

TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 400 RECIPIENT POLICIES - DEFINING THE BENEFIT GROUP

8.106.400.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.106.400.1 NMAC - Rp, 8.106.400.1 NMAC, 12/01/2009; A, 7/1/2024]

8.106.400.2 SCOPE: The rule applies to the general public.
[8.106.400.2 NMAC - Rp, 8.106.400.2 NMAC, 12/01/2009]

8.106.400.3 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. 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.
[8.106.400.3 NMAC - Rp, 8.106.400.3 NMAC, 12/01/2009; A, 7/1/2024]

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8.106.400.4 DURATION: Permanent.
[8.106.400.4 NMAC - Rp, 8.106.400.4 NMAC, 12/01/2009]

8.106.400.5 EFFECTIVE DATE: December 1, 2009, unless a later date is cited at the end of a section.
[8.106.400.5 NMAC - Rp, 8.106.400.5 NMAC, 12/01/2009]

8.106.400.6 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.

[8.106.400.6 NMAC - Rp, 8.106.400.6 NMAC, 12/01/2009]

8.106.400.7 DEFINITIONS: [RESERVED]

8.106.400.8 WHO CAN BE A RECIPIENT: To be a recipient of general assistance, an individual must be eligible according to the regulations for the GA program. An individual for whom an application has been or must be made may receive cash assistance as long as the individual also meets individual eligibility requirements of the GA program and is otherwise eligible.

[8.106.400.8 NMAC - Rp, 8.106.400.8 NMAC, 12/01/2009]

8.106.400.9 BASIS FOR DEFINING THE BENEFIT GROUP:

A. Request for assistance: The request for assistance is the first step in determining those individuals who must be included in the benefit group. At the request of the head of the benefit group, non-mandatory members may be included or removed from the benefit group, this may require the inclusion or removal of other individuals as well.

B. Benefit group members: The head of benefit group is required to apply for any person who is a mandatory benefit group member, failure shall result in ineligibility for the entire benefit group. Changes in benefit group circumstances shall be reviewed and may affect who is considered a mandatory benefit group member.

C. Mandatory for inclusion: The income and resources of mandatory members will always be considered to determine need, but not payment. In order to be included in the assistance group, members must individually meet eligibility requirements. Members mandatory for inclusion are: spouses residing in the home with the applicant, a caretaker of the applicant, and the father of an unborn child residing in the home with the applicant.

[8.106.400.9 NMAC - Rp, 8.106.400.9 NMAC, 12/01/2009]

8.106.400.10 CONSTRUCTING THE BENEFIT GROUP:

A. General: To be eligible for inclusion in a GA benefit group, a person must be individually eligible according to requirements set forth in 8.106.410 NMAC, 8.106.420 NMAC and 8.106.430 NMAC and not otherwise disqualified from participation. The person or persons meeting individual eligibility requirements and for whom an application has been or must be made constitute the benefit group.

B. Disability: The benefit group for the GA-disabled adult program consists of the disabled adult and may include the needs of other adults living in the home. An adult who shares custody of his or her biological child may apply for GA-disabled adults in his or her own right, provided that the adult who is applying has less than half time custody of the child.

(1) Spouse: The spouse, residing in the home with the disabled adult must be included in the benefit group to determine need, but not payment. The spouse may be included in payment if the spouse is determined disabled.

(2) Essential person: An individual, regardless of relation, is considered essential to the well being of a disabled GA applicant and may be included in the GA benefit group to determine need and payment. An essential person is capable of providing the physical care needed by the GA disabled recipient to the extent that placement into institutional care would otherwise be required without this care.

(3) Pregnant individual: An emancipated unmarried pregnant woman, age 17 or younger, or a pregnant adult, who has not reached her third trimester and has been determined to be disabled, may be considered a benefit group member in the GA disabled adult program. The father of the unborn child that resides in the home, must be included in the benefit group to determine need, but not payment.

(4) SSI: An individual receiving SSI, or who would be receiving SSI except for recovery by the social security administration of an overpayment, is not eligible to be included in a GA benefit group.

C. State supplement for adult residential care: To be eligible for inclusion in an ARSCH supplemental payment benefit group, an individual must be eligible for SSI. The benefit group consists of the SSI recipient. Two SSI recipients who would constitute a family if living at home, but who reside in an adult residential shelter care facility, are considered to be two separate benefit groups.

D. Unrelated child: The benefit group for the GA-dependent child program consists of a dependent child who lives in a family setting with a non-related adult caretaker, and all of that dependent child's full, half, step- or adopted siblings living in the home. An adult caretaker may be an individual who is not a specified relative within the fifth degree of relationship and who is not eligible for NMW in his or her own right.

(1) Caretaker: The unrelated caretaker shall be included in the benefit group upon request. The spouse of the unrelated caretaker, if living in the home, shall be included in the benefit group when the unrelated caretaker is included in the benefit group.

(2) Need and payment: The unrelated caretaker and spouse shall be included in the benefit group to determine need and payment only if they request inclusion.

(3) Fifth degree of relationship: The following relatives are within the fifth degree of relationship to the dependent child:

- (a)** father (biological or adoptive);
- (b)** mother (biological or adoptive);
- (c)** grandfather, great grandfather, great-great grandfather, great-great-great grandfather;
- (d)** grandmother, great-grandmother, great-great-grandmother, great-great-great grandmother;
- (e)** spouse of child's parent (stepparent);
- (f)** spouse of child's grandparent, great grandparent, great-great grandparent, great-great-great grandparent (step-grandparent);
- (g)** brother, half-brother, brother-in-law, stepbrother;
- (h)** sister, half-sister, sister-in-law, stepsister;
- (i)** uncle of the whole or half-blood, uncle-in-law, great uncle, great-great uncle;
- (j)** aunt of the whole or half blood, aunt-in-law, great aunt, great-great aunt;
- (k)** first cousin and spouse of first cousin;
- (l)** son or daughter of first cousin (first cousin once removed);
- (m)** son or daughter of great aunt or great uncle (first cousin once removed) and spouse;
- (n)** nephew/niece and spouses.

(4) A second cousin is a child of a first cousin once removed or child of a child of a great aunt or uncle and is not within the fifth degree of relationship.

(5) **Effect of divorce or death on relationship:** A relationship based upon marriage, such as the "in-law", or "step-" relationships, continues to exist following the dissolution of the marriage by divorce or death.

(6) **Unrelated child adult only benefit group:** An adult only benefit group may consist of the non-related adult caretaker when all of the dependent children are receiving SSI.

[8.106.400.10 NMAC - Rp, 8.106.400.11, 12 & 16 NMAC, 12/01/2009; A, 07/01/2013]

8.106.400.11 LIVING ARRANGEMENT:

A. Disability:

(1) An individual shall not be eligible for inclusion in the benefit group if the individual is institutionalized for any reason such as:

- (a) medical or mental health treatment;
- (b) an inmate in a public non-medical institution, including facilities in the state prison system, jails and detention centers, as well as juvenile correction facilities;
- (c) a person shall be considered an inmate if residing in a public facility at the order or discretion of a court, such as a person sentenced to a prison or committed under court order.

(2) An individual shall be eligible for inclusion in the benefit group if the individual is:

- (a) attending a public educational or vocational training institution, who lives in housing provided by the institution; or
- (b) residing in a homeless shelter or other supportive living program administered by a homeless services provider.

(3) To be eligible for inclusion the essential person, spouse or father of the unborn child, must be considered to be living with the disabled recipient.

B. State supplement for adult residential care: To be eligible for the ARSCH supplemental payment program, an individual must be living in a facility licensed as an adult residential shelter care facility by the New Mexico department of health.

C. Dependent child: The determination whether the dependent child meets the living arrangement is discussed with the caretaker and carefully documented in the case record.

(1) The dependent child must be living or considered to be living, in the home with an unrelated caretaker. A dependent child is considered to be living with a caretaker if:

- (a) the caretaker has assumed responsibility for care, support and supervision of an unrelated child and for meeting the child's physical and emotional needs;
- (b) the caretaker has demonstrated an intent to maintain the caretaker-child relationship and to provide a home for the child;
- (c) the caretaker is not the legal guardian of the dependent child;
- (d) the dependent child is not physically absent from the home and is not under the care, control or supervision of himself, a relative or another adult, a social services or correctional agency, or other agency of state, local or tribal government; and
- (e) the dependent child actually spends the majority of time with one caretaker.

(2) **Absence from the home:** The caretaker of a dependent child included in the benefit group must report when a dependent child leaves the home of the caretaker. The dependent child's needs shall be removed from the cash assistance payment if the benefit group includes only one dependent child, eligibility shall be terminated for the benefit group. A child may be physically absent from the home, for a period of time and may remain a member of the benefit group if:

- (a) the absence is related to the well being of the child;
- (b) the caretaker continues to exercise care, financial support, maintains living quarters, makes decisions on the behalf of the child and remains in contact with the child in order to provide supervision of the child; and
- (c) the length of the absence is less than 45 days, provided that the child is not simultaneously participating in another cash assistance program.

(3) **Absences related to the well being of a child:** A child shall retain living-in-the-home status while receiving any of the services described below.

(a) Rehabilitation services, including psychosocial treatment services:

- (i) the program must be family-based with one objective being the

strengthening of family ties;

(ii) treatment plans must provide for a significant level of continuing authority, responsibility, and participation by the caretaker; and

(iii) the caretaker must retain the authority to decide when the child should leave the facility, must approve necessary treatment, and must retain responsibility for provision of pocket money.

(b) **Boarding school:** A child who is attending school away from home regardless of the length of the absence, when the caretaker retains responsibility for care, support and supervision of the child. The child must have been living in the home before attending boarding school.

(c) **Residence in a medicaid facility:** A child hospitalized for care or treatment in a title facility may retain living-in-the-home status, without regard to the length of hospitalization, provided that:

(i) the child must have been living in the home before hospitalization;

(ii) the caretaker continues to be the person with primary responsibility for care, support and supervision of the child and for meeting the child's physical and emotional needs.

(d) Treatment centers may include acute care hospitals, freestanding psychiatric hospitals and rehabilitation hospitals as well as residential treatment centers and group homes reimbursed by medicaid for psychosocial rehabilitation services. The status of a residential treatment center or group home as a medicaid provider may be made by contacting the medical assistance division of the human services department.

(e) A child receiving treatment in a title XIX facility, or placed in other substitute care living arrangements by juvenile authorities as the result of a sentence or commitment by a judicial authority does not meet the definition of living in the home, as the caretaker no longer has significant responsibility of the care, support and supervision of the child.

(f) A child retains living-in-the-home status as long as the caretaker has the authority to control the child's treatment and duration of stay. Should a court order be issued placing the child in a psychiatric facility, a caretaker may be prevented from removing the child from the facility. In such a circumstance, the child cannot retain living-in-the-home status.

(4) **Caretaker's absence from the home:** The caretaker may be physically absent from the home and still retain status as the primary caretaker for purposes of eligibility, provided the caretaker is absent from the home due to illness or hospitalization for 30 days or less.

(a) **Primary responsibility:** In order for the caretaker to retain living-in-the-home status, he or she must retain primary responsibilities for providing care, support and supervision for the child.

(b) **Residence in a medicaid facility:** A caretaker receiving treatment in a Title XIX facility remains a member of the benefit group of which the caretaker was a member at the time of hospitalization until the caretaker leaves the facility and returns to the home. If the caretaker does not return to the home following hospitalization, the living-in-the-home determination shall be terminated.

[8.106.400.11 NMAC - Rp, 8.106.400.10, 14 & 15 NMAC, 12/01/2009]

HISTORY OF 8.106.400 NMAC:

History of Repealed Material:

8.106.400 NMAC, Recipient Policies - Defining the Benefit Group, filed 06/17/2004 - Repealed 12/01/2009.