

Amended by R.1997 d.361, effective September 2, 1997.
See: 29 N.J.R. 1456(a), 29 N.J.R. 3883(a).

Inserted internal and N.J.A.C. references; and substituted "personal assistance" for "personal attendants", "consumer" for "individual", and "county designated agency" for "designated county agency" throughout the section.

10:140-3.5 Services

(a) Services provided to eligible consumers shall be supplemental to and not duplicative of services available through relatives, other informal caregivers or other service programs.

(b) For the purposes of the Personal Assistance Services Program, the following service standards shall be met:

1. Program funds shall not be used for medically related services, including the supervision of registered nurses. It is not the responsibility of the Personal Assistance Services Program to arrange for or provide skilled nursing, therapy, or related medical care and treatment services which the eligible consumer may need.

2. Using a personal assistant as a personal driver may be allowed. In no instance shall any person serving as a personal assistant under the Personal Assistance Services Program provide driving or transportation services using his or her own vehicle. In addition, written verification shall be provided to the county designated agency indicating that the personal assistant is a fully covered driver under the eligible consumer's motor vehicle insurance policy. The verification of insurance coverage as described above shall be updated with the county designated agency every 12 months, at a minimum. Failure to comply with this requirement shall result in suspension or termination of driving or transportation services, as determined by the county designated agency based on the effort and willingness of the consumer to provide the required verification.

3. Personal assistance services provided for the purpose of receiving training or education shall not replace or duplicate those services provided by an educational institution as mandated by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

4. Personal assistance services provided during employment shall not replace or duplicate those services or accommodations provided by an employer as mandated by the Americans With Disabilities Act of 1990, P.L. 101-336, 42 U.S.C. § 12111.

(c) Personal assistance services shall be suspended during a period of hospitalization and resumed automatically once the consumer is discharged to the consumer's community residence.

(d) Personal assistance services received by an eligible consumer, and paid for by funds under the Personal Assistance Services Program, shall be provided by a non-relative who is employed as a personal assistant under the program.

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See: 29 N.J.R. 1456(a), 29 N.J.R. 3883(a).

Rewrote (b)2; inserted (b)4, (c) and (d); and substituted "Personal Assistance Services" for "Personal Attendant Services", and "consumer" for "individual" throughout the section.

Case Notes

Updating financial records not personal services; filing overdue tax returns warranted additional hours. C.D. v. Morris County Department of Human Services' Personal Attendant Services Program, 93 N.J.A.R.2d (DYF) 1.

10:140-3.6 Exceptions to service standards

(a) Exceptions to the service standards in N.J.A.C. 10:140-3.5(a), (b)3 and (b)4 shall be:

1. Initiated by the applicant or consumer;
2. Reviewed on a case-by-case basis by the county designated agency; and
3. Determined by the county designated agency. Upon making the final determination on exception requests, the county designated agency shall provide written notification of the results to the State Program Administrator.

(b) Exceptions to the service standards in N.J.A.C. 10:140-3.5(c) and (d) shall be:

1. Initiated by the applicant or consumer;
2. Reviewed on a case-by-case basis by the county designated agency. The county designated agency shall make a recommendation to the State Program Administrator as to whether an exception should be allowed; and
3. The State Program Administrator shall notify the county designated agency of the determination. Upon receipt of the determination, the county designated agency shall then notify the applicant or consumer regarding the results of the decision rendered by the State Program Administrator.

(c) In making the recommendations and determinations on exception requests, the county designated agency and State Program Administrator shall:

1. Give consideration to the request presented by the applicant or consumer;
2. Require a showing of unusual or emergent circumstances;
3. Give consideration based on funding available;
4. Give consideration to other services received by the consumer or applicant through other funding sources; and
5. Give consideration to the facts presented on a case-by-case basis.

(d) For the purposes of granting exceptions to N.J.A.C. 10:140-3.5(c), the following standards apply:

1. Personal assistance services in the form of maintaining essential communications, advocacy, household, and home maintenance services shall be continued on a limited basis only when other relatives or informal caregivers are not available.

2. Personal care services shall not be provided under the Personal Assistance Services Program during a period of hospitalization.

3. In granting an exception, a temporary modification of the consumer plan of service shall be made with the county designated agency to reflect current needs.

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See: 29 N.J.R. 1456(a), 29 N.J.R. 3883(a).

Inserted N.J.A.C. references; in (a)3, added the second sentence; inserted new (b); recodified (b) as (c); and added (d).

10:140-3.7 Procedures for requesting and granting exceptions to service standards

(a) Eligible applicants or consumers requesting exceptions shall follow the procedures listed below:

1. Requests for exceptions to N.J.A.C. 10:140-3.5(a) through (d) shall be made in writing.

2. The written request for an exception shall be made to the director of the county designated agency and shall indicate the specific exception requested and provide justification.

(b) The director of the county designated agency shall review the request and respond to the request within 30 days.

(c) If the request is for an exception to N.J.A.C. 10:140-3.5(c) and the situation is an emergency, this request may be made verbally and the response of the director of the county designated agency shall be immediate.

(d) If the request is for an exception under N.J.A.C. 10:140-3.5(c) and not an emergency, or under N.J.A.C. 10:140-3.5(d), the director of the county designated agency shall forward his or her recommendation to the State Program Administrator, who shall review the request and respond to the request within 30 days.

Amended by R.1997 d.361, effective September 2, 1997.

See: 29 N.J.R. 1456(a), 29 N.J.R. 3883(a).

Inserted N.J.A.C. references; added (c) and (d); and substituted "county designated agency" for "designated county agency" throughout the section.

10:140-3.8 Transfer of services to another county

(a) Once eligibility for the Personal Assistance Services Program has been established, the consumer retains that eligibility when moving to another county within New Jersey, unless services are terminated pursuant to N.J.A.C. 10:140-3.9.

(b) In order to effect a transfer of personal assistance services, the eligible consumer shall notify, in writing, or, where appropriate, verbally or through alternative communication methods, the director of the county designated agency of both the county of origin and the destination county, of his or her intention to move. Upon receipt of the notification, the destination county shall make a determination as to whether funding is available to provide services, and provide the consumer with the results of that determination in writing.

1. Applicants or consumers who are unable to communicate in English or have a communication handicap may make arrangements with county designated agency for an alternative means for verifying their notification of a move to another county. All other persons must provide notification of a move in writing to the director of the county designated agency.

(c) In the event an eligible consumer moves to another county and wants to retain his or her personal assistance services, and the destination county has determined that there are insufficient funds, the county of origin will continue to pay for those services for a transitional period of no more than six months.

(d) If it has been determined by the destination county that there are insufficient funds, the eligible consumer shall immediately be placed on the destination county's waiting list in accordance with the priorities set forth in N.J.A.C. 10:140-1.5(b).

(e) Following the transition period pursuant to (c) above, the eligible consumer shall be granted services from the destination county in accordance with his or her position on the waiting list in (d) above.

New Rule, R.1997 d.361, effective September 2, 1997.

See: 29 N.J.R. 1456(a), 29 N.J.R. 3883(a).

Former N.J.A.C. 10:123A-3.8, "Termination of service", recodified to N.J.A.C. 10:123A-3.9.

10:140-3.9 Suspension of service and termination of service

(a) Suspension of service and termination of service may be either voluntary or involuntary. Voluntary suspensions and terminations involve situations in which eligible consumers agree to the temporary suspension or permanent cessation of services. All other suspensions and terminations are considered to be involuntary.

(b) Voluntary suspension of service shall not exceed a total of 90 days, and shall be implemented as follows:

1. County designated agencies shall implement an initial suspension period, not to exceed 60 days, based on a request by an eligible consumer.

2. Prior to completion of the initial suspension period, the eligible consumer may request an extension, not to exceed a total of 90 days.

3. The county designated agency shall review the request for an extension and shall make a determination on whether to grant an extended suspension beyond the initial period or to terminate services. All decisions will be made on a case-by-case basis.

4. At the end of a 90-day suspension period, the county designated agency shall determine whether the consumer's services are to be resumed or terminated, and provide appropriate written notification to the consumer regarding the decision rendered.

(c) Consumers who are involuntarily suspended or terminated from services shall receive written notice from the county designated agency at least 30 days prior to the effective date of the suspension or termination. Consumers may receive notice of an involuntary suspension or termination in less than 30 days at the discretion of the county designated agency in those situations described in (e)4, 7 and 8 below.

(d) Involuntary suspensions or terminations may be the result of State mandated reductions in program funding to the county designated agency when the county designated agency has no alternative means of supplementing funding for the services.

1. In determining whether services will be involuntarily suspended or involuntarily terminated, the county designated agency shall consider the current and future availability of alternative means of funding the services.

2. Consumers shall receive written notice of involuntary suspensions or terminations due to State mandated reductions in program funding, in accordance with N.J.A.C. 10:140-3.9(c)

(e) Involuntary suspensions and terminations shall be a result of non-compliance with program regulations and procedures which include, but are not limited to:

1. Failure to submit information necessary to determine or reaffirm social and financial program eligibility in a timely fashion in accordance with N.J.A.C. 10:140-3.2 and 3.3(d);

2. Failure to pay the appropriate consumer fee or to sign time sheets as specified in N.J.A.C. 10:140-4.3(b) and (g), respectively;

3. Failure to comply with the training requirements specified in N.J.A.C. 10:140-6.1;

4. Abuse or misuse of personal assistance services or personal assistants as verified by the county designated agency;

5. Continued non-acceptance and/or dismissal of personal assistants without proper justification;

6. Failure to meet program eligibility requirements pursuant to N.J.A.C. 10:140-2.1, unless an exception has

been granted in accordance with N.J.A.C. 10:140-2.2 and 2.3;

7. Failure of the consumer to manage personal situations which result in placing the health or welfare of a personal assistant at increased risk, as determined by the county designated agency; or

8. Duplication of personal assistance services through other service programs or funding sources as verified by the county designated agency.

(f) In determining whether services will be involuntarily suspended or involuntarily terminated as described in (e) above, the county designated agency shall consider the specifics of the situation, on a case-by-case basis, including, but not limited to, the following factors:

1. The severity of the situation;

2. Any recurrences or patterns in the situation; and

3. The effort and willingness demonstrated by the consumer to resolve the issue or to mediate the problem.

Recodified from 10:123A-3.8 and amended by R.1997 d.361, effective September 2, 1997.

See: 29 N.J.R. 1456(a), 29 N.J.R. 3883(a).

Inserted new (b) and (d); recodified (b) as (c) and (c) as (e); and added (f). Former N.J.A.C. 10:123A-3.9, "Adverse agency actions", recodified to N.J.A.C. 10:123A-3.10.

10:140-3.10 Adverse agency actions

(a) An applicant or consumer may request an administrative review of an agency denial, reduction, suspension or termination of services, denial of a request for an exception, or a failure to act upon a request for services within prescribed time frames.

(b) If services received or requested are to be denied, reduced, suspended or terminated, the county designated agency shall provide written notice and, if appropriate, oral notice to the applicant or consumer at least 30 days prior to such action. Consumers may receive notice in less than 30 days in accordance with N.J.A.C. 10:140-3.9(c).

(c) The written notice of such adverse action shall indicate the reason(s) for the action to be taken, citing the basis for the decision.

(d) In addition, all written notices of such adverse action shall contain the following statement:

"An applicant to or eligible consumer of the Personal Assistance Services Program, who is dissatisfied with any decision regarding an eligibility determination or other matters pertaining to participation in the Personal Assistance Services Program, may file a request for an administrative review of that decision. The applicant or eligible consumer shall not be afforded an administrative review when the adverse agency action is due to State mandated reductions in funding, unless the request for a review is based on a

claim of inaccuracy or misapplication by the county designated agency.

A request for an administrative review must be made within 30 days of the date of written notice of an adverse agency action.

Requests for an administrative review may be made by telephone or letter to the:

State Program Administrator
State Office of Disability Services
PO Box 700
Trenton, New Jersey 08625-0700
1-888-285-3036

(e) A request for a review will operate as a stay of any adverse agency action pending the outcome of the administrative review or any subsequent appeal. A stay of an adverse action may be denied either at the discretion of the county designated agency based on a case-by-case determination of severity in one of those situations described in N.J.A.C. 10:140-3.9(e)4 and 7, or because the request for a review based on a State mandated reduction in funding does not claim an incorrect computation or misapplication by the county designated agency.

(f) Once a stay of the adverse agency action is applied, personal assistance services to a consumer shall not be suspended, reduced or terminated prior to the completion of the administrative review and the rendering of the decision, except when:

1. The sole issue is one of a State mandated reduction in funding and the consumer's claim of inaccuracy or misapplication is invalid; or
2. A change in the consumer's circumstances occurs, affecting eligibility or award of services under the Program, while the decision of the administrative review is still pending and the consumer does not request an additional administrative review related to the subsequent adverse agency action.

(g) Within 30 days from the completion of the administrative review, the State Program Administrator shall render a decision and that decision shall be sent in writing to the applicant or consumer.

(h) Applicants or consumers who disagree with the decision of the administrative review may request a hearing before an Administrative Law Judge pursuant to N.J.A.C. 10:140-3.11. Instructions for such requests shall be incorporated into the written results noted in (g) above.

Recodified from 10:123A-3.9 and amended by R.1997 d.361, effective September 2, 1997.
See: 29 N.J.R. 1456(a), 29 N.J.R. 3883(a).

In (a), inserted “, suspension”, and substituted “prescribed time frames” for “a reasonable time”; in (b), inserted “, suspended” and “unless waived in accordance with N.J.A.C. 10:140-3.9(c)”, and substituted “county designated agency” for “county office”; rewrote (d) and (e); inserted new (f); and recodified (f) and (g) as (g) and (h). Former N.J.A.C. 10:123A-3.10, “Hearings and appeals”, recodified to N.J.A.C. 10:123A-3.11.

10:140-3.11 Hearings and appeals

(a) Administrative hearings under this chapter shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

1. A request for an administrative hearing shall be denied to a consumer who disputes an involuntary suspension, involuntary termination or reduction of services resulting from a State mandated reduction in funds to the county designated agency, unless the request is based on a claim of incorrect computation or misapplication by the county designated agency.

2. In the event that an administrative hearing request is based on a claim that the level of services awarded was computed incorrectly or misapplied as a result of a State mandated reduction in funds, the consumer shall be permitted a stay of an adverse agency action pursuant to N.J.A.C. 10:140-3.10(e).

(b) An administrative hearing may be requested by calling or writing to the:

State Program Administrator
State Office of Disability Services
PO Box 700
Trenton, New Jersey 08625-0700
1-888-285-3036

(c) In all cases, an administrative hearing must be requested within 30 days of receiving the adverse agency decision noted in N.J.A.C. 10:140-3.10.

(d) Upon receipt of a request for an administrative hearing, the Administrative Hearings Coordinator will then forward the request to the Office of Administrative Law, the State agency responsible for conducting the administrative hearings process.

(e) Upon completion of the administrative hearings process, a final decision regarding the matter in dispute shall be rendered by the director of the designated State agency.

(f) If the applicant or eligible consumer objects to the final decision made in accordance with (e) above, a notice of appeal may be filed by the applicant or eligible consumer with the Appellate Division of the Superior Court of New Jersey. Such appeals shall be made within 45 days of the date of the final decision.

(g) Further information about filing a notice of appeal may be obtained by calling or writing the: