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Representing people with disabilities and their families since 1974

Eligibility for Adult Services from the New Jersey Division of Developmental Disabilities

Within the New Jersey Department of Human Services, the Division of Developmental Disabilities (DDD) provides and funds services for New Jersey residents with developmental disabilities. Supports and services are provided by hundreds of community-based organizations — most of them non-profits — as well as several state institutions called developmental centers. More than 42,000 individuals are eligible to receive services funded by DDD, most of whom live at home with their family, or in a community residence such as a group home or supervised apartment.

Developmental disabilities include:

- intellectual disabilities
- cerebral palsy
- autism spectrum disorders
- epilepsy
- spina bifida
- traumatic brain injuries
- certain neurological impairments

In recent years, DDD fundamentally changed the way it provides services to individuals with disabilities. The two most significant changes are:

1. Services will only be provided to eligible individuals who have attained the age of 21; and
2. All individuals must be Medicaid eligible before services can be provided.

Q: What services does DDD fund?

DDD funds three types of services for people with developmental disabilities who live in the community:

- day services, including supports for people who are employed;
- residential services, including individual supports that assist an individual living at home or elsewhere in the community; and
- family support services that assist families caring for loved ones at home.

DDD also participates in a number of Medicaid waivers. The two most frequently used are the Comprehensive Waiver (Supports Program under the Comprehensive Waiver) and the Community Care Program.

Q: Why is DDD eligibility so important?

Adults with developmental disabilities need access to appropriate services if they are to live as independently as possible in their communities.

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In some cases, adults with disabilities have a legal right to an appropriate residential placement and a full day of structured activities, at no cost to family members.

When children with developmental disabilities exit school, they move from the special education system of 'entitlement' to services, to the adult service system of 'quasi-entitlement.' In order to receive day program and residential services an individual must be deemed eligible for services from DDD.

Q: How is eligibility for DDD services determined?

In order to be eligible for DDD services, an individual must meet the following criteria:

1. Have a mental or physical impairment or combination of impairments;
2. The impairment is manifest in the developmental years, before age 22;
3. The impairment is likely to continue indefinitely; and
4. The impairment results in substantial functional limitations in three or more of the following areas of major life activity:
   - self-care;
   - learning;
   - mobility;
   - receptive and expressive language;
   - self-direction;
   - economic self-sufficiency; and
   - capacity for independent living.

Q: When can parents apply for eligibility for their child with a developmental disability?

DDD will only accept applications for individuals with disabilities who are at least 18 years old.

We strongly encourage families to apply for services from DDD as soon as the individual attains the age of 18. This will help ensure that eligibility for DDD services is established before the individual turns 21 and the educational entitlement ends. Additionally, if there is any concern regarding an individual's eligibility for DDD services, applying early will allow an opportunity to address these concerns.

Q. How do the new rules affect individuals previously determined eligible for DDD services?

Any individual born before January 1, 1997, and found eligible for service before January 1, 2013, will be "presumed eligible" to receive services from DDD at age 21.

However, any individual born on or after January 1, 1997, must reapply for DDD services when the individual attains the age of 18.

Q. Will DDD provide any services for individuals with disabilities prior to age 21?

DDD contends it will provide transitional planning services for individuals 16 years old and older. DDD defines that term as information and training to prepare for the transition from school to adult life with a focus on employment.

Q: Where can parents apply?

The application must be submitted to the Regional DDD office that services the area in which the individual with the disability lives. The application can be completed by the individual, or their parent or guardian. The application form can be downloaded at www.hinkle1.com/pubs-and-print/.

Q: Is the application difficult?

No, but those completing the application must be careful. You will need to provide basic identifying information, documentation of medical treatment, education and therapy evaluations, psychiatric and psychological evaluations and proof of citizenship and residency, along with copies of the individual's social security card and birth certificate.

Waiting Lists

DDD's regulations allow it to assign people to waiting lists when services are not immediately available. This applies to both residential and day programs.

DDD maintains two waiting list categories: **Priority** and **General**. The Priority waiting list is the only DDD waiting list that actually places people into services. The **General** waiting list is essentially a registry for people who do not meet the criteria for placement on the Priority waiting list.

The **Community Care Program ("CCP")** waiting list is the waiting list for residential services, which can be years long.

Individuals who meet the following criteria can be placed on the CCP waiting list with priority status:

- both parents are 55 years or older;
- the person is living with someone other than the parent who is not willing to provide care any longer;
- there is a risk of abuse, neglect, or exploitation;
- one parent has a chronic condition, which significantly limits the ability to care for the person; or
- the person's health or safety is at risk because of behavior or physical needs.

As it can take ten to twelve years to reach the top of the CCP waiting list, it is vital that individuals request placement on this list as soon as the criteria can be satisfied.

DDD also uses a waiting list for day programs and vocational services. DDD regulations permit a person to be placed on a **waiting list for day services** five years prior to graduation. Therefore, for families of school-age children who have planned well, a waiting list should not be a problem. Even for individuals who are still on a waiting list upon graduation at age 21, it may be illegal for DDD to refuse immediate services despite its waiting list, particularly if serious regression is likely.

In addition, parents will be asked to complete the New Jersey Comprehensive Assessment Tool (NJ CAT) questionnaire. This questionnaire asks for information about the functional level, behavior supports, medical needs and type of supervision and support that the individual with the disability requires. When completing this form, it is important to present an unvarnished picture of the individual's limitations. For example: the form asks, "Can the individual shower independently?" Many families will answer this question "yes" without much thought. However, if the individual needs to be reminded to go take a shower, or the individual requires verbal prompts while showering, then the answer should be "no" because he or she is not truly independent. Parents should try to imagine the level of support the individual would require if he were living alone, without support and supervision. It is the answers to these questions,

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combined with the documentation provided that will ultimately determine eligibility, set the individual's tier level and budget; therefore, it is imperative the information provided be accurate.

Q: If the individual is over 22 and there are no records from childhood, can he/she still apply?

Absolutely. Although DDD's eligibility criteria requires that the disability manifest before the age of 22, DDD cannot require proof or documentation of functional limitations prior to the age of 22. Hinkle Prior & Fischer argued a precedent-setting case before the New Jersey Supreme Court on behalf of a 54 year-old man with Asperger's Syndrome. DDD had, in part, denied the man's eligibility for services because he lacked documentation of his disability prior to age 22. Ruling in favor of the man, the New Jersey Supreme Court struck down DDD's rules as too restrictive and contrary to state law. After this case, DDD's rules were changed, eliminating the burden DDD placed on families to provide documentation of the disability before age 22. To be clear, the disability must still manifest prior to age 22, but formal documentation (e.g., medical reports or school records) are not required as proof. This is yet another reason to apply for services early so as to avoid these kinds of problems.

Q: Is there an appeal process if DDD eligibility is denied?

Yes. If an application for eligibility is denied, DDD must provide the specific reason for the denial and advise applicants of the opportunity to appeal. The process requires a written appeal to be submitted to DDD within a very short time frame.

The rules and regulations regarding eligibility for services can be confusing and difficult to navigate. Despite long waiting lists for both residential and day program services, there are legal procedures to help protect a person's rights to these services and obtain them when they are needed.

Hinkle Prior & Fischer is a multi-state law practice with offices in Lawrenceville, Cherry Hill, Florham Park, Paramus, and Wall, New Jersey. The attorneys lecture and write frequently on topics of elder law, estate planning, special needs trusts, guardianship, special education, Medicaid and accessing adult services. The attorneys are available to speak to groups in New Jersey and Pennsylvania at no charge.

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