

TITLE 8 SOCIAL SERVICES
CHAPTER 206 MEDICAID ELIGIBILITY - CYFD CHILDREN (CATEGORIES 006, 017, 037, 046, 047, 060, 061, 066 & 086)
PART 500 INCOME AND RESOURCE STANDARDS

8.206.500.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.206.500.1 NMAC - Rp 8.206.500.1 NMAC, 7/1/2024]

8.206.500.2 SCOPE: This rule applies to the general public.
[8.206.500.2 NMAC - Rp 8.206.500.2 NMAC, 7/1/2024]

8.206.500.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended, and by the state health care authority pursuant to state statute. See Section 27-2-12 et. seq. NMSA 1978 (Repl. Pamp. 1991). Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.206.500.3 NMAC - Rp 8.206.500.3 NMAC, 7/1/2024]

8.206.500.4 DURATION: Permanent.
[8.206.500.4 NMAC - Rp 8.206.500.4 NMAC, 7/1/2024]

8.206.500.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.206.500.5 NMAC - Rp 8.206.500.5 NMAC, 7/1/2024]

8.206.500.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.206.500.6 NMAC - Rp 8.206.500.6 NMAC, 7/1/2024]

8.206.500.7 DEFINITIONS: [RESERVED]

8.206.500.8 [RESERVED]

8.206.500.9 [RESERVED]

8.206.500.10 RESOURCE STANDARDS: To be eligible for CYFD medicaid, the value of all countable personal and real property, considered belonging to or available to an applicant/recipient under 18 years of age or 21 years of age in expanded foster care medicaid category 006 or 066 cannot exceed \$1,000. If an applicant/recipient owns resource or saving in excess of this amount, they are not eligible for CYFD medicaid.
[8.206.500.10 NMAC - Rp 8.206.500.10 NMAC, 7/1/2024]

8.206.500.11 APPLICABLE RESOURCE STANDARDS: The authorized representative from CYFD who completes the application on behalf of the applicant/recipient must initiate all appropriate steps to make available property or resources to which the applicant/recipient may be entitled. Normally, individuals under 18 do not own/control property. Property that is held or controlled on behalf of an applicant/recipient is considered available unless some specific provision in the title to the property precludes it availability.

A. Property not readily marketable: Even property that is not marketable must be assessed in the eligibility determination and is subject to transfer restrictions and penalties.

B. Property share owned: The current value of property which must be partitioned to be accessible is not considered available if the net value after estimated costs of partition and other closing costs is less than the resource limit. If the amount likely to be derived from the sale of the applicant/recipient's share of the property exceeds the resource limit, they must initiate attempts to obtain their share of the property.

C. Property owned by parent: The value of property owned by the parent who does not live with the applicant/recipient is not considered available to the applicant/recipient.

[8.206.500.11 NMAC - Rp 8.206.500.11 NMAC, 7/1/2024]

8.206.500.12 COUNTABLE RESOURCES: Countable resources include but are not limited to the following:

- A. cash value of life insurance policy owned by the applicant/recipient;
- B. cash, bank accounts and other readily negotiable assets owned by the applicant/recipient are countable resources;
- C. equipment, tools, and motor vehicles (which do not fit the vehicle exemption);
- D. livestock; and
- E. asset conversion; money received from one-time or sporadic sales of real or personal property such as crops, rugs, or jewelry is considered a resource if the property is not sold or transferred in connection with a business of self-employment activity.

(1) Actual verified expenses associated with the purchase, sale, or production of the property are deducted from money received from the sale to arrive at the net resource value.

(2) Property converted into money is subject to the resource limitation regardless of whether it was fully or partially exempt prior to conversion.

[8.206.500.12 NMAC - Rp 8.206.500.12 NMAC, 7/1/2024]

8.206.500.13 RESOURCE EXCLUSIONS: Certain resources are excluded from the resource computation.

A. Vehicle exclusion: The equity value of one vehicle belonging to the applicant/recipient or in their name, is not considered a countable resource if the value of the vehicle is \$1,500 or less. Any excess over \$1,500 is a countable resource. The value of any apparatus for the handicapped which is installed on the vehicle is also excluded.

B. Income exclusion: Any income which is excluded under income provisions is also excluded from consideration as a resource. Excluded income which is saved must be kept separate from non-excluded savings.

C. Settlement fund payment exclusion: Payments received from the Radiation Exposure Compensation Act is excluded. Payments made under the Agent Orange Settlement Act is also excluded. Payments by the remembrance, responsibility and the future foundation to individual survivors forced into slave labor by the Nazis are excluded.

D. Earned income tax credit payment exclusion: Earned income tax credit payments are not considered resources until the third month after receipt of the payment.

E. Funeral agreement exclusion: The equity value of funeral agreement(s) owned by the applicant/recipients which do not exceed \$1,500 are excluded.

F. Contingent and unliquidated claim exclusion: "Contingent and unliquidated claim" is defined as a yet unnamed right of the applicant/recipient to receive, at some future time, a resource such as an interest in an unprobated estate or damages/compensation from an accident or injury. These claims are excluded if the applicant/recipient can demonstrate that they have consulted an attorney or that under the circumstances it is reasonable not to have consulted an attorney but that they are making effort to prosecute their claim or to proceed with the probate. If the applicant/recipient can demonstrate that their share in an unprobated estate would be less than the expense of the proceeding to probate the estate, the value is not considered a resource.

G. Chafee medicaid: All resources belonging to recipients of chafee medicaid who are between 18 and 21 years of age are excluded.

[8.206.500.13 NMAC - Rp 8.206.500.13 NMAC, 7/1/2024]

8.206.500.14 RESOURCE TRANSFERS: To be eligible for CYFD Medicaid, the applicant/recipient must not have transferred resources within two years prior to application for the purpose of qualifying for CYFD medicaid. An applicant/recipient under eighteen years of age cannot transfer property, except through a guardian. Normally, such applicants/recipients do not own property in their own right. If facts indicate the existences of a trust, inheritance, or prior gift, the CYFD representative completing the application must determine if a transfer has taken place within the two year period.

A. Transfers made for the purpose of qualifying for medicaid: A transfer is considered to have been made for the purpose of becoming eligible if:

- (1) the transfer was made without a reasonable return; and
- (2) the applicant/recipient had no reasonable plan for support at the time of the transfer other than receiving CYFD medicaid.

(3) if the value of the applicant/recipient's equity in the transferred property plus all other countable resources is less than \$1,000, the transfer is not considered to be for the purpose of becoming eligible.

B. Definitions:

- (1) "Transfer" includes the sale, transfer by gift, or conveyance by deed or any other method

of transferring the title to the property. The transfer can be for either the title to real property or any other interest or rights in real property, such as mineral rights.

(2) "Reasonable return" is considered to have been received when the applicant/recipient received compensation in cash or in kind equals the value of the property at the time of transfer. This determination is based on the applicant/recipient's equity interest in the property at the time of transfer.

C. Attempts to obtain reasonable return: If the property was transferred for the purpose of becoming eligible but the applicant/recipient subsequently makes and continues to make efforts to obtain a reasonable return or regain the title, the applicant/recipient is not ineligible because of the improper transfer of resources.

D. Period of ineligibility: If a transfer without fair return was made for the purpose of becoming eligible for CYFD Medicaid, the applicant/recipient is ineligible for a period of 24 months beginning with the month the resources were transferred.

[8.206.500.14 NMAC - Rp 8.206.500.14 NMAC, 7/1/2024]

8.206.500.15 TRUSTS: If an applicant/recipient is the beneficiary of a trust fund, a copy of the trust document and any other documents pertaining to the creation of the trust must be submitted to the eligibility unit of the medical assistance division for coordination of the trust analysis with the HCA's office of general counsel.

[8.206.500.15 NMAC - Rp 8.206.500.15 NMAC, 7/1/2024]

8.206.500.16 INCOME STANDARDS:

A. To be eligible for CYFD medicaid, the applicant/recipient's income must be less than the maximum aid to families with dependent children (AFDC) standard for one person. See 8.200.520.10 NMAC, *Income Standards*. Any earned and unearned income that belongs to the applicant/recipient must be totaled and compared to the standard.

B. The authorized representative of CYFD who completes the medicaid application on behalf of the applicant/recipient must take all necessary steps to apply for or obtain any other income which the applicant/recipient may qualify for when the individual becomes aware of the income. If income becomes available to the applicant/recipient, their eligibility for CYFD medicaid must be re-evaluated.

C. Sources of potential income include social security, veterans benefits, supplement security income, trust funds, and contingent claims.

[8.206.500.16 NMAC - Rp 8.206.500.16 NMAC, 7/1/2024]

8.206.500.17 EARNED INCOME:

A. If an applicant/recipient of CYFD medicaid has earned income and is not a full-time student in elementary school, high school, or a course of vocational or technical training, their earnings are considered in the earned income calculation.

B. Earned income exclusions:

(1) Exclusion for full-time students: If an applicant/recipient of CYFD medicaid has earned income and is a full-time student in elementary school, high school, or in a course of vocational or technical training, their earnings are totally excluded.

(2) Job Training Partnership Act (JTPA) earnings and earned income tax credit exclusion: JTPA earning/reimbursement and earned income tax credit payments are excluded from consideration as income regardless of whether the applicant/recipient is a full-time student.

(3) Work-related expense disregard: An applicant/recipient of CYFD medicaid with earned income from employment is entitled to a deduction of \$90 from gross monthly earnings for work-related expenses.

(4) Census bureau employment: Wages paid by the census bureau for temporary employment related to the census are excluded from consideration as income in the eligibility determination process.

(5) Recipients of Chafee medicaid: All earned income of an applicant/recipient between 18 and 21 years of age is excluded while receiving chafee independent living assistance from CYFD.

[8.206.500.17 NMAC - Rp 8.206.500.17 NMAC, 7/1/2024]

8.206.500.18 UNEARNED INCOME: Unearned incomes includes but is not limited to social security benefits, child support, gifts, contributions, and all other cash income which does not meet the definition of earned income. Unearned income is counted in the gross amount received.

A. Unearned income exclusions and disregards: Certain amounts of unearned income are excluded from the computation of unearned income.

(1) Educational assistance exclusions: Bona fide loans from private individuals or

commercial institutions for education assistance are excluded from unearned income. Income from work study whose purpose is to assist with educational expenses are excluded from unearned income. Educational grants and scholarships whose purpose is to assist with education expenses are excluded regardless of the actual utilization of the funds.

(2) Child nutrition and school lunch benefit exclusion: Child nutritional and school lunch benefits provided in the form of money payments, vouchers, or foodstuffs authorized under the Child Nutritional Act and the National School Lunch Act are excluded.

(3) Income tax return income exclusion: State and federal income tax refunds are excluded from consideration as income. Tax refunds are considered resources.

(4) Native American payment exclusion: Certain payments to Native Americans can be excluded which include:

(a) per capita payment of tribal funds authorized by the tribe or by the secretary of the United States department of the interior; payments received and distributed by the bureau of Indian affairs (BIA) as a trustee for an individual members of a tribe, refer to as individual Indian monies (IAMB) are not considered as per capita payments;

(b) interest derived from retained per capita payments is disregarded if the retained per capita payments have not been commingled with other savings; and

(c) BIA general assistance payments made to disabled tribal members by the BIA;

(d) any tax exempt payment made under the Alaska Native Claims Act are excluded from consideration as unearned income.

(5) Settlement fund payment exclusions: Payments received from the agent orange settlement fund or from any other fund established pursuant to the agent orange product liability litigation settlement are excluded from unearned income. Payments received from the Radiation Exposure Compensation Act are excluded from unearned income. Payments by the remembrance, responsibility and the future foundation to individual survivors forced into slave labor by the Nazis are excluded from unearned income.

(6) Payments made by division of vocational rehabilitation: Any payment made by the division of vocation rehabilitation to an applicant/recipient in training to help them meet additional training costs are disregarded. The entire payment is disregarded unless specific portion is designated for basic maintenance and the applicant/recipient is maintaining only one resident. The portion designated for basic maintenance is considered income.

(7) Child support disregard: The first \$50 of child support payments received in a month from an absent parent which represents payment on a support obligation for the month is disregarded in the eligibility determination and redetermination process.

(a) If multiple child support payments are received such as cases where more than one parent is paying or a parent makes weekly or biweekly payments, the disregard is allowed only once during the month.

(b) If a payment included both current support and arrearage, the disregard is allowed only on the current support.

(8) Disregard for payments made by CYFD: Payment made by CYFD to a third party on behalf of an applicant/recipient are not considered income to the applicant/recipient.

(9) Chafee independent living assistance recipients: All unearned income of an applicant/recipient between 18 and 21 years of age is excluded.

[8.206.500.18 NMAC - Rp 8.206.500.18 NMAC, 7/1/2024]

8.206.500.19 DEEMED INCOME: Income is not deemed to an applicant/recipient from their parents if the applicant/recipient is the full or partial financial responsibility of CYFD. Any voluntary contributions made by the applicant/recipient's parent(s) is considered as unearned income.

[8.206.500.19 NMAC - Rp 8.206.500.19 NMAC, 7/1/2024]

8.206.500.20 TOTAL INCOME: The combination of the applicant/recipient's earned income and unearned income minus any applicable exclusions and disregards is compared to the maximum income standard for one person to determine if the applicant/recipient is eligible for CYFD medicaid.

[8.206.500.20 NMAC - Rp 8.206.500.20 NMAC, 7/1/2024]

8.206.500.21 LUMP SUM PAYMENTS: Lump sums are considered as income in the month received and resources (if retained) as of the first moment of the first day of the following month.

[8.206.500.21 NMAC - Rp 8.206.500.21 NMAC, 7/1/2024]

HISTORY OF 8.206.500 NMAC: [RESERVED]

History of Repealed Material: 8.206.500 NMAC - Income And Resource Standards (filed 12/15/2001), Repealed effective 7/1/2024.

Other: 8.206.500 NMAC - Income And Resource Standards (filed 12/15/2001), Replaced by 8.206.500 NMAC - Income And Resource Standards, effective 7/1/2024.