

1. For families in receipt of assistance on October 1, 1992, a child born to the AFDC parent recipient on or after August 1, 1993 shall not be included in the eligible unit for the provision of AFDC cash assistance only, in accordance with (c) above. Such child shall, however, be included in the eligible unit for initial eligibility purposes as well as for the determination of all other categorically related benefits.

2. For families which apply for AFDC benefits on or after October 1, 1992, the 10-month timeframe specified in (c) above shall be applied from the date of application. For example, if the date of application is November 12, 1992 and the case was determined eligible for the benefits, any child born to that adult recipient on or after September 12, 1993 shall not be included in the eligible unit, for the provision of AFDC cash assistance only, in accordance with (a) above.

3. Beginning October 1, 1992, the 10-month timeframe addressed in (c) above shall be binding upon any family for any subsequent reapplications or reopenings of the case and any child(ren) born into that family shall not be included in the eligible unit, for cash assistance purposes only, until such time as (c)4 below applies.

i. Any child included in AFDC eligible unit who subsequently becomes a parent-minor and either establishes his or her own separate AFDC eligible unit or remains in the eligible unit of the parent or caretaker relative shall be entitled to the 10-month timeframe specified in (c) above from the date of the birth of the parent-minor's first child. The parent-minor's first newborn child shall, therefore, be entitled to AFDC cash assistance.

4. Beginning October 1, 1992, when a parent(s) reapplies for AFDC benefits and no member of the eligible unit has been in receipt of AFDC-C, -F or -N benefits for a minimum of 12 consecutive months immediately preceding the date of application, that family is eligible for a new 10-month grace period from the date of reapplication. In such situations, any child(ren) previously excluded from the eligible unit in accordance with (c) above shall now be included in the eligible unit for cash assistance purposes.

i. When an AFDC-C, -F or -N family becomes ineligible for AFDC for any of the reasons listed in (c)4i(1) through (3) below, remains employed for a minimum of 90 days thereafter and subsequently reapplies for AFDC prior to expiration of the 12 consecutive month period in (c)4 above due to the loss of employment through no fault of their own, any child(ren) previously excluded from the eligible unit in accordance with (c) above shall now be included in the eligible unit for cash assistance purposes. Such families, however, are not entitled to a new 10-month grace period and any child(ren) born subsequent to the reapplication shall not be included in the eligible unit as set forth in (c)3 above.

(1) Earnings or increased earnings from employment, including earnings from new employment;

(2) Loss of the \$30.00 or one-third disregards of earned income (see N.J.A.C. 10:82-4) because of the time-limited application of those disregards; or

(3) Increased hours of employment.

(d) An individual who incurs a penalty of ineligibility shall not be included in the eligible unit and his/her needs shall not be taken into account in determining the family's need for assistance. (See section 14 of this subchapter regarding income of a noneligible parent.)

(e) The term child in AFDC shall be understood to refer to one or more eligible children residing in the home of the applicant parent(s).

1. Relationship of the child(ren) to the parent or parent-person applying for AFDC-C or the child(ren) to the natural or adoptive parents applying for AFDC-F or -N shall be established by use of documentary or non-documentary sources of evidence. Some examples of these types of evidence are given in section 3.4(a)2 of this subchapter.

(f) Rules concerning potential eligibility for other programs are:

1. The CWA shall explore potential eligibility for AFDC-C or -F before determining eligibility for AFDC-N.

2. When applicant family members, including a disabled or blind child, appear to be eligible for other programs (for example, Supplemental Security Income), the advantages and disadvantages of each program shall be explained to the applicant. He/she shall have the right to decide under which program(s) he/she wishes to apply. In the event an applicant parent(s) is found to be eligible for another program of assistance, such parent(s) may nevertheless apply for AFDC-C, -F or -N as appropriate, for the eligible child(ren) only.

i. In the event the parent applies for SSI, the CWA will be allowed to obtain reimbursement of AFDC-N payments made to applicants or their dependents who are subsequently determined eligible for SSI benefits. The amount subject to reimbursement will be only the individual's per capita share of the adjusted AFDC-N allowance. (See N.J.A.C. 10:81-3.46.)

As amended, R.1976 d.408, effective January 1, 1977.

See: 8 N.J.R. 467(c), 9 N.J.R. 23(c).

As amended, R.1977 d.452, effective December 1, 1977.

See: 9 N.J.R. 367(c), 10 N.J.R. 16(b).

As amended, R.1980 d.118, effective March 19, 1980.

Added (e)2i.

As amended on emergency basis R.1984 d.464, effective September 28, 1984 (operative October 1, 1984).

See: 16 N.J.R. 2833(a).

(a)i added.

Readopted, R.1984 d.569, effective November 28, 1984.

See: 16 N.J.R. 2833(a), 16 N.J.R. 3439(b).

(a)1: Added "for AFDC-C or -F".

Amended by R.1992 d.366, effective September 21, 1992.

See: 24 N.J.R. 2147(a), 24 N.J.R. 3345(a).

Elimination of entitlement to increased benefits as a result of birth of a child.

Case Notes

Child support payments received on behalf of non-eligible child could be counted as unearned income with appropriate setoff to eligible unit. *J.R. v. Passaic County*, 95 N.J.A.R.2d (DEA) 7.

Blood relationship not established by grandmother. *V.S. v. Essex County Division of Welfare*, 92 N.J.A.R.2d (DEA) 13.

Grandmother removed as primary caretaker for her daughter's children. *Passaic County Board of Social Services v. G.B.*, 92 N.J.A.R.2d (DEA) 11.

Cited in support of holding that burden of proof of parentage to establish eligibility lies with aid applicant by preponderance of believable evidence. *A.H. v. Bergen Cty. Welfare Bd.*, 4 N.J.A.R. 52 (1981).

10:81-3.9 Applicant in AFDC-C, -F and -N

(a) AFDC-C: The term applicant in AFDC-C refers to the parent(s) or parent-person(s) who makes an affirmative decision to apply for financial assistance or, when the applicant is incapacitated or alleged incompetent, someone acting responsibly for him or her (see N.J.A.C. 10:81-2.3(b)1) in order to maintain and provide for one or more dependent children of eligible age who are in his or her care or custody. It shall also include the stepparent when the natural or adoptive parent designates the stepparent as an individual whose presence in the home is essential to his or her well being and elects that such person shall be included (see N.J.A.C. 10:82-2.9). If the AFDC-C recipient parent marries a non-needy individual on or after October 1, 1992 and the provisions of N.J.A.C. 10:82-2.10 apply, the AFDC-C recipient natural or adoptive parent, the stepparent and that stepparent's own natural or adoptive child(ren) shall be excluded from the eligible unit, unless the family has been randomly assigned to a control group for purposes of evaluation.

1. When the applicant applying for AFDC-C based on continued absence of a natural or adoptive parent is himself or herself a natural or adoptive parent, he or she must apply for himself or herself and children of eligible age, unless such parent is an SSI recipient in which case he or she may apply for the eligible children only (see N.J.A.C. 10:81-3.8).

2. When the applicant in AFDC-C is a parent-person, he or she has the option of applying for himself or herself and the eligible children or only for the eligible children in his or her care and custody.

3. In all AFDC-C cases, an application must be signed by the adult member(s) or parent-minor (see section 12(a) of this subchapter) of the unit for which assistance is claimed. The designated payee may only be a person who has signed the application. (See N.J.A.C. 10:81-2.3(b) and 4.6.).

4. When the AFDC-C child(ren) lives with a parent-person(s), the application shall be executed by the parent-person who will be the designated payee.

5. Application during pregnancy (all segments): Upon presentation of documented medical evidence of pregnancy, which shall include the estimated date of conception and delivery, a pregnant woman may make application for medical assistance on behalf of her unborn child and for AFDC following the child's birth. One application form will be prepared to cover both requests.

i. A pregnant woman under age 21 who meets the criteria established in N.J.A.C. 10:81-8.23 would be eligible for prenatal care in her own right.

ii. The regulations below extend medical assistance (Medicaid Special) on behalf of the unborn child to women age 21 and over and to expectant mothers under age 21 who are not eligible in their own right for Medicaid Special (see N.J.A.C. 10:81-23(e)). Persons in either age group may make application for AFDC pending the anticipated birth of the child.

(1) The CWA will register the application immediately and determine eligibility for medical assistance until the birth of the child (see N.J.A.C. 10:81-8.23). Postnatal care for the mother is not covered unless eligibility for AFDC (and Medicaid) is established in accordance with the appropriate regulations or unless the woman is eligible for Medicaid Special in her own right.

(2) Within 30 days prior to the expected delivery date, the CWA will make a determination regarding eligibility for AFDC, including the evaluation of LRRs. If eligibility is established, money payments will begin following the birth of the child provided the client affirms that she desires assistance and intends to retain care and custody of the child. (See N.J.A.C. 10:82-2.3 regarding initial grants.)

(3) Eligibility for AFDC following the birth of the child is based on the requirements and standard for AFDC-C, -F or -N, whichever is applicable.

(4) After the birth of the child, the mother may be eligible for AFDC but decline a money payment. In such instances, mother and child are eligible for Medicaid Only.

(b) The term applicant in AFDC-F and -N refers to natural or adoptive parents, not incapacitated, both of whom shall be required to execute the formal written application unless one such parent is not available for reasons beyond the family's control. This parent shall be required to sign as promptly as he or she is available for such purpose. (See N.J.A.C. 10:82-1.5 and 2.13 relevant to companion cases.)

(c) To be eligible for AFDC-C, -F or -N, or AFDC-related Medicaid an individual shall be either a citizen of the United States or otherwise permanently residing in the United States under color of law, including any alien who is lawfully present in the United States as a result of the application of Section 207(c), Section 203(a)(7) (prior to April 1, 1980), Section 208, and Section 212(d)(5) of the Immigration and Nationality Act.

1. Each AFDC-C, -F or -N and AFDC-related Medicaid applicant shall, as a condition of eligibility, provide a written statement of citizenship or legal alien status. If the applicant(s) is not a United States citizen, he or she shall provide documentation, subject to verification, of satisfactory immigration status. When the applicant or other person for whom the application is being made is an alien, his or her legal status shall be verified through evidence provided by the applicant with the United States Immigration and Naturalization Service. (Refer to N.J.A.C. 10:81-13 for alien verification procedures through the Systematic Alien Verification for Entitlements (SAVE) program.)

i. A statement of citizenship/legal alien status and signature attesting to citizenship/legal alien status shall be provided before benefits can be issued to that individual. An adult eligible family member or applicant for the family in the absence of an adult family member shall sign for members under 18 years of age.

ii. If a signature is not provided for all eligible family members by the end of the 30-day processing standard, then only those individuals for whom there is a signature shall be eligible for benefits provided they meet all other eligibility requirements.

iii. The needs of ineligible members shall not be considered when determining eligibility and benefits for the remaining family members.

iv. Income and resources of those ineligible individuals who are parents of otherwise eligible children shall be considered available to the eligible family and shall be calculated in accordance with the stepparent deeming formula at N.J.A.C. 10:82-2.9.

2. Assistance through the AFDC-C, -F or -N segments and AFDC-related Medicaid shall not be granted to an illegal alien or to aliens admitted as students or visitors. However, United States citizen/lawfully admitted children of illegal aliens may still be eligible to receive AFDC-C, -F or -N segment benefits and AFDC-related Medicaid. The situations described in (c)2i through iii below serve as illustration of how to determine AFDC-C, -F, or -N status for U.S. citizen/lawfully admitted children of illegal aliens.

i. In the case of one illegal parent with U.S. citizen/lawfully admitted children, the children shall be eligible for AFDC-C due to parental deprivation (one parent is absent). The eligible unit will consist of the U.S. citizen/lawfully admitted children. There is no

assistance payment for the illegal alien parent but his or her income shall be counted as available to the eligible unit in accordance with N.J.A.C. 10:82-2.9(d).

ii. If one parent is a legal alien, or a U.S. citizen and qualifies the children for AFDC-F segment, the children and legal alien/citizen parent shall be eligible under the -F segment. The other parent's income shall be counted as available to the eligible unit in accordance with 10:82-2.9(d) but his or her needs are not considered in determining the grant amount.

iii. If one or both parents are not legal aliens or legal alien/U.S. citizens and the parents do not meet the criteria to qualify the children for AFDC-F, the children may, if otherwise eligible, qualify for -N segment benefits if they are U.S. citizens/lawfully admitted aliens. If both parents are illegal aliens, the parents' income is counted as available to the eligible unit in accordance with N.J.A.C. 10:82-2.9(d) and the children form an -N segment unit of their own. If one parent is an illegal alien and the other parent is a legal alien/U.S. citizen, the children plus the legal alien/U.S. citizen parent form an AFDC-N segment unit.

3. Individuals who have been granted lawful temporary resident status by Immigration and Naturalization Services (INS) as a result of the Immigration Reform and Control Act (IRCA) of 1986, amended section 245A, shall be disqualified for AFDC-C and -F segment assistance payments for a period of five years from the effective date of that status. That period of ineligibility for AFDC payments shall remain in effect even though the temporary status may change to that of lawful permanent resident status during that interval.

4. Cuban and Haitian entrants, who have resided in the United States since January 1, 1982, may qualify for immediate permanent resident status and shall not be subject to the disqualification provision for AFDC-C and -F benefits.

Amended by R.1976 d.408, effective January 1, 1977.

See: 8 N.J.R. 467(c), 9 N.J.R. 23(c).

Amended by R.1977 d.452, effective December 1, 1977.

See: 9 N.J.R. 367(c), 10 N.J.R. 16(b).

Amended by R.1978 d.140, effective May 1, 1978.

See: 10 N.J.R. 106(c), 10 N.J.R. 225(a).

Amended by R.1979 d.233, effective June 14, 1979.

See: 11 N.J.R. 68(c), 11 N.J.R. 346(d).

Amended on an emergency basis, R.1981 d.397, effective September 30, 1981 (operative October 1, 1981), expires November 30, 1981.

See: 13 N.J.R. 759(a).

Readopted, R.1981 d.518, effective December 31, 1981.

See: 13 N.J.R. 759(a), 14 N.J.R. 102(c).

(c): "an alien ... residence or" deleted and "otherwise" added; "including ... Act" added.

Amended on emergency basis, R.1984 d.464, effective September 28, 1984 (operative October 1, 1984).

See: 16 N.J.R. 2833(a).

(a) amended.

Readopted, R.1984 d.569, effective November 28, 1984.

See: 16 N.J.R. 2833(a), 16 N.J.R. 3439(b).

Amended by R.1985 d.99, effective March 4, 1985.

See: 16 N.J.R. 3282(a), 17 N.J.R. 594(a).

Section substantially amended.

Amended by R.1989 d.496, effective September 18, 1989.

See: 21 N.J.R. 1795(a), 21 N.J.R. 3006(a).

Proof of citizenship/alien status required for eligibility; conditions placed upon applicants according to status.

Amended by R.1992 d.366, effective September 21, 1992.

See: 24 N.J.R. 2147(a), 24 N.J.R. 3345(a).

Added exclusion of non-needy stepparent and his or her children.

Amended by R.1994 d.429, effective August 15, 1994.

See: 26 N.J.R. 1573(a), 26 N.J.R. 3479(a).

Amended by R.1994 d.612, effective December 19, 1994 (operative January 1, 1995).

See: 26 N.J.R. 3930(a), 26 N.J.R. 5022(a).

Case Notes

Alien and her son, issued approval notice for visa applications and social security cards, were permanent residents for AFDC and Medicaid purposes. *A.S. v. Passaic County Board*, 95 N.J.A.R.2d (DEA) 23.

Issuance of work authorization cards and social security numbers while application for political asylum was pending gave aliens status as aliens for AFDC benefits. *S.B. and MDYK v. Passaic County*, 95 N.J.A.R.2d (DEA) 18.

Alien who received faulty advice on status from Immigration and Naturalization Service, was nevertheless permanently residing in United States under color of law for AFDC purposes. *M.K. v. Passaic County*, 95 N.J.A.R.2d (DEA) 14.

Grandmother removed as primary caretaker for her daughter's children. *Passaic County Board of Social Services v. G.B.*, 92 N.J.A.R.2d (DEA) 11.

AFDC grant permitted to alien as U.S. resident under color of law, considering that her application for asylum was accepted by the Immigration and Naturalization Service, which issued work permit and had not decided asylum request. *I.E. v. Passaic Cty. Bd. of Social Services*, 3 N.J.A.R. 330 (1981).

10:81-3.10 WFNJ citizenship/eligibility requirements

(a) Only those persons who are United States citizens or eligible aliens shall be eligible for benefits.

1. Eligible alien means an alien as defined in the provisions of section 431 of Title IV of Federal Public Law 104-193 pursuant to section 101 of the Immigration and Nationality Act (INA).

(b) The following individuals are considered to be eligible aliens:

1. An alien who was lawfully admitted for permanent residence to the United States prior to August 22, 1996, pursuant to the INA who is eligible for means-tested, Federally funded public benefits pursuant to Federal law:

i. Certain eligible aliens as provided in section 431 of Title IV of Federal P.L. 104-193 pursuant to Section 101 of the INA who resided in the United States and are victims of domestic violence, subject to certain conditions as described below:

(1) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent acquiesced to such battery or cruelty; or

(2) The alien's child has been battered or subjected to extreme cruelty in the United States by the spouse or parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien when the spouse or parent acquiesced to and the alien did not actively participate in such battery or cruelty; and

(3) In addition to the provisions described in (b)1i(1) and (2) above, if the individual responsible for the battery or cruelty continues to reside in the same household or family assistance unit as the individual who was subjected to such battery or cruelty, then the alien shall be ineligible for benefits.

(4) Federal law stipulates that the Attorney General of the United States shall issue guidance in the Attorney General's sole and unreviewable discretion concerning:

(A) The meaning of the terms "battery" and "extreme cruelty"; and

(B) The standards and methods to be used for determining whether a substantial connection exists between battery and cruelty suffered and an individual's need for benefits under a specific Federal, State or local program.

(5) Until such time as specific guidance is issued by the Attorney General in accordance with (b)1i(4) above, the alien's statement, taken in the form of an affidavit, shall be accepted as documentation that the alien or the alien's child is subject to battery or extreme cruelty and the alien and the child(ren) shall be eligible for assistance.

2. The following aliens admitted to the United States on or after August 22, 1996:

i. A refugee admitted under section 207 of the INA;

ii. An asylee under section 208 of the INA;

iii. A person granted withholding of deportation under section 241(b)3 (previously section 243(h)) of the INA;

iv. An alien admitted as a conditional entrant under Section 203(a)(7) of the INA as it existed prior to April 1, 1980;

v. An alien who is paroled into the U.S. for a period of at least one year under section 212(d)(5) of the INA;

vi. A recipient of refugee and entrant assistance activities or a Cuban or Haitian entrant pursuant to Federal law;

vii. A legal permanent resident alien who has worked 40 qualifying quarters of coverage as defined under Title II of the Federal Social Security Act;

(1) For any period after December 31, 1996, a quarter of work during which an individual received means-tested Federally funded or State funded public assistance benefits shall not count toward the total number of qualifying quarters of coverage.

viii. An alien who is a veteran of, or on active duty in, the armed forces of the United States, or the spouse or dependent child of that person pursuant to Federal law; or

ix. An alien admitted to the United States on or after August 22, 1996, who subsequently lives in the United States for at least five years and is eligible for means-tested Federally funded public benefits pursuant to Federal law.

As amended, R.1977 d.452, effective December 1, 1977.

See: 9 N.J.R. 367(c), 10 N.J.R. 16(b).

Amended by R.1989 d.496, effective September 18, 1989.

See: 21 N.J.R. 1795(a), 21 N.J.R. 3006(a).

Alien verification requirements added.

Repealed by R.1994 d.612, effective December 19, 1994 (operative January 1, 1995).

See: 26 N.J.R. 3930(a), 26 N.J.R. 5022(a).

Section was "Applicant in AFDC-N".

Emergency New Rule, R.1997 d.175, effective March 24, 1997 (operative March 31, 1997; to expire May 23, 1997).

See: 29 N.J.R. 1425(a).

Adopted concurrent proposal, R.1997 d.261, effective May 23, 1997.

See: 29 N.J.R. 1425(a), 29 N.J.R. 2702(a).

10:81-3.11 Parent in AFDC-C, -F and -N segments

(a) In AFDC-C, the term "parent" shall refer to the natural and/or adoptive parent(s) or parent-person(s).

1. By law, in AFDC-C certain relatives shall be recognized as taking the place of a parent. The term "parent-person" is used to designate one or more such relatives who include those of half-blood, those persons of preceding generations denoted by prefixes "grand", and "great", brother, sister, stepfather, stepmother, stepbrother, step-sister, uncle, aunt, first cousin, nephew or niece. Such relative must be one with whom the dependent child is living, in a place of residence in New Jersey maintained by one or more such relatives as his/her or their own home.

i. A home is the family setting maintained or in process of being established as evidenced by assumption and continuation of responsibility for day to day care of the child by the relative with whom the child is living. A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporarily absent from the customary family setting.

ii. Initial payments are authorized on behalf of a child who goes to live with a specified relative within 30 days of the receipt of the first payment, provided payments are not made for a concurrent period for the same child in the home of another relative.

iii. Payments are authorized to persons acting for specified relatives in emergency situations that deprive the child of the care of the relative through whom he/she has been receiving aid, for a temporary period necessary to make and carry out plans for the child's continuing care and support.

2. Under New Jersey law, relatives of persons who adopt children become legally related to such adopted children to the same extent that they are related to natural children of the adopting parent.

3. Spouses of any persons named in the above groups may be considered "parent-persons" even though the marriage has been terminated by death or divorce.

(b) In AFDC-F, the term "parent" refers to the natural or adoptive parents who have at least one eligible child residing with them who is under age 18 or under age 19 and a full-time student in a secondary school or in the equivalent level of vocational or technical training and is reasonably expected to complete the program before reaching age 19.

(c) In AFDC-N, the term "parent" is used to refer to two adults of the opposite sex who have at least one eligible child residing with them who is under age 18 or under age 19 and a full-time student in a secondary school or in the equivalent level of vocational or technical training and is reasonably expected to complete the program before reaching age 19. This child must be the natural child of both parents or the natural child of one and adopted by the other or a child adopted by both.

As amended, R.1977 d.452, effective December 1, 1977.

See: 9 N.J.R. 367(c), 10 N.J.R. 16(b).

As amended, R.1978 d.190, effective June 8, 1978.

See: 10 N.J.R. 286(a).

As amended, R.1982 d.482, effective January 17, 1983.

See: 14 N.J.R. 1078(a), 15 N.J.R. 92(a).

Deleted reference to participation of those under age 21, to 19 years.

Case Notes

Custodian was ineligible for Aid To Families with Dependent Children benefits for her half-sibling due to lack of legal relationship with half-sibling where child had been legally adopted by non-blood relative of custodian. *S.S. v. Cape May County Welfare Agency*, 96 N.J.A.R.2d (DEA) 1.

First cousin once removed as relative in fifth degree of kinship was parent-person. *A.E. v. Essex County Division of Social Services*, 93 N.J.A.R.2d (DEA) 12.