

CHAPTER 141
TRAUMATIC BRAIN INJURY FUND

Authority

N.J.S.A. 30:6F-5 et seq., specifically 30:6F-8.

Source and Effective Date

R.2004 d.245, effective July 6, 2004.
See: 35 N.J.R. 5342(a), 36 N.J.R. 3280(a).

Chapter Expiration Date

Chapter 141, Traumatic Brain Injury Fund, expires on July 6, 2009.

Chapter Historical Note

Chapter 141, Charity Racing Days for the Developmentally Disabled, was adopted as R.1984 d.28, effective February 21, 1984. See: 15 N.J.R. 1826(a), 16 N.J.R. 375(b).

Pursuant to Executive Order No. 66(1978), Chapter 141, Charity Racing Days for the Developmentally Disabled, was readopted as R.1989 d.132, effective February 7, 1989. See: 21 N.J.R. 8(a), 21 N.J.R. 636(a). Pursuant to Executive Order No. 66(1978), Chapter 141 expired on February 7, 1994.

Chapter 141, Traumatic Brain Injury Fund, was adopted as new rules by R.2004 d.245, effective July 6, 2004. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS; REQUIREMENTS

10:141-1.1 Purpose and scope

The purpose of this chapter is to establish criteria for eligibility and to establish a standard methodology for determining the amount and type of supports and services to be allocated to individuals in the State of New Jersey who have survived a traumatic brain injury.

Amended by R.2006 d.422, effective December 4, 2006.

See: 38 N.J.R. 2015(a), 38 N.J.R. 5158(a).

Substituted "supports and services" for "financial assistance".

10:141-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Applicant" means a person who is seeking service(s) from the Fund.

"Beneficiary" means a person receiving service(s) from the Fund.

"Case management" means the administrative responsibility for oversight of the Fund beneficiary's service plan. Case management is a mandatory service component for initial applicants and recipients of Fund service(s).

"Council" means the New Jersey Advisory Council on Traumatic Brain Injury.

"Department" means the New Jersey Department of Human Services.

"Division" means the New Jersey Division of Disability Services.

"Eligible supports and services" means those goods and services that are reimbursable under the Fund. Eligible supports and services shall be directly related to the functional limitations and symptoms associated with the brain injury, or medical treatment related to the brain injury. A beneficiary may, within the financial limits of the program, receive multiple supports simultaneously.

"Excluded assets" are assets which are excluded from consideration for Fund service(s). Excluded assets include the home occupied by the individual as his or her principal residence, one automobile necessary for the transportation of the applicant/beneficiary, personal effects and household goods. Financial instruments recognized by the United States Internal Revenue Service for the purpose of retirement shall be considered excluded assets. These include 401k Plans, IRAs, and similar such instruments.

"Fund" means the Traumatic Brain Injury Fund.

"Funding year" is defined as the continuous 12-month period which begins the day after the Committee renders a decision on an applicant's/beneficiary's support plan. Expenditures in a funding year on behalf of an applicant/beneficiary shall not exceed the caps defined at N.J.A.C. 10:141-1.5(b).

"Immediate family" is defined as:

1. Biological or adoptive parent(s) or other persons who have been legally determined to be financially respon-

sible for an applicant/ beneficiary who is under the age of 18; or

2. Persons who have been legally determined to be financially responsible for an applicant/beneficiary who is over the age of 18, including a lawful spouse.

“Liquid assets” are assets that are convertible to cash within 30 days. Liquid assets include checking and savings accounts, stocks, bonds, treasury notes and similar instruments.

“Order of selection” is defined as the criteria utilized by the Traumatic Brain Injury Fund Review Committee to establish priority for applicants to receive services in the event that the financial resources of the Fund are limited. See N.J.A.C. 10:141-1.6(b).

“Review cycle” means the schedule for the consideration and review of a batch of eligible applications by the TBI Fund Review Committee.

“Service coordination” means clinical responsibility for identifying, developing, and organizing services for a beneficiary. Service coordination is a service option available to Fund beneficiaries, the cost of which shall be applied to the beneficiary’s annual and lifetime expenditure caps.

“Support plan” means a document that describes the nature, frequency and cost of services, supports, equipment or items that have been considered for payment.

“TBI Fund Review Committee” means a Committee appointed by the Division of Disability Services to review service plans, render decisions, hear appeals and review policies associated with the operation of the Fund. The Committee may also be utilized to propose solutions to problems associated with the operation of the Fund.

“Traumatic brain injury” means an acquired injury to the brain where continued impairment can be demonstrated. This term does not include brain dysfunction caused by congenital or degenerative disorders or birth trauma but may include injuries caused by anoxia due to trauma.

Amended by R.2006 d.422, effective December 4, 2006.
See: 38 N.J.R. 2015(a), 38 N.J.R. 5158(a).

In definition “Case management”, substituted “initial applicants and” for “ongoing”; rewrote definitions “Eligible supports and services”, “Excluded assets” and “Service coordination”; added definition “Funding year”; in definition “Support plan”, substituted “considered” for “approved”; in definition “TBI Fund Review Committee”, deleted “and approve applications,” preceding “service plans”, inserted “render decisions, hear”, and inserted “review” preceding “policies”; and in definition “Traumatic brain injury”, inserted “where continued impairment can be demonstrated”.

10:141-1.3 General requirements

(a) The Traumatic Brain Injury Fund shall pay as a last resort for the cost of post acute care, services, and supports to New Jersey residents who have survived neurotrauma with a traumatic brain injury. The Fund will provide support to fos-

ter independence for its beneficiaries. The act establishing the Fund, N.J.S.A. 30:6F-5 et seq., also requires the Brain Injury Association of New Jersey to coordinate public information and prevention education related to the Fund and to traumatic brain injury.

(b) Funding and payment for services must remain within the designated disbursement caps as set forth in N.J.A.C. 10:141-1.5.

Amended by R.2006 d.422, effective December 4, 2006.
See: 38 N.J.R. 2015(a), 38 N.J.R. 5158(a).

In (a), substituted “supports” for “financial assistance”.

10:141-1.4 Administration of the Fund

(a) The following procedures and methods will be used for the administration of the Fund:

1. The Division of Disability Services shall administer the Fund for the Department.

2. A committee known as the TBI Fund Review Committee shall be established within the Division of Disability Services, Department of Human Services, to implement the provisions of the Fund. Responsibilities of the Committee shall be:

- i. Review of requests for services and supports under the Fund;
- ii. Rendering decisions on support plans;
- iii. Hearing of initial appeals;
- iv. Development of policies and procedures; and
- v. Identification of problems associated with the administration of the Fund.

3. The Committee shall periodically report to the New Jersey Advisory Council on Traumatic Brain Injury on the status of applications, problems, and other issues related to the Fund.

4. The Committee shall be comprised of seven members, to be nominated by their respective bodies or interest groups and appointed by the Commissioner of Human Services or designee, as follows:

- i. Two TBI Advisory Council members;
- ii. A family member of an individual with a traumatic brain injury;
- iii. A survivor of traumatic brain injury;
- iv. A representative of the Brain Injury Association of New Jersey;
- v. A professional clinician in the field of traumatic brain injury; and
- vi. The Director of the Division or designee.

5. The Committee shall elect a chair from its members. The chair shall direct the activity of a Committee meeting.

6. Committee members may serve for two-year terms, and may be eligible for reappointment.

7. Committee members may be replaced as necessary in the event that they are no longer able to serve.

8. Committee members must recuse themselves from any decisions related to a conflict of interest with any applicant, beneficiary or provider.

9. Committee members will not be compensated for service to the Committee, but will be reimbursed for travel and other reasonable expenses connected with performing the work of the Committee.

10. The Committee shall meet at least quarterly to review applications, and to conduct business.

11. The Division shall contract with case management companies/agencies to initially assess the applicant's appropriateness for the Fund, and to prepare a support plan in conjunction with the applicant and their family. The Division will make payments to contracted agencies/organizations based on individually negotiated rates.

12. The cost of case management will be considered as an administrative expense of the Fund, and will not to be applied against the benefits provided to a beneficiary.

Amended by R.2006 d.422, effective December 4, 2006.

See: 38 N.J.R. 2015(a), 38 N.J.R. 5158(a).

Rewrote (a)2i through (a)2v and (a)11; in (a)5, added the last sentence; and in (a)12, inserted "of the Fund".

10:141-1.5 Expenditure caps and limitations

(a) Services provided to an individual by the Fund will not exceed a lifetime total of \$100,000.

(b) Expenditures for an individual shall not exceed \$15,000 to be expended in any 12-month period, known as a funding year.

(c) An applicant may apply to the Fund for a waiver of these expenditure limits where the applicant can demonstrate extraordinary hardship to the satisfaction of the Committee. Hardship circumstances to be considered may include, but are not limited to, loss of income, extreme medical need, and potential functional decline of the applicant. Waivers will be at the discretion of the Committee, and will be considered only in emergent circumstances or cases of extreme hardship.

(d) Funding awarded to a beneficiary that has not been utilized at the end of a funding year shall be returned to the Fund, and shall not be counted against the beneficiary's annual and lifetime caps.

(e) A beneficiary must be a resident of the State of New Jersey during the period in which supports and services are being provided under the Fund.

Amended by R.2006 d.422, effective December 4, 2006.

See: 38 N.J.R. 2015(a), 38 N.J.R. 5158(a).

In (b), inserted " , known as a funding year"; in (c), added the last sentence; and added (d) and (e).

10:141-1.6 Eligibility for services and supports

(a) The following criteria shall be used to determine eligibility for the Fund. Responsibility for adherence to the criteria shall be vested with the Division Director, and shall remain an administrative function of the Division;

1. Medical requirements:

i. The applicant has survived a traumatic brain injury as defined in this chapter;

ii. The applicant requires, and is requesting, post acute care services/support directly related to the traumatic brain injury; and

iii. It has been established, by clinical opinion, that the provision of the requested service/support will restore, enhance or maintain function;

2. Financial requirements:

i. The requested expenditure shall not exceed established program caps;

ii. The applicant demonstrates the inability to pay for the requested services or supports from income or assets;

iii. The applicant or his or her immediate family's liquid assets do not exceed \$100,000, and that those assets are otherwise committed, or not available to fund the requested services;

iv. There are no trust funds, settlements, gifts or donations for which the applicant is eligible, and which are available on a timely basis, to meet the applicant's needs;

v. There are no other funds, insurance coverage, or public or private programs for which the applicant is eligible, to provide the requested care, services, or supports for the applicant, in a timely manner;

vi. Payment for services/supports rendered prior to the receipt of formal Committee approval, shall be ineligible for reimbursement;

vii. To the extent of funds provided to the individual, the Fund shall have first claim to any future monies received by the person with a traumatic brain injury as a result of a settlement or other payment made in connection with the traumatic brain injury; and

viii. The Fund may place a financial lien on any appreciable property purchased using Fund resources. The lien shall be no more than the amount issued by the Fund at the time of purchase, and shall be executed where:

- (1) The property is being sold by the beneficiary;
- (2) The beneficiary enters a long-term care facility; or
- (3) The ownership of the property is transferred to an individual other than the original beneficiary; and

3. Residency requirements:

i. The applicant shall be a citizen or permanent resident of the United States, as defined by the Immigration and Nationality Act, Pub. L. 82-414, living in New Jersey, and shall be a resident at least three consecutive months prior to the date of application. Applicants shall maintain legal residence in accordance with N.J.A.C. 10:141-1.5(e) to remain eligible;

ii. The residence of a minor child shall be determined to be that of the parent(s) or legal guardian;

iii. The responsibility to furnish proof of residence shall be that of the applicant or the parent or guardian of a minor child;

iv. Absence from the State of New Jersey for a period of 12 months or more is prima facie evidence of abandonment of domicile;

v. Seasonal residents of New Jersey are excluded from eligibility. Seasonal or temporary residents of the State of whatever duration shall not constitute domicile. Migrant workers who can demonstrate a history of residence in New Jersey shall be eligible for consideration; and

vi. The Fund shall suspend the application for, or the provision of supports and services to, an individual who is or becomes incarcerated or committed to an institution as defined by 42 CFR 435.1008 and 435.1009, incorporated herein by reference, as amended and supplemented. Applications or awards may be reinstated upon release or discharge if eligibility and need continue.

(b) In the event that the Fund is unable to provide funding for all eligible individuals, persons will be given priority according to the following criteria and these criteria will be applied in descending order, and in combination, by the Committee to the eligible applicants in the current review cycle. The Committee will record the basis for its decisions. The criteria to be utilized to determine the order of selection will be:

1. Urgency of the needed service/support to restore, maintain, and/or support the function of the applicant;
2. Cost benefit to the applicant and to the Fund;
3. Demonstrated financial need. Persons with lowest income and assets will be given preference for available funds;
4. Readiness of the applicant to utilize the post-acute services/supports requested;

5. Situations where program services will be utilized as an alternative to, or substitute for, the New Jersey Medicaid TBI Waiver, or similar program, where the applicant has achieved maximum benefit from those programs;

6. The capacity of the Fund to provide the requested services within the limits of the program;

7. The absence of other brain injury services that can meet the requested need of the applicant; and

8. The applicant has been denied Fund services in previous review cycles due to lack of available funds.

Amended by R.2006 d.422, effective December 4, 2006.

See: 38 N.J.R. 2015(a), 38 N.J.R. 5158(a).

Rewrote introductory paragraph of (a); in introductory paragraphs of (a)1 and (a)2, substituted "requirements" for "need"; in (a)1ii, inserted "directly"; in (a)2vi, deleted "and" from the end; added (a)2viii; rewrote (a)3i; in (a)3iv, deleted "and" from the end; in (a)3v, substituted "; and" for a period at the end; and added (a)3vi.

10:141-1.7 Application process for the services/supports of the Fund

(a) The following process shall be used to apply for assistance under the Fund:

1. An individual shall contact the Division for an application to the Fund.

i. Following an initial screening to determine that the prospective applicant meets basic eligibility criteria for the Fund, Division staff will forward application forms to the applicant or designee.

ii. Division staff shall offer assistance to the applicant in completing the application if necessary.

iii. Applications shall be available in alternative formats, upon request.

iv. Requests for applications shall be taken in any commonly accepted form.

2. The applicant shall submit the application on forms provided by the Division. The application shall document identifying information, nature and date of the injury and treatments, corroboration of the injury from a medical doctor or neuropsychologist, request for assistance, including services/support and amount, financial information with supporting data and reasons why services/support cannot be provided by another resource.

3. The application shall be reviewed by Division staff. If the medical documentation does not substantiate that the applicant's disability results from a traumatic brain injury, the Division may take the following actions:

i. Request that the applicant undergo an examination performed by a licensed neurologist, neuropsychiatrist or neuropsychologist and submit a report of such examination to enable the Fund to make a clinical determination of the presence of a traumatic brain injury; and/or