

CHAPTER 46

DETERMINATION OF ELIGIBILITY AND CONTRIBUTION TO CARE AND MAINTENANCE REQUIREMENTS

Authority

N.J.S.A. 30:4-23, 30:4-25.2 and 30:6D-23 et seq.

Source and Effective Date

R.2000 d.361, effective August 4, 2000.
See: 32 N.J.R. 2020(a), 32 N.J.R. 3326(a).

Executive Order No. 66(1978) Expiration Date

Chapter 46, Determination of Eligibility and Contribution to Care and Maintenance Requirements, expires on August 4, 2005.

Chapter Historical Note

Chapter 46, Application and Admission to Functional Services, was adopted and became effective prior to September 1, 1969.

Chapter 46, Application and Admission to Functional Services, was repealed and Chapter 46, Determination of Eligibility, was adopted as new rules by R.1990 d.409, effective September 17, 1990. See: 21 N.J.R. 3712(a), 22 N.J.R. 3030(a).

Pursuant to Executive Order No. 66(1978), Chapter 46, Determination of Eligibility, was readopted as R.1995 d.511, effective August 17, 1995. See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

Subchapter 5, Offers by the Division, Subchapter 6, Termination, and Subchapter 7, Appeals Process, were adopted as new rules by R.1998 d.468, effective September 8, 1998. See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

Pursuant to Executive Order No. 66(1978), Chapter 46, Determination of Eligibility and Contribution to Care and Maintenance Requirements, was readopted as R.2000 d.361, effective August 4, 2000. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

10:46-1.1 Purpose; authority

Pursuant to N.J.S.A. 30:1-12, 30:4-27.2, 30:4-25.2, Application for determination of eligibility, N.J.S.A. 30:4-25.9, 30:6D-1 et seq. (P.L. 1985, c.145) and 30:4-60 et seq. (P.L. 1995, c.155), the Division of Developmental Disabilities, Department of Human Services (Division), intends this chapter to establish guidelines and criteria for determinations of eligibility for services, to individuals with developmental disabilities and their financial ability and that of their legally responsible relatives to contribute to the cost of care and maintenance in providing residential services.

Amended by R.1998 d.468, effective September 8, 1998.
See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

Rewrote the section.

10:46-1.2 Scope

The provisions of this chapter shall apply to all individuals making application to the Division for services under N.J.S.A. 30:4-165.1 et seq. The requirement of an assessment for financial ability to pay shall apply only to those eligible individuals receiving services who have been residentially placed by the Division. This does not include individuals residing in supported living arrangements, in private ICF/MR placements not funded by the Division, or those receiving Challenge Grants or participating in self-determination.

Amended by R.1998 d.468, effective September 8, 1998.
See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

Added the second and third sentences.

Amended by R.2000 d.361, effective September 5, 2000.
See: 32 N.J.R. 2020(a), 32 N.J.R. 3326(a).

Administrative change.

10:46-1.3 Definitions

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

“Application” means the form available at Division offices (see N.J.A.C. 10:46-3.2(a)). The term includes any supporting documentation necessary to the making of an informed determination with regard to applicant eligibility, including medical information. Supporting documentation may include, but is not limited to, educational, psychiatric, psychological, vocational, rehabilitation or social service records.

“Appropriate program of training” means that program of training which at a minimum includes orientation and instruction in identification of developmental disabilities, use of evaluation tools and interaction techniques.

“Assets or resources” means, but is not limited to, cash, trusts, bank accounts, certificates of deposit, stocks, bonds, mutual funds, real estate and savings bonds and personal property pursuant to N.J.S.A. 30:4-25.1a(8).

“Assignment” means the written agreement of the individual to give the Department of Human Services the right to receive and collect any and all proceeds due to the individual from such items as insurance policies, annuities and law suit settlements.

“Assistive devices” mean supports provided to aid in moving and positioning an individual while personal care is given, or which aid in communication.

“Burial fund” means an identifiable fund which is clearly designated and set aside for an individual’s burial expenses.

“Case management” means the linking and coordination of services across family, agency and professional lines to develop and attain goals and objectives embodied in the Individual Habilitation Plan. It involves monitoring of and advocating for the individual’s needs with individual and family participation.

“Challenge grant” refers to a program in which the Division provides funds to an agency, which may be used in combination with other resources available to the individual, which will meet the individual’s needs sufficiently to allow the individual to be removed from the waiting list.

“Child” means a person under 18 years of age.

“Commissioner” means the Commissioner of the State Department of Human Services.

“Consumer price index (CPI)” means the measure of the average change in prices over time in a fixed group of goods and services, as issued by the U.S. Department of Labor.

“Cost of care and maintenance” means the daily rate set by the State Board of Human Services for the residential placement of the individual or the daily rate set by the Commissioner of the Department of Human Services for community care homes (except respite homes) regulated under N.J.A.C. 10:44B multiplied by the number of days the individual is/or was in the placement.

“Counselling” means advice or guidance provided by a person knowledgeable about services to persons with developmental disabilities.

“Dependent” means an individual who meets the State and Federal income tax requirements for being claimed by the client or the LRR(s) on State and Federal income tax forms.

“Developmental disability” means a severe chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifest before age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations before the age of 22 in three or more of the following areas of major life actively, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self sufficiency; and
5. Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.
6. Developmental disability includes, but is not limited to, severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairment where the above criteria are met.

“Director” means the Director of the Division of Developmental Disabilities.

“Disposable income” means the total income from any and all sources, less Federal and State income taxes, FICA and deductions allowable in accordance with N.J.A.C. 10:46-2.5.

“Division” means the Division of Developmental Disabilities.

“Educational and related services” means those programs and/or therapies that are provided to a pupil in association with a free appropriate education.

“Family” means the LRR(s), any dependent minors and any other person(s) who are claimed on the LRR(s) income tax forms, and the individual receiving Division services.

“Family maintenance standard (FMS)” means the income needed to meet a family’s minimum needs. The FMS establishes the lower limit on the charges to the individual and/or the LRR for the individual’s care and maintenance. See N.J.A.C. 10:46-2.5.

“Family support” means those services described under N.J.A.C. 10:46C.

“Fixed income” means that the person is retired, receiving disability benefits, receiving public assistance or is not otherwise actively employed.

“Guardianship services” means those services and programs provided by the Division for the purpose of implementing its responsibility toward the individual with developmental disabilities for whom it is performing the services of guardianship of the person.

“Home adaptation” means renovations to the home within resources available to the Division to accommodate a person’s physical or sensory disability.

“Income” means wages, benefits, interest earned, pensions, annuity payments, and support from a third party pursuant to statute, rule or order or by contract or any other receipt pursuant to N.J.S.A. 30:4-25.1a(7). Income does not include income earned by an individual receiving services which is below the minimum wage rate.

“Intake team” means at least two staff members, one who is the intake worker and one who is a psychologist, who are responsible to determine if the eligibility criteria contained in N.J.A.C. 10:46 have been met.

“Intake worker” means a professional employee of the Division who completes an appropriate program of training as provided by the Division. The program of training at a minimum includes orientation and instruction in identification of developmental disabilities, use of evaluation tools and interaction techniques.

“Legally responsible relative (LRR)” means a spouse, mother, father or adult child of an individual receiving services who is statutorily responsible for the cost of care and maintenance pursuant to N.J.S.A. 30:4-66.

“Marginal income” means the total amount remaining after the cost of the FMS is subtracted from the disposable income.

“Medical cost standard (MCS)” means the minimum amount needed to meet a family’s medical costs. The MCS establishes a maximum limit on the charges to be included in the FMS. See N.J.A.C. 10:46-2.5.

“Medical information” means reports that have been provided by licensed practitioners which demonstrate the existence of a developmental disability as well as the individual’s current physical condition and significant medical history.

“Mental illness” means a current substantial disturbance of thought, mood, perception or orientation which significantly impairs judgement, behavior or capacity to recognize reality but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability. (P.L. 1987, c.116.)

“Mental impairment” means impairment in cognitive, neurological, sensory or cerebral functioning resulting from other than mental illness.

“Mental or physical impairment” means impairment in cognitive, neurological, sensory, cerebral or motor functioning resulting from other than mental illness.

“Other responsible party” means representative payee, trustee or executor, or guardian of the property, as applicable.

“Personal care” means assistance in essential daily activities such as bathing, dressing, transferring, toileting, feeding, grooming and hygiene.

“Physical impairment” means an impairment in motor functioning resulting from other than mental illness.

“Plan to achieve self support (PASS)” means a written course of action approved by the Social Security Administration in accordance with 20 C.F.R. § 416.1226. A PASS allows an individual to set aside income and/or resources for a specified period of time for a work goal. Resources set aside under a PASS are not counted toward the \$2,000 resource limit for SSI eligibility purposes. If income is set aside under a PASS, it is not counted in determining the SSI benefit payment amount. A PASS may be used to set aside money for education, vocational training, or starting a business.

“Primary residence” means the individual’s living arrangement as follows: if he or she lives independently; if the individual resides with his or her family; or the residence of his or her family that is the home of record for official purposes (that is, voter registration, income tax, census, etc.). Second homes or privately made residential placements cannot be considered to be a primary residence.

“Regional Administrator” means the staff member with administrative authority over community operations within several counties who oversee intake teams.

“Rehabilitation technology” means services which provide a systematic application of engineering methodology or scientific principles to meet the needs of, and address the barriers confronted by, individuals in areas that include education, employment, transportation, independent living, and recreation.

“Resident” means a person who is a domiciliary of New Jersey for other than a temporary purpose and who has expressed an intention to have his or her primary residence in the state.

“Respite services” means a short-term arrangement to provide relief to the primary care giver(s) from continuous care of the person.

“Self-determination” means a service delivery system which allows an individual with developmental disabilities, in connection with his or her legal guardian, if any, family and selected friends to identify appropriate services and supports and determine how an individual budget, as well as personal, family and community resources, can be used to develop a support plan which may include living arrangements such as shared living, supported living and other individualized housing and allow the individual to be an integral part of their community.

“Supported employment” means paid employment for persons with developmental disabilities who, because of his or her disability, need ongoing support to perform in a work setting. Supported employment is conducted in work sites in which people without a disability are employed.

“Supported living” means a form of community residence as defined at N.J.A.C. 10:44A-1.3 in which the individual is responsible to pay for his or her room and board.

“Support services” mean services provided to developmentally disabled persons and their families that are generally of short term duration or are a specific type of care, treatment, training, assistance or device that will help the individual avoid the need for more intensive care which would require coordination of a sequence of generic or specialized services.

“Team” means two or more Division employees and/or professionals holding appropriate certification and/or licensure in their respective fields who review recommendations regarding eligibility. The professions represented on the team may vary according to the presenting need for services. At least one member of the team shall have the following qualifications:

1. A doctor of medicine or osteopathy;
2. A registered nurse; or
3. A professional program staff person who is licensed, certified or registered, as applicable. If the professional program staff do not fall under the jurisdiction of State licensure, certification or registration requirements, he or she shall meet the following qualifications.
 - i. To be designated as an occupational therapist, an individual shall be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body;
 - ii. To be eligible as an occupational therapy assistant, an individual shall be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or other comparable body;
 - iii. To be eligible as a physical therapist, the individual shall be eligible for certification as a physical therapist by the American Physical Therapy Association or other comparable body;

iv. To be eligible as a physical therapy assistant, an individual shall be eligible for registration by the American Physical Therapy Association or be a graduate of a two-year college level program approved by the American Physical Therapy Association or other comparable body;

v. To be designated as a psychologist, an individual shall have at least a master’s degree in psychology from an accredited school;

vi. To be designated as a social worker, an individual must:

A. Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or

B. Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body;

vii. To be designated as a speech language pathologist or audiologist, an individual shall:

A. Be eligible for a certificate of clinical competence in Speech Language Pathology or Audiology granted by the American Speech Language Hearing Association or other comparable body; or

B. Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification;

viii. To be designated as a professional recreation staff, an individual shall have a bachelor’s degree in recreation or in a specialty area such as art, dance, music or physical education;

ix. To be designated as a professional dietician, an individual shall be eligible for registration by the American Dietetics Association;

x. To be designated as a human services professional, an individual must have at least a bachelor’s degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counselling and psychology).

“Termination of services” means action taken by the Division under the circumstances set forth in N.J.A.C. 10:46-6 when an individual, LRR(s) or any other responsible party fails to make the assessed payment.

“Treasury Formula-DDD” means the method of determining the financial ability of an individual or LRR(s) to pay for care and maintenance for an individual receiving services, in accordance with N.J.A.C. 10:46-2.5.

Amended by R.1995 d.511, effective September 18, 1995.
See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).
Amended by R.1998 d.468, effective September 8, 1998.
See: 30 N.J.R. 1737(a), 30 N.J.R. 2169(a), 30 N.J.R. 3271(a).

Inserted "Assets or resources", "Assignment", "Burial fund", "Challenge grant", "Consumer price index (CPI)", "Cost of care and maintenance", "Dependent", "Disposable income", "Family", "Family maintenance standard (FMS)", "Income", "Legally responsible relative (LRR)", "Marginal income", "Medical cost standard (MCS)", "Other responsible party", "Self-determination", "Supported living", "Termination of services" and "Treasury Formula-DDD".

Amended by R.1999 d.311, effective September 7, 1999.
See: 31 N.J.R. 95(a), 31 N.J.R. 2633(b).

Inserted "Assistive devices", "Family support", "Home adaptation", "Personal care", "Regional Administrator", "Rehabilitation technology", "Respite services", and "Supported employment".

Amended by R.1999 d.405, effective November 15, 1999.
See: 31 N.J.R. 1890(a), 31 N.J.R. 3632(a).

Inserted "Fixed income" and "Plan to achieve self support (PASS)".
Amended by R.2000 d.315, effective August 7, 2000.

See: 32 N.J.R. 157(a), 32 N.J.R. 2899(a).

Inserted "Primary residence".

Amended by R.2000 d.361, effective September 5, 2000.

See: 32 N.J.R. 2020(a), 32 N.J.R. 3326(a).

Rewrote "Self-determination".

Case Notes

Division of Developmental Disabilities should have promulgated a rule about eligibility standards before using the standards. *T.L. v. Division of Developmental Disabilities*, Dept. of Human Services, 243 N.J.Super. 476, 580 A.2d 272 (A.D.1990).

Disability was "chronic" despite the fact that the question about the man's ability was recent. *T.L. v. Division of Developmental Disabilities*, Dept. of Human Services, 243 N.J.Super. 476, 580 A.2d 272 (A.D.1990).

Applicant whose IQ exceeded cutoff level was ineligible for developmental disability services. *R.S. v. Department of Human Services*, 96 N.J.A.R.2d (DDD) 66.

Profoundly retarded and multiply handicapped man whose day program placement was insufficient to meet his needs would be allowed to transfer to more suitable program. *S.G. v. Division of Developmental Disabilities*, 96 N.J.A.R.2d (DDD) 51.

Applicant for services qualified as developmentally disabled and thus was entitled to those services. *J.D. v. Division of Developmental Disabilities*, 96 N.J.A.R.2d (DDD) 32.

Profoundly retarded man could not change domicile. *K.H. v. Division of Developmental Disabilities Department of Human Resources*, 93 N.J.A.R.2d (DDD) 1.

SUBCHAPTER 2. ELIGIBILITY CRITERIA

10:46-2.1 General eligibility

(a) An individual determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2, and who is a resident of the State of New Jersey, shall be eligible for services of the Division contingent upon cooperation with the financial assessment investigation and payment of any fees assessed.

(b) With regard to a child, the substantial functional limitation(s) shall be evaluated according to expectations based upon the child's chronological age.

(c) With regard to an individual who has entitlements to a free public education pursuant to N.J.S.A. 18A:1-1 et seq., who is otherwise eligible, the expenses of educational and related services shall not be borne by the Division.

(d) If a determination has been made by a local district board of education that an individual's educational needs can only be appropriately served in a living situation other than the individual's home, then the expenses of that residential placement shall not be borne by the Division.

(e) For applicants who present documentation of mental retardation, the criteria for establishing the presence of mental retardation shall be an IQ score of less than 70, demonstrated as follows:

1. The person has an IQ score of 60 to 69; and
 - i. There is an impairment in adaptive behavior; and/or
 - ii. There is a chronic medical problem; and/or
 - iii. There is an impairment in behavioral, sensory or motor function and in the ability to perform basic skills; or
2. The person has an IQ score of 59 or below.

(f) At the time of application, the individual, legal guardian and/or his or her LRR(s) shall be advised by Division staff that the Division shall conduct an investigation into the ability of the individual and/or LRR(s) to pay for services, if the individual is ultimately determined eligible and offered a residential placement. Individuals applying for support services only, in accordance with N.J.A.C. 10:46-2.3(b) through (d), shall not be required to submit financial information or pay a fee.

1. The application shall clearly advise the individual, legal guardian, LRR(s) and other responsible parties that a determination of the ability to pay and agreement to pay shall be part of the eligibility process.

2. The application shall clearly advise that if it is determined that there is no ability to pay but all other eligibility criteria are met, eligibility shall not be denied.

3. The application shall clearly advise the individual, legal guardian, LRR(s) and other responsible parties that the ability to pay shall be reevaluated no less than annually, unless changed circumstances warrant more frequent evaluation, as set forth at N.J.A.C. 10:46-2.4(o).

4. The regional office of the Division shall provide to the individual and/or legal guardian, as part of the application, a financial information sheet with appropriate instructions at the time of application.

5. The individual, legal guardian, or other responsible parties shall provide all documents requested, including tax returns.

(g) An investigation into the ability of the individual and/or his or her LRR(s) and other responsible parties to pay for services shall occur after the Division has determined that the criteria for eligibility for functional services have been met and an offer of residential placement has been made. The individual, LRR(s) or other interested parties shall be notified in writing of their financial obligation by the Division, as set forth in (a) and (f) above.

(h) Whenever possible, the determination of the ability to pay and the assessed amount shall be completed before the individual is residentially placed by the Division.

(i) Individuals assigned to a waiting list for Division residential services and/or their legal guardians shall complete the financial information sheet included in the application. While an individual is on the waiting list, no one shall be required to pay the cost of care and maintenance. On the date the individual is residentially placed by the Division, the requirement to pay begins. Once a residential placement is offered, and prior to actual placement, the individual, legal guardian and/or LRR(s) shall complete the Client Financial Data Packet (CFDP) and/or Legally Responsible Relative Financial Data Packet (LRRFDP), pursuant to N.J.A.C. 10:46-5.1. A specific financial assessment shall be completed no more than 120 days from receipt of the CFDP and/or LRRFDP and required documentation.

(j) Should an individual be residentially placed by the Division on an emergency basis, the CFDP and/or LRRFDP required for a financial determination is due at the regional office for the area in which the placement is located no more than 28 days following the date of placement. If the information is not provided within the required time frames, the Division may consider the individual's circumstances on a case-by-case basis. Failure to provide the required documentation may result in the Department seeking any of the remedies set forth in N.J.A.C. 10:46-6.1.

(k) For individuals already admitted to Division residential services prior to September 8, 1998, the Division shall review available financial data and request additional financial information as necessary. Should a request for additional information be made, the time frames contained in N.J.A.C. 10:46-5.1(a) shall be followed.

Amended by R.1995 d.511, effective September 18, 1995.
See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).
Amended by R.1998 d.468, effective September 8, 1998.
See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

In (a), added "contingent upon cooperation with the financial assessment investigation and payment of any fees assessed" at the end; and added (f) through (k).

Case Notes

Court must undertake to determine appropriate disposition, other than incarceration, of developmentally disabled juvenile, and should require the Division of Developmental Disabilities, and others, to assist in the formulation of a treatment plan. State in Interest of R.M., 141 N.J. 434, 661 A.2d 1277 (1995).

Profoundly retarded man could not change domicile. K.H. v. Division of Developmental Disabilities Department of Human Resources, 93 N.J.A.R.2d (DDD) 1.

10:46-2.2 Residency

(a) It shall be the responsibility of the individual applying for eligibility or his or her legal guardian, to establish residency in the State of New Jersey. Residency shall be determined in the following manner:

1. A competent individual applying for eligibility shall be a resident of the State if he or she lives in the State as his or her primary residence.

2. For minors, who are under 18 years of age, the place where the parents or legal guardian live shall determine the residence of the minor.

3. For adults, who are 18 years and older, incapacitated and have a general guardianship, the incapacitated individual's residence will be that of the legal guardian unless the conditions listed in (a)3i below have been met. This paragraph also applies to persons placed as minors upon reaching 18 years of age.

i. For incapacitated individuals applying for services whose legal guardian lives outside New Jersey, the guardian shall document that the incapacitated individual has established residency by establishing:

(1) That the incapacitated individual lives in New Jersey;

(2) That the incapacitated individual did not relocate to New Jersey for the purpose of obtaining services from the State of New Jersey; and

(3) Through good faith that the incapacitated individual applying for services intends to live in New Jersey. Objective factors that provide evidence of good faith include:

(A) The length and likely duration of the incapacitated individual's residence in New Jersey (that is, the individual has resided in New Jersey for more than two years, he or she expresses no plans to move from New Jersey);

(B) The incapacitated individual's financial or other connections to the locale (that is, the individual is employed locally, has local bank accounts, attends religious services); and

(C) The incapacitated individual's subjective attachment to his or her living arrangements (that is, friends in the area, use of community recreational facilities).

(b) If the incapacitated individual is admitted to services and the guardian moves out-of-State, the incapacitated individual may remain in Division services. Additionally, the legal guardian is free to request a discharge from services or an interstate transfer.

(c) If any person has been placed in the State of New Jersey and that placement has been funded totally or partially by a public or private agency in another state, that person shall not be considered a resident of New Jersey.

(d) For persons applying for services whose legal guardian is in the U.S. military service, residency may be established when the guardian declares his or her home of record to be New Jersey.

(e) For individuals applying for services who are not U.S. citizens, the following must be satisfied to establish residency:

1. The individual must be a permanent alien resident, or his or her legal guardian must be a U.S. citizen or a permanent alien resident; and