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■ Eligibility and Services from The Department of Children and Families for Children with Developmental Disabilities

On January 1, 2013 the Division of Children’s System of Care (CSOC) under the Department of Children and Families (DCF) assumed responsibility for determining eligibility and providing services for children and young adults with developmental disabilities under the age of 21.

Parents need to be aware of the following rules to ensure continued appropriate services are provided to their child.

Q: What are the criteria for eligibility for services from DCF?

The DCF definition of a developmental disability is the same as DDD’s. It means a severe, chronic disability of an individual, which:

- Is attributable to a mental or physical impairment or combination of mental or physical impairments;
- Is manifest before age 22;
- Is likely to continue indefinitely;
- Results in substantial functional limitations in three or more of the following areas of major life activity:
 - Self-care
 - Receptive and expressive language
 - Learning
 - Mobility

- Self-direction
- Capacity for independent living
- Economic self-sufficiency; and

- Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services, which are of lifelong or extended duration and are individually planned and coordinated.

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

Q: If my child was already determined eligible by DDD, do I need to apply to DCF?

Children under the age of 21 who were determined eligible for services by DDD prior to January 2013

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do not have to apply to DCF and are automatically eligible for services from CSOC.

Parents should note CSOC can reassess a child's eligibility if it appears he no longer meets the eligibility criteria outlined above.

Q: If I never applied for DDD services for my child, can I now apply to DCF?

Yes. CSOC will determine eligibility, for children under the age of 18 who were not found eligible for DDD services before January 2013.

For individuals 18 years old and older, DDD will determine eligibility; therefore, the application must be submitted to the DDD Regional Administrator for the county in which the individual lives. However, CSOC remains responsible to provide any services determined necessary until the individual attains the age of 21.

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

Individuals determined eligible for DDD services prior to January 1, 2013, who are under the age of 21, will be presumed eligible to receive services from CSOC.

Any individual who was born before January 1, 1997, does not need to reapply to DDD. However, any individual born on or after January 1, 1997, must reapply to DDD when he is 18 years old.

Q: Where can parents apply?

The application must be submitted to the Family Support and Eligibility Unit of PerformCare New Jersey. The application must be completed by the individual's parent or legal guardian.

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.

In addition, parents will be asked to complete a questionnaire which asks for information about the functional level, behavior supports, medical needs and the 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 giving it 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, combined with the documentation provided, that will ultimately determine eligibility; therefore, it is imperative the information provided be accurate.

Q: What services can DCF provide for eligible individuals?

DCF can provide:

- Respite
- Behavioral supports
- In-home supports
- In some cases, residential placements

Residential Placements

CSOC will not provide a residential placement if it is necessary to ensure the provision of a Free Appropriate Public Education (“FAPE”). Instead, in these cases the student’s school district may be required to provide the residential placement.

Q: How are placement considerations made?

During the Individual Education Plan meeting, placement options should be discussed. The goal is to develop a plan which will provide the student with FAPE. The IEP must provide the supports and services necessary to confer a meaningful educational benefit to the student.

Q: When is a school district required to provide a residential placement?

Placement in a residential program must be provided, at no cost to the parents, if it is the option that allows the student to make meaningful educational progress. Often,

residential placements are considered for students with behaviors, school avoidance issues and similar needs.

Q: What happens when a student who is residentially placed attains the age of 21 and his educational entitlement ends?

In some cases, the Division of Developmental Disabilities will continue funding these placements. Often, families in this situation will need the assistance of an attorney to secure uninterrupted funding for a residential placement. Families in this situation should take action at least one year before their child’s educational entitlement ends.

Q: What services does CSOC provide?

CSOC provides both functional and residential Services.

According to CSOC rules:

- Functional services include “training, habilitation, rehabilitation, adjustment, treatment, care or protection.”
- Residential services include “observation, examination, care, training, treatment, habilitation, rehabilitation, and related services, including community care.”

It is important to note that CSOC will not provide education and related services, including residential services, necessary to provide a free appropriate public education.

Q. Does DDD provide any services for individuals under the age of 21?

DDD contends it will provide transitional planning services for individuals 16 to 21 years old. DDD defines that term as information and training to prepare for the transition from school to adult life with a focus on employment.

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Q: Does DCF require my child to be Medicaid eligible in order to receive services?

DCF requires individuals to apply for Medicaid/NJ Family Care and any other government benefits. Once found eligible, the individual must maintain eligibility for those benefits. However, CSOC will provide services to individuals who are not eligible for Medicaid/NJ Family Care or other benefits. Until the child turns 18, ineligibility for these programs will usually be the result of the parents' income and assets.

Q: What can I do if DCF determines my child is not eligible for services?

If a child is determined ineligible, an appeal can, and should be, filed. The same is true for a denial of services.

It is important for parents and guardians to understand their rights and continue to advocate for their child's needs. A determination of ineligibility or a denial of services by CSOC can be appealed. Parents may need to consult with an attorney if CSOC is denying their child functional services or has determined their child to be ineligible for services. Timelines to file an appeal can be very short, so it will be important to act quickly.

Finally, advanced planning is the key to long-term success. If not already eligible, a DCF application should be submitted immediately. In addition, for families of children born on or after January 1, 1997, it is imperative families immediately submit a DDD application when the child turns 18.

Q: What if my child needs services immediately?

In an emergency situation, CSOC can provide services before the eligibility process is completed.

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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