

TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 510 ELIGIBILITY POLICY - RESOURCES/PROPERTY

8.106.510.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.106.510.1 NMAC - N, 07/01/2004]

8.106.510.2 SCOPE: The rule applies to the general public.
[8.106.510.2 NMAC - N, 07/01/2004]

8.106.510.3 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.
[8.106.510.3 NMAC - N, 07/01/2004]

8.106.510.4 DURATION: Permanent.
[8.106.510.4 NMAC - N, 07/01/2004]

8.106.510.5 EFFECTIVE DATE: July 1, 2004, unless a later date is cited at the end of a section.
[8.106.510.5 NMAC - N, 07/01/2004]

8.106.510.6 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.

[8.106.510.6 NMAC - N, 07/01/2004]

8.106.510.7 DEFINITIONS: [Reserved]

[8.106.510.7 NMAC - N, 07/01/2004]

8.106.510.8 RESOURCE STANDARDS: To be eligible, the value of all countable personal and real property, belonging to or considered as belonging to or considered available to the benefit group, shall not exceed the liquid or non-liquid resource limits. Total resources that exceed the liquid or non-liquid resource limit result in benefit group ineligibility unless the nature of the property or an express condition of its ownership prohibits its transfer. Resources are evaluated based upon their equity value.

A. Liquid resources: The value of countable liquid resources shall not exceed \$1,500.

B. Non-liquid resources: The value of countable non-liquid resources shall not exceed \$2,000.

[8.106.510.8 NMAC - N, 07/01/2004]

8.106.510.9 COUNTABLE RESOURCES:

A. Non-liquid real property: means land and the structures (including mobile homes) and improvements affixed to it.

(1) The value of countable real property owned by or considered available to the benefit group, shall be considered in determining whether non-liquid resources exceed \$2,000.

(2) Grazing permits are considered to be real property.

B. Personal property (liquid or non-liquid): means all property, other than real property, and includes such possessions as bank accounts, cash (other than the current month's income), motor vehicles, livestock, tools, equipment and rights to receive money, such as stocks, bonds, contract rights, insurance policies, etc. The types of personal property that must be counted in determining whether the benefit group's resources exceed the resource limits include, but are not limited to:

- (1) **Life insurance:**
 - (a) Life insurance policies owned by a member of the benefit group shall be considered as a resource that may be converted into cash. The cash value of the life insurance policy shall be counted toward the liquid resource limit.
 - (b) Information about lapsed insurance shall be obtained , since many lapsed policies have a cash value.
- (2) **Cash, bank accounts and other readily negotiable assets:**
 - (a) Readily available cash, such as cash on hand or money in a bank account and other readily negotiable assets, shall be considered as a liquid resource and shall be counted toward the liquid resource limit.
 - (b) "Other readily negotiable assets" include stocks, bonds, negotiable notes, purchase contracts and other similar assets. For purposes of cash assistance eligibility, the value of such assets is their current market value.
- (3) **Motor vehicles, equipment and tools:**
 - (a) The equity value of all motor vehicles, equipment and tools is countable, unless specifically excluded.
 - (b) The value of motor vehicles, equipment and tools, except as set forth in Paragraph 1 of Subsection B of 8.106.510.10 NMAC below, is subject to the non-liquid resource test.
- (4) **Asset conversion:**
 - (a) Money received from one-time-only or sporadic sales of real or personal property, such as crops, rugs, jewelry, etc., shall be considered an asset, rather than income, provided that the property is not sold or transferred in connection with a business or self-employment activity.
 - (b) Assets converted into money are subject to the \$1,500 liquid assets limitation, regardless of whether they were fully or partially exempt prior to conversion.
- (5) **Lump sum payments:** Payments of a one-time nature, such as retroactive monthly payments, payments in the nature of a windfall, personal injury and worker's compensation awards, gambling winnings, etc., shall be considered a resource subject to the liquid resource limit.
[8.106.510.9 NMAC - N, 07/01/2004]

8.106.510.10 RESOURCE EXCLUSIONS:

A. Real property:

- (1) **The home:** The value of the benefit group's home is not considered in determining eligibility. The "home" is the dwelling place occupied by the benefit group. The home is considered to be occupied by the benefit group during a temporary absence, when there is a definite plan to return to the home and no one else is occupying it.
- (2) "Home" includes, in addition to the residence building and the land upon which it is constructed, the following:
 - (a) a reasonable amount of land within reasonable proximity to the residence building, if that land is currently used by and useful to the client;
 - (b) outbuildings within reasonable proximity to the residence building, such as barn, garage and well, if the well is a principal source of water;
 - (c) buildings used for rental purposes, if located on land contiguous to the land upon which the residence building is constructed, and if these buildings cannot be divided from the residence land and sold separately;
 - (d) grazing permits currently being used to graze livestock owned by the client; and
 - (e) furniture, equipment and household goods necessary for the operation and maintenance of the home.

(3) **Other real property - burial plots:** One burial plot for each person included in the benefit group shall be excluded; a burial plot shall consist of the space needed to bury a member of the immediate family.

B. Exempt personal property: The value of the following items of personal property shall not be considered in determining eligibility for GA cash assistance:

- (1) **Vehicles:** all vehicles used by the benefit group for transporting individuals to or from employment, for daily living activities, or for the transportation of goods shall be excluded from consideration as a resource subject to the non-liquid resource limit; recreational vehicles, such as boats or motor homes, shall not be excluded;
- (2) **Specially-equipped vehicles:** a vehicle owned by the benefit group that is specially equipped for

the handicapped shall not be considered in the determination of the liquid or non-liquid resource limit.

C. Exempt income: Any income that is exempt under income provisions is also exempt from consideration as a resource. To maintain its exempt status, exempt income that is accumulated must be kept separate from non-exempt savings.

D. Individual development account (IDA): Subject to the limitations set forth below, funds in an IDA are exempt from consideration as resources in determining benefit group eligibility. To be exempt from consideration, the IDA must be designated for a qualified purpose.

(1) Post-secondary education of a dependent child included in the benefit group: In order to be considered used for a qualified purpose, the post-secondary education funds must be paid from an IDA directly to an eligible education institution. For purposes of this regulation, post-secondary education expenses include:

(a) tuition and fees required for the enrollment or attendance of a student at an eligible education institution. An eligible institution is an institution described in section 481(a)(1) or 1201(a) of the Higher Education Act of 1965 (20 USC 1088(a)(1) or 1141(a)); an area vocational education school (as defined in section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) located in any state; or

(b) books, fees, supplies and equipment required for courses of instruction at an eligible educational institution.

(2) Purchase of a principal residence for a first-time home buyer: The purpose of the IDA is to assist a qualified first-time home buyer to accumulate part of the cash necessary to initiate purchase of the individual's first home.

(a) Only IDA's established by qualified first-time home buyers shall be disregarded; a qualified first-time home buyer is one who has never had an ownership interest in a principal residence.

(b) The IDA may be used only for the purchase of a qualified principal residence; a qualified principal residence is one which qualifies as the principal home under subsection 1034 the federal internal revenue code, if the costs for which do not exceed 100% of the average area purchase price applicable to such residence, determined in accordance with paragraphs (2) and (3) of subsection 143(e) of the internal revenue code.

(c) No more than \$1,500 may be accumulated in an IDA for first-time home purchase. Any amount in excess of \$1,500 is considered in determining whether the benefit group meets the cash resource limit.

(3) Business capitalization: In order to be considered used for a qualified purpose, the funds have to be paid directly from the IDA to a business capitalization account established in a federally insured financial institution that is restricted to use solely for qualified business capitalization expenses. A qualified business means any business that does not contravene any law or public policy. Qualified business capitalization expenses include capital, plant, equipment, working capital and inventory expenses. To be a qualified business, there must be a business plan which:

(a) is approved by a financial institution or a nonprofit loan fund having demonstrated fiduciary integrity;

(b) includes a description of services or goods to be sold, a marketing plan and projected financial statements; and

(c) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(4) To be disregarded, the IDA must meet the following requirements:

(a) the benefit group member must first establish and maintain a savings account with a balance of \$1,500;

(b) the benefit group member must establish the IDA for one of the three purposes described above.

(c) in order for such accounts to be excludable, the IDA must be a trust created or organized in the United States, with trust language restricting use of account funds to the purposes as designated in this section; and

(d) the IDA must be funded exclusively with income earned by a benefit group member or by contributions made by a non-benefit group member.

(5) Funds withdrawn from the account and used for any purpose other than those specified under this section will cause the account to lose its status as an excluded resource, starting with the month in which the funds are withdrawn from the IDA account.

E. Funeral agreements: The equity value of funeral agreements owned by a benefit group member shall be excluded from consideration as a resource. Funeral agreements include any arrangement under which

prepaid funeral services are provided or cash benefits that are intended to pay for funeral services are paid upon the individual's death. Such agreements include contracts with funeral homes, life or burial insurance, and trust or escrow accounts in financial institutions or banks, provided that the trust or escrow accounts contain provisions making the funds payable only upon the death of a named individual. There is no limit on the amount of the funeral agreement that can be disregarded.

F. Contingent or unliquidated claims: A "contingent or unliquidated claim" is an undetermined right of an individual to receive, at some future time, a resource such as an interest in an unprobated estate or damages or compensation resulting from an accident or injury. Such a claim is not considered a resource if the individual (either applicant or recipient) can demonstrate that an attorney has been consulted, or that under the circumstances, it is reasonable not to have consulted an attorney, and that the individual is making every reasonable effort to prosecute the claim or to proceed with the probate. If the individual can demonstrate that his or her share in an unprobated estate would be less than the expense of the proceedings to probate the estate, the value is not considered a resource.

G. Work-related equipment exclusion: Work-related equipment, such as the tools of a trades person or the machinery of a farmer, which are essential to the employment or self-employment of a benefit group member, are excluded, in an amount not to exceed \$1,000 per individual, and remain excludable if the trades person becomes disabled. Farm machinery retains this exclusion for one year if the farmer ends self-employment.

H. Livestock: The value of livestock is an excluded non-liquid resource.

I. Federally excluded resources: Certain resources are excluded pursuant to federal law. For a listing of federally-excluded resources, see 8.139.527 NMAC.
[8.106.510.10 NMAC - N, 07/01/2004]

8.106.510.11 RESOURCE AVAILABILITY:

A. Availability: Resources that are actually available or that are considered to be available to the benefit group are considered in determining eligibility for assistance.

(1) The resource amount used for determination of eligibility for an applicant benefit group shall be based upon the status of the resources on the date of the application interview.

(2) The resource amount used for determination of eligibility for an active case shall be made based on the amount available in the month following the month of expiration of a notice of adverse action.

B. Potentially available resources: The benefit group is required to take all appropriate steps to make available to itself any liquid or non-liquid resource to which the group may be entitled but whose value is not currently considered available, e.g., an inheritance from an unprobated estate. The fact that specific property is not readily marketable on the client's terms is not a condition prohibiting transfer. The current value of property, which must be partitioned in order to be accessible, is not considered available if the net value (after estimated costs of partition and other closing costs) is less than the resource limit. If the amount likely to be derived from the applicant's/recipient's share of the property exceeds the resource limit, the applicant/recipient will be required to initiate attempts to obtain the applicant's/recipient's share of the estate.

C. Resources of benefit group members: A countable liquid or non-liquid resource that belongs to any member of the benefit group is considered available to the entire benefit group.

D. SSI recipients and other non-members: The property of individuals receiving SSI or that of other non-members shall not be considered available, regardless of relationship to benefit group members, except as indicated in Subsection F below.

E. Alien sponsor: The gross income and resources belonging to an individual who is the sponsor of an alien included in the cash assistance benefit group, and the income belonging to the sponsor's spouse, shall be counted in its entirety to determine the eligibility and payment amount if the sponsor has executed an affidavit of support pursuant to subsection 213-A of the Immigration and Nationality Act. The income and resources of the alien sponsor and spouse shall be counted until the sponsored alien achieves citizenship or can be credited with 40 qualifying quarters under title II of the federal Social Security Act.

F. Resources belonging to the unrelated caretaker: The liquid resources owned by an unrelated caretaker of a minor dependent child living in the home shall not be considered available to the child, unless the unrelated caretaker chooses to be included in the GA benefit group.

G. Jointly-owned resources: Resources owned jointly by the benefit group and any individual who is not a mandatory benefit group member shall be considered available in their entirety to the benefit group, unless it can be demonstrated by an applicant or recipient that such resources are inaccessible. The benefit group must verify that:

- (1) it does not have the use of the resource;
- (2) it did not make the purchase or down payment associated with the resource;
- (3) it does not make the continuing loan payments; and
- (4) the title is transferred to, or retained by, the other joint owner;
- (5) if a benefit group can demonstrate that it has access to only a part of the resource, the value of that part is counted toward the benefit group's resource level; a resource will be considered totally inaccessible, if it cannot be practically subdivided and the benefit group's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply; for purposes of this provision, ineligible aliens or disqualified individuals residing with a benefit group are considered benefit group members.

H. Joint bank accounts: If a bank account is owned jointly by a benefit group member and any other individual, the funds in the account are considered available to the benefit group to the extent that it has contributed to the account. If the participating benefit group has not contributed to the account, the funds are considered available only if there is clear and convincing evidence that the other joint owner of the account intends for the participating benefit group to have access to the funds.

[8.106.510.11 NMAC - N, 07/01/2004]

8.106.510.12 ELIGIBILITY DETERMINATION:

A. Determination: If, after determining what property is available to the benefit group and determining the value of that resource, the net value of the countable real and personal property exceeds resource limits, the benefit group shall be ineligible for assistance on the basis of need. The benefit group shall remain ineligible on the basis of need for as long as the value of the property exceeds the resource standards.

B. Receipt of resources: Resources acquired by a benefit group member after approval of an assistance grant shall be evaluated for purposes of financial assistance eligibility at the time of the change. Reporting requirements as indicated in Subsection D of 8.102.630.8 NMAC apply. If the benefit group becomes ineligible due to ownership or availability of resources, assistance is terminated effective the month following the month in which the notice of adverse action expires.

[8.106.510.12 NMAC - N, 07/01/2004]

8.106.510.13 NON-TRANSFER OF REAL PROPERTY:

A. Requirement:

(1) In order to include an individual in the benefit group, the individual must not have transferred real property for the purpose of becoming eligible for cash assistance within the two-year period preceding the date of application.

- (2) A transfer is considered to be for the purpose of becoming eligible for cash assistance if:
 - (a) the transfer was made without a reasonable return; and
 - (b) the individual had no reasonable plan for support at the time of the transfer other than

assistance from the department.

B. Transfer:

(1) For the purpose of this provision, transfer includes the sale, conveyance by deed, or any other method of transferring the title to the property involved, including transfer by gift. The transfer may be for either the title to the real property or other interests or rights in the property, such as mineral or water rights.

(2) A child under the age of 18 cannot transfer property, except through a legal guardian. Normally, a child will not own property in the child's own right, but if facts indicate the existence of a trust, inheritance or prior gifts to the child, it must be determined whether a transfer has taken place within the two-year period.

C. Reasonable return: A reasonable return on the transfer of property is considered to have been received when the person who made the transfer received compensation in cash or in kind equal to the value of the property at the time of transfer. The determination as to whether a reasonable return was received is based on the individual's equity interest in the property at the time of the transfer.

(1) **Equity less than \$2,000:** If the value of the equity interest, plus all other countable resources, was less than \$2,000, the transfer is not considered to be for the purpose of becoming eligible for cash assistance.

(2) **Reasonable value not received:** If it is determined that the property was transferred for the purpose of becoming eligible, but the client has subsequently made efforts to obtain a reasonable return or to regain title, and is willing to continue such efforts, eligibility on this condition exists. If the client is not willing to pursue a reasonable return, or to attempt to regain title to the property, the benefit group shall not be eligible for six months from the month ISD makes the determination that the transfer was made.

[8.106.510.13 NMAC - N, 07/01/2004]

History of 8.106.510 NMAC: [RESERVED]