

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS**  
**PART 420 RECIPIENT POLICIES - REQUIREMENTS FOR DETERMINING DISABILITY**

**8.106.420.1 ISSUING AGENCY:** New Mexico Human Services Department.  
[8.106.420.1 NMAC - Rp, 8.106.420.1 NMAC, 12/01/2009]

**8.106.420.2 SCOPE:** The rule applies to the general public.  
[8.106.420.2 NMAC - Rp, 8.106.420.2 NMAC, 12/01/2009]

**8.106.420.3 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.  
[8.106.420.3 NMAC - Rp, 8.106.420.3 NMAC, 12/01/2009]

**8.106.420.4 DURATION:** Permanent.  
[8.106.420.4 NMAC - Rp, 8.106.420.4 NMAC, 12/01/2009]

**8.106.420.5 EFFECTIVE DATE:** December 1, 2009, unless a later date is cited at the end of a section.  
[8.106.420.5 NMAC - Rp, 8.106.420.5 NMAC, 12/01/2009]

**8.106.420.6 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.  
[8.106.420.6 NMAC - Rp, 8.106.420.6 NMAC, 12/01/2009]

**8.106.420.7 DEFINITIONS:** [Reserved]

**8.106.420.8 DISABILITY DETERMINATION PROCESS**

**A. Disability determination:** The department must find:  
(1) medical evidence of physical or mental impairment(s), and  
(2) medical and non-medical evidence to support that the severity of the impairment(s) is sufficient to significantly restrict the applicant's capacity to perform basic work-related activities or prevent engagement in gainful employment; or  
(3) that, absent the above findings, an unsubstantiated statement of impairment or inability to work shall not be adequate to establish disability.

**B. Case development process:**  
(1) all eligibility factors must be met prior to determining disability;  
(2) complete a medical/social summary describing the applicant's health history; appearance, work and personal situation;  
(3) assist, if appropriate, the applicant with obtaining documentary evidence;  
(4) schedule, if appropriate, appointments for the applicant; and  
(5) determine the need for additional documents for evidence.

**C.** The department may use the following alternative methodology to determine disability for set and variable term general assistance.

(1) **Documentation requirements:**  
(a) The medical information must be documented on the department's standardized and approved medical release/physician's statement or may be documented on a physician's statement that includes all the information required to make a disability determination.

(b) The medical information used to substantiate impairment and finding of disability must include, but shall not be limited to:

- (i) a record or narrative report resulting from examinations or diagnostic procedures;
- (ii) a statement of the impairment;
- (iii) a projected time period of the length of the disability; and
- (iv) certification that the impairment precludes employment within the individual's

capacity.

(2) **Duration of an impairment:** The duration of the impairment shall be evaluated by the department based on medical documentation.

(a) An impairment substantiated by medical documentation that precludes the individual's capacity to engage in gainful employment that is expected to last at least thirty days from the date of disability and for less than eight months shall be eligible for a set term certification.

(b) An impairment substantiated by medical documentation that precludes the individual's capacity to engage in gainful employment that is expected to last at least thirty days from the date of disability and for an indefinite period exceeding 6 months shall be eligible for a period of no more than six months without substantiating medical evidence consistent with Subsection D of 8.106.420.8 below.

(3) The alternative methodology shall be used no more than once in any 12 month period.

**D. Development of evidence:** The applicant is responsible to obtain and provide evidence of the nature and severity of the impairment(s) as well as the capacity to work. Non-medical evidence will not be considered in the absence of medical evidence.

(1) **Medical evidence:** Medical evidence must be submitted and considered to verify the existence of physical, mental impairment(s) or both.

(a) **Source:** Medical evidence 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) **Timeliness of report:** Medical evidence over six months old from the date of application may be useful to support a pattern of recurring impairment, but should be accompanied by current medical evidence.

(c) **Department assistance:**

(i) **Requests for reports:** When necessary the department shall assist in obtaining medical evidence by making no more than two written requests per medical provider, for copies of relevant existing medical reports.

(ii) **Examinations:** The department shall schedule and, based on available funding, pay for a medical examination or other appropriate procedure(s) for purposes of obtaining current medical evidence. The applicant shall first be referred to the individual's own physician or provider.

(2) **Non-medical evidence:** Non-medical evidence may be submitted and considered from public and private agencies, schools, parents and caregivers, social workers and employers, and other sources to assist in the determination of whether the impairment(s) are of sufficient severity to restrict the applicant's capacity to perform basic work-related activities or prevent engagement in gainful employment.

**E. Case disposition:** Once an impairment is established, all the medical and non-medical evidence is considered in assessing impairment severity to determine disability. Case disposition shall include:

- (1) a thorough review of documentary evidence;
- (2) a determination as to whether disability is supported;
- (3) the anticipated duration of the impairment;
- (4) specific contingency requirements; and
- (5) the certification review period for disability review.

**F. Certification period:** The certification period is primarily based on the prognosis and anticipated duration of the impairment(s), as established by medical evidence.

(1) **Set term:** A set term is assigned where medical evidence supports that a significant improvement in the impairment(s) is anticipated or probable in the six months following application. A set term certification shall not exceed eight months in total duration. A new application may be submitted for consideration of a new term.

(2) **Variable term:** A variable term is assigned where medical evidence supports that a significant change in the impairment(s) is not anticipated or probable in the six months following application.

**G. Contingencies:** Eligibility for benefits may be made contingent upon satisfactory completion of written condition(s) that may include, but are not limited to:

- (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.

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

#### **8.106.420.9 VERIFYING IMPAIRMENT(S)**

**A. General:** The nature of the physical and mental impairment(s) must be verified by a medical or mental health diagnosis from an acceptable medical source and supported by current medical evidence based on acceptable clinical and laboratory diagnostic techniques.

**B. Evaluation of report(s):** Reports shall be reviewed for completeness and detail sufficient to identify the limiting effects of impairment(s), probable duration of the impairment(s), and capacity to perform work-related activities.

(1) 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 applicant's ability to sit, stand, move, lift, carry, handle objects, hear, speak and travel.

(2) Psychological assessments shall be reviewed for a description of the applicant'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).

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

#### **8.106.420.10 ASSESS CAPACITY FOR WORK**

**A. General:** The applicant's capacity for work shall be determined by evaluating the severity of the impairment(s) and by applicant's work-related factors with regarding to the impact on the applicant's ability to perform basic work-related activities and to engage in gainful employment.

##### **B. Capacity to perform basic work-related activities**

(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. Capacity for gainful employment:** An applicant's verified employment status shall be taken into consideration in determining disability based on the type, nature, and duration of employment. Disability may still be determined where the applicant is employed minimally or for rehabilitative purposes.

(1) **Minimal employment:** An individual who is minimally employed may still be considered disabled 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 a disability determination.

**D. Other work-related factors:** Other work-related factors may be considered to establish the applicant's capacity to perform basic work-related activities and engage in gainful employment, including but not limited to the following.

(1) **Language barriers:** An applicant's ability to speak, read and write in 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 to 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 may not be heavily weighted in a disability determination. On rare occasions, an impairment is disfiguring and may interfere with employment.

(5) **Age:** The older an individual is, the less potential there is for overcoming an impairment. Recovery is more difficult and, often, total recovery may not be achieved. There may be very little chance that the individual will ever return to functioning effectively in his or her previous job duties.

[8.106.420.10 NMAC - Rp, 8.106.420.13 NMAC, 12/01/2009]

#### **HISTORY OF 8.106.420 NMAC:**

##### **History of Repealed Material:**

8.106.420 NMAC, Recipient Policies - Requirements for Determining Disability, filed 06/17/2004 - Repealed 12/01/2009]