

TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 410 RECIPIENT POLICIES - GENERAL RECIPIENT REQUIREMENTS

8.106.410.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.106.410.1 NMAC - Rp, 8.106.410.1 NMAC, 12/01/2009]

8.106.410.2 SCOPE: The rule applies to the general public.
[8.106.410.2 NMAC - Rp, 8.106.410.2 NMAC, 12/01/2009]

8.106.410.3 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.
[8.106.410.3 NMAC - Rp, 8.106.410.3 NMAC, 12/01/2009]

8.106.410.4 DURATION: Permanent.
[8.106.410.4 NMAC - Rp, 8.106.410.4 NMAC, 12/01/2009]

8.106.410.5 EFFECTIVE DATE: December 1, 2009, unless a later date is cited at the end of a section.
[8.106.410.5 NMAC - Rp, 8.106.410.5 NMAC, 12/01/2009]

8.106.410.6 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.
[8.106.410.6 NMAC - Rp, 8.106.410.6 NMAC, 12/01/2009]

8.106.410.7 DEFINITIONS: [RESERVED]

8.106.410.8 REQUIREMENTS:

A. An applicant or recipient who fails to meet an individual eligibility requirement is not eligible to be included in the benefit group. The individual's ineligibility does not make the entire benefit group ineligible, unless the ineligible individual is the only member of the benefit group.

B Application moratorium: When the department has issued a public notice regarding the limitation of state funds, the caseworker shall deny the general assistance without consideration of eligibility requirements.

[8.106.410.8 NMAC - Rp, 8.106.410.8 NMAC, 12/01/2009]

8.106.410.9 ENUMERATION:

A. To be eligible for inclusion in the benefit group, the recipient, or the caretaker on behalf of a dependent child, must report the individual's social security number (SSN) within 60 days of approval for the GA program.

B. An SSN card shall not be required to validate the individual's SSN, but shall be requested if an individual's SSN becomes questionable or cannot be validated by the social security administration.

C. Failure to meet the enumeration requirement shall result in ineligibility of the benefit group member whose SSN has not been reported or cannot be verified.

[8.106.410.9 NMAC - Rp, 8.106.410.9 NMAC, 12/01/2009]

8.106.410.10 CITIZENSHIP AND ALIEN STATUS: To be eligible for inclusion in a GA benefit group, if otherwise eligible, an individual must be:

A. a citizen of the United States;

- B.** a naturalized citizen;
 - C.** an alien who entered the United States before August 22, 1996, and who meets the definition of a qualified immigrant at 8.106.100 NMAC or meets the definition of a PRUCOL; or
 - D.** an alien who entered the United States on or after August 22, 1996, and who meets the definition of a qualified alien at 8.106.100 NMAC.
- [8.106.410.10 NMAC - Rp, 8.106.410.10 NMAC, 12/01/2009]

8.106.410.11 RESIDENCY:

A. To be eligible for inclusion in a GA benefit group, an individual must be living in the state of New Mexico, and have demonstrated an intent to remain in the state. For applicants, the residency determination shall be made on the date eligibility is determined

B. Residence shall not be considered to exist if the person is just passing through the state or is present in the state for purposes such as vacation, family visits, medical care, temporary employment, or other similar short-term stays and the person does not intend to remain. Residence shall not exist if an individual claims residence in another state.

C. Establishing residence: Residence in New Mexico shall be established by being present in the state on an ongoing basis and carrying out the types of activities associated with normal day-to-day living, such as occupying a house (paying rent or mortgage and utilities, receiving mail at that address, etc.), enrolling children in school, renting a post office box, obtaining a state driver's license, joining a church or other local organization, obtaining or seeking employment in the state, registering to vote in the state, etc.

D. Homeless persons: Homeless persons must meet the residence requirement; however, their personal situations may prevent them from establishing the types of residence indicators listed above. In such cases, as much information as possible shall be obtained and entered into the case record, but absence of the more common types of verifications, including but not limited to residence, shall not be a barrier to eligibility.

E. Temporary absence from the state:

(1) A temporary absence from the state shall not be considered an interruption of residence. Temporary absence occurs when an individual leaves the state for a specific, time-limited purpose, with the intention of returning to the state.

(2) Absences related to the following purposes shall be considered temporary:

- (a) short-term visits with family or friends lasting less than 30 days;
- (b) out-of-state stays for medical treatment; or
- (c) attendance at an out-of-state school, returning to the state during vacations.

(3) **Residency DVR training out-of-state:** If plans are made in conjunction with DVR for a recipient's participation in a training course in another state, cash assistance may be continued for the duration of the training course provided that the recipient or benefit group intends to return to New Mexico when the training is completed.

(4) **Illness:** If a recipient who is temporarily visiting outside New Mexico is unable to return to New Mexico due to illness, cash assistance may continue until such time as the recipient is able to return. The recipient's inability to return to New Mexico due to illness must be verified by a physician's report.

(5) A statement by a recipient of intent to return to the state will be accepted, provided that the recipient does not take action in another state to establish permanent residence.

F. Residency abandonment: Residence shall be considered to have been abandoned when an individual:

- (1) leaves the state and indicates that he intends to establish residence in the other state; or
- (2) leaves the state for no specific purpose and with no clear intention to return; or
- (3) leaves the state and applies for food, financial or medical assistance from another state; or
- (4) has been absent from the state for a period of 30 days or more and has not notified the

department of the absence or of an intention to return.

G. Residence of children: A dependent child shall be considered to be a resident of the same state as the caretaker adult with whom the child is living.

[8.106.410.11 NMAC - Rp, 8.106.410.11 NMAC, 12/01/2009]

8.106.410.12 NONCONCURRENT RECEIPT OF ASSISTANCE:

A. Assistance from another state: An individual who is receiving assistance from another state shall be considered a resident of that state until the state is notified of the individual's intention to abandon residence. An individual who received GA from another state shall be considered to be in receipt of concurrent assistance for

that month.

B. Concurrent receipt of assistance: To be eligible for inclusion in a GA benefit group, the individual cannot already be:

- (1) included as a benefit group member and receiving cash assistance from another department cash assistance program;
- (2) an SSI recipient;
- (3) a recipient of benefits from a federally-funded TANF program (including a tribal program) or BIA-GA program;
- (4) a recipient of a government-funded adoption subsidy program; or
- (5) a recipient of benefits from a TANF or GA program in another state.

C. An individual may not be the payee for more than one GA cash assistance payment.

D. Supplemental security income:

(1) **Ongoing SSI eligibility:** An individual eligible for SSI on an ongoing basis is not eligible for GA benefits based on concurrent receipt of assistance. The SSI recipient shall not be included in the benefit group for purposes of GA eligibility or benefit calculation. The income, resources and needs of the SSI recipient are excluded in determining benefit group eligibility and benefit amount.

(2) **SSI applicants:** An individual receiving GA cash assistance benefits from the department may apply for and receive SSI benefits for the same months for which the department has already issued GA benefits. Cash assistance benefits issued by the department are considered in determining the amount of retroactive SSI benefits to be paid to the SSI applicant. GA ineligibility or overpayments shall not be established for any month for which the SSA issues an SSI retroactive payment. When notice is received that a benefit group member is approved for SSI on an ongoing basis, that member shall be immediately removed from the benefit group.

(3) **Retroactive SSI payments:**

(a) A state funded GA recipient who receives retroactive SSI payments is required to reimburse the department under general assistance program interim assistance reimbursement (IAR) provisions set forth at 8.106.420.17 NMAC.

(b) There may be some situations in which only retroactive SSI benefits are approved. Such approvals do not result in GA ineligibility due to concurrent receipt of assistance, since the SSI benefits will not be received on an ongoing basis, but may result in GA ineligibility on the basis of resources (See 8.106.510 NMAC).

(4) **Adult residential shelter care program:** Receipt of SSI is a requirement for receiving adult residential shelter care payments.

E. Other department programs: The food stamp program, medicaid, LIHEAP and other similar programs are not considered concurrent assistance and shall not make an individual ineligible for GA cash assistance programs.

[8.106.410.12 NMAC - Rp, 8.106.410.12 NMAC, 12/01/2009]

8.106.410.13 ADDITIONAL ELIGIBILITY REQUIREMENTS FOR DISABILITY:

A. Compliance with IAR requirements: The state of New Mexico is a participant in the interim assistance reimbursement (IAR) program administered by the social security administration (SSA). The U.S. secretary of health and human services, through the SSA, has agreed to reimburse the state through HSD for general assistance payments made to an individual receiving GA disability during the period the individual's application for SSI was pending. Upon approval of SSI, SSA sends the first retroactive SSI payment due an individual to HSD as repayment for the state-funded GA payments made to the individual. The repayment of GA benefits from SSI is referred to as interim assistance reimbursement (IAR).

(1) **Interim assistance authorization:** An individual applying for disability based on set or variable term disability must, as a condition of eligibility, authorize in writing the reimbursement to HSD for the amount of GA benefits paid on the individual's behalf for any month in which the SSA pays retroactive SSI benefits to the individual.

(a) **Completing the IAR authorization:** The IAR authorization shall be completed and signed by the applicant and the Department representative at the time the individual is interviewed. Refusal to sign an IAR authorization shall result in immediate denial of a GA application.

(b) The department shall not approve an application for GA without a completed and valid IAR.

(c) The completed and signed IAR authorization form must be received by SSA within 30 days from the date of signature in order to be valid.

(d) **Duration of authorization:** The authorization for IAR shall remain in effect from the date of signature until:

(i) SSA releases the SSI retroactive payment to HSD and HSD recovers the full amount to which it is entitled; or

(ii) HSD and the individual agree to terminate the authorization.

(2) Termination of GA benefits does not constitute termination of the IAR authorization. HSD shall receive the first retroactive SSI payment for an individual who has received GA in the past and for whom an IAR authorization is in effect.

(3) **Validity of an IAR authorization:** In order for the IAR authorization to remain in effect, an individual must have filed an application for SSI within 12 months of signing the authorization.

(4) **Determination of repayment amount:**

(a) The amount of repayment of GA benefits from SSI shall be determined by comparing the months and amounts of GA paid to the individual to the months and amounts of the SSI retroactive payment issued by the SSA. The amount available for reimbursement to the department shall be calculated from the first day the individual is eligible for SSI benefits and shall end with (and include) the month the retroactive SSI payment is made.

(b) For each month that GA and SSI were both paid, the department shall recoup the amount of the GA benefit, not to exceed the amount of SSI for that month.

(c) The department shall not recoup an SSI payment for any month in which a GA payment was not issued.

(d) Emergency advance SSI payments shall not be available for recoupment. Presumptive disability SSI payments shall not be available for recoupment.

(5) **Issuance of balance of SSI payment:** When the amount of the total SSI payment exceeds the total GA payment, the balance of the remaining SSI retroactive payment(s) shall be sent to the individual within 10 calendar days of the date the department received the SSI retroactive payment from SSA. The balance shall be paid in the form of an HSD warrant. The individual shall be informed in writing of the retroactive SSI payment amount, how the repayment amount was computed by the department, and the balance being sent to the individual.

(6) **Returned checks:** When the department is issued an amount greater than the amount of GA benefits paid to an individual, and the excess payment cannot be issued because the individual is deceased or cannot be located, the balance of the SSI retroactive payment shall be returned to SSA.

(7) **When the individual dies before eligibility is determined:** The department has the right to receive repayment for GA benefits paid to an individual who dies before a determination of SSI eligibility is made. In such a circumstance, SSA will make a determination of eligibility or ineligibility for payment. Any excess payment after recovery by HSD will be returned to SSA.

B. Compliance with SSI status requirements:

(1) Any individual who is potentially eligible for SSI on the basis of either age or disability must apply for and accept SSI if approved by the social security administration.

(2) GA benefits shall be terminated when a determination is made that an individual has failed or refused to follow through with the initial SSI application interview, or failed or refused to file a timely request for reconsideration or appeal of an SSI denial.

(3) **Ongoing SSI:** An individual receiving SSI, or who would be receiving SSI except for recovery of an overpayment by the social security administration, is not eligible for GA.

C. SSI application requirement for disabled individuals:

(1) An individual who is approved for GA based on a set or variable term GA must file an application for SSI or OASDI within 60 days following approval. The GA recipient must follow through with the SSI application process and maintain an active SSI or OASDI application.

(2) An individual whose SSI or OASDI application has been denied or terminated must request and pursue his right to a hearing and appeal through the administrative law judge (ALJ) appeal level of the social security administration (SSA). If an individual has allowed his or her hearing rights to expire, the individual must file a new application with the SSA.

(3) An individual who has pursued his or her hearing rights through the SSA and who has not been approved shall not be required to pursue SSI or OASDI benefits any further.

(4) A GA recipient who has not applied for SSI by the end of the month in which the 60th day occurs shall be ineligible to continue receiving GA. In such a situation, a notice of adverse action must be issued. If the individual files an application for OASDI, SSI or both by the end of the month in which the notice of adverse action expires, the individual's benefits will be reinstated.

(5) GA benefits shall be terminated when a determination is made that an individual has failed or refused to follow through with the initial SSI application interview or failed or refused to timely request for consideration or appeal of an SSI denial, unless the individual can demonstrate good cause.

D. Contingency requirements: To remain eligible for variable term disability assistance, an individual must accept treatment available outside the GA program, unless a determination is made that good cause exists for the individual's inability to comply. The department shall make a determination of whether a contingency requirement is warranted and must be met to maintain eligibility for GA.

(1) The GA recipient shall be informed of any ongoing conditions or contingency requirements that must be met in order to ensure ongoing eligibility.

(2) If appropriate, the individual shall be referred to the division of vocational rehabilitation (DVR). A recipient must accept vocational rehabilitation services if offered by DVR.

(3) The department shall not impose a time limit or deadline for a contingency requirement to be met that cannot realistically be met in the community in which the GA recipient resides.

(4) **Failure to comply:** Failure to comply with out good cause shall result in termination of GA benefits and ineligibility until contingency requirements have been met or good cause can be established.

(5) If a recipient of GA fails or refuses a referral, treatment or rehabilitation services, the case shall be reviewed by the department to determine if the refusal was for good cause. A determination that the failure or refusal to accept corrective treatment was for good cause will not result in termination of benefits. A determination that the failure or refusal was not for a good cause reason shall result in termination of GA benefits.

E. Good cause: Good cause is determined on an individual basis. There may be situations in which good cause exists for a GA recipient's inability to comply with a contingency requirement, including but not limited to:

- (1) the treatment is not available without cost or minimal cost to the recipient;
- (2) the treatment is totally unavailable or not available at the frequency required due to lack of providers in the project area in which the recipient resides;
- (3) the failure of ISD to provide written notice or sufficient information to the recipient about the contingency requirement;
- (4) the recipient's inability to participate because of documented barriers, such as lack of transportation, an inability to leave work, illness, or death in the immediate family;
- (5) the contingency requirement was made in error;
- (6) a good cause reason approved by the department;
- (7) treatment that involves more than reasonable risk to correct the impairment;
- (8) treatment that conflicts with the individual's sincere religious beliefs;
- (9) fear of additional treatment that could interfere with or reduce the benefits of current treatment interventions; or
- (10) treatment that may cause further limitations or loss of a function or organ and the recipient is not willing to take the risk.

[8.106.410.13 NMAC - N, 12/01/2009]

8.106.410.14 PROGRAM DISQUALIFICATIONS:

A. Dual state benefits: An individual who has been convicted of fraud for receiving TANF, SNAP, Medicaid or SSI in more than one state at the same time shall not be eligible for inclusion in the GA cash assistance benefit group for a period of 10 years following such conviction. The conviction must have occurred on or after August 22, 1996.

B. Fugitive and probation and parole violators: An individual who is a fugitive felon or who has been determined to be in violation of conditions of probation or parole shall not be eligible for inclusion in the GA cash assistance benefit group.

C. Certain convicted felons. An individual who is or has been determined to be convicted on or before February 7, 2014, as an adult of the following crimes shall not be eligible for inclusion in the cash assistance benefit group:

- (1) aggravated sexual abuse under section 2241 of title 18, United States Code;
- (2) murder under section 1111 of title 18, United States Code;

- (3) an offense under chapter 110 of title 18, United States Code;
 - (4) a federal or state offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or
 - (5) an offense under state law determined by the attorney general to be substantially similar to an offense described in clause (i), (ii), or (iii); and
 - (6) the individual is not in compliance with the terms of the sentence of the individual or the restrictions under 8.139.400.12 C NMAC.
- [8.106.410.14 NMAC - Rp, 8.106.410.13 NMAC, 12/01/2009; A, 04/01/2022]

HISTORY OF 8.106.410 NMAC:

History of Repealed Material:

8.106.410 NMAC, Recipient Policies - General Recipient Requirements, filed 06/17/2004 - Repealed 12/01/2009.