

This is an amendment to 8.139.400 NMAC, Section 11 and 12 to be effective 9/1/2021.

8.139.400.11 SPECIAL MEMBERS:

[A. Students:

(1) Eligibility: An individual who is enrolled at least half time in an institution of higher education will be ineligible to participate in SNAP unless the individual qualifies for one of the exemptions contained in Paragraph (3) of Subsection A of 8.139.400.11 NMAC. Half time enrollment status is determined by the definition of the institution in which the individual is enrolled or attending.

(2) Enrollment:

(a) Students enrolled in an institution of higher education less than half time are not considered students for purposes of SNAP eligibility, and do not have to meet an exemption at Paragraph (3) of Subsection A of 8.139.400.11 NMAC to be eligible for SNAP.

(b) Students who are enrolled at least half time in an institution of higher education in a program that normally requires a high school diploma or equivalency certificate for enrollment in a "regular curriculum," are students and have to meet an exemption at Paragraph (3) of Subsection A of 8.139.400.11 NMAC to be eligible for SNAP. The following programs are not in the "regular curriculum," and if enrolled in one of these programs, the student would not be considered a student for purposes of SNAP eligibility:

(i) Career or technical certificate programs. Career and technical certificate programs are programs which offer a sequence of courses that provide individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions; provide technical skill proficiency, an industry recognized credential, a certificate, or an associate degree; and may include prerequisite courses that meet the requirements of this subparagraph; and include competency based applied learning that contributes to the academic knowledge, higher order reasoning and problem solving skills, work attitudes, general employability skills, technical skills, and occupation specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual.

(ii) English as a second language;

(iii) adult basic education;

(iv) literacy; or

(v) community education courses

(c) Students who are enrolled at least half time in a "regular curriculum," at a college or university that offers degree programs regardless of whether a high school diploma is required are considered students for purposes of SNAP eligibility, and have to meet an exemption found at Paragraph (3) of Subsection A of 8.139.400.11 NMAC to be eligible for SNAP.

(d) The enrollment status of a student shall begin on the first day of the school term. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and semester breaks. Enrollment status shall terminate when the student graduates, is expelled, does not re-enroll or is suspended for a period in excess of 30 calendar days

(e) Students who reside on campus as defined at 34 CFR 668.46(a) and who have opted to or are required to purchase a meal plan which provides fifty percent or more of their meals are ineligible for SNAP in accordance with 7 CFR 273.1(b)(7)(vi).

(3) Student exemptions: To be eligible, a student must meet at least one of the following exemptions:

(a) Age: Be age 17 or younger or age 50 or older.

(b) Physical or mental unfitness: For exemption purposes, physical or mental unfitness per Paragraph (3) of Subsection A of 8.139.400.11 NMAC and 7 CFR 273.5(b)(2) is defined as follows: An individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves. Unfitness can be obvious to the department and documented in the case file; or not obvious to the department, but is documented by a physician, physician's assistant, nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist, or social worker as being unfit to work; the claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment.

(i) If an individual claims to be physically or mentally unfit for purposes

of the student exemption, and the unfitness is not evident to ISD, verification may be required.

~~(ii) Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or of a statement from a physician or licensed or certified psychologist.~~

~~(c) **Education/training program:** Assigned to or placed in an institution of higher education through or in compliance with the requirements of:~~

~~(i) a program under the Job Training Partnership Act of 1974 (JTPA);~~

~~(ii) an employment and training program under 7 CFR 273.7;~~

~~(iii) a program under Section 236 of the Trade Act of 1974 [19 U.S.C. 2296]; or~~

~~(iv) an employment and training program for low income households that is operated by a state or local government where one or more of the components of such program is at least the equivalent to an acceptable SNAP employment and training program component.~~

~~(d) **Employment:** Employed a minimum of 20 hours per week and paid for such employment, or, if self employed, working a minimum of 20 hours per week, and receiving weekly earnings at least equal to the federal minimum wage multiplied by 20 hours. Students whose employment hours fluctuate week to week will be considered to have met the minimum work hour requirement, as long as they maintain an average of 20 hours per week or 80 hours per month.~~

~~(e) **Work study:** Be participating in a state or federally financed work study program during the regular school year.~~

~~(i) The student must be approved for work study at the time of application for SNAP benefits, the work study must be approved for the school term, and the student must anticipate actually working during that time.~~

~~(ii) The exemption will begin with the month in which the school term begins or the month work study is approved, whichever is later.~~

~~(iii) Once begun, the exemption will continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.~~

~~(iv) The exemption will not continue between terms when there is a break of a full month or longer, unless the student is participating in work study during the break.~~

~~(f) **Children:** Responsible for a dependent household member who:~~

~~(i) is under age 6; or~~

~~(ii) has reached the age of 6 but is under age 12 when ISD has determined that adequate child care is not available to enable the student to attend class and comply with the 20 hour work requirement in (d) or the work study requirement in (e) above.~~

~~(g) **Single parents:** Enrolled in an institution of higher education on a full time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.~~

~~(i) This provision applies when only one natural, adoptive or stepparent (single, widow/ widower, separated, divorced) is in the same SNAP household as the child.~~

~~(ii) If there is no natural, adoptive or stepparent in the same SNAP household as the child, another full time student in the same SNAP household as the child may qualify for eligible student status under this provision if he/she has parental control over the child and is not living with his/her spouse.~~

~~(h) **Title IV-A:** Receiving Title IV-A cash assistance.~~

~~(i) **Work incentive program:** Participation in the job opportunities and basic skills program under Title IV of the Social Security Act or its successor programs.~~

~~(j) **On-the-job training:** Be participating in an on-the-job training program. An individual is considered to be participating in an on-the-job training program only during the period of time the individual is being trained by the employer.]~~

A. Students:

(1) **Eligibility:** An individual who is enrolled at least half-time in an institution of higher education will be ineligible to participate in SNAP unless the individual qualifies for one of the exemptions contained in Paragraph (3) of Subsection A of 8.139.400.11 NMAC. Half-time enrollment status is determined by the definition of the institution in which the individual is enrolled or attending.

(2) **Reside on Campus:** Students who reside on campus as defined at 34 CFR 668.46(a) and who have opted to or are required to purchase a meal plan which provides fifty percent or more of their meals are ineligible for SNAP in accordance with 7 CFR 273.1(b)(7)(vi).

(3) **Enrollment:** An individual is considered to be enrolled in an institution of higher

education if the individual:

(a) is enrolled in a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum; or

(b) is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(4) **Student Exemptions:** To be eligible for SNAP, a student as defined in with Subparagraphs (a) and (b) of Paragraph (4) of Subsection A of 8.139.400.11 NMAC must meet at least one of the following criteria.

(a) Be age 17 or younger or age 50 or older;

(b) Be physically or mentally unfit: For exemption purposes, physical or mental unfitness per Paragraph (3) of Subsection A of 8.139.400.11 NMAC and 7 CFR 273.5(b)(2) is defined as follows: An individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves. Unfitness can be obvious to the department and documented in the case file; or not obvious to the department, but is documented by a physician, physician's assistant, nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist, or social worker as being unfit to work; the claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment.

(i) if an individual claims to be physically or mentally unfit for purposes of the student exemption, and the unfitness is not evident to ISD, verification may be required;

(ii) appropriate verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or of a statement from a physician or licensed or certified psychologist.

(c) be receiving Temporary Assistance for Needy Families under Title IV of the Social Security Act;

(d) be enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program;

(e) be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the federal minimum wage multiplied by 20 hours. For students whose employment hours fluctuate week to week will be considered to have met the minimum work hour requirement, as long as they maintain an average of 20 hours per week or 80 hours per month. Compliance with this requirement can be determined by calculating whether the student worked an average of 20 hours per week over the period of a month, quarter, trimester or semester.

(f) be participating in a state or federally financed work study program during the regular school year.

(i) To qualify under this provision, the student must be approved for work study at the time of application for SNAP benefits, the work study must be approved for the school term, and the student must anticipate actually working during that time. The exemption shall begin with the month in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption shall continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

(ii) The exemption shall not continue between terms when there is a break of a full month or longer unless the student is participating in work study during the break.

(g) be participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer;

(h) be responsible for the care of a dependent household member under the age of six;

(i) be responsible for the care of a dependent household member who has reached the age of six but is under age 12 when ISD has determined that adequate child care is not available to enable the student to attend class and comply with the work requirements of Subparagraphs (e) and (f) of Paragraph (3) Subsection A of 8.139.400.11 NMAC;

(j) be a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12;

(i) This provision applies in those situations where only one natural, adoptive or stepparent (regardless of marital status) is in the same SNAP household as the child.

(ii) If no natural, adoptive or stepparent is in the same SNAP household as the child, another full-time student in the same SNAP household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse.

(k) be assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the programs identified in items (i), (iv) of Subparagraph (k) of Paragraph (3) of Subsection A of 8.139.400.11 NMAC. Self-initiated placements during the period of time the person is enrolled in one of these employment and training programs shall be considered to be in compliance with the requirements of the employment and training program in which the person is enrolled provided that the program has a component for enrollment in an institution of higher education and that program accepts the placement. Persons who voluntarily participate in one of these employment and training programs and are placed in an institution of higher education through or in compliance with the requirements of the program shall also qualify for the exemption. The programs are:

(i) a program under the Job Training Partnership Act of 1974 (29 U.S.C. 1501, et seq.);

(ii) an employment and training program in accordance with 7 CFR 273.7, subject to the condition that the course or program of study, as determined by the state agency;

(iii) is part of a program of career and technical education as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302) designed to be completed in not more than four years at an institution of higher education as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 2296); or

(iv) is limited to remedial courses, basic adult education, literacy, or English as a second language;

(v) A program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or

(vi) An employment and training program for low-income households that is operated by a state or local government where one or more of the components of such program is at least equivalent to an acceptable SNAP employment and training program component in accordance with 7 CFR 273.7(e)(1). Using the criteria in 7 CFR 273.7(e)(1), a determination be made as to whether or not the programs qualify;

(l) the enrollment status of a student shall begin on the first day of the school term of the institution of higher education. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer school);

(m) the income and resources of an ineligible student shall be handled in accordance with the requirements in Subsection D of 8.139.520.10 NMAC.

B. Strikers: Households with members on strike are ineligible to participate in the SNAP, unless the household was eligible for benefits the day before the strike began and is otherwise eligible at the time of application. A striker is anyone involved in a strike or concerted stoppage of work by employees, including a stoppage because of the expiration of a collective bargaining agreement, and any concerted slowdown or other concerted interruption of operations by employees. Employees participating in a sympathy strike will be considered strikers. The household will not receive an increased SNAP benefit amount as a result of the decrease in income of the striking member(s) of the household.

(1) Nonstrikers: The following individuals are not considered strikers and are eligible for program participation:

(a) any employee affected by a lockout;

(b) an individual who goes on strike who is exempt from work registration (Subsection B of 8.139.410.12 NMAC) the day before the strike, except those who were exempt because of employment;

(c) employees whose workplace is closed by an employer in order to resist demands of employees (i.e., a lockout);

(d) employees unable to work as a result of other striking employees (e.g., truck drivers who are not working because striking newspaper pressmen prevent newspapers from being printed;

(e) employees who are not part of the bargaining unit on strike but who do not want to cross a picket line for fear of personal injury or death;

(f) employees who are fired or laid off, or who are permanently replaced or officially resign; and

(g) employees who will not be permitted to return to their old jobs but are offered different ones.

(2) **Striker eligibility:**

(a) Striker eligibility is determined by considering the day before the strike as the day of application and assuming the strike did not occur.

(b) Eligibility at the time of application is determined by comparing the striking member's income before the strike to the striker's current income and adding the higher of the two to the current income of the nonstriking household members during the month of application.

(c) To determine benefits (and eligibility for households subject to the net income eligibility standard), deductions will be calculated for the month of application as for any other household. Whether the striker's prestrike earnings are used or the current income is used, the earnings deduction is allowed if appropriate.

(d) Strikers whose households are eligible to participate in the SNAP will be required to register for work unless otherwise exempt.

C. Boarders: Boarders are defined as individuals or groups of individuals residing with others and paying reasonable compensation to those others for lodging and meals. An individual furnished both lodging and meals by a household, but paying less than reasonable compensation to the household for such services, will be considered a household member. Foster care children placed in the home of relatives or other individuals or families will be considered boarders. Foster care payments made to the household will not be counted as income, unless the household chooses to include the foster child. Payment to a household for lodging and meals will be treated as self-employment income to the household.

(1) **Reasonable compensation:** To determine if an individual is paying reasonable compensation for meals and lodging in making a determination of boarder status, only the amount paid for meals will be used, provided that the amount paid for meals can be distinguished from the amount paid for lodging. A reasonable monthly payment will be either of the following:

(a) A boarder whose board arrangement is for more than two meals a day must pay an amount which equals or exceeds the maximum SNAP benefit amount for the appropriate size of the boarder household.

(b) A boarder whose board arrangement is for two meals or less per day must pay an amount which equals or exceeds two-thirds of the maximum SNAP benefit amount for the appropriate size of the boarder household.

(2) **Included boarders:** A household which provides boarding services may request that the boarder be included as a member of the household. Boarders are not eligible to participate in the SNAP separately from the household providing the board. All the income and resources of included boarders will be counted in determining the eligibility and SNAP benefit amount of the household.

(3) **Excluded boarders:** The income and resources of boarders who are not included as household members will not be considered available to the household.

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8.139.400.12 INELIGIBLE HOUSEHOLD MEMBERS: The following individuals shall be included as household members for the purpose of defining a household, but shall not be included as eligible members when determining the household's size, comparing the household's monthly income with the income eligibility standard, or assigning a benefit amount by household size.

A. Excluded household members:

(1) **Ineligible aliens:** Individuals who do not meet citizenship or eligible alien status requirements, or eligible sponsored alien requirements. The income and resources of such individuals shall be counted in determining the household's eligibility and benefit amount in accordance with the requirements in Subsection C of 8.139.520.10 NMAC.

(2) **Ineligible students:** Individuals enrolled in an institution of higher education who are ineligible because they do not meet the student eligibility requirements in Subsection A of 8.139.400.11 NMAC. Ineligible students are considered as non-household members in determining the household's eligibility and benefit amount. Income and resources are considered in accordance with the requirements in Subsection D of 8.139.520.10 NMAC.

B. Disqualified household members:

(1) **SSN disqualified:** Individuals who are disqualified for refusal or failure to provide a

social security number.

(2) **Work noncompliance:** Individuals who have been disqualified for failure or refusal to comply with work requirements.

(3) **IPV:** Individuals disqualified for an intentional program violation.

C. Disqualification for fleeing felons and probation/parole violators: No member of an otherwise eligible household shall be eligible to participate in the FSP as a member of the household during any period in which the individual is:

(1) fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is fleeing, for a crime or attempt to commit a crime, that is a felony, or in New Jersey a high misdemeanor, under the law of the place from which the individual is fleeing; or

(2) violating a condition of probation or parole imposed under a federal or state law.

(3) **Treatment of income and resources:** The income and resources of an individual described in Paragraphs (1) and (2) of Subsection C of 8.139.400.12 NMAC shall be attributed in their entirety to the household while the individual is in the home.

D. Disqualification for certain convicted felon: The disqualification contained in Subsection D of 8.139.400 NMAC shall not apply to a conviction if the conviction is for conduct occurring on or before February 7, 2014. An individual shall not be eligible for SNAP benefits if the individual is convicted as an adult of:

(1) aggravated sexual abuse under section 2241 of title 18, United States Code;

(2) murder under section 1111 of title 18, United States Code;

(3) an offense under chapter 110 of title 18, United States Code;

(4) a federal or state offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or

(5) an offense under state law determined by the attorney general to be substantially similar to an offense described in Paragraph (1), (2), or (3) of Subsection D of 8.139.400.12 NMAC; and

(6) The individual is not in compliance with the terms of the sentence of the individual or the restrictions under Subsection C of 8.139.400.12 NMAC.

[02/01/1995, 10/01/1995, 05/15/1997; 8.139.400.12 NMAC - Rn, 8 NMAC 3.FSP.404, 05/15/2001; A, 02/14/2002; A, 5/15/2002; A, 09/01/2021]