

Recovery of AFDC overpayments. See *Redding v. Burlington Cty. Welfare Bd.*, 123 N.J.Super. 572, 304 A.2d 205 (Law Div.1973), aff'd, 126 N.J.Super. 152, 313 A.2d 221 (App.Div.1973), rev'd, 65 N.J. 439, 323 A.2d 477 (1974).

AFDC overpayments not received as a result of willful withholding of employment information; agency precluded from seeking recoupment of overpayments (Citing former regulation). *Mercer Cty. Welfare Agency v. E.S.*, 5 N.J.A.R. 427 (1983).

Welfare board not allowed to reduce AFDC and Food Stamp benefits to recoup overpayment of benefits after welfare debt discharged in bankruptcy. *Burlington Cty. Welfare Bd. v. J.R.*, 4 N.J.A.R. 34 (1983).

Retroactive underpayment adjustment ordered to reflect status of foster child in household. *Burlington Cty. Welfare Agency v. L.N.*, 4 N.J.A.R. 159 (1982).

10:82-2.20 Change in need while assistance is being received

(a) A change in the circumstances of the eligible unit may result in an adjustment upward or downward in the amount of the assistance payment. Unless (b) below applies, the adjustment must be effective no later than the first day of the month following the month in which the significant change in circumstance occurred. Downward adjustments are subject to timely and adequate notice.

(b) Additional payments to an eligible unit supplementing the last regular payment shall be issued during the current payment period for any of the following reasons only:

1. Administrative error: The CWA shall issue an additional assistance payment(s) supplementing any assistance payment incorrectly computed or not issued due to an administrative error. Such supplemental payment(s) shall be considered as corrections to underpayments;
2. Emergency assistance: The CWA shall supplement an assistance payment with additional payment(s) if authorized under the emergency assistance provisions of N.J.A.C. 10:82-5.10; or
3. Immediate and unanticipated reduction of income (for example, loss of employment, contributions from legally responsible relatives, Social Security or other benefits); or

(c) Any additional payments made to an eligible unit due to the addition of a new member are subject to proration (see N.J.A.C. 10:82-2.2) based on the date of such change if all other eligibility factors are met.

1. Newborn child: The date of change for proration of an additional payment for a newborn child added to an eligible unit shall be the date the child was born.
2. Other member: The date of change for proration of an additional payment for other members added to an eligible unit shall be the date the eligible unit reports to the CWA the addition of the member.

Amended by R.1980 d.332, effective August 1, 1980.
See: 12 N.J.R. 320(c), 12 N.J.R. 484(b).

(a): Effective date of adjustment amended; example added.
Amended by R.1982 d.440, effective December 1, 1982.

See: 14 N.J.R. 1169(a), 14 N.J.R. 1461(a).

Originally filed as an emergency adoption (R.1983 d.367) on October 1, 1982. Readopted as R.1982 d.440. Additional payments subject to proration.

Amended by R.1986 d.471, effective December 1, 1986.

See: 18 N.J.R. 260(a), 18 N.J.R. 2388(b).

Substantially amended.

Amended by R.1992 d.261, effective June 15, 1992 (operative July 1, 1992).

See: 24 N.J.R. 1194(a), 24 N.J.R. 2258(a).

In (a): added text that adjustment must be effective: "no later than the first day of the month following the month in which the significant change in circumstance[s] occurred." Deleted references to monthly reporting.

Deleted subsection (d) referring to reduction or loss of income.

SUBCHAPTER 3. RESOURCES

10:82-3.1 General provisions

(a) The resource policy set forth in this subchapter applies equally to program applicants and recipients. State and Federal laws require that the agency consider all income and resources of the eligible unit in determining eligibility for AFDC and the amount of assistance to be granted. Available resources include cash and other forms of income immediately obtainable to meet the needs of the eligible unit (see N.J.A.C. 10:82-4).

(b) Resources as recognized in this subchapter are either exempt or countable. They are defined as real or personal property which is within the control of one or more members of the eligible unit, or to which the member(s) may have a valid claim, and certain benefits and other contributions of support which may become available.

(c) All countable resources shall be evaluated by their equity value; that is, the current market value of resource less encumbrances, if any.

(d) The total equity value of all countable resources (including savings) shall not exceed \$1,000.

(e) Savings may be retained by a family applying for or receiving AFDC and may be accrued from the AFDC payment or other income, except as provided in N.J.A.C. 10:82-4.15.

(f) "And"/"or" bank accounts are to be treated as follows:

1. For checking and savings accounts in which the names of the owners are stated in the conjunctive ("and" accounts), the eligible family member shall be presumed to possess the funds in proportion to the number of owners listed on the account. Such presumption is rebuttable and shall not apply if the eligible family member and/or the other owner(s) demonstrate to the CWA that actual ownership (based on the contributions by each of

the parties to the sums on deposit) of the funds is in a different proportion. For example, a disabled yet competent sibling sets up an "and" account with his or her healthy sibling. As this type of account usually requires the signatures of both parties for withdrawal purposes, the "and" account would allow the disabled sibling a measure of control and supervision of his or her finances. However, should two or more signatures be required to withdraw monies and another party to the account (that is, a non-client) is uncooperative, the account shall be considered an inaccessible resource. In the event any monies are subsequently withdrawn by the client through the cooperation of the other party, the funds withdrawn shall be treated as an available resource.

2. For checking and savings accounts in which the names of the owners are stated in the disjunctive ("or" accounts), the eligible family member shall be presumed to possess all the funds therein regardless of their source. Such presumption is rebuttable and shall not apply if the eligible family member and/or the other owner(s) demonstrate to the CWA that ownership of the funds is in a different proportion, predicated on contributions by each party to the sums on deposit. For example, an elderly parent wishing to ensure 100 percent accessibility of his or her funds to a child in case of sudden illness or incapacity may wish to set up an "or" account to allow for prompt payment of debts and expenses if the need arises.

3. If it can be demonstrated that funds in either type of account are not legally owned by an eligible family member, such funds shall not be counted toward the resource maximum. In such situations a signed statement attesting to the lack of ownership should be obtained from the eligible family member.

Amended by R.1980 d.451, effective November 1, 1980.

See: 12 N.J.R. 522(b), 12 N.J.R. 664(c).

(c) repealed.

Amended on an emergency basis, R.1981 d.396, effective September 30, 1981, exp. November 30, 1981.

See: 13 N.J.R. 763(a).

Readopted, R.1981 d.519, effective December 31, 1981.

See: 13 N.J.R. 763(a), 14 N.J.R. 102(d).

(c) and (d) added.

Amended by R.1983 d.93, effective March 21, 1983.

See: 14 N.J.R. 1438(a), 15 N.J.R. 443(c).

(e) added, language concerning savings.

Amended by R.1986 d.471, effective December 1, 1986.

See: 18 N.J.R. 260(a), 18 N.J.R. 2388(b).

Substantially amended.

Amended by R.1991 d.603, effective December 16, 1991.

See: 23 N.J.R. 2625(a), 23 N.J.R. 3796(a).

Added new subsection (f).

Case Notes

All income and resources of eligible unit to be considered in determining amount of assistance. *Boyle v. Riti*, 175 N.J.Super. 158, 164, 417 A.2d 1091 (App.Div.1980).

Money in guardianship bank accounts were available for children. *Passaic County Board of Social Services v. M.L.*, 92 N.J.A.R.2d (DEA) 38.

Initial eligibility for AFDC grant must be determined on all income available at any time during the month the application was received (Director's Final Decision) (Cited as N.J.A.C. 10:82-2.2). In the Matter of P.B., 8 N.J.A.R. 329 (1980).

Contribution funds accumulated under provisions of the Post-Vietnam Era Veterans Assistance Program were not an educational grant or loan and must be liquidated as a nonexempt resource before becoming AFDC eligible. *L.D. v. Passaic Cty. Bd. of Social Services*, 7 N.J.A.R. 309 (1984).

In absence of trust account, money deposited in account in AFDC and Food Stamp recipient's name by a third person is an available resource to be considered in eligibility determination (Department's Final Decision). *Union Cty. Bd. of Social Services v. M.M.*, 6 N.J.A.R. 366 (1982).

Funds in joint checking account which constituted on accessible trust must be included as a resource in the calculation of resource limitation for Food Stamp program: denial of eligibility affirmed as resource limitation excluded; remand for factual findings on AFDC determination (Division's Final Decision). *G.M. v. Mercer Cty. Bd. of Social Services*, 4 N.J.A.R. 233 (1983).

10:82-3.2 Exempt resources

(a) Exempt resources are not subject to any requirement for liquidation and are not considered in determining the assistance grant. When any resource is not or is no longer exempt, it shall be evaluated as a countable resource in accordance with N.J.A.C. 10:82-3.1(c) and considered in the determination of eligibility for AFDC.

(b) The exempt resources are as follows:

1. Real property owned by the eligible unit and used as a home by the eligible unit, together with so much of the land on which the house stands as is reasonably necessary for the maintenance of the house. The property may remain in exempt status during temporary absence of the entire family for a period up to four months, at which time the agency shall review the status, and if so indicated, may allow it to remain in exempt status for an additional four months. Continued absence through the entire eight months shall be deemed to be permanent and the property shall be removed from exempt status.

2. Personal property which is used or likely to be used. Included are:

i. House furnishings and clothing in regular use: Furnishings and clothing in storage may be deemed to be exempt in the presence of a reasonable plan for their use;

ii. Personal effects if regularly used or of small intrinsic value: Items of exceptional value not regularly used and not essential to the physical health and safety of the eligible unit are not exempt.

3. One motor vehicle, the equity value of which does not exceed \$1,500. Any excess equity value of a motor vehicle and the full equity of any other motor vehicle is countable toward the \$1,000 resource limit. If the vehicle is especially equipped with apparatus for the disabled, the apparatus shall not increase the value of the vehicle. The equity value of a vehicle shall be the average wholesale value as indicated in the most recent April or October edition of the Red Book: Official Used Car Valuations, less encumbrances (legal debts).

i. An applicant or recipient may indicate that, for reasons such as, but not limited to, body damage or inoperability, a vehicle is in less than average condition. Any applicant or recipient who claims that the Red Book value does not apply to his or her vehicle shall be given the opportunity to acquire verification of the vehicle's value from another reliable source.

4. Livestock, machinery, tools, equipment, and stock-in-trade which serve to produce some net income in cash or in kind, or serve as an incentive for self-help. Livestock or property owned or used by a child in connection with a group or school activity (such as 4-H) is also exempt.

5. Any asset, real or personal, the liquidation of which would produce no net revenue to the eligible unit.

6. Resources designated for special purposes as follows:

i. Relocation adjustment payments which are made pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) by the public agencies and area development agencies engaged in urban renewal, or by housing development projects;

ii. Any Highway Relocation Assistance paid under the Federal-Aid Highway Act of 1968;

iii. For any household participating in the Food Stamp program of the United States Department of Agriculture, the value of the coupon allotment;

iv. In AFDC, payments for participation in the REACH program, including payments for transportation and related expenses set forth at N.J.A.C. 10:81-14.19 and payments for child care at N.J.A.C. 10:81-14.18.

(1) A weekly allowance of \$30.00 paid to recipients of AFDC who are participants in the Job Training Partnership Act (JTPA) training programs.

v. Child care payments for "special circumstance" children (see N.J.A.C. 10:82-5.2) and transportation or the cost of transportation, which is not available from any other source, to transport the "special circumstance" child to and from the child care site when it is essential for the child's physical health and safety. The payment for the cost of transporting a "special circumstance" child to and from the child care site may be authorized under Title IV-A funds through FAMIS.

vi. Supplemental aid by other agencies or organizations, whether public or private, provided that:

(1) There is no duplication between such aid and the public assistance grant;

(2) Such aid is for a special purpose not within the function of the public assistance agency (for example, vocational rehabilitation); or

(3) Such aid is to any undergraduate student for educational purposes.

vii. Any income received through the subsidized adoption program of the Division of Youth and Family Services pursuant to N.J.S.A. 30:4C-45 through 49 (P.L. 1973 C81).

viii. Certain other Federal programs: Funds received by applicants and recipients through certain Federal programs (see (b)6vii(1) through (9) below) shall be regarded as exempt resources in determining eligibility for assistance.

(1) Funds distributed or held in trust for members of any Indian tribe under Public Law 92-254 or 93-134; and

(2) Funds which are tax-exempt portions of payments made pursuant to Public Law 92-203, the Alaska Native Claims Settlement Act;

(3) Benefits or assistance received through the WIC program (special supplemental food program for women, infants and children) and the special food services program for children under the National School Lunch Act as amended by Public Laws 92-433 and 93-150;

(4) Benefits received under Title VII, Nutrition Program for the Elderly, of Older Americans Act of 1965;

(5) Payments made through Service Corps of Retired Executives (SCORE), Active Corps of Executives (ACE), and payments made under Title I of P.L. 93-113 (for example, Volunteers in Service to America—VISTA);

(6) Payments received under the Experimental Housing Assistance Program (EHAP) made under annual contribution's contracts entered into prior to January 1, 1975, under section 23 of the United States Housing Act of 1937;

(7) Payments made through the United States Department of Housing and Urban Development (HUD) Section 8, Rental Assistance Program (RAP), which provides funds to certain disabled individuals and low income families to assist them in meeting shelter costs.

(8) HUD community development block grant funds under Title I of the Housing and Community Development Act of 1974.

(9) Benefits received by eligible households under the Low Income Home Energy Assistance Act of 1981 pursuant to section 2605(f) of Public Law 97-35.

ix. Stipends received by individuals who participate in the New Jersey Youth Corps Stipends Program shall be treated as an exempt resource and not counted in

the determination of AFDC eligibility nor in the calculation of grant entitlement.

7. Occasional nonrecurring gifts and contributions of nominal amount or value, such as those for birthdays, graduations, Christmas or other holidays, to the extent the value does not exceed an average of \$30.00 per recipient in any calendar quarter.

i. In cases where such gifts and contributions exceed an average of \$30.00 per recipient in any calendar quarter, that excess shall be counted as unearned income.

ii. In determining value, a gift received by one member of the eligible unit but intended for the entire eligible unit may be allocated among the eligible unit members in the way most advantageous to the entire unit.

8. Loans:

i. Loans for specific purposes:

(1) Loans and grants which are not to be used to meet current living costs and which are held and used in accordance with the conditions of the loan are exempt. Examples are:

(A) Loans made by the Farmers Home Administration, U.S. Department of Agriculture, under Title III of the Economic Opportunity Act, and loans made by the Farmers Home Administration under provisions in Title V of the Housing Act of 1949, as amended.

ii. Personal loans are exempt when such loans are evidenced by a document, signed by the client and the lender, which states the amount of the loan and terms of repayment.

9. Funds received in repayment of verified costs of collection of a pending claim when the costs were incurred during a period of receipt of AFDC (see N.J.A.C. 10:81-3.41(a)).

10. Value of home produce: Farm and garden products raised by the eligible unit for its own use.

11. Burial plots and funeral agreements: Burial plots (limited to one for each member of the eligible unit) and bona fide funeral agreements to the extent that the equity value of any agreement does not exceed \$1,500 for each member of the eligible unit.

i. Burial plots are conventional gravesites, crypts, mausoleums, urns or other repositories which are customarily and traditionally used for the remains of deceased persons.

ii. Funeral agreements are contractual arrangements to provide for the costs connected with burial, cremation, or other funeral arrangements.

Amended by R.1977 d.229, effective July 1, 1977.

See: 9 N.J.R. 222(d), 9 N.J.R. 370(c).

Amended by R.1977 d.431, effective December 1, 1977.

See: 9 N.J.R. 431(d), 9 N.J.R. 584(b).

Amended by R.1978 d.157, effective June 1, 1978.

See: 10 N.J.R. 113(a), 10 N.J.R. 255(b).

Amended by R.1978 d.438, effective February 1, 1979.

See: 10 N.J.R. 487(b), 11 N.J.R. 75(a).

Amended by R.1980 d.383, effective September 8, 1980.

See: 12 N.J.R. 414(a), 12 N.J.R. 599(b).

(b)4 amended to include burial plots.

Amended by R.1980 d.442, effective November 1, 1980.

See: 12 N.J.R. 534(a), 12 N.J.R. 663(d).

(b)7vi and (b)8: "specific purpose" language removed.

See: N.J.A.C. 10:82-4.15(a).

Amended by R.1981 d.96, effective April 9, 1981.

See: 13 N.J.R. 96(a), 13 N.J.R. 227(b).

(b)7viii(8) added.

Amended by R.1981 d.282, effective August 6, 1981.

See: 13 N.J.R. 224(b), 13 N.J.R. 499(a).

(b)7iii: delete "in excess of amount paid by the household by such allotment" after " . . . of the coupon allotment."

Amended on an emergency basis R.1981 d.396, effective September 30, 1981, exp. November 30, 1981. See: 13 N.J.R. 763(a). Readopted, R.1981 d.519, effective December 31, 1981. See: 13 N.J.R. 763(a), 14 N.J.R. 102(d).

(b)3 through 3iv deleted; new text for (b)3 added; (b)4 deleted; Renumbered (b)5-11 as (b)4-10.

Amended by R.1983 d.93, effective March 21, 1983.

See: 14 N.J.R. 1438(a), 15 N.J.R. 433(c).

(b)3: Equity value of auto not to exceed, formerly \$1,200 to \$1,500 as amended.

Amended by R.1983 d.504, effective November 7, 1983.

See: 15 N.J.R. 1431(a), 15 N.J.R. 1865(a).

Increase from \$200.00 to \$500.00 amount that can be recognized by CWA as incidental expenses.

Amended as emergency rule R.1984 d.463, effective September 28, 1984 (operative October 1, 1984).

See: 16 N.J.R. 486(a), 16 N.J.R. 2837(a).

(b)11 added. Amendments in (b)1-(b)10. Proposed in 16 N.J.R. 486(a).

Readopted, R.1984 d.568, effective November 28, 1984.

See: 16 N.J.R. 2837(a), 16 N.J.R. 3442(a).

Was previously filed as emergency amendment R.1984 d.463.

Correction: Inserted corrected text in (a)6vi, 7 and 9. The new text was prepared but never adopted.

See: 17 N.J.R. 1143(b).

Amended by R.1985 d.709, effective January 21, 1986 (operative February 1, 1986).

See: 17 N.J.R. 2518(b), 18 N.J.R. 192(a).

(b)3i added.

Amended by R.1986 d.471, effective December 1, 1986.

See: 18 N.J.R. 260(a), 18 N.J.R. 2388(b).

Substantially amended.

Amended by R.1987 d.285, effective July 20, 1987.

See: 19 N.J.R. 344(a), 19 N.J.R. 1317(a).

Added (b)6vii(a). Added text in (b)7 "to the extent . . . any calendar quarter" added (c)7i.

Amended by R.1987 d.330, effective August 17, 1987.

See: 19 N.J.R. 709(a), 19 N.J.R. 1559(c).

Added (b)6v(3) and deleted (b)8i(2).

Amended by R.1988 d.424, effective September 6, 1988.

See: 20 N.J.R. 1059(a), 20 N.J.R. 2292(b).

Deleted old text in (b)9 and substituted new.

Amended by R.1989 d.497, effective September 18, 1989.

See: 21 N.J.R. 1811(a), 21 N.J.R. 3014(a).

Clarification of citations added.

Amended by R.1991 d.7, effective January 7, 1991.

See: 22 N.J.R. 2445(a), 23 N.J.R. 93(a).

In (b)6.iv.: added text regarding REACH program.

Deleted (b)6iv(1) on WIN requirements and recodified (b)6iv(2) as new (1). Added new (b)6v. and recodified v. through vii. as vi. through viii.

Administrative Correction.

See: 25 N.J.R. 4597(b).

Amended by R.1994 d.430, effective August 15, 1994.
See: 26 N.J.R. 1584(a), 26 N.J.R. 3483(a).

Case Notes

Net recovery in a personal injury action obtained before commencement of assistance is a factor in determining program eligibility; agreement for assistance repayment valid and enforceable; repayment obligation runs from date of agreement rather than date of injury judgment; welfare board not chargeable with pro rata share of injury litigation counsel fee. In re: Guardianship of Jones, 170 N.J.Super. 478, 406 A.2d 1331 (App.Div.1979), certification denied 82 N.J. 290, 412 A.2d 797 (1980).

Contribution funds accumulated under provisions of the Post-Vietnam Era Veterans Assistance Program were not an educational grant or loan and must be liquidated as a nonexempt resource before becoming AFDC eligible. L.D. v. Passaic Cty. Bd. of Social Services, 7 N.J.A.R. 309 (1984).

Regulations in N.J.A.C. 10:82 regarding loans inapplicable to Food Stamp dispute by provision of N.J.A.C. 10:87-1.5. In re: S.C., 6 N.J.A.R. 333 (1981).

Termination of AFDC benefits due to possession of automobile valued in excess of resource exemption reversed because of agency failure to notify recipient of opportunity to liquidate resource under former N.J.A.C. 10:82-3.4 and 3.5; required valuation method improperly applied. Burlington Cty. Welfare Agency v. E.G., 3 N.J.A.R. 174 (1982).

10:82-3.3 (Reserved)

Amended as emergency rule, R.1984 d.463, effective September 28, 1984 (operative October 1, 1984).
See: 16 N.J.R. 2837(a).

This rule defined potential resources.
Readopted, R.1984 d.568, eff. November 28, 1984.
See: 16 N.J.R. 2837(a), 16 N.J.R. 3442(a).

Was previously filed as emergency amendment R.1984 d.463.

Case Notes

Initial eligibility for AFDC grant must be determined on all income available at any time during the month the application was received (Director's Final Decision). In the Matter of P.B., 8 N.J.A.R. 329 (1980).

10:82-3.4 (Reserved)

Amended, R.1983 d.93, effective March 21, 1983.
See: 14 N.J.R. 1438(a), 15 N.J.R. 443(c).

Language added concerning liquidation of resources in excess of \$1,000.

Amended as emergency rule R.1984 d.463, effective September 28, 1984 (operative October 1, 1984).
See: 16 N.J.R. 2837(a).

This rule was concerned with principals affecting potential resources.
Readopted, R.1984 d.568, effective November 29, 1984.
See: 16 N.J.R. 2837(a), 16 N.J.R. 3442(a).

Was previously filed as emergency rule.

Case Notes

Termination of AFDC benefits due to possession of automobile valued in excess of resource exemption reversed because of agency failure to notify recipient of opportunity to liquidate resource under former N.J.A.C. 10:82-3.4 and 3.5; required valuation method improperly applied. Burlington Cty. Welfare Agency v. E.G., 3 N.J.A.R. 174 (1982).

10:82-3.5 (Reserved)

Amended as emergency rule, R.1984 d.463, effective September 28, 1984 (operative October 1, 1984).

See: 16 N.J.R. 2837(a).

This rule was concerned with Responsibilities regarding potential resources.

Case Notes

Termination of AFDC benefits due to possession of automobile valued in excess of resource exemption reversed because of agency failure to notify recipient of opportunity to liquidate valuation method improperly applied. Burlington Cty. Welfare Agency v. E.G., 3 N.J.A.R. 174 (1982).

Former regulation required written notice to individuals who are requested or required to liquidate a resource. "C.B." v. Essex Cty. Div. of Public Welfare, 1 N.J.A.R. 68 (1981).

10:82-3.6 (Reserved)

Amended as emergency rule, R.1984 d.463, effective September 28, 1984 (operative October 1, 1984).

See: 16 N.J.R. 2837(a).

Old section deleted, new text substituted therefor.
Readopted, R.1984 d.568, effective November 28, 1984.
See: 16 N.J.R. 2837(a), 16 N.J.R. 3442(a).

Was previously filed as emergency rule.
Repealed by R.1988 d.424, effective September 6, 1988.
See: 20 N.J.R. 1059(a), 20 N.J.R. 2292(b).

Section was "Liquidation of nonexempt real property".

10:82-3.7 (Reserved)

Amended by R.1980 d.120, effective March 19, 1980.
See: 12 N.J.R. 28(a), 12 N.J.R. 194(e).

(a)4i: Added cross-reference to N.J.A.C. 10:81-3.41(a)2.
(a)4ii: Added exceptions and made nonsubstantive language changes.
Amended as emergency rule, R.1984 d.463, effective September 28, 1984 (operative October 1, 1984).
See: 16 N.J.R. 2837(a).

(a) through (a)3 deleted; (a)4 changed to (a); renumber i.-iii. as 1.-3.

Readopted, R.1984 d.568, effective November 28, 1984.
See: 16 N.J.R. 2837(a), 16 N.J.R. 3442(a).

Previously filed as emergency rule.
Repealed by R.1988 d.424, effective September 6, 1988.
See: 20 N.J.R. 1059(a), 20 N.J.R. 2292(b).

Section was "Suits and claims".

Case Notes

Statutory amendment excluding child's claim for personal injuries as a source of repayment to welfare agency given retroactive effect to infants injured prior to amendment. Hart v. Fox, 204 N.J.Super. 564, 499 A.2d 553 (Law Div.1985).

Net recovery in a personal injury action obtained before commencement of assistance is a factor in determining program eligibility; agreement for assistance repayment valid and enforceable; repayment obligation runs from date of agreement rather than date of injury judgment; welfare board not chargeable with pro rata share of injury litigation counsel fee. In re: Guardianship of Jones, 170 N.J.Super. 478 (App.Div.1979), certification denied 82 290, 412 A.2d 797 (1980).

Suit or claim arising from an accident to be considered a resource. In re Estate of Jackson, 79 N.J. 517, 524, 401 A.2d 517 (1979).

10:82-3.8 Relative as a resource

(a) The following table indicates the legally responsible relatives (LRRs) in each program to whom the policies and standards in this section apply:

Legally responsible relative	Program	
	AFDC	MA
Spouse	x	x
Child under age 55	x	
Any parent of a child under 18 or of a child over 18 who is not an AFDC parent or parent-person	x	x

As amended, R.1978 d.157, eff. June 1, 1978.

See: 10 N.J.R. 113(a), 10 N.J.R. 255(b).

As amended, R.1979 d.427, eff. December 1, 1979.

See: 11 N.J.R. 446(b), 11 N.J.R. 560(c).

As amended, R.1982 d.353, eff. October 18, 1982.

See: 14 N.J.R. 814(b), 14 N.J.R. 1161(d).

Change from 21 years to 18 years of age as legal requirement for support by relative. Reflects change in law.

10:82-3.9 Available support

(a) The CWA IV-A unit shall determine what contributions, whether in cash or in kind, the relative is currently contributing or is willing to contribute toward the support of the eligible unit.

1. Only the amount of support, whether in cash or in kind, actually being received by the eligible unit shall be considered as available income.

2. When an LRR fails to make available to the eligible unit the amount of the contribution for support as determined by the following methods, such support shall then be considered as a potential resource.

(b) It shall be recognized that a person's obligation to support those relatives for whom he/she is legally responsible takes precedence over any voluntary preference on his/her part to support relatives or other persons for whom he/she is not legally responsible, except as provided in section 11 of this subchapter.

1. Responsibility of a person for the support of his/her own minor children takes priority over any obligations to contribute to support of any other dependent relatives.

(c) When a relative is legally responsible for all members of an eligible unit, this LRR's financial capacity to support shall be considered as a resource to the eligible unit as a whole.

1. When a relative is legally responsible for one or more, but not all member(s) of the eligible unit, the LRR's obligation to support in relation to need shall be the per capita share of the eligible unit's adjusted allowance for those persons for whom he/she is legally responsible.

2. When a relative is legally responsible for two or more persons who are not members of the same eligible unit, his/her capacity to support may be allocated according to the relative's wishes, provided that the amount allocated to any one individual does not exceed that individual's share of the adjusted allowance.

(d) The eligible unit ceases to be eligible for assistance when the amount of the LRR's evaluated capacity to support equals or exceeds their adjusted allowance and this support is actually to the eligible unit.

1. The amount of the LRR's contribution shall be recognized only when there is affirmative evidence that such amount or its equivalent in goods or services is in fact available to members of the eligible unit.

2. When a LRR fails or refuses to make available to the eligible unit all or any portion of his/her contribution, and this has been verified, such amount shall not be entered as income on the PA-3A form. (See PAM 3842 for agency action in such case.)

(e) Where it is determined that an LRR does not have a capacity to contribute to support, any cash contribution which he/she voluntarily makes on a regular basis is recognized as unearned income.

(f) Absent parent: To determine the capacity of an absent parent to support his or her dependent children, the procedures at N.J.A.C. 10:81-11.18 shall be followed by the CWA IV-D unit.

As amended, R.1984 d.242, eff. June 18, 1984 (Operative July 1, 1984).

See: 16 N.J.R. 829(a), 16 N.J.R. 1607(a).

Amended by R.1986 d.115, effective April 7, 1986 (operative May 1, 1986).

See: 18 N.J.R. 20(b), 18 N.J.R. 689(b).

Substantially amended.

Case Notes

Available income. Schmidt v. N.J. Dept. of Institutions and Agencies, 147 N.J.Super. 150, 153, 370 A.2d 892 (App.Div.1977) (regulation cited as ASH § 332.1(a)).

10:82-3.10 Evaluating LRR's capacity to support

(a) The LRR's capacity to support shall be based on his/her total gross monthly income, including all income of whatever kind and from whatever source except as stated in this section.

(b) Income determination rules are:

1. "Gross income" means income before deductions, or the net profit from a business, farm or profession before income and other personal taxes are deducted. "Net profit" is the total revenue less the cost of producing the revenue. Business deductions which are allowable for income tax purposes may be recognized as expenses of producing this revenue.

2. The average income for the most recent period of four months may be accepted as satisfactory evidence of the average for the last year, but the income record for the entire 12-month period may be considered if the individual so requests and makes the necessary information available.