

CHILDREN AND FAMILIES

DIVISION OF CHILDREN'S SYSTEM OF CARE

**Determination of Eligibility for Functional Services from the Division of the Children's
System of Care**

Special Adopted New Rules and Concurrent Proposed Readoption of Special Adopted New

Rules: N.J.A.C. 10:196

Special New Rules Adopted and Concurrent Proposed Readoption of Special Adopted New

Rules Authorized: December 12, 2012 by Allison Blake, Commissioner, Department of Children
and Families.

Filed: December 12, 2012 as R.2013 d.009.

Authority: N.J.S.A. 30:1-12, 30:4-25, 30:4-25.2, 30:4-25.3, 30:4-25.4, 30:4-25.6, 30:4-25.9,
30:4-60, 30:4-66, 30:4C-4.4, and 30:6D-23 through 32.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal Number: PRN 2013-010.

Effective Date: December 12, 2012.

Operative Date: January 1, 2013.

Expiration Date: December 26, 2013.

Submit written comments by March 8, 2013 to:

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Pursuant to P.L. 2012, c. 16, § 158 (N.J.S.A. 30:4C-4.4) (the Act), the Division of Children's System of Care (CSOC) in the Department of Children and Families (DCF) has assumed responsibility for determining eligibility and providing services for persons with developmental disabilities under 21 years of age from the Division of Developmental Disabilities (DDD) in the Department of Human Services (DHS). Pursuant to N.J.S.A. 30:4C-4.4.c, the Commissioner of DCF has the authority to adopt rules necessary to effectuate the realignment of responsibilities set forth in the Act immediately upon filing with the Office of Administrative Law. Any rules so adopted are effective for a period of not more than 12 months following the effective date of the Act, which effective period expires on June 29, 2013. Accordingly, DCF is adopting new rules at N.J.A.C. 10:196 that set forth the criteria and process for determining eligibility for functional services for persons with developmental disabilities from CSOC.

Concurrently, the provisions of these new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The proposed readoption of the special adopted new rules extends the expiration date of the special adopted new rules 180 days to December 26, 2013 pursuant to N.J.S.A. 52:14B-5.1.c(2).

The agency special adopted new rules and concurrent readoption of the special adopted new rules follows:

Summary

N.J.A.C. 10:196-1.1 sets forth the purpose for the rules. The purpose of these rules is to establish eligibility criteria for the receipt of functional services for persons with developmental

disabilities from CSOC and the application process. Pursuant to N.J.S.A. 30:4C-4.4.d, the criteria for establishing eligibility for the receipt of functional services for persons with developmental disabilities from CSOC are governed by the same statutes governing eligibility for services from DDD.

N.J.A.C. 10:196-1.2 sets forth the scope of the rules. More specifically, it sets forth that the eligibility process set forth in this chapter applies to persons with suspected developmental disabilities under 18 years of age. Consistent with N.J.S.A. 30:4C-4.4, which permits DDD to provide transition services to persons under 21 years of age, DDD has proposed new eligibility rules at N.J.A.C. 10:46, 44 N.J.R. 2269(b), that allow it to accept and process applications for persons 18 years of age and older. Rather than concurrently doing eligibility determinations for applicants between the ages of 18 and 21, CSOC will accept DDD's determination of whether an applicant between 18 and 21 years old has a developmental disability and meets the residency requirements for the provision of functional services.

N.J.A.C. 10:196-1.3 provides the definitions of terms and phrases used in this chapter.

N.J.A.C. 10:196-2.1 sets forth the criteria for eligibility for functional services for persons with developmental disabilities from the CSOC. The applicant must have a developmental disability, meet the residency requirements set forth in the subchapter, and apply for Medicaid and other benefits that he or she may be eligible for. It also clarifies that persons under 21 years of age determined eligible by DDD prior to the effective date of this chapter will be eligible to receive functional services from CSOC. In addition, it allows CSOC to reassess eligibility if it appears that the individual no longer meets the eligibility criteria.

N.J.A.C. 10:196-2.2 sets forth the residency requirements for the receipt of functional services for persons with developmental disabilities from CSOC.

N.J.A.C. 10:196-2.3 permits a declaration of presumptive eligibility for applicants who have an emergent need for services and appear to meet the eligibility criteria, which will allow CSOC to provide such services pending a determination of eligibility based on a review of a completed application.

N.J.A.C. 10:196-3.1 identifies the persons who may apply for services on behalf of a person under 18 years of age with a suspected developmental disability.

N.J.A.C. 10:196-3.2 describes the process for submitting an application for functional services for persons with developmental disabilities from CSOC.

N.J.A.C. 10:196-4.1 describes the procedures CSOC or its contracted entity will use to make a determination regarding eligibility.

N.J.A.C. 10:196-4.2 sets forth the requirements for notice to the applicant of the eligibility determination, including the time frames for providing the notice and the contents of the notice.

N.J.A.C. 10:196-5.1 explains that individuals have the right to appeal a determination of ineligibility and that the applicant has the burden of proof and persuasion in any appeal.

As the Department has provided a 60-day comment period on this notice of new rules proposed for re adoption of special adopted new rules, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The special adopted new rules and the proposed re adoption of the special adopted new rules will benefit children with suspected developmental disabilities and their families by setting

forth the specific eligibility criteria for the receipt of functional services from CSOC, describing how to apply for such services and the process that CSOC will use to determine eligibility and advising that applicants have the right to appeal a determination of ineligibility.

Economic Impact

Pursuant to N.J.S.A. 30:4C-4.4, there has been a realignment of responsibility for serving children and young adults with developmental disabilities from DDD to CSOC, but no change in the statutes governing the eligibility of such persons. As such, the special adopted new rules and the proposed readoption of the special adopted new rules are expected to result in no net increase or decrease in costs to the State and to have no economic impact children or young adults applying for functional services from CSOC or their families.

Federal Standards Statement

A Federal standards analysis is not required because the special adopted new rules and the proposed readoption of the special adopted new rules are not subject to Title IV-B or Title IV-E of the Social Security Act, the Individuals with Disabilities Education Act, or any other Federal requirement or standard and are based solely on State statute.

Jobs Impact

The Division anticipates no impact, either positive or negative, on job creation or loss due to the special adopted new rules and the proposed readoption of the special adopted new rules.

Agriculture Industry Impact

The special adopted new rules and the proposed readoption of the special adopted new rules will have no impact on the agriculture industry

Regulatory Flexibility Statement

The special adopted new rules and the proposed readoption of the special adopted new rules address eligibility requirements for individuals who apply to the CSOC for functional services for persons with developmental disabilities and, as such, do not impose any reporting, recordkeeping, or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not necessary.

Housing Affordability Impact Analysis

The special adopted new rules and the proposed readoption of the special adopted new rules have no impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to the eligibility for CSOC functional services.

Smart Growth Development Impact Analysis

The CSOC does not anticipate that the special adopted new rules and the proposed readoption of the special adopted new rules will have any impact on smart growth development or would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules govern the determination of eligibility for functional services for persons with developmental disabilities from the CSOC.

Full text of the special adopted new rules and the proposed readoption of the special adopted new rules follows:

CHAPTER 196

DETERMINATION OF ELIGIBILITY FOR FUNCTIONAL SERVICES FROM THE DIVISION OF THE CHILDREN'S SYSTEM OF CARE

SUBCHAPTER 1. GENERAL PROVISIONS

10:196-1.1 Purpose

(a) The purpose of this chapter is to establish guidelines and criteria for determination of eligibility for functional services to individuals with developmental disabilities under 21 years of age from the Division of Children's System of Care (CSOC) in the Department of Children and Families.

(b) The availability of services shall be limited to the CSOC's funding in a given fiscal year pursuant to N.J.S.A. 2C:30-4.

10:196-1.2 Scope

The CSOC is responsible for providing functional services to eligible individuals with developmental disabilities under 21 years of age pursuant to N.J.S.A. 30:4C-4.4. The CSOC determines eligibility for functional services for applicants with suspected developmental disabilities under the age of 18 as set forth in this chapter. Individuals 18 years of age or older with suspected developmental disabilities may submit applications to the Division of Developmental Disabilities as set forth in N.J.A.C. 10:46. If the individual is between 18 years of age and 21 years of age, the CSOC accepts the Division of Developmental Disabilities' determination of whether the applicant has a developmental disability and meets the residency and citizenship requirements for the provision of functional services, but makes its own determination regarding the services that it provides to an eligible individual between the ages of 18 and 21 years of age.

10:196-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Adult” means a person age 18 years or older.

"Application" means the application form provided by CSOC and 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.

"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; Supplemental Security Income (SSI); Medicare; Medicaid, including any applicable Medicaid waivers; State and Federal funds; and any third-party support pursuant to State rule, order, or by contract.

"Child" means a person under 18 years of age.

"Commissioner" means the Commissioner of the Department of Children and Families.

"CSOC" means the Division of the Children's System of Care in the Department of Children and Families.

"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;

vi. Capacity for independent living; or

vii. 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.

Developmental disability includes, but is not limited to, severe disabilities attributable to intellectual disability, autism, cerebral palsy, epilepsy, spina bifida, and other neurological impairments where the above criteria are met.

“Director” means the Director of the Division of the Children’s System of Care.

"Functional services" means those services and programs in the CSOC available to provide a child with developmental disabilities with education, training, habilitation, rehabilitation, adjustment, treatment, care, or protection. Functional services provided by CSOC do not include educational and related services, including residential services, necessary to provide a free and appropriate education pursuant to N.J.S.A. 18A:1-1 et seq.

"Medical information" means reports that have been provided by licensed practitioners that 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 that significantly impairs judgment, capacity to control behavior, or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome, or developmental disability.

"Mental impairment" means impairment in cognitive, neurological, sensory, or cerebral functioning resulting from other than mental illness.

"Physical impairment" means an impairment in motor functioning resulting from other than mental illness.

"Primary residence" means a dwelling where a person usually lives and does not include second homes.

"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.

"Residential services" or "residential functional services" means observation, examination, care, training, treatment, habilitation, rehabilitation, and related services, including community care, provided by the CSOC to an eligible individual who has been admitted or transferred to, but not discharged from, any residential functional service for persons with developmental disabilities.

SUBCHAPTER 2. ELIGIBILITY CRITERIA

10:196-2.1 General eligibility

(a) An individual must be developmentally disabled and meet the residency requirements described in N.J.A.C. 10:196-2.2 to be eligible to receive functional services from the CSOC.

1. If the applicant is a child, substantial functional limitations are evaluated according to expectations based on the child's chronological age.

(b) In addition to the eligibility requirements in (a) above, the individual shall apply for Medicaid/NJ Family Care and also for other benefits for which he or she may be eligible and to comply with the requirements for continuing eligibility if found eligible. The CSOC does not provide services that are available through other sources.

1. Notwithstanding the requirement to apply for benefits as set forth in this subsection, denial of an application for benefits does not constitute grounds for finding an individual ineligible for functional services from the CSOC.

(c) The receipt of functional residential services is contingent on the individual's or legally responsible relative's compliance with the requirements regarding contribution to the cost of care and maintenance set forth in N.J.S.A. 30:4-60 and 66.

(d) Individuals under 21 years of age who were determined eligible to receive functional services by the Division of Developmental Disabilities prior to January 1, 2013, shall be presumed eligible to receive functional services from the CSOC, but are subject to the provisions of (e) below.

(e) Consistent with N.J.S.A. 30:6D-32.8.c, eligible individuals are reassessed regarding their service needs at clinically appropriate intervals and, if that reassessment suggests that the individual no longer requires functional services or meets the eligibility criteria set forth in this chapter, the individual is reevaluated for continued eligibility for the CSOC's functional services.

10:196-2.2 Residency

(a) Only New Jersey residents who are U.S. citizens or permanent alien residents are eligible for functional services from the CSOC.

(b) It is the responsibility of the applicant to document that the residency and citizenship requirements of this section are met.

(c) A child is a New Jersey resident if his or her parent or legal guardian is a resident of New Jersey.

(d) If any individual has been placed in the State of New Jersey and that placement is funded totally or partially by a public or private agency in another state, that individual shall not be considered a resident of New Jersey.

(e) For children applying for services whose parent or legal guardian is in the U.S. military service and permanently posted to a location outside of New Jersey, residency may be established when the parent or guardian declares his or her home of record to be New Jersey.

(f) The citizenship or immigration status requirements for eligibility are met if the applicant or his or her parent/legal guardian is a US citizen or an alien lawfully admitted for permanent residence.

10:196-2.3 Presumptive eligibility for functional services

(a) If the applicant appears to be eligible for functional services and manifests an emergent need for services from the CSOC, then the applicant may be declared presumptively eligible by the CSOC or its contracted entity and 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. 10:196-5, then the individual may continue to receive services to the extent that they were initially authorized to ameliorate the emergency or until a Final Decision is rendered by the Director, whichever occurs first.

SUBCHAPTER 3. APPLICATION

10:196-3.1 Who may apply

(a) Application for services under this chapter may be made on behalf of a child under 18 years of age by the following persons or entities:

1. The parents or guardian of a child;
2. An agency, public or private, on behalf of a child of whom it has care and custody; or
3. A court having jurisdiction over a child.

(b) Applications for functional services from the CSOC shall be made on behalf of an adult under 21 years of age to the Division of Developmental Disabilities as set forth in N.J.A.C.

10:46. The CSOC accepts the Division of Developmental Disabilities' determination regarding whether the applicant has a developmental disability and meets the residency requirements for the receipt of functional services, but independently determines the most appropriate services and the services to be provided until the individual reaches 21 years of age.

10:196-3.2 How to apply for functional services from the CSOC on behalf of children under 18 years of age

(a) DCF shall maintain information on initiating the application process on its website.

(b) To the extent practicable, written material shall be provided in the individual's primary language and in alternate formats as needed. Accommodations are made for applicants who cannot complete the application by himself or herself.

(c) Minimum information submitted shall include, but not be limited to:

1. Social data, such as name, address, telephone number, Social Security number, and present living arrangement;

2. Medical information;
3. Present programs, including the applicant's educational program;
4. Name, address, and telephone number of the individual, if someone other than the person on whose behalf application is being made;
5. Presenting request, such as the specific service(s) that may be desired, if known by the individual;
6. Financial information on the applicant and, as appropriate, the applicant's parents/guardians, including basic information, such as Social Security number and the amount and type of benefits received, and, when applicable, information required to determine the contribution to care pursuant to N.J.S.A. 30:4-60 and 66; and
7. Documentation of residency.

(d) It is the responsibility of the applicant to cooperate with the CSOC in obtaining required records by signing consent to release of information forms and identifying persons or agencies known by the applicant to be in possession of the needed records.

(e) An application is deemed complete when there is sufficient information to make a determination of eligibility.

SUBCHAPTER 4. DETERMINATION PROCESS AND NOTIFICATION PROCEDURES

10:196-4.1 Determination

(a) The CSOC or its contracted entity shall open an electronic record in response to an applicant's request for a determination of eligibility for functional services.

(b) The CSOC or its contracted entity shall assist in completion of the application upon request of the individual or entity making the application on behalf of the applicant with a suspected developmental disability.

(c) Upon receipt of an application, including all necessary documentation, the CSOC or its contracted entity shall make the eligibility determination based on specific findings regarding the eligibility criteria set forth in N.J.A.C. 10:196-2.

(d) If the CSOC or its contracted entity is unable to make an eligibility determination based on the submitted documentation, it shall:

1. Conduct a face-to-face interview within 30 days, if additional information is needed;
2. Request peer consultation in reaching a decision; or
3. Take other action as appropriate to request or gather supplemental information sufficient to make an eligibility determination.

(e) If the eligibility criteria set forth in N.J.A.C. 10:196-2 are met, then the CSOC or its contracted entity determines the particular functional services deemed most appropriate for the applicant.

10:196-4.2 Notice requirements

(a) Notice of the status of the application for eligibility for functional services is provided to the applicant within 60 days of the receipt of a completed application.

(b) If the eligibility decision cannot be made within 60 days from receipt of a complete application for determination of eligibility for services, then the applicant is advised, in writing, as to the specific reasons why a determination cannot be made, and shall be informed of the status of the application at least every 30 days. The written notice shall include the name and

telephone number of a contact person for additional information about the status of the application.

(c) The applicant is notified in writing within 10 working days of the eligibility determination.

1. If the applicant is found eligible for functional services, notice shall include information regarding the particular functional service deemed most appropriate at the time of the determination, the immediate availability of such services, or alternative service.

2. If the individual is found ineligible, notice shall include the specific reason(s) for the ineligibility determination and shall include information regarding the individual's right to appeal the determination of ineligibility.

SUBCHAPTER 5. APPEALS PROCESS

10:196-5.1 Appeals

(a) An applicant may appeal the CSOC's determination of ineligibility as set forth in N.J.A.C.

10:120A-4.1.

(b) The applicant bears the burden of proof and burden of persuasion in an appeal of the CSOC's determination of ineligibility.

(c) When the ineligibility determination is made by the Division of Developmental Disabilities, the appeal is filed with that agency pursuant to N.J.A.C. 10:48. The CSOC accepts the final outcome of that litigation if the applicant is under 21 years of age.