

TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 510 ELIGIBILITY POLICY - RESOURCES/PROPERTY

8.102.510.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.102.510.1 NMAC - Rp 8.102.510.1 NMAC, 7/1/2024]

8.102.510.2 SCOPE: The rule applies to the general public.
[8.102.510.2 NMAC - Rp 8.102.510.2 NMAC, 7/1/2024]

8.102.510.3 STATUTORY AUTHORITY:

A. Articles 1 and 2 of Chapter 27 NMSA 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.

B. Federal legislation contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 abolished the AFDC program. The federal act created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998, the New Mexico works program was created to replace the aid to families with dependent children program.

C. Under authority granted to the governor by the federal Social Security Act, the health care authority (HCA) is designated as the state agency responsible for the TANF program in New Mexico.

D. Effective April 1, 1998, in accordance with the requirements of the New Mexico Works Act and Title IV-A of the federal Social Security Act, the HCA is creating the New Mexico works program as one of its cash assistance programs.

E. In close coordination with the NMW program, the HCA administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at Title 7, Code of Federal Regulations.

F. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.

[8.102.510.3 NMAC - Rp 8.102.510.3 NMAC, 7/1/2024]

8.102.510.4 DURATION: Permanent.

[8.102.510.4 NMAC - Rp 8.102.510.4 NMAC, 7/1/2024]

8.102.510.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.

[8.102.510.5 NMAC - Rp 8.102.510.5 NMAC, 7/1/2024]

8.102.510.6 OBJECTIVE:

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, resources and support. The further purpose of the program is to increase family income through family employment and child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment.

B. The objective of the education works program (EWP) is to provide cash assistance to a benefit group where at least one individual is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or recipient benefit group would be otherwise eligible for NMW cash assistance but chooses to participate in EWP.

[8.102.510.6 NMAC - Rp 8.102.510.6 NMAC, 7/1/2024]

8.102.510.7 DEFINITIONS: [RESERVED]

[8.102.510.7 NMAC - Rp 8.102.510.7 NMAC, 7/1/2024]

8.102.510.8 RESOURCE STANDARDS: To be eligible on the condition of need, the value of all countable personal and real property, belonging to, or considered as belonging to or considered available to the benefit group shall not exceed the liquid and non-liquid resource limits. Property in excess of the liquid and non-liquid resource limits makes the benefit group ineligible unless the nature of the property or an express condition of its ownership prohibits its transfer. Resources are evaluated based upon their equity value.

A. Liquid resources: Liquid resources are those properties in the form of cash or other financial instruments which are easily convertible to cash and include but are not limited to: savings accounts, checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, cash value of insurance policies, and similar properties. The value of countable liquid resources may not exceed \$1,500.

B. Non-liquid resources: Non-liquid resources are all resources that cannot be easily converted to cash and include, but are not limited to: both real and personal property. The value of countable non-liquid resources may not exceed \$2,000.

[8.102.510.8 NMAC - Rp 8.102.510.8 NMAC, 7/1/2024]

8.102.510.9 COUNTABLE RESOURCES:

A. Real property non-liquid:

(1) Real property means land and the structures and improvements affixed to it.

(2) The value of real property owned by or considered available to the benefit group, except as exempted in Subsection A of 8.102.510.10 NMAC, shall be considered in determining whether non-liquid resources exceed \$2,000.

(3) Grazing permits are classified as real property.

B. Personal property (liquid or non-liquid): The value of personal property other than that exempted in Subsection B of 8.102.510.10 NMAC, belonging to, considered as belonging to, or available to the benefit group, is considered in determining whether the value of property exceeds the resource limits. Personal property is all property other than real property, and includes such possessions as bank accounts, cash (other than the current month's income), motor vehicles, livestock, tools, equipment, and rights to receive money, such as stocks, bonds, contract rights and insurance policies, etc. The types of personal property that must be counted in determining whether the benefit group's resources exceed the resource limits include, but are not limited to the following.

(1) Life insurance:

(a) Life insurance policies owned by a member of the benefit group shall be considered as a resource that may be converted into cash. The cash value of the life insurance policy shall be counted toward the liquid resource limit.

(b) Information about lapsed insurance shall be obtained since many lapsed policies have a cash value.

(2) Cash, bank accounts and other readily negotiable assets: "Other readily negotiable assets" include stocks, bonds, negotiable notes, purchase contracts and other similar assets. For purposes of cash assistance eligibility, the value of such assets is their current market value. These shall be counted toward the liquid resource limit.

(3) Motor vehicles, equipment, and tools:

(a) The equity value of all motor vehicles, equipment and tools is subject to consideration.

(b) The value of motor vehicles, equipment and tools, except as set forth in Paragraph (1) of Subsection B of 8.102.510.10 NMAC below, is subject to the non-liquid resource test.

(4) Asset conversion: Money received from one-time only or sporadic sales of real or personal property such as crops, rugs, jewelry, royalties etc. shall be considered an asset, rather than income, provided that the property is not sold or transferred in connection with a business or self-employment activity. Actual verified expenses associated with the purchase, sale or production of such items shall be deducted from payments received from the sale to arrive at "net asset". Assets converted into money are subject to the \$1,500 liquid assets limitation, regardless of whether they were fully or partially exempt prior to conversion.

(5) Lump sum payments: Payments of a one-time nature, such as retroactive monthly payments, payments in the nature of a windfall, personal injury and worker's compensation awards, gambling winnings, etc, shall be considered to be a resource in the month received. Countable value is considered as a liquid resource. Resource eligibility is determined on the first moment of the first day of the month. Changes during the month do not affect the resource determination for that month; what is left at the first moment of the first day of the month following its receipt will be the countable amount.

[8.102.510.9 NMAC - Rp 8.102.510.9 NMAC, 7/1/2024]

8.102.510.10 RESOURCE EXCLUSIONS:

A. Real property:

(1) The home: The value of the benefit group's home and certain other property, as defined below, is not considered in determining eligibility. The "home" is the dwelling place occupied by the benefit group.

The home is considered to be occupied by the benefit group during a temporary absence from the home when there is a definite plan to return to the home and no one else is occupying it. "Home" includes, in addition to the residence building and the land upon which it is constructed, the following:

- (a) a reasonable amount of land within reasonable proximity to the residence building if that land is currently used by and useful to the client;
- (b) outbuildings within reasonable proximity to the residence building, such as barn, garage and well, if the well is a principal source of water;
- (c) buildings used for rental purposes if located on land contiguous to the land upon which the residence building is constructed and if these buildings cannot be divided from the residence land and sold separately;
- (d) grazing permits currently being used to graze livestock owned by the client;
- (e) furniture, equipment and household goods necessary for the operation and maintenance of the home.

(2) Other real property - burial plots: One burial plot for each person included in the benefit group; a burial plot shall consist of the space needed to bury members of the immediate family.

B. Exempt personal property: The value of the following items of personal property shall not be considered in determining eligibility for financial assistance.

- (1) Vehicles:
 - (a) Transportation to or from work/daily living: Vehicles used for transportation of benefit group members to or from work or work activities, for daily living activities, or for transportation of goods or services shall not be considered in the determination of resources attributed to the benefit group.
 - (b) Specially equipped vehicles: A vehicle that is specially equipped for those with physical impairments shall not be considered in the determination of resources attributed to the benefit group.
- (2) Exempt income: Any income which is exempt under income provisions is also exempt from consideration as a resource. To maintain its exempt status, exempt income which is accumulated must be kept separately from non-exempt savings.

(3) Funeral agreements: The equity value of funeral agreements owned by a benefit group member. Funeral agreements include any arrangement under which prepaid funeral services are provided or cash benefits which are intended to pay for funeral services are paid upon the death of the person. Included as such agreements are contracts with funeral homes, life or burial insurance, or trust or escrow accounts in financial institutions or banks, provided that the trust or escrow accounts contain provisions making the funds payable only upon the death of a named individual. There is no limit on the amount which can be disregarded.

(4) Contingent and unliquidated claims: A "contingent and unliquidated claim" is an as yet undetermined right of the client to receive, at some future time, a resource such as an interest in an estate not probated or damages or compensation resulting from an accident or injury. Such a claim is not considered a resource to meet requirements if the benefit group member can demonstrate that the client has consulted an attorney, or that under the circumstances, it is reasonable not to have consulted an attorney, and that the benefit group member is making every reasonable effort to prosecute the benefit group member's claim or to proceed with the probate. If the benefit group member can demonstrate that the client's share in an estate not probated would be less than the expense of the proceedings to probate the estate, the value is not considered a resource.

(5) Work-related equipment exclusion: Work-related equipment, such as the tools of a trades person or the machinery of a farmer, which are essential to the employment or self-employment of a benefit group member, are excluded, in an amount not to exceed \$1,000 per individual, and remain excludable, if the trades person becomes disabled. Farm machinery retains this exclusion for one year if the farmer ends self-employment.

(6) Livestock: The value of livestock is an excluded non-liquid resource.

C. Individual development account (IDA): As defined in the Individual Development Account Act 58-30 NMSA, 1978, funds in an IDA are exempt from consideration as resources in determining benefit group eligibility are subject to certain requirements. To be disregarded, the IDA must be designated for a qualified use and meet all requirements as follows.

- (1) IDA requirements:
 - (a) the benefit group member must establish the IDA for one of the purposes listed in Paragraph (2) of this subsection;
 - (b) in order for such accounts to be excludable, the IDA must be a trust created or organized in the United States, with trust language restricting use of account funds to the qualified uses as designated in this section; and
 - (c) the IDA must be funded exclusively with income earned by a benefit group

member or by contributions made by a non-benefit group member;

(d) funds withdrawn from the account and used for any purpose other than those specified under this section, will cause the account to lose its status as an excluded resource, starting with the month in which the funds are so used; the amounts withdrawn also constitute an overpayment of assistance, and must be reported and shall be recouped.

(2) IDA qualified uses: Allowable uses of the money withdrawn from an IDA are listed in Subparagraph (a) thru (f) of this subsection.

(a) Post-secondary education expenses: In order to be considered used for the qualified purpose, the post-secondary education funds must be paid from an IDA directly to an eligible education institution, as set forth in this section. For purposes of this regulation, post-secondary education expenses include:

(i) tuition and fees required for the enrollment or attendance of a student at an eligible education institution; an eligible institution is an institution described in section 481(a)(1) or 1201(a) of the Higher Education Act of 1965 (20 USC 1088(a)(1) or 1141(a)); an area vocational education school (as defined in section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) which is in any state; or

(ii) books, fees, supplies, and equipment required for courses of instruction at an eligible educational institution.

(b) Business capitalization: In order to be considered used for the qualified purpose, for business capitalization, the funds have to be paid directly from the IDA to a business capitalization account established in a federally insured financial institution that is restricted to use solely for qualified business capitalization expenses. A qualified business means any business that does not contravene any law or public policy. Qualified business capitalization expenses include capital, plant, equipment, working capital, and inventory expenses. To be a qualified business, there must be a business-plan which:

(i) is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity;

(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(c) First-time home purchase by a qualified buyer: The purpose of the IDA is to assist a qualified first-time home buyer to accumulate part of the cash necessary to initiate purchase of the individual's first home.

(i) Only IDA's established by qualified first-time home buyers shall be disregarded. A qualified first-time home buyer is one who has never had an ownership interest in a principal residence.

(ii) The IDA may be used only for the purchase of a qualified principal residence. A qualified principal residence is one which qualifies as the principal home under Subsection 1034 the federal internal revenue service's code, and the costs for which do not exceed one hundred percent of the average area purchase price applicable to such residence, determined in accordance with Paragraphs (2) and (3) of Subsection 143(e) of the internal revenue service's code.

(d) Home improvements: Costs of major home improvements or repairs on the home of the account owner.

(e) Death of account owner: The amount deposited by the deceased account owner held in an IDA shall be distributed directly to the account owner's spouse. If the spouse is deceased or there is no spouse the amount shall be distributed to a dependent or other named beneficiary of the deceased. The account and matching funds designated for that account from a reserve account may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

(f) Vehicle acquisition: Acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner.

D. Federally excluded resources: Certain resources are excluded pursuant to federal law. For a listing of federally excluded resources see 8.139.527 NMAC.
[8.102.510.10 NMAC - Rp 8.102.510.10 NMAC, 7/1/2024]

8.102.510.11 RESOURCE AVAILABILITY:

A. Availability: Resources that are actually available or which are considered to be available are considered in determining eligibility for assistance. For purposes of cash assistance eligibility, the countable

resources of all benefit group members shall be considered to be available to the benefit group. The resource determination shall be made based upon the status of resources on the first moment of the first day of each month. Subsequent changes shall not effect the determination of eligibility or ineligibility until the first moment of the first day of the following month.

B. Potentially available resources: The benefit group is required to take all appropriate steps to make available to itself any property resources to which the group may be entitled but whose value is not currently available, which includes, but is not limited to, an inheritance, where the estate has not yet gone through probate. The fact that specific property is not readily marketable on the client's terms is not a condition prohibiting transfer. The current value of property, which must be partitioned in order to be accessible, is not considered available if the net value (after estimated costs of partition and other closing costs) is less than the resource limit. If the amount likely to be derived from the applicant's or recipient's share of the property exceeds the resource limit, the applicant or recipient will be required to initiate attempts to obtain the recipient's share of the estate.

C. SSI recipients and other non-members: The property of individuals receiving SSI or of other non-members shall not be considered available, regardless of relationship to benefit group members, except as indicated in E. below.

D. Non-citizen sponsor: The gross income and resources belonging to an individual who is the sponsor of a non-citizen included in the cash assistance benefit group, and the income belonging to the sponsor's spouse, shall be counted in its entirety to determine the eligibility and payment amount if the sponsor has executed an affidavit of support pursuant to Subsection 213-A of the Immigration and Nationality Act. The income and resources of the non-citizen sponsor, and spouse, shall be counted until the sponsored non-citizen achieves citizenship or can be credited with 40 qualifying quarters under title II of the federal Social Security Act.

E. Deeming resources: A liquid resource owned by a parent of a minor parent living in the home, shall be deemed on a pro rata basis, unless the parent of the minor parent receives SSI.

F. Joint property:

(1) Joint resources: Resources owned jointly by separate benefit groups shall be considered available in their entirety to each benefit group, unless it can be demonstrated by an applicant or recipient that such resources are inaccessible to it. The benefit group must verify that:

- (a)** it does not have the use of the resource;
- (b)** it did not make the purchase or down payment;
- (c)** it does not make the continuing loan payments; and
- (d)** the title is transferred to or retained by the other benefit group;
- (e)** if a benefit group can demonstrate that it has access to only a part of the

resource, the value of that part is counted toward the benefit group's resource level; a resource will be considered totally inaccessible, if it cannot be practically subdivided and the benefit group's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply; for purposes of this provision, ineligible non-citizens or disqualified individuals residing with a benefit group are considered benefit group members.

(2) Joint bank accounts: If signatories to a joint bank account are separate benefit groups, the funds in the account are considered available to each benefit group to the extent that it has contributed to the account. If the participation benefit group has not contributed to the account, the funds are considered available only if there is clear and convincing evidence that the other benefit group intends that the participation benefit group actually owns the funds.

[8.102.510.11 NMAC - Rp 8.102.510.11 NMAC, 7/1/2024]

8.102.510.12 [RESERVED]

8.102.510.13 ELIGIBILITY DETERMINATION:

A. Determination: After determining what property is available to the benefit group and determining the value of that resource, the net value of the countable real and personal property exceeds resource limits, the benefit group shall be ineligible for assistance on the basis of need. The benefit group shall remain ineligible on the condition of need for as long as the value of the property exceeds the resource standards. The basis of need is determined by:

- (1)** what property is available to the benefit group;
- (2)** the value of all available resources;
- (3)** what the net value of all countable real and personal property.

B. Receipt of resources: Resources acquired by a benefit group member after approval of an assistance grant shall be evaluated for purposes of financial assistance eligibility at the time of the change.

Reporting requirements as indicated in Subsection D of 8.102.630.8 NMAC apply. If ownership or availability of resources makes the benefit group ineligible, assistance is terminated effective the month following the month the notice of adverse action expires.

[8.102.510.13 NMAC - Rp 8.102.510.13 NMAC, 7/1/2024]

8.102.510.14 NON-TRANSFER OF REAL PROPERTY:

A. Requirement:

(1) For the parent or the specified relative to be included in the benefit group, a benefit group member must not have transferred real property for the purpose of becoming eligible for cash assistance within the two-year period preceding the date of application.

(2) A transfer is considered to be for the purpose of becoming eligible if:

(a) the transfer was made without a reasonable return; and

(b) the person had no reasonable plan for support at the time of the transfer other than assistance from the HCA.

B. Transfer:

(1) For the purpose of this provision, transfer includes the sale, conveyance by deed, or any other method of transferring the title to the property involved, including transfer by gift. The transfer may be for either the title to the real property or other interests or rights in the property, such as mineral or water rights.

(2) A child under the age of 18 years cannot transfer property, except through a guardian. If facts indicate the existence of a trust, inheritance or prior gifts to the child, it must be determined whether a transfer has taken place.

C. Reasonable return: A reasonable return is considered to have been received when the person who made the transfer received compensation in cash or in kind equal to the value of the property at the time of transfer. The determination as to whether a reasonable return was received is based on the person's equity interest in the property at the time of the transfer.

D. Equity less than \$2,000: If the value of the person's equity, plus all other countable resources, was less than \$2,000, the transfer is not considered to be for the purpose of becoming eligible.

E. Reasonable value not received:

(1) When it is determined that the property was transferred for the purpose of becoming eligible, but the client has subsequently made efforts to obtain a reasonable return, or to regain title, and is willing to continue such efforts, if indicated, eligibility on this condition exists. When the client is not willing to pursue a reasonable return, or to attempt to regain title to the property, the case shall not be eligible for six months from the month the HCA makes the determination that the transfer was made.

(2) Any proceeds received in return for property transfers shall be evaluated to determine if they affect the client's ongoing eligibility for cash assistance.

[8.102.510.14 NMAC - Rp 8.102.510.14 NMAC, 7/1/2024]

HISTORY OF 8.102.510 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

ISD FA 410, Resources, 2/10/1988.

ISD FA 410, Resources, 6/18/1990.

ISD FA 440, Determination of Eligibility and Grant, 2/10/1988.

ISD FA 440, Prospective Eligibility and Budgeting, 4/30/1992.

ISD FA 310, Non-Financial Eligibility Criteria, 2/9/1988.

History of Repealed Material: 8 NMAC 3.FAP, Financial Assistance Program - Repealed, 07/01/1997.

8.102.510 Eligibility Policy - Resources/Property - Repealed, 07/01/2001.

8.102.510 NMAC - Eligibility Policy - Resources/Property (filed 6/18/2001) - Repealed effective 7/1/2024.

Other: 8.102.510 NMAC - Eligibility Policy - Resources/Property (filed 6/18/2001) - Replaced by 8.102.510 NMAC - Eligibility Policy - Resources/Property, effective 7/1/2024.