

**27-2D-2. Definitions.**

As used in the Education Works Act [27-2D-1 NMSA 1978]:

- A. "applicant" means a person applying for cash assistance on behalf of a benefit group;
- B. "benefit group" means a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half, step- or adopted siblings living with the dependent child's parent or relative within the fifth degree of consanguinity and the parent with whom the children live;
- C. "cash assistance" means cash payments distributed by the department pursuant to the Education Works Act;
- D. "department" means the human services department;
- E. "dependent child" means a natural, adopted step-child or ward who is:
  - (1) seventeen years of age or younger;
  - (2) eighteen years of age and is enrolled in high school; or
  - (3) between eighteen and twenty-two years of age and is receiving special education services regulated by the public education department;
- F. "director" means the director of the income support division of the department;
- G. "earned income" means cash or payment in kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services;
- H. "education works program" means the cash assistance, activities and services available to a recipient pursuant to the Education Works Act;
- I. "federal act" means the federal Social Security Act and rules promulgated pursuant to the Social Security Act;
- J. "federal poverty guidelines" means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services;
- K. "parent" means natural parent, adoptive parent, stepparent or legal guardian;
- L. "person" means an individual;
- M. "recipient" means a person who receives cash assistance or services or a member of a benefit group who has reached the age of majority;
- N. "secretary" means the secretary of human services;
- O. "services" means child-care assistance; payment for education- or employment-related transportation costs; job search assistance; employment counseling; employment, education and job training placement; an annual payment for education-related costs; case management; or other activities whose purpose is to assist transition into employment;
- P. "unearned income" means old age, survivors and disability insurance; railroad retirement benefits; veterans administration compensation or pension; military retirement; pensions, annuities and retirement benefits; lodge or fraternal benefits; shared shelter payments; settlement payments; individual Indian money; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income; and

**Q. "vehicle" means a conveyance for the transporting of persons to or from employment or education for the activities of daily living or for the transportation of goods; "vehicle" does not include boats, trailers or mobile homes used as a principal place of residence.**

**27-2D-3. Application; resource planning session; individual education plan; review periods.**

- A. Application for cash assistance or services shall be made to the department. The application shall be in writing or reduced to writing in the manner and on the form prescribed by the department. The application shall be made under oath by an applicant with whom a dependent child resides and shall contain a statement of the age of the child, residence, a complete statement of the amount of property in which the applicant has an interest, a statement of all income that the applicant and other benefit group members have at the time of the filing of the application and other information required by the department.
- B. The department shall assist applicants in completing the application for cash assistance or services and shall evaluate applicants to determine all department programs for which the applicant may be eligible. The department shall process all expedited food stamp applications within two business days of submission, and the department shall deliver expedited food stamps to eligible applicants within seven days of the application.
- C. At the time of application for cash assistance and services, an applicant shall identify everyone who is to be counted in the benefit group. Once an application is approved, the recipient shall advise the department if there are any changes in the membership of the benefit group.
- D. No later than thirty days after an application is filed, the department shall make referrals and act on the application.
- E. No later than five days after an application is approved, the department shall provide reimbursement for child care.
- F. Whenever the department receives an application for assistance, a verification and record of the applicant's circumstances shall promptly be made to ascertain the facts supporting the application and to obtain other information required by the department. The verification may include a visit to the home of the applicant, as long as the department gives adequate prior notice of the visit to the applicant.
- G. The department shall work with the recipient to develop an individual educational plan that:
- (1) sets forth the educational goal for the recipient, identifies barriers to that goal and identifies the steps to be taken by the recipient to achieve that goal;
  - (2) describes the services the department may provide so that the recipient may complete the recipient's educational goal; and
  - (3) provides for meetings with the recipient every six months or at the end of each academic term to review the eligibility of the benefit group and to review and revise the recipient's individual education plan.
- H. The recipient and the department shall sign the recipient's individual education plan. The department shall:
- (1) not allow a recipient to decline to participate in developing an individual education plan;
  - (2) not waive the requirement that a recipient develop an individual education plan; and
  - (3) emphasize the importance of the individual education plan to the recipient.

**27-2D-4. Education works program; eligibility; restrictions; requirements.**

A. A person is eligible to receive education works services or cash assistance if the person demonstrates that:

(1) the person has been accepted or has been determined to be eligible to enroll in a two- or four-year post-secondary or graduate or post-graduate degree program; and

(2) the degree the person will receive will increase the person's ability to engage in full-time paid employment.

B. A recipient shall not receive cash assistance funded by the temporary assistance for needy families block grant during the period in which the recipient is receiving cash assistance pursuant to the Education Works Act [27-2D-1 NMSA 1978].

C. A recipient shall apply for all financial aid available from the post-secondary, graduate or post-graduate educational institution that the recipient attends.

D. During the twenty-four months of participation in the education works program, a recipient shall engage in at least twenty hours per week of class time, studying, work, work-study or volunteering. The department shall assume that a recipient spends one and one-half hours studying for every hour of class time.

E. A recipient may participate in the education works program for no more than twenty-four months, except that a recipient may participate in the education works program for one additional academic term following the twenty-four-month participation limit, or for two additional academic terms following the twenty-four-month participation limit at the discretion of the director, if doing so will result in the recipient earning a degree.

F. The number of recipients enrolled in the education works program is limited to the number of recipients who can be served by the funds available.

G. For purposes of this section, "work" means work-study, training-related practicums, internships, paid employment, volunteering or any other activity approved by the department.



**27-2D-5. Financial standard of need.**

- A. The secretary shall adopt a financial standard of need based upon the availability of state funds.
- B. The following income sources are exempt from the gross income test, the net income test and the cash payment calculation:
- (1) medicaid;
  - (2) food stamps;
  - (3) government-subsidized foster care payments if the child for whom the payment is received is also excluded from the benefit group;
  - (4) supplemental security income;
  - (5) government-subsidized housing or housing payments;
  - (6) federally excluded income;
  - (7) educational payments made directly to an educational institution;
  - (8) government-subsidized child care;
  - (9) earned income that belongs to a person seventeen years of age or younger who is not the head of household;
  - (10) child support passed through to the participant by the child support enforcement division of the department in the following amounts:
    - (a) fifty dollars (\$50.00) per month through December 31, 2008; and
    - (b) no later than January 1, 2009, a minimum of one hundred dollars (\$100) for one child and two hundred dollars (\$200) for two or more children as based on availability of state and federal funds; and
  - (11) other income sources as determined by the department.
- C. The total countable gross earned and unearned income of the benefit group shall not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.
- D. For a benefit group to be eligible to participate:
- (1) earned and unearned income that belongs to the benefit group shall not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group; and
  - (2) earned and unearned income that belongs to the benefit group shall not equal or exceed the financial standard of need after applying the disregards set out in Paragraphs (1) through (4) of Subsection E of this section.
- E. Subject to the availability of state funds, the department shall determine the cash payment of the benefit group by applying the following disregards to the benefit group's earned income and then subtracting that amount from the benefit group's financial standard of need:
- (1) one hundred twenty-five dollars (\$125) of monthly earned income and one-half of the remainder, or for a two-parent family, two hundred twenty-five dollars (\$225) of monthly earned income and one-half of the remainder for each parent;
  - (2) monthly payments made for child care at a maximum of two hundred dollars (\$200) for a child under two years of age and a maximum of one hundred seventy-five dollars (\$175) for a child two years of age or older;

- (3) costs of self-employment income; and
- (4) business expenses.

F. In addition to the disregards specified in Subsection E of this section, and between the effective date of this 2007 act and June 30, 2008, or until implementation of the employment retention and advancement bonus program in the New Mexico Works Act, the department shall apply the following income disregards to the benefit group's earned income and then subtract that amount from the benefit group's financial standard of need:

- (1) for the first two years of receiving cash assistance or services, if a participant works over the work requirement rate set by the department pursuant to the New Mexico Works Act, one hundred percent of the income earned by the participant beyond that rate; and
- (2) for the first two years of receiving cash assistance or services, for a two-parent benefit group in which one parent works over thirty-five hours per week and the other works over twenty-four hours per week, one hundred percent of income earned by each participant beyond the work requirement rate set by the department.

G. The department may recover overpayments of cash assistance on a monthly basis not to exceed fifteen percent of the financial standard of need applicable to the benefit group.

**27-2D-6. Resources.**

- A. Liquid and nonliquid resources owned by the benefit group shall be counted in the eligibility determination.
- B. A benefit group may at a maximum own the following resources:
- (1) two thousand dollars (\$2,000) in nonliquid resources;
  - (2) one thousand five hundred dollars (\$1,500) in liquid resources;
  - (3) the value of the principal residence of the participant;
  - (4) the value of burial plots and funeral contracts for family members;
  - (5) individual development accounts; and
  - (6) the value of work-related equipment up to one thousand dollars (\$1,000).
- C. Vehicles owned by the benefit group shall not be considered in the determination of resources attributed to the benefit group.

**27-2D-7. Ineligibility.**

A. The following are ineligible to be members of a benefit group:

- (1) an inmate or patient of a nonmedical institution;
- (2) a person who, in the two years preceding application, assigned or transferred real property unless he:
  - (a) received or receives a reasonable return;
  - (b) attempted to or attempts to receive a reasonable return; or
  - (c) attempted to or attempts to regain title to the real property;
- (3) a minor unmarried parent who has not successfully completed a high school education and who has a child at least twelve weeks of age in his care unless the minor unmarried parent:
  - (a) participates in educational activities directed toward the attainment of a high school diploma or its equivalent; or
  - (b) participates in an alternative educational or training program that has been approved by the department;
- (4) a minor unmarried parent who is not residing in a place of residence maintained by his parent, legal guardian or other adult relative unless the department:
  - (a) refers or locates the minor unmarried parent to a second-chance home, maternity home or other appropriate adult-supervised supportive living arrangement and takes into account the needs and concerns of the minor unmarried parent;
  - (b) determines that the minor unmarried parent has no parent, legal guardian or other appropriate adult relative who is living or whose whereabouts are known;
  - (c) determines that a minor unmarried parent is not allowed to live in the home of a living parent, legal guardian or other appropriate adult relative;
  - (d) determines that the minor unmarried parent is or has been subjected to serious physical or emotional harm, sexual abuse or exploitation in the home of the parent, legal guardian or other appropriate adult relative;
  - (e) finds that substantial evidence exists of an act or a failure to act that presents an imminent or serious harm to the minor unmarried parent and the child of the minor unmarried parent if they live in the same residence with the parent, legal guardian or other appropriate adult relative;
  - (f) determines that it is in the best interest of the unmarried minor parent to waive this requirement;
- (5) a minor child who has been absent or is expected to be absent from the home for forty-five days;
- (6) a person who does not provide a social security number or who refuses to apply for one;
- (7) a person who is not a resident of New Mexico;
- (8) a person who fraudulently misrepresented residency to receive assistance in two or more states simultaneously, except that the person shall be ineligible only for ten years;
- (9) a person who is a fleeing felon or a probation and parole violator;
- (10) a person concurrently receiving supplemental security income, tribal temporary assistance for needy families or bureau of Indian affairs general assistance; and



(11) unless he demonstrates good cause, a parent who does not assist the department in establishing paternity or obtaining child support or who does not assign support rights to New Mexico as required pursuant to the federal act.

B. For the purposes of this section, "second-chance home" means an entity that provides a supportive and supervised living arrangement to a minor unmarried parent where the minor unmarried parent is required to learn parenting skills, including child development, family budgeting, health and nutrition and other skills to promote long-term economic independence and the well-being of children.

C. Pursuant to the authorization provided to the states in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C. Section 862a(d)(1)(A), New Mexico elects to exempt all persons domiciled in the state from application of 21 U.S.C. Section 862a(a).

**27-2D-8. Fair hearing; review and appeal.**

A. A recipient may request a hearing if:

- (1) an application is not acted on within a reasonable time after the filing of the application;
- (2) an application is denied in whole or in part; or
- (3) the cash assistance or services are modified, terminated or not provided.

B. The department shall notify the recipient of his rights under this section.

C. The department shall by rule establish procedures for the filing of a request for a hearing and the time limits within which a request may be filed; provided, however, that the department may grant reasonable extensions of the time limits. If the request is filed in a timely manner, cash assistance and services shall be provided until the appeal is resolved. If the request is not filed within the specified time for appeal or within whatever extension the department may grant, the department action shall be final. Upon receipt of a timely request, the department shall give the recipient reasonable notice of an opportunity for a fair hearing in accordance with the rules of the department.

D. The hearing shall be conducted by a hearing officer designated by the director. The powers of the hearing officer shall include administering oaths or affirmations to witnesses called to testify, taking testimony, examining witnesses, admitting or excluding evidence and reopening a hearing to receive additional evidence. The technical rules of evidence and the rules of civil procedure shall not apply. The hearing shall be conducted so that the contentions or defenses of each party to the hearing are amply and fairly presented. Each party may be represented by counsel or other representative and may conduct cross-examination. Oral or documentary evidence may be received, but the hearing officer may exclude irrelevant, immaterial or unduly repetitious evidence.

E. The director shall review the record of the proceedings and shall make his decision on the record. The recipient or his representative shall be notified in writing of the director's decision and the reasons for the decision. The written notice shall inform the recipient of his right to judicial review. The department shall be responsible for ensuring that the decision is enforced.

F. Within thirty days after receiving written notice of the decision of the director, a recipient may file a notice of appeal with the court of appeals together with a copy of the notice of the decision. The clerk of the court shall transmit a copy of the notice of appeal to the director.

G. The filing of a notice of appeal shall not stay the enforcement of the decision of the director, but the department may grant, or the court upon motion and good cause shown may order, a stay.

H. Within twenty days after receipt of the notice of appeal, the department shall file with the clerk of the court three copies and furnish to the appellant one copy of the written transcript of the record of the proceedings.

I. If, before the date set for argument, application is made to the court for leave to present additional evidence and the court is satisfied that the additional evidence is material and there was good reason for not presenting it in the hearing, the court may order the additional evidence taken before the department. If the application to present additional evidence is filed by the department and is approved by the court, the department's decision that is being appealed shall be stayed. The director may modify his findings and decision by reason of the additional evidence and shall file with the court a transcript of the additional evidence together with any modified or new findings or decision.

J. The review of the court shall be made upon the decision and the record of the proceedings.

K. The court shall set aside a decision and order of the director only if the decision is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record as a whole; or
- (3) otherwise not in accordance with law.

L. The department shall not authorize or allow expenditures in excess of the amounts previously appropriated by the legislature.

**27-2D-9. Satisfactory participation.**

A. To maintain satisfactory participation in the education works program, a recipient shall be a full-time student as defined by the school that the recipient attends.

B. A recipient may demonstrate good cause for failure to maintain satisfactory participation in the education works program, and must work with the department to address the barrier, in any month of participation for the following reasons:

- (1) extended illness or injury of the recipient;
- (2) the recipient is the primary caretaker for a special needs child or an ill or aging parent; or
- (3) the recipient has been assessed to have a learning disability or a mental or physical health problem.

C. If a recipient falls below the academic standard of the school in one academic term, he shall be placed on probationary status for one academic term to improve his grades. If a recipient's overall grade point average falls below 2.0 based on a four-point system, the department shall place him on probation for a maximum of two academic terms to allow him to bring up his overall grade point average.

D. A recipient shall:

- (1) attend classes as scheduled and participate as required by the standard of the school;
- (2) report to the department a change that may affect the benefit group's eligibility for or anything that may affect the recipients ability to participate in the education works program;
- (3) provide the department with copies of any financial aid award letters; and
- (4) provide the department with copies of his grades as they become available.

E. If a recipient does not comply with Subsection C of this section or with the provisions of the Education Works Act [27-2D-1 NMSA 1978], the department may require the recipient to apply for public assistance pursuant to the New Mexico Works Act [27-2B-1 NMSA 1978]. This decision shall be made in writing and the recipient shall have the opportunity to appeal the decision.