

## CHAPTER 46

## DETERMINATION OF ELIGIBILITY

## Authority

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

## Source and Effective Date

R.1995 d.511, effective August 17, 1995.  
See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

## Executive Order No. 66(1978) Expiration Date

Chapter 46, Determination of Eligibility, expires on August 17, 2000.

## Chapter Historical Note

Chapter 46, Application and Admission to Functional Services, was originally filed and became effective prior to September 1, 1969. A new rule, N.J.A.C. 10:46-4.3 was adopted by R.1975 d.158, effective July 1, 1975. See: 7 N.J.R. 226(b), 7 N.J.R. 328(b). Chapter 46 was repealed and replaced by R.1990 d.409, effective September 17, 1990.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. See: Source and Effective Date. See, also, section annotations.

See section annotations for specific rulemaking activity.

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## SUBCHAPTER 1. GENERAL PROVISIONS

## 10:46-1.1 Purpose; authority

Pursuant to N.J.S.A. 30:4-25.2, Application for determination of eligibility, and N.J.S.A. 30:6D-1 et seq. (P.L.1985, c. 145), 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 persons with developmental disabilities.

## 10:46-1.2 Scope

The provisions of this chapter shall apply to all persons making application to the Division for services under N.J.S.A. 30:4-165.1 et seq.

## 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.

“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.

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

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

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

“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.

“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.

“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.

“Intake Team” means at least two staff, one of whom is the intake worker, 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.

“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.

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

“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.

“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).

Amended by R.1995 d.511, effective September 18, 1995.  
See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

#### 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).

## SUBCHAPTER 2. ELIGIBILITY CRITERIA

### 10:46-2.1 General eligibility

(a) A person 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, is eligible for services of the Division.

(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.

Amended by R.1995 d.511, effective September 18, 1995.  
See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

#### 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).

### 10:46-2.2 Presumptive eligibility

(a) If the applicant appears to be eligible for services and manifests an emergent need for services from the Division, then such person may be declared presumptively eligible by the Division Director or his or her designee. The determination of presumptive eligibility shall be made within five days of the initial contact for services. The eligibility determination process shall be completed subsequent to the admission to service. If the person is found ineligible and has been receiving services under presumptive eligibility, immediate referral shall be made to the appropriate agency or agencies for services. That individual or his or her guardian shall be notified in writing that services will cease in 30 days.

(b) If the individual appeals the decision of ineligibility in accordance with N.J.A.C. 10:48-1, the individual may continue to receive services until a Final Decision is rendered by the Division Director.

**10:46-2.3 Services**

(a) Services are those specialized programs or adaptations of generic services provided by any public or private agency, organization or institution and directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a disability, and includes case management, diagnosis, evaluation treatment, personal care, day care, domiciliary care, special living arrangements, training, education, vocational training, recreation, counselling of the person with the disability and his family information and referral services and transportation services.

(b) Support services may be offered without supplying all information required under N.J.A.C. 10:46-3.3 when:

- i. The applicant requests limited services to meet the person's needs and those services may avoid the need for more intensive services;
- ii. The intake worker determines through a preliminary review of available information that the person is developmentally disabled; and
- iii. The applicant agrees to accept support services.

(c) All information required under N.J.A.C. 10:46-3.3 shall be required if the applicant disagrees with the initial recommendation for support services or, subsequent to the provision of support services, more intensive services are desired.

(d) Support services include:

1. Respite care to give primary care givers relief from continuous care of the person;
2. Personal care to an individual where the primary care giver is unable to do this unassisted;
3. Assistive devices to aid in moving and positioning an individual while giving personal care or devices to aid in communication. Assistive devices shall be available if the individual lives independently, in the home of a relative or in a home licensed in accordance with N.J.A.C. 10:44B. The assistive device cannot be available through an alternate funding source. Assistive devices remain the property of the Division;
4. Supported employment which is:
  - i. Paid employment for persons with developmental disabilities for whom competitive employment at or above minimum wage without the benefit of supported employment services is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;
  - ii. Conducted in a variety of settings, particularly work sites in which persons without disabilities are employed; and

iii. Supported by any activity needed to sustain paid work by persons with disabilities;

5. Home adaptation to accommodate persons with a physical or sensory disability. Home adaptations may not be offered under presumptive eligibility; and

6. Rehabilitation technology 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, rehabilitation employment, transportation, independent living and recreation.

(e) For applicants who apply for Family Support, the requirements of N.J.A.C. 10:46A shall apply.

(f) Persons found eligible for support services shall not automatically be added to a waiting list for other Division services. If the person wishes to be added to a waiting list for other than support services, a determination of eligibility for Division services shall be made, in accordance with N.J.A.C. 10:46C.

Amended by R.1995 d.511, effective September 18, 1995.  
See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

**Case Notes**

Discussion of standard for classification of children as sustainable under former regulations. *Levine v. New Jersey Dept. of Institutions and Agencies*, 84 N.J. 234, 418 A.2d 229 (1980).

**SUBCHAPTER 3. APPLICATION****10:46-3.1 Who may apply**

(a) Application for services under this chapter may be made by the following persons:

1. An adult on his or her own behalf;
2. The parents or guardian of a minor;
3. An agency, public or private, on behalf of a minor of whom it has care and custody;
4. A court having jurisdiction over a minor;
5. The guardian of an adjudicated incompetent adult;  
or
6. A court of competent jurisdiction on behalf of an adult person who appears to be developmentally disabled.

(b) For applicants who apply for Family Support, the requirements of N.J.A.C. 10:46A shall apply.

Amended by R.1995 d.511, effective September 18, 1995.  
See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

**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).

**10:46-3.2 Where to apply**

(a) Application shall be made to the regional offices of the Division. The initial contact may be made to an intake worker by telephone, in writing or by appearing in person.

(b) If the intake worker determines that the request is for the services of the Division, he or she shall send the person an application.

(c) If the intake worker determines that the request is for services not offered by the Division, the intake worker shall offer to refer the person to an appropriate agency. If the person wishes to pursue the services of the Division, the intake worker shall send an application and information concerning services.

(d) Applications shall be made to a regional office of the Division. Forms and instructions may be obtained by writing to or calling:

Regional Office: Northern Regional Office 201-927-2600 1B Laurel Drive Flanders, NJ 07836	Counties of Jurisdiction: Sussex, Morris, Warren, Passaic, Bergen, Hudson
Upper Central Reg. Office 201-379-1700 65 Springfield Avenue Springfield, NJ 07081	Essex, Somerset, Union
Lower Central Reg. Office 609-292-4500 222 S. Warren St. Trenton, NJ 08625	Middlesex, Monmouth, Mercer, Ocean, Hunterdon
Southern Regional Office (609) 757-4700 101 Haddon Ave. Suite 17 Camden, NJ 08103-1485	Camden, Atlantic, Gloucester, Cumberland, Salem, Cape May, Burlington

(e) If the person for whom eligibility is sought does not live in New Jersey at the time of the application, the applicant shall indicate if they presently receive services from a state agency in the state where the individual resides. To apply for services from the State of New Jersey under the Interstate Compact on Mental Health (N.J.S.A. 30:7B-1 et seq.), the request shall be sent to the Administrative Practice Officer, Division of Developmental Disabilities, CN 726, Trenton, New Jersey 08625. The request shall be forwarded to the appropriate regional office for a determination of eligibility. All information required in N.J.A.C. 10:46-3.3 shall be provided. All notice requirements contained in N.J.A.C. 10:46-4.2 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).

**10:46-3.3 How to apply**

(a) Application shall be made on forms supplied by the Division.

(b) Minimum information submitted shall include, but not be limited to:

1. Social data, such as name, address, telephone number, social security number, and present living arrangement;
2. Medical information;
3. Present program or employment type;
4. Name, address and telephone number of the applicant, if someone other than the person on whose behalf application is being made; and
5. Presenting request, such as the specific service(s) that may be desired if known by the applicant.

(c) Accommodations shall be made available by the Division for applicants who cannot complete the application by him or herself. Applications may be taken in sites other than the regional office. Applications may be taken at any site which will facilitate the determination of eligibility.

(d) It is the responsibility of the applicant to cooperate with the Division in obtaining required records by signing consent to release of information forms and identifying persons or agencies known by the applicant to be in possession of the needed records.

(e) An application shall be deemed complete when there is sufficient information to make a determination of eligibility.

**SUBCHAPTER 4. DETERMINATION PROCESS**

**10:46-4.1 Determination**

(a) A Division intake worker shall begin a case file upon receipt of an application for determination of eligibility for services.

(b) The intake worker shall assist in completion of the application upon request of the applicant.

(c) Upon receipt of an application including all necessary documentation and completion of an in person interview with the applicant, the intake worker shall make an initial recommendation in writing based upon specific findings regarding eligibility pursuant to N.J.A.C. 10:46-2.

(d) An Intake team may, at the request of the intake worker or his or her supervisor, review the recommendation of the intake worker and:

1. Render a determination regarding eligibility; or
2. Refer the matter to a second Intake team, when there is disagreement among the first team concerning eligibility. No member of the second team shall have participated in the initial Intake team review.

(e) The determination of the Intake worker or Intake team(s) shall be made in writing within 10 working days and shall be based on specific findings.

(f) In cases where the matter is referred for further review, the intake worker shall present the case record to the second team. The second team shall review the record and shall make a final determination.

Amended by R.1995 d.511, effective September 18, 1995.  
See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

#### 10:46-4.2 Notice requirements

(a) Division staff shall notify the applicant in writing of the status of the eligibility determination no more than 60 days after initial contact with the intake worker.

(b) If the eligibility decision cannot be made within 60 days after the initial contact, the applicant shall be advised in writing as to the specific reasons why a determination cannot be made and shall be informed of the status of the application at least every 30 days thereafter.

(c) If the applicant is determined eligible, Division staff shall notify the applicant in writing within 10 days of the determination and such notice shall include information regarding the service(s) deemed most suitable by the Intake worker or the Intake team.

1. If the most appropriate service as determined by the Intake worker or the Intake team is not immediately available, the Division shall provide an alternate service.
2. The Division shall also place the eligible persons name on a waiting list in accordance with N.J.A.C. 10:46C.

(d) If the individual is determined ineligible, the Division shall notify the applicant in writing within 10 working days of the determination. Such notification shall include specific criteria that were not met by the applicant, and shall also include information regarding the applicant's right to appeal the determination pursuant to N.J.A.C. 10:48-1. The petitioner shall bear the burden of proof and the burden of persuasion.

Amended by R.1995 d.511, effective September 18, 1995.  
See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

#### Case Notes

Eligibility application may be signed by anyone providing for care and custody of a child if the parent or guardian is not available. In re: Guardianship Services Regulations, 198 N.J.Super. 132, 486 A.2d 888 (App.Div.1984), affirmed as modified 103 N.J. 619, 512 A.2d 453 (1986).