



STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
HUMAN SERVICES REGISTER

I. DEPARTMENT

HUMAN SERVICES DEPARTMENT

II. SUBJECT

ELIMINATION OF THE CLOTHING ALLOWANCE

III. PROGRAMS AFFECTED

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES
EDUCATION WORKS PROGRAM
STATE TANF FOR QUALIFIED ALIENS
GENERAL ASSISTANCE FOR UNRELATED CHILDREN
REFUGEE CASH ASSISTANCE

IV. ACTION

PROPOSED REGULATIONS

V. BACKGROUND

The New Mexico Human Services Department is proposing to eliminate the Annual Clothing Allowance for school age children due to the elimination of funding from the budget for State Fiscal Year 2012. The proposed amendments align the regulations with the Human Services Department Secretary's statutory authority to comply with the Legislative and Executive appropriated budget by eliminating the allowance. House Bill 2 from the 50th Legislative Regular Session did not provide an appropriation for the Clothing Allowance for State Fiscal Year 2012. Prior budgets included a specific appropriation for the Annual Clothing Allowance for school age children. The Human Services Department proposes regulatory amendments consistent with NMSA 1978, §27-2B-7 (New Mexico Works Act) and, NMSA 1978, §27-2D-5 (Education Works Act).

VI. PROPOSED REGULATIONS

The Department's proposal to eliminate the annual clothing allowance will impact recipients of the following programs: TANF cash assistance, Education Works, State Funded Qualified Aliens, General Assistance for Unrelated Children and Refugee Cash Assistance.

This register and proposed regulations are available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. If you do not have Internet access, a copy of the proposed regulations may be requested by contacting Income Support Division Policy and Program Development Bureau at 827-7219.

VII. EFFECTIVE DATE

July 29, 2011

VIII. PUBLIC HEARING

A public hearing to receive testimony on these proposed regulations will be held on Friday, July 1, 2011 at 10:00 am. The hearing will be held at the Income Support Division Conference Room at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 87505. The Conference Room is located in room 120 on the lower level. Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1-800-432-6217.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

IX. ADDRESS

Interested persons may address written or recorded comments to:

Sidonie Squier, Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to:

Vida.Tapia-Sanchez@state.nm.us

X. PUBLICATION

Publication of these proposed regulations approved on 5/11/11 by:



SIDONIE SQUIER, SECRETARY
HUMAN SERVICES DEPARTMENT

This is an amendment to section 8 of 8.102.500 NMAC.

8.102.500.8 GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for NMW, state funded qualified aliens and EWP cash assistance based on need requires a finding that:

- (1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;
- (2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;
- (3) the countable resources owned by and available to the benefit group do not exceed the \$1,500 liquid and \$2,000 non-liquid resource limits;
- (4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. Gross income limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

- (1) Income eligibility limits are revised and adjusted each year in October.
- (2) The gross income limit for the size of the benefit group is as follows:
 - (a) one person \$ 768
 - (b) two persons \$1,033
 - (c) three persons \$1,297
 - (d) four persons \$1,562
 - (e) five persons \$1,828
 - (f) six persons \$2,092
 - (g) seven persons \$2,357
 - (h) eight persons \$2,622
 - (i) add \$265 for each additional person.

C. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than 100% of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

- (1) one person \$903
- (2) two persons \$1,215
- (3) three persons \$1,526
- (4) four persons \$1,838
- (5) five persons \$2,150
- (6) six persons \$2,461
- (7) seven persons \$2,773
- (8) eight persons \$3,085
- (9) add \$312 for each additional person.

D. Standard of need:

- (1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately [~~\$91~~] \$79 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state funded qualified aliens, and EWP cash assistance benefit group is:

- (a) one person \$ 266
- (b) two persons \$ 357
- (c) three persons \$ 447
- (d) four persons \$ 539
- (e) five persons \$ 630
- (f) six persons \$ 721
- (g) seven persons \$ 812
- (h) eight persons \$ 922
- (i) add \$91 for each additional person.

E. Special needs:

~~[(1) **Special clothing allowance:** In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100, subject to the availability of state or federal funds.~~

~~_____ (a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.~~

~~_____ (b) The clothing allowance shall be allowed for each school age child who is included in the NMW, TBP, state funded qualified aliens or EWP cash assistance benefit group subject to the availability of state or federal funds.~~

~~_____ (c) The clothing allowance is not allowed in determining eligibility for NMW, TBP, state funded qualified aliens, or EWP cash assistance.]~~

~~[(2)](1) **Layette:** A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.~~

~~[(3)](2) **Special circumstance:** Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.~~

This is an amendment to section 8 of 8.106.500 NMAC.

8.106.500.8 - GA General Requirements

~~[G. **Special clothing allowance for school age dependent children:** In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100, subject to the availability of state or federal funds.~~

~~_____ (1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age nineteen (19) by the end of August.~~

~~_____ (2) The clothing allowance shall be allowed for each school age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.~~

~~_____ (3) The clothing allowance is not counted in determining eligibility for GA cash assistance.]~~

This is an amendment to section 9 of 8.139.520 NMAC.

8.139.520.9 INCOME STANDARDS

A. Earned income: Earned income includes the following:

(1) **Wages and salaries:** All wages and salaries paid to an employee.

(2) **Sick pay:** Sick pay is counted as earned income if the person receiving sick pay will be returning to work after recovery and is still considered an employee by the employer.

(3) **Military personnel:** A household consisting of one or more military personnel receiving a basic allowance for quarters and/or basic allowance for subsistence instead of free housing and/or food shall have such funds counted as earned income.

(4) **Self-employment:** The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, minus the costs of doing business, is considered earned income. This is the gross income of the self-employed individual.

(5) **Rental property:** Income from rental property is considered earned only if a household member is actively engaged in the management of the property an average of at least twenty (20) hours per week. The owner is allowed the cost of doing business.

(6) **Roomer or boarder:** Payments from a roomer or boarder are considered self-employment income. The 20 hours per week provision applied to rental property does not apply to roomer or boarder situations.

(7) **Training allowances:** A training allowance from a vocational and rehabilitative program recognized by federal, state or local governments, such as DVR, is considered earned income, to the extent the training allowance is not a reimbursement.

(8) **VISTA payments:** Payments under Title I (VISTA, university year for action, etc.) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113 Stat., as amended) are considered earned income to applicant households not receiving food stamp benefits at the time the household member joined VISTA.

(9) **Workforce Investment Act:** Earnings of an individual participating in an on-the-job training program under Section 204 (b) (1) (C) or Section 254 (c) (1) (A) of the Workforce Investment Act (WIA). This provision does not apply to household members under 19 years of age who are under the parental control of an adult member, regardless of school attendance or enrollment. Earnings include monies paid under the WIA and monies paid by the employer. This section includes adult and youth programs and summer youth employment and training programs, but does not include job corps, E&T programs for Native Americans, migrant and seasonal farm workers, and veterans employment programs.

B. Unearned income: Unearned income includes, but is not limited to, the following:

(1) **Federal assistance programs:** Assistance payments from federal or federally aided cash assistance programs, such as supplemental security income (SSI), Title IV-A (temporary assistance to needy families), general assistance (GA), or other assistance programs

based on need. Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered unearned income.

(2) **Other benefits:** Annuities, pensions, retirement, veteran's or disability benefits, workman's compensation, unemployment compensation benefits (UCB), OASDI, and strike benefits are unearned income.

(3) **Foster care payments:** Foster care payments for children or adults shall be counted in their entirety unless the household providing the foster care chooses to exclude the foster child household member.

(4) **Support or alimony:** Support or alimony payments made directly to the household from non-household members.

(5) **Educational funds:** Scholarships, educational grants, fellowships, deferred payment loans for education, and veteran's educational benefits, are counted, after allowable deductions, unless the educational assistance is excluded in its entirety in Subsection E of 8.139.520.9 NMAC. Gifts or money a student may receive from parents or other private source on a periodic basis shall be counted as unearned income, including the portion used to pay for tuition and mandatory fees.

(6) **Government-sponsored programs:** Payments to individuals from individual Indian monies and grants from the bureau of Indian affairs.

(7) **Gain or benefit:** Dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or a benefit to the household. Interest income includes payments on a bank account that are simply posted in a bank book and not paid directly to a household.

(8) **Trust funds:** Money withdrawn or dividends that are or could be received by a household from a trust fund considered an excludable resource. Such trust withdrawals shall be considered income in the month received, unless excluded in Subsection D of 8.139.520.9 NMAC. Dividends which the household has the option of either receiving as income or reinvesting in the trust shall be considered income in the month they become available to the household, unless excluded per Subsection D of 8.139.520.9 NMAC.

(9) **Rental property:** Income from rental property shall be considered unearned when a household member engages in the management of the property less than 20 hours per week. The gross income minus the cost of doing business is counted as household income.

(10) **Sponsored alien income:** The amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that is deemed to be that of the alien (Subsection G of 8.139.420.9 NMAC).

(11) **Termination pay:** Severance pay (e.g., two weeks pay instead of notice) and supplementary unemployment benefits (a series of payments similar to UCB, but paid by the employer) received after termination shall be considered unearned income.

(12) **Vacation or sick pay:** Unused vacation or sick pay paid in installments over a period of at least two months is considered unearned income in the months received. If paid as a lump sum at termination of employment, the income is considered a resource in the month received.

(13) **Cash awards, gifts, prizes:** Cash awards, gifts, prizes and winnings shall be considered unearned income in the month received, subject to the \$30.00 per quarter exclusion, even if paid on a one-time basis.

(14) **One-time income:** The distinction between one-time income and a one-time

lump sum resource is that a lump sum is money owed the household from a past period and paid retroactively.

C. Other countable income:

(1) **Legal entitlement:** Any payment that a household is legally entitled to receive, but is diverted by the provider of the payment to a third party for an expense incurred or owed by the household shall be counted as income. The distinction is whether the individual or organization making a payment on behalf of a household is using funds that otherwise must be paid to the household, such as wages, cash assistance grant, or child support or alimony payments. In these cases, a household is legally entitled to the money. If an employer, agency, or former spouse who owes such funds to a household diverts the money to a third party to pay for a household expense, the money is still counted as income, unless a court orders the money diverted.

(2) **Garnished wages:** Wages earned by a household member that are garnished or diverted by an employer and paid to a third party for a household expense shall be counted as income.

(3) **Public assistance:** All or part of a public assistance grant that is normally provided by a money payment to a household, but is diverted to a third party or to a protective payee for purposes of managing expenses, shall be counted as income.

(4) **Third party energy assistance payments:** Any payment made to a household under a state law to provide energy assistance shall be considered money payable directly to the household, unless under the law the payment cannot be provided in cash.

D. Excluded income: The following income shall be excluded in determining FS benefits:

(1) **Federal laws:** Income excluded by federal laws. The comprehensive list is found in 8.139.527 NMAC.

(2) **In-kind benefits:** Any gain or benefit which is not in the form of money paid directly to the household, including non-monetary or in-kind benefits such as meals, clothing, public housing, gifts for special occasions, or produce from a garden.

(3) **Vendor payments:** Money payments that a household is not legally entitled to receive, and which are paid directly to a third party for a household expense are considered a vendor payment. A money payment made on behalf of a household is considered a vendor payment whenever an individual or organization outside the household uses its own funds to make a direct payment to a household's creditors, or to a person or organization providing a service to a household. Vendor payments include but are not limited to:

(a) rent paid directly to the landlord by a friend or relative, who is not a household member;

(b) rent or mortgage payments made to landlords or the mortgagee by the department of housing and urban development (HUD) or by a state or local housing authority;

(c) payments by a government agency to a child care institution to provide day care for a household member;

(d) insurance company payments made directly to titleholders or loan companies when a household member becomes disabled or dies and is covered by credit life and disability insurance;

(e) housing assistance payments made to a third party on behalf of a household residing in transitional housing for the homeless;

(f) a rent payment by an employer made directly to the landlord, in addition

to paying the household its regular wages, is considered a vendor payment and is excluded as income.

(4) Energy assistance: Any payment or allowance made for the purpose of providing energy assistance under any federal law, except for a payment or allowance provided under Title IV-A of the Social Security Act; any federal or state one-time assistance for weatherization or emergency repair or replacement of heating or cooling devices.

(5) State or local general assistance: Any general assistance provided to a household which cannot, under state law, be provided in cash directly to a household.

(6) Child care food program: Payments made to a household from the child care food program for child care, or any amount received as payment for care or reimbursement for costs incurred is excluded income.

(7) Plan for achieving self-support (PASS) program: Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support which has been approved under Sections 1612 (b)(4) (A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act. The income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.

(8) Infrequent/irregular income: Any income received in the certification period which is received too infrequently or irregularly to be reasonably anticipated. The income received cannot exceed \$30.00 in a quarter.

(9) Lump-sum payment: Money received in the form of a nonrecurring lump sum payment, including but not limited to income tax refunds; rebates or credits; retroactive lump sum social security or SSI; cash assistance; railroad retirement; or other similar payments. Lump sum insurance settlements and refunds of security deposits on rental property or utilities are counted as resources in the month received, unless specifically excluded from consideration as a resource by federal law.

(10) TANF diversion: A TANF payment made to divert a family from becoming dependent on cash assistance shall be considered as a nonrecurring lump-sum payment if the payment is not defined as ongoing monthly assistance.

(11) Loans: All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(12) Charitable donations: Charitable cash donations based on need from one or more private, nonprofit charitable organizations, not to exceed \$300 in a federal fiscal quarter (January through March, April through June, July through September, and October through December).

(13) Earned income tax credit (EITC): EITC payments received either as a lump sum, or advance payments of earned income tax credits received as part of a paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year.

(14) Diverted retirement income: The portion of a civil service retirement annuity or military retirement payment that is diverted to a former spouse by court order in a divorce decree is excluded from the income of the retiree.

~~**(15) Annual allowance:** The clothing allowance provided each year to an TANF household whose children are entering or returning to school.~~

~~**(16)**~~**(15) Utility reimbursements:** Any amount paid by the department of housing and urban development (HUD) or farmers home administration (FmHA) to a household as a utility reimbursement, or to a utility provider on behalf of a household, is excluded income.