

CHAPTER 46

DETERMINATION OF ELIGIBILITY AND CONTRIBUTION TO CARE AND MAINTENANCE REQUIREMENTS

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 Chapter 46 was repealed and replaced by R.1990 d.409, effective September 17, 1990.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.

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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 the self-determination project.

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.

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 in-

struction 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.

“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 the Division’s pilot program which allows an individual with developmental disabilities, in connection with his or her legal guardian, if any, family and selected friends to select appropriate services and supports and determine how an individual budget, as well as individual, family and community resources, can be used to develop a living arrangement, such as shared living, supported living and other individualized housing options, and allow the individual to be a greater 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)”.

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 Presumptive eligibility

(a) If the applicant appears to be eligible for services and manifests an emergent need for services from the Division, then such a person may be declared presumptively eligible by the Regional Administrator. The determination of presumptive eligibility shall be made within five days of 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.

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

In (a), substituted "Regional Administrator" for "Division Director or his or her designee".

10:46-2.3 Services

(a) "Services for developmentally disabled persons" means specialized services or specialized adaptations of generic services provided by a 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 a person with a developmental disability and includes case management, diagnosis, evaluation, treatment, personal care, domiciliary care, special living arrangements, training, vocational training, recreation, counseling of the person with the disability and his family, information and referral services and transportation services.

(b) Respite service shall not be considered placement for the purposes of N.J.A.C. 10:46B.

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

(d) Assistive devices may be made available to persons who live independently, in the home of a relative or in a home licensed under N.J.A.C. 10:44B, as follows:

1. The assistive device is not available through an alternate-funding source; and
2. Assistive devices shall remain the property of the Division.

(e) Home adaptation shall not be provided to persons determined presumptively eligible. Home adaptation may be provided once the individual is found eligible for services.

(f) Respite services may be provided in the home or through a home licensed under N.J.A.C. 10:44A or 10:44B.

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).

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

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).

10:46-2.4 Determination of financial ability to pay

(a) Once a residential placement is offered, the Division, or its appointed agent, shall conduct an investigation into the ability of the individual and/or LRR(s) to pay for the cost of care and maintenance, including, but not limited to, assets, resources, income or insurance of the individual or his or her LRR(s).

(b) In accordance with the provisions of N.J.S.A. 30:1-12c, the Division shall, as needed, issue subpoenas to require testimony or to compel the production of documents in order to complete its investigation.

(c) The individual, his or her legal guardian or LRR(s) shall authorize the release of information necessary to complete the financial assessment and annual reviews, at the time of the application for eligibility. All information required to complete the financial assessment shall be kept confidential pursuant to N.J.S.A. 30:4-24.3, except to the extent necessary to enforce the obligation to contribute.

(d) The individual, legal guardian, LRR(s) and/or other responsible parties shall cooperate fully in obtaining the information needed for the investigation. Failure to cooperate may be a reason for a determination of ineligibility, withdrawal of an offer of residential placement, or termination of services if already placed.

(e) In its investigation, the Division, or its appointed agent, shall use the formula of financial ability to pay delineated in N.J.A.C. 10:46-2.5 to determine if the individual or his or her LRR(s) has sufficient income, assets, resources, finances or estate to pay for all or part of his or her cost of care and maintenance as fixed by the State Board of Human Services or the Commissioner.

1. A written notice shall be sent which informs the individual, legal guardian and/or LRR(s) of the figures used and how the amount due was calculated.

2. The individual, legal guardian, LRR(s) and/or other responsible parties may, at any time, inquire as to how the particular amount due to be paid was determined.

(f) The individual, LRR(s), and/or other responsible parties shall make such payments as are required by N.J.A.C. 10:46-2.5 for the cost of care and maintenance as set by the State Board of Human Services pursuant to N.J.S.A. 30:4-23 et seq. and 30:4-60(b) (See chapter Appendix, incorporated herein by reference), beginning on the date of residential placement by the Division, to the following:

Treasurer, State of New Jersey
DHS-DDD
PO Box 35247
Newark, New Jersey 07193-5247

(g) The Division, or its appointed agent, shall determine the legal settlement of the individual, using N.J.S.A. 30:4-49 through 73 to determine what state or county shall bear any cost of maintenance if the individual cannot pay. In no case shall the individual or other responsible parties be relieved of overall responsibility to repay the full costs of care and maintenance nor shall the LRR(s) be relieved of overall responsibility to pay the full amount assessed.

(h) The county where the individual resides at the time of application shall be notified by the Division if the individual

is determined eligible for services. The county of residence and the county of settlement, if different, shall make their records available for examination and provide copies of documents as needed by the Division, or its appointed agent, and shall fully cooperate with the Division, or its appointed agent, in the review and investigation of the ability to pay of the individual or his or her LRR(s).

(i) All payments received by the county or State from the estate of the individual on behalf of any individual receiving residential services shall be treated as payments for current care and maintenance and retained by the Division to offset current costs. Pursuant to N.J.S.A. 30:4-78, the only exception is if payment is made for a specific service period. Such a payment shall be shared in the same ratio between the Division and the county as those parties shared the cost for that period.

(j) The individual and/or legal guardian shall apply for and maintain all current and future benefits for which he or she may be eligible including, but not limited to, Medicare, Medicaid, State and Federal benefits and any third party support pursuant to statute, rule, order or by contract. If the individual, legal guardian and/or LRR(s) does not apply for and maintain current and future benefits, procedures for termination of services, pursuant to N.J.A.C. 10:46-6, may be initiated.

(k) Eligibility for services shall not be denied if the other eligibility criteria are met but the individual does not have the ability to pay. The determination of lack of ability to pay shall be made by the Division, or its appointed agent, and kept in the client record. The individual's ability to pay shall be reviewed annually.

(l) The individual and/or legal guardian shall agree to assign to the Division at the time of the offer of residential placement all rights to the support indicated in (j) above, unless specifically prohibited by Federal and/or State law or rule. For individuals already residentially placed by the Division on or before September 8, 1998, the assignment of those rights shall be made as soon as possible following (the effective date of this rule).

(m) The Division shall file a lien against the real and personal property of the individual receiving services for the full cost of care and maintenance received minus the amount paid and also against the real and personal property of an individual and/or the LRR(s) for any past due amount the LRR(s) was required to contribute to the cost of the individual's care and maintenance.

(n) If the full amount of the assessed monthly payment cannot be paid, the individual, legal guardian, LRR(s) and/or other responsible parties shall notify the Division immediately. The Division, or its agent, shall investigate and determine whether a new or revised monthly payment is to be made. Such reassessments shall be given priority to be completed by the Division or its agent.

(o) Payment calculations for the individual and/or LRR(s) shall be reviewed and revised annually by the Division or its appointed agent. If the Treasury Formula-*DDD(B)* (N.J.A.C. 10:46-2.5(k)) is used, expenses reviewed by the IHP team and approved by the assigned State business office shall be considered an annual budget for the individual. If the financial circumstances of the individual and/or the LRR(s) change prior to the annual review, the individual, other responsible parties or LRR(s) shall immediately notify the Division in writing at the Fiscal Office (M), Division of Developmental Disabilities, PO Box 170, Trenton, NJ 08601. Minor changes, as indicated below at (o)1 through 3, shall not be the basis for an additional review. The individual, other responsible parties or LRR(s) shall be responsible to continue to pay as directed by the Division until the Division or its appointed agent, completes its review. The requested review shall be given priority. If it is determined that a change in the assessed amount is appropriate, the change shall be effective on the first day of the month following the postmarked date of the letter notifying the Division of a change in financial circumstances. For example, if the date of notification was January 2, 1998, effective date of the change would be February 1, 1998. The review shall be completed no more than 90 days following the receipt of all the requested documentation.

1. The annual calendar year increases to Social Security benefits and other periodic increases to benefits shall not be grounds for a revision to the annual budget for expenses. No request for a revision of the assessed contribution for the cost of care and maintenance may be made under this circumstance. This increase shall be considered at the time of the next annual IHP.

2. The individual, legal guardian, family, and/or other interested parties shall be invited to the annual IHP meeting. The scheduling of the IHP meeting shall facilitate the fullest possible participation of the individual, legal guardian, family and/or other interested parties. The Division shall accommodate reasonable requests in scheduling the date of the annual IHP meeting. If attendance is not possible at the meeting, requests for expenses may be submitted in writing prior to the meeting. If the individual, legal guardian, family and/or other interested party chooses not to participate in the IHP meeting, this lack of participation shall not be the grounds to request a revision of the annual budget for expenses. No request for a revision of the assessed contribution of care and maintenance shall be made under this circumstance.

3. If the individual, legal guardian, family and/or interested parties do not use the entire amount potentially available at the time of the annual IHP meeting, that remainder shall not be the grounds to request a revision of the annual budget for expenses. No request for a revision of the assessed contribution for the cost of care and maintenance shall be made under this circumstance. The expenses shall be recalculated at the time of the next annual IHP.

(p) The individual shall remain liable for the unpaid balance of the cost of care and maintenance. The LRR(s) shall remain liable for any unpaid portion of the assessed amount.

New Rule, R.1998 d.468, effective September 8, 1998.
See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).
Amended by R.1999 d.405, effective November 15, 1999.
See: 31 N.J.R. 1890(a), 31 N.J.R. 3632(a).
Rewrote (o).

10:46-2.5 Treasury Formula-*DDD*

(a) The purpose of this section is to set forth the assessment methodology used by the Department of Human Services for determining the financial ability to contribute toward the cost of care and maintenance of an individual with a developmental disability, and the procedure for the collection of such contribution. This section shall apply to the individual being served, LRR(s) or any other person responsible for the estate of such individual and/or LRR(s). The family maintenance standard, the medical cost standard and the tuition deduction shall be revised annually, using the Consumer Price Index figures then applicable and the cost for in-State tuition at Rutgers, the State University. These revisions shall be published annually by the Department as a public notice in the New Jersey Register. Additionally, the Department shall publish in the New Jersey Register the cost of care and maintenance rates as established by the State Board of Human Services.

(b) The Treasury Formula-*DDD(A)* charges 20 percent of family income above a minimum cost of living standard to clients with financial dependents (claimed on individual's State and Federal income tax forms) and LRR(s) except as provided in (l) below.

(c) The family maintenance standard (FMS) shall be used to define the income necessary to meet a family's minimal needs. The FMS establishes the lower ceiling on charges by assuring that payments to the Department do not reduce the family's income below this amount. The FMS is tied to an authoritative cost of living standard which reflects inflationary increases. Adjustments in the FMS are made by using the current available 12 month change in the Consumer Price Index (CPI), October through October, for Urban Wage Earners and Clerical Workers for New York/Northeastern New Jersey and the Philadelphia Metropolitan regions. This CPI standard, compiled for a family of four, is changed into equivalent incomes for various family sizes using a scale provided by the Federal government. (See Examples 1 and 2 below.)

(d) The family maintenance standard shall be calculated by the Department in the following manner. (The steps listed below coincide to the numbered instructions shown in Example 2 below.)

1. Step 1—Indicate adjustment months. The adjustment months will be the months of October of the previous year and October of the current year.

2. Step 2—Determine the difference in the Consumer Price Index. For each region, determine the difference in the Consumer Price Index of “all items” by subtracting last October’s CPI from the index information received from the current October report.

3. Step 3—Calculate the Consumer Price increase or decrease. Calculate the percentage increase or decrease in the CPI for each region. The difference for each region divided by last October’s CPI by region will equal the percentage of increase or decrease.

4. Step 4—Determine average increase or decrease. Calculate the average or the percentage increases or decreases for the regions.

5. Step 5—Adjust the FMS Base (a family of four). Multiply the current standard by the average regional CPI increase or decrease calculated in Step 4, and add the answer to, if an increase, or subtract the answer from, if a decrease, the current standard to obtain the new standard.

6. Step 6—Determine the FMS for smaller and larger families. Multiply the FMS calculated in Step 5 by the Equivalence Standards indicated in the Table in Example 2 below.

(e) The medical cost standard shall be calculated by the Department using the same process described in (d) above for the FMS. The MCS computation, however, only uses the medical care cost component of the CPI. (See Example 1 below.)

(f) The deduction for college tuition shall be the actual college tuition cost paid, but shall not exceed the maximum of the annual in-State tuition expenses for Rutgers University. The deduction shall be net of any scholarships, awards or grants, and shall cover tuition paid but shall not cover such items as room, board, books and lab fees. The maximum college tuition deduction for calendar year 1999 is \$4,762. This shall be revised annually as required by (a) above.

(g) The Treasury Formula-DDD(A) allows deductions from total income to accurately determine the disposable income. Allowable deductions shall be as follows:

1. Major “unavoidable” expenses such as non-insured medical expenses in excess of the medical cost standard (MCS);
2. Alimony payments or other court-ordered monthly contributions;
3. College tuition in accordance with (f) above;
4. Child care expenses which comply with current Federal income tax guidelines for the Federal child care credit; and
5. Catastrophic events.
 - i. Deductions for catastrophic events shall include documented personal property losses from theft or

natural catastrophes such as fire, flood or storm. Deductible losses resulting from a natural catastrophe shall have been caused by a sudden and destructive force. Damages occurring over time, such as termite infestation, or residing or painting a house as part of regular maintenance shall not be deductible losses. Situations resulting from extreme financial stress shall be considered as a catastrophic event. Some examples include large debts due to prolonged unemployment and extraordinary business losses. The individual and/or LRR(s) shall provide verification of the claimed deduction(s).

(h) The individual and/or LRR(s) shall provide to the Department State and Federal income tax forms and wage statements in all cases, except when the family can establish status as recipients of public assistance.

(i) The total funds remaining, after the cost of the appropriate FMS is subtracted from the Disposable income, shall be the marginal income. The individual or LRR(s) shall contribute 20 percent of the marginal income.

(j) Individuals with financial dependents, as defined in (l) below, and LRR(s) shall contribute in accordance with the following Treasury Formula-DDD(A):

Total Annual Income less Income Taxes and Allowable Deductions = Disposable Income

Disposable Income less Family Maintenance Standard = Marginal Income

Marginal Income multiplied by .20 then divided by 12 = Monthly Charge

(k) Individuals without financial dependents and those required by (l) below to use this formula shall contribute in accordance with the following Treasury Formula-DDD(B):

1. Total Monthly Net Income less PNA and, where documented, a plan to achieve self support (PASS) = Disposable Monthly Income.

i. Where an individual has a PASS, as defined at 20 C.F.R. § 416.1226, and approved by the Social Security Administration, that amount shall be deducted from the Total Monthly Net Income.

ii. A copy of the PASS as approved by the Social Security Administration shall be provided to the Division by the individual.

iii. The PASS may be in effect for 18 months and may be extended for another 18 months up to an overall limit of 48 months, as approved by the Social Security Administration.

iv. The resources excluded under the PASS shall be deducted from the Total Monthly Net Income for the term of the plan, or until there is evidence that the time schedule has been completed, or the goal has been

achieved, or the plan is not followed or the plan has been abandoned.

2. Fifty percent of Disposable Monthly Income shall be automatically contributed to cost of care and maintenance. If the monthly payment is less than \$20.00, the contribution shall be waived.

i. Where an individual is required to contribute to a HUD rental, or otherwise pays directly for his or her housing costs as indicated in the Division's contract with the provider agency, that amount shall be deducted from the 50 percent contributed to the cost of care and maintenance.

ii. If an agency wishes to collect room and board directly from the individual served, the agency may request to amend its contract with the Division by the amount it expects to collect. The amount collected shall be deducted from the 50 percent contributed to the cost of care and maintenance.

iii. A one-time allowance of up to \$1,500 may be taken for the cost associated with the appointment of a private guardian. This allowance may be deducted from the 50 percent automatically contributed for the cost of care and maintenance. A copy of the court order shall be provided to the Division by the guardian once the guardian has been appointed. If, for any reason, any part of the allowance is not used for the appointment of a guardian, the unused amount of the allowance may be collected in one sum at a time established by the Division.

3. The 50 percent remainder of disposable income shall be potentially available for other expenses as specified in (k)3i through vi below if recommended by IHP team and approved by the assigned State business office of the Division, as being determined to be reasonable, programmatic appropriate, consistent with individual need and not otherwise provided by the Division. The approved expenses shall be considered an annual budget to be approved once a year unless there have been changes in the person's circumstances.

i. Clothing allowances;

ii. Medical and dental expenses not covered by other sources;

iii. Transportation costs when they are program related or an individual's family member(s) is unable to visit otherwise as determined by (r) below;

iv. Leisure and/or recreation activities as programmatic determined to be appropriate by the IHP Team;

v. Burial fund. The amount, which may be accumulated, shall be subject to any dollar amount limitation established by any statute, rule, order or contract, which applies to the individual including Federal benefits; and

vi. Private guardianship expenses of up to six percent of the annual income of the individual, without court order. The six percent may be exceeded under court order for an additional percentage. This expense shall not be permitted where the Division provides guardianship through the Bureau of Guardianship Services.

4. All earnings from employment below minimum wage shall be exempt from determining an individual's available income and shall not be considered part of the individual's disposable income. Contributions to the cost of care and maintenance from employment earnings at or above minimum wage shall be determined as follows:

i. The first \$65.00 earned shall be exempt from any contribution requirements.

ii. After the first \$65.00 earned, 30 percent of all wages earned will be contributed towards the cost of care and maintenance. If the monthly payment is less than \$20.00, the contribution requirement shall be waived.

(l) A married individual receiving residential services shall use the appropriate Treasury Formula-DDD as set forth below:

1. If two individuals who are married have no dependents and are living together or separately in Division residential placements, each individual shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD(B) in (k) above.

2. If an individual is residentially placed by the Division and has a spouse and/or dependents who live elsewhere and the spouse and dependents receive public assistance and/or other Federal or State benefits for themselves only, the spouse and/or dependents shall have no financial responsibility for the cost of the individual's care and maintenance. The individual shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD(B) in (k) above.

3. If an individual is residentially placed by the Division, and has a spouse who resides elsewhere and the spouse has income and the dependents may or may not receive public assistance or benefits, the spouse's income shall be assessed pursuant to (j) above. The individual's income and benefits shall also be reviewed to determine past financial support to the dependents. If there is no evidence that support has been provided by the individual to dependents, the individual's income and benefits shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD(B) in (k) above.

4. If an individual is residentially placed by the Division and has a spouse who resides elsewhere, and the spouse has an income and there are no dependents, the spouse's income shall be assessed pursuant to (j) above. The individual shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD(B) in (k) above.

5. If an individual is residentially placed by the Division and is financially responsible for a dependent and no public assistance or benefits are received on behalf of the dependent, the individual's income and benefits shall be assessed pursuant to Treasury Formula-DDD(A) in (j) above.

(m) Assets shall be reported as such by the individual and LRR(s). The Department shall place a lien against the individual's assets for the unpaid cost of care and maintenance. A lien shall be placed against the assets of an LRR(s) for any unpaid portion of the LRR's required payments.

(n) The individual and/or the LRR(s) shall supply information to the Department or its agent regarding current and former residences and financial circumstances. Financial information shall include a full disclosure of income, assets, resources and benefits. The individual and/or the LRR(s) shall supply to the Department information regarding insurance coverage, including name and address of any insurance company(s) providing coverage, and the identification number(s) applicable to the individual.

1. The data required by (n) above shall be the primary source of information for the Department's investigation into legal settlement and the ability to contribute toward the care and maintenance of the individual. Where appropriate, the Department shall review other records,

such as property tax records and any other source related to the information required.

2. The required information shall be updated annually by the individual and/or his or her LRR(s), or guardian or other person acting on behalf of the individual, using forms provided by the Department. The completed forms shall be returned to the Department or its agent within 20 days of the date mailed.

(o) The individual, his or her LRR(s), legal guardian or other person acting on behalf of the individual shall notify the Department in writing of any change in the information submitted in accordance with (n)2 above.

(p) The individual shall receive a minimum personal needs allowance of \$40.00 per month from the funds received by the representative payee or from the individual's income. The personal needs allowance shall be used by the individual for his or her personal spending.

(q) Purchases made with the individual's funds shall be the personal property of that individual and shall be reserved for that individual's use.

(r) Any family member who is on a fixed income may request to have the travel expenses which he or she incurs to visit the individual residentially placed by the Division covered pursuant to (k) above.

EXAMPLE 1

New Jersey Department of Human Services
 Treasury Formula for the Assessment of Charges to Clients and Legally Responsible Relatives
 Calculation of the Medical Cost Standard
 (Effective January 1, 2000)

COMPUTATION

The Medical Cost Standards computed on this page are to be used for all CY 2000 assessments.

1. Adjustment Months	October, 1998 and October, 1999			
2. Consumer Price Index for Urban Wage Earners and Clerical Workers—Medical Care.				
ADJUSTMENT	NEW YORK/ PHILADELPHIA			
MONTHS	NORTHEASTERN N.J. METROPOLITAN			
October, 1998:	258.4			
October, 1999:	266.6			
Difference:	8.2			
3. Percentage Change:				
NEW YORK/NORTHEASTERN N.J.	3.17% Increase			
PHILADELPHIA METROPOLITAN	4.56% Increase			
4. Average Regional Percentage Change:	3.87% Increase			
5. Adjustment of Medical Cost Standard (Family of Four):	\$4,486 x 1.0387 = \$4,660			
6. Determination of Medical Cost Standard for Various Family Sizes:				
Family Size	Equivalence Factor	Base (Family of Four)	=	MCS
2	.68	\$4,660	=	\$3,169
3	.84	\$4,660	=	\$3,914
4	1.00	\$4,660	=	\$4,660
5	1.16	\$4,660	=	\$5,406

61.32x\$4,660=\$6,151
71.35x\$4,660=\$6,291

NOTE: To calculate the Medical Cost Standard for family sizes larger than seven members, the Equivalence Factor should be increased by three hundredths (.03) for each additional family member and multiplied by the Medical Cost Standard for a family of four.

EXAMPLE 2

New Jersey Department of Human Services
Treasury Formula for the Assessment of Charges to Clients and Legally Responsible Relatives
Calculation of the Family Maintenance Standard
(Effective January 1, 2000)

COMPUTATION

The Family Maintenance Standards computed on this page are to be used for all CY 2000 assessments.

1. Adjustment Months October, 1998 and October, 1999
2. Consumer Price Index for Urban Wage Earners and Clerical Workers—All Items.
ADJUSTMENT MONTHS

	<u>NEW YORK/ NORTHEASTERN N.J.</u>	<u>PHILADELPHIA METROPOLITAN</u>
October, 1998:	170.5	169.3
October, 1999:	174.5	174.3
Difference:	<u>4.0</u>	<u>5.0</u>
3. Percentage Change:

NEW YORK/NORTHEASTERN N.J.	2.35% Increase
PHILADELPHIA METROPOLITAN	2.95% Increase
4. Average Regional Percentage Change: 2.65% Increase
5. Adjustment of Medical Cost Standard (Family of Four): \$21,609 x 1.0265 = \$22,182
6. Determination of Family Maintenance Standard for Various Family Sizes:

Family Size	Equivalence Factor	Base (Family of Four)	FMS
2	.68	\$22,182	\$15,084
3	.84	\$22,182	\$18,633
4	1.00	\$22,182	\$22,182
5	1.16	\$22,182	\$25,731
6	1.32	\$22,182	\$29,280
7	1.35	\$22,182	\$29,946

NOTE: To calculate the Family Maintenance Standard for family sizes larger than seven members, the Equivalence Factor should be increased by three hundredths (.03) for each additional family member and multiplied by the Family Maintenance Standard for a family of four.

New Rule, 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).
Administrative change.
See: 30 N.J.R. 4376(a).
Amended by R.1999 d.405, effective November 15, 1999.
See: 31 N.J.R. 1890(a), 31 N.J.R. 3632(a).
Rewrote (k).
Administrative change.
See: 31 N.J.R. 4260(a).

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

SUBCHAPTER 3. APPLICATION

10:46-3.1 Who may apply

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

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:	Counties of Jurisdiction:
Northern Regional Office	Sussex, Morris, Warren, Passaic,

Regional Office:
201-927-2600
1B Laurel Drive
Flanders, NJ 07836

Counties of Jurisdiction:
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, PO Box 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.