

This is an amendment to 8.139.400 NMAC, Sections 12 and 13.

8.139.400.12 INELIGIBLE HOUSEHOLD MEMBERS: The following individuals ~~[will]~~ shall be included as household members for the purpose of defining a household, but ~~[will]~~ shall not be included as eligible members when determining the household's size, comparing the household's monthly income with the income eligibility standard, or assigning a benefit amount by household size.

A. Excluded Household Members:

(1) **Ineligible Aliens:** Individuals who do not meet citizenship or eligible alien status requirements, or eligible sponsored alien requirements. The income and resources of such individuals ~~[will]~~ shall be counted in determining the household's eligibility and benefit amount in accordance with the requirements in Subsection C of 8.139.520.10 NMAC.

(2) **Ineligible Students:** Individuals enrolled in an institution of higher education who are ineligible because they do not meet the student eligibility requirements in Subsection A of 8.139.400.11 NMAC. Ineligible students are considered as non-household members in determining the household's eligibility and benefit amount. Income and resources are considered in accordance with the requirements in Subsection D of 8.139.520.10 NMAC.

B. Disqualified Household Members:

(1) **SSN Disqualified:** Individuals who are disqualified for refusal or failure to provide a Social Security Number.

(2) **Work Noncompliance:** Individuals who have been disqualified for failure or refusal to comply with work requirements.

(3) **IPV:** Individuals disqualified for an Intentional Program Violation.

C. Drug Disqualifications: An individual convicted under a federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved, and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)]), ~~[will]~~ shall be permanently ineligible to participate in the Food Stamp Program. An individual who receives SSI, and is ineligible to participate because of a drug related felony conviction, shall not be eligible and shall not be included in the household based on categorical eligibility requirements of the Food Stamp Program.

(1) **Effective Date:** Disqualification ~~[will]~~ shall not apply to convictions which occurred on or before August 22, 1996.

(2) **Household Declaration:** Each applicant for food stamp benefits is required, during the application process, to state in writing whether ~~[he/she]~~ the applicant or any other household member, has been convicted of possession, use or distribution of a controlled substance.

(3) **Treatment of Income and Resources:** The income and resources of a disqualified individual ~~[will]~~ shall be considered in their entirety to the household while the individual remains in the home.

D. Disqualification for Fleeing Felons and Probation/Parole Violators: No member of an otherwise eligible household ~~[will]~~ shall be eligible to participate in the FSP as a member of the household during any period in which the individual is:

(1) Fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is fleeing, for a crime or attempt to commit a crime, that is a felony, or in New Jersey a high misdemeanor, under the law of the place from which the individual is fleeing; or

(2) Violating a condition of probation or parole imposed under a federal or state law.

(3) **Treatment of Income and Resources:** The income and resources of an individual described in ~~[(1) and (2) above will]~~ Paragraphs (1) and (2) of Subsection D of 8.139.400.12 NMAC shall be attributed in their entirety to the household while the individual is in the home.

[02/01/95, 10/01/95, 05/15/97; 8.139.400.12 NMAC - Rn, 8 NMAC 3.FSP.404, 05/15/2001; A, 02/14/2002]

8.139.400.13 SPECIAL HOUSEHOLDS

A. Institutions: An individual ~~[will]~~ shall be considered a resident of an institution if the institution provides two or more meals daily, and the institution has not been authorized to accept food stamp benefits.

B. Eligibility: Residents of institutions ~~[will]~~ shall not be eligible to participate in the Food Stamp Program, with the following exceptions:

(1) **Federally Subsidized Housing:** Residents of federally subsidized housing for the elderly, built under Section 202 of the Housing Act of 1959 (even if residents are not elderly), provided that they otherwise qualify for participation.

(2) **Drug/Alcoholic Treatment Centers:** Drug addicts or alcoholics who, for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program, live in a public or private nonprofit facility or treatment center.

(3) **Disabled/Blind Group Living Arrangement:** Disabled or blind individuals as defined in (i) through (x) of Subparagraph b of Paragraph [22] 23 of Subsection A of 8.139.[650] 100.7 NMAC who are residents in a group living arrangement.

(4) **Battered Women/Children:** Women, or women with their children, temporarily residing in a shelter for battered women and children. Such persons temporarily residing in shelters for battered women and children ~~will~~ shall be considered individual households for the purposes of applying for and participating in the Food Stamp Program.

(5) **Homeless:** Residents of public or private nonprofit shelters for the homeless.

C. **Residents of Drug/Alcohol Treatment Centers:** A drug addict or alcoholic who regularly participates in a drug or alcoholic treatment or rehabilitation program as a resident of the center may voluntarily apply for food stamp benefits. Children living with their eligible parent(s) in a drug or alcohol treatment center ~~will~~ shall be considered household members when determining eligibility and benefit amount. An ~~ISS will~~ caseworker shall certify residents of addict/alcoholic treatment centers, and their children, by using the same provisions applied to all other applicant households, except that certification must be accomplished through an authorized representative employed by the institution. (For further information, Subsection [B] D of 8.139.110.9 NMAC)

(1) **Processing:**

(a) **Expedited Services:** Residents of treatment centers or rehabilitation centers for drug addiction or alcohol treatment, and their children, may qualify for expedited service in the same way as any other household. Food stamp benefits ~~must~~ shall be received no later than the seventh calendar day following the date of application, and verification may be postponed. Verification requirements ~~must~~ shall be completed before the second month's benefits are issued. (See 8.139.110.16 NMAC for more information on expedited service and continuation of benefits).

(b) **Normal Processing:** If normal processing standards apply, the ~~ISS will~~ caseworker shall complete the verification and documentation requirements before making an eligibility determination for the initial application (see 8.139.110.12 NMAC and 8.139.110.13 NMAC).

(c) **Changes and Recertifications:** Changes and recertifications ~~will~~ shall be processed for resident households using the same standards ~~[applied to all other food stamp households.]~~ outlined at 8.139.120.10 NMAC. Households ~~will~~ shall be extended the same rights to notices of adverse actions, to fair hearings, and to entitlement to lost benefits as are all other food stamp households (see 8.139.120.8 NMAC and 8.139.120.[9] 10 NMAC).

(2) **Treatment Centers Eligibility Status:**

(a) **Food and Nutrition Service Authorization:** Before certifying any resident for food stamp benefits, an ~~ISS will~~ caseworker shall verify that the treatment center is authorized by FNS as a retailer if the center wishes to accept food stamp benefits. If the center is not authorized by FNS, the treatment center's status under Part B of Title XIX of the Public Health Service Act (42 USC, 300 et seq.) ~~must~~ shall be verified.

(b) **List of Residents:** Each treatment and rehabilitation center ~~will~~ must provide the appropriate county office a list of currently participating residents. The list ~~will~~ must include a statement signed by a responsible center official attesting to the list's validity. The list is required on a monthly basis.

(c) **On-Site Visits:** The County Director or designee ~~will~~ shall conduct periodic, random, on-site visits to the center to ensure the accuracy of the list and that the appropriate county office records are consistent and up-to-date.

(d) **Change Notification:** The treatment center ~~will~~ must notify the ~~ISS~~ caseworker of changes in a household's income or other circumstances and when an addict or alcoholic leaves the treatment center. The treatment center ~~will~~ must return the household's food stamp benefits to the county office if the household has left the center without its share.

(3) **When Household Leaves Center:** When a household leaves the center, the center ~~will~~ must give the resident household its ID card and any unused food stamp benefits. The household, not the center, ~~will~~ shall be allowed to participate during any months remaining in the certification period.

(a) A household ~~will~~ shall receive the full food stamp benefit amount if no benefits were spent on its behalf. This is applicable at any time during the month.

(b) If food stamp benefits have already been issued and any amount has been spent on behalf of a household, and the household leaves the program before the 16th day of the month, the treatment center must

return to the household one-half of the monthly food stamp benefit amount. If a household leaves after the 16th of the month, and the food stamp benefits have already been issued and used, no food stamp benefits ~~[will]~~ shall be returned to the household.

(c) The treatment center ~~[will]~~ must, if possible, give the household a change report form to report the household's new address and other circumstances after leaving the center, and ~~[will]~~ must advise the household to return the form to the appropriate county office within ten days.

(d) When the household leaves the treatment center, the center is no longer allowed to act as the household's authorized representative.

(4) Organization/Institution Responsibilities:

(a) The organization or institution is responsible for:

(i) **Program Rules:** An organization or institution is legally responsible for any misrepresentation or intentional program violation which it knowingly commits in the certification of center residents.

(ii) **Awareness of Household Circumstances:** As an authorized representative, the organization or institution must be aware of the household's circumstances and should carefully review those circumstances with any resident before applying on ~~[his/her]~~ their own behalf.

(iii) **Proper Use of Food Stamp Benefits:** The organization or institution ~~[will]~~ shall be strictly liable for any loss or misuse of food stamp benefits held on behalf of resident households, and for all overissuances that occur while the households are residents of the treatment center. The organization or institution may be penalized or disqualified if it is determined administratively or judicially that food stamp benefits were misappropriated or used for purchases that did not contribute to a certified household's meals.

(b) The county office ~~[will]~~ shall notify the Food Assistance Bureau when it has reason to believe that an organization or institution is misusing food stamp benefits in its possession. The Food Assistance Bureau ~~[will]~~ shall notify FNS. HSD ~~[will]~~ shall take no action before FNS action against the organization or institution.

(c) HSD ~~[will]~~ shall establish a claim for overissuance of food stamp benefits held on behalf of resident clients if any overissuance is discovered during an investigation or hearing procedure for redemption violations.

(d) If FNS disqualifies an organization or institution for any period of time, HSD ~~[will]~~ shall suspend its authorized representative status for the same period.

D. Residents in Group Living Arrangements: A disabled or blind [individuals who are] resident[s] of a public or private non-profit group living arrangement may choose to apply [on their own] for food stamp benefits on his own, or through an authorized representative of the resident's own choosing, or through the facility's authorized representative. The group living arrangement facility must determine if the resident may apply on the resident's own behalf based on the resident's physical and mental ability to handle his own affairs. If [such residents apply] a resident applies through the facility's authorized representative, [their] eligibility [will] shall be determined as a one-person household[s]. If a household applies on its own behalf, the household size [will] shall be determined according to the [definition in] rules at Subsection C of 8.139.400.8 NMAC. Such residents [will] shall be certified using the same provisions applied to all other households. [Before any of its residents are certified for food stamp benefits, the facility must provide verification that it is authorized by FNS or licensed by the New Mexico Health and Environment Department and that it is a nonprofit organization, as established by its articles of incorporation filed with the State Corporation Commission]. HSD shall determine that the group living arrangement facility is a non-profit organization as established by its articles of incorporation with the New Mexico Public Regulation Commission, and the group living arrangement facility must provide verification that it is authorized by FNS or certified by the New Mexico Department of Health as a group living arrangement, before any of the residents are certified for food stamps.

(1) Resident's Rights/Responsibilities:

(a) The rights and responsibilities listed in Paragraph 1 of Subsection C of 8.139.400.13 NMAC, for residents of treatment centers also apply to blind or disabled residents of group living arrangements when the facility acts as the resident's authorized representative.

(b) If a household has made application on its own behalf, the household is responsible for reporting changes to the county office within 10 days of the date the change becomes known to the household.

(c) If a resident, or a group of residents, receives food stamp benefits on ~~[his/her]~~ the resident's or group's own behalf and retain use of ~~[his/her]~~ the resident's or group's food stamp benefits, the ~~[individuals are]~~ resident or group is entitled to keep the food stamp benefits when ~~[they]~~ the resident or group leaves. If a group of

residents has received food stamp benefits as one household, a pro rata share of the remaining food stamp benefits ~~[will]~~ shall be provided to any departing member.

(d) Residents of group living arrangements receiving food stamp benefits on their own behalf are responsible for overissuances, as would any other household (see (d) of Paragraph 2 of Subsection C of 8.139.400.13 NMAC).

(2) Group Home Responsibilities:

(a) The same responsibilities apply to authorized representatives of a group living arrangement as to treatment centers (Paragraph 4 of Subsection C of 8.139.400.13 NMAC). These provisions are not applicable if a resident has applied on ~~[his/her]~~ the resident's own behalf. (For further information see Subsection B of 8.139.110.9 NMAC, Authorized Representatives).

(b) A group living facility ~~[will]~~ shall give the appropriate county office a list of currently participating residents. This list ~~[must]~~ shall include a statement by a responsible center official attesting to the validity of the list. The list is required on a monthly basis.

(c) The County Director or designee ~~[will]~~ shall conduct periodic, random on-site visits to ensure the accuracy of the list and make sure that the appropriate county office records are consistent and up-to-date.

(d) If a group living facility acts in the capacity of authorized representative, it must notify the ~~[ISS]~~ caseworker of changes in a household's income or other household circumstances, and when an individual leaves the group living arrangement.

(e) When a household leaves a group living facility, the facility, if it either acted as authorized representative or retained use of food stamp benefits on behalf of residents, gives the departing household its ID card and any unused benefits. The household, not the group living facility, ~~[will]~~ shall be allowed to sign for and receive any remaining food stamp benefits.

(f) A departing household must receive the full food stamp benefit amount, if issued, and if no food stamp benefits have been spent on behalf of that household. These procedures are applicable at any time during the month.

(g) If the food stamp benefits have been issued and any portion spent on behalf of the household, and the household leaves the group living arrangement before the 16th day of the month, the group living facility must return the ID card and one-half of the monthly food stamp benefit amount to the departing household. If the household leaves on or after the 16th of the month and the food stamp benefits have already been issued and used, the household ~~[will]~~ shall not receive any food stamp benefits.

(h) If a group of residents is certified as one household and gives the food stamp benefits to the group living facility to use, departing residents must be given a pro rata share of one-half of the household's monthly food stamp benefit amount if the group leaves prior to the 16th day of the month. When a household leaves, the group living facility may no longer act as the household's authorized representative.

(i) The group living facility ~~[will]~~ shall, if possible, give the household a change report form to report the household's new address and other circumstances after leaving the facility, and ~~[will]~~ shall instruct the household to return the form to the appropriate county office within ten days.

(3) Use Of Benefits:

(a) A group living facility may purchase and prepare food for eligible residents on a group basis if residents normally get their meals at a central location as part of the group living arrangement services, or if meals are prepared at a central location for delivery to the individual residents.

(b) If residents purchase and/or prepare food for home consumption, as opposed to communal dining, the group living facility must make sure that each resident's food stamps are used for meals intended for that resident.

(c) If residents retain use of their own food stamp benefits, they may either use the food stamp benefits to purchase meals prepared for them by the facility or to purchase food to prepare meals for their own consumption.

E. Battered Women's Shelters

(1) Before certifying residents of a battered women's shelter, an ~~[ISS-must]~~ caseworker shall make sure that the shelter is a public or private nonprofit residential facility serving battered women and their children.

(2) If a facility serves other individuals as well as battered women and their children, an ~~[ISS-must]~~ caseworker shall make sure that a part of the facility is set aside on a long term basis to serve only battered women and their children.

(3) Shelters with FNS authorization to redeem food stamps at wholesalers ~~[will]~~ shall be considered to be meeting the definition and the ~~[ISS]~~ caseworker is not required to make any further determination. The ~~[ISS-must]~~ caseworker shall document the basis of this determination.

(4) Local ISD offices are required to maintain and update a current list of shelters meeting the battered women's shelter definition to facilitate prompt certification of eligible residents.

(5) Special Certification Procedures:

(a) Many shelter residents have recently left a household containing the person who abused them. The former household may be certified for participation in the Food Stamp Program, and its certification may be based on a household size that includes the woman and children who have just left. Shelter residents included in such a certified household may nevertheless apply for and (if otherwise eligible) participate in the Program as a separate household, and concurrently, if the household that included them is the household containing the person who abused them. Shelter residents included in such a household may receive additional food stamp benefits as a separate household only once in a month.

(b) Shelter residents who apply as separate households ~~[will]~~ shall be certified solely on the basis of their own income and resources and the expenses for which they are responsible. They ~~[will]~~ shall be certified without regard to the income, resources, and expenses of their former household. Jointly held resources ~~[will]~~ shall be considered inaccessible.

(c) Room payments from the residents to the shelter ~~[will]~~ shall be counted as shelter expenses. Any shelter residents eligible for expedited service ~~[will]~~ shall be handled in accordance with the provisions in 8.139.110.16 NMAC.

(6) Handling the Former Household: The ~~[ISS must]~~ caseworker shall take prompt action to make sure that the former household's eligibility or food stamp benefit amount reflects the change in household size and composition. ~~[Such action includes either:~~

~~(a) — shortening the certification period by issuing a notice of expiration to the former household;~~
or

~~(b) — acting on the reported change by issuing an adverse action notice.]~~

[02/01/95, 07/01/98; 8.139.400.13 NMAC -Rn, 8 NMAC 3.FSP.406, 05/15/2001; A, 02/14/2002]