
FOOD AND NUTRITION SERVICES CERTIFICATION
ELIGIBILITY REQUIREMENTS
Controlled Substance Felons

FNS 290 Controlled Substance Felons
Change #1-2014
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290.01 REQUIREMENT FOR CONTROLLED SUBSTANCE FELONS

An individual who both **committed and was convicted** under federal or State law **on or after August 23, 1996**, of any offense classified as a felony by the law of the jurisdiction involved with an element of the possession, use, or distribution of a controlled substance, is permanently disqualified from FNS. In New Jersey anyone convicted of a drug related crime and sentenced to serve one year or more in prison is considered a drug felon for FNS purposes. This provision **does not** apply to an individual convicted of a controlled substance felony offense **committed on or before** August 22, 1996, **nor** to an individual convicted of a felony offense other than a controlled substance felony offense.

Applicants are required at application and recertification to sign a statement declaring whether any FNS unit member has been convicted of a drug-related felony committed on or after August 23, 1996. Individuals convicted of a felony involving possession, use, or distribution of a controlled substance after this date are permanently disqualified from the program. This includes Supplemental Security Income (SSI) recipients.

For determining countable income and resources of controlled substance felons, see Section 250, Resources, and Section 260, Income.

Exceptions to the permanent disqualification are in place for Class H or I State felony convictions occurring in North Carolina (N.C.). Conditions discussed in 290.02 apply to Class H and Class I drug felony convictions occurring in N.C. only.

NOTE: Individuals committing a federal controlled substance felony **on or after August 23, 1996** are permanently disqualified from FNS.

290.02 AN INDIVIDUAL CONVICTED OF CLASS H OR I CONTROLLED SUBSTANCE FELONY OFFENSE IN NORTH CAROLINA

A. General Requirements

An individual convicted of a Class H or I felony that involved possession, use, or distribution of a controlled substance committed on or after August 23, 1996, **in** North Carolina may reestablish eligibility for FNS benefits under the following conditions.

1. The individual may be eligible for FNS benefits six months after release from custody or, if the individual was never committed to custody, six months after the date of conviction, provided there has been no additional controlled substance felony convictions within six months of the first conviction, **and**
2. The individual has successfully completed, or has continuously participated in, a required substance abuse treatment program as determined appropriate by the area mental health authority. If the area mental health authority determines treatment is appropriate and funds and programs are available, an individual eligible for FNS benefits because of this rule must undergo substance abuse

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treatment as a condition for receiving FNS benefits. The individual cannot be determined eligible to receive FNS benefits until notice of compliance is received from the area mental health authority.

NOTE: There is a co-payment for outpatient behavioral health services for individual who receive Medicaid benefits. On November 1, 2010, DMA implemented a new co-payment requirement. A co-payment of \$3.00 will be charged for clinic and outpatient services including visits for outpatient behavioral health services. Providers may bill the patient for the applicable co-payment amount, but may not refuse services for inability to pay co-payment.

3. If an individual is convicted of more than one Class H or Class I controlled substance felony over a period of time, the six-month disqualification rule still applies. There are no permanent disqualifications for repeat Class H or Class I substance felons in N.C. As long as the six-month period has elapsed and the individual has complied with all of the substance abuse requirements, eligibility may be established after six months. If a second conviction of a Class H or I controlled substance felony occurs during the six-month disqualification period, the individual is ineligible to receive FNS benefits until six months has elapsed from the most recent conviction.

EXAMPLE: An individual is convicted of a Class H controlled substance felony on March 4, 1999, and reports the conviction during his March 1999 recertification. He is disqualified from FNS from April 1, 1999 through September 4, 1999. He complies with Mental Health and is not convicted of another controlled substance felony within six months from the date of conviction. The individual begins receiving FNS benefits again in October 1999. On November 25, 1999, the individual is convicted of another Class H controlled substance felony. He reports the conviction during his December 1999 recertification, and becomes disqualified again on January 1, 2000. He complies with Mental Health and is not convicted of another controlled substance felony within six months from the date of conviction. He is potentially eligible for FNS benefits again on May 25, 2000.

EXAMPLE: An individual is convicted of a Class I controlled substance felony on **November 7, 1999**. He reports the conviction during his January 2000 recertification. The individual is disqualified from FNS February 1, 2000 through May 7, 2000. On March 14, 2000, the individual is convicted of a Class H controlled substance felony which he reports when he reapplies on May 8, 2000. The individual is now disqualified for six months from the second conviction date. He is disqualified through September 14, 2000.

NOTE: Individuals who establish or reestablish eligibility for FNS benefits are not required to comply with any substance abuse requirements once an assessment and/or participation in a treatment program has been completed. Individuals convicted of a later felony drug offense must again complete eligibility requirements before participating in FNS.

B. Procedures

1. For those individuals convicted in N.C., determine the classification of the controlled substance felony as follows:
 - a. Use available information in the Department of Corrections Inquiry.
 - b. Contact the individual's parole or probation officer.

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- c. Use any resource available to your agency such as contacting the Clerk of Court. (Sometimes the Clerk of Court can provide a criminal records check with the full name of the individual; however, there may be a fee charged for this service.)
2. At application, reapplication, full recertification, and when a new household member is reported. Address the following questions.
 - a. Has anyone in your home been convicted since August 22, 1996, of a controlled substance felony offense that was committed on or after August 23, 1996?

If the answer to this question is “no,” accept the FNS unit’s **written** statement at application, reapplication, or recertification, unless questionable. Accept the FNS unit’s **verbal** statement if a change in household composition is reported by telephone, and the FNS unit indicates that no FNS unit member has a controlled substance felony.
 - b. Was the conviction for a Class H or Class I controlled substance felony charge?
 - c. Was the conviction in N.C.?
 - d. Has it been at least six months since his release from custody, or if he was never committed to custody, has it been six months since the date of conviction?

If the answer to any or all of the above questions is “yes,” verify the individual’s status as a Class H or I controlled substance felon. Verify that the individual has not been convicted of any other controlled substance felony offense during the six-month period of ineligibility. If the FNS unit answers no to all of the questions, determine eligibility based on eligibility criteria discussed in Section 200, Eligibility Requirements.
3. Obtain a signed [DSS-8219](#), Consent For Release of Confidential Information. The signed release is necessary in order for the substance abuse professional to notify the county of the individual’s progress with his treatment plan.
4. Refer the individual to the local area mental health authority for assessment. Mental Health staff determines which substance abuse program is appropriate for the individual or determines treatment is not warranted. Refer the individual even though he may already be in a treatment program required by the court.
5. Verify compliance before approving benefits since assessment and/or participation in a treatment program is an eligibility requirement.
6. Disqualify the individual from FNS if:
 - a. Mental Health provides notification that the individual has failed to follow through with the required assessment and/or treatment; **or**
 - b. The individual refuses to sign the consent form; **or**
 - c. It has not been six months since release from custody or, if the individual was never committed to custody, six months after the date of conviction if there has been no additional controlled substance felony convictions.

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7. Add the disqualified individual back to the FNS case when the disqualification ends.
 - a. For applications, add the disqualified individual to the FNS case if it has been six months since his release from custody. If the individual was never committed to custody, add the disqualified individual six months after the date of conviction if there are no additional controlled substance felony convictions and the treatment provision is met.

EXAMPLE: The individual was convicted on April 4 and was not committed to custody. The earliest he could be eligible for FNS benefits would be October 4.
 - b. For ongoing cases, add the disqualified individual to the FNS case the month following his sixth month after release from custody. If the individual was never committed to custody, add the disqualified individual in the month following his six months after conviction if there have been no additional controlled substance felony convictions and the treatment provision is met.

EXAMPLE: The individual was convicted on April 4 and was not committed to custody. The earliest he could be added to the FNS case would be November 1.
8. Individuals who have been convicted of a felony class other than H or I or, who have been convicted outside of N.C., continue to be permanently disqualified from participating in FNS. Document the case file.

290.03 REPORT OF A CHANGE INVOLVING A CONTROLLED SUBSTANCE FELON

- A. The FNS unit **is not** required to report a controlled substance felony conviction. If the FNS unit fails to report the conviction during the certification period, do not establish a claim as this is not considered a reportable change.
- B. If a substance abuse felony is reported by a third-party source, refer to Section 450 of the Food and Nutrition Services Certification Manual and follow the appropriate procedures for changes reported by a third party source.
- C. When an individual's disqualification period ends, treat as a change in situation. Add the individual to an ongoing case effective the first day of the month following the disqualification period.

EXAMPLES:

1. Client applied for FNS benefits. Client was convicted on September 5, 1999, of a Class H controlled substance felony offense committed on **June 15, 1999**, in N.C. He was never incarcerated, and he has not been convicted of another controlled substance felony offense during the six-month waiting period. The area Mental Health Authority determined that treatment is not necessary. If he meets all other eligibility criteria, the client may be eligible for FNS benefits effective **March 5, 2000**.

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2. Client was convicted on September 5, 1999, of a Class I controlled substance felony offense committed on June 15, 1999, in N.C. He was incarcerated until **December 1, 1999**, and he has not been convicted of another controlled substance felony offense during the six-month waiting period. The area Mental Health Authority determined that treatment is necessary. If he meets all other eligibility criteria and completes the treatment program, he may be eligible for FNS benefits effective **June 1, 2000**.
3. Client was convicted on September 5, 1999, of a Class H controlled substance felony offense committed on June 1, 1999, in Virginia. He is permanently disqualified from FNS because he has a drug-related felony **outside of N.C.**
4. Client was convicted on September 2, 1997, of a controlled substance felony offense committed on July 1, 1996. He **is not disqualified** from FNS because he **committed the felony prior to August 23, 1996**.