

This is an amendment to 8.249.500 NMAC, Sections 8, 9, 14 and 16, effective 1/1/2022.

**8.249.500.8 MISSION:** ~~[To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.]~~ To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.  
[8.249.500.8 NMAC - N, 1/1/2014; A, 1/1/2022]

**8.249.500.9 NEED DETERMINATION:**

**A.** Financial need: The budget group's eligibility is based on financial need. See Section 1931 of the Social Security Act, the rules in this chapter and in 8.200.520 NMAC.

**B.** Financial eligibility: Pursuant to Section 1931 of the Social Security Act, enacted by Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), a new medicaid financial eligibility standard was created. Refugee medical assistance (RMA) uses this same standard.

(1) Income eligibility criteria: The income eligibility criteria for Category 049 are based on New Mexico's aid to families with dependent children (AFDC) program as of July 16, 1996. This is defined as the standard of need (SON) used in AFDC as of July 16, 1996. A refugee can be eligible for Category 059 if income would be below AFDC after deducting medical expenses incurred and paid in that month. Eligibility for Category 059 is determined on a month-to-month basis.

(2) Less restrictive income and resource methodology: Pursuant to Section 1931 of the Social Security Act, as a state option, New Mexico may use income and resource eligibility methodologies that are less restrictive than the AFDC methodologies used as of July 16, 1996. This chapter defines less restrictive methodologies to be used by New Mexico for resources, countable and excluded earned or unearned income, available or unavailable income and income deductions or disregards.

**C.** Gross and net income tests: Determining financial need is a two-step process. When the countable gross or net income is exactly equal to the income eligibility standards, eligibility does not exist.

(1) Gross income test: The first step is determining the countable gross income of the budget group. Gross income includes all countable income before taking into account taxes or deductions. Only self employment deductions are allowed in the gross income test. The calculated gross income must be less than ~~[485]~~ one hundred and eighty-five percent of the SON. If the budget group's income is more than ~~[485]~~ one hundred and eighty-five percent of the SON, the assistance unit is not eligible.

(2) Net income test: The second step is determining the countable net income of the budget group. From the countable gross income in step one, deduct all allowable work related expenses (WRE) and unearned income deductions/disregards. The countable net income must be less than the SON appropriate to the budget group size. If the budget group's income is more than the SON, the assistance unit is not eligible.  
[8.249.500.9 NMAC - Rp, 8.249.500.9 NMAC, 1/1/2014; A, 1/1/2022]

**8.249.500.14 UNAVAILABLE INCOME:**

**A.** Individuals included in the budget group may have a legal right to income but not access to it; such income is not counted as available income:

- (1) old age, survivors, and disability insurance (OASDI);
- (2) railroad retirement benefits (RRB);
- (3) veterans administration (VA) benefits:
  - (a) income available to veterans and their dependents from the VA as compensation for service-connected disability;
  - (b) pension for non-service connected disability;
  - (c) dependency and indemnity compensation; and
  - (d) death benefits paid from a government issue (GI) life insurance;
- (4) unemployment compensation benefits (UCB);
- (5) military allotments;
- (6) worker's compensation;
- (7) pension, annuity, and retirement benefits;
- (8) union benefits;

- (9) lodge or fraternal benefits;
  - (10) real property income that is not earned income;
  - (11) shared shelter and utility payments when the budget group shares shelter with others:
    - (a) payments which exceed the budget group's cost are considered income;
    - (b) payments which are less than the budget group's cost are not considered; these are the others' share of the shelter cost and are treated as pass-through payments;
  - (12) income from the sale of goods or property which are obtained in finished condition;
  - (13) child support payments received directly by the budget group and retained for its use;
  - (14) settlement payments which are received from worker's compensation settlements, insurance claims, damage claims, litigation, trust distributions which are made on a recurring basis;
  - (15) individual Indian monies (IIM) payments received and distributed by the bureau of Indian affairs (BIA) as a trustee for an individual member of a tribe;
  - (16) bureau of Indian affairs (BIA) or tribal general assistance (GA) payments; and
  - (17) income that is not listed as available in this chapter where the budget group cannot gain access to the income; this includes wages withheld by an employer that refuses to pay.
- B.** Individuals may receive payment of funds "passed through" the individual for the benefit of someone other than themselves. Such pass through payments are not considered available.
- C.** A recipient of supplemental security income (SSI) is not part of the budget group. His other income is not considered available to the budget group.
- D.** ~~Alien~~ Non-citizen sponsor deeming is not applicable pursuant to 8.200.410 NMAC. [8.249.500.14 NMAC - N, 1/1/2014; A, 1/1/2022]

#### **8.249.500.16 EARNED INCOME DEDUCTIONS/DISREGARDS:**

- A.** Self employment: Certain self-employment deductions allowed by the federal internal revenue service (IRS) are allowed in the net and gross income test.
- (1) Self-employment income will be annualized for income projection purposes. If the IRS Form 1040 has been filed, the previous year's tax return is used to anticipate future income, if no significant changes in circumstances have occurred. An alternative method of income anticipation should be used when the amount of self employment income reported on tax returns would no longer be a good indicator of expected income, i.e., loss of cattle or crops due to disease.
  - (2) If tax returns are used for annualized projected income, self-employment expenses listed on the return are allowable except:
    - (a) the mileage allowance is the New Mexico department of finance and administration (DFA) rate as detailed in 2.42.2 NMAC unless proof that the actual expense is greater; and
    - (b) no deduction is allowed for rent or purchase of the place of business if the individual operates the business out of his or her residence, unless the individual can demonstrate that the expense has been allowed under federal income tax guidelines.
  - (3) The following deductions are not allowed:
    - (a) depreciation;
    - (b) personal business and entertainment expenses;
    - (c) personal transportation to and from work;
    - (d) purchase of capital equipment; and
    - (e) payments on the principal of loans for capital assets or durable goods.
- B.** WRE income disregards: The WRE disregard of \$120 and one third of the remaining balance is disregarded from earned income during the net income test.
- C.** Child care expenses:
- (1) To be eligible for a child care deduction, the child receiving the care must be:
    - (a) a dependent of the employed person;
    - (b) younger than 13; and
    - (c) included in the budget group.
  - (2) Standards: Actual costs of child care, not to exceed the applicable limits set forth below are deducted from earnings. The amount to be deducted depends upon whether the person is employed full or part-time and the age of the child. Full-time employment is considered to be 30 hours or more of employment per week; part time is any employment of less than 30 hours per week.
    - (a) up to \$200 per month per child if the person is employed full-time and the child is under age two;

is under age two;                   **(b)**       up to \$100 per month per child if the person is employed part-time and the child

child's age is two through 12; and                   **(c)**       up to \$175 per month per child if the person is employed full-time and the

child's age is two through 12.                   **(d)**       up to \$87.50 per month per child if the person is employed part-time and the

**(3)**       Third party child care payments: Child care costs paid by third parties directly to the child care provider cannot be used as child care deductions. Such payments are classified as vendor payments and are not counted as income. If such payments do not meet the full cost of child care, the difference between the deduction and the vendor payment is the amount allowed, up to the stated child care deductions in Paragraph (2) of ~~this subsection~~ Subsection C of 8.249.500.16 NMAC. If the third party child care payments are made to the budget group, the payments would be treated as pass through payments and not counted.  
[8.249.500.16 NMAC - N, 1/1/2014; A, 1/1/2022]