

TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 620 DESCRIPTION OF PROGRAM BENEFITS - BENEFIT DETERMINATION/GENERAL

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

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

8.106.620.3 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.
[8.106.620.3 NMAC - N, 07/01/2004]

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

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

8.106.620.6 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.
[8.106.620.6 NMAC - N, 07/01/2004]

8.106.620.7 DEFINITIONS: [Reserved]
[8.106.620.7 NMAC - N, 07/01/2004]

8.106.620.8 PAYMENT DETERMINATION:

A. Determining countable benefit group income: The benefit group's net countable income shall be considered in the payment determination. The benefit group's net countable income is subtracted from the standard of need for the size of the benefit group.

B. Determining the payment:

(1) A benefit group whose net countable income equals or exceeds the standard of need for the size of the benefit group shall not be eligible for GA benefits.

(2) For a benefit group whose net countable income does not exceed the standard of need for the size of the benefit group, the benefit amount shall be determined by:

(a) subtracting the benefit group's countable income from the standard of need for the size of the benefit group;

(b) subtracting any sanction amount, if applicable; and

(c) subtracting any recoupment amount, if applicable.

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

8.106.620.9 RECOUPMENT: An individual against whom there is an outstanding claim for overpayment of cash assistance shall be required to repay the claims. Recovery of an overpayment may be accomplished by recoupment (see 8.106.640.11 NMAC). Recoupment amounts shall be deducted from the monthly benefit after the sanction amount is deducted, if appropriate.
[8.106.620.9 NMAC - N, 07/01/2004]

8.106.620.10 CHILD SUPPORT PAYMENT SANCTIONS - GA UNRELATED CHILD PROGRAM

A. General:

(1) Failure by an adult caretaker of an unrelated dependent child to comply with child support cooperation requirements shall result in a payment reduction of 25% for the first occurrence, 50% for the second occurrence and case closure for the third occurrence. Cases closed due to sanctioning are ineligible for a period of six months.

(2) Before imposing the first sanction, the caretaker shall be given the opportunity to meet child support requirements through a conciliation process. If the individual does not agree to cooperate by the end of the conciliation period, a payment sanction shall be imposed. The reduction shall be applied to the benefit group's standard of need.

(3) Child support cooperation requirements shall be applicable to the caretaker adult even if the adult is not included in the benefit group. Payment sanctions shall be applicable to benefit group's standard of need even if the caretaker adult is not included in the benefit group.

B. The conciliation process:

(1) **When conciliation is available:** Conciliation shall be available to an individual once during an occurrence of assistance. Once a conciliation period has been made available to the benefit group, there must be a period of at least 12 months between occurrences of assistance in order for a conciliation to be available again to the benefit group.

(2) **Occurrence of assistance:** An occurrence of assistance means a continuous period in which a benefit group receives GA benefits.

(3) **Determining that noncompliance has occurred:** The determination of noncompliance with child support shall be made by CSED. The conciliation and sanctioning process for child support noncompliance is initiated by the department upon receipt of notice from CSED that the caretaker has failed to cooperate.

(4) **Initiating conciliation:** Within ten days of notification by CSED that the caretaker has not complied, the caseworker shall take action to initiate a conciliation period, if the individual's conciliation has not been used. A conciliation is initiated by the caseworker issuing a conciliation notice.

(5) Conciliation period:

(a) Conciliation is a 30-day period during which the caretaker has the opportunity to correct whatever failure resulted in the noncompliance determination. The conciliation process shall occur only once prior to the imposition of the sanction. The benefit group shall be subject to sanction in the month following the month the notice of adverse action expires.

(b) If CSED determines that the adult caretaker is not complying with child support requirements, the adult caretaker shall be required to enter into a conciliation process established by HSD to address the noncompliance, or to identify good cause for noncompliance or barriers to compliance, if applicable.

(c) The adult caretaker shall have ten working days from the date a conciliation notice is mailed to contact HSD to initiate the conciliation process. An adult caretaker who fails to initiate the conciliation process shall have a notice of adverse action mailed after the tenth working day following the date on which the conciliation notice is mailed. An adult caretaker who begins, but does not complete, the conciliation process shall be mailed a notice of adverse action 30 days from the date the original conciliation was initiated.

(d) If the adult caretaker has initiated the conciliation process, it is the adult caretaker's responsibility to contact CSED and to comply with CSED requirements or to request a waiver. If the caseworker does not receive confirmation from CSED within 30 days of issuing the conciliation notice that the caretaker is cooperating, has a good cause waiver, or has requested a good cause waiver, the conciliation process shall be considered to have failed and the benefit group shall be subject to a payment sanction.

C. Occurrence of noncooperation:

(1) Each instance in which a caretaker is determined by the department to have failed to meet a child support requirement shall be considered a separate occurrence of noncompliance.

(2) When the noncompliance continues for three months without the sanctioned individual reestablishing compliance, progression to the next higher sanction level shall result in the fourth month.

(3) Reestablishing compliance shall allow full payment to resume, or shall appropriately reduce the sanction level for the benefit group in the month following the month in which compliance is established.

D. Cumulative sanctions: Noncompliance sanctions are cumulative as they relate to an individual in the benefit group.

(1) A cumulative sanction shall result when there is more than one failure by an individual in the benefit group to comply with child support enforcement requirements.

(2) A cumulative sanction, whether or not cured, shall remain the property of the individual benefit group member who caused the sanction. An individual with a cumulative sanction who leaves a benefit group relieves the benefit group of that individual's sanction status.

(3) An individual's compliance shall reverse the sanction level to the benefit group.

(4) An individual's sanction status may be reversed as a result of a hearing decision that renders the sanction invalid.

(5) A third sanction level, which results in a mandatory six-month closure for the benefit group, cannot be reversed.

E. Progressive sanctions: Sanction levels shall be progressive to the benefit group in which the sanctioned individual resides.

(1) When the noncompliance continues for three months without the sanctioned individual reestablishing compliance, progression to the next higher sanction level shall result in the fourth month.

(2) A sanction shall progress until compliance is established by the individual, or there is a waiver of the requirement. Reestablishing compliance shall allow full payment to resume or shall appropriately reduce the sanction level for the benefit group in the month following the month in which compliance is established.

(3) A progressive sanction may be reversed as a result of a hearing decision that renders the sanction level invalid.

(4) An individual's compliance cannot reverse the sanction level attributed to the benefit group. Once a sanction has been imposed, any subsequent sanction is imposed at the next higher level, unless reversed by a hearing decision.

F. Sanctioning:

(1) Within ten days of determining that the caretaker has failed to meet a child support cooperation requirement, ISD shall issue a notice of adverse action informing the benefit group that its cash assistance payment will be reduced. The payment reduction shall take place with the first payment following expiration of the notice of adverse action.

(2) Notice of adverse action shall apply to all child support noncompliance sanctions and levels, including those relating to the conciliation process.

(3) Failure to comply during the 13-day notice of adverse action time period shall cause the sanction to become effective.

(4) **Lifting the sanction:** An caretaker who corrects the failure of compliance with child support enforcement requirements during the 13-day notice of adverse action time period shall not have the sanction imposed against the benefit group or payment amount.

(a) The sanction shall not count as a cumulative or progressive sanction, since the reason for the sanction was corrected during the notice of adverse action time period and prior to a benefit reduction being imposed.

(b) A sanction shall be removed effective the month following the month in which the determination is made that the individual has complied with requirements.

(c) A child support enforcement sanction shall be removed after CSED notifies the caseworker that the individual is in compliance with child support enforcement requirements.

G. Sanction levels:

(1) First-level sanction:

(a) The first failure to comply, or first level sanction for failure to comply, shall result in a reduction of 25% of the standard of need.

(b) If the first level, or 25% sanction, lasts for three months, or an individual has a second incident of failure to comply, the sanction shall advance to level two, or 50% sanction.

(2) Second-level sanction:

(a) The second level sanction for failure to comply shall result in a reduction of 50% of the standard of need. The second level is initiated by failure to comply for more than three months or a second instance of noncompliance with a CSED requirement.

(b) A failure to meet child support enforcement requirements for three months at the second level, or a third incidence of failure to comply with a requirement shall result in the third sanction level.

(3) Third-level sanction:

(a) The third sanction level results in case closure for a period of not less than six months.

(b) Once an individual is sanctioned at the third level, any subsequent incident of failure to comply shall immediately result in the third level sanction, or case ineligibility for six months.

H. Sanctions by other states or other programs: Individuals in sanction status for failure to comply with the requirements of other programs or other states, such as the food stamp employment and training program shall not carry that sanction status into the GA cash assistance program.
[8.106.620.10 NMAC - N, 07/01/2004]

8.106.620.11 NON-REPORTING SANCTIONS

A. General: The eligibility determination and payment calculation process relies upon applicants and recipients to provide accurate and timely reports of information affecting their eligibility and benefit amount. Payment sanctions for non-reporting shall be established to encourage timely and accurate reporting and to offset benefits resulting from the reporting of inaccurate or misleading information, the untimely reporting of changes, or the failure to report any required information.

B. Length of a sanction: Each non-reporting sanction shall run for a period of four months for the first month in which failure to report occurred. An additional month shall be added for each additional month included in an occurrence of non-reporting until the payment is corrected.

C. Definition of an occurrence of non-reporting: An occurrence of non-reporting exists when an applicant or recipient intentionally fails to report information or reports incorrect information which results in an overpayment of cash assistance benefits.

D. Amount of sanction:

(1) Reporting sanctions shall be calculated at 25% of standard of need for the size of the benefit group being sanctioned.

(2) Reporting sanctions are not progressive. If there is another occurrence of non-reporting prior to the end of an ongoing non-reporting sanction period, the next sanction and any subsequent non-reporting sanctions shall be consecutive and at the 25% level.

(3) Reporting sanctions and child support sanctions shall be integrated into a single calculation to determine the final sanction amount.

(4) If a case closes during a reporting sanction period for reasons other than sanctions, the non-reporting sanction shall be suspended and resumed at the same duration the next time the case is reopened.

E. Procedures: The following steps shall be taken in implementing a payment sanction.

(1) The caseworker shall document and establish an overpayment claim using ISD2 overpayment claims procedures. The caseworker shall also determine whether the recipient was at fault.

(2) The county director or a designated unit supervisor shall review the overpayment and determine the accuracy of the overpayment determination and appropriateness of the fault determination. Upon determining that all is in order, the county director, or designated supervisor shall cause a notice of intent to sanction to be issued to the recipient. Failure of the recipient to contact the person issuing the notice within the 10 working days allowed shall constitute waiver of conciliation rights.

(3) If the recipient requests conciliation within the 10 working days after issuance of the notice, the county director or designated supervisor shall schedule a conciliation conference.

(4) The conciliation conference is conducted by the county director or designated supervisor.

(a) The caseworker shall describe the reporting error, how the amount of the overpayment is determined and the reasons for finding the recipient at fault.

(b) The recipient shall have the opportunity to discuss the overpayment determination, the finding of fault and to show good cause why the sanction should not be imposed.

(c) Based upon this conference, the county director or designated supervisor shall determine whether a sanction should be imposed.

(d) The recipient may represent himself or be represented by someone else. If the recipient wishes to be represented by another individual, the recipient must designate that individual on a form ISD-121.

(5) Following the conference, the county director shall issue written notice stating whether or not the sanction is to be imposed, and, if appropriate, the worker shall effect the sanction causing issuance of a notice of adverse action. The payment reduction takes effect in the month following expiration of the notice of adverse action.

(6) Recipients who disagree with the sanction determination shall have fair hearing rights and access to the fair hearing process.

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

History of 8.106.620 NMAC: [RESERVED]