

(d) 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 amount contributed to the cost of care and maintenance.

(e) A one-time allowance of up to \$2,000 may be deducted from the contribution for the cost associated with the appointment of a private guardian. 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.

(f) The individual may utilize up to six percent of his or her total gross annual income for the provision of private guardianship 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.

(g) Any request to retain funds beyond 25 percent shall be based exclusively on the following circumstances. The request to retain additional funds shall be made to the case manager, be reviewed by the IDT team and approved by the assigned State business office. Retention of additional funds is subject to the annual reassessment. The individual or representative payee shall provide verification of the extraordinary need which shall be limited to the following circumstances:

1. The individual's reasonable costs related to food or shelter, including heat and utilities in a supervised apartment that exceed the amount provided in the agency contract;
2. Major "unavoidable" medical costs that are covered by Medicaid but exceed the frequency of service established by Medicaid or other unavoidable medical costs as reviewed and approved by the Division;
3. Replacement of personal items due to destructive behavior based upon documentation in a specific behavior plan and not covered by the contract or third party;
4. For individuals who do not already have one, establishment of an irrevocable burial fund. The individual shall be permitted to retain no more than an additional 10 percent per month of the disposable income until such time as the burial contract is paid in full; and
5. For individuals who will move from a residential placement to independent living within six months, the individual may retain up to \$2,000 to establish his or her household. Once the individual lives independently, he or she will have all his or her funds available; no contribution is required. The \$2,000 must be spent as it is needed; the individual cannot accumulate these funds.

(h) 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 computed similar to the way in which the Social Security Administration counts earned income for Supplemental Security Income purposes. Contributions shall be determined as follows:

1. The first \$85.00 of wages earned each month shall be exempt from any contribution requirements;
2. After the first \$85.00, one half of all wages earned will be excluded;
3. After one half of all wages earned are excluded, an additional one half of earnings are excluded because the individual's Supplemental Security Income cash benefit is reduced by one dollar for every two dollars earned; and
4. After this second exclusion, 30 percent of all wages earned will be contributed toward the cost of care and maintenance. If the monthly payment is less than \$20.00, the contribution requirement shall be waived.

(i) The individual or his or her representative payee may utilize the funds from earned income as he or she determines appropriate, however, he or she is responsible to maintain continued eligibility for the Medicaid DDD Community Care Waiver benefits.

10:46D-3.2 DDD Formula B-DDD(B) for individuals under age 18

(a) This section shall apply to the individual under age 18 being served, LRR(s) or any other person responsible for the estate of such individual and/or LRR(s). The family maintenance standard for a family of four, for calendar year 2016, is \$31,903, the medical cost standard (for a family of four is \$8,137) 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, (\$11,217 for school year 2015-16). These revisions shall be published annually by the Department as public notices 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 Commissioner.

(b) The Treasury Formula-DDD(B) 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 (j) 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 that 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.

(d) The family maintenance standard shall be calculated by the Department in the following manner.

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.

(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.

(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 the 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 school year 2015-2016 is \$11,217. This shall be revised annually as required by (a) above.

(g) The Treasury Formula-DDD(B) 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, below, and LRR(s) shall contribute in accordance with the following Treasury Formula-DDD(B):

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

Administrative change.
 See: 37 N.J.R. 80(a).
 Administrative change.
 See: 38 N.J.R. 310(a).
 Administrative change.
 See: 39 N.J.R. 105(a).
 Administrative change.
 See: 40 N.J.R. 183(a).
 Administrative change.
 See: 41 N.J.R. 238(a).
 Administrative change.
 See: 42 N.J.R. 71(a).
 Administrative change.
 See: 43 N.J.R. 53(a).
 Administrative change.
 See: 44 N.J.R. 83(a).
 Administrative change.
 See: 45 N.J.R. 34(a).
 Administrative change.
 See: 46 N.J.R. 79(a).
 Administrative change.
 See: 47 N.J.R. 997(a).
 Administrative change.
 See: 48 N.J.R. 595(a).

Amended by R.2016 d.160, effective November 21, 2016.

See: 48 N.J.R. 913(a), 48 N.J.R. 2440(a).

In (a), substituted "Commissioner" for "State Board of Human Services".

10:46D-3.3 DDD Formula A-DDD(A) for married persons over age 18

(a) 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(A) at N.J.A.C. 10:46D-3.1.

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(A) at N.J.A.C. 10:46D-3.1.

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 Treasury Formula-DDD(A) N.J.A.C. 10:46D-3.2 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(A) at N.J.A.C. 10:46D-3.1.

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 N.J.A.C. 10:46D-3.2 above. The individual shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD(A) at N.J.A.C. 10:46D-3.1.

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(B) at N.J.A.C. 10:46D-3.2.

(b) 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 a LRR(s) for any unpaid portion of the LRR's required payments.

(c) The individual and/or the LRR(s) shall supply information to the Department or its agent regarding current and former residences and financial circumstances.

(d) 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 (d) 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.

(e) 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 (d) above.

(f) 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.

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

SUBCHAPTER 4. PROVIDER RESPONSIBILITIES

10:46D-4.1 Requirements

(a) The Division may designate the agency licensed under N.J.A.C. 10:44A which services the individual to collect room and board directly from the person served.

1. The contract between the Division and the agency shall stipulate the terms under which the agency shall collect contributions.

2. The agency may become representative payee for the individual.

3. Where the agency is not the representative payee, the agency shall be responsible to collect the fee directly from

the individual, legally responsible relative or representative payee.

(b) If the agency documents three separate unsuccessful attempts to collect the contribution, the Division shall assume responsibility for the collection of the contribution. The contract of the agency shall be adjusted as needed. In these instances, the Division shall inform the Social Security administration that it believes that the current representative payee or the beneficiary has not carried out their responsibilities as set forth in the regulation. The Division shall request a change in representative payee.

(c) The Division shall maintain responsibility for the collection of the contribution from the individual or representative payee where the individual is placed in a community care residence licensed under N.J.A.C. 10:44B or the individual is placed in a private institution licensed under N.J.A.C. 10:47 or out-of-State.

SUBCHAPTER 5. TERMINATION

10:46D-5.1 Notice of termination

(a) While N.J.S.A. 30:4-25.9 provides the Division with the ability to terminate any services to the eligible individual within 60 days if the conditions of eligibility are not complied with, when the assessed contribution to the cost of care and maintenance is not received in a timely fashion, in all instances the Division will take a number of interim steps prior to initiating such final action as delineated in this section.

(b) When the required monthly payment has not been received by 60 days past the due date, the Division shall notify, in writing, the individual, LRR(s), other responsible parties and, if different, the individual's legal guardian, that the payment is at least 60 days past due.

1. The Division shall require all payments to be made within 10 days of the date of the notification or negotiate a schedule of repayments.

2. If all payments due are not received within the 10 day or negotiated period, the Division shall notify, in writing, the individual, his or her LRR(s), other responsible parties and, if different, his or her legal guardian that the Division may initiate termination, collection or other appropriate action. The notice shall include information regarding the right to appeal this determination in accordance with N.J.A.C. 10:46D-6.

(c) A copy of the notice specified in (b)2 above shall be sent to the provider of the placement, consistent with the terms of this subchapter, indicating that the Division may initiate termination, collection or other appropriate action due to the lack of payment.

(d) When there is a representative payee who has not paid the assessed amount, a notice shall be sent to the Social Security Administration or other agency or person administering benefits that the individual is in jeopardy of having his or her placement terminated. The agency or person administering benefits shall be advised that the representative payee has not made payment for services, including food and shelter. The Division shall request a change in the representative payee.

(e) If the full or negotiated payment is received prior to termination of placement, placement shall continue uninterrupted.

(f) Should the individual and/or LRR(s) request a revision of the amount to be paid or notify the Division of an inability to pay in accordance with N.J.A.C. 10:46D-2.2(f), the Division shall investigate the circumstances.

1. The notice that the Division may initiate termination, collection or other appropriate action shall remain in effect while the Division conducts the investigation.

2. While the Division is conducting the investigation, the Division shall continue funding the placement until a determination whether an adjustment in the amount to be paid is made.

(g) If the individual is in a residential placement and the individual is capable of paying for the cost of care and maintenance but has refused to do so, a notice shall be sent by the Division establishing a date certain upon which funding of that program shall cease.

1. If the individual is incapable of paying and the LRR(s) refuses to pay the assessed amount, the Department shall file a collection or other appropriate action to recover the portion of cost which the LRR(s) is responsible to pay.

(h) If a competent individual is in a residential placement and is refusing to pay the assessed amount, the regional staff shall meet with the individual and other interested parties no fewer than 30 days before the scheduled date for services to end to discuss the individual's future living arrangements. The individual and other interested parties shall again be requested to make full payment at that meeting. If the competent individual who is capable of paying for the cost of services will not make payment, the Division may seek appropriate relief, including, but not limited to, a court order of removal, collection, wage garnishment and/or other appropriate action for failure to make payments.

(i) If the LRR(s) will not make payment, the Division shall, if appropriate, seek to return a minor child to the LRR(s) residence. If returning the individual home is deemed not feasible by the Division due to the risk of abuse, neglect or exploitation, the Division shall initiate proceedings in Superior Court to obtain payment from the LRR(s) in addition to other available actions.