

See: 24 N.J.R. 1860(a), 24 N.J.R. 4378(a).

Eligibility expanded to include children of specified ages born after September 30, 1983.

### 10:72-3.5 Household unit

(a) The term "household unit" means those persons whose income is counted in the determination of eligibility under the provisions of this chapter. The following persons, if they reside with the program applicant or recipient, shall be considered members of the household unit:

1. In the case of a pregnant woman:
  - i. The pregnant woman and the unborn child (or children, when it is medically verified that there is more than one fetus);
  - ii. The pregnant woman's spouse;
  - iii. The pregnant woman's natural or adoptive children under the age of 21;
  - iv. The blood-related siblings (including those of half-blood) of the pregnant woman's children who are under the age of 21; and
  - v. The natural or adoptive father of any children in the household unit.
2. In the case of a child:
  - i. The child;
  - ii. The child's natural or adoptive parents;
  - iii. The child's blood-related (including half-blood) and adoptive siblings under the age of 21; and
  - iv. At the option of the applicant, the child's stepparent. If the applicant elects not to include the stepparent in the household unit, his or her income will not be included in the determination of eligibility except to the extent that he or she makes it available to the eligible members.
3. In the case of an aged, blind, or disabled individual, the household unit will consist of that individual and his or her spouse if the spouse resides with the aged, blind, or disabled individual. In the case of a blind or disabled child, the household unit will consist of only that child; however, the income and resources of the child's parents will be deemed to that child in accordance with N.J.A.C. 10:72-4.4(d).
4. Any person who is in receipt of AFDC or SSI or who has applied for and been found eligible for Medicaid based on eligibility for those cash assistance programs will not be included in the household unit. Any person whose income and resources have been deemed to an eligible SSI recipient shall likewise not be included in the household unit unless that person is applying for benefits under this chapter.

5. Any person in (a)1 and 2 above shall be included in the household unit even though he or she is in an AFDC-

related Medically Needy budget unit in accordance with N.J.A.C. 10:70-3.5. Likewise, any person in (a)1 and 2 above required by N.J.A.C. 10:70-3.5 to be included in an AFDC-related Medically Needy budget unit, shall be included in that budget unit even if he or she is included in a household unit under the provisions of this section. Any aged, blind, or disabled person eligible under the provisions of this chapter or who is eligible for Medically Needy (or pending spend-down) will not be included in the household unit of a pregnant woman or child.

6. A spouse shall not be included in the household unit of an aged, blind, or disabled individual if the spouse is himself or herself in the household unit of an eligible pregnant woman or child under the provisions of this chapter, or is in the budget unit of an eligible AFDC-related Medically Needy case (including eligible pending spend-down). Note: Resources of a spouse of an aged, blind, or disabled individual will be deemed to that individual in accordance with N.J.A.C. 10:72-4.5 even though the spouse is not in the household unit.

Emergency Amendment, R.1988 d.96, effective February 2, 1988 (expired April 2, 1988).

See: 20 N.J.R. 548(a).

Substantially amended.

Adopted Concurrent Proposal, R.1988 d.212, effective May 16, 1988.

See: 20 N.J.R. 548(a), 20 N.J.R. 1103(a).

Amended by R.1995 d. 539, effective October 16, 1995.

See: 27 N.J.R. 2527(a), 27 N.J.R. 3956(a).

### 10:72-3.6 Third party liability

Program applicants and recipients are required to identify to the county welfare agency any third party (individual, entity, or program) that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient.

### 10:72-3.7 Persons sanctioned under AFDC rules

Persons who are ineligible for AFDC due to the imposition of a sanction of ineligibility for a factor of AFDC eligibility that does not apply in Medicaid (such as noncooperation with work registration or WIN requirements) shall have eligibility determined under this chapter without regard to the sanction. (For persons ineligible for AFDC due to a period of ineligibility imposed as a result of the receipt of lump sum income, see N.J.A.C. 10:72-4.3(c)).

### 10:72-3.8 Application for other benefits

(a) As a condition of eligibility for the Medicaid program, applicants and recipients are required to take all necessary steps to obtain any annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Applicants and recipients must avail themselves of any health insurance coverage available to the household unit at no cost, such as coverage provided by an employer at no cost.

1. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation

and pensions, Social Security benefits, and unemployment compensation. They do not include AFDC, Supplemental Security Income (SSI), or General Assistance.

#### Case Notes

Petitioner's income caused ineligibility for Medicaid benefits. L.H. v. DMAHS, 93 N.J.A.R.2d (DMA) 107.

#### 10:72-3.9 Inmates of public institutions

(a) Any person who is an inmate of a public institution is ineligible for the Medicaid program.

(b) Any person who is incarcerated in a Federal, State, or local correction facility (prison, jail, detention center, reformatory, etc.) is not eligible for the Medicaid program.

### SUBCHAPTER 4. FINANCIAL ELIGIBILITY

#### 10:72-4.1 Income eligibility limits

(a) Income limits for Medicaid for aged, blind, and disabled persons (except for specified low-income Medicare beneficiaries), as well as children six years of age or older covered under the provisions of this chapter will be based on 100 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with Sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be  $\frac{1}{2}$  of the annual poverty income guideline rounded down to the next whole dollar amount for household unit sizes of one and two for aged, blind, and disabled individuals and for the appropriate family size for children aged six years or over. The annual revision to the Federal poverty income guideline will be effective for purposes of this section with the first day of the year for which the poverty income guideline is promulgated.

(b) Effective with the first month of coverage, January 1, 1993, income limits for specified low-income Medicare beneficiaries shall be based on 110 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with Sections 1902(a)(10)(E)iii of the Social Security Act, 42 U.S.C. 1396a. Effective January 1, 1995, the income limits will be set at 120 percent of the Federal poverty level.

(c) Income limits for children aged one through five years covered under the provisions of this chapter shall be based on 133 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be one-twelfth of 133 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(d) Income limits for pregnant women and children under the age of one year covered under the provisions of this chapter shall be based on 185 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be one-twelfth of 185 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(e) In order to be eligible for Medicaid benefits under the provisions of this chapter, monthly household income (as determined by this chapter) must be equal to or less than the income limit established in (a), (b), (c), or (d) above as applicable.

1. If a pregnant woman is determined to be income eligible during any month prior to the end of her pregnancy, she, if otherwise eligible, will continue eligible without regard to changes in the household unit's income for the term of her pregnancy, including the 60-day period beginning with the last day of the pregnancy whether or not the pregnancy results in a live birth. If the income change results from the addition of a new household member, the new income is not considered through the 60-day period beginning with the last day of the pregnancy.

i. The child resulting from the pregnancy will be eligible for Medicaid without regard to changes in the household unit's income for a period of not less than 60 days and up to a period of one year, so long as the mother remains eligible for Medicaid, or would remain eligible if pregnant, and the child remains in the mother's custody.

ii. A pregnant woman who, during the course of the pregnancy, was eligible for and received AFDC, Medicaid Special, or Medicaid for the Unborn is deemed to have met the income requirements of this chapter.

2. With the exception in (e)1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

Emergency Amendment, R.1988 d.96, effective February 2, 1988 (expired April 2, 1988).

See: 20 N.J.R. 548(a).

Added (b)1ii.

Adopted Concurrent Proposal, R.1988 d.212, effective May 16, 1988.

See: 20 N.J.R. 548(a), 20 N.J.R. 1103(a).

Emergency Amendment, R.1991 d.223, effective March 28, 1991 (operative April 1, 1991; expires May 27, 1991).

See: 23 N.J.R. 1200(a).

Adopted Federally required coverage pursuant to Omnibus Budget Reconciliation Act of 1989.

Adopted Concurrent Proposal, R.1991 d.302, effective May 24, 1991.

See: 23 N.J.R. 1200(a), 23 N.J.R. 1945(a).

Provisions of emergency amendment R.1991 d.223 readopted without change.

Emergency Amendment, R.1991 d.445, effective July 29, 1991 (expires September 27, 1991).

See: 23 N.J.R. 2543(a).

In (b): added "aged one through five years" regarding children covered; added new (c), recodifying existing (c) as new (d).

Adopted Concurrent Proposal, R.1991 d.526, effective October 21, 1991.

See: 23 N.J.R. 2453(a), 23 N.J.R. 3144(a).

Provisions of emergency amendment R.1991 d.445 adopted without change.

Administrative Correction to (b).

See: 24 N.J.R. 851(a).

Added "133 percent of" to text regarding the poverty income guideline.

Amended by R.1992 d.364, effective September 21, 1992.

See: 24 N.J.R. 2145(a), 24 N.J.R. 3343(a).

Child's eligibility for Medicaid extended.

Amended by R.1992 d.484, effective December 7, 1992.

See: 24 N.J.R. 1860(a), 24 N.J.R. 4378(a).

Revised (a).

Amended by R.1993 d.369, effective July 19, 1993.

See: 25 N.J.R. 1042(b), 25 N.J.R. 3217(a).

#### Case Notes

Reasonable basis existed for use of income multiplier to determine eligibility under Medical Assistance and Health Service Act. *P.P. v. New Jersey Dept. of Human Services, Div. of Medical Assistance and Health Services*, 280 N.J.Super. 1, 654 A.2d 471 (A.D.1994), certification denied.

#### 10:72-4.2 Prospective budgeting of income

(a) The county welfare agency shall establish the best estimate of income that will be available to the household unit.

1. The best estimate of income shall be based on an average of the household unit's income for the full two-month period preceding the date of application or redetermination. Adjustments shall be made to the estimated income to reflect changes in income that either have occurred or which are reasonably anticipated to occur which would affect the household unit's income during a period of eligibility.

#### 10:72-4.3 Countable income; pregnant women and children

(a) Except as specified below, countable income for pregnant women and children under the provisions of this chapter shall include the income of all members of the household unit as determined at N.J.A.C. 10:72-3.5(a)1 and 2, and shall be determined in accordance with regulations applicable to income in the AFDC-C program (see N.J.A.C. 10:82).

1. The maximum income limits as provided for at N.J.A.C. 10:82-1.2(d) do not apply.

2. Neither the \$30.00 nor the one-third disregard of earned income at N.J.A.C. 10:82-2.8(a)3 and 10:82-4.4(c) apply.

3. The deeming of stepparent income at N.J.A.C. 10:82-2.9(d) does not apply. (See N.J.A.C. 10:72-3.5(a)2

regarding the inclusion or exclusion of the stepparent in the household unit.)

4. The deeming of an alien sponsor's income at N.J.A.C. 10:82-3.13 does not apply.

(b) Nonrecurring lump sum income received by a household unit of a pregnant woman or child shall be added to any other income received by the household unit in that month. The total shall be divided by the income eligibility limit applicable to the household. The result will be the number of months the eligible members of the household unit shall be ineligible to receive Medicaid under the provisions of this chapter. Any remaining income from this calculation is treated as if it were unearned income in the first month following the period of ineligibility. No period of ineligibility shall apply to a pregnant woman eligible under the provisions of this chapter.

1. The period of ineligibility shall begin the first month subsequent to the month the nonrecurring income is received or, if there is insufficient time to provide timely adverse action notice, the following month.

2. Once established, the period of ineligibility may be reduced only in accordance with the AFDC provisions for shortening a period of ineligibility as found at N.J.A.C. 10:82-4.15(a)5. The basis for a determination to shorten the period of ineligibility shall be fully documented in the case record.

(c) Any person who received AFDC or Medicaid based on AFDC rules and became ineligible for such assistance because of a period of ineligibility imposed as a result of the provisions of N.J.A.C. 10:82-4.15 may establish eligibility under the provisions of this chapter. The amount of the lump sum used to determine the original period of ineligibility shall be divided by the applicable income eligibility limit to determine the period of ineligibility for Medicaid under this chapter. If that period has already expired, eligibility for benefits under this chapter may be established so long as all other eligibility criteria are met.

(d) The parents of children and the spouse of a pregnant woman are legally responsible relatives to pregnant women and children applying for or eligible for benefits under the provisions of this chapter. When a legally responsible relative resides in the same household, his or her income is considered in the determination of eligibility and no further action is required. When a legally responsible relative does not reside in the same household, the county welfare agency shall pursue support from that relative in accordance with the provisions of N.J.A.C. 10:82-3.8 et seq.

1. Except when the legally responsible relative resides in the same household, income of the relative shall be counted only to the extent that the income is actually made available to the household unit.

Amended by R.1987 d.380, effective August 27, 1987.  
See: 19 N.J.R. 1324(a), 19 N.J.R. 1731(a).

(c): missing text inserted.  
 Emergency Amendment, R.1988 d.96, effective February 2, 1988 (expired April 2, 1988).  
 See: 20 N.J.R. 548(a)  
 Adopted Concurrent Proposal, R.1988 d.212, effective May 16, 1988.  
 See: 20 N.J.R. 548(a), 20 N.J.R. 1103(a).  
 Emergency Amendment, R.1991 d.223, effective March 28, 1991 (operative April 1, 1991; expires May 27, 1991).  
 See: 23 N.J.R. 1200(a).  
 Adopted Federally required coverage pursuant to Omnibus Budget Reconciliation Act of 1989.  
 Adopted Concurrent Proposal, R.1991 d.302, effective May 24, 1991.  
 See: 23 N.J.R. 1200(a), 23 N.J.R. 1945(a).  
 Provisions of emergency amendment R.1991 d.223 readopted without change.  
 Amended by R.1992 d.364, effective September 21, 1992.  
 See: 24 N.J.R. 2145(a), 24 N.J.R. 3343(a).  
 Stylistic change.

#### 10:72-4.4 Income eligibility; aged, blind, and disabled individuals

(a) Except as specified below, countable income for aged, blind, and disabled individuals shall be determined in accordance with rules applicable to income in Medicaid Only—Aged, Blind, and Disabled (see N.J.A.C. 10:71-5).

1. The disregard of cost-of-living increases in Social Security benefits provided for in N.J.A.C. 10:71-5.3(a)7x and xi do not apply.
2. The deeming of the income of an alien's sponsor as provided for at N.J.A.C. 10:71-5.7 does not apply.

(b) Nonrecurring lump sum income received by the household unit of an aged, blind, or disabled individual shall be counted as income in the month received and any portion retained shall be counted as a resource in subsequent months.

(c) An aged, blind, or disabled individual will have the value of in-kind support and maintenance counted as unearned income in the following circumstances.

1. An aged, blind, or disabled adult, who would in accordance with rules at N.J.A.C. 10:71-5.6(c) be determined to be "living in the household of another", shall be considered to have unearned income in the amount specified at N.J.A.C. 10:71-5.4(a)12 less \$20.00. The amount of income so assigned is not rebuttable by the applicant or recipient.
2. Any aged, blind, or disabled person other than those addressed in (c)1 above, to whom food, clothing, or shelter is given or paid for by someone other than a spouse, parent, or minor child residing in the same household, shall be presumed to receive in-kind support and maintenance. The presumed value of the support and maintenance will be the values specified at N.J.A.C. 10:71-5.4(a)12. The presumed value so assigned may be rebutted in accordance with the provisions of that subsection.

(d) In accordance with the rules at N.J.A.C. 10:71-5.5, the income of the spouse of an aged, blind, or disabled individual shall be deemed to the aged, blind, or disabled individual if they are residing in the same household. Income of the parent(s) of a blind or disabled child under the age of 18 residing in the same household shall be deemed available to the child in determining income eligibility for benefits under this chapter. No income shall be deemed to an aged, blind, or disabled individual from a person who is a member of a household unit of an eligible pregnant woman or child under the provisions of this chapter or who is in the budget unit of eligible AFDC-related Medically Needy cases (including a case that is eligible pending spend-down.)

1. If the countable income (before income deeming) of the aged, blind, or disabled individual exceeds the poverty income guideline for one person he or she is ineligible for benefits and income deeming does not apply.
2. When income of a spouse is deemed to an aged, blind, or disabled individual, the total countable income after deeming is compared to the poverty income guideline for two persons.
3. In determining income eligibility of a child, the child's income after deeming is compared to the poverty income guideline for one person.
4. When the income of a spouse must be deemed to both an aged, blind, or disabled individual and a blind or disabled child, the income is first deemed to the aged, blind, or disabled spouse. If the income (after deeming) of the aged, blind, or disabled spouse does not exceed the poverty income guideline, he or she is income eligible and there is no income to be deemed to the blind or disabled child. If the poverty income guideline is exceeded, the aged, blind, or disabled adult is income ineligible and the excess income is deemed to the blind or disabled child.
5. When parental income must be deemed to more than one blind or disabled child, the deemable income shall be divided equally among such children.

Emergency New Rule, R.1988 d.96, effective February 2, 1988 (expired April 2, 1988).  
 See: 20 N.J.R. 548(a).  
 This section was originally "resource eligibility" which was recodified to 4.5.  
 Adopted Concurrent Proposal, R.1988 d.212, effective May 16, 1988.  
 See: 20 N.J.R. 548(a), 20 N.J.R. 1103(a).

#### Case Notes

Reinstatement of severely disabled man's New Jersey Care benefits in spite of income in excess of maximum allowable amount was appropriate. *L.E. v. Camden County Board of Social Services*, 94 N.J.A.R.2d (DMA) 11.

Prospective-only application of regulation did not violate equal protection. *J.B. v. Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (DMA) 89.