

**REVISED ADOPTED REGULATION OF THE MENTAL
HYGIENE AND MENTAL RETARDATION DIVISION OF THE
DEPARTMENT OF HUMAN RESOURCES**

LCB File No. R130-97

Effective December 12, 1997

EXPLANATION - Matter in *italics* is new; matter in brackets [] is material to be omitted.

AUTHORITY: §§1-8, NRS 435.365.

Section 1. Chapter 435 of NAC is hereby amended by adding thereto a new section to read as follows:

As used in NRS 435.365, the division will interpret "parent or other relative" to mean:

- 1. A biological parent or relative of a person with mental retardation; or*
- 2. A person who has legally adopted or is the legal guardian of such a person.*

Sec. 2. NAC 435.400 is hereby amended to read as follows:

435.400 1. A parent or other relative of a person with mental retardation is eligible for assistance pursuant to NAC 435.400 to 435.430, inclusive, if the person with mental retardation:

(a) Has severe or profound mental retardation or is under 6 years of age and has developmental delays requiring support equivalent to the support required by a person with severe or profound mental retardation; and

(b) Meets the financial requirements for fee reduction established by the division pursuant to NRS 433.404 and 435.115.

2. The division will consider [a] *the person to [be profoundly mentally retarded] have profound or severe mental retardation* within the meaning of NRS 435.365 if:

[1. The intelligence testing scores for the person are more than 5 standard deviations below the norm, 19 and below on the Stanford-Binet and 24 and below on the Wechsler Scales; or

2. The person is so disabled that he requires a specialized program of care such as that provided in a facility which is operated by the division and provides services for mentally retarded persons.]

(a) *A psychological examiner diagnoses the person as having profound or severe mental retardation based on the results obtained by generally accepted methods for assessing the intellectual capability and coping or adaptive skills of the person; or*

(b) *The person is under 6 years of age and a multidisciplinary team identifies him as having developmental delays that require support that is equivalent to the support required by a person with profound or severe mental retardation.*

3. *The diagnosis required by subsection 2 must be made in accordance with the criteria set forth in "Mental Retardation: Definition, Classification and Systems of Support," 9th edition, 1992. A copy of the publication may be obtained from the American Association on Mental Retardation, 444 North Capitol Street, N.W., Washington, D.C. 20001-1512, for the price of \$65, plus \$4 for shipping and handling.*

4. *As used in this section:*

(a) *"Multidisciplinary team" means a psychological examiner and one or more other persons, including a parent, legal guardian, clinician, educator, physician, social worker,*

therapist, case manager or nurse of a person with mental retardation, who, because of personal or specialized knowledge, are qualified to provide or interpret information relating to the person's cognitive, physical, psychological, language, speech and social development or self-help skills.

(b) "Psychological examiner" means a psychologist who is licensed in this state or any other person who, because of specialized training and knowledge, including any training and knowledge required to assess the intellectual capabilities or an impairment of the adaptive behavior of a person, is qualified to diagnose a person as having:

(1) Profound or severe mental retardation; or

(2) Developmental delays that require support that is equivalent to the support required by a person with profound or severe mental retardation.

Sec. 3. NAC 435.405 is hereby amended to read as follows:

435.405 1. An application for financial assistance from the division for **[the care of a retarded]** *care provided by a parent or other relative of a person with mental retardation* must be submitted to the division on a form which, upon request, will be provided by the division. **[The division will send a written acknowledgment to the applicant upon receipt of his completed application.]**

2. Upon receipt of **[such an]** *the* application, a staff member of the division will:

(a) **[Communicate]** *Conduct an interview* with the applicant;

(b) Request any additional information **[needed by the division;]** *required for the applicant to complete the application;* and

(c) Inform the applicant of the services available from the division.

[3. In determining the adequacy of the care which the applicant will provide for the retarded person, the division will consider whether the retarded person will be provided care in accordance with a plan approved by the division.]

Sec. 4. NAC 435.410 is hereby amended to read as follows:

435.410 1. To be eligible for assistance [under] *pursuant to* NAC 435.400 to 435.430, inclusive, an applicant must reside in this state.

2. In determining whether the applicant or his [retarded] relative *with mental retardation* is reasonably able to pay for the care and support of the [retarded] relative, the division will consider:

- (a) The adequacy of [their income, determined by family size and gross income;
- (b) Their assets and liabilities;
- (c) The specific characteristics of the retarded relative; and
- (d) The following table:

TABLE FOR EVALUATING FINANCIAL ELIGIBILITY

COMBINED GROSS FAM- ILY INCOME	NUMBER OF FAMILY MEMBERS				
	2	3	4	5	6 or more
THE PERCENT OF MAXIMUM IS:					
15,000	100				
16,000	90				
17,000	80				
18,000	70	100			
19,000	60	90			
20,000	50	80			
21,000	40	70	100		
22,000	30	60	90		
23,000	20	50	80		
24,000	10	40	70	100	

25,000	0	30	60	90	
26,000		20	50	80	
27,000		10	40	70	100
28,000		0	30	60	90
29,000			20	50	80
30,000			10	40	70
31,000			0	30	60
32,000				20	50
33,000				10	40
34,000				0	30
35,000					20
36,000					10
37,000 or more					0

3.] the financial resources of those persons; and

(b) Whether the applicant or his relative with mental retardation is eligible in accordance with the schedules of fees established pursuant to NRS 433.404 and 435.115 for a reduction of fees for services other than services provided by the division pursuant to NAC 435.400 to 435.430, inclusive.

3. To determine the adequacy of the care that the applicant will provide for the relative with mental retardation, the division will consider whether the relative will be provided care in accordance with a plan approved by the division.

4. Eligibility for continued assistance will be reviewed *with the applicant at least* annually.

[4. If the retarded relative of an applicant is less than 18 years of age and is receiving supplemental security income, the financial eligibility of the applicant for assistance shall be deemed established.]

Sec. 5. NAC 435.415 is hereby amended to read as follows:

435.415 1. [A staff member of the] *The* division will [determine] :

(a) *Determine* whether an applicant is eligible for assistance [.

2. *The division will give*] *and the amount of that assistance, if any; and*

(b) *Provide* the applicant written notice of the [staff member's decision.

3.] *decision.*

2. If an applicant becomes eligible for assistance, he is entitled to retroactive assistance from the first day of the month after the date on which the division received his *completed* application.

3. *If the relative with mental retardation for whose care assistance is provided pursuant to NAC 435.400 to 435.430, inclusive, dies while eligible for the assistance, the applicant is entitled to receive 1 additional month of assistance pursuant to those sections.*

Sec. 6. NAC 435.420 is hereby amended to read as follows:

435.420 1. The division will distribute assistance monthly by check. The division will stop the payment of any such check [which] *if it* is not cashed within 90 days after it is issued by the division . [, and no assistance will be given for the month for which the check was issued.]

2. If the division makes an overpayment of assistance in a monthly check issued to a person, the division may, in any subsequent monthly check issued by the division to the person, deduct a portion of the assistance provided in the check until the amount of the overpayment is recovered.

Sec. 7. NAC 435.425 is hereby amended to read as follows:

435.425 **[If the name or address of the applicant is changed, the applicant must give the division written notice of that change.]**

1. If a change occurs in the home of a person who is receiving assistance for providing care to a relative with mental retardation pursuant to the provisions of NAC 435.400 to 435.430, inclusive, and that change affects the adequacy of that care or the eligibility of the person to receive the assistance as specified in a form provided to the person by the division, the person shall report the change to the division within 30 days after the change occurs.

2. If a change occurs in the diagnosis of mental retardation of a relative specified in subsection 1, the person receiving assistance for the relative shall report the change to the division on or before the end of the month in which the change occurs. The report must include any materials for testing used to conduct the diagnosis.

3. A report specified in this section must be submitted on a form provided by the division.

Sec. 8. NAC 435.430 is hereby amended to read as follows:

435.430 1. **[If a staff member determines that an applicant is ineligible for assistance, the] An applicant may appeal from [that decision to the administrator of the division. The applicant] :**

(a) *A decision by the division that he is ineligible for assistance pursuant to NAC 435.400 to 435.430, inclusive; or*

(b) *An award or denial of assistance to the applicant by the division.*

If the applicant wishes to appeal the decision or award or denial of assistance, he must file a written [notice of the] appeal with the [administrator] regional coordinator of the division in whose region the decision or award or denial was made within 15 [working] days after the applicant received notice of [his ineligibility].

2. *The administrator] the decision.*

2. *The regional coordinator with whom an appeal is filed pursuant to subsection 1 may require documentary evidence to support [appeals concerning financial eligibility].*

3. *The administrator will consider the appeal and render his decision] the appeal. The regional coordinator shall complete his review of the appeal within 30 days after he receives the [notice of] written appeal.*

3. *An applicant may appeal a decision of a regional coordinator issued pursuant to subsection 2 by filing a written appeal with the administrator or a person designated by him. The appeal must be filed within 15 days after the applicant receives written notice of the decision of the regional coordinator. The decision of the administrator or the person designated by him concerning an appeal filed pursuant to this section is a final decision for the purposes of judicial review.*