-7.4.

Amended by R.2007 d.129, effective May 7, 2007.

See: 38 N.J.R. 4374(a), 39 N.J.R. 1719(a).

In (b)3iii, substituted "benefit" for "coupon"; and in (c)2, substituted first occurrence of "is" for "in".

10:87-7.8 Residents of substance abuse treatment and rehabilitation programs

(a) Substance abusers, who regularly participate in publicly operated or private nonprofit substance abuse treatment and rehabilitation programs on a resident basis, may voluntarily apply for the Food Stamp Program.

1. Applications shall be made through an authorized representative who is employed by the substance abuse center (SAC) and designated by the center for that purpose (see also N.J.A.C. 10:87-2.7(e)). The CWA may require the household to designate the SAC as its authorized representative for the purpose of accessing the allotment on behalf of the household.

2. SAC residents shall have their eligibility determined as a one-person household unless their children are living

disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date the disqualification shall take effect. The CWA shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. In addition, the CWA shall provide the written demand letter for restitution.

As amended, R.1983 d.224, effective May 31, 1983.

See: 15 N.J.R. 633(a), 15 N.J.R. 1034(a).

Originally adopted as an Emergency Rule, R.1983 d.117, effective March 31, 1983, operative April 1, 1983. The amendments are pursuant to the Food Stamp Act Amendments of 1982 (P.L. 97-253) and the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

References to fraud deleted; references to hearing officers deleted and replaced by references to Office of Administrative Law procedures.

Amended by R.1989 d.121, effective February 21, 1989.

See: 20 N.J.R. 2689(a), 21 N.J.R. 511(b).

Recodified from 11.4 with amendments to (j), (k) and (m).

Amended by R.1994 d.42, effective January 18, 1994.

See: 25 N.J.R. 4697(b), 26 N.J.R. 377(a).

Amended by R.1998 d.498, effective October 5, 1998.

See: 30 N.J.R. 1928(a), 30 N.J.R. 3669(b).

In (f)1vi, substituted a reference to 12-month disqualifications for a reference to six-month disqualifications, and substituted a reference to 12-month disqualifications for a reference to 24-month disqualifications. Repeal and New Rule, R.2004 d.181, effective May 17, 2004.

See: 36 N.J.R. 28(a), 36 N.J.R. 2425(a).

Section was "Administrative disqualification hearing procedures".

Amended by R.2007 d.129, effective May 7, 2007.

See: 38 N.J.R. 4374(a), 39 N.J.R. 1719(a).

In (a), substituted "food stamp benefits" for "food stamps".

10:87-11.8 Deferred adjudication

(a) Individuals accused of an IPV which are referred to a court of appropriate jurisdiction but for which no determination of guilt is obtained due to the accused individual having met the terms of a court order or which were not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor, shall be allowed to sign a disqualification consent agreement. The CWA shall make arrangements with the county prosecutors to provide advance written notification to the household member of the consequences of consenting to disqualification as a result of deferred adjudication and to include the disqualification consent agreement in agreements between the prosecutors and the accused individuals or in the court orders.

(b) The advance notice and agreement shall include, at a minimum, the following:

1. A statement for the accused individual to sign that the accused individual understands the consequences of consenting to disqualification, along with a statement that the head of household must also sign the consent agreement if the accused individual is not the head of household, with an appropriately designated signature block;

2. A statement that consenting to disqualification shall result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil or criminal misrepresentation or fraud;

3. A warning that the disqualification penalties for intentional program violation under the Food Stamp Program which could be imposed are a 12-month disqualification for the first violation, 24-month disqualification for the second violation, and permanent disqualification for the third violation, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification; and

4. A statement of the fact that the remaining household members, if any, shall be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

(c) If the individual suspected of an IPV signs the disqualification consent agreement, he or she shall be disqualified in accordance with the disqualification periods specified at N.J.A.C. 10:87-11.2, unless contrary to the court order. The period of disqualification shall begin within 45 days of the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies a date for initiating the disqualification period, the CWA shall disqualify the household member in accordance with the court order.

1. Once a disqualified penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's IPV, regardless of its eligibility for program benefits.

(d) If the household member suspected of an IPV signs the disqualification consent agreement, the CWA shall provide written notice to the household member. The notice shall be provided prior to the disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date the disqualification shall take effect. The CWA shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. In addition, the CWA shall provide the written demand letter for restitution.

As amended, R.1983 d.224, effective May 31, 1983.

See: 15 N.J.R. 633(a), 15 N.J.R. 1034(a).

Originally adopted as an Emergency Rule, R.1983 d.117, effective March 31, 1983, operative April 1, 1983. The amendments are pursuant to the Food Stamp Act Amendments of 1982 (P.L. 97-253) and the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

References to "fraud" deleted and replaced by "intentional program violation".

Amended by R.1989 d.121, effective February 21, 1989.

See: 20 N.J.R. 2689(a), 21 N.J.R. 511(b).

Recodified from 11.4.

Repeal and New Rule, R.2004 d.181, effective May 17, 2004.

See: 36 N.J.R. 28(a), 36 N.J.R. 2425(a).

Section was "Participation while awaiting a hearing".

10:87-11.9 Reporting requirements

(a) The CWA shall report to DFD information concerning individuals disqualified for IPV, including those individuals disqualified based on the determination of a final administrative disqualification hearing decision or a court of appropriate jurisdiction and those individuals disqualified as a result of signing either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases referred for prosecution. This information shall be forwarded by DFD to the United States Department of Agriculture/Food and Nutrition Service (USDA/FNS) so that it is received no later than 30 days after the date the disqualification took effect, or would have taken effect for a currently ineligible individual whose disqualification is pending future eligibility.

(b) DFD shall report information concerning each individual disqualified for IPV in a format known as the Disqualified Recipient System (DRS). This format shall include the individual's Social Security number, date of birth, full name, type of offense, number of the disqualification (1st, 2nd or 3rd), the State and county in which the disqualification took place, the date on which the disqualification took effect and the length of the disqualification period imposed.

(c) The CWA shall submit the required information on each individual disqualified for IPV through DFD's reporting system.

(d) All the data submitted by State agencies concerning individuals disqualified for IPV will be available for use by any New Jersey State agency or CWA. CWAs shall, at a minimum, use the data for the following:

1. To determine the eligibility of individual program applicants prior to certification in cases where the CWA has reason to believe a household member is subject to disqualification in another political jurisdiction;
2. To ascertain the appropriate penalty to impose, based on past disqualifications, in a case under consideration; and
3. To use this data in other ways, such as to screen all program applicants prior to certification and/or to periodically match the entire list of disqualified individuals against current caseloads.

(e) The disqualification of an individual for IPV in one political jurisdiction shall be valid in another. However, one or more IPV's which occurred prior to April 1, 1983, shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification(s) took place. CWAs are required to identify any individuals disqualified for fraud prior to implementation of this rule and to submit the information required by this section on such individuals.

(f) In cases where the disqualification for an IPV is reversed by a court of appropriate jurisdiction, the CWA shall

submit a report to purge the file of the information relating to the disqualification which was reversed.

As amended, R.1983 d.224, effective May 31, 1983.

See: 15 N.J.R. 633(a), 15 N.J.R. 1034(a).

Originally adopted as an Emergency Rule, R.1983 d.117, effective March 31, 1983, operative April 1, 1983. The amendments are pursuant to the Food Stamp Act Amendments of 1982 (P.L. 97-253) and Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

"Director of the CWA" replaced by "administrative law judge".

Amended by R.1989 d.121, effective February 21, 1989.

See: 20 N.J.R. 2689(a), 21 N.J.R. 511(b).

Recodified from 11.7.

Repealed by R.1994 d.42, effective January 18, 1994.

See: 25 N.J.R. 4697(b), 26 N.J.R. 377(a).

Section was "Decision format".

Repeal and New Rule, R.2004 d.181, effective May 17, 2004.

See: 36 N.J.R. 28(a), 36 N.J.R. 2425(a).

Section was "Reserved".

10:87-11.10 Reverse disqualifications

In cases where the determination of an IPV is reversed by a court of appropriate jurisdiction, the CWA shall reinstate the individual in the program if the household is eligible. The CWA shall restore benefits that were lost as a result of the disqualification in accordance with the procedures specified at N.J.A.C. 10:87-11.16.

As amended, R.1983 d.224, effective May 31, 1983.

See: 15 N.J.R. 633(a), 15 N.J.R. 1034(a).

Originally adopted as an Emergency Rule, R.1983 d.117, effective March 31, 1983, operative April 1, 1983. The amendments are pursuant to the Food Stamp Act Amendments of 1982 (P.L. 97-253) and the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

Rules concerning appeals after CWA hearings deleted and replaced.

Amended by R.1989 d.121, effective February 21, 1989.

See: 20 N.J.R. 2689(a), 21 N.J.R. 511(b).

Recodified from 11.8.

Repeal and New Rule, R.2004 d.181, effective May 17, 2004.

See: 36 N.J.R. 28(a), 36 N.J.R. 2425(a).

Section was "No further administrative appeal".

10:87-11.11 Restoration of lost benefits

The CWA shall restore to the household benefits which were lost whenever the loss was caused by an error by the CWA. Additionally, the CWA shall restore lost benefits when this Manual specifically states that the household is entitled to restoration of lost benefits or an intentional program violation disqualification was subsequently reversed as specified by N.J.A.C. 10:87-11.10. In SSI jointly processed cases the CWA shall restore to the household benefits which were lost whenever the loss was caused by an error by the CWA or by the SSA/DO. Such an error shall include, but not be limited to, the loss of an applicant's food stamp application after it has been filed with the SSA/DO. Benefits shall be restored even if the household is currently ineligible. The CWA shall maintain an accounting system for documenting a household's entitlement to restoration of lost benefits and for recording the balance of lost benefits that must be restored to the household. The CWA shall, at a minimum, document how the amount to be restored was calculated and the reason for restoration. The accounting system shall be designed to