

TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 520 ELIGIBILITY POLICY - INCOME

8.106.520.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.106.520.1 NMAC - Rp, 8.106.520.1 NMAC, 11/01/2023]

8.106.520.2 SCOPE: The rule applies to the general public.
[8.106.520.2 NMAC - Rp, 8.106.520.2 NMAC, 11/01/2023]

8.106.520.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.
[8.106.520.3 NMAC - Rp, 8.106.520.3 NMAC, 11/01/2023]

8.106.520.4 DURATION: Permanent.
[8.106.520.4 NMAC - 8.106.520.4 NMAC, 11/01/2023]

8.106.520.5 EFFECTIVE DATE: November 1, 2023, unless a later date is cited at the end of a section.
[8.106.520.5 NMAC - Rp, 8.106.520.5 NMAC, 11/01/2023]

8.106.520.6 OBJECTIVE:

- A.** The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program such as New Mexico works (NMW) or the federal program of supplemental security income (SSI).
- B.** The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.
- C.** The objective of the burial assistance program is to assist in payment of burial expenses for an individual who was a low-income individual at the time of death.

[8.106.520.6 NMAC - Rp, 8.106.520.6 NMAC, 11/01/2023]

8.106.520.7 DEFINITIONS: [RESERVED]
[8.106.520.7 NMAC - Rp, 8.106.520.7 NMAC, 11/01/2023]

8.106.520.8 GENERAL:

- A.** **Income eligibility:** To be eligible for GA cash assistance based on income the countable gross earned and unearned income available to the benefit group is considered to determine the income eligibility of the benefit group.
- B.** **Gross income test:** For the benefit group to be income eligible, the countable gross earned and unearned income considered available to the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.
- C.** **Net income test:** For the benefit group to be income eligible, the countable net income after all allowable deductions must be less than the standard of need for the size of the benefit group.

[8.106.520.8 NMAC - Rp, 8.106.520.8 NMAC, 11/01/2023]

8.106.520.9 EXEMPT INCOME: The following income sources or assistance types are not considered available for the gross income test, the net income test and the cash payment calculation:

- A.** medicaid;
- B.** food stamp benefits;
- C.** government-subsidized foster care, if the child for whom the payment is received is not included in the benefit group;
- D.** SSI;

- E. government-subsidized housing or housing payment; government includes any federal, state, local or tribal government, or a private non-profit or for-profit entity operating housing programs or using government funds to provide subsidized housing or to make housing payments.
- F. income excluded by federal law (described in 8.139.527 NMAC);
- G. educational payments made directly to an educational institution;
- H. government-subsidized child care;
- I. earned income that belongs to a child 17 years of age or younger who is not the head of household; only earned income paid directly to the child is considered as belonging to the child;
- J. up to \$50.00 child support disregard and up to \$100.00 for one child and \$200 for two or more children per month, child support pass-through distributed to the benefit group by the CSED;
- K. an emergency one-time only payment made by other agencies or programs;
- L. reimbursements for past or future identified expenses, to the extent they do not exceed actual expenses and do not represent a gain or benefit to the benefit group, such as expenses for job or job training-related activities, travel, per diem, uniforms, transportation costs to and from the job or training site, medical or dependent care reimbursements and any reimbursement for expenses incurred while participating in NMW work program activities; reimbursements for normal living expenses, such as rent, mortgage, clothing or food eaten at home are not excluded;
- M. utility assistance payments, such as from LIHEAP, LITAP or similar assistance programs.
- N. all exempt income identified in 8.102.520.9 NMAC.

[8.106.520.9 NMAC - Rp, 8.106.520.9 NMAC, 11/01/2023]

8.106.520.10 EARNED INCOME DEFINITION:

- A. Earned income means cash or payment in kind that is received as wages from employment, payment in lieu of wages, earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.
- B. Earnings include gross profit from self-employment, which requires substantial effort on a continuous basis by the individual who is receiving the income.
 - (1) Income from rental property is considered earnings if the individual regularly does painting, plumbing, carpentry, maintenance, cleaning or repair work on the property, or if substantial time is spent each month in bookkeeping, collecting rent, or paying bills on the property.
 - (2) Income from livestock is considered earnings if the individual raises livestock for the purpose of making cash sales. Net income received from the sale of livestock shall be considered in determining the cash assistance benefit amount.
 - (a) The income received from the sale of livestock may be prorated and projected on a monthly basis over the certification period.
 - (b) Domestic pets (cats, dogs, etc.) are not considered livestock, and their value is not considered in determining income eligibility, except when they are bred and raised for sale.
- C. The use of property, such as inhabiting a home or apartment, is considered as earnings if it is received in exchange for services provided to the person owning or controlling the property, and the applicant or recipient would be legally obligated to make a payment for use of the property.

[8.106.520.10 NMAC - Rp, 8.106.520.10 NMAC, 11/01/2023]

8.106.520.11 DETERMINING INCOME FOR SELF-EMPLOYED INDIVIDUALS:

- A. Reporting of earnings as business or self-employment income to state or federal tax authorities is the usual indicator of business or self-employment income. Criteria for verification of business and self-employment income are set forth in Paragraph (2) of Subsection B of 8.100.130.14 NMAC.
 - (1) Tax returns from the previous year may be used, unless the amount of business and self-employment income reported on tax returns is no longer a good indicator of anticipated income.
 - (2) If the self-employment enterprise has been in operation for such a short time that there is insufficient information to make a reasonable projection, the benefit group shall be required to report income at shorter intervals until there is enough information to make a longer projection of anticipated income.
 - (3) When tax forms are used to annualize and project income, the expenses reported on the tax forms shall be used, allowing for adjustments for those expenses or costs that are treated differently or not allowed under cash assistance policy.
 - (4) Capital gains are counted in full as income to determine self-employment income. A capital gain is defined as proceeds from the sale of capital goods or equipment.

B. Averaging business or self-employment income: Business or self-employment income is averaged over the period the income is intended to cover, even if the benefit group receives income from other sources.

(1) An individual in a benefit group, who by contract or self-employment derives his or her annual income in a period of time shorter than one year, must have income averaged over a twelve-month period.

(2) If significant changes have occurred because of a substantial increase or decrease in business and averaged income will not accurately reflect the self-employed individuals' income, the self-employment income shall be calculated on the basis of anticipated, not prior, earnings.

(3) If a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the coming year.

(4) **Seasonal income:** Self-employment income that is intended to meet the benefit group's needs for only part of the year shall be averaged over the period of time the income is intended to cover.

C. Determining monthly business or self-employment income: For the period of time over which self-employment income is averaged, the individual's monthly self-employment income is determined by adding all self-employment income, including capital gains, and excluding allowable costs of producing the self-employment income, and dividing the resulting self-employment income by the number of months the income is intended to cover.

[8.106.520.11 NMAC - Rp, 8.106.520.11 NMAC, 11/01/2023]

8.106.520.12 EARNED INCOME DEDUCTIONS:

A. Earnings deductions: Deductions from gross earned income shall be made in determining the net countable earned income of benefit group members.

(1) Earned income deductions may not exceed the amount of an individual's gross earned income.

(2) The earned income deductions may not be used to reduce unearned income, nor may deductions that are not used by one benefit group member be allocated against the earnings of another benefit group member.

(3) An allowable business expense or cost of producing self-employment income that has been used as a deduction from self-employment income shall not also be allowed as an earned income deduction.

B. Business expenses and self-employment costs: Business expenses and self-employment costs shall be deducted from the gross earnings of a self-employed benefit group member. The income remaining after all allowable business expenses and self-employment costs have been deducted shall be counted as the gross income of the benefit group member. To be eligible for a business or self-employment expense deduction, a Tax ID shall be required.

(1) **Allowable expenses and costs:** Allowable costs of producing self-employment income include, but are not limited to:

(a) costs of materials and supplies;

(b) business travel, but not personal commuting expenses, calculated at \$.25 per mile, unless the self-employed individual can prove that the actual expense is greater;

(c) business taxes, including occupational taxes, gross receipts taxes and property taxes on a place of business other than the home, and business licenses;

(d) rental of equipment, tools and machinery;

(e) rent expense for the place of business, except for the place of business when the individual operates the business out of the individual's residence, unless the individual can demonstrate that the expense has been allowed under federal income tax guidelines;

(f) payments on the principal of the purchase price of income-producing real estate and capital assets, machinery, equipment and other durable goods;

(g) interest paid to purchase income-producing property.

(2) **Expenses and costs not allowed:**

(a) costs for depreciation, personal business, entertainment expenses and personal transportation to and from work; and

(b) expenses or costs of self-employment that are reimbursed by other agencies cannot also be claimed as costs of self-employment, such as, but not limited to, reimbursements made through USDA to individuals who provide home child care.

(3) Expenses or costs that exceed self-employment income shall not be deducted from other

income.

C. Living expense deduction:

(1) Allowing the deduction in the GA-disabled adult program: The living expense deduction is allowed with no time limit as follows:

- (a)** \$125 and one-half of the remainder for a single-adult benefit group;
- (b)** \$225 and one-half of the remainder for a benefit group that includes two adults.

(2) Allowing the deduction in a GA-unrelated child benefit group: The living expense deduction shall be allowed when the caretaker of an unrelated dependent child chooses to be included as a benefit group member. The living expense deduction is allowed with no time limit as follows:

- (a)** \$125 and one-half of the remainder for a single-adult benefit group;
- (b)** \$225 and one-half of the remainder for a benefit group that includes the

unrelated caretaker and his or her spouse.

D. Child care costs: Out-of-pocket expenses for child care apply only to the GA-unrelated child benefit group. Expenses paid by the unrelated caretaker for the dependent child included in the benefit group that are necessary due to employment of the caretaker shall be allowed.

(1) From earnings remaining after allowing the work incentive deduction, deduct an amount not to exceed \$200 per month for a child under age two and \$175 per month for a child age two or older.

(2) If both the caretaker and spouse of the caretaker are working, child care expenses shall be allocated to maximize the available deduction to the benefit group.

(3) The total amount deducted per child shall not exceed the applicable limits set forth above. [8.106.520.12 NMAC - Rp, 8.106.520.12 NMAC, 11/01/2023]

8.106.520.13 UNEARNED INCOME:

A. Definition of unearned income: Unearned income means old age, survivors and disability insurance payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, individual Indian money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

B. Special considerations:

(1) Direct receipt of child support: Child support payments directly received by an unrelated caretaker and retained by the caretaker are considered available to the benefit group in their entirety, whether or not the caretaker chooses to be included in the benefit group.

(2) Real property income: Income from real property is considered as unearned income when an individual included in the benefit group engages in the management of the property less than 20 hours a week. Costs associated with maintenance of the property or the production of income for which the benefit group is responsible are deducted from the income received for the use of the property.

(3) Alien sponsor income: All of the income of the alien sponsor and sponsor's spouse is counted as unearned income to the benefit group. [8.106.520.13 NMAC - Rp, 8.106.520.13 NMAC, 11/01/2023]

8.106.520.14 NET COUNTABLE INCOME: The earned income remaining after all allowable exemptions and deductions shall be added to the unearned income belonging to the benefit group. The resulting amount shall be the net countable income of benefit group members. The net countable income shall be used to determine the cash assistance payment to the benefit group. [8.106.520.14 NMAC - Rp, 8.106.520.14 NMAC, 11/01/2023]

History of 8.106.520 NMAC: [RESERVED]

History of Repealed Material:

8.106.520 NMAC, State Funded Assistance Program - Eligibility Policy Income, filed 06/17/2004 - Repealed effective 11/01/2023.

Other: 8.106.520 NMAC, State Funded Assistance Program - Eligibility Policy Income, filed 06/17/2004 - was Replaced by 8.106.520 NMAC, State Funded Assistance Program - Eligibility Policy Income, effective 11/1/2023.