

TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 420 RECIPIENT POLICIES - SPECIAL RECIPIENT REQUIREMENTS

8.102.420.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.102.420.1 NMAC - Rp 8.102.420.1 NMAC, 07/01/2001]

8.102.420.2 SCOPE: The rule applies to the general public.
[8.102.420.2 NMAC - Rp 8.102.420.2 NMAC, 07/01/2001]

8.102.420.3 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.

[8.102.420.3 NMAC - Rp 8.102.420.3 NMAC, 07/01/2001; A, 11/15/2007]

8.102.420.4 DURATION: Permanent.
[8.102.420.4 NMAC - Rp 8.102.420.4 NMAC, 07/01/2001]

8.102.420.5 EFFECTIVE DATE: July 1, 2001.
[8.102.420.5 NMAC - Rp 8.102.420.5 NMAC, 07/01/2001]

8.102.420.6 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.

[8.102.420.6 NMAC - Rp 8.102.420.6 NMAC, 07/01/2001; A, 11/15/2007]

8.102.420.7 DEFINITIONS: [Reserved]
[8.102.420.7 NMAC - Rp 8.102.420.7 NMAC, 07/01/2001]

8.102.420.8 AGE - NMW: To be eligible for inclusion in the benefit group, a dependent child is a natural child, adopted child or stepchild or ward who is:

A. 17 years of age or younger;

B. 18 years of age and is enrolled in high school; or

C. between 18 and 22 years of age and is receiving special education services regulated by the New Mexico public education department (PED).

[8.102.420.8 NMAC - Rp 8.102.420.8 NMAC, 07/01/2001, A, 05/15/2003; A, 7/17/2006; A, 11/15/2007]

8.102.420.9 SCHOOL ATTENDANCE:

A. Requirement: A child of school age, as defined by PED, must attend school and have satisfactory attendance to meet the personal responsibility requirements of the parent, specified relative, or caretaker.

B. Student status:

(1) A dependent child of school age must be a full-time student at a certified educational facility or participating and fully complying with a home-schooling program approved by the New Mexico PED. School age means any dependent child who turns six years of age prior to September first and is under 18 years of age.

(2) A participant who is 18 years of age may be included in the NMW benefit group if the individual is enrolled in high school, or the high school equivalent level of vocational or technical training. Such an individual may be eligible to be included in the NMW benefit group until the end of the month in which the individual graduates or until the end of the month in which the individual turns 19 years of age, whichever occurs first.

(3) A student who is between 18 and 21 years of age may be included in the NMW benefit group as long as the student is enrolled in high school and is receiving special education services regulated by the PED. There must be a current valid individual education plan (IEP) for the student to verify the special education services.

(4) A dependent child age 17 years of age or younger who has graduated from high school or has obtained a GED shall be deemed to be a full-time student and to fulfill attendance requirements.

(5) A minor unmarried parent who does not have a child under the age of 12 weeks, must attend school full time to obtain a high school diploma or must participate in a GED program full-time or participate in approved alternate schooling unless the minor unmarried parent has already graduated from high school or obtained a GED.

C. School attendance:

(1) **Full time attendance:** A child is considered a full-time student based on the below criteria:

(a) School attendance is defined by the standards of the educational facility or program in which the child is enrolled including regularly scheduled vacations and breaks provided the child:

(i) has not been removed for non attendance; and

(ii) resumes attendance when classes start again;

(b) is currently enrolled in a home schooling programming approved by the New Mexico PED.

(2) **Verification:**

(a) Verification of school attendance must be provided at time application and certification for any:

(i) minor unmarried parent; and

(ii) dependent child 18 years of age and over.

(b) The statement of the parent or caretaker is acceptable verification of school attendance for all other dependent children, unless otherwise questionable.

D. Unsatisfactory attendance:

(1) A child shall be considered not meeting the school attendance requirement when the child:

(a) is not enrolled in school;

(b) has accumulated three unexcused absences in a grading period, but not on the same day;

(c) has dropped out of school during the current grading period; or

(d) has one or more unexcused absences during the time period covered by a current school attendance plan.

(2) **Reporting requirement:** Within 14 days of the date it becomes known, the parent, specified relative, or caretaker must report to ISD if a child is not enrolled in school, has accumulated three unexcused absences during the current grading period, or has dropped out of school. Failure to report that a child has not met school attendance requirements shall not result in a non-reporting sanction for the parent, or the specified relative or caretaker if included in the benefit group.

(3) **Failure to meet:** In the absence of good cause for failure to meet the school attendance requirements the conciliation process shall be initiated.

(a) **Conciliation process:** Prior to removing the child's needs from the benefit group's standard of need, the parent, specified relative or caretaker shall have a 10 working day conciliation period to address school non-attendance. The conciliation period is a 10 working day period affording an opportunity for the parent, child, and the school to develop a plan to ensure regular attendance by the child and comply with NMW requirements.

(i) Within 10 days of receipt of verification that a child has not met school attendance requirements, the caseworker shall take action to initiate a conciliation period by issuing a notice of action.

(ii) The benefit group shall have 10 working days from the date of issuance of the notice to provide a school attendance plan indicating the school's confirmation of satisfactory arrangements.

(iii) If a benefit group fails to provide a school attendance plan, a notice of adverse action shall be sent within five working days.

(iv) If the school confirms that satisfactory arrangements have been made to ensure regular attendance by the child, the child shall remain eligible.

(b) Benefit reduction:

(i) The child shall be removed from the benefit group effective the month following the month the notice of adverse action expires.

(ii) If there is one or more unexcused absence following successful submission of a school attendance plan (the school's confirmation of satisfactory arrangements), the caseworker shall remove the child from the benefit group effective the month following the month the notice of adverse action expires.

(c) **Case closure:** If the child is the only child included in the benefit group, the cash assistance case shall be subject to closure in the month following the notice of adverse action.

(4) **Good cause:** A child with unsatisfactory school attendance or enrollment shall be warranted good cause based on the following circumstances:

(a) periods of personal illness or convalescence;

(b) family emergencies, for a period not to exceed 30 days;

(c) participation in or attendance at cultural and religious activities as long as the child has parental consent; or

(d) a minor parent has a child under 12 weeks of age.

E. Regaining eligibility: Once a child has been removed from the benefit group due to failure to comply with school attendance requirements, the child can not be considered a member of any benefit group. Changes in school attendance must be reported by the parent/caretaker. Eligibility may be regained when:

(1) the child has attended school with no unexcused absences for the 30 days;

(2) circumstances of good cause apply as listed in Paragraph (4) of Subsection D; or

(3) during the summer months if the child is promoted, attending summer school or graduating.

[8.102.420.9 NMAC - Rp 8.102.420.9 NMAC, 07/01/2001, A, 05/15/2003; A, 11/15/2007; A, 02/27/2009]

8.102.420.10 [RESERVED]

8.102.420.11 NMW/TANF LIMITED WORK PARTICIPATION STATUS DETERMINATION PROCESS

A. Eligibility: To be eligible for a limited work participation status, a participant must meet at least one of the criteria below as verified by the department:

(1) Who is age 60 or older.

(2) A single parent, not living with the other parent of a child in the home, or caretaker relative with no spouse, with a child under the age of 12 months. A participant may be eligible for a limited work participation status using this qualification for no more than 12 months during the participant's lifetime.

(3) A single custodial parent caring for a child less than six years of age or who is a medically fragile child if the parent is unable to obtain child care for one or more of the following reasons and the children, youth and families department (CYFD) certifies as to the unavailability or unsuitability of child care:

(a) the unavailability of appropriate child care within a reasonable distance from the parent's home or work site; or

(b) the unavailability or unsuitability of appropriate and affordable formal child care by a relative or under other arrangements; or

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements;

(4) A participant who is a woman in her third trimester of pregnancy, or six weeks post partum.

(5) A participant whose personal circumstances preclude participation for a period not to exceed 30 consecutive days in a calendar year.

(6) A participant who demonstrates by reliable medical, psychological or mental reports, court orders, police reports, or personal affidavits (if no other evidence is available), that family violence or threat of family violence effectively bars the parent from employment.

(7) A participant who is completely impaired, either temporarily or permanently, as determined by

IRU.

(8) A participant may be entitled to the family violence option (FVO). This option allows for a parent in a domestic violence environment to be in a limited work participation status for the length of time certified by a trained domestic violence counselor. The certification shall indicate that the parent is in a domestic violence environment which makes them eligible for a limited work participation status.

(a) A participant's FVO limited work participation status shall be reviewed every six months and shall be determined by IRU based on the domestic violence counselor's certification.

(b) A participant who can continue to comply with work requirements as certified by a trained domestic violence counselor may be eligible for a limited work participation status for 24 weeks as described in 8.102.461.15 NMAC.

(9) A participant who is the sole provider of the care for an ill or incapacitated person. In order to meet this exception, the participant must show that the parent is the sole caretaker for a disabled person and must demonstrate that the participant cannot be out of the home for the number of hours necessary to meet standard work participation hours. The following apply to caretaker conditions in determining if the standard work participation rate applies or if a limited work participation rate will be granted:

(a) Only those care activities around which work program activities cannot be scheduled are taken into consideration.

(b) Food purchase and preparation activities, home maintenance chores, etc. are activities which may be scheduled and performed at time other than work program participation hours and are not taken into consideration when determining the standard work participation rate.

(c) A requirement to be on call for the medical emergencies of a medically fragile person is taken into consideration in determining the standard work participation rate for the participant.

(10) A participant may demonstrate good cause for the need for the limited work participation status. A good cause limited work participation status may exist and shall be determined by the department based on the participant's existing condition(s) to include any barriers identified during the NMW assessment process that impair an individual's ability to comply with the standard work participation rate or capacity to work.

B. Determinations in general: The NMW/TANF determination for a limited work participation status is made independently of and using differing standards from those used for determining OASDI or SSI eligibility, general assistance, workman's compensation, veteran's compensation or in Americans with Disability Act (ADA) determinations. Medical and social information (as appropriate) used by the department's reviewers may differ between determinations for each type of program, and a participant's condition may improve or worsen over time. As a result, a participant may be classified disabled by one program, but not by another. A disability determination made for another program or purpose is immaterial to the NMW/TANF limited work participation status determination. NMW/TANF determinations shall be made by applying NMW/TANF regulations and medical and non-medical information (as appropriate) known to the department. An applicant/participant may have more than one condition to qualify for limited work participation status. The limited work participation rate and work activities will reflect accommodations for all identified and approved qualifying conditions.

C. Medical and non-medical based determinations:

(1) **Medical conditions:** The IRU shall review all documentation and make determinations for participants requesting a limited work participation status or hardship extension due to a medical condition. To be eligible for a limited work participation status from or for a hardship extension, based on a medical condition, the department must find:

(a) evidence of a physical or mental impairment(s) supported by medical documentation; and

(b) determine that the severity of the impairment(s), as supported by appropriate medical documentation is sufficient to significantly restrict the participant's capacity to fulfill the standard work participation rate or capacity to work; requests for limited work participation status or hardship extension must be supported by medical documentation, but may be supplemented by non-medical documentation provided by the applicant as requested by the IRU.

(2) **Caretaker conditions:** The IRU shall review all documentation and make determinations for participants requesting a limited work participation status or hardship extension due to caretaker conditions. To be eligible for a limited work participation status or for a hardship extension, as a caretaker, the department must find the participant is:

(a) the sole provider for an ill or incapacitated family member living in the home who does not attend school on a full time basis; and

(b) providing necessary care to the extent that otherwise precludes the participant's capacity to

fulfill standard work participation rates or capacity to work.

(3) Non-medical conditions: The NMW service provider shall review documentation and make determinations regarding requests for limited work participation status for non-medical conditions. If a participant has a medical condition(s) in addition to non-medical conditions, the IRU shall review documentation and make determinations regarding requests for limited work participation status for medical and non-medical conditions. To be eligible for a limited work participation status from the NMW/TANF standard work participation rate based on conditions that are not medical in nature, the department must find the participant has one of the qualifications for a limited work participation status identified in Subsection A above.

D. Case development process: The caseworker shall be responsible for explaining hardship eligibility, work program requirements, standard work participation rates, and for referring all participants requesting a limited work participation status and hardship extensions to the IRU and NMW service provider, as appropriate. Participants must complete and return the requested information to request a limited work participation status within thirty days of the request.

(1) Limited work participation status requests for medical conditions: Requests for a limited work participation status based on a medical condition shall be sent to the IRU for determination and contain the following:

- (a)** a completed assessment that has been conducted by the NMW service provider within the six months prior to the date of the request for a change in status;
- (b)** a completed individual responsibility plan conducted by the NMW service provider;
- (c)** copies of relevant medical reports made within the last six months;
- (d)** a work participation agreement with the proposed activity(ies); and
- (e)** additional documents for evidence of other work related factors.

(2) Limited work participation status requests for non-medical conditions: The NMW service provider shall utilize the following documents to determine eligibility for the limited work participation status:

- (a)** a completed assessment that has been conducted by the NMW service provider within the six months prior to the date of the request for a change in status; and
- (b)** a completed individual responsibility plan conducted by the NMW service provider.

E. Provision of documentation: It shall be the responsibility of the participant requesting limited work participation status or hardship extension to provide recent (within the last six months) medical and non-medical information necessary to make a determination. Non-medical evidence will not be considered in the absence of medical documentation for requests based on medical conditions. A participant, who has not provided the necessary information as requested by the department, contractor or its designee to make a determination within 30 days of the request for the limited work participation status or hardship extension, shall be subject to meeting full participation requirements. Participants who fail to provide the requested documentation within 30 days of the request, but are also eligible for a limited work participation status on the basis of a non-medical condition, shall be referred to the NMW service provider to determine the limited work participation status based on the non-medical condition. The participant is not responsible for providing documentation produced by the department, its contractors, or its designee.

(1) Medical documents: Written paperwork must be submitted to verify the existence of physical, mental impairment(s) or both; as well as the extent of the caretaking needs. It is the responsibility of the participant to get all information to the IRU for review. Determinations are based on the written evidence provided in a timely manner to IRU.

(a) Source: Medical documents must be obtained from approved source(s), limited to: medical doctors, physician assistants, doctors of osteopathy or podiatry, ophthalmologists, psychiatrists or psychologists, state-licensed providers, and individuals that meet the minimum mental health professional qualifications set by their community mental health services employer.

(b) Department assistance: The department, contractor or its designee shall offer assistance to the participant to include obtaining medical documents or other reasonable accommodations as requested by the participant. If the department is assisting the participant with obtaining documentation or other accommodation, the participant is still responsible for providing accurate and timely information.

(c) Timeliness of report: The participant shall provide medical records from the past six months. Medical documents over six months old from the date of the request for the limited work participation status or hardship extension may be useful to support a pattern of recurring impairment, but must be accompanied by current medical documents.

(d) Independent medical review: The department may request additional documentation in

order to make a determination regarding a participant's request for limited work participation status. The IRU may request additional documentation in the form of an independent medical review of the participant's condition(s). If the participant is also a recipient of medicaid, the department may assist with a referral to a medicaid provider, as appropriate.

(2) **Non-medical information:** Non-medical information may not be used for medical condition determinations without the provision of medical documents. Non-medical information may be submitted to the IRU or the NMW service provider and will be considered if the source is public and private agencies, schools, participants and caregivers, social workers and employers, and other relevant and independent sources to assist in the determination of whether the barriers are of sufficient severity to restrict the participant's capacity to fulfill the standard work participation rate, or that the need to care for an individual are so great as to limit or exclude participation.

F. Case disposition:

(1) **Medical based conditions:** The IRU shall have sole responsibility for reviewing all medical documents. When making a determination regarding a participant's capacity to fulfill the standard work participation hours, the IRU will within 30 calendar days of receipt complete the following:

- (a) conduct a thorough review of the documentary evidence;
- (b) make a determination as to whether a medical condition or caretaking need is supported by the evidence provided by the participant;
- (c) determine the anticipated duration of the impairment;
- (d) adopt or propose participation activities based on the work participation agreement submitted with the participants request packet; and
- (e) establish the reduced limited work participation hours if a limited work participation status or hardship extension of the 60 month time limit is granted.

(2) **Non-medical based impairments:** The NMW service provider shall review all non-medical information and make a determination that a participant is eligible for a limited work participation status. The determination shall identify one of the criteria qualifying for a limited work participation status. The NMW service provider shall identify the non-medical barrier and establish the participation activity(ies) and the limited work participation rate to be included in the approved work participation agreement. All of the non-medical information is considered in assessing the participant's capacity to fulfill the standard work participation rate. Case disposition shall include:

- (a) a thorough review of documentary evidence;
- (b) a determination as to whether the claim of a non-medical impairment is supported; and
- (c) the anticipated duration of the impairment.

(3) **Duration of condition(s):** The duration of the condition shall be evaluated based on documentation provided and must be expected to last at least thirty days in order to grant a limited work participation status.

(4) **Evaluation of medical report(s):** Reports shall be reviewed by the IRU for completeness and detail sufficient to identify the caretaking needs, limiting effects of impairment(s), probable duration of the impairment(s), and capacity to perform work program participation standards.

(a) Anatomical and physiological reports shall be reviewed for a description of the medical history, clinical findings, laboratory findings, diagnosis, prescribed treatment and prognosis, and to identify the participant's ability to sit, stand, move, lift, carry, handle objects, hear, speak and travel.

(b) Psychological assessments shall be reviewed for a description of the participant's behavior, affect, orientation, capacity for appropriate decision-making, response to stress, cognitive function (awareness, memory and intellectual capacity), contact with reality and need for occupational, personal and social adjustment(s).

G. Notification: The department shall notify the participant regarding the disposition of their request for limited work participation status in compliance with the requirements of adequate notice and notice of adverse action, as applicable.

H. Re-evaluation of status: A participant's limited work participation status shall be re-evaluated on a periodic basis, as determined by the IRU or the NMW service provider, as appropriate. At the time of reevaluation, it shall be necessary to get an update of the medical or non-medical impairment, caretaking need, and any changes in other work-related factors. The IRU shall remain responsible for deciding whether a medical impairment or caretaking need still exists, and the date of the next re-evaluation for continued approval of limited work participation status. The NMW service provider shall remain responsible for deciding whether the non-medical impairment still exists and the date of the next evaluation for continued approval of limited work

participation status.

I. Determining the limited work participation rate: after a participant is approved for limited work participation status either at the initial determination or re-evaluation, the IRU or NMW may prescribe conditional work program activities and requirements designed to assist the participant to help accommodate and eliminate barriers. The participant may be assigned to core, non-core and other activities which may include, but not be limited to, one of the contingencies below:

- (1) follow treatment plans as prescribed by a physician or mental health provider;
- (2) seek and utilize available community based resources;
- (3) accept treatment as recommended by a physician or mental health provider;
- (4) pursue a referral for DVR, or other available services;
- (5) apply for SSI, if applicable; or
- (6) any other activity specific to the participant's circumstance and conditions.

J. Transition of currently waived participants to the limited work participation status.

(1) **Currently waived:** Participants who are waived on or before the effective date of this regulation shall be evaluated for a limited work participation status at their next recertification for TANF benefits or at the next waiver review, whichever is earlier.

(2) **Pending waiver determination:** Participants who are pending a waiver determination on or before the effective date of this regulation shall be considered for a waiver of the work participation status. They will be determined for a limited work participation status at their next recertification for ongoing TANF benefits or at the next waiver review, whichever is earlier.

[8.102.420.11 NMAC - Rp, 8.102.420.11 NMAC, 07/01/2001; A, 07/17/2006; A, 11/15/2007; A, 04/01/2012]

8.102.420.12 ASSESS CAPACITY FOR WORK

A. General: A medical or mental health condition that precludes a participant's capacity to fulfill the standard work participation rate or capacity to work shall be determined by evaluating the extent of the impairment and other work-related factors. A participant is eligible for a limited work participation status if there is a determination of impairment or condition by the IRU or NMW service provider, as appropriate.

B. Capacity to perform NMW program participation standards: If the participant is determined by IRU or the NMW service provider to have an impairment, the other work-related factors shall be considered. Although a participant may be determined to have some type of impairment, the existence of impairment does not necessarily result in a finding that the participant is incapable of fulfilling the standard work participation hours. A determination that a participant is a caretaker does not necessarily result in a finding that the need to care for an incapacitated or ill household family member is so great as to limit or exclude participation. Many participants with impairments are able to work and thus are not considered to have a medical condition requiring the granting of a limited work participation status according to the standards set forth in the NMW program.

(1) **Sedentary work:** Sedentary work involves lifting no more than ten pounds at a time and occasionally lifting or carrying articles like docket files, ledgers and small tools. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and sedentary standards are met.

(2) **Light work:** Light work involves lifting no more than twenty pounds at a time, with frequent lifting or carrying of objects weighing up to ten pounds. Even though the weight lifted may be very little, a job is placed in this category if it requires a good deal of walking or standing, or if it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities

(3) **Medium work:** Medium work involves lifting no more than 50 pounds at a time, with frequent lifting or carrying of objects weighing up to 25 pounds.

(4) **Heavy work:** Heavy work involves lifting no more than 100 pounds at a time, with frequent lifting or carrying of objects weighing up to 50 pounds.

(5) **Very heavy work:** Very heavy work involves lifting objects weighing more than 100 pounds at a time, with frequent lifting or carrying of objects weighing 50 pounds or more.

C. Psychological impairment: If psychological impairment is being assessed, a participant's mental ability to function at one of the above-mentioned levels shall be evaluated in the following areas:

(1) **Judgment:** A participant's ability to exercise appropriate decision-making processes in a work situation consistent with the participant's abilities.

(2) **Stress reaction:** Participant's ability to handle stress consistent with the level of employment.

(3) **Cognitive function:** Participant's awareness, memory, intellectual capacity and other cognitive functions.

D. Capacity for gainful employment: A participant's verified employment status shall be taken into consideration in determining impairment based on the type, nature, and duration of employment. Impairment may still be determined where the participant is employed minimally or for rehabilitative purposes.

(1) **Minimal employment:** An individual who is minimally employed may still be considered impaired if the individual cannot reasonably be expected to be self-supporting by at least the standard of need for the size of the benefit group.

(2) **Rehabilitative employment:** Work made available to an individual through the interest or compassion of others, or to rehabilitate an individual (as in a sheltered workshop), but which would not ordinarily exist on the open labor market, shall not be considered employment in an impairment determination.

E. Other work-related factors: Impairments together with other work-related factors may be considered to establish the participant's capacity to perform basic work program participation standards and engage in gainful employment. While these factors may present an impediment to obtaining employment, they are problems which can be overcome through work program participation. Where such impediments exist, the participant shall be expected to participate in activities which will overcome these barriers. Other work-related factors include but are not limited to the following:

(1) **Language barriers:** A participant's ability to speak, read, and write English.

(2) **Educational level:**

(a) **Illiteracy:** Inability to read or write English. Illiterate individuals are considered suitable for the general labor work force.

(b) **Marginal:** Eight years of education or less. Marginally-educated individuals are considered suitable for the semi-skilled work force.

(c) **Limited:** Lack of a high school diploma or GED, but more than eight years of education. Individuals with limited education are considered suitable for the semi-skilled work force.

(d) **High school, GED and above:** Indicates an individual's ability to compete in all levels of the job market.

(e) **Training program:** Completion of training in a particular field of employment may offset limited education in some instances.

(3) **Job experience:** Experience in a job field can overcome a lack of education, training or both. Jobs held in the last ten years shall be considered. Work experience shall be evaluated based on the type of work previously performed, the length of employment, and the potential for transferring the experience to other types of employment. Inability to continue working in one's prior field of work does not constitute a disability. Job experience is classified in the following categories.

(a) **General labor:** Does not require the ability to read or write.

(b) **Semi-skilled labor:** Requires a minimal ability to read, write and do simple calculations.

(c) **Skilled labor:** Ability to do work in which the ability to read, write and do calculations of a complex nature is needed. Specialized training in the area is also considered.

(4) **Appearance:** An individual's appearance is generally not the sole reason for an impairment determination. On rare occasions, impairment is disfiguring and may interfere with employment.

(5) **Age:** Age may affect participants with impairments. The older an individual is, generally, the harder it is for the person to overcome or recover from impairment. A participant's age may be considered when determining the extent of impairment and the support needed to assist a participant.

F. WPA following IRU determination of limited work participation status. After the IRU or NMW service provider, as appropriate, makes a determination to either grant or deny a request for a limited work participation status, the participant must act in accordance with the paragraphs below to ensure they are in compliance .

(1) **Limited work participation status granted and adoption of the WPA:** Upon approval for the limited work participation status, the participant shall continue to participate in the assigned core or non-core activities or contingencies identified on the WPA submitted to IRU for determination. The WPA shall be considered finalized and the participant shall follow the WPA until the next evaluation date determined by the IRU or NMW service provider.

(2) **Limited work participation status granted and modification of the WPA:** If the participant is approved for a limited work participation status, but the IRU did not accept the WPA, the participant and the NMW service provider shall meet no later than 15 days following date of the limited work participation status approval to

modify the WPA in accordance with the determination of the IRU. The modification will take into consideration the participant's impairment(s) and provide a limited work participation rate and suggested core and non-core work activities.

(3) Limited work participation status denial: If the IRU or NMW service provider, as appropriate, denies the participant's request for limited work participation status, the participant is required to develop a WPA with the NMW service provider no later than 15 days following the date of denial by the IRU or the NMW service provider. Failure to develop a WPA may be considered non-compliance in accordance with 8.102.460 NMAC. [8.102.420.12 NMAC - Rp, 8.102.420.12 NMAC, 07/01/2001; A, 07/17/2006; A, 11/15/2007; A, 04/01/2012]

8.102.420.13 [RESERVED]

[8.102.420.13 NMAC - Rp, 8.102.420.13 NMAC, 07/01/2001; A, 07/17/2006; A, 11/15/2007; Repealed, 04/01/2012]

8.102.420.14 CHILD SUPPORT:

A. Assignment: By state statute, Section 27-2-28(F), NMSA 1978, any participant who signs an application automatically assigns the participant's child support rights to the department. The assignment shall be made with respect to the child for whom NMW is provided and shall be valid as long as the participant receives NMW payments on the child's behalf. The assignment shall also include any spousal support for which the applicant is or may become eligible.

B. Cooperation:

(1) The adult responsible for each child included in the benefit group must cooperate with the child support enforcement division (CSED) in obtaining child support for any dependent child included in the NMW benefit group. Failure to do so will result in payment sanctions. The adult shall be required to cooperate regardless of whether the adult is included in the benefit group.

(2) Failure to cooperate shall result in the personal ineligibility of the participant refusing to cooperate and in a payment sanction against the benefit group, as described in 8.102.620.10 NMAC.

(3) The determination as to whether the participant has cooperated with CSED shall be made by CSED based on CSED requirements. The cooperation requirement may be partially or fully waived by CSED upon demonstration of good cause by the specified relative as indicated in Subsection E of 8.102.420.14 NMAC.

(4) The caretaker relative must transmit to CSED any child support, spousal or medical support payment which the caretaker relative receives directly.

C. Determining that cooperation exists: A caretaker relative who, on the application and certification forms, indicates a willingness to cooperate and who provides basic information determined by CSED as necessary to establish and pursue support shall be considered to have met the cooperation requirement until such time as CSED reports to the caseworker that the participant is failing to cooperate.

D. Action upon receiving notice of noncompliance: On notification by CSED of failure to cooperate, the caseworker shall take immediate action to issue a conciliation notice or to impose a noncompliance sanction.

E. Good cause:

(1) In some situations, it is not in the best interests of the child or parent to pursue support or to require that the caretaker relative cooperate with CSED in pursuing such support. Caretaker relatives therefore must be:

- (a)** notified that the requirement to cooperate may be waived;
- (b)** informed of the requirements involved in the waiver; and
- (c)** given an opportunity to request a waiver that would exempt them from the cooperation

requirement.

(2) If a caretaker relative requests a waiver of the cooperation requirement, assistance shall not be delayed pending determination of good cause, nor may enforcement of support begin or continue while the waiver of the requirement is under consideration. An applicant who makes a waiver request shall not be included in the benefit group until the necessary corroborative information and documents are provided to ISD.

(3) Granting a good cause exemption: The decision whether to grant a good cause exemption shall be made according to the following methods.

(a) Domestic violence exemption: Exemption status shall be reviewed based on the following criteria.

- (i)** The New Mexico family violence option in the NM TANF state plan allows for

exemption from cooperation with CSED requirements due to a domestic violence environment. The ISD caseworker shall exempt a participant from cooperation requirements with CSED where a trained domestic violence counselor has certified that cooperation would make it more difficult to escape the domestic violence or would unfairly penalize the participant in light of current experiences.

(ii) CSED shall exempt a participant from cooperation requirements with CSED when the participant has demonstrated by reliable medical, psychological or mental reports, court orders or police reports that they are subject to or at risk to domestic violence.

(iii) Upon approval of exemption the caseworker shall submit a memo regarding exemption status to CSED and ISD central office.

(b) **Other good cause exemptions:** All other good cause exemptions, including but not limited to and exemption due to a domestic violence environment that is not certified by a trained domestic violence counselor, from cooperation with CSED requirements shall be made by the director of the CSED or designee.

(4) Notification:

(a) **Approval:** The caseworker shall send a written notice to the client whether the waiver has been granted and when it will be reviewed. The letter shall also tell the client whether CSED has determined that support can be pursued without danger or risk to the client or child.

(b) **Denial:** If CSED decides that good cause does not exist, the caseworker shall notify the client that the request has been denied and that the client is expected to cooperate fully in pursuing support, within 10 working days of the day the notice was issued. The notification shall also inform the client that a client has 60 days in which to request an administrative hearing, but that the client is expected to begin cooperating within 10 days after the date of the letter.

[8.102.420.14 NMAC - Rp 8.102.420.14 NMAC, 07/01/2001; A, 11/15/2007]

8.102.420.15 [RESERVED]

[8.102.420.15 NMAC - Rp 8.102.420.15 NMAC, 07/01/2001; Repealed, 7/17/2006]

8.102.420.16 SSI STATUS: Any individual who is potentially eligible for SSI on the basis of either age or disability must apply for and accept SSI. An individual receiving SSI, or who would be receiving SSI except for recovery of an overpayment, is not eligible to be included in an NMW, or an EWP benefit group.

[8.102.420.16 NMAC - Rp 8.102.420.16 NMAC, 07/01/2001; A, 7/17/2006]

8.102.420.17 [RESERVED]

[8.102.420.17 NMAC - Rp 8.102.420.17 NMAC, 07/01/2001; Repealed, 7/17/2006]

History of 8.102.420 NMAC:

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

ISD 223.3000, Good Cause for not Cooperating in the Pursuit of Child Support, 3-28-80.

ISD FA 330, Child Support, 2/10/88.

ISD FA 340, GA Disability, 2/10/88.

ISD FA 340, GA Disability, 8/30/94.

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

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

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

ISD FA 850, State Supplement for Residential Care, 2/10/88.

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

8.102.420 NMAC Recipient Policies - Special Recipient Requirements - Repealed 07/01/01.