

N.J.A.C. 10:78

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 57 No. 12, June 16, 2025

NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 78. NJ FAMILYCARE

Title 10, Chapter 78 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

N.J.S.A. 30:4D-1 et seq. and 30:4J-8 et seq.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

Effective: July 6, 2021.

See: 53 N.J.R. 1280(a).

CHAPTER HISTORICAL NOTE:

Chapter 78, NJ FamilyCare, was adopted as special new rules by R.2000 d.393, effective September 6, 2000, to expire March 5, 2001. See: 32 N.J.R. 3603(a). The provisions of R.2000 d.393 were readopted as R.2001 d.113, effective March 5, 2001. See: 32 N.J.R. 3603(a), 33 N.J.R. 1126(a).

Subchapter 9, Premium Support Program (PSP), was adopted as special new rules by R.2001 d.286, effective July 20, 2001. See: 33 N.J.R. 2913(a). Subchapter 9, Premium Support Program (PSP), expired on January 20, 2002.

Subchapter 9, Premium Support Program (PSP), was adopted as new rules by R.2002 d.199, effective July 1, 2002. See: 33 N.J.R. 2913(a), 34 N.J.R. 2331(b).

Subchapter 11, Provisions Governing Former New Jersey Health Access Enrollees, was adopted as special new rules by R.2002 d.29, effective December 21, 2001. See: 34 N.J.R. 602(a), 38 N.J.R. 2602(a), 38 N.J.R. 2828(a).

Chapter 78, NJ FamilyCare, was readopted as R.2006 d.347, effective September 1, 2006. See: 38 N.J.R. 2602(a), 38 N.J.R. 3095(a), 38 N.J.R. 4222(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 78, NJ FamilyCare, was scheduled to expire on September 1, 2013. See: 43 N.J.R. 1203(a).

Chapter 78, NJ FamilyCare, was readopted, effective July 31, 2013. See: 45 N.J.R. 2042(a).

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In accordance with [N.J.S.A. 52:14B-5.1](#), Chapter 78, NJ FamilyCare, was scheduled to expire on July 31, 2020. Pursuant to Executive Order Nos. 127 (2020) and 244 (2021) and P.L. 2021, c. 104, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) is extended through January 1, 2022. Chapter 78, NJ FamilyCare, was readopted, effective July 6, 2021. See: Source and Effective Date.

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Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 78, NJ FamilyCare, expires on July 6, 2028.

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Applicant's request for emergency medical services was not properly evaluated under the criteria for NJ Care because the applicant was neither blind, aged nor disabled. Rather, on these facts, the request should have been evaluated under the standards used for NJ FamilyCare. Since the application was not evaluated under the correct criteria, the order denying relief was properly reversed and the agency was to reassess the application under the correct criteria. [M.O. v. Somerset Cnty. Bd. of Social Servs., OAL DKT. NO. HMA 12440-16, 2017 N.J. AGEN LEXIS 29](#), Initial Decision (January 17, 2017).

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N.J.A.C. 10:78-1.1

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§ 10:78-1.1 Program outline

(a) This chapter contains the criteria for NJ FamilyCare eligibility for certain uninsured parents, caretakers and caretaker relatives and children not eligible under the provisions of [N.J.A.C. 10:69](#), AFDC-Related Medicaid, and 10:79, NJ FamilyCare Children's Program, as well as certain uninsured single individuals and couples without dependent children not eligible under the provisions of [N.J.A.C. 10:90](#), Work First New Jersey Program. Prior to June 15, 2002, NJ FamilyCare also provided subsidized health insurance to those legal immigrants who were lawfully admitted for permanent residence and who met all other qualifications under the provisions of [N.J.A.C. 10:69](#), 10:72 and 10:79, but for the Federal immigrant residency restrictions. After June 14, 2002, no applications were accepted from individuals who were parents, caretakers and caretaker relatives. As of September 1, 2005, the program was reopened to new applicants who were parents, or caretakers, of dependent children under the age of 19 and who meet the eligibility criteria contained in [N.J.A.C. 10:78-3.4\(a\)6](#) and this chapter. For all applications received after February 28, 2010, all programs under this chapter are closed to any enrollments of, or benefits for, parents and caretakers whose benefits are not funded or payable under Title XIX of the Social Security Act. Therefore, such applications for such persons will not be processed for enrollment. Additionally, on and after April 1, 2010, applicants or beneficiaries who are adult restricted aliens, as defined at [N.J.A.C. 10:78-3.2](#), are ineligible for enrollment in, or benefits from, the NJ FamilyCare Program and any other program under this chapter, except as allowed pursuant to [N.J.A.C. 10:78-3.2\(e\)2](#); this termination of enrollments and benefits does not apply to individuals who are pregnant women or children under the age of 19.

(b) Individuals financially ineligible for Medicaid under the provisions of [N.J.A.C. 10:71](#), 10:72 or 10:69 and who are income ineligible for FamilyCare under the provisions of this chapter shall be evaluated for eligibility as Medically Needy under the provisions of [N.J.A.C. 10:70](#).

(c) Eligibility under the provisions of this chapter shall be limited to those individuals not otherwise eligible for Medicaid or NJ FamilyCare, including:

1. Parents and caretakers of children under the age of 19, as described and limited at [N.J.A.C. 10:78-3.4](#);
2. Pregnant women whose income is over 185 percent, but does not exceed 200 percent, of the Federal poverty level (FPL);
3. Immigrant pregnant women lawfully admitted for permanent residence who would be eligible for Medicaid but for Federal immigrant residency restrictions;
4. Single individuals and couples without dependent children; and
5. Children under the age of 21.

(d) Persons found eligible for NJ FamilyCare will receive services as set forth in [N.J.A.C. 10:78-7.1](#), Scope of services.

History

HISTORY:

Special amendment, R.2002 d.214, effective June 10, 2002 (to expire March 5, 2006).

See: [34 N.J.R. 2338\(a\)](#).

Rewrote (a) and (b).

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Rewrote (a); in the introductory paragraph of (c), substituted "FamilyCare" for "KidCare"; in (c)2, inserted ", but does not exceed 200 percent," and substituted "level (FPL)" for "line".

Special amendment, R.2010 d.133, effective June 1, 2010.

See: [42 N.J.R. 1404\(a\)](#).

In (a), deleted a comma following "caretakers", substituted "As" for "However, as", substituted "were" for "are" preceding the third occurrence of "parents", and inserted the last three sentences; and in (c)1, inserted ", as described and limited at [N.J.A.C. 10:78-3.4](#)".

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Class of resident immigrants' motion for preliminary injunctive relief seeking to stay the enforcement of [N.J.A.C. 10:78-3.2](#), which adopted the standard of eligibility for federal Medicaid benefits contained in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), [8 U.S.C.S. §§ 1601](#) to [1646](#), and applied it to New Jersey's FamilyCare Program, making them ineligible for New Jersey's Medicaid program, was denied because they failed to demonstrate a legal right to relief or success on the merits of their claim as adopting the federal eligibility criteria was held constitutional since adopting the federal eligibility criteria for aliens bore a real and substantial relationship to PRWORA's compelling governmental interest of assuring that aliens be self reliant in accordance with national immigration policy and New Jersey's interest in providing subsidized health insurance within the limits of the appropriations as set forth in the enabling act, [N.J.S.A. 30:4J-16. Guaman v. Velez, 421 N.J. Super. 239, 23 A.3d 451, 2011 N.J. Super. LEXIS 131 \(2011\)](#).

An Administrative Law Judge (ALJ) concluded that a county board of social services acted properly when, upon a recalculation of a mother's income eligibility for Medicaid benefits for herself and two minor children, it terminated those benefits and determined that the mother was required to reimburse \$ 17,070.73, being the excess benefits received by the mother, to the Division of Medical Assistance and Health Services. Though the natural father of the mother's two children resided in the home with them, the mother had failed to disclose his presence or his income, though such disclosure was required by [N.J.A.C. 10:78-3.5\(a\)\(1\)\(v\)](#), which provided that a "household" included the natural father of any child in the household unit and [N.J.A.C. 10:78-4.3\(a\)](#), which provided, with exceptions not relevant here, that "countable income" included all income of all members of the household unit. Those omissions meant that the application that the mother made for Family Care benefits per [N.J.A.C. 10:78-1.1](#) and [N.J.A.C. 10:78-2.1\(a\)](#) did not comply with regulatory requirements and should not have been granted. *M.O. v. Mercer Cnty.*

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Bd. of Social Servs., OAL DKT. NO. HMA 03156-14, AGENCY DKT. NO. 1130066077, 2014 N.J. AGEN LEXIS 270, Initial Decision (May 22, 2014).

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§ 10:78-1.2 Purpose

(a) The purpose of the rules contained within this chapter is to:

1. Set forth eligibility criteria for the NJ FamilyCare program; and
2. Specify the rights and responsibilities of program applicants and beneficiaries.

(b) Circumstances which are neither specifically nor generally addressed in these rules shall be referred to designated staff of the Division of Medical Assistance and Health Services for resolution.

(c) The director of the eligibility determination agency shall assign copies of this chapter to administrative staff, all staff responsible for the determination of NJ FamilyCare eligibility, social services staff as appropriate and shall ensure that each staff member is thoroughly familiar with its requirements in order to apply the policies and procedures consistently.

(d) The Division of Medical Assistance and Health Services shall issue amendments to this chapter as they are promulgated in accordance with New Jersey Administrative Procedure Act, [N.J.S.A. 52:14B-1](#) et seq.

(e) At least one administrative copy of all obsolete pages of this chapter shall be maintained by the eligibility determination agency.

(f) This chapter is a public document. All copies in use shall be updated accurately as amendments are issued. The chapter is available as follows:

1. Copies are available in the State offices of the Division of Medical Assistance and Health Services and in each eligibility determination agency for examination and review during regular office hours.

2. Specific requirements necessary for an applicant or beneficiary or his or her representative to determine whether a grievance review may be requested or to prepare for a grievance review shall be provided to such persons without charge.

3. All public and university libraries which have agreed to maintain the chapter up-to-date will have a copy available under their regulations.

4. Welfare, social service, and other nonprofit organizations shall be furnished with a copy of this chapter at no cost upon an official written request on agency letterhead to the Division of Medical Assistance and Health Services.

5. A current up-to-date copy of this chapter may be obtained at:

<http://www.state.nj.us/humanservices/dmhs/manuals.html>, or by contacting the Division of Medical Assistance and Health Services. Copying fees shall be imposed in accordance with [N.J.S.A. 47:1A-5](#).

History

HISTORY:

Amended by R.2006 d.347, effective October 2, 2006.

§ 10:78-1.2 Purpose

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

In (f)2, substituted "may" for "is to"; and rewrote (f)5.

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§ 10:78-1.3 Administrative organization

The NJ FamilyCare program is under the supervision of the Division of Medical Assistance and Health Services.

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§ 10:78-1.4 Principles of administration

(a) The following principles of administration apply in the NJ FamilyCare program.

1. Opportunity to make application shall be as follows:
 - i. Any individual who believes he or she is eligible shall be afforded an opportunity to make application (or reapplication) for the NJ FamilyCare program without delay.
2. The primary source of information requirements shall be as follows:
 - i. Program applicants or beneficiaries shall be the primary source of information concerning program eligibility; and
 - ii. The eligibility determination agency shall, when necessary, in the process of determining eligibility, use secondary sources of information with the knowledge and consent of the applicant or eligible person.
3. Adherence to law and administrative policy shall be as follows:
 - i. There shall be strict adherence to law and complete conformity with rules; and
 - ii. Requirements other than those established by law or rule shall not be imposed as a condition of receiving assistance under the NJ FamilyCare program.

(b) No cost sharing shall be imposed on children who are American Indians or Alaska Natives, as defined in [42 CFR 457.10](#). Proof of Federally recognized AI/AN tribal status shall be provided in the form of a tribal card or letter.

History

HISTORY:

Amended by R.2002 d.371, effective November 18, 2002.

See: [34 N.J.R. 2244\(a\)](#), [34 N.J.R. 2549\(b\)](#), [34 N.J.R. 3978\(c\)](#).

Added (b).

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

In (b), substituted "or" for "/", inserted ", as defined in [42 CFR 457.10](#)" and deleted ", in accordance with 42 CFR 36a.16" from the end.

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§ 10:78-1.5 Confidentiality of information

(a) No member, officer, or employee of the eligibility determination agency shall produce or disclose any confidential information to any person except as authorized below.

1. Information considered confidential shall include, but shall not be limited to, the following:
 - i. Names and addresses;
 - ii. Medical services provided;
 - iii. Social and economic conditions and circumstances;
 - iv. Eligibility determination agency evaluation of personal information; and
 - v. Medical data, including diagnosis and past history of disease or disability.
2. The eligibility determination agency may disclose information concerning an applicant or eligible person to persons and agencies directly related to the administration of the NJ FamilyCare program. Persons and agencies directly related to program administration shall include, but shall not be limited to, those who are properly authorized to be involved in the following:
 - i. The establishment of eligibility;
 - ii. The determination of the amount and scope of medical assistance;
 - iii. The provision of services for beneficiaries; and
 - iv. The conduct or assisting in the conduct of an investigation, prosecution, or civil or criminal proceeding related to the NJ FamilyCare program.
3. The eligibility determination agency may release information whenever the applicant or eligible person waives confidentiality, but only to the extent authorized by the waiver.
4. If a court issues a subpoena for a case record or any other confidential information or for any agency representative to testify concerning an applicant or eligible person, the eligibility determination agency shall make a statement substantially as follows:
 - i. Information concerning applicants and beneficiaries of NJ FamilyCare shall be restricted to persons directly connected to the administration of such assistance. This includes a requirement of nondisclosure of such information in response to a subpoena, except in those instances where refusal to follow orders of the court will result in an individual or agency being held in contempt of court.
 - ii. In any instance of a subpoena for case record information or for agency testimony, a complete report of the disposition of the court's request shall be entered into the case record.
5. Pertinent information and records may be released in conjunction with an administrative hearing conducted by the Office of Administrative Law regarding action or inaction of the eligibility

§ 10:78-1.5 Confidentiality of information

determination agency affecting an applicant's or beneficiary's eligibility under the NJ FamilyCare program.

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§ 10:78-1.6 Materials distributed to NJ FamilyCare applicants or beneficiaries

- (a)** All materials distributed to program applicants or beneficiaries shall:
 1. Directly relate to the administration of the NJ FamilyCare program;
 2. Have no political implications;
 3. Contain names only of individuals directly connected with the administration of the NJ FamilyCare program; and
 4. Identify those individuals only in their capacity with the State or the eligibility determination agency.
- (b)** The eligibility determination agency shall not distribute materials such as "holiday" greetings, general public announcements, or alien registration notices.
- (c)** The eligibility determination agency may distribute materials directly related to the health and welfare of program applicants and beneficiaries, such as announcements of free medical examinations, availability of surplus food, voter registration and consumer protection information.

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§ 10:78-1.7 Nondiscrimination

- (a)** Discrimination on the basis of race, color, national origin, age, or disability shall be prohibited.
- (b)** All persons seeking or receiving FamilyCare benefits shall be afforded an opportunity to file a complaint alleging discrimination. Such complaints may be filed directly with the Director, Division of Medical Assistance and Health Services, PO Box 712, Trenton, New Jersey 08625-0712.
- (c)** In any instance in which a complaint of alleged discrimination is filed with a State or county agency, the complaint shall be forwarded immediately to the Director, Division of Medical Assistance and Health Services. The Director, upon receipt of any such complaint, shall take any such action he or she deems appropriate to the situation. This action may include, but shall not be limited to, the securing of reports from whatever sources have knowledge pertinent to the situation and referral to the Division on Civil Rights of the New Jersey Department of Law and Public Safety for investigation, evaluation, and recommendation by that agency.
- (d)** The eligibility determination agency shall afford full cooperation in the investigation of complaints of discrimination as may be requested by the State Division of Medical Assistance and Health Services, or the State Division on Civil Rights.

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§ 10:78-1.8 Assignment of medical support rights

(a) Any person who applies for NJ FamilyCare, by virtue of the application for benefits, shall be deemed to have assigned to the Commissioner of the Department of Human Services any rights to support for the purpose of medical care as determined by a court or administrative order and any rights to payment for care from any third party. Program applicants and beneficiaries shall cooperate in the identification of and the obtainment of any such rights. Failure to cooperate shall result in denial of eligibility for any adult. Children shall not be subject to this sanction.

1. The eligibility determination agency shall advise program applicants and beneficiaries of the terms of the assignment and the consequences thereto.

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§ 10:78-1.9 Applicability to this chapter of Medicaid provisions relating to fraud and abuse, third party liability and administrative and judicial remedies

All of the relevant provisions pertaining to fraud and abuse, third party liability, and administrative and judicial remedies which are contained in the following sections of [N.J.S.A. 30:4D-1](#) et seq. and [N.J.A.C. 10:49](#) shall be fully applicable to NJ FamilyCare: [N.J.S.A. 30:4D-6.c](#), 6.f, 7.h, 7.i, 7.k, 7.l, 7.1, 12, 17(e)(1), 17(f), 17(g), 17(i), 17.1 and 17.2, as well as [N.J.A.C. 10:49-3.2](#), [4.1](#) through [4.5](#), [5.5](#), [6.1\(a\)3](#), 7.3, 7.4, 7.5, 8.2(a)1ii, 9.6 through 9.12, 11.1, 12.1 through 12.7, 13.1, 13.4, 14.2 through 14.6 and 16.5.

History

HISTORY:

New Rule, R.2002 d.155, effective May 20, 2002.

See: [33 N.J.R. 3893\(a\)](#), [34 N.J.R. 1852\(a\)](#).

Amended by R.2002 d.318, effective September 16, 2002.

See: [34 N.J.R. 1787\(a\)](#), [34 N.J.R. 3273\(a\)](#).

Rewrote the section.

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Substituted "6.c, 6.f, 7.h, 7.i, 7.k, 7.l," for "6c, 6f, 7h, 7i, 7k, 7l," inserted "(1)" following "17(e)" and "8.2(a)1ii," preceding "9.6 through 9.12".

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§ 10:78-2.1 Application

(a) Application for NJ FamilyCare benefits shall be accomplished by completing and signing the application form as well as any addenda to that form as prescribed by the Division of Medical Assistance and Health Services. Applicants may obtain NJ FamilyCare applications from various social service locations, by calling the Division or by calling the NJ FamilyCare program at 1-800-701-0710. Applicants may also apply for the NJ FamilyCare program by completing an on-line application form at <http://www.njfamilycare.org> or www.NJHelps.org. The eligibility determination agencies shall process all applications mailed, forwarded or presented to them.

(b) The eligibility determination agency shall:

1. Inform applicants of the purpose of and the eligibility requirements for the NJ FamilyCare program, including their rights to a grievance review;
2. Receive applications and review them for completeness, consistency, and reasonableness;
3. Assist program applicants in exploring their eligibility for program benefits;
4. Make known to program applicants the appropriate resources and services both within the agency and in the community; and
5. Assure the prompt and accurate submission of eligibility data to the Eligibility File for beneficiaries and prompt notification to beneficiaries of the reason for their eligibility or ineligibility.

(c) As part of the application process, an applicant for NJ FamilyCare shall:

1. Complete, with the assistance of the eligibility determination agency, as needed, any forms required as part of the application process; and
2. Assist the eligibility determination agency in securing evidence that verifies his or her statements regarding eligibility.

(d) For any application for NJ FamilyCare benefits under the provisions of this chapter, the eligibility determination agency shall accomplish disposition of the application as soon as all factors of eligibility are met and verified but not later than 30 days from the date of application. Exceptions to the timeliness standard appear in (d)2 below.

1. "Disposition of the application" means the official determination by the eligibility determination agency of eligibility or ineligibility of the applicant(s) for NJ FamilyCare.
2. Disposition of the application may exceed the applicable processing standard when substantially reliable evidence of eligibility or entitlement for benefits is lacking at the end of the processing period. In such circumstances, the application may be continued in pending status. The eligibility determination agency shall fully document in the case record the circumstances of the delayed application processing. The processing standard may be exceeded for any of the following:
 - i. Circumstances wholly within the control of the applicant;

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- ii. A determination by the eligibility determination agency, when evidence of eligibility or entitlement is incomplete or inconclusive, to afford the applicant additional time to provide evidence of eligibility before final action on the application;
- iii. An administrative or other emergency that could not reasonably have been avoided; or
- iv. Circumstances wholly beyond the control of both the applicant and the eligibility determination agency.

3. When disposition of the application is delayed beyond the processing standard, the eligibility determination agency shall provide the applicant written notification prior to the expiration of the processing period, setting forth the specific reasons for the delay.

4. Each eligibility determination agency director shall establish appropriate operational controls to expedite the processing of applications and to assure maximum compliance with the processing standard.

- i. The eligibility determination agency shall maintain control records identifying all pending applications which have exceeded the processing standard and the reason therefor. The record shall be adequate to make possible the preparation of reports of such information as may be requested by the Division of Medical Assistance and Health Services.

(e) The following actions on an application qualify as disposition of an application for purposes of the processing standard:

1. Approved: The applicant has been determined eligible for NJ FamilyCare;
2. Denied: The applicant has been determined ineligible for NJ FamilyCare;
3. Dismissed: A decision by the eligibility determination agency that the application process need not be completed because:
 - i. The applicant has died;
 - ii. The applicant cannot be located;
 - iii. The application was registered in error; or
 - iv. The applicant has moved out of the State during the application process; and
4. Withdrawn: The applicant requests that eligibility for the NJ FamilyCare program no longer be considered.

(f) The New Jersey FamilyCare Health Coverage Program will not process applications postmarked on or after September 1, 2001 for single adults and couples without dependent children who are not eligible for General Assistance.

(g) The New Jersey FamilyCare Health Coverage Program did not process applications received after the close of business on June 14, 2002 and prior to September 1, 2005, from those parents or caretakers who would have qualified only under the provisions of this chapter during that time.

History

HISTORY:

Special amendment, R.2001 d.304, effective July 31, 2001 (operative September 1, 2001).

See: [33 N.J.R. 2912\(a\)](#).

Added (f).

Special amendment, R.2002 d.214, effective June 10, 2002.

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See: [34 N.J.R. 2338\(a\)](#).

Added (g).

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

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

Annotations

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County social services board acted properly when it terminated Medicaid benefits being paid to a recipient on the basis, *inter alia*, that she had failed to notify the agency when she moved, married and had a child. Moreover, because the recipient's income exceeded the relevant cap, the county might properly seek reimbursement of incorrectly paid benefits. [S.G. v. DMAHS, OAL DKT. NO. HMA 1622-17, 2017 N.J. AGEN LEXIS 1334](#), Final Agency Determination (April 27, 2017).

Medicaid recipient who failed to timely notify the county social services board that she had moved from Address 1 to Address 2 thereby failed to meet her obligations to provide the agency with accurate and timely information as required for continued eligibility. That being so, her claim that she did not receive timely notice of the agency's intention to terminate her benefits had no merit and she was not entitled to an award of retroactive benefits. [S.G. v. Hudson Cnty. Bd. of Social Servs., OAL DKT. NO. HMA 01622-17, 2017 N.J. AGEN LEXIS 162](#), Initial Decision (March 20, 2017).

An Administrative Law Judge (ALJ) concluded that a county board of social services acted properly when, upon a recalculation of a mother's income eligibility for Medicaid benefits for herself and two minor children, it terminated those benefits and determined that the mother was required to reimburse \$ 17,070.73, being the excess benefits received by the mother, to the Division of Medical Assistance and Health Services. Though the natural father of the mother's two children resided in the home with them, the mother had failed to disclose his presence or his income, though such disclosure was required by [N.J.A.C. 10:78-3.5\(a\)\(1\)\(v\)](#), which provided that a "household" included the natural father of any child in the household unit and [N.J.A.C. 10:78-4.3\(a\)](#), which provided, with exceptions not relevant here, that "countable income" included all income of all members of the household unit. Those omissions meant that the application that the mother made for Family Care benefits per [N.J.A.C. 10:78-1.1](#) and [N.J.A.C. 10:78-2.1\(a\)](#) did not comply with regulatory requirements and should not have been granted. [M.O. v. Mercer Cnty. Bd. of Social Servs., OAL DKT. NO. HMA 03156-14, AGENCY DKT. NO. 1130066077, 2014 N.J. AGEN LEXIS 270](#), Initial Decision (May 22, 2014).

Administrative law judge ordered the retroactive placement of a mother into the NJ FamilyCare Children's Health Insurance Program (CHIP) program even though the program was closed to new applicants after it moved her to the AFDC-related Medicaid program based on incorrect income information she provided on a renewal application. The Division of Medical Assistance and health Services failed to renew her application and noticed the reported income discrepancies as required by [N.J.A.C. 10:78-2.1\(b\)](#); [N.J.A.C. 10:79-2.1\(b\)](#), which would have caught the mother's mistake and prevented the transfer. The mother did not purposely delay reporting a change in circumstances that rendered her ineligible for CHIP; instead, she improperly completed the renewal application.

§ 10:78-2.1 Application

K.B. V. Div. of Medical Assistance and Health Serv., OAL DKT. No. HMA 8959-11, 2014 N.J. AGEN LEXIS 153,
Initial Decision (March 27, 2014).

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N.J.A.C. 10:78-2.2

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§ 10:78-2.2 Interview

The eligibility determination agency may, at the request of the applicant or authorized agent, conduct a personal face-to-face interview with the program applicant or the authorized agents as part of the process of determining program eligibility.

History

HISTORY:

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Inserted ", at the request of the applicant or authorized agent," and deleted ", but is not required to conduct,".

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Medicaid benefits were properly denied to an applicant on a finding that she failed to provide requirement documentation. The application was filed on May 14, 2014 and a request for the submission of several documents, including bank statements, by June 14, 2014 was made at that time. A follow-up letter dated June 10, 2014, advised that the application would be denied if the documents were not provided by June 30, 2014, and additional documents were provided at that time while other materials, including several years' worth of bank statements were not provided. On these facts, the agency's denial of benefits was consistent with law. [J.L. v. DMAHS and Gloucester Cty. Bd. of Social Servs., OAL DKT. NO. HMA 02029-15, 2015 N.J. AGEN LEXIS 258](#), Initial Decision (April 13, 2015).

Determination by Department of Medical Assistance and Health Services (DMAHS) and a county Board of Social Services (CBSS) denying Medicaid benefits on the ground that the applicant failed to provide the required documentation was supported by the record which established that the requested information was not timely provided. After the application was filed, the agency requested three forms that had not been completed, a copy of the applicant's divorce decree and several other items, and ultimately imposed a deadline of August 7, 2014 to provide the requested documentation. Although some of the verifications were provided on September 22, 2014

§ 10:78-2.2 Interview

and September 23, 2014, the remaining verifications were not provided to the agency until October 6, 2014, 234 days after the original application was filed. On these facts, the determination by DMAHS denying eligibility was appropriate. [W.B. v. DMAHS and Gloucester Cty. Bd. of Social Servs., OAL DKT. NO. HMA 01229-2015, 2015 N.J. AGEN LEXIS 151](#), Initial Decision (March 17, 2015).

Determination by Department of Medical Assistance and Health Services (DMAHS) and a county Board of Social Services (CBSS) denying Medicaid benefits on the ground that the applicant failed to provide the required documentation was supported by the record. After the application was filed, the agency requested various items and ultimately set a deadline for receipt thereof of December 15, 2014. Though the requested materials ultimately were provided, the request was not complete until December 29, 2014, which was 258 days after the application was filed. On these facts, the determination by DMAHS denying eligibility was appropriate. [H.M. v. DMAHS and Gloucester Cty. Bd. of Social Servs., OAL DKT. NO. HMA 00540-2015, 2015 N.J. AGEN LEXIS 150](#), Initial Decision (March 13, 2015).

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§ 10:78-2.3 Verification requirements

(a) The eligibility determination agency shall verify all factors related to eligibility for the NJ FamilyCare program. Factors subject to verification include:

1. Birth date: The birth date of any person for whom benefits are sought shall be provided; if there is a discrepancy between the age reported by the applicant and the age appearing on the program record and the discrepancy affects eligibility or categorical requirements then the applicant shall be required to submit proof of birth date;
2. Citizenship/Immigration status: The immigration status of any individual seeking benefits who is not a citizen of the United States shall be verified to establish entitlement for NJ FamilyCare benefits;
3. Household composition: The eligibility determination agency shall verify the household composition in order to ascertain which persons will be included in the determination of eligibility for NJ FamilyCare benefits;
4. Social Security number: The Social Security number of any person seeking NJ FamilyCare benefits shall be provided and verification shall be required when other information indicates a discrepancy regarding the Social Security number;
5. Eligibility for, or coverage under, other health insurance; and
6. All sources of income of any person whose income shall be counted in the determination of program eligibility.
 - i. To verify income, a new applicant shall submit one recent pay stub from each employer of each household member.
 - ii. If a household member cannot provide a recent pay stub, the household member may submit another form of income verification as the Division allows, such as a letter from his or her employer, on the employer's letterhead.
 - iii. If the applicant fails to submit income verification in a timely manner, before determining the applicant ineligible for the NJ FamilyCare program, the Division shall seek to verify the household's income by reviewing available records from the Department of Treasury or Department of Labor and Workforce Development concerning the household members, or such other records as the Division allows.
 - iv. Although resources are not a factor of eligibility, resources shall be identified and verified to determine if income is derived from the resources.

(b) The eligibility determination agency shall use documentary evidence as the primary source of verification. Documentary evidence is written confirmation of the family's circumstances. The applicant shall obtain or assist the eligibility determination agency in obtaining any required documentation.

(c) In circumstances in which the documentary evidence is questionable or is not available, the eligibility determination agency may use collateral contact to confirm the family's circumstances. A collateral contact

§ 10:78-2.3 Verification requirements

is a person who provides verbal confirmation of a family's circumstances by a person outside the family. In order to be acceptable as verification, a collateral contact shall be in a position to provide accurate information about the family and the circumstance in question.

- (d) Subsequent to the initial application, verification is required for only those factors of eligibility which are subject to change or for those factors for which the original verification has become questionable.
- (e) In the absence of credible verification of all eligibility factors, eligibility for the NJ FamilyCare program shall not be established.

History

HISTORY:

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Rewrote (a); in (b), substituted "The applicant shall obtain or assist" for "It is the responsibility of the applicant to obtain or to assist"; and in (c), inserted "person who provides".

Annotations

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N.J.A.C. 10:78-2.4

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§ 10:78-2.4 Case transfer from one county to another

(a) When individuals move permanently to another county within the State, responsibility for the case shall be transferred in accordance with the provisions of this section. The case transfer shall be accomplished in a manner so as not to adversely affect the rights of any individual to program entitlement.

1. A temporary visit out-of-county shall not be considered to be a change of county residence until the visit has continued for longer than three calendar months.

(b) The county of origin shall initiate and the receiving county shall, on request, immediately undertake an investigation of the circumstances surrounding the move. If the move is permanent, each county shall execute its respective responsibilities in accordance with (c) and (d) below.

(c) For persons who move from the county in which application for NJ FamilyCare is made prior to the determination of eligibility or ineligibility:

1. The county in which the application was made has the responsibility to:

- i. Complete the eligibility determination process;
- ii. If determined eligible for the NJ FamilyCare program, add the eligible person(s) to the Eligibility File with the correct effective date of NJ FamilyCare eligibility and the new address in the receiving county; and
- iii. If the case is determined eligible, within five working days of that determination, transfer the case record material to the receiving county in accordance with (d)1i through iv below.

2. The receiving county shall:

- i. Communicate promptly with the beneficiary upon the receipt of the case material to advise of continued program entitlement; and
- ii. Immediately notify the county of origin, in writing, of the date the case material was received.

(d) For cases which have already been determined eligible for the NJ FamilyCare program:

1. The county of origin has the responsibility to:

- i. Transfer, within five working days from the date it is notified of the actual move, a copy of pertinent case material to the receiving county. Such material shall include, at a minimum, a copy of the first application and most recent application form (including all verification), Social Security number(s), and the new address in the receiving county;
- ii. Send with the case material in (d)1i above, a cover letter specifying that the case is being transferred and requesting written acknowledgment of receipt;
- iii. Forward promptly to the receiving county, copies of any other material mutually identified as necessary for case administration; and
- iv. Notify the receiving county if there will be a delay in providing any of the case material.

§ 10:78-2.4 Case transfer from one county to another

2. The receiving county shall:

- i. Communicate promptly with the beneficiary upon receipt of the case material;**
- ii. Immediately notify the county of origin, in writing, of the date the initial case material was received;**
- iii. Review eligibility for the case. If questions regarding case eligibility exist because of information provided by the county of origin, that county shall be consulted for resolution of the issues;**
- iv. Accept responsibility for the case (provided application to transfer has been made) effective with the next month if the initial case material has been received before the 10th of the month;**
- v. Accept responsibility for the case (provided application to transfer has been made) for the second month after the month of receipt of initial case material when such material is received on or after the 10th of the month;**
- vi. Update the Eligibility File as necessary including entry of a new case number. If the case is determined eligible for NJ FamilyCare in the receiving county, there shall be no interruption of entitlement. If the case is determined ineligible for NJ FamilyCare in the receiving county, eligibility shall be terminated, subject to timely and adequate notice, and the previously eligible person terminated on the Eligibility File; and**
- vii. Notify the county of origin of the date eligibility for NJ FamilyCare will begin or will be terminated in the receiving county.**

Annotations

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§ 10:78-2.5 Case transfer from one eligibility determination agency to another

(a) When an individual's eligibility transfers from one eligibility determination agency to another, responsibility for the case shall be transferred in a manner so as not to adversely affect the rights of any individual to program entitlement.

- 1.** For individuals for whom, because of an initial screening, it is determined that the eligibility determination agency shall transfer the application to the appropriate agency, the agency of origin has the responsibility to:
 - i.** Transfer, within five working days from the date of the initial screening, a copy of the application form including all verification; and
 - ii.** Send the materials in (a)1i above, with a cover letter specifying that the application is being transferred and requesting written or verbal acknowledgment of receipt.
- 2.** For individuals for whom a determination has been made, it is determined that because of a change in circumstances the eligibility determination agency shall transfer the case, the agency of origin has the responsibility to:
 - i.** Transfer, within five working days from the date of the report of a change in circumstances, a copy of pertinent material to the appropriate agency. Such material shall include, at a minimum, a copy of the first application and most recent application form including all verification;
 - ii.** Send the case material in (a)2i above, with a cover letter specifying that the case is being transferred and requesting written acknowledgment of receipt;
 - iii.** Forward promptly to the receiving agency, copies of any other material mutually identified as necessary for case administration; and
 - iv.** Notify the receiving agency if there will be a delay in providing any of the case material.
- 3.** The receiving agency shall:
 - i.** Communicate promptly with the individual upon receipt of the case material;
 - ii.** Immediately notify the agency of origin, in writing, of the date the initial case material was received;
 - iii.** Review eligibility for the case. If questions regarding case eligibility exist because of information provided by the agency of origin, that agency shall be consulted for resolution of the issues;
 - iv.** Accept responsibility for the case effective with the next month if the initial case material has been received before the 10th of the month;
 - v.** Accept responsibility for the case for the second month after the month of receipt of initial case material when such material is received on or after the 10th of the month;

§ 10:78-2.5 Case transfer from one eligibility determination agency to another

- vi. Update the Eligibility File, as necessary, including entry of a new case number. If the case continues to be eligible for NJ FamilyCare in the receiving agency, there shall be no interruption of entitlement. If the case is determined ineligible for NJ FamilyCare in the receiving agency, eligibility shall be terminated, subject to timely and adequate notice, and the previously eligible person terminated on the Eligibility File;
- vii. Notify the agency of origin of the date eligibility for NJ FamilyCare will begin or will be terminated in the receiving agency; and
- viii. Issue a NJ FamilyCare identification card with the new number if necessary.

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N.J.A.C. 10:78-2.6

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§ 10:78-2.6 Redetermination of eligibility

(a) Eligibility for NJ FamilyCare under this chapter shall be redetermined no later than 12 months following the month of initial eligibility or the last redetermination, unless eligibility is being redetermined in accordance with N.J.A.C. 10:90. (See [N.J.A.C. 10:78-4.5](#).)

(b) The eligibility determination agency shall reassess program eligibility as follows:

1. When indicated based upon previous information obtained by the eligibility determination agency about anticipated change in the case situation or when additional information is needed to ascertain income eligibility for the program; and
2. Promptly after information is obtained by the eligibility determination agency which indicates changes in the case circumstances that may affect program eligibility.

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§ 10:78-2.7 Post-application beneficiary responsibilities

Upon a determination of eligibility for the NJ FamilyCare program, beneficiaries have the ongoing responsibility to report changes in family circumstances and for the provision of information as set forth at [N.J.A.C. 10:78-2.1\(c\)](#). At any time that the eligibility determination agency lacks sufficient information, including that information which is available from other programs or data sources, to confirm continuing program eligibility because of the unwillingness of an eligible person to provide necessary information, the agency shall commence action to terminate the case.

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County social services board acted properly when it terminated Medicaid benefits being paid to a recipient on the basis, *inter alia*, that she had failed to notify the agency when she moved, married and had a child. Moreover, because the recipient's income exceeded the relevant cap, the county might properly seek reimbursement of incorrectly paid benefits. [S.G. v. DMAHS, OAL DKT. NO. HMA 1622-17, 2017 N.J. AGEN LEXIS 1334](#), Final Agency Determination (April 27, 2017).

Medicaid recipient who failed to timely notify the county social services board that she had moved from Address 1 to Address 2 thereby failed to meet her obligations to provide the agency with accurate and timely information as required for continued eligibility. That being so, her claim that she did not receive timely notice of the agency's intention to terminate her benefits had no merit and she was not entitled to an award of retroactive benefits. [S.G. v. Hudson Cnty. Bd. of Social Servs., OAL DKT. NO. HMA 01622-17, 2017 N.J. AGEN LEXIS 162](#), Initial Decision (March 20, 2017).

N.J.A.C. 10:78-3.1

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 3. NONFINANCIAL ELIGIBILITY**

§ 10:78-3.1 General provisions

- (a)** Eligibility for the NJ FamilyCare program shall be established in relation to each requirement of the NJ FamilyCare program to provide a valid basis for the granting or denying of NJ FamilyCare benefits.
- (b)** The applicant's statements regarding his or her eligibility, as set forth in the application form, are evidence. The statements shall be consistent and meet prudent tests of credibility. Incomplete or questionable statements shall be supplemented and substantiated by corroborative evidence from other pertinent sources.

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N.J.A.C. 10:78-3.2

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§ 10:78-3.2 Citizenship

(a) In order to be eligible for the NJ FamilyCare program, an individual shall be a citizen of the United States, an alien lawfully admitted for permanent residence, or an alien who can be classified as an eligible alien in accordance with this chapter.

1. The term "citizen of the United States" includes persons born in Puerto Rico, Guam, the Virgin Islands, Swain's Island, American Samoa, and the Northern Mariana Islands.

(b) The following aliens, regardless of the date of entry into the United States, if they otherwise meet the eligibility criteria, are entitled to NJ FamilyCare benefits:

1. An alien lawfully admitted for permanent residence;
2. A refugee admitted pursuant to section 207 of the Immigration and Nationality Act;
3. An asylee admitted pursuant to section 208 of the Immigration and Nationality Act;
4. An alien whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act;
5. An alien who has been granted parole for at least one year by the United States Citizenship and Immigration Services (USCIS) pursuant to section 212(d)(5) of the Immigration and Nationality Act;
6. An alien who has been granted conditional entry pursuant to section 203(a)(7) of the immigration law in effect prior to April 1, 1980;
7. An alien who is granted status as a Cuban or Haitian entrant as defined by section 501(e) of the Refugee Education Assistance Act of 1980;
8. An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply;
9. A member of an Indian tribe as defined in section 4(e) of the Indian Self Determination and Education Assistance Act;
10. An alien who is admitted to the United States as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988;
11. An alien who is honorably discharged or who is on active duty in the United States Armed Forces and his or her spouse and the unmarried dependent children of the alien or spouse; and
12. Certain qualified aliens who are victims of domestic violence and when there is a substantial connection between the battery or cruelty suffered by an alien and his or her need for NJ FamilyCare benefits, subject to certain conditions described below:
 - i. The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent.

§ 10:78-3.2 Citizenship

- ii. The alien has been battered or subjected to extreme cruelty in the United States by a member of the spouse's or parent's family residing in the same household of the alien and the spouse or parent acquiesced to such battery or cruelty.
- iii. The alien's child has been battered or subjected to extreme cruelty in the United States by the spouse or the parent of the alien (without the active participation of the alien in the battery or cruelty).
- iv. The alien's child has been battered or subjected to extreme cruelty in the United States by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent acquiesced to and the alien did not actively take part in such battery or cruelty.
- v. In addition to the conditions described in (b)12i through iv above, if the individual responsible for the battery or cruelty continues to reside in the same household as the individual who was subjected to such battery or cruelty, then the alien shall be ineligible for full NJ FamilyCare benefits.
- vi. The eligibility determination agency shall apply the definitions "battery" and "extreme cruelty" and the standards for determining whether a substantial connection exists between the battery or cruelty and the need for NJ FamilyCare as issued by the Attorney General of the United States under his or her sole and unreviewable discretion, in accordance with [8 U.S.C. § 1641](#).

(c) Persons claiming to be eligible aliens shall provide the eligibility determination agency with documentation of alien status.

- 1. If an applicant presents an expired USCIS document or is unable to present any document demonstrating his or her immigration status, the eligibility determination agency shall refer the applicant to the local office of USCIS to obtain evidence of status. If, however, the applicant provides an alien registration number, but no documentation, the eligibility determination agency shall file USCIS Form G-845 along with the alien registration number with the local office of USCIS to verify status.
- 2. The following sets forth acceptable documentation for eligible aliens:
 - i. Lawful Permanent Resident--USCIS Form I-551, or for recent arrivals, a temporary I-551 stamp in a foreign passport or on Form I-94.
 - ii. Refugee--USCIS Form I-94 annotated with stamp showing entry as refugee under section 207 of the Immigration and Nationality Act and date of entry into the United States; USCIS Form I-688B annotated "274a.12(a)(3)," I-766 annotated "A3," or I-571. Refugees usually adjust to Lawful Permanent Resident status after 12 months in the United States, but for purposes of determining NJ FamilyCare eligibility they are considered refugees. Refugees whose status has been adjusted will have, USCIS Form I-551 annotated "RE-6," "RE-7," "RE-8," or "RE-9."
 - iii. Asylees--USCIS Form I-94 annotated with a stamp showing grant of asylum under section 208 of the Immigration and Nationality Act, a grant letter from the Asylum Office of either the Immigration and Naturalization Service or the USCIS, Forms 688B annotated "274a.12(a)(5)," or I-766 annotated "A5."
 - iv. Deportation Withheld--Order of an Immigration Judge showing deportation withheld under section 243(h) of the Immigration and Nationality Act and the date of the grant, or USCIS Form I-688B annotated "274a.12(a)(10)" or I-766 annotated "A10."
 - v. Parole for at Least a Year--USCIS Form I-94 annotated with stamp showing grant of parole under section 212(d)(5) of the Immigration and Nationality Act and a date showing granting of parole for at least a year.
 - vi. Conditional Entry under Law in Effect before April 1, 1980--USCIS Form I-94 with stamp showing admission under section 203(a)(7) of the Immigration and Nationality Act, refugee-conditional entry, or USCIS Forms I-688B annotated "274a.12(a)(3)" or I-766 annotated "A3."

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vii. Cuban Haitian Entrant--USCIS Form I-94 stamped "Cuban/Haitian Entrant under section 212(d)(5) of the INA."

viii. An American Indian born in Canada--USCIS Form I-551 with code S13 or an unexpired temporary I-551 stamp (with code S13) in a Canadian passport or on Form I-94.

ix. A member of certain Federally recognized Indian tribes--a membership card or other tribal document showing membership in tribe is acceptable documentation.

x. Amerasian Immigrant--USCIS Form I-551 with the code AM1, AM2, or AM3 or passport stamped with an unexpired temporary I-551 showing a code AN6, AM7, or AM8.

3. For aliens who entered the United States on or after August 22, 1996, the date of entry into the United States shall be determined as follows:

i. On USCIS Form I-94, the date of admission should be found on the refugee stamp. If missing, the eligibility determination agency should contact the local office of the USCIS by filing Form G-845, attaching a copy of the document;

ii. If the alien presents USCIS Form I-688B (Employment Authorization Document), I-766, or I-571 (Refugee Travel Document), the eligibility determination agency shall ask the alien to present Form I-94. If that form is not available, the eligibility determination agency shall contact the USCIS via the submission of Form G-845, attaching a copy of the documentation presented;

iii. If the alien presents a grant letter or court order, the date of entry shall be derived from the date of the letter or court order. If missing, the eligibility determination agency shall contact the USCIS by submitting a Form G-845, attaching a copy of the document presented.

4. For aliens who present themselves as on active duty or honorably discharged from the United States Armed Forces, the following shall serve as documentation:

i. For discharge status, an original, or notarized copy of the veteran's discharge papers issued by the branch of service in which the applicant was a member;

ii. For active duty military status, an original, or notarized copy, of the applicant's current orders showing the individual is on full-time duty with the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard (full-time National Guard duty does not qualify), or a military identification card (DD Form 2 (active));

iii. A self-declaration under penalty of perjury may be accepted pending receipt of acceptable documentation.

(d) As a condition of eligibility, all applicants for NJ FamilyCare shall sign a declaration under penalty of perjury that they are citizens of the United States or aliens in a satisfactory immigration status. In the case of a child or incompetent applicant, another individual on the applicant's behalf shall complete the same written declaration under penalty of perjury.

(e) On and after April 1, 2010, applicants or beneficiaries who are adult restricted aliens shall be ineligible for enrollment in, or benefits from, the NJ FamilyCare Program and any other program under this chapter, except as allowed pursuant to (e)2 below; this termination of enrollment and benefits under the program does not apply to individuals who are pregnant women or children under the age of 19.

1. The term "restricted alien," within this chapter, means an alien lawfully admitted for permanent residence, who has lived in the United States for less than five full years after such lawful admittance.

2. Enrolled restricted aliens who, between October 1, 2009 and March 25, 2010, received a medical service that was actually covered by NJ FamilyCare shall be ineligible for enrollment in, or benefits from, the NJ FamilyCare Program and any other program under this chapter, effective July 1, 2010, rather than April 1, 2010. Additionally, as of July 1, 2010, the Division of Medical Assistance and Health Services may additionally extend medical service coverage to any such restricted alien still enrolled who is being treated for a life threatening illness or receiving on-going life sustaining treatment;

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however, any such decisions regarding extending coverage, the duration of any such coverage, the extent of services covered and the reimbursement methodology used for service coverage shall all be vested in the on-going sole discretion of the Division, based upon the Division's assessment of the necessity of such coverage, use of resources and/or available options.

History

HISTORY:

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

In (b)5, substituted "United States Citizenship and Immigration Services (USCIS)" for "Immigration and Naturalization Service"; and rewrote (c)1, (c)2 and (c)3.

Special amendment, R.2010 d.133, effective June 1, 2010.

See: [42 N.J.R. 1404\(a\)](#).

Added (e).

Annotations

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Class of resident immigrants' motion for preliminary injunctive relief seeking to stay the enforcement of [N.J.A.C. 10:78-3.2](#), which adopted the standard of eligibility for federal Medicaid benefits contained in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), [8 U.S.C.S. §§ 1601 to 1646](#), and applied it to New Jersey's FamilyCare Program, making them ineligible for New Jersey's Medicaid program, was denied because they failed to demonstrate a legal right to relief or success on the merits of their claim as adopting the federal eligibility criteria was held constitutional since adopting the federal eligibility criteria for aliens bore a real and substantial relationship to PRWORA's compelling governmental interest of assuring that aliens be self reliant in accordance with national immigration policy and New Jersey's interest in providing subsidized health insurance within the limits of the appropriations as set forth in the enabling act, [N.J.S.A. 30:4J-16. Guaman v. Velez, 421 N.J. Super. 239, 23 A.3d 451, 2011 N.J. Super. LEXIS 131 \(2011\)](#).

N.J.A.C. 10:78-3.3

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NJ - New Jersey Administrative Code > **TITLE 10. HUMAN SERVICES** >
CHAPTER 78. NJ FAMILYCARE > **SUBCHAPTER 3. NONFINANCIAL ELIGIBILITY**

§ 10:78-3.3 State residency

(a) In order to be eligible for the NJ FamilyCare program, an individual shall be a resident of the State of New Jersey. The term "resident" shall be interpreted to mean a person who is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom.

1. If an individual leaves New Jersey with the intent to establish permanent residence elsewhere, or for an indefinite period for purposes other than a temporary visit, he or she ceases to be eligible to receive NJ FamilyCare from this State.
2. When an individual enters this State in order to receive medical care and applies for NJ FamilyCare to meet all or a portion of the costs of such care, the fact that the immediate purpose of the move was to secure medical care does not, in and of itself, have the effect of making the person ineligible for the NJ FamilyCare program. It is the responsibility of the eligibility determination agency to evaluate all such cases and to make an eligibility determination, considering carefully all the following criteria:
 - i. Whether the move is a temporary one, being solely for the purpose of receiving medical care for a limited time;
 - ii. Whether there is clear expression of intent on the part of the individual to remain permanently in this State;
 - iii. Whether there is objective evidence that the individual has, in fact, abandoned or not abandoned residence in the State from which he or she came; and
 - iv. Whether the state in which the individual previously resided recognizes him or her as having continuing eligibility under the Medicaid program (or other program providing payment for medical care) of that jurisdiction.
3. If, after full consideration of the above factors, the eligibility determination agency is satisfied that the individual has become a resident of this State, NJ FamilyCare eligibility may be established.

Annotations

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Case Notes

Minor was properly found to be ineligible for Medicaid based on excess family income, which income was found to include that of his father, who lived in Moscow, Russia but who visited the minor's home in N.J. once a month for a week or ten days. Even though the father was domiciled in Russia, he was properly found to be "residing" in N.J.

§ 10:78-3.3 State residency

within the meaning of [N.J.A.C. 10:78-3.5\(a\)](#), which was properly interpreted as considering the word "resident" to be equivalent to the meaning of "having a residence." Since a person could have many residences, it was appropriate to treat the N.J. home as one of the father's residences, even though he was domiciled in [Russia. M.S. v. Union Cnty. Div. of Social Servs., OAL DKT. NO. HMA 02783-16, 2016 N.J. AGEN LEXIS 218](#), Initial Decision (April 21, 2016).

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N.J.A.C. 10:78-3.4

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 3. NONFINANCIAL ELIGIBILITY**

§ 10:78-3.4 Beneficiaries

(a) Except as specified in (b) through (d) below, the following persons who meet all the eligibility criteria of this chapter and are not eligible to receive Medicaid or NJ FamilyCare Children's Program coverage under current provisions shall be eligible for NJ FamilyCare benefits:

1. Parents and caretakers of dependent children under the age of 19 whose gross family income does not exceed 200 percent of the Federal Poverty level (see N.J.A.C. 10:78-4), who applied as such for NJ FamilyCare benefits prior to June 15, 2002, and continuously have received those benefits;
2. Single adults or couples without dependent children whose gross family income does not exceed 100 percent of the Federal Poverty level (see N.J.A.C. 10:78-4) who applied as such for NJ FamilyCare benefits prior to September 1, 2001, and continuously have received those benefits.
 - i. A couple shall be defined as a man and a woman who are legally married, or who have been determined to be a couple by the Social Security Administration, or who are living together in the same household and presenting themselves to the community in which they live as husband and wife;
3. Pregnant women of any age during the term of a medically verified pregnancy whose gross family income does not exceed 200 percent of the Federal Poverty level.
 - i. A pregnant woman who is determined eligible under the criteria of this chapter shall, for purposes of eligibility, be considered to be a pregnant woman until the end of the 60-day period beginning with the last day of her pregnancy. Her eligibility as a pregnant woman shall end on the last day of the month in which the 60-day period ends;
4. Individuals under the age of 21 lawfully admitted for permanent residence and who qualify under the provisions in [N.J.A.C. 10:69](#) or 10:79 but for Federal immigration residency restrictions;
5. Any child born to a woman eligible under the provisions of this chapter (except to a presumptively eligible pregnant woman who has subsequently been found ineligible for the month the child was born) shall remain eligible for a period of not less than 60 days from his or her birth and up to one year, so long as the mother remains eligible for NJ FamilyCare, or would remain eligible if pregnant, whether or not application has been made, if the child lives with his or her mother.
 - i. Notwithstanding (a)5 above, any child resulting from the pregnancy shall be eligible for NJ FamilyCare, if not otherwise eligible for Medicaid or the NJ FamilyCare Children's Program, without regard to changes in the household unit's income for a period of not less than 60 days and up to a period of one year, so long as the mother remains eligible for NJ FamilyCare, or would remain eligible if pregnant, and the child remains in the mother's custody;
6. Parents, or caretakers, of dependent children under the age of 19 who meet the eligibility criteria contained in (a)6i through iv below and in this chapter, and who either were enrolled for benefits in the NJ FamilyCare Program on or after September 1, 2005, and continuously have received those benefits or have a pending application for such benefits that was received on or before February 28, 2010. The gross family income standards for eligibility of such individuals follows:

§ 10:78-3.4 Beneficiaries

- i. Effective September 1, 2005, parents, or caretakers, of dependent children under the age of 19 whose gross family income does not exceed 100 percent of the Federal Poverty Level;
- ii. Effective September 1, 2006, parents, or caretakers, of dependent children under the age of 19 whose gross family income does not exceed 115 percent of the Federal Poverty Level;
- iii. Effective September 1, 2007, parents, or caretakers, of dependent children under the age of 19 whose gross family income does not exceed 133 percent of the Federal Poverty Level; and
- iv. Effective September 1, 2008, and applying to NJ FamilyCare existing enrollments under this paragraph and applications received by February 28, 2010, parents or caretakers of dependent children under the age of 19 whose gross family income does not exceed 200 percent of the Federal Poverty Level; and

7. Any individual receiving NJ FamilyCare under the provisions of this chapter who is receiving inpatient services covered by NJ FamilyCare shall continue to be eligible for FamilyCare until the end of the stay for which the inpatient services are furnished, notwithstanding any other provision of this chapter.

(b) For all enrollment applications received after February 28, 2010, all programs under this chapter are closed to any enrollments of, or benefits for, parents and caretakers whose benefits are not funded or payable under Title XIX of the Social Security Act, except as described in (b)1 below. Therefore, such applications for such persons will not be processed for enrollment. This exclusion from enrollment and benefits additionally applies to parents or caretakers who are applying to enroll after being terminated from enrollment in the NJ FamilyCare Program, including, but not limited to, individuals who have been terminated due to non-payment of premiums or other amounts due.

1. This exclusion from enrollment and benefits does not apply to parents or caretakers who are enrolled in NJ FamilyCare and who subsequently become enrolled in one of the State's programs for pregnant women, provided that they otherwise continue to be eligible for NJ FamilyCare benefits at the time of application and provided that they apply for re-enrollment in NJ FamilyCare at the close of their coverage under the other program.

(c) Effective June 15, 2002, applicants who are restricted alien children, as defined at [N.J.A.C. 10:78-3.2](#), shall be uninsured and financially eligible for the NJ FamilyCare Children's Program Plans A, B, C or D, in accordance with the provisions of [N.J.A.C. 10:79](#).

(d) On and after April 1, 2010, applicants or beneficiaries who are adult restricted aliens, as defined at [N.J.A.C. 10:78-3.2](#), shall be ineligible for enrollment in, and benefits from, the NJ FamilyCare Program or any other program under this chapter, except as allowed pursuant to [N.J.A.C. 10:78-3.2\(e\)2](#). This termination of enrollment and benefits under the program does not apply to individuals who are pregnant women or children under the age of 19.

History

HISTORY:

Special amendment, R.2002 d.214, effective June 10, 2002.

See: [34 N.J.R. 2338\(a\)](#).

In (a), substituted "Except as specified in (b) below, the" for "The", inserted "the" preceding "eligibility criteria" and substituted "shall be" for "are" in the introductory paragraph; added (b) and (c).

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

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Rewrote the section.

Special amendment, R.2010 d.133, effective June 1, 2010.

See: [42 N.J.R. 1404\(a\)](#).

In the introductory paragraph of (a), inserted "through (d)"; rewrote the introductory paragraph of (a)6; in (a)6i and (a)6ii, substituted a semicolon for "shall be eligible to apply for NJ FamilyCare." at the end; in (a)6iii, deleted "shall be eligible to apply for NJ FamilyCare" following "Level"; added (a)6iv; added new (b); recodified former (b) as (c); in (c), inserted ", as defined at [N.J.A.C. 10:78-3.2](#)," and deleted a comma following "C"; and added (d).

Annotations

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After applicants lost their eligibility for NJ FamilyCare benefits due to their increased income, they became new applicants for purposes of the State Children's Health Insurance Program (SCHIP); but because, pursuant to [N.J.A.C. 10:78-3.4\(b\)](#), SCHIP barred new enrollees by that time, the applicants were no longer eligible for publicly funded medical assistance. [S.J. v. Div. of Med. Assistance & Health Servs., 426 N.J. Super. 366, 44 A.3d 643, 2012 N.J. Super. LEXIS 95 \(2012\)](#).

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N.J.A.C. 10:78-3.5

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§ 10:78-3.5 Household unit

(a) The term "household unit" means those persons whose income is counted in the determination of eligibility under the provisions of this chapter. The following persons, if they reside with the program applicant or beneficiary, shall be considered members of the household unit:

1. In the case of a parent or caretaker:
 - i. The parent or caretaker;
 - ii. The spouse of the parent or caretaker;
 - iii. The parent or caretaker's natural or adoptive children under the age of 21;
 - iv. The blood-related siblings (including those of half-blood) of the parent or caretaker's children who are under the age of 21; and
 - v. The natural or adoptive father of any children in the household unit;
2. In the case of a single adult who does not meet the definition of dependent child under [N.J.A.C. 10:69](#), the single adult only;
3. In the case of the couple without dependent children, the couple only;
4. In the case of a child who does not qualify for NJ FamilyCare Plan A because of Federal immigrant residency restriction or health insurance (see [N.J.A.C. 10:79](#)):
 - i. The child;
 - ii. The child's natural or adoptive parents;
 - iii. The child's blood-related (including half-blood) and adoptive siblings under the age of 21; and
 - iv. At the option of the household, the child's stepparent;
5. In the case of a child who does not qualify for NJ FamilyCare Plans B, C, or D because of alien residency restrictions (see [N.J.A.C. 10:79](#)):
 - i. The child;
 - ii. The child's natural or adoptive parents;
 - iii. The child's blood-related (including half-blood) and adoptive siblings under the age of 21;
 - iv. The natural or adoptive father of any child(ren) in the household unit; or
 - v. The stepparent if the stepparent is married to the natural parent; and
6. In the case of a pregnant woman:
 - i. The pregnant woman and the unborn child (or children, when it is medically verified that there is more than one fetus);
 - ii. The pregnant woman's spouse;

§ 10:78-3.5 Household unit

- iii. The pregnant woman's natural or adoptive children under the age of 21;
- iv. The blood-related siblings (including those of half-blood) of the pregnant woman's children who are under the age of 21; and
- v. The natural or adoptive father of any children in the household unit.

History

HISTORY:

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

In (a)4 and (a)5, substituted "FamilyCare" for "KidCare".

Annotations

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Case Notes

Income of a dependent residing in the household of an applicant for Medicaid was properly included in "household income" for the purposes of the calculation of income. Because that calculation revealed that the applicant's gross monthly household income was \$ 2914, household income exceeded the \$ 2349 ceiling that applied to the family unit, and the applicant was properly found not to be entitled to Medicaid benefits. [T.S. v. Camden Cnty. Bd. of Soc. Servs., OAK DKT. NO. HMA 16292-17, 2018 N.J. AGEN LEXIS 736](#), Final Agency Determination (July 20, 2018).

Minor was properly found to be ineligible for Medicaid based on excess family income, which income was found to include that of his father, who lived in Moscow, Russia but who visited the minor's home in N.J. once a month for a week or ten days. Even though the father was domiciled in Russia, he was properly found to be "residing" in N.J. within the meaning of [N.J.A.C. 10:78-3.5\(a\)](#), which was properly interpreted as considering the word "resident" to be equivalent to the meaning of "having a residence." Since a person could have many residences, it was appropriate to treat the N.J. home as one of the father's residences, even though he was domiciled in [Russia. M.S. v. Union Cnty. Div. of Social Servs., OAL DKT. NO. HMA 02783-16, 2016 N.J. AGEN LEXIS 218](#), Initial Decision (April 21, 2016).

Medicaid recipient received an overpayment of benefits because she failed to list the father of her children as a resident in the household and include his income during the period in question as required by [N.J.A.C. 10:78-3.5\(a\)\(1\)\(v\)](#) and [N.J.A.C. 10:78-4.3\(a\)](#). She knew or should have known that the presence and income of the live-in father of her children should have been reflected on the application for benefits, and the Mercer County Board of Social Services was entitled to recover the overpayment. [M.O. v. Mercer Cnty. Bd. of Social Serv., OAL Dkt. No. HMA 03156-14, 2014 N.J. AGEN LEXIS 278](#), Initial Decision (May 22, 2014).

An Administrative Law Judge (ALJ) concluded that a county board of social services acted properly when, upon a recalculation of a mother's income eligibility for Medicaid benefits for herself and two minor children, it terminated those benefits and determined that the mother was required to reimburse \$ 17,070.73, being the excess benefits received by the mother, to the Division of Medical Assistance and Health Services. Though the natural father of the

§ 10:78-3.5 Household unit

mother's two children resided in the home with them, the mother had failed to disclose his presence or his income, though such disclosure was required by [N.J.A.C. 10:78-3.5\(a\)\(1\)\(v\)](#), which provided that a "household" included the natural father of any child in the household unit and [N.J.A.C. 10:78-4.3\(a\)](#), which provided, with exceptions not relevant here, that "countable income" included all income of all members of the household unit. Those omissions meant that the application that the mother made for Family Care benefits per [N.J.A.C. 10:78-1.1](#) and [N.J.A.C. 10:78-2.1\(a\)](#) did not comply with regulatory requirements and should not have been granted. M.O. v. Mercer Cnty. Bd. of Social Servs., OAL DKT. NO. HMA 03156-14, AGENCY DKT. NO. 1130066077, 2014 N.J. AGEN LEXIS 270, Initial Decision (May 22, 2014).

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N.J.A.C. 10:78-3.6

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§ 10:78-3.6 Third party liability and other health insurance

(a) Program applicants and beneficiaries are required to identify to the eligibility determination agency any third party (individual, entity, or program) that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or beneficiary.

(b) For the purposes of this section, the terms "health insurance" or "group health plan" do not include:

1. Student coverage which is defined as a limited coverage policy covering injuries sustained during school or school-sponsored activities;
2. Accident-only coverage (including death and dismemberment);
3. Disability income insurance;
4. Credit insurance;
5. Liability insurance, and coverage issued as a supplement to liability insurance, including automobile insurance;
6. Worker's compensation or similar insurance;
7. Personal injury protection coverage in automobile insurance;
8. Long-term care insurance;
9. Dental-only and vision-only coverage; and
10. Hospital indemnity or other fixed dollar indemnity insurance if the benefits of such insurance are provided under a separate policy, contract or certificate, and, there is no coordination or integration of the benefits with a group health plan or other health insurance.

(c) An applicant is not eligible for NJ FamilyCare if he or she:

1. Is currently covered under a non-governmental group health plan, is currently covered, or eligible for coverage, under Medicare, Medicaid or NJ FamilyCare Children's Program, or under a group health plan sponsored or self-funded by a government unit; or
2. Has been covered under a group health plan or Medicare at any time during the three-month period preceding the date of application for NJ FamilyCare; except that coverage which has lapsed within the three-month period due to the expiration of an applicant's continuation rights under the Consolidated Omnibus Budget Reconciliation Act (COBRA) or other continuation rights available under State law shall not preclude an applicant from being eligible for NJ FamilyCare. An applicant who has lost coverage under an employer's plan will also not be subject to the three-month period if the applicant becomes unemployed through no fault of his or her own. In addition, an applicant may voluntarily terminate coverage under COBRA, or any other health insurance purchased through the individual market, in order to be considered for NJ FamilyCare eligibility.

§ 10:78-3.6 Third party liability and other health insurance

- i. The exceptions noted in (c)2 above with respect to COBRA and purchases in the individual market shall not apply to children in families with income greater than 200 percent of the Federal poverty level.
- (d) The provisions of (c)1 and 2 above shall not apply to those parents, caretakers and children who would qualify for AFDC-related Medicaid or NJ FamilyCare Plan A but for Federal immigration residency restrictions.

History

HISTORY:

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Rewrote (c)1; in (c)2, substituted "three-month" for "six month" throughout; in (c)2i, substituted "(c)2" for "(b)2"; and in (d), substituted "(c)1" for "(b)1", "AFDC-related" for "AFDC related" and "FamilyCare" for "KidCare".

Annotations

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Case Notes

ALJ's denial of a Medicaid application due to the applicant's ostensible failure to provide health insurance information from her former employer was reversed and the matter was remanded for a reevaluation of eligibility because the regulation on which the ALJ had relied concerned FamilyCare and was not applicable to the instant case. [S.P. v. DMAHS and Essex Cnty. Bd. of Social Servs., OAL DKT. NO. HMA18615-13, 2014 N.J. AGEN LEXIS 902](#), Order Reversing Initial Decision (March 7, 2014).

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N.J.A.C. 10:78-3.7

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§ 10:78-3.7 Persons sanctioned

Persons who would be ineligible for AFDC-related Medicaid using the rules in existence as of July 16, 1996 or due to the imposition of a sanction of ineligibility for a TANF eligibility factor that does not apply to NJ FamilyCare (such as noncooperation with work registration) shall have eligibility determined under this chapter without regard to the sanction. Persons other than children and pregnant women sanctioned for non-cooperation of medical support under provisions of [N.J.A.C. 10:69-10.28](#) shall be subject to the same sanction under NJ FamilyCare (for persons ineligible for AFDC-related Medicaid due to a period of ineligibility imposed as a result of the receipt of lump sum income, see [N.J.A.C. 10:78-4.3\(c\)](#)).

Annotations

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N.J.A.C. 10:78-3.8

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§ 10:78-3.8 Application for other benefits

(a) As a condition of eligibility for the NJ FamilyCare program, applicants and beneficiaries are required to take all necessary steps to obtain any annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Applicants and beneficiaries shall avail themselves of any health insurance coverage available to the household unit at no cost, such as coverage provided by an employer at no cost.

1. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation and pensions, Social Security benefits, and unemployment compensation. TANF, Supplemental Security Income (SSI), or Work First New Jersey/General Assistance are excluded.

Annotations

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N.J.A.C. 10:78-3.9

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§ 10:78-3.9 Inmates of public institutions

- (a)** Any person who is an inmate of a public institution is ineligible for the NJ FamilyCare program.
- (b)** Any person who is incarcerated in a Federal, State, or local correction facility (such as a prison, jail, detention center, or reformatory) shall not be eligible for the NJ FamilyCare program.

Annotations

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N.J.A.C. 10:78-4.1

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 4. FINANCIAL ELIGIBILITY**

§ 10:78-4.1 Calculation of income eligibility limits

- (a)** For parents, and caretakers, of dependent children under the age of 19 who applied as such for NJ FamilyCare benefits prior to June 15, 2002, and continuously have received those benefits, income limits shall be based on 200 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with [42 U.S.C. § 9902\(2\)](#). The monthly income standard shall be 1/12 of the annual poverty income guideline rounded up to the next whole dollar amount for household unit sizes. The annual revision to the Federal poverty income guideline shall be effective, for purposes of this section, with the first day of the calendar year for which the poverty income guideline is promulgated.
- (b)** Income limits for single adults and couples without dependent children covered under the provisions of this chapter shall be based on 100 percent of the poverty income guideline as defined by the U.S. Department of Health and Human Services in accordance with [42 U.S.C. § 9902\(2\)](#). The monthly income standard shall be 1/12 of 100 percent of the annual poverty income guideline rounded up to the next whole dollar amount for each household size of one and two. The annual revision to the Federal poverty income guideline shall be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.
- (c)** Income limits for NJ FamilyCare for pregnant women covered under the provisions of this chapter shall be based on 200 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with [42 U.S.C. § 9902\(2\)](#). The monthly income standard shall be 1/12 of the annual poverty income guideline rounded up to the next whole dollar amount for household unit sizes. The annual revision to the Federal poverty income guideline shall be effective for purposes of this section with the first day of the year for which the poverty income guideline is promulgated.
- (d)** Income limits for NJ FamilyCare for children under the age of 21 who would qualify for Medicaid Special under the provisions of [N.J.A.C. 10:69](#), but for Federal immigration residency restrictions, shall be as specified in [N.J.A.C. 10:69](#).
- (e)** Income limits for NJ FamilyCare for children under the age of 19 who would qualify for NJ FamilyCare but for Federal immigration residency restrictions shall be covered under the provisions of this chapter up to 350 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with [42 U.S.C. § 9902\(2\)](#). The monthly income standard shall be 1/12 of the annual poverty income guideline rounded up to the next whole dollar amount for household unit sizes. The annual revisions to the Federal poverty income guidelines shall be effective for purposes of this section with the first day of the year for which the poverty income guideline is promulgated.
- (f)** For applicants who are parents, or caretakers, of dependent children under the age of 19 who meet the eligibility criteria contained in [N.J.A.C. 10:78-3.4\(a\)](#) and this chapter, income limits for NJ FamilyCare shall be based on the percentage of the poverty income guidelines, as defined by the U.S. Department of Health and Human Services in accordance with [42 U.S.C. § 9902\(2\)](#), listed in (f)1 to 3 below. The monthly income standard shall be 1/12th of the annual poverty income guideline rounded up to the next whole dollar amount for household unit sizes. The annual revision to the Federal poverty income guidelines shall be effective, for purposes of this Chapter, with the first day of the calendar year for which the poverty income guidelines are issued by the U.S. Department of Health and Human Services.

§ 10:78-4.1 Calculation of income eligibility limits

1. Effective September 1, 2005, the income limit for NJ FamilyCare for new applicants who are parents or caretakers of dependent children under the age of 19 shall be based on 100 percent of the Federal Poverty Level.
2. Effective September 1, 2006, the income limit for NJ FamilyCare for new applicants who are parents or caretakers of dependent children under the age of 19 shall be based on 115 percent of the Federal Poverty Level.
3. Effective September 1, 2007, the income limit for NJ FamilyCare for new applicants who are parents or caretakers of dependent children under the age of 19 shall be based on 133 percent of the Federal Poverty Level.

(g) In order to be eligible for NJ FamilyCare benefits under the provisions of this chapter, monthly household income (as determined by this chapter) shall be equal to or less than the income limit established in (a), (b), (c), (d), (e) or (f) above as applicable.

1. If a pregnant woman is determined to be income eligible during any month prior to the end of her pregnancy, she, if otherwise eligible, shall continue to be eligible without regard to changes in the household unit's income for the term of her pregnancy, including the 60-day period beginning with the last day of the pregnancy whether or not the pregnancy results in a live birth. If the income change results from the addition of a new household member, the new income is not considered through the 60-day period beginning with the last day of the pregnancy.
 - i. Any child resulting from the pregnancy shall be eligible for NJ FamilyCare, if not otherwise eligible for Medicaid or NJ FamilyCare, without regard to changes in the household unit's income for a period of not less than 60 days and up to a period of one year, so long as the mother remains eligible for NJ FamilyCare, or would remain eligible if pregnant, and the child remains in the mother's custody.
2. With the exception of (g)1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

(h) The annual revision to the Federal poverty income guidelines reflected in this chapter shall be effective, on the first day of the calendar year for which the poverty income guidelines are issued by the U.S. Department Health and Human Services. Revisions to the specific dollar amounts will be published annually in the New Jersey Register as an administrative notice.

History

HISTORY:

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Income eligibility limits". Rewrote the section.

Annotations

Notes

Chapter Notes

Case Notes

§ 10:78-4.1 Calculation of income eligibility limits

County social services board correctly determined that a family that included a pregnant woman was ineligible for Medicaid due to excess income. The income limit was 200% of the federal poverty level in a household of three that included a pregnant woman was \$ 3444, and the family's verified monthly income was [\\$ 4,963. N.T. v. Essex Cnty. Bd. of Social Servs., OAL DKT. NO. HMA 11367-16, 2016 N.J. AGEN LEXIS 761](#), Initial Decision (September 7, 2016).

County board of social services - Medicaid unit (CWA) -- acted properly when it denied an application for Medicaid assistance under the Family Care program on a finding that the applicant's household income exceeded the ceiling for such benefits. Though the income calculation made by CWA was incorrect, a recalculation thereof including income from self-employment, calculated per [N.J.A.C. 10:78-4.3\(b\)](#), yielded total income of \$ 86,387, or \$ 7,198.37 per month per [N.J.A.C. 10:78-4.3\(b\)2i](#). Because [N.J.A.C. 10:78-4.1](#) set the income limit for the applicant's household, which was a married couple without dependent children, AT \$ 15,730 or \$ 1,311 per month, the applicant's income clearly exceeded the maximum allowed under the Family Care program. [L.B. and F.B. v. Gloucester Cnty. Bd. of Social Servs. & DMAHS, OAL DKT. NO. HMA 6394-14, 2014 N.J. AGEN LEXIS 496](#), Initial Decision (August 20, 2014).

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N.J.A.C. 10:78-4.2

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 4. FINANCIAL ELIGIBILITY**

§ 10:78-4.2 Prospective budgeting of income

(a) The eligibility determination agency shall establish the best estimate of income that shall be available to the household unit.

1. The best estimate of income shall be based on the household unit's income for the month preceding the date of application or redetermination. Adjustments shall be made to the estimated income to reflect changes in income that either have occurred or which are reasonably anticipated to occur which would affect the household unit's income during a period of eligibility.

Annotations

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N.J.A.C. 10:78-4.3

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 4. FINANCIAL ELIGIBILITY**

§ 10:78-4.3 Countable income

(a) Except as specified below, countable income shall include the income of all members of the household unit as determined at [N.J.A.C. 10:78-3.5\(a\)](#), except that:

1. Income from a legally responsible relative who does not reside with the family shall be counted only to the extent that the income is actually made available to the household unit;
2. A minor child who is in receipt of Supplemental Security Income (SSI) shall not be included in the household income;
3. Earned income of a child who is a full or part-time student as defined in [N.J.A.C. 10:69-10.15](#) shall be counted in the household income.
 - i. For those individuals who would qualify for AFDC-related Medicaid or NJ FamilyCare Plan A except for alien residency restriction, earned income of a child who is a full or part-time student as defined at [N.J.A.C. 10:69-10.15](#) shall not be counted; and
4. All wages paid by the Census Bureau for temporary employment related to Census 2000 activities shall be excluded from earned income.

(b) Income for purposes of determining eligibility for NJ FamilyCare shall be determined as follows:

1. For self-employed persons, income shall be calculated using adjusted gross income reported on the family's Federal income tax form(s) from the prior year as the baseline and adding back in reported depreciation, carryover loss, and net operating loss amounts that apply to the business in which the family is currently engaged. Applicants shall report the most recent financial situation of the family if it has changed from the period of time covered by the Federal income tax form. The report may be in the form of a percentage increase or decrease.
2. For wage earners, income shall be calculated based on gross income reported in the month immediately preceding application for NJ FamilyCare.
 - i. Income received weekly shall be multiplied by 4.333 to determine the monthly amount; biweekly income shall be multiplied by 2.167; variable amounts should be averaged for the appropriate frequency (that is, weekly paychecks should have a weekly average calculated: biweekly amounts should be averaged to determine a biweekly average, etc.). That amount should then be multiplied by the appropriate formula to determine monthly gross income. Other income should also have the same methodology applied to determine monthly income.
3. For unemployed persons eligible for a governmental income program, income shall be determined as it exists at time of application, with notification of changes to be the responsibility of the applicant. If income evaluated in this fashion renders an applicant ineligible, documented cessation of the income source after the date of application shall be considered.
4. For other individual circumstances, income, including unearned income shall be calculated based on a combination and/or variation of (b)1, 2 and/or 3 above, as appropriate.

§ 10:78-4.3 Countable income

(c) Nonrecurring lump sum income received by a household unit shall be added to any other income received by the household unit in that month. The total shall be divided by the income eligibility limit applicable to the household. The result shall be the number of months the eligible members of the household unit shall be ineligible to receive NJ FamilyCare under the provisions of this chapter. Any remaining income from this calculation is treated as if it were unearned income in the first month following the period of ineligibility.

1. The period of ineligibility shall begin the first month subsequent to the month the nonrecurring income is received or, if there is insufficient time to provide timely adverse action notice, the following month.

2. Once established, the period of ineligibility may be reduced only in accordance with the AFDC provisions for shortening a period of ineligibility as found at [N.J.A.C. 10:69-10.23](#). The basis for a determination to shorten the period of ineligibility shall be fully documented in the case record.

(d) Any person who received AFDC-related Medicaid and became ineligible for such assistance because of a period of ineligibility imposed as a result of the provisions of [N.J.A.C. 10:69-10.23](#) may establish eligibility under the provisions of this chapter. The amount of the lump sum used to determine the original period of ineligibility shall be divided by the applicable income eligibility limit to determine the period of ineligibility for NJ FamilyCare under this chapter. If that period has already expired, eligibility for benefits under this chapter may be established so long as all other eligibility criteria are met.

(e) The parents of an infant and the spouse of a pregnant woman are legally responsible relatives of infants and pregnant women applying for or eligible for benefits under the provisions of this chapter. When a legally responsible relative resides in the same household, his and/or her income is considered in the determination of eligibility and no further action is required. When a legally responsible relative does not reside in the same household, the eligibility determination agency shall pursue support from that relative in accordance with the provisions of N.J.A.C. 10:69-10.

1. Except when the legally responsible relative resides in the same household, income of the relative shall be counted only to the extent that the income is actually made available to the household unit.

(f) No portion of a cash reward provided to any individual by the Division for providing information about fraud and/or abuse in any program administered in whole or in part by the Division shall be included in the computation of income for financial eligibility purposes.

History

HISTORY:

Amended by R.2002 d.124, effective April 15, 2002.

See: [33 N.J.R. 4188\(a\)](#), [34 N.J.R. 1546\(a\)](#).

Added (f).

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

In (a)3i, substituted "AFDC-related" for "AFDC related" and "FamilyCare" for "KidCare"; and in (e), substituted "of" for "to" preceding "infants and pregnant women".

Annotations

Notes

Chapter Notes**Case Notes**

County board of social services - Medicaid unit (CWA) -- acted properly when it denied an application for Medicaid assistance under the Family Care program on a finding that the applicant's household income exceeded the ceiling for such benefits. Though the income calculation made by CWA was incorrect, a recalculation thereof including income from self-employment, calculated per [N.J.A.C. 10:78-4.3\(b\)](#), yielded total income of \$ 86,387, or \$ 7,198.37 per month per [N.J.A.C. 10:78-4.3\(b\)2i](#). Because [N.J.A.C. 10:78-4.1](#) set the income limit for the applicant's household, which was a married couple without dependent children, AT \$ 15,730 or \$ 1,311 per month, the applicant's income clearly exceeded the maximum allowed under the Family Care program. [L.B. and F.B. v. Gloucester Cnty. Bd. of Social Servs. & DMAHS, OAL DKT. NO. HMA 6394-14, 2014 N.J. AGEN LEXIS 496](#), Initial Decision (August 20, 2014).

Administrative law judge concluded that an applicant was eligible for New Jersey FamilyCare. The applicant was a seasonal employee who went on Medicaid (FamilyCare) for six months and off Medicaid for six months as a result of her variable income. She was a seasonal employee for many years. Her earned and unearned income was consistent year over year; and if "seasonalized" it fell within the FamilyCare income eligibility guidelines of [N.J.A.C. 10:78-4.3\(b\)](#) on both on a gross income and monthly income basis. [D.G. v. Div. of Med. Assistance and Health Serv. and the Cumberland Cnty. Bd. of Social Serv., OAL Dkt. No. HMA 6308-14, 2014 N.J. AGEN LEXIS 352](#), Initial Decision (July 15, 2014).

Medicaid recipient received an overpayment of benefits because she failed to list the father of her children as a resident in the household and include his income during the period in question as required by [N.J.A.C. 10:78-3.5\(a\)\(1\)\(v\)](#) and [N.J.A.C. 10:78-4.3\(a\)](#). She knew or should have known that the presence and income of the live-in father of her children should have been reflected on the application for benefits, and the Mercer County Board of Social Services was entitled to recover the overpayment. [M.O. v. Mercer Cnty. Bd. of Social Serv., OAL Dkt. No. HMA 03156-14, 2014 N.J. AGEN LEXIS 278](#), Initial Decision (May 22, 2014).

An Administrative Law Judge (ALJ) concluded that a county board of social services acted properly when, upon a recalculation of a mother's income eligibility for Medicaid benefits for herself and two minor children, it terminated those benefits and determined that the mother was required to reimburse \$ 17,070.73, being the excess benefits received by the mother, to the Division of Medical Assistance and Health Services. Though the natural father of the mother's two children resided in the home with them, the mother had failed to disclose his presence or his income, though such disclosure was required by [N.J.A.C. 10:78-3.5\(a\)\(1\)\(v\)](#), which provided that a "household" included the natural father of any child in the household unit and [N.J.A.C. 10:78-4.3\(a\)](#), which provided, with exceptions not relevant here, that "countable income" included all income of all members of the household unit. Those omissions meant that the application that the mother made for Family Care benefits per [N.J.A.C. 10:78-1.1](#) and [N.J.A.C. 10:78-2.1\(a\)](#) did not comply with regulatory requirements and should not have been granted. M.O. v. Mercer Cnty. Bd. of Social Servs., OAL DKT. NO. HMA 03156-14, AGENCY DKT. NO. 1130066077, 2014 N.J. AGEN LEXIS 270, Initial Decision (May 22, 2014).

Adopting Initial Decision's conclusion that student loans were not includable as income for purposes of determining petitioner's Medicaid eligibility under the NJ FamilyCare program; a loan is a liability, not income, and including student loans as income defeats the purpose of the student loan program, as well as the underlying spirit and intent of assisting impoverished individuals (adopting with clarification [2007 N.J. AGEN LEXIS 188](#)). [K.F. v. DMAHS, OAL Dkt. No. HMA 12115-06, 2007 N.J. AGEN LEXIS 329](#), Final Decision (March 15, 2007).

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N.J.A.C. 10:78-4.4

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 4. FINANCIAL ELIGIBILITY**

§ 10:78-4.4 Income eligibility for single adults and couples without dependent children who applied as such for NJ FamilyCare benefits prior to September 1, 2001, and who have received those benefits continuously

- (a)** Before applying the NJ FamilyCare eligibility test, the eligibility determination agency staff shall evaluate, or make referrals, as appropriate, to determine eligibility for other medical coverage, including, without limitation, programs for the aged, blind and disabled, and Medicaid Special.
- (b)** When a single adult or couple without dependent children is determined not to be eligible for WFNJ/GA, the eligibility determination agency shall continue to evaluate possible eligibility for NJ FamilyCare or refer the application to the appropriate agency. Eligibility shall exist when the single adult or couple without dependent children meets the following financial criteria:
 1. The gross income of an eligible single adult or couple without dependent children shall be no greater than 100 percent of the poverty level for the applicable family unit size, one or two, at the time the individual applies or reapplies for coverage, or when the case is reopened.
 - i. If one member of a couple is currently enrolled in a Medicaid program other than the Medically Needy program, that person's gross income shall not be counted in determining the eligibility of the other member of the couple for NJ FamilyCare.
- (c)** Those single adults and couples without dependent children who are determined eligible for NJ FamilyCare shall receive the NJ FamilyCare Plan "H" service package. The particular scope of services under Plan H is described at [N.J.A.C. 10:49-5.8](#).
- (d)** Except as specified under the presumptive eligibility rules (N.J.A.C. 10:78-5) of this chapter:
 1. The effective initial eligibility date shall be the first day of the month of the application date, if the individual was eligible on the application date.
 - i. If the applicant was not eligible on the application date, but was found to be eligible on any date other than the application date, the effective initial eligibility date shall be the first day of the month in which eligibility began.

History

HISTORY:

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Income eligibility for single adults and couples without dependent children". Deleted (b)1ii; and rewrote (c).

§ 10:78-4.4 Income eligibility for single adults and couples without dependent children who applied as such for NJ FamilyCare benefits prior to September 1, 20....

Annotations

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N.J.A.C. 10:78-4.5

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 4. FINANCIAL ELIGIBILITY**

§ 10:78-4.5 Redetermination of eligibility for single adults and couples without dependent children who applied as such for NJ FamilyCare benefits prior to September 1, 2001, and continuously have received those benefits

- (a) Once enrollment is completed for single adults and couples without dependent children, those family units shall be subject to verification of continuing eligibility for NJ FamilyCare. The same test outlined at [N.J.A.C. 10:78-4.1](#) shall be applied in determining whether the gross income remains no greater than 100 percent of the poverty level.
- (b) All wages paid by the Census Bureau for temporary employment related to Census 2000 activities shall be excluded from earned income.
- (c) If, as a result of any eligibility redetermination, a single adult or couple without dependent children is found to be ineligible for NJ FamilyCare, the eligibility determination agency shall evaluate the case for possible eligibility for other programs and shall make direct arrangements or referrals, as appropriate, to enroll these individuals in other programs for which they may be eligible.
- (d) An eligibility redetermination shall occur 12 months following the date of the previous determination or redetermination for each single adult or couple without dependent children initially determined to be eligible for NJ FamilyCare. This redetermination shall be conducted by the eligibility determination agency responsible for the case at the time the redetermination is required.
- (e) For those individuals who are receiving benefits under Work First New Jersey/General Assistance, the redetermination cycle shall follow the schedule set forth in [N.J.A.C. 10:90](#).

History

HISTORY:

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Redetermination of eligibility for single adults and couples without dependent children". In (c), deleted "determination or" following "any eligibility".

Annotations

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§ 10:78-4.5 Redetermination of eligibility for single adults and couples without dependent children who applied as such for NJ FamilyCare benefits prior to Sept....

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N.J.A.C. 10:78-4.6

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 4. FINANCIAL ELIGIBILITY**

§ 10:78-4.6 Resource eligibility

Individuals seeking NJ FamilyCare benefits under the provisions of this chapter are eligible without regard to the value of the household unit's resources. The eligibility determination agency shall inquire about the household unit's resources only in order to establish income that may result from the household unit's resources.

Annotations

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N.J.A.C. 10:78-5.1

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 5. PRESUMPTIVE ELIGIBILITY**

§ 10:78-5.1 General presumption eligibility information

Children who would qualify for Medicaid or NJ FamilyCare Children's Program except for the Federal immigrant residency restriction shall receive presumptive eligibility services under the provisions of [N.J.A.C. 10:79](#). Pregnant women and children under the age of one year, with income up to 185 percent of the FPL, receive presumptive eligibility services under the provisions of [N.J.A.C. 10:72](#). Pregnant women whose income is over 185 percent, but does not exceed 200 percent, of the FPL receive presumptive eligibility services in accordance with this chapter.

History

HISTORY:

Recodified from [N.J.A.C. 10:78-5.5](#) and amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Rewrote the section. Former [N.J.A.C. 10:78-5.1](#), General presumptive eligibility information, repealed.

Annotations

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N.J.A.C. 10:78-5.2

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 5. PRESUMPTIVE ELIGIBILITY**

§ 10:78-5.2 (Reserved)

History

HISTORY:

Repealed by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Requirements for presumptive eligibility determination entities".

Annotations

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N.J.A.C. 10:78-5.3

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 5. PRESUMPTIVE ELIGIBILITY**

§ 10:78-5.3 (Reserved)

History

HISTORY:

Repealed by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Presumptive eligibility processing performed by the presumptive eligibility determination entity".

Annotations

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N.J.A.C. 10:78-5.4

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 5. PRESUMPTIVE ELIGIBILITY**

§ 10:78-5.4 (Reserved)

History

HISTORY:

Repealed by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Presumptive eligibility process performed by the Division of Medical Assistance and Health Services".

Annotations

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N.J.A.C. 10:78-5.5

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§ 10:78-5.5 (Reserved)

History

HISTORY:

Recodified to [N.J.A.C. 10:78-5.1](#) by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Presumptive eligibility processing performed by the eligibility determination agency".

Annotations

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N.J.A.C. 10:78-5.6

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 5. PRESUMPTIVE ELIGIBILITY**

§ 10:78-5.6 (Reserved)

History

HISTORY:

Repealed by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Responsibility of the applicant".

Annotations

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N.J.A.C. 10:78-5.7

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CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 5. PRESUMPTIVE ELIGIBILITY**

§ 10:78-5.7 (Reserved)

History

HISTORY:

Repealed by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Notification and grievance review rights".

Annotations

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N.J.A.C. 10:78-5.8

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 5. PRESUMPTIVE ELIGIBILITY**

§ 10:78-5.8 (Reserved)

History

HISTORY:

Repealed by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Limitation on number of presumptive eligibility periods".

Annotations

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N.J.A.C. 10:78-5.9

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 5. PRESUMPTIVE ELIGIBILITY**

§ 10:78-5.9 (Reserved)

History

HISTORY:

Repealed by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Hospital-specific payment caps for presumptive eligibility".

Annotations

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N.J.A.C. 10:78-5.10

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CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 5. PRESUMPTIVE ELIGIBILITY**

§ 10:78-5.10 (Reserved)

History

HISTORY:

Repealed by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Subchapter effective period".

Annotations

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N.J.A.C. 10:78-6.1

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CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 6. ELIGIBILITY DETERMINATION
AGENCY ADMINISTRATIVE REQUIREMENTS**

§ 10:78-6.1 Notice of the eligibility determination agency decision

(a) The eligibility determination agency shall promptly notify any applicant for, or beneficiary of, the NJ FamilyCare program in writing of any agency decision affecting the applicant or beneficiary. When a decision relates to any adverse action which may entitle a beneficiary to a grievance review, the action shall not be implemented until at least 10 days after the mailing of the notice (see (e) below for exceptions to the 10-day notice requirement).

1. For notices of action adverse to a beneficiary, the date of mailing of the notice shall appear on the notice.
2. Notices of any eligibility determination agency action shall contain the name, address, and telephone number of the legal services agency serving that county.
3. In the case of an applicant or beneficiary who cannot be located, the notice shall be mailed to his or her last known address.

(b) All notices of agency decision shall state, in clear and simple language, the nature of the agency decision and an accurate and factual legal basis for the decision.

1. All notices of the agency decision shall include an explanation of the right to a grievance review.
2. All notices of agency decisions adverse to the applicant or recipient shall include the complete citation and title of the rule(s) upon which the agency decision is based.

(c) All notices of denial or termination shall include an explicit statement of the reason for program ineligibility and (except in the case of the death of an applicant or beneficiary) shall advise of the right to reapply whenever the applicant or beneficiary believes that circumstances have changed such that the reason for program ineligibility no longer exist.

(d) When the processing of an application shall be delayed beyond the standards for disposition of an application as set forth in [N.J.A.C. 10:78-2.1\(d\)](#), notice shall be mailed prior to the expiration of the disposition period notifying the applicant of the delay and the reasons for the delay.

(e) The 10-day notice requirement for actions adverse to a program beneficiary need not be adhered to when:

1. The eligibility determination agency has factual information confirming the death of a beneficiary;
2. The eligibility determination agency receives a clear written statement, signed by the beneficiary, that he or she no longer wishes to receive program benefits, or which gives information indicating a change in circumstances which requires a termination or reduction in benefits, and the beneficiary has indicated in writing that he or she understands that termination or reduction in benefits shall be the consequence of supplying such information;
3. The beneficiary's whereabouts are unknown and agency mail directed to him or her has been returned by the postal service indicating no forwarding address;

§ 10:78-6.1 Notice of the eligibility determination agency decision

4. The beneficiary has been accepted for public or medical assistance in another state and that fact has been confirmed by the eligibility determination agency; or
5. A beneficiary child has been removed from the home as a result of a judicial determination or voluntarily placed in foster care by his or her legal guardian.

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Medicaid recipient who failed to timely notify the county social services board that she had moved from Address 1 to Address 2 thereby failed to meet her obligations to provide the agency with accurate and timely information as required for continued eligibility. That being so, her claim that she did not receive timely notice of the agency's intention to terminate her benefits had no merit and she was not entitled to an award of retroactive benefits. [S.G. v. Hudson Cnty. Bd. of Social Servs., OAL DKT. NO. HMA 01622-17, 2017 N.J. AGEN LEXIS 162](#), Initial Decision (March 20, 2017).

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N.J.A.C. 10:78-6.2

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILY CARE > SUBCHAPTER 6. ELIGIBILITY DETERMINATION
AGENCY ADMINISTRATIVE REQUIREMENTS**

§ 10:78-6.2 Case records

- (a)** The purpose of the case record is to provide a complete documentary record of eligibility determination agency actions and the reasons therefor.
- (b)** The case record shall include:
 1. A record of all eligibility determination agency actions and decisions relating to the case, as well as documentary evidence relating to such actions and decisions, including application forms;
 2. All forms relating to financial eligibility; and
 3. All case-related correspondence, memorandum, and documents except those required by law or regulation to be maintained elsewhere.
- (c)** No case record, or part thereof, shall be removed from its file location without a record identifying the person who has custody of it.
- (d)** No case record, or part thereof, shall be removed from the eligibility determination agency offices except upon the specific authorization of the agency director, deputy director, or other person specifically designated by the agency director to authorize such removal.
- (e)** All case records shall be filed in a secure and fire-resistant location.

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N.J.A.C. 10:78-7.1

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 7. SERVICES UNDER NJ
FAMILYCARE**

§ 10:78-7.1 Scope of services

(a) The NJ FamilyCare "Plan A" service package shall contain those services described at [N.J.A.C. 10:49-5.2](#).

(b) The NJ FamilyCare "Plan D" benefit package shall contain those services described at [N.J.A.C. 10:49-5.7](#). Those FamilyCare Plan D beneficiaries whose income is above 150 percent of the Federal poverty level shall be responsible for copayments for services received, in accordance with the provisions of this chapter.

1. No cost sharing shall be imposed on children who are American Indians or Alaska Natives as defined at [42 CFR 457.10](#). Proof of Federally recognized AI/AN tribal status shall be provided in the form of a tribal card or letter.

(c) Individuals who would be eligible for AFDC-related Medicaid or NJ FamilyCare and who are subject to the Federal immigration residency restriction shall receive services and shall be subject to any applicable premium contribution based on income eligibility, under the provisions of [N.J.A.C. 10:69](#) or 10:79.

(d) Except as noted in [N.J.A.C. 10:49-5.7, 5.8](#) and [5.10](#), NJ FamilyCare beneficiaries shall receive services through managed care organizations operating under a contract with the Department of Human Services. Single adults and couples without dependent children whose gross income is not more than 100 percent of the Federal poverty level will be enrolled in a managed care service administrator program. Effective July 1, 2002, adults without dependent children who are not eligible for WFNJ/GA and whose income is below 100 percent of the Federal poverty level shall receive the NJ FamilyCare Plan H service package described at [N.J.A.C. 10:49-5.8](#).

(e) Copayments required of NJ FamilyCare beneficiaries shall be as described at [N.J.A.C. 10:49-9.1](#). Premium payments required of NJ FamilyCare beneficiaries shall be as described at [N.J.A.C. 10:49-9.2](#). Enrollment for these beneficiaries shall commence after their first premium payment has been received by the Statewide eligibility determination agency. No other NJ FamilyCare beneficiary will be responsible for a premium payment or a copayment.

1. No cost sharing shall be imposed on children who are American Indians or Alaska Natives as defined at [42 CFR 457.10](#). Proof of Federally recognized AI/AN tribal status shall be provided in the form of a tribal card or letter.

(f) Drugs used exclusively to treat AIDS and HIV shall not be included in the FamilyCare services packages, but shall be made available to FamilyCare beneficiaries through the ADDP program in accordance with N.J.A.C. 8:61-3.

(g) Effective July 1, 2002, for WFNJ/GA-eligible individuals, no managed care services will be provided. WFNJ/GA-eligible individuals will receive medical services in accordance with [N.J.A.C. 10:49-24.3](#). Effective July 1, 2003, all substance abuse services for WFNJ/GA-eligible individuals will be administered through the Substance Abuse Initiative (SAI).

§ 10:78-7.1 Scope of services

1. Effective June 15, 2002, hospital services for WFNJ/GA-eligible individuals shall be submitted for reimbursement through charity care.

(h) Childless adults with incomes below 100 percent of the Federal poverty level who are not eligible for WFNJ/GA and who are enrolled in NJ FamilyCare on June 30, 2002 shall receive the Plan H service package described at [N.J.A.C. 10:49-5.8](#).

1. Effective June 15, 2002, hospital-based behavioral health services for childless adults with incomes below 100 percent of the Federal poverty level who are not eligible for WFNJ/GA shall be submitted for reimbursement through charity care.

(i) Contingent upon continuing approval by the Centers for Medicare & Medicaid Services of New Jersey's Health Insurance Flexibility and Accountability Act (HIFA) waiver, certain parents/caretakers of children enrolled in NJ FamilyCare who have earned incomes below 134 percent of the Federal poverty level shall receive the Plan D benefit package described at [N.J.A.C. 10:49-5.7](#). Those parents/caretakers who are awaiting enrollment in a managed care organization or who meet the standards for exemption from the requirement for enrollment in managed care will receive the Plan D benefit package on a fee-for-service basis, which shall be called Plan I. Services available under Plan I are described at [N.J.A.C. 10:49-5.10](#).

1. Parents who are eligible for NJ FamilyCare Plan A in accordance with [N.J.A.C. 10:69](#), AFDC-Related Medicaid, shall continue to receive the Plan A benefit package.

History

HISTORY:

Special amendment, R.2001 d.304, effective July 31, 2001 (operative September 1, 2001).

See: [33 N.J.R. 2912\(a\)](#).

In (d), substituted "shall not" for "may" preceding "be eligible"; added (g) and (h).

Special amendment, R.2002 d.214, effective June 10, 2002.

See: [34 N.J.R. 2338\(a\)](#).

Rewrote (a), (d), (g) and (h).

Amended by R.2002 d.371, effective November 18, 2002.

See: [34 N.J.R. 2244\(a\)](#), [34 N.J.R. 2549\(b\)](#), [34 N.J.R. 3978\(c\)](#).

Added b(1); added e(1).

Special amendment, R.2003 d.98, effective January 31, 2003 (to expire March 3, 2006).

See: [35 N.J.R. 1303\(a\)](#).

In (b), rewrote the first sentence in the introductory paragraph; in (e), rewrote the introductory paragraph; added (i).

Special amendment, R.2003 d.417, effective September 26, 2003 (operative November 1, 2003).

See: [35 N.J.R. 4913\(a\)](#).

Rewrote (d); in (g), substituted "2003" for "2002"; added (j).

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

§ 10:78-7.1 Scope of services

Rewrote the section.

Special amendment, R.2010 d.133, effective June 1, 2010.

See: [42 N.J.R. 1404\(a\)](#).

Deleted (j).

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N.J.A.C. 10:78-8.1

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 8. BENEFICIARY RIGHTS AND
RESPONSIBILITIES**

§ 10:78-8.1 Grievance reviews

- (a)** All NJ FamilyCare applicants and beneficiaries shall be afforded the opportunity for a grievance review.
 - 1. Those agency actions which adversely affect an applicant or beneficiary and may be grieved shall include, but shall not be limited to:
 - i. Determination of household composition;
 - ii. Earned and unearned income calculations; and
 - iii. Interpretation of residency, citizenship and age requirements.
- (b)** A grievance shall not be considered for those circumstances in which eligibility is precluded by Federal or State statute. These circumstances include, but are not limited to: income standard, age requirement, and citizenship requirements. A grievance shall not be considered for non-payment of premiums.
- (c)** An applicant shall submit a description of the grievance to the agency in writing within 20 days of the date of the adverse action notice. The agency shall notify the applicant or beneficiary of its decision on the matter, specifying the reasons for the decision, within 60 days of the receipt of the complete documentation of the grievance.
- (d)** The grievance shall be heard by a panel comprised of State staff, who will make recommendations to the DMAHS Director. Within 60 days of receipt of the appeal, the DMAHS Director shall issue a disposition. The final agency decision is subject to judicial review in the Appellate Division.
- (e)** As a first step in the grievance process, the Division shall initiate an informal dispute resolution process upon receipt of the grievance request and prior to the grievance board hearing the case. The informal dispute resolution process shall include reviewing the grievance, researching the issue involved, and may include contact with the individual filing the grievance. The intent of the informal dispute resolution process is to try and resolve the grievance prior to the grievance board hearing.
- (f)** The agency shall retain all correspondence and documentation relating to the grievance in the applicant's or beneficiary's file.

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§ 10:78-8.1 Grievance reviews

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N.J.A.C. 10:78-8.2

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RESPONSIBILITIES**

§ 10:78-8.2 Fair hearing

No applicant or beneficiary of the NJ FamilyCare program shall be entitled to a fair hearing as a result of adverse agency action; however, nothing in this chapter shall prevent an applicant or beneficiary from requesting a fair hearing to which they may otherwise be entitled under the provisions of any other law, rule, or regulation.

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N.J.A.C. 10:78-8.3

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RESPONSIBILITIES**

§ 10:78-8.3 Post-application responsibilities

Once determined eligible for NJ FamilyCare, the applicant shall have the on-going responsibility for reporting to the eligibility determination agency any changes in family circumstances and for providing information as delineated at [N.J.A.C. 10:78-2.7](#). The applicant shall provide additional information as requested by the eligibility determination agency. At any time that the eligibility determination agency lacks sufficient information to confirm continuing program eligibility because of the unwillingness of the applicant or beneficiary to provide necessary information, the agency shall commence action to terminate the case and pursue recovery when warranted.

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County social services board acted properly when it terminated Medicaid benefits being paid to a recipient on the basis, *inter alia*, that she had failed to notify the agency when she moved, married and had a child. Moreover, because the recipient's income exceeded the relevant cap, the county might properly seek reimbursement of incorrectly paid benefits. [S.G. v. DMAHS, OAL DKT. NO. HMA 1622-17, 2017 N.J. AGEN LEXIS 1334](#), Final Agency Determination (April 27, 2017).

N.J.A.C. 10:78-9.1

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 9. PREMIUM SUPPORT PROGRAM
(PSP)**

§ 10:78-9.1 Purpose and scope

- (a)** The purpose of the Premium Support Program (PSP) is to provide financial support to adults and children to help defray the cost of employer-sponsored health insurance.
- (b)** The Premium Support Program is designed to cover individuals eligible for NJ FamilyCare who have access to employer-sponsored health plans. Assistance will be provided in the form of a direct subsidy payment to the beneficiary for a portion of the payroll deduction required for participation in the employer-sponsored health plan. Beneficiaries will be reimbursed on a regular schedule, to coincide with their employer's payroll deduction, so as to minimize any adverse financial impact on the beneficiary.

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N.J.A.C. 10:78-9.2

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**NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES >
CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 9. PREMIUM SUPPORT PROGRAM
(PSP)**

§ 10:78-9.2 Definitions

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

"Large employer" means any person, firm, corporation, partnership or political subdivision that is actively engaged in business that employed an average of more than 50 employees on business days during the preceding calendar year.

"Small employer" means any person, firm, corporation, partnership or political subdivision that is actively engaged in business that employed an average of at least two, but no more than 50, employees on business days during the preceding calendar year.

"Wraparound service" means any service that is not covered by the enrollee's employer plan that is an eligible service covered by NJ FamilyCare for the enrollee's category of eligibility.

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N.J.A.C. 10:78-9.3

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(PSP)**

§ 10:78-9.3 Who is eligible to participate in NJ FamilyCare/Premium Support Program

- (a)** Single individuals, childless couples and families, as defined in [N.J.A.C. 10:69](#), who have been determined eligible for NJ FamilyCare in accordance with this chapter shall be eligible to apply for participation in the Premium Support Program (PSP).
- (b)** An applicant shall have access to an employer-sponsored health plan prior to applying to participate in the PSP.
- (c)** In order to participate in the PSP, a PSP applicant employed by a large employer shall first have access to an employer-sponsored plan which provides coverage at least equal to the services provided in the NJ FamilyCare Plan D service package.
- (d)** If an applicant is employed by a small employer, the specific services available to the applicant shall be at least equal to the services in the NJ FamilyCare Plan D service package; however, the extent of coverage of the services need not be the same as the extent of coverage in the NJ FamilyCare Plan D service package. For a comprehensive listing of small employers health plans, refer to [N.J.A.C. 11:21](#).

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N.J.A.C. 10:78-9.4

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CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 9. PREMIUM SUPPORT PROGRAM
(PSP)**

§ 10:78-9.4 Premium Support Program enrollment process

(a) All applicants to the Premium Support Program shall first be found eligible for the NJ FamilyCare program. Applicants to the Premium Support Program shall provide information concerning employment and employer-sponsored health insurance benefits. If an otherwise eligible applicant has access to employer-sponsored health benefits, the applicant shall enroll in the Premium Support Program, in accordance with the provisions of this subchapter.

(b) If the applicant meets the criteria in (a) above, the State Eligibility Vendor for the NJ FamilyCare program or the County Board of Social Services that made the determination of eligibility will refer the case record for review to:

DMAHS/PSP
PO Box 712
Mail Code 46
Trenton, NJ 08625-0712

History

HISTORY:

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

In (a), substituted "shall" for "must".

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N.J.A.C. 10:78-9.5

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CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 9. PREMIUM SUPPORT PROGRAM
(PSP)**

§ 10:78-9.5 Application review

(a) The NJ FamilyCare Program eligibility vendor or County Board of Social Services will refer all applications to the Premium Support Program. The referral will consist of a copy of the original application for NJ FamilyCare and shall include copies of any pertinent documentation, including, but not limited to, any information provided by the applicant regarding his or her employer's health benefit plan.

(b) The application will be reviewed for completeness and NJ FamilyCare eligibility will be verified by the Division.

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N.J.A.C. 10:78-9.6

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(PSP)**

§ 10:78-9.6 Applicant's responsibilities during the application process

- (a)** The Premium Support Program applicant shall provide employer health benefit plan information regarding all family members for whom coverage is sought.
- (b)** The applicant shall assist the Division as needed in obtaining employer health benefits plan information.
- (c)** If the employee fails to provide the Division with the information needed to complete the application review, the application for premium support shall be denied.
 1. If the application for premium support is denied due to lack of cooperation by the employer, the applicant (and family, if applicable) shall continue to participate in a State-contracted managed care plan through the NJ FamilyCare program.
 2. If the application for premium support is denied due to lack of cooperation by the applicant, after three attempts by the Premium Support Program to contact the applicant by letter (in addition, a phone call will be made if a phone number is available), the NJ FamilyCare participation of the applicant and any other adult eligible members of the household shall be terminated immediately. The eligible children in the household will continue to remain eligible until the next annual redetermination, at which time the applicant's failure to cooperate and provide necessary information shall result in termination of NJ FamilyCare eligibility for all members of the household.

History

HISTORY:

Amended by R.2003 d.231, effective June 16, 2003.

See: [35 N.J.R. 354\(a\)](#), [35 N.J.R. 2667\(a\)](#).

Rewrote (c)2.

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§ 10:78-9.6 Applicant's responsibilities during the application process

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N.J.A.C. 10:78-9.7

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(PSP)**

§ 10:78-9.7 Premium Support Program data collection

(a) Upon receipt of a completed application, the Premium Support Program (PSP) will:

1. Issue a notification letter to the applicant(s) stating that the application has been referred to the Premium Support Program for determination of eligibility for PSP participation; and
2. Send a letter and a Request for Information Form to the applicant's employer, seeking information on the type of employer-sponsored health plan(s) available to the employee.

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N.J.A.C. 10:78-9.8

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§ 10:78-9.8 Employer participation criteria

- (a)** The employer should complete the Request for Information Form and return the form to the Premium Support Program (PSP) with a copy of the employer's Statement of Insurance Coverage.
- (b)** An application to participate in the Premium Support Program shall be supported by the indication by the applicant's employer that the employer contributes, at a minimum, 50 percent of the annual cost of the insurance premium for the employee (and family, as applicable). If the employer does not contribute 50 percent of the premium cost, the PSP application shall be denied and the applicant shall continue to participate in a State-contracted managed care program through the NJ FamilyCare program.
- (c)** If the employer does attest to contributing, at a minimum, 50 percent of the annual cost of premium on behalf of the employee (and family, as applicable), the Division will evaluate the application for cost-effectiveness, in accordance with [N.J.A.C. 10:78-9.10](#).

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N.J.A.C. 10:78-9.9

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(PSP)**

§ 10:78-9.9 Employer plan review

(a) Upon return of the employer's completed "Request for Information Form" and "Statement of Insurance Coverage," the Premium Support Program will initiate a two step review of the employer plan to determine if the plan meets the Division's plan participation requirements, as follows:

1. Step I: The employer-sponsored plan shall be compared, benefit-by-benefit, to the NJ FamilyCare Plan 'D' service package, to determine whether the employer-sponsored plan's services are the same services the employee would be eligible for under NJ FamilyCare.
 - i. If the employer is a large employer, both the specific services and the extent of coverage of the services shall be at least equal to the services in the NJ FamilyCare Plan D service package.
 - ii. If the employer is a small employer, the specific services shall be identical to the services in the NJ FamilyCare Plan D service package; however, the extent of coverage of the services need not be the same as the extent of coverage in the NJ FamilyCare Plan D service package. For small employer health plan information, refer to [N.J.A.C. 11:21](#).
2. Step II: The employer plan will be evaluated for cost effectiveness, in accordance with [N.J.A.C. 10:78-9.10](#).

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N.J.A.C. 10:78-9.10

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§ 10:78-9.10 Cost-effectiveness test

(a) Cost-effectiveness shall be determined by comparing the cost of the beneficiary/employee and all eligible family members' participation in the NJ FamilyCare program against the total cost to the State of reimbursing the beneficiary/employee for the employee share of the cost of family coverage less a monthly premium contribution amount for the family purchasing the employer plan. The amounts used for the calculations in this section shall be derived from actuarial tables used by the NJ FamilyCare program and actual costs reported by the employee/employer during the processing of the Premium Support Program (PSP) application.

(b) For the State to provide benefits under NJ FamilyCare, an actuarially valid total cost per family per month will be determined, using current data from NJ FamilyCare (NJFC), Managed Care participant rates.

(c) The cost of the employer-sponsored plan shall be determined by totaling the costs to the State to participate in the employer-sponsored plan.

1. The monthly amount of the employee premium plus the actuarial value of all excess cost-sharing expenditures (co-payments, deductible and coinsurance), less the NJ FamilyCare/Premium Support Program monthly premium amount, plus the cost of "wraparound" services, if applicable, will constitute the total cost to the State to purchase the employer plan.

(d) As a condition of PSP approval, the result of the cost-effectiveness test shall indicate a cost savings difference of, at a minimum, five percent between what the State would pay for the employee's participation in the employer-sponsored health plan and what the State would pay for the employee's participation in the NJ FamilyCare program.

(e) If the employer-sponsored plan is determined by the Division to be cost-effective in accordance with (d) above, the applicant shall participate in the Premium Support Program. If the employer-sponsored plan is determined not cost-effective, in accordance with (d) above, the beneficiary will continue to participate in the NJ FamilyCare program.

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N.J.A.C. 10:78-9.11

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(PSP)**

§ 10:78-9.11 Plan approval notification and premium support payments

- (a)** If the beneficiary/employee is found eligible to participate in the Premium Support Program (PSP), a letter of notification will be sent to the employee. The notification letter will advise the employee of PSP approval and request that the beneficiary/employee and all eligible family members be enrolled in the employer-sponsored plan at the earliest possible date.
- (b)** The letter of notification will provide a suggested future date of plan enrollment, and a date on which the first PSP payment should be made.
 1. The first PSP payment will be made to the employee in advance of the first payroll deduction by the employer.
- (c)** All PSP participants' payments to their employers shall be subject to verification by the Division.
- (d)** The PSP beneficiary/employee shall submit proof of employer plan participation prior to the payment by the Division of any premium support payments after the initial payment. Proof of employer plan participation shall include, but need not be limited to: payroll stubs indicating the amount of the employee's contribution to employer plan coverage, a copy of the insurance carrier identification card indicating all covered family members, or a letter of coverage from the employer or insurance carrier. All documents submitted shall be subject to verification by the Division.

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N.J.A.C. 10:78-9.12

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(PSP)

§ 10:78-9.12 Payment of premium support to beneficiaries

- (a)** All Premium Support Program (PSP) payments will be made directly to the beneficiaries, for a portion of the amount payable to the employer by the beneficiary for the employer-sponsored health plan.
- (b)** The periodic payments to the beneficiary will coincide with the schedule of payroll deductions as established by the employer.
- (c)** The amount of the periodic payments to the employee shall be the amount of the employee's contribution to the employer's plan, less the monthly NJFC/PSP premium amounts for which the employee is responsible, in accordance with [N.J.A.C. 10:78-9.13](#).

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N.J.A.C. 10:78-9.13

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(PSP)**

§ 10:78-9.13 NJ FamilyCare/Premium Support Program payment formula

(a) A monthly premium charge shall be assessed and collected for all participants in the NJ FamilyCare Premium Support Program (PSP), in accordance with [N.J.A.C. 10:49-9.2](#) and (b) below. PSP participants shall be assessed \$ 10.00 less per payment for children and \$ 5.00 less per payment per adult than the standard NJ FamilyCare premium payments. The assessments shall be deducted from the premium support payments remitted to the beneficiary in accordance with [N.J.A.C. 10:78-9.12](#).

(b) Premiums shall be paid monthly for children and parents/caretakers enrolled in NJ FamilyCare Plans C, D and H who are PSP participants in accordance with Table 1 below. The single monthly premium for children shall include all children in the family. The monthly premium for parents/ caretakers shall include the first parents/caretaker and the second parents/caretaker premiums indicated in Table 1, as applicable.

TABLE 1

NJ FamilyCare Premium Payments for PSP Participants

Effective July 1, 2006

	<u>Prem iums for Child ren</u>
Plan C	\$ 8.00
Plan D (over 200 percent FPL up to and including 250 percent FPL)	\$ 26.0 0
Plan D (over 250 percent FPL up to and including 300 percent FPL)	\$ 62.0 0
Plan D (over 300 percent FPL up to and including 350 percent FPL)	\$ 110. 50
	<u>Prem iums</u>

§ 10:78-9.13 NJ FamilyCare/Premium Support Program payment formula

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Plan D (over 150 percent FPL up to and including 200 percent FPL)	
First parent/caretaker in the family	25.5 0
Second parent/caretaker in the family	\$ 7.50
Plan H (over 150 percent FPL up to and including 250 percent FPL)	
First parent/caretaker in the family	\$ 25.5 0
Second parent/caretaker in the family	\$ 7.50

History

HISTORY:

Special amendment, R.2003 d.98, effective February 1, 2003 (to expire March 3, 2006).

See: [35 N.J.R. 1303\(a\)](#).

Rewrote (b); in (c), (d) and (e), inserted "Effective February 1, 2003" preceding "NJ FamilyCare PSP" and amended the monthly premiums throughout; added (f).

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Rewrote the section.

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N.J.A.C. 10:78-9.14

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(PSP)**

§ 10:78-9.14 Payment of cost sharing expenditures

- (a)** The Premium Support Program (PSP) will reimburse the beneficiary for the difference between the NJFC/PSP co-payment amount and that of the employer-sponsored plan co-payment amount. For example, if the NJFC/PSP co-payment amount for a physician's office visit is \$ 5.00 and the employer-sponsored plan co-pay charge is \$ 15.00 for the same service, the PSP will reimburse the beneficiary the difference in excess of the NJFC/PSP co-payment amount (\$ 10.00).
- (b)** Copayment amounts for services available through the HMO shall be consistent with those of the NJ FamilyCare program (see [N.J.A.C. 10:78](#)).

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N.J.A.C. 10:78-9.15

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(PSP)

§ 10:78-9.15 Five percent of gross family income annual limit on cost-sharing (out-of-pocket) expenditures

(a) If, during the course of a regular plan year (January 1 to December 31), the beneficiary and/or any other eligible family members incur cost sharing expenditures (copayments, co-insurance and deductibles) that are not directly reimbursable by the Premium Support Program (PSP), and that exceed five percent of the individual's or family's gross annual income, they may submit proof of such expenditures to the PSP for review and possible reimbursement, in accordance with the provisions of this section. If the beneficiary chooses an employer-sponsored plan which costs more than the basic plan approved by the Premium Support Program for that employee and/or any other eligible family members, the difference between the approved premium and the actual premium:

1. Will not be reimbursed by the Premium Support Program; and
2. Will not be included in the five percent cost sharing calculation (see [N.J.A.C. 10:49-9.3](#)).

(b) The annual limit on cost sharing expenditures shall be five percent of the individual's or family's gross annual income.

(c) The PSP will review all submitted medical expenditures made during the course of a plan year, and will determine those expenses that are allowable. If the allowable expenditures are equal to or greater than five percent of the individual's or family's gross annual income, all future cost sharing expenditures for the remainder of the plan year will be payable by the PSP.

1. Allowable expenses, for the purpose of the annual limit on cost-sharing (out-of-pocket) expenditures, shall be those expenses for services covered under the beneficiary's service package.

(d) The PSP will authorize such expenses by indicating a message on the NJ FamilyCare monthly ID Card waiving payment of such expenses for the remainder of the plan year. The provider will then bill the PSP for the amount of the cost share or the beneficiary may submit a bill to the PSP for reimbursement.

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N.J.A.C. 10:78-9.16

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(PSP)**

§ 10:78-9.16 Covered services

- (a)** Participants in the NJ FamilyCare/Premium Support Program shall be eligible for all covered services based on their NJ FamilyCare category of eligibility (Plan A, B, C or D). Premium Support Program (PSP) participants shall utilize their employer-sponsored plan as primary coverage.
- (b)** Any services not covered by the employer plan, but covered under the enrollees' NJ FamilyCare category of eligibility, will be available to PSP participants as a "wraparound" service. Any such wraparound service (for example, optical appliances or hearing aids) shall be provided by a New Jersey Medicaid/NJ FamilyCare participating approved provider. The failure of a beneficiary to use a New Jersey Medicaid/FamilyCare provider for "wraparound services" will result in a denial of payment by the NJ FamilyCare Program. The services received would then be the full responsibility and liability of the beneficiary.
- (c)** To access any "wraparound" service, a Premium Support Program beneficiary/employee or eligible family member will be issued a NJ FamilyCare monthly identification card and shall present such proof of eligibility to the provider prior to receipt of services. Failure to present proof will not obligate the PSP to pay for such services or require the provider to bill NJ FamilyCare for such services. In case of failure to present proof of eligibility, the beneficiary/employee or eligible family member shall be liable for all incurred expenses. Any wraparound services shall be received from a NJ Medicaid/FamilyCare participating provider. Reimbursement will be made to the provider on a fee-for-service basis according to the Division's rules for those services.

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N.J.A.C. 10:78-9.17

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§ 10:78-9.17 Certain Medicaid provisions applicable to the Premium Support Program

All of the relevant provisions pertaining to fraud and abuse, third party liability, and administrative and judicial remedies which are contained in the following sections of [N.J.S.A. 30:4D-1](#) et seq. and [N.J.A.C. 10:49](#) shall be fully applicable to the Premium Support Program: [N.J.S.A. 30:4D-6.c](#), 6.f, 7.h, 7.i, 7.k, 7.l, 7.1, 12, 17(e)(1), 17(f), 17(g), 17(i), 17.1 and 17.2, as well as [N.J.A.C. 10:49-3.2](#), [4.1](#) through [4.5](#), [5.5](#), [6.1\(a\)3](#), 7.3, 7.4, 7.5, 8.2(a)1ii, 9.6 through 9.12, 11.1, 12.1 through 12.7, 13.1, 13.4, 14.2 through 14.6 and 16.5.

History

HISTORY:

Amended by R.2002 d.318, effective September 16, 2002.

See: [34 N.J.R. 1787\(a\)](#), [34 N.J.R. 3273\(a\)](#).

Rewrote the section.

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Substituted "6.c, 6.f, 7.h, 7.i, 7.k, 7.l," for "6c, 6f, 7h, 7i, 7k, 7l," inserted "(1)" following "17(e)" and inserted "8.2(a)1ii,".

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N.J.A.C. 10:78-9.18

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§ 10:78-9.18 Applicability of rules of the Department of Banking and Insurance; small employer health plans

Notwithstanding the provisions of this subchapter, in the case of a conflict between the rules in this subchapter and the rules of the Department of Banking and Insurance, the rules of the Department of Banking and Insurance regarding small employer health plans shall apply.

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N.J.A.C. 10:78-9.19

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§ 10:78-9.19 Interpretations of rules

Circumstances which are neither specifically nor generally addressed in these rules shall be referred to the DMAHS/PSP unit for resolution.

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N.J.A.C. 10:78-10.1

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FAMILYCARE**

§ 10:78-10.1 Termination of eligibility for good cause for fraud and abuse

(a) Subject to the limitations contained in [42 U.S.C. § 1320a-7b\(a\)](#), "Criminal Penalties for Acts involving Federal Health Care Programs," any violation of (b) below shall result in the issuance of a Notice of Proposed Termination of the processing of the applicant's application, or of the beneficiary's eligibility for NJ FamilyCare. An individual receiving a Notice of Proposed Termination may request a grievance review.

(b) Subject to the limitations contained in [42 U.S.C. § 1320a-7b\(a\)](#), cause for termination exists when a NJ FamilyCare applicant or beneficiary:

1. Knowingly or intentionally makes or causes to be made false statements or misrepresentations of material fact in any application or reapplication for benefits under NJ FamilyCare;
2. Knowingly or intentionally makes or causes to be made false statements, misrepresentations of material fact, or alterations on any NJ FamilyCare claim, eligibility card, or other document issued by or on behalf of the Division;
3. Intentionally misuses or abuses NJ FamilyCare benefits;
4. Knowingly or intentionally converts all or part of NJ FamilyCare benefits to a use other than the individual's own legitimate use and benefit;
5. Gives, loans, or sells an eligibility card to anyone for use by an individual or individuals other than the eligible person or persons for whom the card was issued;
6. Engages in forgery or attempted forgery involving eligible services and/or claims for such services;
7. Engages in a course of conduct or performs an act deemed improper or abusive of the NJ FamilyCare program following notification that this conduct should cease; or
8. Fails to cooperate in a NJ FamilyCare investigation.

(c) Subject to the limitations contained in [42 U.S.C. § 1320a-7b\(a\)](#), the existence of a cause for termination described in (b) above may be established by:

1. A judgment of conviction for a crime, disorderly persons offense, or petty disorderly persons offense;
2. A judgment or order of either a court of competent jurisdiction or an administrative agency; or
3. A preponderance of the evidence.

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§ 10:78-10.1 Termination of eligibility for good cause for fraud and abuse

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N.J.A.C. 10:78-10.2

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FAMILYCARE**

§ 10:78-10.2 Applications for readmission subsequent to termination of eligibility, or denial of applications for determination of eligibility

- (a)** The terminated individual, or anyone with authority to act on his or her behalf, may apply to the Director for readmission to the NJ FamilyCare program no earlier than one year from the date of the final agency decision terminating the applicant's application process or the beneficiary's eligibility.
- (b)** The Director shall approve or deny such an application in accordance with the provisions of this chapter.
- (c)** An individual whose application for readmission has been denied may request a grievance review on the denial, and/or may submit another application to the Director no earlier than two years from the date of the final agency decision denying readmission.

History

HISTORY:

Amended by R.2006 d.347, effective October 2, 2006.

See: [38 N.J.R. 2602\(a\)](#), [38 N.J.R. 3095\(a\)](#), [38 N.J.R. 4222\(a\)](#).

Section was "Applications for readmission subsequent to termination of eligibility, or of applications for determination of eligibility".

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N.J.A.C. 10:78-10.3

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§ 10:78-10.3 Applicability

N.J.A.C. 10:78-10.1(a) and [10.2](#) shall apply only to NJ FamilyCare applicants and beneficiaries whose eligibility has been terminated for the reasons set forth in N.J.A.C. 10:78-10.1(b) and shall not apply to termination due to ineligibility initiated under N.J.A.C. 10:78-2 through 4.

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N.J.A.C. 10:78-11.1

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CHAPTER 78. NJ FAMILYCARE > SUBCHAPTER 11. PROVISIONS GOVERNING
FORMER NEW JERSEY HEALTH ACCESS ENROLLEES**

§ 10:78-11.1 Purpose, scope and definitions

(a) The purpose of this subchapter is to set forth the general provisions of the New Jersey FamilyCare program as it applies to those who were enrolled in the New Jersey Health Access program on October 31, 2001.

(b) This subchapter applies to all individuals who:

1. Were enrolled in the New Jersey Health Access program on October 31, 2001; and
2. Are enrolled in the NJ FamilyCare program.

(c) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Health Maintenance Organization (HMO) plan" means that managed care contract which is in force between the Department of Human Services and the managed care organizations and which is administered by the Division of Medical Assistance and Health Services.

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N.J.A.C. 10:78-11.2

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FORMER NEW JERSEY HEALTH ACCESS ENROLLEES**

§ 10:78-11.2 Eligibility and redetermination of eligibility

(a) Individuals who were enrolled in the New Jersey Health Access program on October 31, 2001, and who returned a plan selection form by November 13, 2001, shall be eligible to enroll in the NJ FamilyCare program.

- 1.** An enrollee who is denied the opportunity to enroll in the New Jersey FamilyCare program because he or she did not return a plan selection form by November 13, 2001 shall have the right to file a grievance with the Health Access New Jersey Grievance Board in accordance with (a)2 below, if the grievance is filed with the Access program within 10 days of receipt of notice of discontinuation of the Access program mailed November 14, 2001. If the enrollee has not filed a grievance within 10 days of receipt of the notice mailed on November 14, 2001, no further opportunity to file a grievance shall be available.
- 2.** If an enrollee has a grievance pertaining to the subsidy level calculated or involuntary disenrollment in the Access Program, the enrollee shall submit a description of the grievance to the Access Program in writing within 10 days of the adverse notification. The Access Program shall notify the enrollee of its decision on the matter in writing, specifying the reasons for the decision, within 30 days of receipt of the complete documentation of the grievance. The Access Program shall retain all correspondence and documentation relating to the grievance in the enrollee's file. The Access Program's decision shall be considered the final agency determination.

(b) An enrollee shall remain eligible for the NJ FamilyCare program for former Health Access enrollees if:

- 1.** The enrollee meets the eligibility limits established by the Division at (b)2 through 5 below, and the applicant's family gross income meets the income limits established by the Division, which shall not exceed 250 percent of the Federal poverty income guidelines revised annually by the United States Department of Health and Human Services, pursuant to the provisions of [42 U.S.C. § 9902\(2\)](#), incorporated herein by reference. (For further information on the poverty income guidelines, contact the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, DC 20201; telephone: 202-690-6141);
- 2.** The enrollee continues to reside in New Jersey;
 - i.** All enrollees shall be required to submit a signed affidavit stating their intent to remain in New Jersey; and
 - ii.** Documentation of residency may be required, if determined necessary by program audit staff;
- 3.** The enrollee is not eligible for employer-based insurance;
- 4.** The enrollee is not currently enrolled in any other government program providing health care benefits; and
- 5.** The enrollee is not currently covered under an individual standard health benefits plan or other individual health coverage.

§ 10:78-11.2 Eligibility and redetermination of eligibility

(c) An enrollee's eligibility shall be redetermined on at least an annual basis, and in each subsequent 12-month period an enrollee shall submit an attestation of assets in addition to submitting to a redetermination of eligibility based on gross income, in accordance with (d) and (e) below.

(d) Determination of income for former Health Access enrollees shall be as follows:

1. Gross income for the person to be insured shall include the gross income of all legally responsible adults in a family, unearned income of minor children, and with respect to dependents of persons residing in a household separate from the dependent, that portion of the legally responsible adult's income required to be available for the care and support of that dependent.
 - i. A family includes legally married spouses and their dependent child(ren), and a single person and his or her dependent child(ren), as child and dependent are defined by the Board in the standard health benefits plan HMO policy form in Exhibit F of the Appendix to [N.J.A.C. 11:20](#).
 - ii. A family shall not include persons residing within the same residence who do not have a legal relationship or legal dependency obligation for support.
2. Income for purposes of redetermining eligibility of former Health Access enrollees for NJ FamilyCare shall be determined as follows:
 - i. For farm and non-farm self-employed persons, income shall be calculated using adjusted gross income reported on the family's Federal income tax form(s) from the prior year as the baseline and adding back in reported depreciation, carryover loss, and net operating loss amounts that apply to the business in which the family is currently engaged. Enrollees shall report the most recent financial situation of the family if it has changed from the period of time covered by the Federal income tax form. The report may be in the form of a percentage increase or decrease.
 - ii. For wage earners, income shall be calculated based on gross income reported in the four months immediately preceding, multiplied by three to reflect a 12-month period.
 - iii. For unemployed persons eligible for a governmental income program, income shall be determined by the amount of expected payments from the government agency plus any other gross income.
 - iv. For other individual circumstances, income shall be calculated based on a combination and/or variation of (d)2i, ii and/or iii above, as appropriate.

(e) Proof of income requirements for former New Jersey Health Access enrollees shall be as follows:

1. The enrollee shall provide acceptable proof of income that may include any of the following: paycheck stub, W-2 form, a letter from an employer on company letterhead stating an individual's income, or a statement of the gross benefit amount from any governmental agency providing benefit to the individual. These should be submitted in the combination appropriate for the individual or family. Enrollees shall submit a signed copy of their most recent Federal income tax form filed, if any.
2. Additional documentation may be requested of an individual, on a case-by-case basis, for verifying eligibility.
3. Changes that could impact an individual's or family's eligibility shall be reported immediately. As soon as identified, enrollees shall report, at a minimum, changes in the following:
 - i. Income;
 - ii. Employment status;
 - iii. Family composition (birth, death, marriage, divorce);
 - iv. Address; and
 - v. Availability of other health coverage.

§ 10:78-11.2 Eligibility and redetermination of eligibility

4. Failure to provide factual information may result in immediate disenrollment and may result in the imposition of payback provisions available under the law.

(f) A beneficiary who was transferred to NJ FamilyCare from the NJ Health Access program shall be eligible to receive the service package appropriate for that beneficiary, based on all relevant eligibility factors other than financial eligibility factors.

History

HISTORY:

Special amendment, R.2002 d.214, effective June 10, 2002.

See: [34 N.J.R. 2338\(a\)](#).

Added (f).

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N.J.A.C. 10:78-11.3

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FORMER NEW JERSEY HEALTH ACCESS ENROLLEES**

§ 10:78-11.3 Subsidy, contribution and copayments

(a) The total subsidy the State shall submit on behalf of a former New Jersey Health Access program enrollee shall be based upon the contract in force between the State and the managed care organization in which the individual is enrolled. The subsidy shall be recalculated in accordance with the contract between the Division and the managed care organization.

(b) The contribution that a former New Jersey Health Access Program enrollee shall be required to pay to the State shall be as provided for in [N.J.A.C. 10:78-7.1\(e\)](#).

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N.J.A.C. 10:78-11.4

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FORMER NEW JERSEY HEALTH ACCESS ENROLLEES**

§ 10:78-11.4 Disenrollment

- (a)** Any individual who does not submit timely payment for his or her share of the premium, as determined by the State, in accordance with [N.J.A.C. 10:78-7.1](#), shall be disenrolled.
- (b)** The Division may disenroll any former Access program enrollee from the NJ FamilyCare program for good cause, which shall include: failure to meet the eligibility requirements set forth in this subchapter; loss of eligibility; nonpayment of premium contribution; and fraud or abuse. The Division shall provide the enrollee with advance written notice of its intent to disenroll the enrollee specifying the reasons for the disenrollment action. Such notice shall specify an effective date of the notice, and shall describe procedures for disenrollment, including the enrollee's right to appeal the disenrollment decision pursuant to N.J.A.C. 10:78-8.

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N.J.A.C. 10:78-11.5

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FORMER NEW JERSEY HEALTH ACCESS ENROLLEES**

§ 10:78-11.5 Applicability

- (a)** Except as otherwise specified in this subchapter, all provisions of [N.J.A.C. 10:78](#), NJ FamilyCare, shall apply to the administration of the NJ FamilyCare program services provided to former New Jersey Health Access program enrollees.
- (b)** Notwithstanding the provisions of this subchapter, in the case of a conflict between these rules and the rules of the Department of Banking and Insurance, the rules of the Department of Banking and Insurance shall apply.

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