

SUBCHAPTER 6. ELIGIBILITY REQUIREMENTS

Case Notes

See for historical purposes Atty.Gen.F.O.1978, No. 3 (then existing regulation N.J.A.C. 10:69A-4.3 declared invalid).

10:167-6.1 Age

(a) To be eligible for PAAD, the applicant shall be 65 years of age or older or shall be under 65 and over 18 years of age and receive Social Security Title II disability benefits. Individuals under age 65 who receive disability benefits on behalf of someone other than themselves are ineligible. The applicant shall be able to document his or her age upon request by the Department. The Department will require that the applicant submit a photocopy of his or her certificate or other acceptable proof of age if over 65 years of age.

(b) The following are acceptable proofs of age:

1. Primary proof: The applicant is required to submit a photocopy of one of the following documents:

- i. Birth certificate;
- ii. Baptismal certificate;
- iii. Bris certificate;
- iv. Social Security records verifying age (can be obtained from local security office);
- v. Railroad retirement letter (can be obtained from Railroad Retirement Board).

2. Secondary proofs: If the applicant cannot supply one of the documents listed above, copies of any two of the following documents are acceptable:

- i. Insurance policy;
- ii. Driver's license;
- iii. School record;
- iv. State or Federal census record;
- v. Church record of Baptism (age five or after);
- vi. Confirmation certificate;
- vii. Marriage record;
- viii. Employment record;
- ix. Union record;
- x. Military record;
- xi. Medicare card;
- xii. Delayed birth certificate;
- xiii. Applicant's child's birth certificate;
- xiv. Physician's or midwife's record of applicant's birth;

- xv. Immigration record;
- xvi. Naturalization record;
- xvii. Passport.

(c) If under age 65, the following are acceptable proofs of disability:

1. A copy of a Social Security award certificate issued in the last six months.
2. A Social Security Form or record.
3. A document issued by Social Security that establishes Medicare eligibility. The document must be dated within six months prior to the date of application.

Amended by R.1985 d.259, effective May 20, 1985.
See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Substantially amended.

Amended by R.1988 d.211, effective May 16, 1988.
See: 20 N.J.R. 369(a), 20 N.J.R. 1106(a).

Added text to (b)5 "letter (can be obtained from Railroad Retirement Board)".

Amended by R.1990 d.614, effective December 17, 1990.

See: 22 N.J.R. 2218(a), 22 N.J.R. 3956(a).

In (a): added sentence regarding ineligibility of those under 65 who receive disability benefits on behalf of someone other than themselves. Stylistic revisions to text.

Amended by R.1998 d.176, effective April 6, 1998.

See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

In (b)1, substituted a reference to Social Security records verifying age for a reference to Social Security form No. 2458 in iv, and deleted a former vi; in (b)2, deleted a former v, recodified former vi through xi as v through x, inserted a new xi, deleted a former xii, and recodified former xiii through xviii as xii through xvii; and in (c), rewrote 2, and added 3.

10:167-6.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than \$26,130 to be eligible for PAAD.

(b) Any married permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than \$32,037 to be eligible for PAAD.

1. An applicant and spouse shall be considered separate and eligibility determined under the single income standard when each maintains a separate residence and the applicant does not have access to the spouse's income.

i. Any support payment received by the applicant for the sole benefit of the applicant shall be considered as income for PAAD eligibility purposes.

2. An applicant and spouse may be considered separated when the spouse has been institutionalized in a long-term facility, either skilled or intermediate, or in a State or county psychiatric hospital at least 30 consecutive days prior to application.

i. PAAD shall consider the applicant and spouse separated only when doing so is more favorable to the applicant for PAAD (for example, when the income of an applicant and his institutionalized spouse is combined at \$25,060, the applicant is ineligible for PAAD, but if the applicant and spouse are considered separated, the applicant could be eligible for PAAD under the single income standard. If the institutionalized spouse was not covered by Medicaid, the spouse could become eligible under the single income standard).

(c) All income, from whatever source derived, is considered in determining eligibility for the purpose of PAAD. Jointly owned income sources, will be allocated according to degree of ownership.

1. All income, taxable and nontaxable, is to be included. Examples of possible sources of income (gross amounts unless otherwise noted) are as follows:

- i. Social Security benefits paid to or on behalf of the applicant;
- ii. Veterans benefits;
- iii. Disability benefits, whether public or private;
- iv. Salaries;
- v. Wages;
- vi. Bonuses;
- vii. Commissions;
- viii. Fees;
- ix. Dividends;
- x. Interest taxable and nontaxable;
- xi. Capital gains;
- xii. Royalties;
- xiii. Bequests and death benefits;
- xiv. Support payments;
- xv. Unemployment benefits;
- xvi. Pensions and black lung benefits;
- xvii. Annuities (contributory and non-contributory, qualified and nonqualified);
- xviii. Retirement benefits including distribution from Individual Retirement Arrangements (IRAs) (Traditional, Simple, Roth, Educational) and benefit payments from foreign countries;
- xix. Business income (net);
- xx. Fair market value of prizes and awards.
- xxi. Gambling and lottery winnings; and
- xxii. Rental income (net after expenses).

2. Sources of income which are excluded in considering eligibility for PAAD are as follows:

- i. Benefit amounts received under the New Jersey State Lifeline Credit Program/Tenants Lifeline Assistance Program;
- ii. Benefits received under New Jersey State Home-Steak Rebates;
- iii. Proceeds from spouse's life insurance;
- iv. Capital gains of up to \$250,000 for a single person or up to \$500,000 for a married couple on the sale of a main home which is also excluded from income taxation by IRS and the New Jersey Division of Taxation;
- v. Stipends from the Volunteers to Service in America (VISTA), Foster Grandparents programs, Workforce 55+ program and programs under Title V of the Older Americans Act of 1965;
- vi. Agent Orange payments;
- vii. Reparation payments to Japanese Americans by the Federal Government pursuant to sections 105 and 106 of the Civil Liberties Act of 1988, P.L. 100-383 (50 U.S.C. App. 1989b-4 and 1989b-5);
- viii. Rewards involving health care fraud or abuse which apply to N.J.A.C. 10:49-13.4;
- ix. Holocaust reparations;
- x. Proceeds from viatical settlements;
- xi. Proceeds received by the beneficiary of a Special Needs Trust (see N.J.A.C. 10:167-2.2 for provisions);
- xii. Rollovers from one tax deferred financial instrument (pension, annuity, IRA, insurance contract or other retirement benefits) to another tax deferred financial instrument;
- xiii. 1035 Tax Free Exchanges of a policy or contract handled between two insurance companies; and
- xiv. An insurance policyholder's original contributions if Demutualization of the policy occurs (in that case, only the earnings on the policy would be counted);

(d) The applicant must be able to document the amounts reported upon request by the Department, and will be required to submit photocopies of his/her Federal, State and/or City income tax return and other acceptance evidence.

(e) PAAD eligibility is conferred based upon annual income for the current calendar year, which is estimated at the time of application. Previous year income information is used as a gauge and supplements estimates of current income to determine current eligibility. However, if previous year income exceeds the standard, but current year income is expected to fall within legal limits, an initial applicant may estimate current year income for the purpose of establishing PAAD eligibility.

(f) Since PAAD eligibility is based upon actual annual income, if the actual income for the current calendar year exceeds the PAAD income standard, the person will become ineligible for the entire calendar year and shall be required to repay benefits paid for all prescriptions and Lifeline benefits from January 1 through December 31 of the calendar year.

(g) Upon renewal of eligibility, all re-applicants must submit previous year income information to substantiate previous estimates. Requests by re-applicants to use anticipated income, as the basis for eligibility, when previous year income exceeds the PAAD standard, will be reviewed individually.

(h) The PAAD program shall take necessary action to recover the full amount of payments made on behalf of beneficiaries during an ineligible period, when appropriate.

(i) PAAD beneficiaries are required to notify the PAAD program immediately if their current year income exceeds the PAAD income standard.

(j) Applicants who combine their income by filing joint Federal and/or State income tax returns, must combine their income for PAAD eligibility purposes for the same time period and their eligibility determination shall be based on the joint income standard, except when (b)2 above applies.

(k) Medical or other expenses are not considered or deducted from gross income for PAAD eligibility purposes.

(l) Net losses in one income category shall not be used to offset income in another category.

(m) Beginning January 1, 1996 and annually thereafter, the income eligibility limits shall increase by the amount of the maximum Social Security benefit cost-of-living adjustment for that year for single and married persons, respectively, in accordance with 42 U.S.C. § 415(i)(2)(D), incorporated herein by reference. The Commission will provide notice of the new income limits annually by publication in the New Jersey Register.

(n) If requested, applicants shall provide all income and asset information necessary to apply for the Medicare Part D Low Income Subsidy, pursuant to 20 CFR Part 418, Subpart D, and 42 CFR Part 423, which are incorporated herein by reference, as amended and supplemented.

1. The PAAD Program shall use the information to apply on behalf of the PAAD applicant for the low income subsidy by completing the Social Security Administration SSA-1020, on-line application form at www.socialsecurity.gov.

2. The additional income and asset information, required for the low income subsidy application and not required by (a) through (m) above shall not be used in determining PAAD eligibility, but shall only be used to determine eligibility for the low income subsidy.

3. In addition to the income and asset information required by N.J.A.C. 10:167-6.1 through 6.9 to determine eligibility, applicants shall provide the following information necessary for the Social Security Administration to determine eligibility for the low income subsidy:

- i. Bank accounts (checking, savings, and certificates of deposit);
- ii. Stocks;
- iii. Bonds;
- iv. Savings bonds;
- v. Mutual funds;
- vi. Individual retirement accounts or other similar investments;
- vii. Any other cash at home or held anywhere else;
- viii. Life insurance policies with a total face value of \$1,500 or more;
- ix. Real estate other than your home and the property on which it is located;
- x. Help that you (or your spouse, if married and living together) receive to pay for any of the following household expenses – food, mortgage, rent, heating fuel or gas, electricity, water and property taxes; and
- xi. The number of relatives who live with you and your spouse and depend on you or your spouse to provide at least one-half of their financial support.

Amended by R.1982 d.198, effective June 21, 1982.

See: 14 N.J.R. 321(b), 14 N.J.R. 659(a).

Section substantially amended.

Amended by R.1985 d.690, effective January 21, 1986.

See: 17 N.J.R. 2332(a), 18 N.J.R. 190(a).

Single permanent resident income changed from "\$12,000" to "\$13,500"; married from "\$15,000" to "\$16,250".

Amended by R.1988 d.174, effective April 18, 1988.

See: 19 N.J.R. 2375(a), 20 N.J.R. 902(a).

Changed "\$13,250 to \$13,650" and "\$16,250 to \$16,750".

Amended by R.1990 d.182, effective March 19, 1990.

See: 21 N.J.R. 3047(a), 22 N.J.R. 953(a).

Added (c)2iv. regarding the one-time capital gain.

Amended by R.1990 d.614, effective December 17, 1990.

See: 22 N.J.R. 2218(a), 22 N.J.R. 3956(a).

In (c)2: added v.-vi.

Amended by R.1991 d.563, effective November 18, 1991.

See: 23 N.J.R. 2623(a), 23 N.J.R. 3514(a).

Income eligibility revised upwards.

Amended by R.1993 d.608, effective December 6, 1993.

See: 25 N.J.R. 3407(a), 25 N.J.R. 5528(b).

Amended by R.1994 d.191, effective April 18, 1994.

See: 25 N.J.R. 5750(a), 26 N.J.R. 1657(a).

Amended by R.1995 d.10, effective January 3, 1995.

See: 26 N.J.R. 3142(a), 27 N.J.R. 242(a).

Amended by R.1996 d.7, effective January 2, 1996.

See: 27 N.J.R. 3541(a), 28 N.J.R. 184(c).

In (a) and (b) increased income limits, and added (m).

Administrative Change.

See: 28 N.J.R. 3597(a).

In (a) and (b) increased income limits.

Administrative change.

See: 29 N.J.R. 2562(a).

In (a), substituted "\$17,550" for "\$17,056"; and in (b), substituted "\$21,519" for "\$20,913".

Administrative change.

See: 30 N.J.R. 68(a)

Amended by R.1998 d.176, effective April 6, 1998.

See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

Rewrote (b)1; in (b)2, substituted "may" for "shall" following "spouse" in the introductory paragraph and added i; in (c)1, inserted new i through iii, recodified former i through xvii as iv through xx, and deleted "(including Social Security)" at the end of new xvi; and in (f), substituted "benefits paid for all prescriptions and Lifeline benefits" for "for all prescriptions" following "repay".

Administrative change.

See: 31 N.J.R. 54(b).

Administrative change.

See: 32 N.J.R. 59(a).

Administrative change.

See: 33 N.J.R. 554(b).

In (a), substituted "\$19,238" for "\$18,587" and in (b), substituted "\$23,589" for "\$22,791".

Administrative change.

See: 34 N.J.R. 935(a).

Administrative change.

See: 35 N.J.R. 1115(a).

Administrative correction.

See: 35 N.J.R. 5619(b).

Amended by R.2004 d.349, effective September 20, 2004.

See: 36 N.J.R. 1859(a), 36 N.J.R. 4311(a).

In (b), inserted "for the sole benefit of the applicant" preceding "shall be considered" in 1i and substituted "\$ 25,060" for "\$ 24,000" in 2i; rewrote (c); in (m), substituted "adjustment" for "increase" following "cost-of-living".

Administrative change.

See: 36 N.J.R. 5683(a).

Administrative change.

See: 37 N.J.R. 5001(a).

Administrative change.

See: 38 N.J.R. 5362(a).

Administrative change.

See: 40 N.J.R. 182(a), 6966(a).

Amended by R.2009 d.16, effective January 5, 2009.

See: 40 N.J.R. 4479(a), 41 N.J.R. 221(a).

Added (n).

Administrative change.

See: 43 N.J.R. 3365(a).

Administrative change.

See: 45 N.J.R. 33(a).

Administrative change.

See: 46 N.J.R. 78(a).

Case Notes

Pharmaceutical Assistance to the Aged and Disabled regulations limiting eligibility to persons actually receiving Social Security disability benefits upheld against constitutional challenge as having a rational state purpose in being necessary for the financial viability of the program. *Barone v. Dept. of Human Services*, 210 N.J.Super. 276, 509 A.2d 786 (App.Div.1986) affirmed 107 N.J. 355, 526 A.2d 1055.

Pharmaceutical assistance beneficiary must repay state if combined income over minimum eligibility because of "in kind" services rendered. *R.S. v. Division of Medical Assistance and Health Services*, 97 N.J.A.R.2d (HLT) 39.

Inclusion of applicants' Individual Retirement Account as income was appropriate. *S. K. v. New Jersey Division of Medical Assistance and Health Services, Pharmaceutical Assistance to the Aged and Disabled*, 94 N.J.A.R.2d (PAA) 1.

10:167-6.3 Citizenship

A person shall not be required to be a citizen of the United States in order to be eligible for PAAD.

10:167-6.4 Residence

(a) The statute provides that "any . . . resident of this State . . . shall be eligible for PAAD. 'Resident' means one legally domiciled within the State for a period of 30 days immediately preceding the date of application for inclusion in the program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile. Absence from this State for a period of 12 months is prima facie evidence of abandonment of domicile. The burden of establishing legal domicile within the State is upon the applicant."

1. Interpretation: The term resident shall be interpreted to mean a person having his customary place of abode in New Jersey. The fact that an individual was or may have been motivated to move to New Jersey because of the availability of medical facilities does not, of itself, justify a finding that he has not established a residence in this State; however, such inquiry need not be made if an individual has been physically present in New Jersey for a period exceeding three months.

2. The applicant must be able to substantiate residence upon request by the Department and is required to submit photocopies of two documents showing evidence of current residence at the time of initial application.

3. The following are examples of sources of evidence of residence:

- i. Motor vehicle records (for example, valid driver's license);
- ii. Landlord's records and rent receipts;
- iii. Public utility records and receipts (for example, electric bill);
- iv. Personal property assessment records;
- v. Records of business or professional people, such as doctors, department stores, etc.;
- vi. Post office records;
- vii. Records of social agencies, public or private;
- viii. Employment records; and
- ix. Social Security records.

4. Determination as to continued New Jersey residence of a person absent from this State shall be based upon contact with the applicant by a representative of the Department.

5. In reaching a decision as to continuing New Jersey residence of an absentee, the issue is whether the individual intends to return to New Jersey or remain indefinitely in the other jurisdiction. If a beneficiary leaves New Jersey with the intent to establish a place of abode elsewhere, he becomes ineligible under the PAAD program and must notify the Pharmaceutical Assistance to the Aged and Disabled program of the address and return the PAAD eligibility card.