

**CHAPTER 46**  
**DETERMINATION OF ELIGIBILITY**

**Authority**

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

**Source and Effective Date**

R.2005 d.391, effective October 18, 2005.  
See: 37 N.J.R. 2326(a), 37 N.J.R. 4443(b).

**Chapter Expiration Date**

Chapter 46, Determination of Eligibility and Contribution to Care and Maintenance Requirements, expires on October 18, 2010.

**Chapter Historical Note**

Chapter 46, Application and Admission to Functional Services, was adopted and became effective prior to September 1, 1969.

Chapter 46, Application and Admission to Functional Services, was repealed and Chapter 46, Determination of Eligibility, was adopted as new rules by R.1990 d.409, effective September 17, 1990.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, effective August 17, 1995. See: 27 N.J.R. 2157(a), 27 N.J.R. 3606(a).

Subchapter 5, Offers by the Division, Subchapter 6, Termination, and Subchapter 7, Appeals Process, were adopted as new rules by R.1998 d.468, effective September 8, 1998. See: 30 N.J.R. 1737(a), 30 N.J.R. 3271(a).

Pursuant to Executive Order No. 66(1978), Chapter 46, Determination of Eligibility and Contribution to Care and Maintenance Requirements, was readopted as R.2000 d.361, effective August 4, 2000. See: 32 N.J.R. 2020(a), 32 N.J.R. 3326(a).

Chapter 46, Determination of Eligibility and Contribution to Care and Maintenance Requirements, was readopted by R.2005 d.391, effective October 18, 2005. See: Source and Effective Date. See, also, section annotations.

Chapter 46, Determination of Eligibility and Contribution to Care and Maintenance Requirements, was renamed Determination of Eligibility by R.2007 d.307, effective October 1, 2007. See: 39 N.J.R. 1387(a), 39 N.J.R. 4122(a).

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**APPENDIX. NEW JERSEY DEPARTMENT OF HUMAN SERVICES CALENDAR YEAR 2003 PATIENT PAYMENT RATES FOR STATE INSTITUTIONS AND PROGRAMS**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**10:46-1.1 Purpose; authority**

(a) 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 determination of eligibility for services, to individuals with developmental disabilities. The applicant shall apply for all benefits for which he or she may be eligible. The Division shall not provide services when those services may be available through other sources. Before the Division offers services covered under the waiver, the individual and/or representative payee is responsible to apply through the Division for the Medicaid DDD Community Care Waiver and comply with all the requirements of eligibility for these benefits. The individual is also responsible to maintain eligibility for those benefits by ensuring they have no more than \$2,000 in cash assets. All other eligibility criteria in this chapter remain the same.

(b) When an individual receives residential services from the Division, they are 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.

(c) The availability of services shall be limited to the Division's funding in a given fiscal year.

(d) When a person is determined eligible for services, he or she may receive those State-funded services that are available at that time.

(e) The eligible person shall be notified by the Division of the availability of waiver services. At that time, the Division will provide the application for the Medicaid DDD Community Care Waiver.

(f) Any person under the age of 18 who is determined by the Division to be eligible for ICF/MR services may be found eligible for the Medicaid DDD Community Care Waiver without deeming of the family's income. The eligible person shall be notified by the Division of the availability of waiver services. At that time, the Division will provide the application for the Medicaid DDD Community Care Waiver. The individual shall meet all other eligibility requirements.

(g) To the extent practicable, written material shall be provided in the individual's primary language and in alternate formats as needed.

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.

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.

### 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.

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.

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

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

Administrative change.

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).

Deleted the last two 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 instruction in identification of developmental disabilities, use of evaluation tools and interaction techniques.

"Assistant Commissioner" means the Assistant Commissioner of the Division of Developmental Disabilities.

"Assistive devices" mean supports provided to aid in moving and positioning an individual while personal care is given, or which aid in communication.

"Benefits" means all current and future sources of cash and health assistance from Federal, State or private entities including, but not limited to, Social Security, SSI, Medicare,

Medicaid DDD Community Care Waiver, State and Federal funds and any third party support pursuant to State, rule order or by contract.

"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.

"Counseling" means advice or guidance provided by a person knowledgeable about services to persons with developmental disabilities.

"Developmental Disability" means a severe, chronic disability of an individual, 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 in three or more of the following areas of major life activity:
  - i. Self-care;
  - ii. Receptive and expressive language;
  - iii. Learning;
  - iv. Mobility;
  - v. Self-direction; and/or
  - vi. 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 impairments where the above criteria are met.

"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.