TITLE 8 SOCIAL SERVICES
CHAPTER 248 MEDICAID ELIGIBILITY - MEDICARE DRUG COVERAGE (CATEGORY 048)
PART 500 INCOME AND RESOURCE STANDARDS

8.248.500.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.248.500.1 NMAC - Rp 8.248.500.1 NMAC, 7/1/2024]

8.248.500.2 SCOPE: The rule applies to the general public.
[8.248.500.2 NMAC - Rp 8.248.500.2 NMAC, 7/1/2024]

8.248.500.3 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 27-2-12 et. seq. NMSA 1978 (Repl. Pamp. 1991). The legal basis for the low-income subsidy (LIS) program is the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), Public Law 108-173. 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.
[8.248.500.3 NMAC - Rp 07/01/2024]

8.248.500.4 DURATION: Permanent.
[8.248.500.4 NMAC - Rp 8.248.500.4 NMAC, 7/1/2024]

8.248.500.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.248.500.5 NMAC - Rp 8.248.500.5 NMAC, 7/1/2024]

8.248.500.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicare part D (drug benefit) - low income subsidy program.
[8.248.500.6 NMAC - Rp 8.248.500.6 NMAC, 7/1/2024]

8.248.500.7 DEFINITIONS: [**RESERVED**]

8.248.500.8 [**RESERVED**]

8.248.500.9 NEED DETERMINATION: This section describes the methodology to be used in determining countable resources and income for the low-income subsidy (LIS) program which is based in part on supplemental security income (SSI) methodology. These guidelines are used for initial and on-going eligibility for medicare beneficiaries enrolled in part A or part B medicare. LIS eligibility is determined prospectively. Applicants/recipients must meet, or expect to meet, all financial and non-financial eligibility criteria in the month for which a determination of eligibility is made.
[8.248.500.9 NMAC - Rp 8.248.500.9 NMAC, 7/1/2024]

8.248.500.10 APPLICATION PROCESS: The income support division (ISD) office is responsible for taking LIS applications from those individuals who do not want to submit their application to the social security administration either directly or through the ISD office.

A. Who does not have to apply: Certain groups of medicare beneficiaries who are also receiving medicaid do not have to apply for the LIS. These individuals are called "deemed eligible" and will automatically be put on the LIS:

(1) full-benefit dual eligibles, who are persons eligible for both medicare and have full medicaid benefits (including drug benefits);

(2) SSI recipients;

(3) medicare beneficiaries, who are participants in the medicare saving programs, which are: QMB, SLIMB, and QI-1;

(4) working disabled individuals (WDI) who are receiving medicare;

(5) HCBW recipients who are receiving medicare; and

(6) individuals screened for QMB, SLIMB, or QI-1 and determined eligible before the application for LIS is processed.

B. Who can apply: medicare beneficiaries who are not deemed eligible (See Paragraphs (1) through (6) above) and who insist on filing their application with the state rather than with social security administration (SSA).
[8.248.500.10 NMAC - Rp 8.248.500.10 NMAC, 7/1/2024]

8.248.500.11 RESOURCE STANDARDS: A "resource" is defined as cash and other assets that can be converted to cash within 20 days.

A. Resource determination: The resource determination is made as of the first moment of the first day of the month. An applicant/recipient is ineligible for any month in which their countable resources exceed the allowable resource standard as of the first moment of the first day of the month. Changes in the amount of countable resources during a month do not affect eligibility or ineligibility for that month.

B. Distinguishing between resources and income: Resources must be distinguished from income to avoid counting a single asset twice. As a general rule, ownership of a resource precedes the current month while income is received in the current month. Income held by an applicant/recipient until the following month becomes a resource.
[8.248.500.11 NMAC - Rp 8.248.500.11 NMAC, 7/1/2024]

8.248.500.12 APPLICABLE RESOURCE STANDARDS: The resource standard for the LIS is $10,000 for an individual and $20,000 for a couple. Resources belonging to other dependent family members are not considered.

A. Cash resources: The face value of cash, savings or checking accounts is considered in determining LIS eligibility.

(1) An applicant/recipient must provide verification of the value of all cash resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the ISD worker sends a bank or postal savings clearance to the appropriate institution(s).

(2) If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant/recipient's checking account balance to arrive at the amount to be considered a countable resource.

B. Other resources: The value of other resources is evaluated according to the applicant/spouse's equity in the resource(s). The equity value of an item is defined as the price for which that item, minus any encumbrances, can reasonably be expected to sell on the open market in the particular geographic area. Other resources which can be converted to cash within 20 days include, but are not limited to: stocks, bonds, mutual fund shares, promissory notes, mortgages, whole life insurance policies, financial institution accounts (savings, checking, CDs, IRAs, 401(K) accounts, and annuities), and real property not contiguous with home property.
[8.248.500.12 NMAC - Rp 8.248.500.12 NMAC, 7/1/2024]

8.248.500.13 COUNTABLE RESOURCES: Before a resource can be considered countable, the three criteria listed below must be met.

A. Ownership interest: An applicant/recipient must have an ownership interest in a resource for it to be countable. The fact that an applicant/recipient has access to a resource, or has a legal right to use it, does not make it countable unless the applicant/recipient also has an ownership interest in it.

B. Legal right to convert resource to cash: An applicant/recipient must have the legal ability to spend the funds or to convert non-cash resources into cash.

(1) Physical possession of resource: The fact that an applicant/recipient does not have physical possession of a resource does not mean it is not their resource. If they have the legal ability to spend the funds or convert the resource to cash, the resource is considered countable. Physical possession of savings bonds is a legal requirement for cashing them.

(2) Unrestricted use of resource: An applicant/recipient is considered to have free access to the unrestricted use of a resource even if he can take those actions only through an agent, such as a representative payee or guardian.

(3) If there is a legal bar to the sale of a resource, such as a co-owner legally blocking the sale of jointly owned property, the resource is not countable. The applicant/recipient is not required to undertake litigation in order to accomplish the sale.

C. Legal ability to use a resource: If a legal restriction exists which prevents the use of a resource for

the applicant/recipient's own support and maintenance, the resource is not countable.

D. Jointly-held account: If the applicant/spouse is the only subsidy claimant or subsidy recipient who is an account holder on a jointly held account, the state will presume that all of the funds in the account belong to the applicant/spouse. If more than one subsidy claimant or subsidy recipient are account holders, the state will presume that the funds in the account belong to those individuals in equal shares. If the applicant/spouse disagrees with the ownership presumption described in this subsection, they may rebut the presumption. Rebuttal is a procedure that permits an individual to furnish evidence and establish that some or all of the funds in the jointly-held account do not belong to them.

[8.248.500.13 NMAC - Rp 8.248.500.13 NMAC, 7/1/2024]

8.248.500.14 RESOURCE EXCLUSIONS: The following resources are not to be considered for purposes of determining LIS eligibility:

A. Applicant's home: A home is any property in which the applicant and spouse have an ownership interest and which serves as the applicant's principal place of residence. There is no restriction on acreage of home property. This property includes the shelter in which an individual resides, the land on which the shelter is located, and any outbuildings.

B. Non-liquid resources, other than real property: These include, but are not limited to:

(1) household goods and personal effects;

(2) automobiles, trucks, tractors and other vehicles;

(3) machinery and livestock; and

(4) non-cash business property.

C. Property of a trade or business: Property of a trade or business that is essential to the applicant/spouse's means of self-support.

D. Non-business property: Non-business property that is essential to the applicant/spouse's means of self-support.

E. Stock in regional or village corporations: Stock in regional or village corporations held by natives of Alaska during the 20-year period in which the stock is inalienable pursuant to the Alaska Native Claims Settlement Act.

F. Whole life insurance: Whole life insurance owned by an individual (and spouse, if any) if the total face value of all the life insurance policies on any person does not exceed $1,500. When the total face value of all policies exceeds $1,500, the cash surrender value of all policies is countable.

G. Term life insurance: Term life insurance that has no cash surrender value.

H. Restricted, allotted Indian lands: Restricted, allotted Indian lands, if the Indian/owner cannot dispose of the land without the permission of other individuals, their tribe, or an agency of the federal government.

I. Payments or benefits: Payments or benefits provided under a federal statute other than title XVI of the act where exclusion is required by such statute.

J. Federal disaster relief: Federal disaster relief assistance received on account of a presidentially declared major disaster, including accumulated interest, or comparable state or local assistance.

K. Funds of $1,500: Funds of $1,500 for the individual and $1,500 for the spouse who lives with the individual if these funds are intended to be used for funeral or burial expenses of the individual and spouse.

L. Burial spaces: Burial spaces, including burial plots, gravesites, crypts, mausoleums, urns, niches, vaults, headstones, markers, plaques, burial containers, opening and closing of the gravesite, and other customary and tradition repositories for the deceased's bodily remains, for the applicant/spouse.

M. Retained retroactive SSI or social security: Retained retroactive SSI or social security benefits for nine months after the month they are received.

N. Certain housing assistance:

O. Refunds: Refunds of federal income taxes and advances made by an employer relating to an earned income tax credit for the month following the month of receipt, and refunds of child tax credits for nine months after the month they are received.

P. Payments: Payments received as compensation incurred or losses suffered as a result of a crime (victims' compensation payments), for nine months beginning with the month following the month of receipt.

Q. Relocation assistance: Relocation assistance for a state or local government, for nine months, beginning with the month following the month of receipt.

R. Dedicated financial institution accounts: Dedicated financial institution accounts consisting of past-due benefits for an SSI-eligible individual under age 18.

S. Gifts: A gift to, or for the benefit of, an individual who has not attained 18 years of age and who

has a life-threatening condition, from an organization described in section 501(c)(3) of the internal revenue code of 1986 which is exempt from taxation under Section 501(a) of such code. The resource exclusion applies to any in-kind gift that is not converted to cash, or to a cash gift that does not exceed $2,000.

T. Funds received: Funds received from a government or nongovernmental agency, program, or health insurance policy whose purpose is to provide medical care or medical services or social services and conserved to pay for medical or social services.

[8.248.500.14 NMAC - Rp 8.248.500.14 NMAC, 7/1/2024]

8.248.500.15 INCOME STANDARDS: Income is anything the applicant/spouse receives in cash or in-kind that can be used to meet their needs for food or shelter. The gross income of the applicant, and their spouse if living together, but not dependent family members, will be considered. However, dependent family members will be counted in the family size.

[8.248.500.15 NMAC - Rp 8.248.500.15 NMAC, 7/1/2024]

8.248.500.16 EARNED INCOME:

A. Earned income: Earned income consists of the following types of payments:

(1) wages counted at the earliest of: when received, when credited to the person employed, or when set aside for the employee's use;

(2) net earnings from self-employment counted on a taxable year basis; net losses, if any, are deducted from other earned income, but not from unearned income;

(3) payments for services performed in a sheltered workshop or work activities center counted when received or set aside for the employee's use;

(4) royalties earned by an individual in connection with any publication of their work and any honoraria received for services rendered; and

(5) in-kind earned income is counted based on current market value. If the applicant/spouse receives an item that is not fully paid for and they are responsible for the balance, only the paid up value is income to the applicant.

B. Period under consideration: The period for which earned income is counted is, in 2006, the remainder of the calendar year, starting with the month of application for the subsidy. Adjust prospective earned income based on the number of months remaining in the calendar year. The income standard against which the income is measured should be adjusted to reflect the same number of months. For subsidy applications filed in 2005, eligibility cannot begin prior to January 1, 2006.

C. Earned income exclusions: Earned income exclusions apply in the order listed below:

(1) refund of federal income taxes and payments under the earned income tax credit;

(2) the first $30 of earned income per calendar quarter that is received too irregularly or infrequently to be counted as income;

(3) any portion of the $20 per month exclusion that has not been excluded from combined unearned income;

(4) $65 per month of the applicant/spouse's earned income;

(5) for applicants who are under age 65 and receive a social security disability insurance benefit based on disability, sixteen and three-tenths percent of gross earnings for impairment related work expenses (IRWE);

(6) one half of the applicant/spouse's remaining earned income; and

(7) for applicants who are under age 65 and receive a social security disability insurance benefit that is based on blindness, twenty-five percent of gross earnings for blind work expenses (BWE).

[8.248.500.16 NMAC - Rp 8.248.500.16 NMAC, 7/1/2024]

8.248.500.17 UNEARNED INCOME: Unearned income is all income that is not earned income. Unearned income is counted at the earliest of the following points: when received, when credited to the recipient, or when set aside for the recipient's use.

A. Unearned income includes, but is not limited to:

(1) social security;

(2) railroad retirement;

(3) veterans benefits;

(4) temporary assistance for needy families (TANF);

(5) pensions;

(6) annuities;
(7) alimony and support payments;
(8) rents;
(9) workmen's compensation;
(10) in-kind support and maintenance;
(11) death benefits;
(12) royalties not counted as earned income; and
(13) dividends and interest not otherwise excluded under SSI rules.

B. Unearned income disregards:

(1) In-kind support and maintenance is any food and shelter that is given to the applicant/spouse or received because someone else pays for it. This includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewage, and garbage collection services. The maximum amount of income countable for in-kind support and maintenance is limited to one third of the monthly SSI benefit rate for an individual or a couple, if the applicant's spouse is counted, or the current market value of the support, whichever is lower.

(2) When benefits are reduced for overpayments or garnishments, count the gross benefit before deductions.

(3) If part of a payment reflects expenses the applicant/spouse incurred in getting the payment, such as legal fees, damages, or medical expenses, incurred because of an accident, reduce the payment by the amount of the expenses. Do not reduce the payment by the amount of personal income taxes owed on the payment.

(4) Subtract from veterans benefits any amount included in the payment for a dependent. If the applicant/spouse is the dependent, count the portion of the benefit attributable to the dependent if they reside with the veteran or receive their own separate payment from the department of veteran affairs.

(5) Subtract from death benefits the expenses of the deceased person's last illness and death paid by the recipient.

C. Unearned income exclusions: The following types of unearned income are not considered for purposes of determining LIS eligibility:

(1) SSI benefits;
(2) any public agency's refund of taxes on real property or food;
(3) need-based assistance wholly funded by a state or one of its subdivisions, including state supplementation of SSI benefits but not a federal/state grant program such as TANF;
(4) any portion of a grant, scholarship, fellowship, or gift used for paying tuition, fees, or other educational expenses; any portion set aside or used for food, clothing or shelter is countable;
(5) food which the applicant or their spouse raise if it is consumed by them or their household;
(6) assistance received under the Disaster Relief and Emergency Assistance Act and assistance provided under any federal statute because of a catastrophe which the president of the United States declares to be a major disaster;
(7) Alaska longevity bonus payments made to an individual who is a resident of Alaska and who, prior to October 1, 1985, met the 25-year residency requirement for receipt of such payments in effect prior to January 1, 1983, and was eligible for SSI;
(8) payments for providing foster care to a child who was placed in the applicant's home by a public or private nonprofit child placement or child care agency;
(9) any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become part of the separate burial fund;
(10) home energy assistance (any assistance related to meeting the costs of heating or cooling a home);
(11) one-third of support payments made to or for the applicant by an absent parent if the applicant is a child;
(12) the first $20 of any unearned income in a month other than income in the form of in-kind support and maintenance received in the household of another and income based on need;
(13) housing assistance-any assistance paid with respect to a dwelling unit under:
(a) the United States Housing Act of 1937;
(b) the National Housing Act;
(c) Section 101 of the Housing and Urban Development Act of 1965;

(d) Title V of the Housing Act of 1949; or

(e) Section 202(h) of the Housing Act of 1959;

(14) any interest accrued on and left to accumulate as part of the value of an excluded burial space purchase agreement;

(15) gift of a domestic travel ticket received by the applicant or their spouse and not converted to cash;

(16) payments made to the applicant or their spouse from a fund established by the state to aid victims of crime;

(17) relocation assistance provided to the applicant or their spouse by the state or local government that is comparable to relocation assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(18) hostile fire pay received from one of the uniformed services;

(19) the first $60 of unearned income received per calendar quarter that is received too irregularly or infrequently to be counted as income; or

(20) any dividends or interest earned on countable resources, any dividends or interest earned on resources excluded under a federal statute other than the Social Security Act, and any dividends or interest excluded under the Social Security Protection Act of 2004.

[8.248.500.17 NMAC - Rp 8.248.500.17 NMAC, 7/1/2024]

8.248.500.18 DEEMED INCOME: Deeming income from a spouse to their minor child(ren) or from one spouse to the other spouse when living in the same household, does not apply.

[8.248.500.18 NMAC - Rp 8.248.500.18 NMAC, 7/1/2024]

8.248.500.19 TOTAL COUNTABLE INCOME: Countable income is the sum of unearned income or earned income for the individual or spouse less disregards or exclusions. Only one earned income exclusion ($65 plus one half of the remainder) is applied and one $20 disregard is applied if using income from both spouses.

[8.248.500.19 NMAC - Rp 8.248.500.19 NMAC, 7/1/2024]

HISTORY OF 8.248.500 NMAC: [**RESERVED**]

History of Repealed Material: 8.248.500 NMAC - Income And Resource Standards (filed 1/13/2006) Repealed effective 7/1/2024.

Other: 8.248.500 NMAC - Income And Resource Standards (filed 1/13/2006) Replaced by 8.248.500 NMAC - Income And Resource Standards effective 7/1/2024.