

ii. Enrollment of WFNJ individuals in a DHSS' licensed or approved RSATP shall be required in accordance with the definition established at N.J.A.C. 10:90-15.1, or in-patient, or out-patient substance abuse treatment programs.

iii. Failure to participate in the treatment plan shall result in a sanction in accordance with N.J.A.C. 10:90-4.13.

2. A WFNJ GA unemployable individual shall be required to participate in the mandatory SAI program, if substance abuse is the sole reason for the unemployable status and shall have his or her WFNJ status changed from GA unemployable to GA employable once the individual is well enough, as determined by the CCC, to participate in work or work activities. Such a change in status shall be supported by medical documentation, and shall be in the therapeutic interest of the WFNJ recipient as determined by the CCC and the CCC clinical supervisor.

i. In the instances as noted in (a)2 above, the CCC shall advise the WFNJ agency worker to request a new WFNJ/MED-1, Examination Report that states that substance abuse is the reason for the unemployable status. If the updated WFNJ/MED-1, Examination Report indicates that the WFNJ/GA recipient is no longer unemployable, then the WFNJ/GA employable requirements at N.J.A.C. 10:90-3 shall apply.

3. WFNJ recipients who shall not be required to participate in substance abuse treatment include, but are not limited to, the following:

i. WFNJ individuals who, as a result of the assessment by the CCC, are determined not to be dependent on alcohol and/or drugs or abusing alcohol and/or drugs shall cease involvement with the SAI program at that time;

ii. A WFNJ eligible individual who is able to function at work or in a work activity and scores high on the "Cage-Aid" form; or

iii. Persons convicted on or after August 22, 1996 for an offense which occurred on or after August 22, 1996 involving possession, use or distribution of a controlled substance that meet the good cause requirements in accordance with N.J.A.C. 10:90-18.6(c).

Amended by R.2004 d.292, effective August 2, 2004.

See: 36 N.J.R. 1695(a), 36 N.J.R. 3545(a).

In (a), rewrote 2i.

10:90-18.4 SAI sanctions

For WFNJ recipients subject to mandatory participation in the SAI, failure to comply with the completion and signing of the required SAI forms, the substance abuse assessment and/or the requirements of the treatment plan, including biological testing if appropriate, and follow-up, when it is clinically appropriate and in the therapeutic interest of the SAI participant, shall result in a sanction in accordance with N.J.A.C. 10:90-4.13, unless the CCC determines that treat-

ment is not clinically appropriate for the WFNJ recipient at the time or the criteria established for conciliation at N.J.A.C. 10:90-4.12 apply.

10:90-18.5 Continued SAI treatment when the WFNJ TANF/GA case closes

(a) WFNJ recipients are eligible for continued substance abuse treatment as follows:

1. WFNJ/GA recipients are eligible for continued treatment for a period of six months from the date the WFNJ/GA case is closed due to earnings; and

2. WFNJ/TANF recipients are eligible for continued treatment for up to two years from the effective date the WFNJ/TANF case is closed due to earnings.

10:90-18.6 Eligibility rules for convicted drug felons

(a) The following convicted drug felons may establish eligibility for WFNJ TANF/GA cash assistance benefits and/or Food Stamp program benefits:

1. A person convicted on or after August 22, 1996 under Federal or State law of any offense which occurred on or after August 22, 1996 which is classified as a felony, high misdemeanor or crime, under the laws of the jurisdiction involved and which has as an element the possession, or use of, a controlled substance as defined in section 102(6) of the Federal "Controlled Substances Act" (21 U.S.C. § 802(6)).

i. Under the laws of the State of New Jersey, a crime is defined at N.J.S.A. 2C:1-4(a) as "an indictable offense ... for which a sentence of imprisonment in excess of 6 months is authorized."

ii. A person convicted in accordance with (a)1 above of possession or use of a controlled substance may be eligible for WFNJ TANF/GA cash assistance and/or Food Stamp program benefits, if the person enrolls in and actively participates in or completes a DHSS' licensed or approved RSATP at the conclusion of which the person is certified drug free by an authorized program representative or the person is able to establish good cause in accordance with N.J.A.C. 10:90-18.6(c).

(1) Eligibility for WFNJ TANF/GA cash assistance and/or Food Stamp program benefits shall commence upon the person's enrollment in a DHSS' licensed or approved RSATP.

(2) Eligibility for WFNJ TANF/GA cash assistance and/or Food Stamp program benefits may continue after the person has completed a DHSS' licensed or approved RSATP provided that:

(A) During the first 60 days after completion of a RSATP or at the time of application or case redetermination, it must be determined, via testing by an entity designated by DFD, that the person is free of any non-prescribed controlled substance. If

the person is determined not to be free of any controlled substance during, or at the conclusion of, the 60 day period, the person's eligibility for benefits shall be terminated immediately.

(B) WFNJ TANF/GA cash assistance and/or Food Stamp program benefits cannot be granted or reinstated until the person re-enrolls in another RSATP, and remains drug free for a minimum of 60 days and is determined via testing to be free of any non-prescribed controlled substance.

iii. Juvenile drug convictions are not classified as felonies, high misdemeanors or crimes. Therefore, a juvenile who committed an offense involving possession or use of a controlled substance, who was not convicted of the offense until he or she was 18 years of age or older, shall not be found ineligible for WFNJ cash assistance and/or Food Stamp program benefits solely because of a drug conviction.

(b) The following convicted drug felons may establish eligibility only for Food Stamp program benefits and WFNJ/GA medical services:

1. The provisions at (a)1 above, with respect to Federal and State law, also apply to persons convicted of distribution of a controlled substance.

i. The provisions at (a)1i above, with respect to the State's definition of a crime, also apply to persons convicted of distribution of a controlled substance.

ii. A person convicted in accordance with (a)1 above of distribution of a controlled substance may be eligible only for Food Stamp program benefits, if the person enrolls in and actively participates in or completes a licensed or approved DHSS' RSATP at the conclusion of which the person is certified drug free by an authorized program representative; and WFNJ/GA medical services, which shall not exceed benefits offered in the WFNJ/GA program, that are limited to the time the person is receiving treatment in a DHSS' licensed or approved RSATP.

(1) Eligibility for Food Stamp program benefits and WFNJ/GA medical services shall commence upon the person's enrollment in a DHSS' licensed or approved RSATP.

(2) The provisions at (a)1ii(2) above, with respect to continued eligibility for Food Stamp program benefits, also apply to persons convicted of distribution of a controlled substance.

(A) A person convicted of distribution of a controlled substance is only eligible for WFNJ/GA medical services while at the facility. The person is not eligible for GA medical services after completing a DHSS' licensed or approved RSATP.

(3) Persons convicted on or after August 22, 1996 of an offense which occurred on or after August 22,

1996 involving distribution are not eligible for WFNJ cash assistance benefits.

iii. The provisions at (a)1iii above, with respect to juvenile drug convictions, also apply to persons convicted of distribution of a controlled substance.

(c) Good cause exceptions, from participation in substance abuse treatment, shall be established for persons convicted of possession or use of a controlled substance who are willing to participate in a DHSS' licensed or approved RSATP in order to establish eligibility for WFNJ TANF/GA cash assistance and/or Food Stamp program benefits and are unable to do so for the following reasons:

1. Persons that want to establish eligibility for Food Stamp program benefits only and meet the good cause criteria established at (c)2 through 6 below, including the good faith effort requirements, can not be referred to the SAI for assessment or substance abuse treatment.

2. The person already completed a substance abuse treatment program as noted below:

i. Individuals who have been incarcerated and have completed a substance abuse treatment program as a result of the incarceration and are determined to be drug free;

ii. Individuals who have completed a DHSS' licensed or approved in-patient or out-patient substance abuse treatment program and are determined to be drug free; or

iii. Individuals who test free of drugs, and are therefore not appropriate for substance abuse treatment in a DHSS' licensed or approved RSATP, or in an in-patient or out-patient program.

(1) As a result of the substance abuse assessment, the CCC can determine that:

(A) The person is not in need of substance abuse treatment at this time and his or her involvement in the SAI shall cease;

(B) Periodic completion of the "Cage-AID" form or the "Pre-Assessment Checklist" shall be done to verify the person's continued compliance with the good cause reasons identified in (c)2i through ii above. The periodic assessment shall become mandatory and a condition for WFNJ initial and continued eligibility and receipt of WFNJ TANF/GA cash assistance; or

(C) The person is in need of in-patient or out-patient substance abuse treatment at a DHSS' licensed or approved facility. Treatment shall become mandatory and a condition for WFNJ initial and continued eligibility and receipt of WFNJ TANF/GA cash assistance.

(2) The person is a participant in the Drug Court Initiative (DCI) and provides written verification, on agency letterhead confirming the following:

(A) A Treatment Assessment Services for the Courts (TASC) evaluator's substance abuse assessment has been completed;

(B) The level of treatment required by the court; and

(C) The name and telephone number of the DCI liaison to the WFNJ agency.

3. The person entered a DHSS' licensed or approved RSATP on his or her own.

4. The person was enrolled in a DHSS' licensed or approved RSATP then later discharged as a result of the participant's physical or mental health problems including pregnancy.

i. Individuals discharged from a facility in accordance with (c)4 above shall provide written documentation from the facility the person was discharged from, on agency letterhead, confirming the reason for the discharge and the date of discharge.

5. The person meets the good faith effort requirements in accordance with (e) below and the person is denied entry in a DHSS' licensed or approved RSATP due to the following:

i. The facility's inability to provide services to accommodate the person's physical or mental health problems (including pregnancy);

ii. The facility reached its capacity and cannot accommodate the person's request for enrollment at the time of application for WFNJ cash assistance benefits only; and

6. Individuals experiencing other unusual circumstances as determined by the DHS.

(d) The provisions at (c)1 through 6 above, with respect to good cause reasons, also apply to persons convicted of distribution of a controlled substance that want to establish eligibility only for Food Stamp program benefits.

(e) Persons convicted of possession or use of a controlled substance that establish good cause for the reasons identified in (c)5i or ii above, shall be required to make a "good faith" effort to enter a facility as noted below:

1. The person shall make a good faith effort by attempting to enroll in at least three DHSS' licensed or approved RSATPs.

i. Attempts by the individual to enroll in a facility may be pursued by telephone.

2. The person shall provide documentation of his or her good faith efforts.

i. Documentation shall consist of a written verification from each licensed or approved RSATP, on agency letterhead, confirming that the person sought entry in the facility; and, the date(s) and reason (mental or

physical health reasons or capacity issues in the treatment programs) the facility denied the individual's request for enrollment.

ii. The required documentation shall be provided promptly, as a condition of eligibility, so that the eligibility determination can be completed within the 30-day time frame in accordance with N.J.A.C. 10:90-1.5.

iii. If the person making the good faith effort wants to establish eligibility for WFNJ TANF/GA cash assistance benefits and indicates that the facility will not provide the requested documentation, then the county or municipal WFNJ agency, with the cooperation of the applicant, shall follow-up by contacting the DHSS' licensed or approved RSATP(s) by telephone.

iv. Individuals who establish eligibility for WFNJ TANF/GA cash assistance benefits through the good cause process shall be referred to the SAI immediately at the time of application, unless the person submits written documentation from a substance abuse treatment program, that he or she is free of any non-prescribed controlled substance at the time of application.

(f) The provisions at (e) above, with respect to making a good faith effort also apply to persons convicted of distribution of a controlled substance that want to establish eligibility only for Food Stamp program benefits.

10:90-18.7 Responsibility of the SAI CCC

(a) The responsibilities of the CCC are to:

1. Notify the WFNJ agency worker, through a liaison, within 24 hours of the scheduled assessment of a WFNJ recipient;

2. Conduct the assessment and provide the WFNJ agency worker with the individual's status as to assessment, treatment plan and placement in treatment, if it is determined that treatment is necessary;

3. Monitor and follow-up on treatment service;

4. Evaluate, authorize and pre-approve treatment for persons convicted of possession or use of a controlled substance who are referred to the SAI for participation in treatment service or payment of treatment service; and

5. Inform the WFNJ agency worker of any changes during a WFNJ participant's course of treatment as well as when it is appropriate for an individual to engage in an additional work activity.

10:90-18.8 Responsibilities of the county/municipal WFNJ agency for SAI

(a) The responsibilities of the county and/or municipal WFNJ agencies are to:

1. Refer eligible WFNJ recipients for participation in the SAI;
2. Perform system updates;
3. Provide transportation;
4. Provide supportive services; and
5. Notify the CCC immediately when the SAI participant's case will be closed and provide the effective closing date.

Amended by R.2004 d.292, effective August 2, 2004.
See: 36 N.J.R. 1695(a), 36 N.J.R. 3545(a).
In (a)1, deleted "/SARD" after "SAI".

10:90-18.9 Fair hearings

WFNJ recipients have a right to a fair hearing on any adverse action in accordance with the provisions at N.J.A.C. 10:90-9.

SUBCHAPTER 19. KINSHIP CARE SUBSIDY PROGRAM (KCSP)

10:90-19.1 Purpose and scope

(a) Based on P.L. 2001, c.250, the Kinship Care Subsidy Program (KCSP) is being established. The KCSP involves providing monthly cash subsidies for children residing with low income individuals, known as kinship legal guardians, who take responsibility for raising a child whose parents are unable or unwilling to do so. The KCSP is designed to provide cash assistance for the needs of children residing with kinship legal guardians, in accordance with the provisions set forth in this subchapter.

(b) The KCSP shall provide subsidies for eligible children up to the financial cap allotted to the program. The KCSP slots shall be allocated by county to serve eligible children on a first come, first served basis.

(c) P.L. 2001, c.250 creates a new type of court awarded kinship legal guardianship, which addresses the needs of children and caregivers in long-term kinship relationships. Participation in the KCSP is subject to the caregiver's establishment of a court ordered kinship legal guardianship arrangement.

(d) A child is determined eligible for the KCSP if the child's caregiver has been granted kinship legal guardianship and has an annual family income of less than or equal to 150 percent of the Federal Poverty Level (FPL). Children whose caregivers meet the specific KCSP eligibility criteria will be eligible for up to a \$250.00 per month/per child subsidy.

10:90-19.2 Defining kinship legal guardianship

(a) "Kinship legal guardianship" is defined as a caregiver who is willing to assume care of a child due to parental incapacitation, with the intent to raise the child to adulthood, and who is appointed the kinship legal guardian of the child by the court pursuant to P.L. 2001, c.250.

1. "Parental incapacity" means incapacity of such a serious nature as to demonstrate that the parent is unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child.

2. This form of legal guardianship provides permanency for children and stronger legal protection for caregivers, without termination of parental rights and adoption.

i. A kinship legal guardian shall be responsible for the care and protection of the child and providing for the child's health, education and maintenance.

ii. Under kinship legal guardianship, the child's parent(s) retain the power to consent to the adoption or name change of the child, the obligation to pay child support and the right to maintain a continued relationship with the child through visitation as determined by the court. An award of kinship legal guardianship does not limit or terminate any rights or benefits derived from the child's parents, including inheritance and social security or insurance benefits.

3. Any adult family friend or person with a biological or legal relationship to a child, other than the child's parent, who has been providing care and support for the child living in the caregiver's home for 12 consecutive months, may petition the court for kinship legal guardianship.

(b) Caregivers who have obtained other forms of guardianship through the Surrogate and Probate Departments of the Superior Court must receive kinship legal guardianship to be eligible to apply for the subsidy. A kinship legal guardian shall have the same meaning as the term "legal guardian," as defined in 42 U.S.C. § 675, except that the process, procedure and ruling for kinship legal guardianship shall be apart from and shall not amend, supplant or contravene N.J.S.A. 3B:12-1 et seq.

(c) The Superior Court, Chancery Division, Family Part has jurisdiction to award kinship legal guardianship. Consistent with rules and procedures adopted by the Supreme Court, the determination will be based on a petition filed by the caregiver that contains a kinship caregiver assessment certifying to the ability of the petitioner to care for the child. The assessment shall also contain the results from a criminal history record background check, domestic violence central registry check and a child abuse record check of the caregiver and any adult residing in the caregiver's household.