

2. In addition, the applicant may submit other documents in support of a determination to include, but not limited to:

- i. Personal (non-work related) references;
- ii. Statements of support from members of the clergy;
- iii. Awards and certificates earned; and
- iv. Any other documentation which the candidate feels may assist the Department in reaching a favorable conclusion on behalf of the Department.

(c) If the Department issues a determination of rehabilitation to an applicant or nurse aide, the applicant or nurse aide shall not be required to submit the information described in (a) above in future renewal processing. This shall not apply if the person has been convicted of a disqualifying offense subsequent to the issuance of the determination of rehabilitation, in which case the applicant or nurse aide shall comply with the provisions of (a) above.

(d) A person disqualified from certification for filing a false sworn statement in accordance with N.J.A.C. 8:43I-2.3(c) shall not be permitted to request a determination of rehabilitation.

(e) A person disqualified from certification for failure to comply with the requirements of this chapter in accordance with N.J.A.C. 8:43I-2.3(b), except those disqualified from filing a false application pursuant to N.J.A.C. 8:43I-2.3(c), shall not be permitted to request a determination of rehabilitation until such time as the person has fully complied with the requirements of this chapter. Such compliance may include, but is not limited to, obtaining a current or updated criminal history record from the Division of State Police or the Federal Bureau of Investigation, or both.

Case Notes

Adopting Initial Decision's conclusion that respondent was ineligible for certification as a nurse aide where respondent's criminal history was extensive, she remained on probation for at least one of the offenses and was behind in her fine payments, and her assertion that she attended church and no longer engaged in stealing did not offset six years of documented illegal behavior (adopting 2007 N.J. AGEN LEXIS 131 as modified). *Smith v. N.J. Dep't of Health & Senior Services*, OAL Dkt. No. HLT 8980-06, 2007 N.J. AGEN LEXIS 328, Final Decision (March 28, 2007).

Affirming Initial Decision's conclusion that an applicant for nurse aide certification had demonstrated rehabilitation from a past criminal record by clear and convincing evidence, where: (i) the offense of permitting escape of a psychiatric patient was more than 10 years old and the applicant had not been charged with another similar offense; (ii) the offense of theft related to the shoplifting of food during a period when the applicant was homeless and hungry; and (iii) the applicant submitted his record of employment and training since his last offense, as well as letters attesting to job performance and character from employers, coworkers, instructors, relatives of clients, and a current client (affirming and modifying 2005 N.J. AGEN LEXIS 668). *Smith v. Dep't of Health & Senior Services*, OAL Dkt. No. HLT 02671-05, 2005 N.J. AGEN LEXIS 1307, Final Decision (December 1, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 594) affirmed, which concluded that an applicant for nurse aide certification who had been convicted of three offenses of shoplifting, including one offense that had occurred within a year of the application, had not demonstrated rehabilitation by clear and convincing evidence. Of the eight factors listed in N.J.A.C. 8:43I-2.4, the only one that weighed in favor of rehabilitation was the favorable recommendations from coworkers and superiors; the applicant would be working with a vulnerable population, at least one offense was recent, the record indicated repeat offenses that were not committed in youth or immaturity, and the evidence showed that there existed no social conditions which contributed to the offenses. *Gonzales v. Dep't of Health & Senior Services*, OAL Dkt. No. HLT 11020-03, 2005 N.J. AGEN LEXIS 1109, Final Decision (September 1, 2005).

8:43I-2.5 Conditional certification

(a) An applicant for certification as a nurse aide may be issued a conditional certification and may be employed in the capacity of a nurse aide for a period of up to 120 days, as follows:

1. The Department will issue a conditional certification to the applicant for a period not to exceed 120 days if the application demonstrates that the candidate has provided a sworn statement indicating that her or she has not been convicted of any of the offenses listed at N.J.A.C. 8:43I-2.3, and has not been placed on the Department's Nurse Aide Abuse Registry pursuant to N.J.A.C. 8:39-43.7(b).

2. All conditional certification documents issued by the Department shall bear the issue and expiration date, and are non-renewable.

3. Nothing in this chapter shall be construed as to permit an individual with a conditional certification authority to perform those duties of a nurse aide for which the applicant has not yet been trained or authorized to perform.

4. Nothing in this chapter shall be construed as to permit an individual to remain employed as a nurse aide for more than 120 days prior to successfully completing a NATCEP and passing the State skills and written or oral exam as required by 42 U.S.C. §§ 1396r(b)5 or 1395I-3(b)5.

5. If a conditionally certified applicant is disqualified from certification, the Department shall issue a notice to the applicant and employer, if known. The notice to the employer shall state that the applicant is disqualified, but shall not disclose the offenses upon which the disqualification is based.

- i. Upon receipt of the notice, the employer shall immediately remove the person from duties which require regular contact with patients, residents or clients. The person shall not have unsupervised contact with any patient, resident or client, nor shall the property of those persons be entrusted to any disqualified applicant.

- ii. If the employer receives notice from the Department that the applicant has filed for a hearing to contest the accuracy of their criminal history record background investigation, the person may remain em-

ployed pending a final decision on the person's petition, but the employer shall not permit the person to have unsupervised contact with elderly patients, residents or clients.

iii. The Department will notify the employer of any requests for hearings, and the results of any hearings, within five days of receipt of such request or disposition.

8:43I-2.6 Convictions occurring after initial criminal record history background check clearance

(a) The Department will be notified by the New Jersey State Police of convictions occurring after the applicant is initially qualified pursuant to this chapter, in accordance a system developed under the authority of N.J.S.A. 26:2H-83(a).

(b) Once the Department has learned that a person has been convicted of a disqualifying offense, the Department will issue a notice of disqualification to the person and employer. The notice to the employer will state that the person has been disqualified, but shall not list the offenses resulting in disqualification.

1. The person disqualified from certification shall be immediately terminated from employment as a nurse aide, and his or her certificate shall be deemed revoked.

2. The employer shall report to the Department, in writing, that the employee has been terminated from employment as a nurse aide and the effective date of termination.

3. The person disqualified shall have 30 days from the date of termination of their position as a nurse aide to petition the Department for a hearing on the accuracy of the criminal history record background check, or to show cause why the conviction should not result in the revocation of their certificate. The person's employer shall be notified of any petition received by the Department.

i. Any petition challenging the accuracy of a criminal history shall be forwarded to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14B-1 et seq.

ii. Petitions seeking to establish cause not to revoke the certification of the nurse aide shall be processed by the Criminal Investigation Unit, which shall make an investigation into the circumstances surrounding the conviction, together with any of the criteria for rehabilitation listed at N.J.A.C. 8:43I-2.4. If relief is not granted based upon this investigation, the petitioner shall have the right to a hearing on the denial in the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et seq.

iii. In all cases, the Department shall notify the person and the person's employer, if known, as to the outcome of the petition. The notification shall state

whether the person is to be reinstated or if the person's termination and revocation stands.

8:43I-2.7 Right to hearing

(a) Persons disqualified from certification due to a false sworn statement and application as required by N.J.A.C. 8:43I-2.1(a) shall be granted a hearing only if they are contesting the accuracy of the criminal history record background check. No person so disqualified shall be permitted to establish rehabilitation, nor shall a hearing be granted to provide for an evaluation of rehabilitation pursuant to N.J.S.A. 26:2H-84(d).

(b) Persons disqualified from certification for failure to establish rehabilitation shall be entitled to a hearing challenging the accuracy of the criminal history record background check, the denial of a determination of rehabilitation, or both.

(c) All hearings authorized by this chapter shall be held by and under the rules of the Office of Administrative Law, N.J.A.C. 1:1, pursuant to N.J.S.A. 52:14B-1 et seq.

8:43I-2.8 Penalty for false sworn statement

(a) Any person who submits a false sworn statement pursuant to N.J.A.C. 8:43I-2.1(a) shall be disqualified from certification as a nurse aide in New Jersey, and may be assessed a fine of not more than \$1,000, or both.

(b) Any person disqualified pursuant to (a) above shall be ineligible to submit an application for certification or to receive criminal history record background check clearance for a period of two years from the date of the disqualification notice. Acceptance of a new application is conditioned upon payment of any outstanding fine balance and the completion of a new and truthful sworn statement and fingerprint impressions as required by N.J.A.C. 8:43I-2.1 and 2.2.

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 8) affirmed, which concluded that an applicant should be disqualified from nurse aide certification because the applicant falsely answered "no" to the question that asked whether the applicant had been convicted of any crimes. *Turner v. Dep't of Health & Senior Services*, OAL Dkt. No. HLT 11360-07, 2008 N.J. AGEN LEXIS 145, Final Decision (February 15, 2008).

Commissioner reversed the Initial Decision (2006 N.J. AGEN LEXIS 380) and found that an applicant was disqualified from receiving certification as a nurse aide where the applicant provided a false answer on the criminal background investigation application, despite a previous conviction for simple assault; the applicable statute and regulation do not require the Department to prove intent to falsify the application, but rather, provide for strict liability. *Pruette v. Dep't of Health & Senior Services*, OAL Dkt. No. HLT 2118-06, 2006 N.J. AGEN LEXIS 783, Final Decision (August 17, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 382) adopted, which concluded that petitioner was disqualified from certification as a nurse aide for filing a false application and affidavit for certification; petitioner falsely answered a question on the application as to whether he had ever been convicted of offenses listed on the other side of the application

when in fact he had been found guilty of a violation of N.J.S.A. 2C:35-10(c) and received a six-month suspended period of confinement and one-year probation penalty. *Crutcher v. N.J. Dep't of Health & Senior Services*, OAL Dkt. No. HLT 9288-05, 2006 N.J. AGEN LEXIS 585, Final Decision (July 14, 2006).

8:43I-2.9 Full certification

(a) A conditionally certified nurse aide will be granted full, unrestricted certification, upon:

1. Completion of a NATCEP and passing the State skills and written or oral exam as required by N.J.A.C. 8:39-43; and

2. Receipt by the Department of the fingerprint supported criminal history record background check from both the Division of State Police and the Federal Bureau of Investigation indicating that either:

- i. The person has no disqualifying convictions; or
- ii. The person has disqualifying convictions, but the Department has issued a determination of rehabilitation in accordance with N.J.A.C. 8:43I-2.4.

(b) A nurse aide seeking to renew his or her certification will be issued a renewal authorization upon receipt by the Department of the fingerprint supported criminal history record background check indicating that either:

1. The person has no disqualifying convictions; or

2. The person has disqualifying convictions, but the Department has issued a determination of rehabilitation in accordance with N.J.A.C. 8:43I-2.4.

(c) Determinations that an individual is qualified for certification or recertification as a nurse aide are valid for a period of 180 days from the issuance of the qualification notice. If full certification is not obtained by the 180th day following the issuance of the notice of qualification, a new criminal history report must be obtained. The previous notice of qualification is deemed expired and invalid.

8:43I-2.10 Extension of time for persons renewing certifications

(a) The Department may issue an extension of time for individuals seeking to renew their certification as a nurse aide. Extension will be issued when, for circumstances not within the control of the nurse aide, processing times will not permit the Department to complete the background checks prior to the expiration date of their current certification. The candidate must complete a fingerprint appointment prior to the expiration date of the current certificate. Extension requests are processed by the employer to the Department. Extension requests must be on facility stationery and contain the name of the employer, the name of the nurse aide, the nurse aide's social security number, current certification expiration date, and certification number.