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TITLE 8 SOCIAL SERVICES  
CHAPTER 235 MEDICAL ASSISTANCE PROGRAM ELIGIBILITY - PREGNANCY OR FAMILY  
PLANNING SERVICES  
PART 500 INCOME AND RESOURCE STANDARDS

**8.235.500.1 ISSUING AGENCY:** New Mexico Human Services Department (HSD).  
[8.235.500.1 NMAC - Rp, 8.235.500.1 NMAC, 1-1-14]

**8.235.500.2 SCOPE:** The rule applies to the general public.  
[8.235.500.2 NMAC - Rp, 8.235.500.2 NMAC, 1-1-14]

**8.235.500.3 STATUTORY AUTHORITY:** The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.  
[8.235.500.3 NMAC - Rp, 8.235.500.3 NMAC, 1-1-14]

**8.235.500.4 DURATION:** Permanent.  
[8.235.500.4 NMAC - Rp, 8.235.500.4 NMAC, 1-1-14]

**8.235.500.5 EFFECTIVE DATE:** January 1, 2014, unless a later date is cited at the end of a section.  
[8.235.500.5 NMAC - Rp, 8.235.500.5 NMAC, 1-1-14]

**8.235.500.6 OBJECTIVE:** The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual, specifically 8.200 400 NMAC, *General Medicaid Eligibility*. Processes for establishing and maintaining MAD eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC, *General Provisions for Public Assistance Programs*.  
[8.235.500.6 NMAC - Rp, 8.235.500.6 NMAC, 1-1-14]

**8.235.500.7 DEFINITIONS:** [RESERVED]

**8.235.500.8 MISSION:** To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.  
[8.235.500.8 NMAC - N, 1-1-14]

**8.235.500.9 NEED DETERMINATION:** An individual's eligibility is based on financial need. Pursuant to 8.200.520 NMAC, and appropriate to the budget group size, countable income must be less than:

- A. 185 percent of the federal poverty limit (FPL); or
- B. the difference between 185 percent FPL and 235 percent FPL may be disregarded from earned income.

[8.235.500.9 NMAC - Rp, 8.235.500.9 NMAC, 1-1-14]

**8.235.500.10 RESOURCE STANDARDS:** Resources are not an eligibility factor.  
[8.235.500.10 NMAC - Rp, 8.235.500.10 NMAC, 1-1-14]

**8.235.500.11 INCOME STANDARDS:** Income consists of money received by a person whose income is considered available to the budget group as described in this chapter.

A. Income from a 30 calendar day period is used to determine eligibility. The 30 calendar day period may be any consecutive 30 calendar day period that is prior to the date of the application through the date of timely disposition. The applicant and the caseworker must agree on the 30 calendar day period. Income from a terminated source is not counted.

B. Income received less frequently than monthly: If an amount of gross income is received less frequently than monthly, that amount is converted to a monthly amount to determine financial eligibility. The conversion is dividing the total income by the number of months the income is intended to cover. For the purposes of this calculation, a partial month is considered to be one full month. This includes, but is not limited to, income

from sharecropping, farming, and self-employment. It includes contract income as well as income for a tenured teacher who may not have a contract.

C. Use of conversion factors: Whenever a full month's income is received on a weekly or biweekly basis, the income is converted to a monthly amount. Income is rounded down to the nearest whole dollar prior to application of the conversion factor. Weekly income is multiplied by four and biweekly income is multiplied by two.

[8.235.500.11 NMAC - Rp, 8.235.500.11 NMAC, 1-1-14]

**8.235.500.12 AVAILABLE INCOME:**

A. Determination of eligibility for the assistance unit is made by considering income that is available to the assistance unit and budget group. The amount of countable income is determined using allowable income exemptions, deductions and disregards. The income of a budget group member who is not included in the assistance unit is deemed available to the assistance unit.

B. Available income includes:

- (1) income received by the budget group;
- (2) income received by someone not included in the budget group for someone included in the budget group and which is available to the budget group;
- (3) income that is withheld as a result of a garnishment or wage withholding; and
- (4) income withheld by a source at the budget group's request

[8.235.500.12 NMAC - Rp, 8.235.500.12, 1-1-14]

**8.235.500.13 TOTAL COUNTABLE INCOME:** Earned income remaining after the applicable deductions and disregards are taken, together with the gross amount of any unearned income received by the assistance unit, is compared to 185 percent of the federal poverty level to determine eligibility.

[8.235.500.13 NMAC - Rp, 8.235.500.13 NMAC, 1-1-14]

**8.235.500.14 LUMP SUM PAYMENTS:** Lump sum payments are considered income in the month received, unless specifically excluded under medicaid regulations. Lump sum payments are considered a resource, if retained, as of the first moment of the first day of the following month.

[8.235.500.14 NMAC - Rp, 8.235.500.14 NMAC, 1-1-14]

**8.235.500.15 UNAVAILABLE INCOME:**

A. Individuals included in the budget group may have a legal right to income but not access to it; such income is not counted as available income when:

- (1) received by someone for the budget group and not made available to the budget group; or
- (2) the income not listed as available in this chapter where the budget group cannot gain access to the income; this includes wages withheld by an employer that refuses to pay.

B. Individuals may receive payment of funds "passed through" the individual for the benefit of someone other than themselves. Such pass through payments are not considered available.

C. A recipient of supplemental security income (SSI) is not part of the budget group. His or her income is not available to the budget group.

D. Alien sponsor deeming is not applicable pursuant to 8.200.410 NMAC.

[8.235.500.15 NMAC - N, 1-1-14]

**8.235.500.16 EARNED INCOME:** Earned income includes wages from employment, profit from self-employment. A dependent child's income is not counted as earned income.

[8.235.500.16 NMAC - N, 1-1-14]

**8.235.500.17 EARNED INCOME DEDUCTIONS/DISREGARDS:**

A. Self employment: Certain self-employment deductions allowed by the federal internal revenue service (IRS) are allowed.

- (1) Self-employment income will be annualized for income projection purposes. If the IRS Form 1040 has been filed, the previous year's tax return is used to anticipate future income, if no significant changes in circumstances have occurred. An alternative method of income anticipation should be used when the amount of self employment income reported on tax returns would no longer be a good indicator of expected income, i.e., loss of cattle or crops due to disease.

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(2) If tax returns are used for annualized projected income, self-employment expenses listed on the return are allowable except for:

(a) mileage allowance is the New Mexico department of finance and administration (DFA) rate as detailed in 2.42.2 NMAC unless proof that the actual expense is greater;

(b) rent or purchase of the place of business if the individual operates the business out of his or her residence, unless the individual can demonstrate that the expense has been allowed under federal income tax guidelines;

(c) depreciation;

(d) personal business and entertainment expenses;

(e) personal transportation to and from work;

(f) purchase of capital equipment; and

(g) payments on the principal of loans for capital assets or durable goods.

B. Work related expense (WRE) income disregards: The WRE disregard of \$120 and one third of the remaining balance is disregarded from countable earned income for each employed individual during the net income test.

C. Child care expenses:

(1) To be eligible for a child care deduction, the child receiving the care must be: a child of the employed person; under age 13; and included in the budget group.

(2) Standards: The amount deducted depends upon whether the person is employed full or part-time and the age of the child. Full-time employment is considered to be 30 hours or more of employment per week. Part time employment is less than 30 hours per week. The actual costs of child care are not to exceed the applicable limits set forth are deducted from earnings as:

(a) up to \$200 per month per child if the person is employed full-time and the child is under two years of age;

(b) up to \$100 per month per child if the person is employed part-time and the child is under two years of age;

(c) up to \$175 per month per child if the person is employed full-time and the child is two through 12 years of age;

(d) up to \$87.50 per month per child if the person is employed part-time and the child is two through 12 years of age.

(3) Third party child care payments: Child care costs paid by third parties directly to the child care provider cannot be used as child care deductions. Such payments are classified as vendor payments and are not counted as income. If such payments do not meet the full cost of child care, the difference between the deduction and the vendor payment is the amount allowed, up to the stated child care deductions in Paragraph (2) of this subsection. If the third party child care payments are made to the budget group, the payments would be treated as pass through payments and not counted.

[8.235.500.17 NMAC - N, 1-1-14]

**8.235.500.18 UNEARNED INCOME:** Unearned income includes benefits, pensions, etc.

A. The following types of unearned income are considered in determining eligibility:

(1) old age, survivors, and disability insurance (OASDI);

(2) railroad retirement benefits (RRB);

(3) veterans administration (VA) benefits:

(a) income available to veterans and their dependents from the VA as compensation for service-connected disability;

(b) pension for non-service connected disability;

(c) dependency and indemnity compensation; and

(d) death benefits paid from a government issue (GI) life insurance;

(4) unemployment compensation benefits (UCB);

(5) military allotments;

(6) worker's compensation;

(7) pension, annuity, and retirement benefits;

(8) union benefits;

(9) lodge or fraternal benefits;

(10) real property income that is not earned income;

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- (11) shared shelter and utility payments that exceed the budget group's cost are considered income, when the budget group shares shelter with others;
  - (12) income from the sale of goods or property which are obtained in finished condition;
  - (13) child support payments received directly by the budget group and retained for its use;
  - (14) settlement payments which are received from worker's compensation settlements, insurance claims, damage claims, litigation, trust distributions which are made on a recurring basis;
  - (15) American Indian individual Indian monies (IIM) for payments received and distributed by the bureau of Indian affairs (BIA) as a trustee for an individual member of a tribe; and
  - (16) bureau of Indian affairs (BIA) or tribal general assistance (GA) payments.
- B. The following types of unearned income are not considered in determining eligibility:
- (1) cash assistance from HSD or a tribal entity;
  - (2) supplemental nutritional assistance program (SNAP);
  - (3) low income home energy assistance program (LIHEAP);
  - (4) foster care or adoption subsidy;
  - (5) supplemental security income (SSI);
  - (6) Child Nutrition and National School Lunch Act;
  - (7) nutrition programs for the elderly, including meals on wheels and lunches at senior citizen's centers;
  - (8) bona fide loans from private individuals and commercial institutions as well as loans for the purpose of educational assistance;
  - (9) work study funds paid by an educational institution, when the purpose is to assist with educational expenses, regardless of the actual use of the funds;
  - (10) domestic volunteers compensation or any other payments made to or on behalf of volunteers under the Domestic Volunteers Services Act of 1973 including:
    - (a) volunteers in service to America (VISTA);
    - (b) university year for action (UYA);
    - (c) special volunteer programs (SVP);
    - (d) retired senior volunteer program (RSVP);
    - (e) foster grandparents program (FGP);
    - (f) older American community service program (OACSP);
    - (g) service corps of retired executives (SCORE); and
    - (h) active corps of executives (ACE);
  - (11) state and federal income tax returns;
  - (12) American Indian payments including:
    - (a) per capita payments distribution of tribal funds to an Indian tribe member by the tribe or by the secretary of the United States (US) department of the interior;
    - (b) interest derived from retained per capita payments (if kept separately identifiable); and
    - (c) tribal land claims payments settled by means of case payments;
  - (13) Job Training Partnership Act of 1982 (JTPA) payments made to dependent children;
  - (14) Title II Uniform Relocation Assistance and Real Property Acquisition Act of 1970 payments;
  - (15) supportive service payments made for reimbursement of transportation, child care, or training related expenses under the New Mexico work programs (NMW), tribal work programs, and other employment assistance programs;
  - (16) division of vocational rehabilitation (DVR) training payments made by the for training expenses;
  - (17) gifts, donations or contribution from other agencies which are intended to meet needs not covered as a medicaid benefit; to be exempt, the payment must:
    - (a) be paid under the auspices of an organization or non-profit entity; and
    - (b) be for a specific identified purpose, to supplement not duplicate medicaid services for the intended beneficiary of the donation or contribution;
  - (18) educational loans and grants intended for educational expenses; regardless of actual utilization of the funds;
  - (19) agent orange settlement fund payments or any fund established pursuant to the agent orange product liability litigation settlement;
  - (20) radiation exposure compensation settlement fund payments;
  - (21) Nazi victim payments made to individuals per P.L. 103-286, August 1, 1994; and

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(22) vendor payments made on behalf of a budget group member when an individual or organization outside the budget group uses its own funds to make a direct payment to a budget group's service provider.  
[8.235.500.18 NMAC - N, 1-1-14]

**HISTORY OF 8.235.500 NMAC:**

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

- ISD 290.1000, Medical Assistance for Woman and Children, filed 11-13-84.
- ISD FA 830, Medical Assistance for Woman and Children and AFDC Related Groups, filed 2-10-88.
- MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 8-11-88.
- MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 9-8-88.
- MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 9-30-88.
- MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 12-1-88.
- MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 3-31-89.
- MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 6-8-89.
- MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 12-28-89.
- MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 12-29-89.
- MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 3-1-91.
- MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 6-5-92.

**History of Repealed Material:**

- MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 6-5-92 - Repealed effective 2-1-95.
- 8.235.500 NMAC, Income and Resource Standards, filed 5-13-04 - Repealed effective 1-1-14.