

4. Respite Care;
5. Integrated Therapeutic Network; and
6. Environmental/Vehicle Accessibility Adaptations.

Amended by R.1995 d.511, effective September 18, 1995.

See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

Amended by R.1998 d.468, effective September 8, 1998.

See: 30 N.J.R. 1737(a), 30 N.J.R. 2169(a), 30 N.J.R. 3271(a).

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

Amended by R.1999 d.311, effective September 7, 1999.

See: 31 N.J.R. 95(a), 31 N.J.R. 2633(b).

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

Amended by R.1999 d.405, effective November 15, 1999.

See: 31 N.J.R. 1890(a), 31 N.J.R. 3632(a).

Inserted "Fixed income" and "Plan to achieve self support (PASS)".

Amended by R.2000 d.315, effective August 7, 2000.

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

Inserted "Primary residence".

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

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

Rewrote "Self-determination".

Amended by R.2003 d.476, effective December 15, 2003.

See: 35 N.J.R. 3015(a), 35 N.J.R. 3783(a), 35 N.J.R. 5556(a).

Rewrote the section.

Amended by R.2005 d.391, effective November 21, 2005.

See: 37 N.J.R. 2326(a), 37 N.J.R. 4443(b).

In definition "Developmental disability", rewrote introductory paragraph 4 and added 4i through vi.

Amended by R.2007 d.307, effective October 1, 2007.

See: 39 N.J.R. 1387(a), 39 N.J.R. 4122(a).

Added definition "Assistant Commissioner"; in definition "Developmental Disability", in the introductory paragraph, inserted a comma following "individual", and in 4, deleted "before the age of 22" following "limitations"; and deleted definition "Director".

#### Case Notes

When denying application for services, Department of Human Services, Division of Developmental Disabilities, improperly interpreted "mental impairment" component of "developmental disability" as requiring proof of a neurological injury or mental retardation; such a view was too cramped in light of regulation's expansive definition that focused on the impact of the condition upon the applicant. D.D. v. New Jersey Div. of Disabilities, 351 N.J.Super. 308, 798 A.2d 148.

Applicant for services from the Department of Human Services, Division of Developmental Disabilities, does not have the burden of proving a definitive cause or source of "mental impairment," which is component of "developmental disability" required for services eligibility. D.D. v. New Jersey Div. of Disabilities, 351 N.J.Super. 308, 798 A.2d 148.

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 must be determined eligible for services under this chapter before the Division can provide services. In order to receive waiver services (a Federal Medicaid program), the individual and/or representative payee is responsible to make application for all benefits and comply with the requirements to continue eligibility for all benefits for which they are entitled, primarily the Medicaid DDD Community Care Waiver, Social Security and SCI. The individual is also responsible to maintain Medicaid eligibility by ensuring he or she has no more than \$2,000 in cash assets.

(b) The individual is required to apply for these benefits, primarily the Medicaid DDD Community Care Waiver, Social Security and SSI and comply with all the requirements of those programs, for which he or she may be eligible. If the individual is denied benefits and can take no action to become eligible for those benefits, he or she shall provide documentation of the denial to the Division, which shall be part of the client record. Eligibility for waiver services shall not be denied under these instances, if the other eligibility criteria are met.

(c) Individuals must keep assets below \$2,000 in order to remain eligible for waiver services. If eligibility is lost because assets are over \$2,000, the individual or representative payee will be notified that they have 30 days to comply with the asset requirement, in order to continue in a waiver program. If the individual or representative payee does not comply, they will receive notification that they will no longer be eligible for waiver services if they do not reduce their assets below \$2,000 within an additional 60 days. Loss of eligibility for the Medicaid DDD Community Care Waiver will mean the individual will be eligible for only those State-funded services that are available at that time. If at any time during this period, the individual reestablishes eligibility by lowering their assets, the individual will be able to remain in the waiver service.

(d) When an individual receives residential services from the Division, they are also required to contribute to the cost of care and maintenance. The requirements and financial ability of the individual and that of their legally responsible relatives to contribute to the cost of care and maintenance are set forth in N.J.A.C. 10:46D, Contributions for Care.

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

(f) 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.

(g) If a determination has been made by a local district board of education or a court of competent jurisdiction 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.

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

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

Amended by R.1995 d.511, effective September 18, 1995.

See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

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).

Amended by R.2003 d.476, effective December 15, 2003.

See: 35 N.J.R. 3015(a), 35 N.J.R. 3783(a), 35 N.J.R. 5556(a).

Rewrote the section.

Amended by R.2005 d.391, effective November 21, 2005.

See: 37 N.J.R. 2326(a), 37 N.J.R. 4443(b).

Rewrote (a) through (c) and (g).

#### Case Notes

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

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

#### 10:46-2.2 Residency

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

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

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

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

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

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

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

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

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

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

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

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

(c) If any individual has been placed in the State of New Jersey and that placement is funded totally or partially by a