

**CHAPTER 81**

**PUBLIC ASSISTANCE MANUAL**

**Authority**

N.J.S.A. 44:10-3, Federal Family Support Act of 1988 (P.L. 100-485), 58 FR 49218, 57 FR 30407, 45 CFR 250.30(b)(a), 45 CFR 250.73(e)1 and 255.2.

**Source and Effective Date**

R.1994 d.429, effective July 25, 1994.  
See: 26 N.J.R. 1573(a), 26 N.J.R. 3479(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 81, Public Assistance Manual, expires on July 25, 1999.

**Chapter Historical Note**

Chapter 81, Public Assistance Manual, was filed and became effective prior to September 1, 1969. Chapter 81 was repealed and new rules were adopted as R.1975 d.29. See: 6 N.J.R. 244(a), 7 N.J.R. 105(c). Pursuant to Executive Order No. 66(1978), Chapter 81 was readopted as R.1989 d.496. See: 21 N.J.R. 1795(a), 21 N.J.R. 3006(a). Subchapters 1 through 10, 12 and 14 were amended by R.1991 d.8, effective January 7, 1991. See: 22 N.J.R. 2405(b), 23 N.J.R. 63(b), based on the Family Support Act of 1988 (P.L. 100-485) (54 F.R. 42146).

Chapter 81 was readopted as R.1994 d.429. See: Source and Effective Date. As a part of R.1994 d.429, Subchapter 12, Newark/Camden Teen Progress Demonstration, was repealed effective August 15, 1994. See: 26 N.J.R.1573(a), 26 N.J.R. 3479(a). See, also, section annotations.

**Cross References**

New Jersey Care, special Medicaid programs manual, scope, see N.J.A.C. 10:72-1.1.

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## SUBCHAPTER 1. PUBLIC ASSISTANCE IN NEW JERSEY

### Subchapter Historical Note

All provisions of this subchapter were filed and became effective prior to September 1, 1969. A new revised subchapter was filed February 11, 1975, as R.1975 d.29 to become effective April 15, 1975. See: 6 N.J.R. 244(a), 7 N.J.R. 105(c). Amendments were filed and became effective March 1, 1976 as R.1976 d.63. See: 8 N.J.R. 69(b), 8 N.J.R. 195(b). Further amendments were filed and became effective December 1, 1977 as R.1977 d.452. See: 9 N.J.R. 367(c), 10 N.J.R. 16(b). Further amendments were filed and became effective September 1, 1979 as R.1979 d.278. See: 11 N.J.R. 280(b), 11 N.J.R. 383(b). Further amendments were filed on an emergency basis effective September 30, 1981 to become operative October 1, 1981 to expire November 30, 1981 and to be readopted December 30, 1981 as R.1981 d.518. See: 13 N.J.R. 759(a), 14 N.J.R. 102(c). This subchapter was readopted, effective August 23, 1984 with amendments to become operative October 1, 1984 as R.1984 d.405. See: 16 N.J.R. 1446(a), 16 N.J.R. 2437(a). See chapter and section levels for further amendments.

### 10:81-1.1 Purpose and scope

(a) The purpose of this manual is to set forth the policies and procedures necessary for the orderly and equitable provision of public assistance on a Statewide basis. It is binding on the county welfare agencies (CWAs) and enforceable by the Division of Economic Assistance. Questions of interpretation will be resolved by the Division of Economic Assistance.

(b) The community recognizes that the security and welfare of each individual are essential to the security and welfare of the community as a whole. Therefore, it has established, among others, programs of social service and public assistance.

(c) Supplementary services under private auspices are also available in the community. To the greatest extent possible clients should be informed of these services as additional resources, not in lieu of public programs.

(d) Public assistance and social services programs are administered within the framework of Federal and State laws and regulations in accordance with equitable and objective standards. Policy is limited by Federal and State law and is effective only as it is consistent with those laws.

1. A recipient is required to be engaged in work, a work activity, self-directed job search or other work/educational activity as defined in N.J.A.C. 10:86, once it is determined that the recipient is ready to engage in work, or once the recipient has received cash assistance for 24 months (whether or not consecutive), whichever is earlier.

2. Recipients shall be required to engage in work and/or work activities for a minimum of 20 hours and up to a maximum of 40 hours per week except that a recipient who is a full time post-secondary education student in a course of study directly related to employment, shall be required to engage in another work activity for no more than 15 hours a week subject to the recipient making satisfactory progress toward completion of the post-secondary course of study. This requirement supersedes any rule in N.J.A.C. 10:81 or 10:86 that pertains to required hours of participation in work and/or work activities that conflicts with this requirement.

(e) Such assistance and services shall be rendered to all eligible individuals and families in an atmosphere of mutual respect between agency employees and the people they serve. Agencies shall ensure that assistance and services are:

1. Extended in a manner and environment which increases a person's sense of importance, dignity and self-esteem;

2. Designed and administered to respect the human and civil rights of persons applying for or receiving assistance;

3. Provided in the least restrictive, most appropriate setting.

(f) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, enacted August 22, 1996, enacted Federal welfare reform. The new Federal law eliminated the Aid to Families with Dependent Children (AFDC) program and created a Temporary Assistance for Needy Families (TANF) block grant for states to provide time-limited cash assistance. New Jersey's block grant program is established as Work First New Jersey (WFNJ) in accordance with the Work First New Jersey Act, P.L. 1997, c.13, c.14, c.\_\_\_\_, and c.\_\_\_\_. Pursuant to Public Law 104-193 and P.L. 1997, c.13, c.14, c.\_\_\_\_ and c.\_\_\_\_, the following provisions pertain to time-limited cash assistance:

1. Effective April 1997, eligibility for cash assistance benefits shall be limited to a lifetime total of 60 cumulative months for an individual recipient, except as otherwise provided in this subsection, whether assistance was received in the WFNJ/TANF or the WFNJ/GA components of the program. The calculation of the time limit will be based on the number of days the recipient received benefits up to the 60 cumulative month lifetime limit.

i. At the end of an individual adult recipient's 60 cumulative months of receipt of cash assistance, the assistance unit shall no longer be eligible to receive WFNJ/TANF or WFNJ/GA assistance.

ii. In the event that a recipient who has received cash assistance as a dependent child or minor parent and later becomes a head of household in the child's or parent's own right for the purposes of receiving benefits, the time during which such dependent child or minor parent had previously received benefits shall not count toward the 60 cumulative month lifetime limit.

2. A recipient's receipt of assistance from Federal TANF block grant funds provided by another state or territory shall count towards the 60 cumulative month lifetime limit, except for an adult recipient as described in (f)2i and ii below.

i. In determining the number of months for which an adult has received assistance, any month during which the adult lived on an Indian reservation or in an Alaskan Native village shall be disregarded if, during the month, at least 1,000 individuals were living on the reservation or in the village and at least 50 percent of the adults living on the reservation or in the village were unemployed.

ii. In determining the number of months for which an adult recipient has received cash assistance, the first 90 days of each period of a temporary disability resulting from injury or illness related to participation in a community work experience program (CWEP) or alternative work experience program (AWEP) shall be exempted from the 60 cumulative month time limit.

3. A recipient shall be exempted from the 60 cumulative month lifetime limit if the recipient is:

i. Over 60 years of age;

ii. The sole parent or other sole caretaker relative of a disabled child or other disabled dependent who must provide full-time care for the disabled child or other disabled dependent;

iii. Permanently disabled, including, but not limited to, a person eligible for disability insurance benefits under Title II of the Federal Social Security Act (42 U.S.C. §§ 401 et seq.) but not to include any period of non-permanent incapacity;

iv. Chronically unemployable (to be defined at a later date); or

v. Subject to domestic violence. As an interim measure, the exemption shall be based on the request of the recipient. An affidavit taken from the recipient indicating that she or he is a victim of domestic violence shall be accepted as documentation that this situation exists.

4. Extensions, as provided in WFNJ statute, are acknowledged and shall be defined at a later date.

Amended by R.1979 d.278, effective September 1, 1979.

See: 11 N.J.R. 280(b), 11 N.J.R. 383(b).

Amended by R.1979 d.426, effective December 1, 1979.

See: 11 N.J.R. 376(b), 11 N.J.R. 560(d).

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

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

Emergency amendment R.1997 d.101, effective January 31, 1997 (operative February 1, 1997; to expire April 1, 1997).

See: 29 N.J.R. 701(a).

Inserted (d)1 and (d)2.

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

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

In (d), inserted "Federal and State" preceding "law" and made a conforming change; in(d)2, rewrote the first sentence and added the second sentence; and added (f).

Adopted concurrent proposal, R.1997 d.184, effective April 1, 1997.

See: 29 N.J.R. 701(a), 29 N.J.R. 1511(a).

Provisions of emergency amendment R.1997 d.101 adopted without change.

#### Case Notes

Cited as example of expression of legislative desire to help the elderly grow old with dignity and independence. *Texter v. Dept. of Human Services*, 88 N.J. 376, 443 A.2d 178 (1982).

County welfare board's discretion is severely restricted by state and federal regulations. *Battaglia v. Union Cty. Welfare Bd.*, 88 N.J. 48, 438 A.2d 530 (1981) certiorari denied 102 S.Ct. 2045, 456 U.S. 965, 72 L.Ed.2d 490 (1982).

#### 10:81-1.2 Opportunity and decision to apply

Any person who believes he or she and his or her children are eligible for public assistance must be given the opportunity to apply without delay. Applicants will be informed about the eligibility requirements and their rights and obligations in applying for and receiving assistance. The decision to apply rests with the applicant. The applicant has the right to withdraw the application before eligibility or ineligibility has been determined.

Amended by R.1984 d.405, effective September 17, 1984 (operative October 1, 1984).

See: 16 N.J.R. 1446(a), 16 N.J.R. 2437(a).

#### 10:81-1.3 Presumptive eligibility in cases of immediate need

When immediate need is apparent and applicant provides evidence of eligibility by a written statement signed under oath, the director of the county welfare board shall issue a grant effective as of the date of application. (Immediate need is defined in N.J.A.C. 10:81-9.1.)

#### Cross References

Initial payment, see N.J.A.C. 10:81-4.3.

#### Case Notes

*Gilbert v. Tull*, 145 N.J. Super. 53, 366 A.2d 1012, 59 (Law Div.1976) (regulation cited as PAM § 1120).

#### 10:81-1.4 Prompt disposition by county welfare agency

County welfare agency staff shall move with all reasonable speed in accepting, processing and recommending action on applications for assistance. If applicant is eligible, payment shall be issued as soon as need is apparent. The agency's standards of promptness for acting on applications or re-determining eligibility shall not be a basis for delay in granting aid.

Amended by R.1979 d.278, effective September 1, 1979.

See: 11 N.J.R. 280(b), 11 N.J.R. 383(b).

#### 10:81-1.5 Primary source of information

Applicants and recipients are in all instances the primary source of information about themselves and their families. It is the responsibility of the agency to determine eligibility and, as necessary, to secure verification from secondary sources. Such verification information shall be limited to those facts which are essential to establish eligibility and shall be obtained only with the consent of the client. It will be explained to the client that verification is necessary and lack of consent to obtain it will make processing of the application impossible.

(e) When continued absence as defined in this section exists, eligibility for AFDC-F or -N ceases. The family shall be evaluated for AFDC-C.

1. In situations where the parent is to be incarcerated, hospitalized, institutionalized or incapacitated for a period beyond 30 days, eligibility for AFDC-F or -N ceases. The remaining members of the family shall be evaluated for AFDC-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.1979 d.423, effective December 1, 1979.

See: 11 N.J.R. 446(a), 11 N.J.R. 559(e).

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

See: 11 N.J.R. 625(a), 12 N.J.R. 194(c).

Added second sentence and cross reference.

As amended, R.1984 d.415, effective September 17, 1984.

See: 16 N.J.R. 825(a), 16 N.J.R. 2440(a).

Amended by R.1986 d.9, effective February 3, 1986.

See: 17 N.J.R. 2333(a), 18 N.J.R. 272(a).

(d)1-3 added.

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

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

Text deleted at (c)3 to conform to equalization of payment standards.

#### Case Notes

"Absent parent" for AFDC eligibility defined. In the Matter of Souder, 204 N.J.Super. 132, 497 A.2d 1258 (App.Div.1985).

"Absent parent" defined for AFDC eligibility. Burrus v. Dept. of Human Services, 194 N.J.Super. 60, 476 A.2d 285 (App.Div.1984).

Continued absence of parent. Shannon v. Dept. of Human Services, 157 N.J. Super. 251, 384 A.2d 899 (App.Div.1978) (regulation cited as PAM § 2533).

Husband residing in same apartment building as recipient spouse does not constitute continued absence of parent; benefits reduction approved (Director's Final Decision). A.S. v. Bergen Cty. Welfare Bd., 7 N.J.A.R. 258 (1981), revised 191 N.J.Super. 228 (App.Div.1983).

AFDC grant terminated because children were not being deprived of parental support. Burlington Cty. Welfare Bd., v. H.R., 3 N.J.A.R. 363 (1980).

Physical incapacity of parent. R.R. v. Hudson County Division of Welfare, 2 N.J.A.R. 228 (1978).

Continued AFDC assistance denied because father was not continuously absent from home. Gloucester Cty. Welfare Bd. v. "C.R.", 2 N.J.A.R. 14 (1980).

#### 10:81-2.8 FDP or REACH participation in AFDC-C, -F, and -N segments

(a) The IM worker has responsibility for determining each AFDC-C, -F and -N family member's need to participate in FDP or REACH (the AFDC work/training program) as a condition of eligibility for AFDC (see N.J.A.C. 10:86 or N.J.A.C. 10:81-14), unless exempt. The FDP or REACH exemptions as described in N.J.A.C. 10:86 or N.J.A.C. 10:81-14.3A will be explained to each applicant.

1. If an individual claims exemption due to incapacity, he or she shall be given Form DRS-1, Examining Physician's Report, to be completed by a physician or licensed or certified psychologist of his or her choice and returned to the CWA for payment as authorized by the Division of Medical Assistance and Health Services.

i. If the completed DRS-1 indicates that the individual will be incapacitated for at least 90 days, the client shall be referred to the Division of Vocational Rehabilitation Services by means of Form PA-14, Referral for Services.

2. Those individuals not exempt from FDP or REACH shall be informed that they must participate in the FDP or REACH program (see N.J.A.C. 10:86 or N.J.A.C. 10:81-14.3 and 14.8 for failure to participate in FDP or REACH).

i. The IM worker shall immediately refer all individuals who wish to volunteer for participation in FDP or REACH to case management.

(b) During the application process the income maintenance worker shall:

1. Provide an orientation to the FDP or REACH program to applicants;

2. Determine the participant status for FDP or REACH;

3. Inform exempt FDP or REACH applicants of their right to voluntarily participate in the FDP or REACH program;

4. Refer nonexempt applicants and volunteers for FDP or REACH evaluation by the case manager;

5. Establish FDP or REACH participant's target group category in accordance with N.J.A.C. 10:86 or N.J.A.C. 10:81-14.3(j); and

6. Refer FDP or REACH applicants and participants to the county welfare agency IV-D Child Support Unit for child support orders.

(c) The IM worker shall inform AFDC-N applicants that the condition of insufficient income or resources upon which eligibility is based cannot be the result of a voluntary termination of employment without good cause (see N.J.A.C. 10:86 or N.J.A.C. 10:81-14.8(e)) within the last 90 days prior to application by either of the applicant parents regardless of reason. When voluntary termination of employment causes ineligibility, neither the father nor the mother will be included in the eligible family for a period of 90 days. The 90-day penalty period shall begin with the date of the termination of employment. However, eligibility shall be considered for the children.

Repeal and New Rule: R.1991 d.8, effective January 7, 1991.

See: 22 N.J.R. 2405(b), 23 N.J.R. 63(b).

Section was "WIN registration in AFDC-C and -F segments (WIN counties only)."

Prior rulemaking activity is as follows:

Amended by R.1976 d.63, effective March 1, 1976.

See: 8 N.J.R. 69(b), 8 N.J.R. 169(a).

Amended by R.1977 d.226, effective July 1, 1977.

See: 9 N.J.R. 223(b), 9 N.J.R. 370(a).

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.1979 d.428, effective October 18, 1979.

See: 11 N.J.R. 344(a), 11 N.J.R. 560(e).  
Amended on an emergency basis by R.1981 d.397, effective September 30, 1981, (operative October 1, 1981), expired 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).  
(b)-(b)1v added.  
Amended by R.1992 d.366, effective September 21, 1992.  
See: 24 N.J.R. 2147(a), 24 N.J.R. 3345(a).  
References to Family Development Program added.

### 10:81-2.9 Denial of cash assistance

(a) In addition to those persons who are already not considered to be members of the eligible unit, the following persons shall also not be eligible for assistance and shall not be considered to be members of the assistance unit:

1. A person who is fleeing to avoid prosecution, custody or confinement after conviction, under the laws of the jurisdiction from which the person has fled, for a crime or an attempt to commit a crime which is a felony or a high misdemeanor under the laws of the jurisdiction from which the person has fled; or, is violating a condition of probation or parole imposed under Federal or State law;

2. A person found to have willfully and knowingly fraudulently misrepresented his or her residence in order to obtain means-tested public benefits in two or more states or jurisdictions, shall be ineligible for benefits for a period of 10 years from the date of conviction in a Federal or state court;

3. Other aliens who are not eligible aliens as defined in N.J.A.C. 10:81-3.10; and

4. A person convicted on or after August 22, 1996 under Federal or State law of any offense which is classified as a felony, high misdemeanor or crime, under the laws of the jurisdiction involved and which has as an element the distribution, possession or use of a controlled substance as defined in section 102(6) of the Federal "Controlled Substances Act" (21 U.S.C. § 802(6)).

i. A person convicted of any such offense which has as an element the possession or use only of such a controlled substance may be eligible for benefits if the person has successfully completed a drug abuse treatment program licensed by the Department of Health and Senior Services, at the conclusion of which the person is certified drug free by an authorized program representative.

(1) Eligibility for benefits shall commence upon successful completion of the established requirements of the drug treatment program.

(2) During the first 60 days after successful completion of the drug treatment program or at the time of application or case redetermination, it must be determined, via testing by an entity designated by DFD, that the person is free of any controlled substance. If the person is determined not to be free of any controlled substance during, or at the conclusion of, the 60-day period, the person's eligibility for benefits shall be terminated.

(A) Benefits cannot be granted or reinstated until the person completes another drug treatment program, remains drug free for a minimum of 60 days and is determined via testing to be free of any controlled substance.

Emergency New Rule, R.1997 d.101, effective January 31, 1997 (operative February 1, 1997; to expire April 1, 1997).  
See: 29 N.J.R. 701(a).  
Emergency amendment R.1997 d.175, effective March 24, 1997 (operative March 31, 1997; to expire May 23, 1997).  
See: 29 N.J.R. 1425(a).  
Added (a)3 and 4.  
Adopted concurrent proposal, R.1997 d.184, effective April 1, 1997.  
See: 29 N.J.R. 701(a), 29 N.J.R. 1511(a).  
Provisions of emergency new rule R.1997 d.101 adopted without change.

### 10:81-2.10 Residence law

The law requires that an applicant for or recipient of public assistance shall reside in New Jersey. Application should be made to CWB in county of residence even though temporary.

### 10:81-2.11 Support from relatives

(a) The IM worker will explain to applicant that certain relatives must be contacted and evaluated to determine what capacity, if any, they have to contribute to the family's support. Payment will not be delayed pending evaluation of legally responsible relatives.

(b) Applicant should be advised that their entitlement to assistance will not be jeopardized by the unwillingness of legally responsible relatives to provide support.

### 10:81-2.12 Repayment (all segments)

The IM worker shall determine from the applicant whether there is a pending claim against any individual, group or agency on behalf of any member of the eligible unit. If such a non-exempt claim does exist, applicant shall be advised that completion of Form PA-10D, Agreement to Repay, must be executed before a grant may be given.

Amended by R.1977 d.452, effective December 1, 1977.  
See: 9 N.J.R. 367(c), 10 N.J.R. 16(b).

#### Case Notes

Statute requiring those who receive public assistance for children living with them, as condition of continued eligibility, to agree to repay, from settlement of certain legal claims or interests, assistance granted by welfare agency from date of entitlement to such claims or interest does not preclude recovery of such funds in the absence of agreement to repay. *Childs v. Essex County Div. of Welfare*, 236 N.J.Super. 127, 564 A.2d 889 (L.1988).

### 10:81-2.13 Administrative action on application

(a) The IM worker again will review all appropriate forms for completeness and accuracy, and give them to his/her supervisor. The supervisor will examine the forms for consistency of applicant's statements, completion of all necessary information and correct budgetary computations. If acceptable, the supervisor will indicate his/her approval by signing Form PA-3A or Form 105, as appropriate; if not acceptable, the forms will be returned to IM worker for correction.

(b) For those CWAs still using the PA-3A, the following applies:

1. Following the supervisor's approval, the director's approval shall be obtained and indicated on the PA-3A form.

As amended, R.1979 d.428, effective October 18, 1979.  
See: 11 N.J.R. 344(a), 11 N.J.R. 560(e).

**10:81-2.14 Ratification by welfare agency**

(a) If immediate need is apparent and applicant provides evidence of eligibility, a grant will be issued on the director's approval and prior to the welfare agency ratification.

(b) If immediate need is not apparent a grant will be issued as soon as eligibility is established, with subsequent ratification by the welfare agency.

As amended, R.1979 d.428, effective October 18, 1979.  
See: 11 N.J.R. 344(a), 11 N.J.R. 560(e).

**10:81-2.15 Notice and information to client**

(a) If immediate need is not apparent and a decision of approval or disapproval is not reached within 30 days of application, the CWB shall notify the applicant in writing of this fact and the reason for the delay. If the lack of decision is due to circumstances within the control and knowledge of the applicant, the welfare board will remind the applicant of the steps he/she must take to enable the welfare board to make a decision. (This notice shall include a sentence in Spanish cautioning the client that it relates to his/her eligibility for public assistance and if he/she does not understand the notice he/she should contact the CWB.)

(b) When a decision is reached, the applicant shall be notified in writing of this decision (approved or disapproved). If the application is denied, the notice shall provide information regarding food stamp eligibility requirements for nonpublic assistance households and financial and medical assistance available through general assistance.

(c) Client will also be advised in writing that if he/she is dissatisfied with any action or inaction of the welfare agency, he/she may request a hearing. He/she shall be informed of the steps that are to be followed in making such a request.

(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.

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).

### 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

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.

3. The social service unit of the registering county welfare board shall assist the applicant to establish a home for the dependent child(ren).

(e) Responsibility for initial planning for the return of a patient to the community rests with the institutional authorities. When public assistance is necessary and the person appears eligible, the Bureau of Transitional Services will coordinate the application with the institutional authorities and with the appropriate CWA. The Bureau of Transitional Services under the Division of Mental Health and Hospitals will be responsible for reviewing such referrals to assure that all essential information is assembled, and for expediting the processing of an application by the appropriate county welfare agency for final determination of eligibility.

1. The institution will routinely complete the following forms without charge (a stock supply of which will be provided to them by the Division of Economic Assistance) and will forward copies to the Bureau of Transitional Services along with copies of staff notes pertinent to each case:

- i. Form PA-12, Referral by State Mental Institution to Public Assistance Agency;
- ii. Form DRS-8, Report of Findings by Psychiatric Diagnostic Group, where appropriate.

2. Persons under the jurisdiction of Division of Mental Retardation, Bureau of Field Services, shall be referred by that bureau directly to the appropriate county welfare board.

(f) When a parent is about to be released from a veteran's hospital, the hospital will make referral in writing, with the knowledge and consent of the veteran, to include the following minimum information:

1. Identifying data;
2. Anticipated date of discharge;
3. Description of any known or tentative living arrangement following discharge;
4. In addition, the hospital will complete, without charge, the following forms as appropriate:
  - i. DRS-8, Report of Findings by Diagnostic Group;
  - ii. Abstract of patient's hospital record; or in absence of abstract;
  - iii. DRS-1, Examining Physician's Report;
  - iv. DRS-1A, Report of Eye Examination.

5. Thereafter the county welfare board shall arrange for an application interview and shall process the application as any other.

(g) The BTS area worker shall arrange with the social service staff of the institution for an interview with the applicant. If the patient decides to apply, the BTS worker

shall assist in completing the application in accordance with subchapter 2 of this chapter.

1. The BTS worker is responsible for prompt investigation to determine initial eligibility, including inquiry regarding any funds held by the institution or other party in a personal account for the applicant. The BTS worker will discuss available services including assistance in locating a suitable living arrangement with the applicant. BTS will determine which CWA the case will be referred to and notify the institutional authorities of this decision. BTS shall transfer the completed referral forms to the designated CWA.

(h) The CWA will register cases transferred from BTS within one working day. The CWA will determine initial eligibility within 30 days and so inform in writing BTS which will coordinate discharge of the client. If the client is discharged in less than 30 days and has immediate need (see N.J.A.C. 10:81-1.3) assistance will be granted immediately. If the applicant qualifies, the initial grant shall be issued by the CWA to coincide with the client's release from the institution, and the relationship between the recipient and the CWA will be conducted as in all other cases.

(i) A child of eligible age or a spouse of an AFDC-C recipient parent who is at home on extended visit or convalescent leave from a State institution is eligible for inclusion in the AFDC-C, -F or -N assistance payment, as appropriate.

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.1979 d.428, effective October 18, 1979.

See: 11 N.J.R. 344(a), 11 N.J.R. 560(e).

Amended by R.1983 d.319, effective July 20, 1983.

See: 15 N.J.R. 933(a), 15 N.J.R. 1375(c).

Internal cites changed to N.J.A.C. cites.

Amended by R.1991 d.8, effective January 7, 1991.

See: 22 N.J.R. 2405(b), 23 N.J.R. 63(b).

In (e) and (f): Revised references to forms in subsections.

### 10:81-3.32 Temporary absence of a family member

(a) Eligibility for WFNJ/TANF may exist during the absence of a child, parent or parent-person from the home under the circumstances described in N.J.A.C. 10:81-3.33 and 3.34. When the absence is foreseeable, the CWA should make appropriate plans.

1. A parent or caretaker relative who fails to notify the county welfare agency of the absence of the minor child from the home by the end of the five day period that begins with the date that it becomes clear to the parent or relative that the minor child will be absent for more than 180 consecutive days shall be ineligible for benefits for a period of three months from the date the CWA becomes aware of the recipient's failure to notify the agency of the absence which shall begin with the month following the month in which the absence becomes known.

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.1980 d.78, effective April 1, 1980.

See: 11 N.J.R. 554(b), 12 N.J.R. 126(c).

Recodified (b) and (c) into N.J.A.C. 10:81-3.33 and 3.34 with amendments.

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

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

In (a), changed "AFDC" to "WFNJ/TANF", and inserted N.J.A.C. references; and added (a)1.

### 10:81-3.33 Child or parent in an institution

(a) When a child who would be otherwise eligible for WFNJ/TANF is out of the home due to voluntary/involuntary placement in an institution, he or she shall be recognized as a member of the eligible unit so long as it is anticipated that he or she will return home within one year from the date of the placement. State only funds shall be used after the minor child has been absent from the home for more than 180 consecutive days. See N.J.A.C. 10:82-1.6(b) regarding adjustments to the grant for children who are absent from the home.

1. A child whose placement is specified for a period longer than one year shall not be eligible during the entire period of placement. (See N.J.A.C. 10:82-2.5 regarding visits home of seven or more days.)

2. Placement for an unspecified or indeterminate period shall be construed to be for less than one year. Should such period extend beyond one year, the child shall be deleted from the eligible unit at the end of the year.

3. In the case of a new application, eligibility of an institutionalized child shall be based on the specified length of the placement starting from the date the placement began.

(b) The term "parent" as used in subsection (c) of this section includes both parents and parent-persons.

(c) Rules concerning a parent in an institution are:

1. In AFDC-C, when a parent is absent for diagnostic treatment or care and, even though hospitalized, is able to retain responsibility for supervising a plan for adequate care and control of his/her child(ren), eligibility shall continue so long as necessary to complete recovery but not to exceed three months. (Use of a temporary payee is not precluded; see N.J.A.C. 10:81-4.7.)

i. When it appears that the absence will continue for more than three months, the case will be reevaluated relative to the care and protection of the children and approval of the State office obtained for continued eligibility of the parent.

ii. See: N.J.A.C. 10:82-1.6(b) regarding appropriate adjustments to the grant.

2. In AFDC-F and -N cases, when a parent is absent from the home due to one of the following conditions, the case shall be immediately reviewed for transfer to AFDC-C if;

i. A parent is hospitalized and such condition will continue for at least 30 days; or

ii. A parent is committed to an institution and such absence will continue for at least 30 days.

As amended, R.1980 d.78, eff. April 1, 1980.

See: 11 N.J.R. 554(b), 12 N.J.R. 126(c).

(a) was recodified and substantially amended from N.J.A.C. 10:81-3.32(b) and 3.33.

(b) and (c)1 were recodified from N.J.A.C. 10:81-3.32(c)3 and 4 with amendments. Three month limitation was six months and reevaluation procedure was changed. Reference to temporary payee and grant adjustments were added.

As amended, R.1983 d.319, eff. July 20, 1983.

See: 15 N.J.R. 933(a), 15 N.J.R. 1375(c).

Internal cite changed.

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

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

In (a), changed "AFDC" to "WFNJ/TANF", and inserted the second sentence.

### 10:81-3.34 Absence for reasons other than institutional

(a) Children: Temporary absence of a child which has not lasted more than 30 consecutive days does not affect eligibility or level of grant entitlement. When the absence of a child lasts longer than 30 days or it appears that an absence will last longer than 30 days the CWA will review the situation.

1. If it is found that the parent or parent-person lacks or will lack both physical custody and responsibility for day to day care of the child and the situation is likely to continue for more than 90 days, the child is no longer eligible for assistance. In situations in which the whereabouts of the child is unknown, or the parent or parent-person is precluded from contract, or the time period is otherwise indefinite, the child is no longer eligible for assistance.

2. If it is found that there is reasonable expectation that the child will return to the home within 90 days, the child remains eligible.

3. The child remains eligible during the time that the above review is in process, but not longer than 90 days.

4. In unusual situations involving particular hardship, the CWA may consult with the State office.

(b) Regarding parent or parent-person, temporary absence of not more than 30 days for whatever reason will not affect eligibility provided that adequate care and supervision of the child(ren) has been arranged in advance. When necessary, arrangements will be made by the county welfare agency regarding issuance of the grant.

1. The county welfare agency shall obtain approval from the State office for continuing eligibility in unusual situations of temporary absence lasting more than 30 days.

(c) When the entire family unit leaves the State for a temporary visit, the provisions of N.J.A.C. 10:81-3.21 through 3.25 shall apply.

As amended, R.1980 d.78, effective April 1, 1980.  
See: 11 N.J.R. 554(b), 12 N.J.R. 126(c).

Repealed definition of institution.  
(a) was recodified from N.J.A.C. 10:81-3.32(b) and substantially amended.  
(b) was recodified from N.J.A.C. 10:81-3.32(c).  
Added (c).  
Amended by R.1985 d.312, effective June 17, 1985 (operative July 1, 1985).  
See: 17 N.J.R. 163(a), 17 N.J.R. 1565(a).  
Text from (a) deleted and new text substituted.  
Amended by R.1987 d.175, effective April 20, 1987.  
See: 18 N.J.R. 1675(a), 19 N.J.R. 644(a).  
Text added to (a) "When the absence ..."  
Deleted old (a) 1.-4. and substitute new.