

TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 410 RECIPIENT POLICIES - GENERAL RECIPIENT REQUIREMENTS

8.102.410.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.102.410.1 NMAC - Rp 8.102.410.1 NMAC, 07/01/2001]

8.102.410.2 SCOPE: The rule applies to the general public.
[8.102.410.2 NMAC - Rp 8.102.410.2 NMAC, 07/01/2001]

8.102.410.3 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.

[8.102.410.3 NMAC - Rp 8.102.410.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.410.4 DURATION: Permanent.
[8.102.410.4 NMAC - Rp 8.102.410.4 NMAC, 07/01/2001]

8.102.410.5 EFFECTIVE DATE: July 1, 2001.
[8.102.410.5 NMAC - Rp 8.102.410.5 NMAC, 07/01/2001]

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

[8.102.410.6 NMAC - Rp 8.102.410.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.410.7 DEFINITIONS: [Reserved]
[8.102.410.7 NMAC - Rp 8.102.410.7 NMAC, 07/01/2001]

8.102.410.8 REQUIREMENTS: This section describes eligibility requirements which each recipient of cash assistance must meet in order to be included in the benefit group.
[8.102.410.8 NMAC - Rp 8.102.410.8 NMAC, 07/01/2001; A, 11/15/2007]

8.102.410.9 ENUMERATION: The participant, or the specified relative on behalf of a dependent child, must report the participant's social security number (SSN) within 60 days of approval for the cash assistance program. Failure to meet this requirement shall result in ineligibility for the benefit group member without a reported or

verified SSN.

[8.102.410.9 NMAC - Rp 8.102.410.9 NMAC, 07/01/2001; A, 11/15/2007]

8.102.410.10 CITIZENSHIP AND ALIEN STATUS:

A. Eligibility for TANF funded cash assistance:

(1) Participation in the NMW cash assistance program is limited to a U.S. citizen, a naturalized citizen or a non-citizen U.S. national.

(2) A non-citizen, other than a non-citizen U.S. national, must be both a qualified and eligible alien in order to participate in the NMW cash assistance program.

B. Definitions:

(1) **Continuously lived in the U.S.:** means that a non-citizen has lived in the U.S. without a single absence of more than 30 days or has lived in the U.S. without a total of aggregated absences of more than 90 days.

(2) **Federal means-tested public benefit:** means benefits from the food stamp program; the food assistance block grant programs in Puerto Rico, American Samoa, and the commonwealth of the Northern Mariana Islands; supplemental security income (SSI); and the TANF block grant program under title IV of the Social Security Act; medicaid, and SCHIP.

(3) **Five-year bar:** means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified aliens who entered the United States on or after August 22, 1996, until they have continuously lived in the U.S. for five years. If an alien enters the U.S. on or after August 22, 1996, but does not meet the definition of a qualified alien, the five-year bar begins on the date the non-citizen attains qualified alien status.

(4) **Immigrant:** means a non-citizen or an alien within the meaning found in title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(5) **Non-citizen U.S. national:** means a person who is not a U.S. citizen but was born in an outlying possession of the United States on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains Island or the Northern Mariana Islands.

(6) **Permanently residing under color of law (PRUCOL):** means a person whose presence in the US is known by the department of homeland security (DHS) and the DHS does not intend to deport the person. Persons classified as PRUCOL may or may not also be qualified aliens.

C. Qualified alien: A qualified alien is any of the following types of non-citizens:

(1) who is lawfully admitted for permanent residence under the Immigration and Nationality Act (an LPR);

(2) who is granted asylum under Section 208 of the INA (an asylee);

(3) who is a refugee admitted to the U.S. under Section 207 of the INA (a refugee);

(4) who is paroled into the U.S. under Section 212(d)(5) of the INA for at least one year (a parolee);

(5) whose deportation is being withheld under Section 241(b)(3) or 243(h) of the INA;

(6) who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(7) who is a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(8) who is a victim of a severe form of trafficking, regardless of immigration status, under the Trafficking Victims Protection Act of 2000.

D. Qualified alien due to battery or extreme cruelty: means a non-citizen, regardless of alien status, who has been battered or subjected to extreme cruelty, as long as the following elements are met:

(1) there is a substantial connection between such battery or cruelty and the need for the cash benefits; and

(2) the abused non-citizen is not currently living with the abuser; and

(3) the INS or executive office of immigration review (EOIR) has:

(a) approved a self-petition seeking permanent residency, or

(b) approved a petition for a family based immigrant visa; or

(c) approved an application for cancellation of removal or suspension of deportation; or

(d) found that a pending petition or application establishes "prima facie" (true and valid) case for approval; and

(4) the non-citizen has been battered or subjected to extreme cruelty in the US by a spouse or parent,

or by a member of the spouse or parent's family residing in the same household as the abused non-citizen and the spouse or parent of the abused non-citizen consented to, or acquiesced in such battery or cruelty; or

(5) the non-citizen has a child who has been battered or subjected to extreme cruelty in the US by the non-citizen's spouse or parent, as long as the non-citizen does not actively participate in the battery or cruelty; or a non-citizen whose child is battered or subjected to extreme cruelty by a member of the non-citizen's spouse or parent's family residing in the same household and the non-citizen's spouse or parent consented or acquiesced to such battery or cruelty; or

(6) the non-citizen is a child who resides in the same household as a parent who has been battered or subjected to extreme cruelty in the US by the parent's spouse or by a member of the spouse's family residing the same household and the non-citizen's spouse consented or acquiesced to such battery or cruelty.

(7) **U.S. citizen:** means, but may not be limited to:

(a) a person born in the United States;

(b) a person born in Puerto Rico, Guam, U.S. Virgin Islands or Northern Mariana Islands who has not renounced or otherwise lost his or her citizenship;

(c) a person born outside the U.S. to at least one U.S. citizen parent; or

(d) a person who is a naturalized citizen.

E. Aliens who are eligible to participate: An alien who meets the definition of a qualified alien shall be eligible to participate in the NMW cash assistance program if the alien:

(1) physically entered the U.S. prior to August 22, 1996 and obtained qualified alien status before August 22, 1996;

(2) physically entered the U.S. prior to August 22, 1996, obtained qualified alien status on or after August 22, 1996 and has continuously lived in the U.S. from the latest date of entry prior to August 22, 1996 until the date the participant or applicant obtained qualified alien status;

(3) physically entered the U.S. on or after August 22, 1996, meets the definition of a qualified alien and has been in qualified alien status for at least five years (five year bar);

(4) physically entered the U.S. before August 22, 1996 and did not continuously live in the U.S. from the latest date of entry prior to August 22, 1996 until obtaining qualified alien status, but has been in qualified alien status for at least five years;

(5) is a lawfully admitted permanent resident alien under the INA, who has worked or can be credited with 40 qualifying quarters; or

(6) is a veteran of the military with an honorable discharge that is not based on alien status who has fulfilled the minimum active duty requirements; or the non-citizen who is on active duty military service; or the person is the spouse, surviving spouse who has not remarried, or an unmarried dependent child of a veteran or active duty service member;

(7) an alien is eligible for a period of five years from the date an alien:

(a) is granted status as an asylee under Section 208 of the INA;

(b) is admitted as a refugee to the U.S. under Section 207 of the INA;

(c) has had his or her deportation withheld under Section 241(b)(3) or 243(h) of the INA;

(d) is admitted as an Amerasian immigrant under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988; or

(e) is admitted as a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980; and

(8) a qualified alien who entered the United States on or after August 22, 1996, to whom the five-year bar applies, may participate in the state-funded TANF program without regard to how long the alien has been residing in the United States.

F. Victim of severe form of trafficking: A victim of a severe form of trafficking, regardless of immigration status, who has been certified by the U.S. department of health and human services (DHHS), office of refugee resettlement (ORR), is eligible to the same extent as a refugee.

(1) The date of entry for a victim of trafficking is the date of certification by ORR (which appears in the body of the eligibility letter from the ORR).

(2) A victim of a severe form of trafficking:

(a) must have and present a certification of eligibility letter from ORR for adults or letter for children (similar to but not necessarily a certification letter) as proof of status; and

(b) is not required to provide any immigration documents, but may have such documents and may present such documents.

(3) Determining eligibility for a victim of trafficking must include a call to the trafficking verification line at 1-866-401-5510.

(4) The caseworker must inform ORR of the benefits for which the victim of trafficking has applied.

G. Quarters of coverage:

(1) SSA reports quarters of coverage through the quarters of coverage history system (QCHS).

(2) The number of qualifying quarters is determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, and is based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(a) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of eligibility.

(b) If eligibility of an alien is based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the caseworker shall determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(3) **Disputing quarters:** If a participant or applicant disputes the SSA determination of quarters of coverage, the participant may not participate based on having 40 qualifying quarters until a determination is made that the participant or applicant can be credited with 40 qualifying quarters. The participant or applicant may participate as a state-funded benefit group member, if otherwise eligible.

(4) **Federal means-tested benefit:** After December 31, 1996, a quarter in which an alien received any federal means-tested public benefit, as defined by the agency providing the benefit shall not be credited toward the 40-quarter total. A parent's or spouse's quarter is not creditable if the parent or spouse actually received any federal means-tested public benefit. If the alien earns the 40th quarter of coverage prior to applying for a federal means-tested public benefit in that same quarter, the caseworker shall allow that quarter toward the 40 qualifying quarters total.

H. Verification of citizenship/eligible alien status: U.S. citizenship is verified only when client statement of citizenship is inconsistent with statements made by the applicant or with other information on the application, previous applications, or other documented information known to HSD.

(1) **Questionable U.S. citizenship:** Any mandatory benefit group member whose U.S. citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained. The member whose citizenship is questionable shall have all of his resources and a pro rata share of income considered available to any remaining benefit group members.

(2) **Eligible alien status:** Verification of eligible alien status is mandatory at initial certification. Only those benefit group members identified as aliens with qualified and eligible alien status are eligible to participate in the NMW program.

(3) **Ineligible or questionable alien status:** Any household member identified as an ineligible alien, or whose alien status is questionable cannot participate in the NMW program.

I. Need for documentation:

(1) Benefit group members identified as aliens must present documentation, such as but not limited to, a letter, notice of eligibility, or identification card which clearly establishes that the alien has been granted legal status.

(2) A caseworker shall allow an alien a reasonable time to submit acceptable documentation of eligible alien status. A reasonable time shall be 10 days after the date the caseworker requests an acceptable document, or until the 30th day after application, whichever is longer.

(3) If verification of an applicant's eligible status is not provided by the deadline, the eligibility of the remaining benefit group members shall be determined. Verification of eligible alien status provided at a later date shall be treated as a reported change in benefit group membership.

(4) During the application process, if an individual has been determined to be a qualified alien and either the individual or HSD submits a request to a federal agency for documentation to verify eligible alien status, HSD must certify the individual in the TANF benefit group as a state-funded participant until a determination is made that the individual is eligible for TANF funded cash assistance.

(5) **Inability to obtain INS documentation:** If a benefit group indicates an inability to provide documentation of alien status for any mandatory member of the benefit group, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to contact INS when the alien does not provide any documentation from INS.

J. Failure to cooperate: If a benefit group or a benefit group member indicates an unwillingness to provide documentation of alien status for any member, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to get documentation.

K. Reporting undocumented (illegal) non-citizens:

(1) HSD shall inform the local DHS office only when an official determination is made that any mandatory member of a benefit group who is applying for and receiving benefits is present in the U.S. in violation of the INA. A determination that a non-citizen is in the US in violation of the INA is made when:

(a) the non-citizens unlawful presence is a finding of fact or conclusion of law that is made by HSD as part of a formal determination about the individuals eligibility; and

(b) HSD's finding is supported by a determination by DHS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the U.S. such as a final order of deportation.

(2) An non-citizen who resides in the US in violation of the INA shall be considered an ineligible benefit group member until there is a finding or conclusion of law through a formal determination process by the INS or EOIR.

(3) Illegal non-citizen status is considered reported when the caseworker enters relevant information about the non-citizen on the benefit group's computer file.

(4) A systematic alien verification for entitlements (SAVE) response showing no service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.

L. Income and resources of ineligible aliens: All the resources and a prorated share of income of an ineligible alien, or of an alien whose alien status is unverified, shall be considered in determining eligibility and the cash assistance benefit amount for the remaining eligible benefit group members.

[8.102.410.10 NMAC - Rp 8.102.410.10 NMAC, 07/01/2001; A, 07/01/2004; A, 11/15/2007; A, 12/01/2009; A, 06/01/2011]

8.102.410.11 RESIDENCE:

A. To be eligible for inclusion in a benefit group, the individual must be living in New Mexico (NM) and demonstrate an intention to stay. At application, the residency determination shall be made prior to the date cash assistance is authorized. Once established, NM residency continues until the individual takes action to end it.

B. Residence shall not be considered to exist if the person is just passing through or is present in NM for purposes such as vacation, family visits, medical care, temporary employment, or other similar short-term stays where 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, enrolling a child in school, renting a post office box, obtaining a state driver's license, joining a church or other local organization, obtaining or seeking a job in the state, registering to vote in the state, etc.

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

E. Assistance from another state: An individual receiving assistance from another state shall be considered a resident of that state, until that state is notified of the individual's intention to abandon residence. An individual who received TANF from another state shall be considered to be in receipt of concurrent assistance for that month, as set forth in 8.102.410.12 NMAC.

F. 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. After the temporary absence, the individual must intend to return to the state. An absence related to the following purposes shall be considered temporary:

(a) short-term visits with family or friends for 30 days or less;

(b) out-of-state stays for medical treatment;

(c) attendance at an out-of-state school, with returns to the state during vacations.

(2) A statement by a participant of intent to return to the state will be accepted, provided that the

participant does not take action in another state to establish permanent residence.

G. Residency abandonment: Residence shall be considered to have been abandoned when:

(1) an individual leaves the state and indicates that an intent to establish residence in the other state;

or

(2) an individual leaves the state for no specific purpose and with no clear intention to return;

(3) an individual leaves the state and applies for food, financial or medical assistance from another state, which makes residence in that state a condition of eligibility; or

(4) an individual has been absent from the state for a period of more than 30 days and has not notified the caseworker of the absence or of any intention to return.

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

[8.102.410.11 NMAC - Rp 8.102.410.11 NMAC, 07/01/2001; A, 11/15/2007]

8.102.410.12 NONCONCURRENT RECEIPT OF ASSISTANCE:

A. To be eligible for inclusion in a NMW benefit group, the individual cannot already be included in or receiving benefits from:

(1) another department cash assistance benefit group;

(2) an SSI grant;

(3) a tribal TANF program or BIA-GA program;

(4) a government-funded adoption subsidy program;

(5) a TANF program in another state; or

(6) foster care payments as defined in Title IV of the Social Security Act.

B. An individual may not be the payee for more than one NMW cash assistance payment.

C. Supplemental security income:

(1) **Ongoing SSI eligibility:** A person eligible for SSI on an ongoing basis is not eligible for NMW or refugee assistance benefits on the basis of concurrent receipt of assistance. The SSI recipient is not included in the benefit group for purposes of financial assistance eligibility and benefit calculation. The income, resources, and needs of the SSI recipient are excluded in determining benefit group eligibility and payment.

(2) **SSI applicants:** An individual receiving cash assistance benefits from the department may apply for and receive SSI benefits for the same months for which the department has already issued benefits. Cash assistance benefits issued by the department are considered in determining the amount of retroactive SSI benefits. NMW ineligibility or overpayments shall not be established for any month for which SSI issues a retroactive benefit. When verification 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.

D. Subsidized adoptions: Children in receipt of state or federal adoption subsidy payments are included as benefit group members, and their income is counted in determining eligibility and payment.

E. Other department programs: Non-concurrent receipt of assistance limitations apply to departmental programs authorized in 8.102 NMAC, 8.106 NMAC, 8.119 NMAC, tribal TANF programs, SSI, and payments for foster care under Title IV of the Social Security Act. SNAP, medicaid, LIHEAP and other similar programs are not considered concurrent assistance and shall not make an individual ineligible for cash assistance and tribal TANF programs.

[8.102.410.12 NMAC - Rp 8.102.410.12 NMAC, 07/01/2001; A, 11/15/2007; A, 07/01/2013]

8.102.410.13 WORK PROGRAMS: The NMW work program is designed to improve the participant's capacity to improve income and strengthen family support. If an individual who is required to meet work program requirements fails to do so, the benefit group may be subject to the payment sanctions described in 8.102.620.10 NMAC.

[8.102.410.13 NMAC - Rp 8.102.410.13 NMAC, 07/01/2001; A, 10/01/2001; A, 11/15/2007]

8.102.410.14 [RESERVED]

[8.102.410.14 NMAC - Rp 8.102.410.14 NMAC, 07/01/2001]

8.102.410.15 PROGRAM DISQUALIFICATIONS:

A. Dual state benefits: An individual who has been convicted of fraud for receiving TANF, food stamps, medicaid, or SSI in more than one state at the same time shall not be eligible for inclusion in the 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 cash assistance benefit group.

[8.102.410.15 NMAC - Rp 8.102.410.15 NMAC, 07/01/2001; A, 05/15/2002; A, 11/15/2007]

8.102.410.16 [RESERVED]

[8.102.410.16 NMAC - Rp 8.102.410.16 NMAC, 07/01/2001]

8.102.410.17 LIFETIME LIMITS:

A. NMW/TANF:

(1) NMW/TANF cash assistance shall not be provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime. The benefit group shall be ineligible if the benefit group contains at least one adult, minor head of household or spouse of the minor head of household who has received 60 or more months of NMW/TANF cash assistance, unless the lifetime limit has been waived pursuant to Subsection E of 8.102.410.17 NMAC.

(2) For purposes of determining the 60-month lifetime limit, the count of months of NMW/TANF cash assistance begins on July 1, 1997 and thereafter, and includes assistance received under PROGRESS, or the court-ordered AFDC program in effect until March 31, 1998, or NMW.

(3) Any month in which an adult, a minor head of household, or the spouse of a minor head of household, has received full, partial, prorated, or retroactive NMW/TANF cash assistance shall be considered a month of receipt and shall be counted towards the 60-month lifetime limit for the benefit group in which that individual resides.

(4) The count of months of NMW/TANF assistance shall include cash benefits, supportive services reimbursements, or other forms of benefits designed to meet a family's ongoing basic needs (for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). NMW/TANF cash assistance shall include supportive services such as transportation and childcare provided to a family who is unemployed.

(5) Receipt of TANF assistance from another state after July 1997, or from a tribal entity that does not meet the criteria at Subsection C of 8.102.410.17 NMAC is counted as a month of receipt of TANF assistance for purposes of the term limit regulation.

B. Non-countable assistance:

(1) The department shall not count a month of receipt of NMW/TANF cash assistance or services toward the 60-month lifetime limit if the participant was a minor who was not the head of household or the spouse of the head of household.

(2) Support services, transportation reimbursements, or child care assistance received by a benefit group with earned income shall not be considered as a month of NMW/TANF assistance against the 60-month term limit, as long as the benefit group does not also receive NMW/TANF cash assistance to meet ongoing basic needs.

(3) Assistance shall not be considered a month of NMW/TANF cash assistance if the assistance is a:

(a) non-recurrent short term benefit that will not extend beyond four months, is not intended to meet ongoing basic needs, and is designed to meet a specific crisis situation or episode of need;

(b) work subsidy to an employer to cover the cost of employee wages, benefits, supervision and training and does not use TANF funds;

(c) refundable earned income tax credit;

(d) contribution to or distribution from an individual development account;

(e) service such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, or other employment related services that do not provide basic income support; and

(f) transportation benefit provided under a job access or reverse commute project to an individual who is not receiving NMW/TANF cash assistance.

(4) Under federal law, TANF funds may be transferred into the social services block grant and the child care development block grant. Benefits provided to individuals from these transferred funds are no longer characterized as TANF funds and do not count against the lifetime limits.

C. Excluded from the term limit count: Any month in which an adult or minor head of household

receives NMW or tribal TANF cash assistance or services while residing in Indian country, as the term is defined in 18 U.S.C. subsection 1151, and where at least 50 percent of the adults are not working, shall not be counted toward the lifetime limit.

D. Extension of the term limit due to hardship: Up to twenty percent of the population of TANF participants to whom the term limit applies may be waived from the 60-month term limit based on hardship or being battered or subjected to extreme cruelty.

(1) An extension of NMW/TANF cash assistance shall not be granted to a benefit group prior to exhausting the 60-month lifetime limit.

(2) The term limit extension will end if the condition or situation allowing the extension ceases to exist.

E. Hardship extension types: For purposes of establishing a hardship and eligibility for an extension of NMW/TANF cash assistance, an individual to whom the lifetime limit applies must demonstrate through reliable medical, psychological or mental reports, social security administration (SSA) records, court orders, department records or police reports that the individual:

(1) is determined eligible for a limited work participation status due to one of the following qualifying conditions:

(a) an impairment, either temporarily or permanently, as determined by IRU in accordance with Paragraph (1) of Subsection C of 8.102.420 NMAC;

(b) is the sole provider of the care for an ill or incapacitated person;

(c) does not have the ability to be gainfully employed because the individual is affected by domestic violence;

(d) has been battered or subjected to extreme cruelty;

(2) has an application for supplemental security income (SSI) pending in the application or appeals process and:

(a) is currently granted a limited participation status because of a temporary or complete disability; or

(b) was granted a limited participation status because of a temporary or complete disability in the previous twenty-four months;

(3) has reached the age of 60 by the end of the last month of his or her term limit;

(4) is otherwise qualified as defined by the department.

F. Determining hardship and eligibility for an extension:

(1) The incapacity review unit shall make a determination of hardship based on a temporary or complete disability or being the sole provider of home care to an ill or disabled family member based on criteria set forth at 8.102.420.11, 8.102.420.12 and 8.102.420.13 NMAC.

(2) The incapacity review unit may determine contingency requirements or conditions for continued participation of the individual under the applicable hardship type(s).

(3) **Hardship based on domestic violence, battery, or extreme cruelty:** A certification that an individual cannot be gainfully employed due to domestic violence, or has been battered or subject to extreme cruelty shall be made by a trained domestic violence counselor and shall be part of the case record.

(a) Supporting documentation shall be provided to the department and made part of the individual's case record. For purposes of determining a hardship, an individual has been battered or subjected to extreme cruelty if the individual can demonstrate by reliable medical, psychological or mental reports, court orders, department records or police reports that the individual has been subjected to and currently is affected by:

(i) physical acts that result in physical injury;

(ii) sexual abuse;

(iii) being forced to engage in non-consensual sex acts;

(iv) threats or attempts at physical or sexual abuse;

(v) mental abuse; or

(vi) neglect or deprivation of medical care except when the deprivation is based by mutual consent on religious grounds.

(b) The incapacity review unit shall review the documentation provided to demonstrate a hardship type related to domestic violence, battery, or extreme cruelty, shall ensure that the documentation supports a finding of hardship, and shall determine review periods and contingency requirements if applicable.

(4) The department shall determine the eligibility of the individual for a hardship extension based on age or whether an application for SSI is pending or in the appeals process by reviewing department records or SSA

files.

G. Participating benefit group:

(1) A NMW benefit group in active status at the time the benefit group reaches the 60-month term limit may ask for an extension of NMW/TANF cash assistance under hardship provisions. The benefit group must provide supporting documentation by the 15th day of the 60th month. If otherwise eligible and a hardship type is determined, the benefit group shall be authorized cash assistance from the first day of the 61st month.

(2) A NMW benefit group whose certification period expires in the 60th month of the term limit may be recertified, if otherwise eligible, under hardship provisions, but must provide supporting documentation by the end of the benefit group's certification period.

H. Closed benefit group: A benefit group shall be required to file an application for NMW cash assistance based on hardship under the following conditions:

(1) a NMW benefit group in active status does not submit supporting documentation by the 15th day of the 60th month of receipt of cash assistance; or

(2) a NMW case closes upon reaching the term limit;

(3) a benefit group may file an application on the first day of the 61st month, or at any time after, and if eligible, benefits shall be approved effective the date of authorization or 30 days from the date of application, whichever is earlier.

I. Automatic extension of cash assistance: A NMW benefit group shall be automatically extended NMW/TANF cash assistance based on hardship when the benefit group member who has received 60 months of cash assistance is:

(1) an adult age 60 or over; or

(2) an adult or minor head of household with an application for SSI pending or in the appeals process; or based on verification in the case record that is not older than three months, the benefit group member is:

(3) granted a limited participation status due to a complete disability, either permanently or temporarily;

(4) granted a limited participation status due to being the sole provider of home care to an ill or disabled family member; or

(5) unable to be gainfully employed because the benefit group member has been battered or subjected to extreme cruelty, or affected by domestic violence; or

(6) is otherwise qualified as defined by the department.

[8.102.410.17 NMAC - Rp 8.102.410.17 NMAC, 07/01/2001, A, 01/01/2003, A, 05/15/2003; A, 11/15/2007; A, 12/01/2009; A, 04/01/2012]

8.102.410.18 REQUIREMENTS FOR TANF HARDSHIP EXTENSIONS:

A. Benefit group: NMW cash assistance regulations at 8.102 NMAC continue to apply to a NMW/TANF benefit group that receives a cash assistance based on a hardship determination. A benefit group may be sanctioned at the appropriate level in compliance with regulations at 8.102.620.10 NMAC when a benefit group member fails to comply with the requirements at set forth in at 8.102.410.17 NMAC and 8.102.410.18 NMAC.

B. Certification period: In most cases the certification period for the case will be set at six (6) months, beginning with the 61st month of cash assistance. The incapacity review unit may set the certification period for a benefit group that is shorter or longer than six months when the condition for the hardship type warrants such a determination.

C. Limited work participation status individuals:

(1) An individual granted an extension of the 60-month term limit due to a hardship determination shall be required to meet with the work program contractor. The individual shall be referred by the department to the work program contractor:

(a) no later than the first day of the 61st month for a case in active status in the 60th month; or

(b) by the end of the first month of the benefit group's hardship extension period for a benefit group whose certification period expires in the 60th month; or

(c) upon approval of a hardship extension period for a benefit group whose case is closed.

(2) An individual granted an extension of the 60-month time limit shall be required to comply with the limited work participation hours as determined by the IRU under hardship, including but not limited to, counseling; substance abuse treatment; speech or physical therapy, continuing or follow up medical treatment; keeping doctor's appointments; family counseling; or engaging in programs or activities to address the hardship type.

D. Other benefit group members: Any other individual included in the NMW benefit group must

comply with NMW compliance requirements set forth at 8.102.460 NMAC.

E. Case management:

(1) The individual and the work program contractor shall develop a case management plan that includes specific provisions for assessing barriers and determining actions or behaviors that will enhance the ability of the benefit group to become economically independent.

(2) Case management includes, but is not limited to:

(a) making referrals to appropriate agencies and providing any follow up necessary to obtain the assistance needed by the benefit group;

(b) completing an in-depth assessment and identifying individual and family barriers, such as but not limited to, learning disabilities, cognitive disabilities, substance abuse, criminal history, transportation issues, child care, school attendance for dependent children, limited English proficiency; or limited work ability;

(c) making appropriate referrals and seeking the assistance needed to address the barriers;

(d) identifying support services needs; or

(e) placement in appropriate and realistic work activities and follow up on work activity

progress.

[8.102.410.18 NMAC - N, 01/01/2003; A, 11/15/2007; A, 04/01/2012]

History of 8.102.410 NMAC:

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

ISD 221.9000, Registration for Manpower Services, Training and Employment Under the Work Incentive Program, 3/24/80.

ISD FA 310, Non-Financial Eligibility Criteria, 2/9/88.

ISD FA 350, Work Registration, 2/10/88.

ISD FA 350, JOBS, 6/25/90.

ISD 221.7000, Deprivation of Parental Support, 3/6/80.

ISD FA 320, Deprivation of Parental Support, 2/10/88.

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

8.102.410 NMAC Recipient Policies - General Recipient Requirements - Repealed, 07/01/01.