

TITLE 8 SOCIAL SERVICES
CHAPTER 150 LOW INCOME HOME ENERGY ASSISTANCE PROGRAM
PART 410 GENERAL RECIPIENT REQUIREMENTS

8.150.410.1 ISSUING AGENCY: New Mexico Human Services Department.
[7-1-95, 11-1-95; 8.150.410.1 NMAC - Rn, 8 NMAC 22.LHP.000.1, 10-1-01]

8.150.410.2 SCOPE: The rule applies to the general public.
[7-1-95, 11-1-95; 8.150.410.2 NMAC - Rn, 8 NMAC 22.LHP.000.2, 10-1-01]

8.150.410.3 STATUTORY AUTHORITY: 27 NMSA 1978 (1992 Repl.) provides for the department to "...adopt, amend and repeal bylaws, rules and regulations...". It also provides for administration of public assistance programs.
[7-1-95, 11-1-95; 8.150.410.3 NMAC - Rn, 8 NMAC 22.LHP.000.3, 10-1-01]

8.150.410.4 DURATION: Permanent.
[7-1-95, 11-1-95; 8.150.410.4 NMAC - Rn, 8 NMAC 22.LHP.000.4, 10-1-01]

8.150.410.5 EFFECTIVE DATE: November 15, 1996, unless a different date is at the end of a section or paragraph.
[7-1-95, 11-1-95; 1-15-96, 8.150.410.5 NMAC - Rn, 8 NMAC 22.LHP.000.5, 10-1-01]

8.150.410.6 OBJECTIVE: The objective of these regulations is to provide policy and procedures for the administration of the Low Income Home Energy Assistance Program.
[7-1-95, 11-1-95; 8.150.410.6 NMAC - Rn, 8 NMAC 22.LHP.000.6, 10-1-01]

8.150.410.7 DEFINITIONS: [RESERVED]

8.150.410.8 HOUSEHOLD UNIT: For purposes of LIHEAP, a household is an individual, or group of individuals living together, who incurs a heating or cooling cost. The heating or cooling cost must be to meet residential, not business or industrial, heating or cooling needs.
[7-1-95, 11-1-95, 11-15-96, 10-15-98; 8.150.410.8 NMAC - Rn, 8 NMAC 22.LHP.410.11 & A, 10-1-01; A, 10-01-06]

8.150.410.9 ENERGY RESPONSIBILITY:

A. Energy cost: To be eligible for LIHEAP benefits, the household must incur an energy cost. The energy cost may be for a primary heat source, i.e., the energy source or fuel with which the household is predominantly heated, or for a secondary heat source. A secondary heat source is an energy source that is essential to the process of providing heat to the home. The energy cost may be for a cooling cost. The cooling cost may be for a primary source, i.e., evaporative cooling or refrigerated air, or secondary cooling. Secondary cooling is the use of energy to operate portable fans, ceiling fans, whole house fans, gable vent fans, or power attic vent fans.

B. Secondary heat source: Electricity to ignite a gas or steam furnace is the most common example of an allowable secondary heat source for LIHEAP purposes. Electricity used only for lighting purposes or to operate fans to distribute heat from a wood-burning stove is not considered an allowable secondary heat source for LIHEAP purposes.

C. Wood-gathering households: Households who use wood as a fuel to heat their home and gather the wood themselves are considered to have a heating responsibility. Regardless of whether a direct or indirect cost was incurred to obtain the wood the household meets this requirement.

D. Direct or indirect utility responsibility: The heating/cooling cost may be direct in the form of a utility payment or fuel purchase, or indirect in the form of a non-subsidized rent payment which either designates or does not designate the included utility cost, or costs associated with obtaining wood for heating households.

E. Crisis intervention: To be eligible for LIHEAP regular or life-threatening crisis intervention, the household must meet the eligibility criteria for regular benefits as specified in 8.150.500.8 NMAC, must not have received a LIHEAP benefit in the current federal fiscal year and, in addition, be able to provide verification that proves the applicant household is facing a current or impending energy crisis, established with any one of the following:

(1) current notice of disconnect for the household from a utility vendor; or
(2) applicant written or verbal statement of insufficient funds for the household to open an account with a utility vendor or meet the security deposit requirements of a utility vendor; or
(3) statement from the household's fuel vendor that fuel will not be provided without payment.

(4) Life-threatening crisis intervention: The applicant must meet the above criteria for a regular crisis intervention and in addition provide a written or verbal statement advising that the household faces an emergency which poses a threat to the health or safety of one or more members of the household.

F. Community referrals: In circumstances where the household is not eligible for crisis intervention, or if a balance remains after the crisis/life threatening intervention has been provided, the household shall be informed of other resources in the community, which may be able to assist the household in meeting its energy expenses.

[7-1-95, 11-1-95, 11-15-96, 10-15-98; 8.150.410.9 NMAC - Rn, 8 NMAC 22.LHP.410, 10-1-01; A, 10-1-12; A, 10-1-15]

8.150.410.10 [Reserved]

[7-1-95, 11-1-95, 11-15-96, 10-15-98; 8.150.410.10 NMAC - Rn, 8 NMAC 22.LHP.410, 10-1-01; Repealed, 10-1-12]

8.150.410.11 HOUSING TYPE:

A. Non-subsidized rent: Non-subsidized rent is defined as an obligation to pay for shelter which is entirely the responsibility of the household incurring the expense.

(1) Separate direct costs: Households paying non-subsidized rent who incur a separate heating/cooling cost are eligible for LIHEAP.

(2) Utilities included in rent: Households paying non-subsidized rent whose utility costs are included in their rent, even if no such cost is designated, are eligible for LIHEAP.

B. Subsidized rent: Subsidized rent assistance is defined as a payment for shelter, or shelter and utilities, the cost of which has been reduced due to a subsidy from a housing or other assistance program. University housing does not meet this definition and is therefore not considered subsidized housing.

(1) Separate direct costs: Households receiving subsidized rent assistance who incur a separate direct cost for heating/cooling are eligible for LIHEAP benefits;

(2) Subsidized rent/utilities with additional separate utility cost: Households receiving subsidized rent assistance who receive a subsidy for utilities but who incur an additional out-of-pocket expense for utilities are eligible for LIHEAP;

(3) Subsidized rent with utilities included: Households receiving subsidized rent assistance whose heating/cooling cost is included in their subsidized rent and do not incur an additional out-of-pocket heating or cooling expense are not eligible for LIHEAP;

(4) Subsidized rent with rental cost: Households receiving subsidized rent assistance who pay rent but do not pay utilities are not eligible for LIHEAP; and,

(5) Subsidized rent with no cost: Households receiving subsidized rent assistance who pay no rent and no utilities are not eligible for LIHEAP;

C. Mortgaged or free and clear home: Households who pay a mortgage or own their own home and incur a separate heating/cooling cost are eligible for LIHEAP.

[7-1-95, 11-1-95, 11-15-96, 10-15-98; 8.150.410.11 NMAC - Rn, 8 NMAC 22.LHP.410, 10-1-01; A, 10-1-15]

8.150.410.12 INDIAN TRIBAL ELIGIBILITY: In New Mexico, an Indian tribe may choose to administer its own LIHEAP program for tribal members and request from DHHS an allocation of the state's share of the LIHEAP grant award for this purpose. An Indian tribe is defined as a legal entity of a group of Native Americans living on tribal lands with a distinct and separate government. Residents of tribal land may be eligible for tribal administered LIHEAP or HSD-administered LIHEAP under the following circumstances.

A. Tribes that administer LIHEAP: Indian tribal members living on their tribe's tribal lands, whose tribe administers their own LIHEAP program, are not eligible for HSD-administered LIHEAP benefits.

B. Tribes not administering LIHEAP: Indian tribal members living on the tribal lands of tribes not administering their own LIHEAP program may be considered for HSD-administered LIHEAP benefits providing they meet income eligibility and heating/cooling responsibility requirements as specified in this policy.

C. Indians on other tribes' land: Households that are members of Indian tribes administering their own LIHEAP program but not living on their tribe's tribal lands, may be considered for HSD-administered LIHEAP benefits providing they meet income eligibility and heating responsibility requirements, as specified in this policy, and they did not receive LIHEAP benefits from their tribal government for the current LIHEAP season.

D. Non-Indians and non-tribal members on tribal land: Non-Indians living on tribal lands and Indians living on tribal lands who are excluded from eligibility for LIHEAP by the Indian tribe administering their own LIHEAP program may be considered for HSD-administered LIHEAP benefits providing they meet income eligibility and heating/cooling responsibility requirements as specified in this policy.

E. At the direction of the HSD secretary, HSD may serve tribal members normally excluded due to Subsection A of 8.150.410.12 NMAC if they have not been or do not expect to be served by the tribal LIHEAP program.

[7-1-95, 11-1-95, 11-15-96; 8.150.410.12 NMAC - Rn, 8 NMAC 22.LHP.410 & A, 10-10-01; A, 10-1-05; A, 10-1-06; A, 10-1-12; A, 10-1-15]

8.150.410.13 CITIZENSHIP: To be eligible, a LIHEAP household must contain at least one member who is a (1) U.S. citizen, or (2) a qualified alien considered eligible to participate in the TANF program. See 8 USC Sec. 1641, Title 8, Chapter 14, Subchapter IV, and any subsequent changes.

[7-1-95, 11-1-95; 8.150.410.13 NMAC - Rn, 8 NMAC 22.LHP.410, 10-1-01; A, 10-01-06]

8.150.410.14 RESIDENCY: To be eligible, a LIHEAP household must have a residence in New Mexico and be occupying that residence at the time of application. The LIHEAP benefit must be applied toward the utility or fuel costs incurred for that residence.

[7-1-95, 11-1-95; 8.150.410.14 NMAC - Rn, 8 NMAC 22.LHP.410, 10-1-01; A, 10-01-06]

8.150.410.15 ENUMERATION: To be eligible for inclusion in the LIHEAP benefit group, a social security number (SSN) or proof of application for a number must be provided for each citizen and qualified alien for which assistance is being requested. Any member(s) of a LIHEAP applicant household who do not meet the requirements of this section will not be eligible for a LIHEAP benefit.

[8.150.410.15 NMAC - N, 10-01-06]

8.150.410.16 RESIDENCE IN FACILITY OR INSTITUTION: Persons residing in New Mexico but living in group homes, halfway houses, institutions, homeless shelters, or in places not normally intended for human occupation are not eligible unless they can document heating/cooling expenses.

[8.150.410.16 NMAC - Rn, 8.150.420.8 NMAC & A, 10-1-12]

8.150.410.17 RECIPIENT RIGHTS:

A. Treatment and non-discrimination: Members of a household shall have the right, at all times, to be treated with dignity at all times. Household members may not be discriminated against on the basis of age, sex, race, color, handicap, national origin, or religious or political belief.

B. Confidentiality: Household members have the right to confidentiality as defined in 8.100.100.13 NMAC.

C. Fair hearings: The household has the right to disagree with the determinations made by HSD and to appeal such actions through HSD's fair hearing process.

[8.150.410.17 NMAC - Rn, 8.150.430.8 NMAC & A, 10-1-12]

8.150.410.18 RECIPIENT RESPONSIBILITIES:

A. Benefit purpose: The household is responsible for using the benefit received for the purpose intended.

B. Erroneously issued benefits: If it is determined the household is not entitled to the benefit received, whether agency or recipient caused, the household is responsible for paying back the benefits received. The household is responsible for repayment whether the benefit was received directly by the household or paid to a vendor per Subsection H of 8.150.100.12 NMAC, a claim must be established for any erroneous benefit issuance.

[8.150.410.18 NMAC - Rn, 8.150.430.9 NMAC & A, 10-1-12; A, 10-1-15]

HISTORY OF 8.150.410 NMAC:

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

ISD 600.0000, Energy Assistance Programs, 11-12-82.

ISD 600.0000, Low Income Energy Assistance Program, 1-9-84.

ISD 710.0000, Energy Assistance Programs, 11-15-85.

ISD 620.0000, Crisis Intervention Assistance, 11-12-82.

ISD 620.0000, Energy Crisis Intervention Assistance, 12-27-83.

ISD 714.0000, Energy Crisis Intervention, 11-20-85.

ISD 630.0000, Program Administration, 11-12-82.

ISD 630.0000, Program Administration, 12-27-83.

ISD 715.0000, Administration of Energy Assistance Programs, 11-20-85.

ISD FA 710, Energy Assistance Programs, 12-5-89.

ISD CAS 700, Energy Assistance Program, 11-13-91.

ISD CAS 700, Energy Assistance Program, 11-10-92.

ISD/CACB/LHP 700, Low Income Home Energy Assistance Program, 5-6-94.

ISD/CACB/LHP 700, Low Income Home Energy Assistance Program, 7-28-94.

History of Repealed Material: [RESERVED]