

TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 520 ELIGIBILITY POLICY - INCOME

8.102.520.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.102.520.1 NMAC - Rp 8.102.520.1 NMAC, 07/01/2001]

8.102.520.2 SCOPE: The rule applies to the general public.
[8.102.520.2 NMAC - Rp 8.102.520.2 NMAC, 07/01/2001]

8.102.520.3 STATUTORY AUTHORITY:

A. 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.

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 human services department 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 department is creating the New Mexico works program as one of its cash assistance programs.

E. In close coordination with the NMW program, the department 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.

[8.102.520.3 NMAC - Rp 8.102.520.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.520.4 DURATION: Permanent.
[8.102.520.4 NMAC - Rp 8.102.520.4 NMAC, 07/01/2001]

8.102.520.5 EFFECTIVE DATE: July 1, 2001.
[8.102.520.5 NMAC - Rp 8.102.520.5 NMAC, 07/01/2001]

8.102.520.6 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 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 participating benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.520.6 NMAC - Rp 8.102.520.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.520.7 DEFINITIONS: [RESERVED]
[8.102.520.7 NMAC - Rp 8.102.520.7 NMAC, 07/01/2001]

8.102.520.8 GENERAL:

A. Income eligibility: To be eligible for cash assistance based on income eligibility factors:

(1) the countable gross income available to the benefit group cannot equal or exceed the maximum gross income limit for the size of the benefit group;

(2) the net countable income available to the benefit group cannot equal or exceed the standard of need applicable to the size of the benefit group;

(3) all income exempted or deducted in the gross income test shall be exempted or deducted in the net income test;

(4) all income considered available in the net income test shall be considered in determining the amount of payment to the benefit group.

B. Gross income test (85 percent test): For the benefit group to be eligible, the countable gross income 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 eligible, the countable net income must be less than the standard of need applicable to the size of the benefit group.

D. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than 100 percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services.

E. Counting income during the certification period:

(1) For the purposes of cash assistance eligibility and payment determination, income is money received by or available to the benefit group in each month of the certification period.

(2) Only income which is actually received, or can reasonably be expected to be received, is counted for financial eligibility and payment calculation.

(3) The benefit group must take appropriate steps to apply for and receive income from any other source to which the group may potentially be eligible. A benefit group may be found ineligible for failing or refusing to apply for or pursue potential benefits from other sources.

(4) A benefit group member who is 62 years of age or older must apply for and take all necessary steps to receive a reduced OASDI benefit in order to comply with this eligibility criterion.

F. Income availability:

(1) The availability of income to the benefit group is determined by who must be included in the benefit group, and whether income must be deemed available to the benefit group.

(2) Income belongs to the person who gains it, either through the person's own efforts, as in the case of earnings, or as a benefit, as in the case of a beneficiary of social security administration income.

(3) Any unearned income, benefits, or payments, such as but not limited to: child support or social security benefits, for a child are considered as belonging to the benefit group in which the child is included.

(4) **Alien sponsors:** The gross income and resources belonging to an individual who is the sponsor of an alien 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 alien sponsor, and spouse, shall be counted until the sponsored alien achieves citizenship or can be credited with 40 qualifying quarters under title II of the federal Social Security Act.

G. Unavailable income: In some situations, individuals who are included in the benefit group, either an applicant or participant status, have a legal right to income but do not have access to it. Such income is not counted as available income for purposes of cash assistance eligibility and benefit calculation. A benefit group may be found ineligible for failing or refusing to immediately take all steps necessary to obtain access to the income.

H. Ineligible alien: The countable income belonging to an ineligible alien is deemed available to the benefit group and is prorated according to the size of the benefit group to determine the eligibility and payment amount for the benefit group.

[8.102.520.8 NMAC - Rp 8.102.520.8 NMAC, 07/01/2001; A, 11/15/2007]

8.102.520.9 EXEMPT INCOME: The following income sources 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 a 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 governmental 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 \$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, and 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 low-income home energy assistance program (LIHEAP), low-income assistance program (LITAP), or similar assistance programs.

N. subsidized private sector employment: as outlined at Subsection B of 8.102.461.12 NMAC.

O. guaranteed basic income: any payments that is funded solely with private funds or mixture of private and public funds will be excluded income.

P. universal basic income: any payments that is funded solely with private funds or mixture of private and public funds will be excluded income.

[8.102.520.9 NMAC - Rp 8.102.520.8.I NMAC, 07/01/2001; A, 11/15/2007; A, 07/15/2010; A, 1/1/2023; A, 11/1/2023]

8.102.520.10 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 participant who is receiving the income.

(1) Income from rental property is considered earnings if the participant 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 participant raises livestock for the purpose of making cash sales. Net income received from the sale of livestock shall be considered in determining amount of the cash assistance grant.

(a) The income received from this operation may be prorated on a semiannual period if it is reasonable to expect that the client will realize the same amount during the next budgetary period.

(b) Domestic pets (cats, dogs, etc.) are not considered livestock, and their value is not considered in determining resource eligibility except where 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.

[8.102.520.10 NMAC - Rp 8.102.520.9 NMAC 07/01/2001; A, 11/15/2007]

8.102.520.11 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 expected income.

(2) 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.

(3) 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) Benefit groups which by contract or self-employment derive their 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) 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.

(5) **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 over which the income will be averaged.

[8.102.520.11 NMAC - Rp 8.102.520.11 NMAC, 07/01/2001]

8.102.520.12 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 a participant'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 deduction that is not verified at the time of certification or processing of the semiannual report shall not be allowed as a deduction. A deduction verified after certification shall be processed as a change.

(4) An allowable deduction that is verified after a semiannual report is processed shall be handled as set forth at Subsection I of 8.102.120.11 NMAC.

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 after all allowable business expenses and self-employment costs shall be counted as the gross income of the benefit group member. To be eligible for this expense 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, 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, personal transportation to and from work.

(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. Work incentive deduction:

(1) To qualify for the work incentive deduction the benefit group member must be a parent of a dependent child included in the benefit group or the caretaker relative of a dependent child included in the benefit group whose parent does not live in the home, or the legal spouse of such parent or caretaker relative.

(2) **Allowing the deduction:** The work incentive deduction is allowed with no time limit as follows:

(a) \$125 and one-half of the remainder for the parent in a single-parent benefit group;

(b) \$225 and one-half of the remainder for each parent in a two-parent group;

(c) \$125 and one-half of the remainder for a benefit group member in a single-parent or two-parent benefit group who is not a parent; and

(d) \$125 for a non-benefit group members whose income is deemed available.

D. Child care costs: Out of pocket expenses for child care that is necessary due to employment of a benefit group member shall be allowed.

(1) From earnings remaining after allowing the excess hours and work incentive deductions, 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 more than one parent is working, costs of child care shall be allocated to maximize the available deduction to the benefit group.

(3) The total amount deducted per child, regardless of the number of benefit group members who are employed, shall not exceed the applicable limits set forth above.

E. Contributions made into approved individual development accounts: The actual amount contributed into an approved IDA from an employed benefit group member's earnings shall be an allowable deduction from earned income.

[8.102.520.12 NMAC - Rp 8.102.520.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 07/01/2008]

8.102.520.13 DEEMED INCOME DETERMINATION:

A. The earned and unearned income of certain non-benefit group members shall be deemed available to the eligible benefit group members. The income shall be deemed from the following:

(1) the parent of a minor parent;

(2) a participant or applicant who has been disqualified from participation because of a failure or refusal to provide a social security number;

(3) an ineligible alien.

B. Earned income deductions: An employed ineligible group member's earned income shall be allowed an earned income deduction of \$125. The remainder is the net countable earned income of the non-benefit group member.

C. Unearned income: No deductions are allowed from the unearned income of a ineligible group member whose income is deemed available to the benefit group.

D. Deeming of income:

(1) The net countable earned income and all of the unearned income of a non-benefit group member shall be divided by the total number of benefit group and ineligible group members. The result is the prorated income amount.

(2) The deemed income to the eligible benefit group members shall be determined by multiplying the prorated income amount by the number of eligible benefit group members. The non-benefit group member's share of the prorated income shall be excluded from consideration.

[8.102.520.13 NMAC - N, 07/01/2001; A, 11/15/2007]

8.102.520.14 NET EARNED INCOME: The income remaining after all allowable exemptions and deductions shall be made from the earned income of benefit group members, plus the deemed income to the benefit group, shall be the net countable earned income of the benefit group. The net countable income shall be used to determine the cash assistance payment to the benefit group.

[8.102.520.14 NMAC - Rp 8.102.520.13 NMAC, 07/01/2001]

8.102.520.15 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. Unearned income is not subject to deductions.

B. Special conditions:

(1) Direct receipt of child support: Child support payments directly received and retained by the benefit group are considered available to the benefit group in their entirety.

(2) Real property income: Income from real property is considered as unearned income when the benefit group engages in the management of the property less than 20 hours a week. The benefit group shall take all appropriate steps to utilize real property in a manner that will produce maximum benefits for the benefit group's maintenance. Costs associated for 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.

[8.102.520.15 NMAC - N, 07/01/2001; A, 11/15/2007]

HISTORY OF 8.102.520 NMAC:

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

ISD FA 430, Income, 2/11/1988.

History of Repealed Material: 8 NMAC 3.FAP, Financial Assistance Program - Repealed, 07/01/97.

8.102.520 Eligibility Policy - Income, - Repealed, 07/01/01.