

**CHAPTER 83****PHARMACEUTICAL ASSISTANCE TO THE AGED  
AND DISABLED ELIGIBILITY MANUAL****Authority**

N.J.S.A. 30:4D-20 through 24.

**Source and Effective Date**

R.2003 d.392, effective September 9, 2003.  
See: 35 N.J.R. 1335(a), 35 N.J.R. 4721(a).

**Chapter Expiration Date**

Chapter 83, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, expires on September 9, 2008.

**Chapter Historical Note**

Chapter 83, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was originally codified in Title 10 as Chapter 69A, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual. Chapter 69A, Pharmaceutical Assistance to the Aged Program, was adopted as R.1976 d.102, effective April 5, 1976. See: 7 N.J.R. 505(c), 8 N.J.R. 232(b).

Pursuant to Executive Order No. 66(1978), Chapter 69A, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was readopted as R.1988 d.211, effective April 20, 1988. See: 20 N.J.R. 369(a), 20 N.J.R. 1106(a).

Pursuant to Executive Order No. 66(1978), Chapter 69A, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was readopted as R.1993 d.175, effective March 26, 1993. See: 24 N.J.R. 4479(a), 25 N.J.R. 1764(a).

Pursuant to Reorganization Plan No. 001-1996, Chapter 69A, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was recodified to Title 8, Chapter 83, effective October 15, 1997. See: 29 N.J.R. 4679(a).

Pursuant to Executive Order No. 66(1978), Chapter 83, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was readopted as R.1998 d.176, effective March 13, 1998. See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

Chapter 83, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was readopted as R.2003 d.392, effective September 9, 2003. See: Source and Effective Date.

**Cross References**

See N.J.A.C. 10:51-4.1 et seq., Pharmaceutical assistance to the aged and disabled program.

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**SUBCHAPTER 1. INTRODUCTION****8:83-1.1 Purpose and intent**

(a) It is intended that Pharmaceutical Assistance to the Aged and Disabled (PAAD) shall extend assistance to certain persons whose level of income disqualifies them for medical assistance under the New Jersey Medical Assistance and Health Services Act, but who have significant needs for prescribed drugs and/or insulin, insulin needles, insulin syringes, and/or certain diabetic materials and are unable to fully meet the cost of such items.

(b) This manual has been developed as a statement of policy and procedures and is applicable only to eligibility for the PAAD Program.

Amended by R.1985 d.690, effective January 21, 1986.  
See: 17 N.J.R. 2332(a), 18 N.J.R. 190(a).

Added text in (a) "and/or certain diabetic materials".  
Amended by R.1998 d.176, effective April 6, 1998.  
See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

**8:83-1.2 Legal authority**

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

1. Chapter 194, Laws of 1975, effective August 21, 1975. Amended by Chapter 312, Laws of 1975, effective February 19, 1976;
2. Chapter 268, Laws of 1977, effective January 1, 1978;
3. Chapter 171, Laws of 1978, effective December 22, 1978;
4. Chapter 27, Laws of 1979, effective March 1, 1979;
5. Chapter 499, Laws of 1981, effective March 1, 1982;
6. Chapter 209, Laws of 1985, effective August 1, 1985;
7. Chapter 221, Laws of 1987, effective July 29, 1987 and retroactive to December 31, 1986;
8. Chapter 16, Laws of 1989, effective February 1, 1989; and
9. Chapter 84, Laws of 1991, effective April 3, 1991 and retroactive to January 1, 1991; and
10. Chapter 30, Laws of 1992, effective June 29, 1992.
11. Chapter 3, Laws of 1993, effective January 13, 1993 and retroactive to January 1, 1993;
12. Chapter 27, Laws of 1995, effective February 15, 1995, retroactive to January 1, 1995;
13. Chapter 323, Laws of 1995, effective April 4, 1996; and
14. Reorganization Plan No. 001-1996.

(b) These Statutes supplement the New Jersey Medical Assistance and Health Services Act (P.L. 1968, c.413).

Amended by R.1985 d.259, effective May 20, 1985.

See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Deleted (a)1, and substituted new text; added (a)5.

Amended by R.1985 d.690, effective January 21, 1986.

See: 17 N.J.R. 2332(a), 18 N.J.R. 190(a).

Added (a)6.

Amended by R.1988 d.174, effective April 18, 1988.

See: 19 N.J.R. 2375(a), 20 N.J.R. 902(a).

Added (a)7.

Amended by R.1990 d.182, effective March 19, 1990.

See: 21 N.J.R. 3047(a), 22 N.J.R. 953(a).

Added (a)8.

Amended by R.1991 d.563, effective November 18, 1991.

See: 23 N.J.R. 2623(a), 23 N.J.R. 3514(a).

New (a)9. added; reference to Chapter 84, Laws of 1991.

Amended by R.1993 d.608, effective December 6, 1993.

See: 25 N.J.R. 3407(a), 25 N.J.R. 5528(b).

Amended by R.1994 d.191, effective April 18, 1994.

See: 25 N.J.R. 5750(a), 26 N.J.R. 1657(a).

Amended by R.1996 d.7, effective January 2, 1996.

See: 27 N.J.R. 3541(a), 28 N.J.R. 184(c).

Amended by R.1998 d.176, effective April 6, 1998.

See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

In (a), added 13 and 14.

**SUBCHAPTER 2. DEFINITIONS****8:83-2.1 Definitions**

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

“Annual income” means all income from whatever source derived, actually received or anticipated.

“Anticipated income” means the amounts of income the applicant can reasonably be expected to receive during the calendar year.

“Applicant” means an individual who applies for PAAD, either personally or through an authorized agent.

“Authorized agent” means a person who initiates the PAAD application for a person who is incompetent or incapable of filing the PAAD application on his/her behalf.

“Authorized representative” means a person with legal authority to act on behalf of an individual in making decisions related to the individual’s enrollment in, disenrollment from, and access to negotiated prices and Transitional Assistance under the Medicare Prescription Drug Discount Card and Transitional Assistance Program as defined by 42 C.F.R. 403.802.

“Beneficiary” means an individual who has been found eligible for PAAD benefits.

“Business income” means net income derived from a business, trade or profession or from the rental of property after deductions of the ordinary and necessary expenses attributable to the business, trade, profession, or to the rental or property which are allowed under the Federal Internal Revenue Code and regulations issued thereunder.

“Calendar year” means a year beginning January 1 and ending on December 31. It is the base period utilized to determine annual income and PAAD eligibility.

“Centers for Medicare and Medicaid Services (CMS)” means the agency of the Federal Department of Health and Human Services which is responsible for the administration of the Medicare program in the United States. CMS was formerly known as the Health Care Financing Administration (HCFA).

“Commissioner” means the Commissioner of the Department of Health and Senior Services.

“Current year” means the calendar year in which a person applies or reapplies for PAAD.

“Department” means the Department of Health and Senior Services.

“Electronic Data Interchange (EDI) Enrollment Form” means an agreement signed by a Medicare Part B Supplier authorizing PAAD to bill Medicare electronically on its behalf for claims that are eligible under both PAAD and Medicare.

“Expiration date” means the date when a beneficiary’s PAAD eligibility ends.

“Legend Drug” means any approved drug product which by Federal law cannot be dispensed without a prescription and bears the statement on the label: “Caution: Federal law prohibits dispensing without a prescription”.

“Lifeline Credit Program” means the utility assistance program that offers a benefit in the form of a credit to the utility account during the heating season to eligible New Jersey residents.

“Medicare” means medical assistance provided to certain aged and disabled persons as authorized under Title XVIII (Medicare) of the Social Security Act.

“Medicare-endorsed prescription drug discount card program,” “endorsed program,” or “endorsed discount card program” means any prescription drug discount card program that has received Medicare endorsement and whose endorsed sponsor has entered into a contract with CMS.

“Medicare Part B Supplier” means a supplier of Medicare Part B (Medical Insurance) services to Medicare beneficiaries including Durable Medicare Equipment, Prosthesis, Orthotics, and Supplies (DMEPOS).

“Medicare Prescription Drug Discount Card and Transitional Assistance Program” or “Medicare Drug Discount Card Program” means the program established under section 1860D-31 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, Dec. 8, 2003.

“National Suppliers Clearinghouse (NSC)” means the entity that issues Durable Medicare Equipment, Prosthesis, Orthotics, and Supplies (DMEPOS) supplier authorization numbers nationwide to Medicare Part B Suppliers for the Centers for Medicare and Medicaid Services (CMS). The National Supplier Clearinghouse is located at P.O. Box 100142, Columbia, SC 29202-3142.

“NSC Supplier Number” means the authorization number issued by the National Supplier Clearinghouse (NSC) to a Medicare Part B Supplier of Durable Medicare Equipment, Prosthesis, Orthotics, and Supplies (DMEPOS) for the Centers for Medicare and Medicaid Services (CMS).

“PAAD Co-pay” means the amount of \$5.00 which must be paid by each PAAD beneficiary to the pharmacy toward the cost for each prescription for a legend drug and/or insulin, insulin syringes, insulin needles, and certain diabetic testing materials. The co-pay is not reimbursable by the PAAD. The \$5.00 co-payment shall be paid in full by each eligible person to the pharmacist at the time of each purchase of prescription drugs, and shall not be waived, discounted or rebated in whole or in part.

“Pharmaceutical assistance” means the payments authorized by the Department in the form of a check to a participating pharmacy on behalf of a PAAD beneficiary.

“Pharmacy” means any pharmacy located in New Jersey, operating under a valid permit from the Board of Pharmacy of the State of New Jersey, which has filed an application and agreement of participation which has been approved by the New Jersey Medicaid Program.

“Prescription drugs” means all approved legend drugs, including any interchangeable drug products contained in the latest list approved and published by the Drug Utilization Review Council in conformance with the provisions of the “Prescription Drug Price and Quality Stabilization Act,” and insulin, insulin syringes, insulin needles and certain diabetic testing materials when prescribed.

1. The term “prescription drugs” includes:

i. Any drug product which by Federal law cannot be dispensed unless ordered by a physician, dentist or podiatrist;

ii. Every product considered to be a legend prescription drug which is required by the Federal Food, Drug and Cosmetic Act to have the following statement on the manufacturer’s original packaging label: “Caution: Federal law prohibits dispensing without a prescription”;

iii. Insulin, insulin syringes and insulin needles. While not legend drugs, these items are covered by this program when prescribed;

iv. Diabetic testing materials including blood glucose reagent strips which can be visually read, urine monitoring strips, tapes and tablets and bloodletting devices and lancets (electronically monitored devices are not included); and

v. Syringes and needles for injectable medicines for the treatment of multiple sclerosis.

2. The term “prescription drugs” excludes cosmetics drugs as indicated at N.J.A.C. 8:83C-1.15 unless medically necessary.

“Previous year” means the calendar year preceding the year in which the person is applying or reapplies for PAAD. For example, 1995 is the “previous year” when

referring to an application which is dated between January 1, 1996 through December 31, 1996, inclusive.

1. If a person, who is required to submit a Federal, State and/or City Income Tax return, applies for PAAD at the beginning of a calendar year but has not yet filed an income tax return for the previous year, the last year for which the person filed a tax return is considered to be the "previous year" when completing the PAAD application.

"Provider" means any individual, partnership, association, corporation, institution, or any other public or private entity, agency, or business concern, meeting applicable requirements and standards for participation in the New Jersey Medicaid Program, and the Pharmaceutical Assistance to the Aged and Disabled Program, and where applicable, holding a current valid license, and lawfully providing medical care, services, goods and supplies authorized under N.J.S.A. 30:4D-1 et seq. and amendments thereto.

"Reasonable cost" means the maximum allowable cost of prescription drugs plus a dispensing fee as determined by the Commissioner.

"Resident" means "one legally domiciled within the State (of N.J.) for a period of 30 days immediately preceding the date of application for inclusion in the PAAD Program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile." (See N.J.A.C. 10:69A-6.4 for residence requirements.)

"Special needs trust" means a trust containing the assets of a disabled individual that is established for the sole benefit of the individual by a parent, grandparent, legal guardian or court prior to the time the individual reaches the age of 65. (See N.J.A.C. 8:83-2.2 for provisions.)

"Tenants Lifeline Assistance Program" means a utility assistance program that offers a benefit in the form of a check issued to tenants whose utilities are included in their rent and do not have a separate utility bill.

"Transitional Assistance" means a subsidy that transitional assistance enrollees may apply toward the cost of covered discount card drugs in the manner described in 42 C.F.R. § 403.808(d).

"Viatical settlement" means the sale or cashing in of a life insurance policy prior to death of the insured, due to the fact that the insured has experienced a catastrophic, life-threatening or chronic illness or condition.

As amended, R.1989 d.375, eff. September 25, 1979.  
See: 11 N.J.R. 558(c). As amended, R.1982 d.198, eff. June 21, 1982.  
See: 14 N.J.R. 321(b), 14 N.J.R. 659(a).

Section substantially amended.  
As amended, R.1985 d.259, effective May 20, 1985.  
See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Added definition "reasonable cost".  
Amended by R.1985 d.690, effective January 21, 1986.  
See: 17 N.J.R. 2332(a), 18 N.J.R. 190(a).

Amended "PAAD Co-pay" and "prescription drugs".

Amended by R.1993 d.155, effective April 5, 1993.  
See: 24 N.J.R. 4328(a), 25 N.J.R. 1514(a).

Revised copayment to \$5.00.  
Amended by R.1998 d.176, effective April 6, 1998.  
See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

In "Prescription drugs" added 1v; in "Previous year", inserted "for which the person filed a tax return" following "last year" in 1; and inserted "Provider".

Amended by R.2000 d.286, effective July 3, 2000.  
See: 32 N.J.R. 428(a), 32 N.J.R. 2441(b).

In "Prescription drugs", added 2.  
Amended by R.2003 d.248, effective June 16, 2003.  
See: 34 N.J.R. 3456(a), 35 N.J.R. 2642(d).

Added "Center for Medicare and Medicaid Services (CMS)", "Electronic Data Interchange (EDI) Enrollment Form", "Medicare", "Medicare Part B Supplier", "National Suppliers Clearinghouse (NSC)" and "NSC Supplier Number"; in "Prescription drugs" amended the N.J.A.C. reference in 2.

Amended by R.2004 d.349, effective September 20, 2004.  
See: 36 N.J.R. 1859(a), 36 N.J.R. 4311(a).

Added "Special needs trust" and "Viatical settlement".  
Amended by R.2004 d.459, effective December 20, 2004.  
See: 36 N.J.R. 3619(a), 36 N.J.R. 5682(b).

Added "Authorized representative", "Medicare-endorsed prescription drug discount card program", "endorsed program", or "endorsed discount card program", "Medicare Prescription Drug Discount Card and Transitional Assistance Program" or "Medicare Drug Discount Card Program" and "Transitional Assistance".

#### Case Notes

"Income" defined. Atty.Gen.F.O.1978, No. 3.

#### 8:83-2.2 Special needs trusts

(a) To be considered a special needs trust, the trust shall include the following provisions:

1. The trust shall specifically state that the trust is for the sole benefit of the trust beneficiary;
2. The trust shall specifically state that its purpose is to permit the use of trust assets to supplement, and not to supplant, impair or diminish, any benefits or assistance of any Federal, State or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving;
3. The trust shall specifically state the age of the trust beneficiary, that the trust beneficiary is disabled within the definition of 42 U.S.C. § 1382c(a)(3), and whether the trust beneficiary is competent at the time the trust is established;
4. The trust shall specifically identify, in an attached schedule, the source of the initial trust property and all assets of the trust;
5. If the trust makes provisions which are intended to limit invasion by creditors or to insulate the trust from liens or encumbrances, the trust shall state that such provisions are not intended to limit the State's right to reimbursement or to recoup incorrectly paid benefits;
6. The special needs trust shall state that it is established by a parent, grandparent, or legal guardian of the trust beneficiary or by a court;

7. If the application mailed by PAAD is lost in the mail, misplaced or not received due to the applicant's change of address, it is the applicant's responsibility to contact PAAD for a new application; and

8. If the applicant does not wish the PAAD program to act as his or her "authorized representative" for the purpose of coordinating Medicare and PAAD benefits, it is the applicant's responsibility to file a written "opt-out" letter with the program.

(d) The beneficiary has the responsibility to:

1. Notify PAAD whenever any one of the following occurs:

- i. His or her marital status changes.
- ii. He or she moves anywhere within the State of New Jersey, in which case, he or she shall submit proof of new address.

2. Return his or her eligibility card to PAAD whenever becoming ineligible due to one of the following:

- i. He/she moves out of the State of New Jersey.
- ii. He/she becomes eligible for Medicaid or any other plan of assistance or insurance that wholly covers pharmaceutical services.
- iii. His/her or their annual income increases to an amount which exceeds the legal limit.
- iv. He/she was determined eligible based on his/her disability and he/she stops receiving Social Security Disability benefits.

v. When requested by PAAD because required information to confirm eligibility was not submitted, or scheduled recovery payments are in arrears.

3. Repay the State of New Jersey, upon request, for the cost of benefits incorrectly paid on his or her behalf. Failure to fully repay the State for incorrectly paid benefits could cause the suspension of his or her PAAD benefits in the future, as well as possible withholding of all or some of his or her rebates or refunds which may be due him or her from the State of New Jersey.

As amended, R.1981 d.332, effective September 10, 1981.  
 See: 13 N.J.R. 432(a), 13 N.J.R. 580(c).  
 (d): delete i-iii; renumber iv and v as i and ii; renumber (d)2 as (d)3 and add new text for (d)2.  
 Amended by R.1985 d.259, effective May 20, 1985.  
 See: 17 N.J.R. 367(a), 17 N.J.R. 1318(a).  
 Section substantially amended.  
 Amended by R.1991 d.563, effective November 18, 1991.  
 See: 23 N.J.R. 2623(a), 23 N.J.R. 3514(a).  
 Reference to "beneficiary" added at (c).  
 Amended by R.1993 d.368, effective July 19, 1993.  
 See: 24 N.J.R. 4329(a), 25 N.J.R. 3216(a).  
 Amended by R.1995 d.10, effective January 3, 1995.  
 See: 26 N.J.R. 3142(a), 27 N.J.R. 242(a).  
 Amended by R.1998 d.176, effective April 6, 1998.  
 See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

In (b), substituted a reference to eligibility cards for a reference to temporary eligibility cards in 3, deleted a former 4, recodified former 5 and 6 as 4 and 5, and added a new 6; in (c), deleted "within 60 days after the expiration date" at the end of 7; and in (d), added ", in which case, he or she shall submit proof of new address" at the end of 1ii, and substituted a reference to the State of New Jersey for a reference to the Division of Taxation at the end of 3.

Amended by R.2004 d.459, effective December 20, 2004.  
 See: 36 N.J.R. 3619(a), 36 N.J.R. 5682(b).  
 In (c), rewrote 1ii, added 8.

**8:83-5.7 Combined application for PAAD/Lifeline**

(a) There shall be only one application for those beneficiaries who apply for both PAAD and Lifeline.

- 1. A beneficiary may file one application for both programs on the same form.
- 2. If an applicant wishes to apply only for Lifeline, he or she shall still use the AP-2 form. (See N.J.A.C. 8:83A-4.8).
- 3. On reapplication for Lifeline, the applicant shall complete an AP-12 renewal form.

(b) Beneficiaries who apply for PAAD shall follow the procedures and meet the qualifications of the program in this chapter.

(c) Beneficiaries who apply for Lifeline will follow the procedures and meet the qualifications of the program in N.J.A.C. 8:83A.

New Rule, R.1996 d.581, effective December 16, 1996.  
 See: 28 N.J.R. 3499(a), 28 N.J.R. 5174(a).  
 Amended by R.1998 d.176, effective April 6, 1998.  
 See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).  
 In (a), substituted a reference to the AP-2 form for a reference to the LL-1 form in 2, and added 3.

**SUBCHAPTER 6. ELIGIBILITY REQUIREMENTS**

**Case Notes**

See for historical purposes Atty.Gen.F.O.1978, No. 3 (then existing regulation N.J.A.C. 10:69A-4.3 declared invalid).

**8:83-6.1 Age**

(a) To be eligible for PAAD, the applicant shall be 65 years of age or older or shall be under 65 and over 18 years of age and receive Social Security Title II disability benefits. Individuals under age 65 who receive disability benefits on behalf of someone other than themselves are ineligible. The applicant shall be able to document his or her age upon request by the Department. The Department will require that the applicant submit a photocopy of his or her certificate or other acceptable proof of age if over 65 years of age.

(b) The following are acceptable proofs of age:

- 1. Primary proof: The applicant is required to submit a photocopy of one of the following documents:

- i. Birth certificate;
- ii. Baptismal certificate;
- iii. Bris certificate;
- iv. Social Security records verifying age (can be obtained from local security office);
- v. Railroad retirement letter (can be obtained from Railroad Retirement Board).

2. Secondary proofs: If the applicant cannot supply one of the documents listed above, copies of any two of the following documents are acceptable:

- i. Insurance policy;
- ii. Driver's license;
- iii. School record;
- iv. State or Federal census record;
- v. Church record of Baptism (age five or after);
- vi. Confirmation certificate;
- vii. Marriage record;
- viii. Employment record;
- ix. Union record;
- x. Military record;
- xi. Medicare card;
- xii. Delayed birth certificate;
- xiii. Applicant's child's birth certificate;
- xiv. Physician's or midwife's record of applicant's birth;
- xv. Immigration record;
- xvi. Naturalization record;
- xvii. Passport.

(c) If under age 65, the following are acceptable proofs of disability:

1. A copy of a Social Security award certificate issued in the last six months.
2. A Social Security Form or record.
3. A document issued by Social Security that establishes Medicare eligibility. The document must be dated within six months prior to the date of application.

Amended by R.1985 d.259, effective May 20, 1985.

See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Substantially amended.

Amended by R.1988 d.211, effective May 16, 1988.

See: 20 N.J.R. 369(a), 20 N.J.R. 1106(a).

Added text to (b)5 "letter (can be obtained from Railroad Retirement Board)".

Amended by R.1990 d.614, effective December 17, 1990.

See: 22 N.J.R. 2218(a), 22 N.J.R. 3956(a).

In (a): added sentence regarding ineligibility of those under 65 who receive disability benefits on behalf of someone other than themselves. Stylistic revisions to text.

Amended by R.1998 d.176, effective April 6, 1998.

See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

In (b)1, substituted a reference to Social Security records verifying age for a reference to Social Security form No. 2458 in iv, and deleted a former vi; in (b)2, deleted a former v, recodified former vi through xi as v through x, inserted a new xi, deleted a former xii, and recodified former xiii through xviii as xii through xvii; and in (c), rewrote 2, and added 3.

### 8:83-6.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than \$21,850 to be eligible for PAAD.

(b) Any married permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than \$26,791 to be eligible for PAAD.

1. An applicant and spouse shall be considered separate and eligibility determined under the single income standard when each maintains a separate residence and the applicant does not have access to the spouse's income.

i. Any support payment received by the applicant for the sole benefit of the applicant shall be considered as income for PAAD eligibility purposes.

2. An applicant and spouse may be considered separated when the spouse has been institutionalized in a long-term facility, either skilled or intermediate, or in a State or county psychiatric hospital at least 30 consecutive days prior to application.

i. PAAD shall consider the applicant and spouse separated only when doing so is more favorable to the applicant for PAAD (for example, when the income of an applicant and his institutionalized spouse is combined at \$25,060, the applicant is ineligible for PAAD, but if the applicant and spouse are considered separated, the applicant could be eligible for PAAD under the single income standard. If the institutionalized spouse was not covered by Medicaid, the spouse could become eligible under the single income standard).

(c) All income, from whatever source derived, is considered in determining eligibility for the purpose of PAAD. Jointly owned income sources, will be allocated according to degree of ownership.

1. All income, taxable and nontaxable, is to be included. Examples of possible sources of income (gross amounts unless otherwise noted) are as follows:

i. Social Security benefits paid to or on behalf of the applicant;

- ii. Veterans benefits;
  - iii. Disability benefits, whether public or private;
  - iv. Salaries;
  - v. Wages;
  - vi. Bonuses;
  - vii. Commissions;
  - viii. Fees;
  - ix. Dividends;
  - x. Interest taxable and nontaxable;
  - xi. Capital gains;
  - xii. Royalties;
  - xiii. Bequests and death benefits;
  - xiv. Support payments;
  - xv. Unemployment benefits;
  - xvi. Pensions and black lung benefits;
  - xvii. Annuities (contributory and non-contributory, qualified and nonqualified);
  - xviii. Retirement benefits including distribution from Individual Retirement Arrangements (IRAs) (Traditional, Simple, Roth, Educational) and benefit payments from foreign countries;
  - xix. Business income (net);
  - xx. Fair market value of prizes and awards.
  - xxi. Gambling and lottery winnings; and
  - xxii. Rental income (net after expenses).
2. Sources of income which are excluded in considering eligibility for PAAD are as follows:
- i. Benefit amounts received under the New Jersey State Lifeline Credit Program/Tenants Lifeline Assistance Program;
  - ii. Benefits received under New Jersey State Homestead Rebates;
  - iii. Proceeds from spouse's life insurance;
  - iv. Capital gains of up to \$250,000 for a single person or up to \$500,000 for a married couple on the sale of a main home which is also excluded from income taxation by IRS and the New Jersey Division of Taxation;
  - v. Stipends from the Volunteers to Service in America (VISTA), Foster Grandparents programs, Workforce 55+ program and programs under Title V of the Older Americans Act of 1965;
  - vi. Agent Orange payments;
  - vii. Reparation payments to Japanese Americans by the Federal Government pursuant to sections 105 and 106 of the Civil Liberties Act of 1988, P.L. 100-383 (50 U.S.C. App. 1989b-4 and 1989b-5);
  - viii. Rewards involving health care fraud or abuse which apply to N.J.A.C. 10:49-13.4;
  - ix. Holocaust reparations;
  - x. Proceeds from viatical settlements;
  - xi. Proceeds received by the beneficiary of a Special Needs Trust (see N.J.A.C. 8:83-2.2 for provisions);
  - xii. Rollovers from one tax deferred financial instrument (pension, annuity, IRA, insurance contract or other retirement benefits) to another tax deferred financial instrument;
  - xiii. 1035 Tax Free Exchanges of a policy or contract handled between two insurance companies; and
  - xiv. An insurance policyholder's original contributions if Demutualization of the policy occurs (in that case, only the earnings on the policy would be counted);
- (d) The applicant must be able to document the amounts reported upon request by the Department, and will be required to submit photocopies of his/her Federal, State and/or City income tax return and other acceptance evidence.
- (e) PAAD eligibility is conferred based upon annual income for the current calendar year, which is estimated at the time of application. Previous year income information is used as a gauge and supplements estimates of current income to determine current eligibility. However, if previous year income exceeds the standard, but current year income is expected to fall within legal limits, an initial applicant may estimate current year income for the purpose of establishing PAAD eligibility.
- (f) Since PAAD eligibility is based upon actual annual income, if the actual income for the current calendar year exceeds the PAAD income standard, the person will become ineligible for the entire calendar year and shall be required to repay benefits paid for all prescriptions and Lifeline benefits from January 1 through December 31 of the calendar year.
- (g) Upon renewal of eligibility, all re-applicants must submit previous year income information to substantiate previous estimates. Requests by re-applicants to use anticipated income, as the basis for eligibility, when previous year income exceeds the PAAD standard, will be reviewed individually.
- (h) The PAAD program shall take necessary action to recover the full amount of payments made on behalf of beneficiaries during an ineligible period, when appropriate.

(i) PAAD beneficiaries are required to notify the PAAD program immediately if their current year income exceeds the PAAD income standard.

(j) Applicants who combine their income by filing joint Federal and/or State income tax returns, must combine their income for PAAD eligibility purposes for the same time period and their eligibility determination shall be based on the joint income standard, except when (b)2 above applies.

(k) Medical or other expenses are not considered or deducted from gross income for PAAD eligibility purposes.

(l) Net losses in one income category shall not be used to offset income in another category.

(m) Beginning January 1, 1996 and annually thereafter, the income eligibility limits shall increase by the amount of the maximum Social Security benefit cost-of-living adjustment for that year for single and married persons, respectively, in accordance with 42 U.S.C. § 415(i)(2)(D), incorporated herein by reference. The Commission will provide notice of the new income limits annually by publication in the New Jersey Register.

Amended by R.1982 d.198, effective June 21, 1982.  
See: 14 N.J.R. 321(b), 14 N.J.R. 659(a).

Section substantially amended.

Amended by R.1985 d.690, effective January 21, 1986.  
See: 17 N.J.R. 2332(a), 18 N.J.R. 190(a).

Single permanent resident income changed from "\$12,000" to "\$13,500"; married from "\$15,000" to "\$16,250".

Amended by R.1988 d.174, effective April 18, 1988.  
See: 19 N.J.R. 2375(a), 20 N.J.R. 902(a).

Changed "\$13,250 to \$13,650" and "\$16,250 to \$16,750".  
Amended by R.1990 d.182, effective March 19, 1990.

See: 21 N.J.R. 3047(a), 22 N.J.R. 953(a).

Added (c)2iv. regarding the one-time capital gain.

Amended by R.1990 d.614, effective December 17, 1990.  
See: 22 N.J.R. 2218(a), 22 N.J.R. 3956(a).

In (c)2: added v.-vi.

Amended by R.1991 d.563, effective November 18, 1991.  
See: 23 N.J.R. 2623(a), 23 N.J.R. 3514(a).

Income eligibility revised upwards.

Amended by R.1993 d.608, effective December 6, 1993.  
See: 25 N.J.R. 3407(a), 25 N.J.R. 5528(b).

Amended by R.1994 d.191, effective April 18, 1994.  
See: 25 N.J.R. 5750(a), 26 N.J.R. 1657(a).

Amended by R.1995 d.10, effective January 3, 1995.  
See: 26 N.J.R. 3142(a), 27 N.J.R. 242(a).

Amended by R.1996 d.7, effective January 2, 1996.  
See: 27 N.J.R. 3541(a), 28 N.J.R. 184(c).

In (a) and (b) increased income limits, and added (m).  
Administrative Change.

See: 28 N.J.R. 3597(a).

In (a) and (b) increased income limits.

Administrative change.

See: 29 N.J.R. 2562(a).

In (a), substituted "\$17,550" for "\$17,056"; and in (b), substituted "\$21,519" for "\$20,913".

Administrative change.

See: 30 N.J.R. 68(a).

Amended by R.1998 d.176, effective April 6, 1998.  
See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

Rewrote (b)1; in (b)2, substituted "may" for "shall" following "spouse" in the introductory paragraph and added i; in (c)1, inserted new i through iii, recodified former i through xvii as iv through xx, and

deleted "(including Social Security)" at the end of new xvi; and in (f), substituted "benefits paid for all prescriptions and Lifeline benefits" for "for all prescriptions" following "repay".

Administrative change.

See: 31 N.J.R. 54(b).

Administrative change.

See: 32 N.J.R. 59(a).

Administrative change.

See: 33 N.J.R. 554(b).

In (a), substituted "\$19,238" for "\$18,587" and in (b), substituted "\$23,589" for "\$22,791".

Administrative change.

See: 34 N.J.R. 935(a).

Administrative change.

See: 35 N.J.R. 1115(a).

Administrative correction.

See: 35 N.J.R. 5619(b).

Amended by R.2004 d.349, effective September 20, 2004.

See: 36 N.J.R. 1859(a), 36 N.J.R. 4311(a).

In (b), inserted "for the sole benefit of the applicant" preceding "shall be considered" in 1i and substituted "\$ 25,060" for "\$ 24,000" in 2i; rewrote (c); in (m), substituted "adjustment" for "increase" following "cost-of-living".

Administrative change.

See: 36 N.J.R. 5683(a).

Administrative change.

See: 37 N.J.R. 5001(a).

#### Case Notes

Pharmaceutical Assistance to the Aged and Disabled regulations limiting eligibility to persons actually receiving Social Security disability benefits upheld against constitutional challenge as having a rational state purpose in being necessary for the financial viability of the program. *Barone v. Dept. of Human Services*, 210 N.J. Super. 276, 509 A.2d 786 (App.Div.1986) affirmed 107 N.J. 355, 526 A.2d 1055.

Pharmaceutical assistance beneficiary must repay state if combined income over minimum eligibility because of "in kind" services rendered. *R.S. v. Division of Medical Assistance and Health Services*, 97 N.J.A.R.2d (HLT) 39.

Inclusion of applicants' Individual Retirement Account as income was appropriate. *S. K. v. New Jersey Division of Medical Assistance and Health Services, Pharmaceutical Assistance to the Aged and Disabled*, 94 N.J.A.R.2d (PAA) 1.

#### 8:83-6.3 Citizenship

A person shall not be required to be a citizen of the United States in order to be eligible for PAAD.

#### 8:83-6.4 Residence

(a) The statute provides that "any ... resident of this State ... shall be eligible for PAAD. 'Resident' means one legally domiciled within the State for a period of 30 days immediately preceding the date of application for inclusion in the program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile. Absence from this State for a period of 12 months is prima facie evidence of abandonment of domicile. The burden of establishing legal domicile within the State is upon the applicant."

1. Interpretation: The term resident shall be interpreted to mean a person having his customary place of abode in New Jersey. The fact that an individual was or may have been motivated to move to New Jersey because of the availability of medical facilities does not, of itself, justify a finding that he has not established a residence in this State; however, such inquiry need not be made if an individual has been physically present in New Jersey for a period exceeding three months.

2. The applicant must be able to substantiate residence upon request by the Department and is required to submit photocopies of two documents showing evidence of current residence at the time of initial application.

3. The following are examples of sources of evidence of residence:

- i. Motor vehicle records (e.g., valid driver's license);
- ii. Landlord's records and rent receipts;
- iii. Public utility records and receipts (e.g., electric bill);
- iv. Personal property assessment records;
- v. Records of business or professional people, such as doctors, department stores, etc.;
- vi. Post office records;
- vii. Records of social agencies, public or private;
- viii. Employment records.

4. Determination as to continued New Jersey residence of a person absent from this State shall be based upon contact with the applicant by a representative of the Department.

5. In reaching a decision as to continuing New Jersey residence of an absentee, the issue is whether the individual intends to return to New Jersey or remain indefinitely in the other jurisdiction. If a beneficiary leaves New Jersey with the intent to establish a place of abode elsewhere, he becomes ineligible under the PAAD program and must notify the Pharmaceutical Assistance to the Aged and Disabled program of the address and return the PAAD eligibility card.

Amended by R.1985 d.259, effective May 20, 1985.

See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Substituted "within" for "with".

Amended by R.1985 d.690, effective January 21, 1986.

See: 17 N.J.R. 2332(a), 18 N.J.R. 190(a).

3.ii deleted.

Amended by R.1998 d.176, effective April 6, 1998.

See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

In (a), deleted "and reapplication" at the end of 2.

#### 8:83-6.5 Recipient of other assistance and pharmaceutical coverage

(a) The State statute provides that any person shall be ineligible for PAAD if he/she is otherwise qualified for assistance under the Act of which the PAAD Act is a

supplement (Chapter 413, Laws of 1968). This is interpreted to mean that a State resident 65 years of age or older cannot be eligible for PAAD when receiving Medicaid benefits.

(b) The State statute further provides that any otherwise eligible person whose prescription drug costs are wholly covered by any other plan of assistance or insurance shall be ineligible for PAAD.

#### 8:83-6.6 PAAD eligibility application and renewal application forms

(a) The Pharmaceutical Assistance to the Aged and Disabled Eligibility Application (AP-2) is the only acceptance form to be utilized in determining the applicant's initial eligibility for PAAD. These forms are available to applicants in central and local offices and other convenient locations throughout the State.

(b) The only acceptable form to be utilized in determining the beneficiary's continuation of eligibility will be the PAAD Eligibility Renewal Application Form (AP-12). This form is automatically mailed to the beneficiary approximately four months prior to the eligibility expiration date.

Amended by R.1985 d.259, effective May 20, 1985.

See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Substituted "four months" for "90 days".

#### 8:83-6.7 Social Security account number

(a) Each applicant for PAAD benefits must include his or her Social Security Account Number (SSAN) on the application/reapplication form. The SSAN is a unique and verifiable number which is utilized to differentiate between persons with the same name. Married persons must also indicate the SSAN of their spouse.

(b) In the event that the applicant does not have a SSAN, a unique identifying number will be assigned by the PAAD program. This number will be used throughout the beneficiary's PAAD eligibility.

#### 8:83-6.8 Certification

The applicant for PAAD benefits must certify that all the answers to the questions and items on the application/renewal application form are true and accurate to the best of his/her knowledge. This certification must be dated, signed or marked by the applicant and spouse (if married), and the preparer of the form (if other than the applicant), before the application/renewal application can be processed.

#### 8:83-6.9 Authorization

(a) By signing/marketing the certification and authorization statement on the application/renewal application form, the applicant/reapplicant authorizes:

1. The Department to verify any information on the form by contacting the Social Security Administration, the

Internal Revenue Service, the New Jersey Division of Taxation, employers and others as the need arises;

2. Visitation and review by representatives of the Department, or the Division of Medical Assistance and Health Services;

3. Assignment of benefits to the State of New Jersey if he/she or his/her spouse has any other plan of assistance or insurance that covers, at least in part, the cost of prescription drugs; and

4. Prescribing practitioners to release information concerning prescriptions which have been paid by the PAAD program, to the Department and the New Jersey Division of Medical Assistance and Health Services or any law enforcement authority of this State charged with the investigation or prosecution of violations of the criminal provisions of the "Pharmaceutical Assistance to the Aged and Disabled Act" or the criminal laws of this State.

Amended by R.1984 d.617, effective January 21, 1985.

See: 16 N.J.R. 2050(a), 17 N.J.R. 201(b).

(a)4 added.

#### 8:83-6.10 Eligibility period

(a) A PAAD eligibility card is effective for the dates indicated on the card. The PAAD beneficiary shall renew his or her eligibility in accordance with the provisions of N.J.A.C. 8:83-5.3(b). In that case, he or she would receive an updated eligibility card automatically for the second year, and would complete a renewal application every two years. Beneficiaries who are subject to the two year renewal provision will have their eligibility card renewed automatically for one additional year.

(b) Approximately four months prior to his or her expiration date, PAAD will notify the beneficiary if he or she must complete a renewal form. Renewal applications must be returned to the PAAD Program by the beneficiary at least 45 days prior to the expiration date to ensure continuous coverage.

Amended by R.1985 d.259, effective May 20, 1985.

See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Old text deleted and new text substituted.

Amended by R.1985 d.690, effective January 21, 1986.

See: 17 N.J.R. 2332(a), 18 N.J.R. 190(a).

Income changed from "\$9,000" to "\$10,000" for single and married raised from "\$12,000" to "\$13,000".

Amended by R.1988 d.174, effective April 18, 1988.

See: 19 N.J.R. 2375(a), 20 N.J.R. 902(a).

Substituted "expiration" for "renewal".

Amended by R.1990 d.614, effective December 17, 1990.

See: 22 N.J.R. 2218(a), 22 N.J.R. 3956(a).

In (a): increased income level from \$10,000 to \$11,000 for single persons and from \$13,000 to \$14,000 for married persons.

Amended by R.1991 d.563, effective November 18, 1991.

See: 23 N.J.R. 2623(a), 23 N.J.R. 3514(a).

References to eligibility effective dates revised.

Amended by R.1998 d.176, effective April 6, 1998.

See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

In (a), substituted "the dates indicated on the card" for "one year" at the end of the first sentence; and in (b), deleted "he/she is eligible for biennial eligibility or if" following "beneficiary if" in the first sentence.

#### 8:83-6.11 Confidentiality and disclosure of information

(a) All personally identifiable information regarding applicants or beneficiaries obtained or maintained under this program shall be confidential and shall not be released without the written consent of the applicant or beneficiary or their authorized agent.

(b) Disclosure of information without the consent of the applicant, beneficiary or their authorized agent shall be limited to purposes directly connected with the administration of the program pursuant to State law and regulations.

(c) The prohibition of (a) above against unauthorized disclosure shall not be construed to prevent:

1. The release of statistical or summary data or information in which applicants or beneficiaries cannot be identified.

2. The release to the Attorney General or other legal representative of this State of information or files relating to the claim of any applicant, beneficiary or their authorized agent challenging the program's statute, regulations or a determination made pursuant thereto, or against whom an action or proceeding for the recovery of incorrectly paid benefits has been instituted.

3. The release of information to the program's contractors, the Lifeline Credit Program, Tenant Lifeline Assistance Program, Social Security Administration, the Division of Medical Assistance and Health Services and other plans of assistance or insurance that covers the cost of prescription drugs in whole or in part.

4. The release of information or files to the State Treasurer or other governmental agency or to their duly authorized representatives, for an audit, review of expenditures or similar activity authorized by law.

5. The release of information or files to any law enforcement authority of this State charged with the investigation or prosecution of violations of the criminal provisions of the "Pharmaceutical Assistance to the Aged and Disabled Act" or the criminal laws of this State.

6. The release of information to the Department and participating licensed veterinarians for the purpose of verifying eligibility for benefits under the Animal Population Control Program.

7. The release of information or files to County Welfare Agencies for the purpose of determining eligibility for Medicaid benefits or for subsequent verification of Medicaid eligibility.

8. The release of information or files to the Division of Motor Vehicles in the Department of Law and Public Safety for the implementation of the Fair Automobile Insurance Act of 1990 (P.L. 1990, c.8).