

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT Provisional Housing - Awaiting SSI/SSDI Eligibility (PHASE) Pilot Program

Proposed Repeals: N.J.A.C. 10:90-6.9 and 6.10

Proposed New Rule: N.J.A.C. 10:90-6.9

Authorized By: Elizabeth Connolly, Acting Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:1-12 and 44:10-53.

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

Proposal Number: PRN 2017-035.

Submit comments by May 5, 2017, to:

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The agency proposal follows:

Summary

Since the Department is providing a 60-day comment period on this notice of proposal, the notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Public Law 1997, c. 38, The Work First New Jersey (WNFJ) Act, codified at N.J.S.A. 44:10-1 et seq., authorizes the Department of Human Services (DHS) to propose three-year pilot programs that waive the duty to comply with various statutory requirements of the WNFJ program. To date, the State has utilized a series of pilots to waive some of the statutory requirements pertaining to the Emergency Assistance (EA) Program. EA is a supportive benefit for WNFJ recipients that provides assistance with housing costs and other essential items and is limited to 12 months, with limited opportunities for extensions.

N.J.A.C. 10:90-6.9 and 6.10, the rules that governed the Housing Assistance Program (HAP) and the Housing Hardship Extension (HHE) pilots are repealed because the pilot programs have expired pursuant to N.J.S.A. 44:10-53.

Pursuant to proposed new N.J.A.C. 10:90-6.9, DHS is advancing the "Provisional Housing - Awaiting Supplemental Security Income/Social Security Disability Insurance Eligibility" (PHASE) pilot, to mainly provide temporary housing assistance to WNFJ Temporary Assistance for Needy Families (TANF) recipients or General Assistance (GA) recipients who have exhausted the 12-month lifetime limit on EA benefits and exhausted any available hardship extensions. Additionally, these recipients must be permanently disabled and have an application pending or be pursuing an appeal to receive Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits.

The PHASE pilot is proposed for this particular group of WNFJ recipients because the application or appeal process for an SSI or SSDI determination can take several years; therefore, it is not unusual for these clients to exhaust their EA while anticipating an SSI or SSDI approval.

Proposed new N.J.A.C. 10:90-6.9 provides different eligibility criteria from prior EA-based pilots. For instance, PHASE recipients shall be required to have legal representation for their SSI or SSDI applications. Representation will be required because the application or appeal process typically requires a client to submit specific evidence to the Social Security Administration (SSA) and meet critical deadlines, and allows the client to appeal to the SSA several times at various administrative levels. The mandatory legal representation should not present a financial burden to a client because the Department contracts with a legal services agency to provide pre-paid legal services for WNFJ clients applying for SSI and SSDI.

PHASE recipients shall also be required to contribute 30 percent of their household income each month toward their housing costs, consistent with the requirements of the EA program.

Social Impact

Proposed new N.J.A.C. 10:90-6.9 is expected to have a positive impact for members of our society who are WNFJ recipients with a permanent disability, who are anticipating SSI or SSDI benefits. These individuals will receive up to three years of temporary housing assistance while pending an eligibility determination or a decision on an appeal.

Economic Impact

Proposed new N.J.A.C. 10:90-6.9 is expected to have a positive impact on the State economy. Authorizing temporary housing assistance for WNFJ clients awaiting SSI or SSDI benefits should have a positive impact on the State economy because the spending power given to recipients should stimulate the rental housing markets across the State and such stimulation will continue when clients obtain their Federal benefits.

Federal Standards Statement

The Department has reviewed the applicable Federal laws and regulations and that review indicates that the proposed new rule does not exceed Federal standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed new rules should not result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed new rules should have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed new rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose no reporting, recordkeeping, or other compliance requirements on small businesses and, thus, a regulatory flexibility analysis is not required. The proposed new rules govern a public assistance program designed to succeed the EA program for certain clients.

Housing Affordability Impact Analysis

The proposed new rules should not have an impact on housing affordability in New Jersey. Specifically, it is unlikely that the rules would evoke a change in the average costs associated with housing because the proposed new rules govern a public assistance program designed to succeed the EA program for certain WNFJ clients.

Smart Growth Development Impact Analysis

The proposed new rules should not have an impact on smart growth. Specifically, it is not likely that the rules Program would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed new rules govern a public assistance program designed to succeed the EA program for certain WNFJ clients.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:90-6.9 and 6.10.

Full text of the proposed new rule follows:

10:90-6.9 Provisional Housing — Awaiting Supplemental Security Income/Social Security/Disability Insurance (SSI/SSDI) Eligibility (PHASE) Pilot Program

(a) The PHASE pilot is established pursuant to N.J.S.A. 44:10-53, wherein the Commissioner of the Department of Human Services is authorized to waive, for a period not to exceed three years, compliance with the requirements of the Work First New Jersey (WNFJ) program to the extent that the Commissioner deems it necessary to conduct an experimental pilot that is likely to help promote the objectives of the WNFJ program, which are client empowerment and self-sufficiency.

1. Eligibility for PHASE shall be no more than 36 months and is limited to WFNJ General Assistance (GA) or Temporary Assistance for Needy Families (TANF) assistance units that are otherwise eligible for emergency assistance (EA) pursuant to this subchapter. To be eligible, the assistance unit shall:

i. Contain an adult member who is permanently disabled, as evidenced by presenting and maintaining a current WFNJ Med 1, indicating a medical condition expected to last 12 months, or contain adult or child members who are disabled and are being cared for by another member of the assistance unit full time, such that the caregiver is unable to work as evidenced by a WFNJ 5S-DEP, indicating a condition expected to last 12 months. The physician's signature on the WFNJ 5S-DEP shall constitute proof of the disability; however, the caregiver's status as the only person who can provide the care shall require additional corroboration, if deemed necessary by the agency or DFD;

ii. Have exhausted its applicable EA benefits pursuant to the time limits provided in N.J.S.A. 44:10-51 and N.J.A.C. 10:90-6.4;

iii. Remain in imminent danger of homelessness; and

iv. Have applications or appeals pending for SSI or SSDI for all disabled members of the assistance unit.

2. A client must exhaust the traditional EA time limit and hardship extensions prior to being enrolled in PHASE. If it is later discovered that an assistance unit was somehow determined eligible for PHASE prior to exhausting the traditional EA time and extensions, the unit's remaining EA time will be reduced immediately to reflect each month that the recipient received assistance through PHASE. When the traditional EA time is fully exhausted, then all subsequent months of EA shall count against the PHASE clock.

3. PHASE recipients who remain otherwise eligible for EA, may continue to receive PHASE assistance for a period of up to three full months from the date of the SSI or SSDI awards. The three-month transition period shall start in the month after the date on the Notice of Award. WFNJ cash assistance eligibility is not a factor that will prevent the assistance unit from receiving the three months of transitional assistance, unless WFNJ eligibility was terminated for a reason other than the increased income from the SSI or SSDI award.

4. Temporary housing assistance benefit payments made under this section may include security deposits, rent, mortgage, moving expenses, and utilities for living arrangements. Additional payments may be authorized for emergency food and clothing as provided for under the traditional EA program rules.

5. Payment of retroactive rent, mortgage, and utilities is permitted as guided by N.J.A.C. 10:90-6.3(a)5. Payment of retroactive rent, mortgage, or utilities is limited to a maximum of three months, unless additional time is approved by the DFD after a written request by the county welfare agency (CWA) or municipal welfare agency (MWA).

6. Rental units must be at or below the fair market rent for the area in which the housing is situated.

7. Payments authorized for recipients to stay in a hotel, motel, or shelter living arrangements are limited to 60 cumulative days during a recipient's lifetime on PHASE.

(b) Continued eligibility for the PHASE program shall be contingent upon the following:

1. Recipients are required to retain and keep legal representation for the duration of his or her SSI or SSDI application or the appeal process. If not already represented by counsel, recipients will be referred to a pre-paid legal services agency contracted by the Department that will assess the merits of the application or appeal and, if appropriate, will represent the recipient throughout the process. In the alternative, the recipient can retain a private attorney, as selected by and paid for by the recipient.

2. Recipients shall execute any releases necessary to allow the CWA/MWA to obtain information confirming the status of the attorney-client relationship, the reason(s) for the dissolution of the relationship, or the reason(s) they were unable to utilize the contracted legal services agency. DFD retains the discretion to continue eligibility despite the lack of legal representation.

3. Recipients shall contribute 30 percent of the total household income towards their housing costs throughout their time on PHASE. While receiving WFNJ cash assistance, the recipients shall agree to a

mandatory vendor-restricted payment, directly from the CWA/MWA to the landlord, from the WFNJ grant.

4. PHASE recipients shall comply with an EA service plan, which includes, among other things, the requirement that the recipient search for, apply for, and agree to accept permanent housing arrangements that will be accessible and affordable with the anticipated SSI/SSDI benefit amount and other available resources, including shared living arrangements and/or housing arrangements outside of the recipients' current county of residence. The EA service plan shall be reviewed and updated by the CWA/MWA, as appropriate, but at least every three months.

5. When recipients' current monthly housing costs exceed the anticipated SSI or SSDI benefit amount, PHASE recipients shall continue to explore more affordable housing arrangements that they discover or that are suggested by the CWA/MWA. The recipient shall accept such an affordable housing arrangement, unless there is good cause to reject. Among other things, a desire to remain in one's present community, aversion to living with a roommate, or aversion to living in another type of shared living arrangement shall not alone form the basis of good cause to reject an affordable housing arrangement.

(c) In concurrence with, or in addition to, the factors set forth in N.J.A.C. 10:90-6.1, the following recipients, when otherwise eligible for EA, shall not be eligible for the PHASE program or will lose eligibility, unless they can demonstrate good cause for their actions or inactions, as appropriate:

1. Credible documentary evidence suggests that the unit failed to abide by SSI/SSDI application or appeals deadlines and other basic steps that the recipient was required to meet in the application or appeals process. Among other things, evidence that a case was closed due to missed appointments or evidence that a case is stagnant due to a failure by the recipient to provide documents, could be examples of the failures under this subsection. Upon request, a recipient shall obtain from the Social Security Administration (SSA) documents that confirm the nature of any delays in the application or the appeals process and provide those documents to the CWA/MWA or DFD or sign a consent allowing the CWA/MWA or DFD to obtain such documents from the SSA;

2. The Appeals Council of the SSA has refused to review the recipient's SSI/SSDI decision or has affirmed the denial of the application. The CWA/MWA or DFD retains the discretion, where good cause exists, to terminate eligibility to the PHASE program when a recipient is making a subsequent application for SSI/SSDI, after an earlier application was withdrawn or denied, or terminate eligibility to the PHASE program, when a recipient is making a subsequent appeal at the same level, after the initial appeal was withdrawn or the initial decision was affirmed. Factors that the CWA/MWA should consider prior to rendering a recipient ineligible under this subsection include, but are not limited to, the reasons for the denials or withdrawals, the number of denials or withdrawals, and the circumstances presented as the basis for a new application to the SSA. At no time shall a recipient be allowed to apply more than two times or appeal at the same level more than two times and remain eligible for PHASE;

3. The recipient lost Section 8 or other subsidized housing due to non-compliance with Section 8 or other subsidized housing rules and regulations;

4. The household contains an employable adult;

5. The recipient previously incurred a six-month EA penalty due to non-compliance, including non-compliance with the EA service plan, within the 12-month period prior to applying for PHASE; and/or

6. An adult in the assistance unit has caused his or her own homelessness.

(d) A circumstance not addressed by this section shall continue to be governed by existing EA rules when those rules are relevant and not in conflict with this section.

(e) The PHASE program will expire on (three years from the effective date of this section). Applications will be accepted up to (one month prior to the expiration date). Applications that are submitted through (one month prior to the expiration date) shall be considered for the program and if determined eligible shall receive assistance. Assistance units deemed eligible for the PHASE pilot prior to (the expiration date) will continue to receive assistance through the month

the program expires, as long as they remain otherwise eligible for EA and continue to comply with the additional PHASE program criteria.

LAW AND PUBLIC SAFETY

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
Compassionate Use Medical Marijuana Definitions
Proposed Amendment: N.J.A.C. 13:35-7A.2**

Authorized By: Board of Medical Examiners, William Roeder,
Executive Director.

Authority: N.J.S.A. 45:9-2 and 24:6I-1 et seq.

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

Proposal Number: PRN 2017-033.

Submit comments by May 5, 2017, to:

William Roeder, Executive Director
Board of Medical Examiners
140 East Front Street, 2nd Floor
PO Box 183
Trenton, NJ 08625

or electronically at: [http://www.njconsumeraffairs.gov/
Proposals/Pages/default.aspx](http://www.njconsumeraffairs.gov/Proposals/Pages/default.aspx).

The agency proposal follows:

Summary

The New Jersey Compassionate Use Medical Marijuana Act, N.J.S.A. 24:6I-1 et seq. (Act), authorizes the use of marijuana to treat or alleviate pain or other symptoms associated with certain specifically identified debilitating medical conditions. P.L. 2016, c. 53, amended the definition of “debilitating medical condition” in the Act, so that post-traumatic stress disorder could be deemed a debilitating medical condition. The Board of Medical Examiners (Board) proposes to amend N.J.A.C. 13:35-7A.2 to amend the definition of “debilitating medical condition” to reflect the amended statutory definition.

The Board has provided a 60-day comment period for this notice of proposal. Therefore, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Board believes that the proposed amendment may benefit individuals who suffer from post-traumatic stress disorder, in that the amendment recognizes that such individuals could be qualified to obtain and use marijuana for medicinal purposes.

Economic Impact

The Board believes that the proposed amendment will have a positive economic impact on medical marijuana dispensaries, in that they may see an increase in sales due to more individuals qualifying to purchase marijuana for medical purposes.

Federal Standards Analysis

Under existing Federal law, the manufacture, possession, sale, or distribution of marijuana is prohibited. See 21 U.S.C. §§ 841 et seq. States, however, are not required to enforce Federal law. In enacting the New Jersey Compassionate Use Medical Marijuana Act, N.J.S.A. 24:6I-1 et seq., the New Jersey Legislature found that compliance with the Act does not put the State of New Jersey in violation of Federal law. See N.J.S.A. 24:6I-2. Because the standards established in these rules conflict with requirements imposed under Federal law, a Federal standards analysis is required.

The amendment is proposed because P.L. 2016, c. 53 revised the definition of “debilitating medical condition” to include post-traumatic stress disorder and would permit individuals who suffer from post-traumatic stress disorder to qualify to obtain and use marijuana for medicinal purposes. Although possession and use of marijuana is a

violation of Federal law, the New Jersey Legislature drew a distinction between medical and non-medical use of marijuana, and determined that the medical use of marijuana is beneficial in treating or alleviating pain and symptoms associated with certain debilitating medical conditions. See N.J.S.A. 24:6I-2.

Jobs Impact

The Board does not believe that proposed amendment will result in the creation or loss of jobs in the State.

Agriculture Industry Impact

The proposed amendment will have no impact on the agriculture industry in the State.

Regulatory Flexibility Statement

Since licensed physicians are individually licensed by the Board under the Regulatory Flexibility Act (the Act), N.J.S.A. 52:14B-16 et seq., they may be considered “small businesses” for the purposes of the Act. A regulatory flexibility analysis is not required as the proposed amendment will not impose any costs, will not require licensed physicians to employ any professional services to comply with the proposed amendment, and will not impose any compliance, recordkeeping, or reporting requirements.

Housing Affordability Impact Analysis

The proposed amendment will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed amendment would evoke a change in the average costs associated with housing because the proposed amendment concerns debilitating conditions that may qualify an individual to obtain and use marijuana for medicinal purposes.

Smart Growth Development Impact Analysis

The proposed amendment will have an insignificant impact on smart growth and there is an extreme unlikelihood that the proposed amendment would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendment concerns debilitating conditions which may qualify an individual to obtain and use marijuana for medicinal purposes.

Full text of the proposal follows (additions indicated in boldface **thru**):

SUBCHAPTER 2. COMPASSIONATE USE MEDICAL MARIJUANA

13:35-7A.2 Definitions

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

...

“Debilitating medical condition” means:

1. One of the following conditions, if resistant to, or if the patient is intolerant to, conventional medical therapy: seizure disorder, including epilepsy; intractable skeletal muscular spasticity; **post-traumatic stress disorder**; or glaucoma;

2.-5. (No change.)

...