

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 139 FOOD STAMP PROGRAM**  
**PART 420 RECIPIENT REQUIREMENTS - SPECIAL HOUSEHOLDS**

**8.139.420.1 ISSUING AGENCY:** New Mexico Health Care Authority.  
[8.139.420.1 NMAC - Rp 8.138.420.1 NMAC, 7/16/2024]

**8.139.420.2 SCOPE:** General public.  
[8.139.420.2 NMAC - Rp 8.138.420.2 NMAC, 7/16/2024]

**8.139.420.3 STATUTORY AUTHORITY:** The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. 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.  
[8.139.420.3 NMAC - Rp 8.138.420.3 NMAC, 7/16/2024]

**8.139.420.4 DURATION:** Permanent.  
[8.139.420.4 NMAC - Rp 8.138.420.4 NMAC, 7/16/2024]

**8.139.420.5 EFFECTIVE DATE:** July 16, 2024, unless a later date is cited below a section.  
[8.139.420.5 NMAC - Rp 8.138.420.5 NMAC, 7/16/2024]

**8.139.420.6 OBJECTIVE:** Issuance of the revised food stamp program policy manual is intended to be used in administration of the food stamp program in New Mexico. This revision incorporated the latest federal policy changes in the food stamp program not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the HCA.  
[8.139.420.6 NMAC - Rp 8.138.420.6 NMAC, 7/16/2024]

**8.139.420.7 DEFINITIONS:** [RESERVED]

**8.139.420.8 CATEGORICAL ELIGIBILITY (CE):** All members of a food stamp household must maintain CE status for the household to be considered CE. Categorically eligible one and two person households are entitled to the minimum food stamp benefit amount, except in an initial month if the prorated benefit is less than ten dollars (\$10).

**A. Determining CE:** Households may be CE by receiving financial assistance or by receiving a non-cash TANF/MOE funded benefit or service, known as broad-based CE.

**(1) Financial assistance/SSI CE:** A food stamp household is considered CE for the entire month when all of its members receive or has been determined eligible to receive any combination of the benefits or services from the following:

- (a)** financial assistance;
- (b)** financial, in-kind benefits, or services funded either under Title IV-A of the Social Security Act or by the state as part of the TANF maintenance of effort;
- (c)** SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)).

**(2) Broad-based CE due to receiving a non-cash TANF/MOE funded benefit or service:** A food stamp household is considered to be a broad-based CE household for the month of application and the entire certification period when the household's gross income is less than one hundred sixty-five percent FPG and the household has received a non-cash TANF/MOE funded benefit or service.

**(3) Households not entitled to CE:** A household shall not be considered CE if:

(a) any member is disqualified for an IPV;  
(b) any member is disqualified for failure to comply with work registration or E&T requirements, including voluntarily quitting a job or reducing employment hours without good cause;  
(c) any member is disqualified because of fleeing felon status or parole/probation violations;  
(d) the household is institutionalized; or  
(e) the household refuses to cooperate in providing information that is necessary to determine eligibility;  
(f) households that lose eligibility because an individual member received substantial lottery or gambling winnings will remain ineligible until they meet the income and resource limits detailed in 7 CFR 273.8 and 273.9. The next time such a household reapplies and is certified for SNAP after losing eligibility under this rule, the household would not be considered categorically eligible. This requirement is not permanent; it applies only to the first time a household is certified under regular SNAP rules following the loss of eligibility for substantial lottery and gambling winnings.

(4) Households may be CE if they contain non-household members such as ineligible students, ineligible non-citizens, ABAWDs who are ineligible due to time limits.

**B.** Eligibility factors for CE households: All CE households are subject to food stamp eligibility requirements, including, but not limited to, verification of household composition, if questionable; benefit determination (income and deductions); disqualification for any reason; claims recovery and restored benefits; notices and fair hearings; and all reporting requirements.

(1) Financial assistance/SSI households: Households entitled to CE because of receipt of financial assistance or SSI do not have to provide verification of the following eligibility factors:

- (a) resources;
- (b) social security number;
- (c) sponsored non-citizen information; and
- (d) residency.

(2) Broad-based households: Households entitled to CE because they received a non-cash TANF/MOE funded benefit or service do not have to verify resources.

**C.** Case management for all CE households:

(1) Applicant households: Caseworkers shall postpone denying a potentially CE household until the 30th day to allow financial assistance or SSI benefit approval. If within 30 days following the denial date, the caseworker becomes aware of, approval which makes the household CE benefits shall be paid using the original application and any other information which has become available since that time.

(2) Responsibility to report changes: CE households subject to simplified or regular reporting must report changes in accordance with 8.139.120 NMAC.

(3) Action on changes to CE status: When a household reports a change or the HCA becomes aware of a change, the caseworker shall take action to determine if the household is still entitled to continue CE.

(a) Financial assistance: When the household reports a loss or the HCA becomes aware of a loss of SSI or financial assistance, the household should be evaluated for broad-based CE.

(b) Broad-based CE: The caseworker shall take action to determine if the household still meets the criteria for broad-based CE status per Paragraph (2) of Subsection A above. Should the reported change result in a loss of broad-based CE the household will be notified in writing. Any household no longer entitled to broad-based CE status may still participate in the food stamp program and are subject to all eligibility requirements including resource and reduced income limits.

[8.139.420.8 NMAC - Rp 8.138.420.8 NMAC, 7/16/2024]

### **8.139.420.9 SPONSORED NON-CITIZENS:**

**A.** Definition of a sponsored non-citizen: A non-citizen lawfully admitted for permanent resident status into the United States, for which an individual has executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act. Not all lawful non-citizens are sponsored. Only in the event that the sponsored non-citizen is eligible in accordance with 8.139.410.9 NMAC shall the HCA consider available to the household the income and resources of the sponsor and spouse.

**B.** Date of entry or date of admission: The date established by the immigration and naturalization service (INS) as the date the sponsored non-citizen was admitted for permanent residence.

**C.** Sponsor: An individual who has executed an affidavit of support or similar agreement on behalf

of a non-citizen, as a condition of the non-citizen's entry or admission into the United States as a permanent resident.

**D.** Exempt non-citizens: The provisions of this section do not apply to the following:

- (1) a non-citizen participating in the food stamp program as a member of the sponsor's food stamp household;
- (2) a non-citizen sponsored by an organization or group rather than an individual;
- (3) a non-citizen who is not required to have a sponsor under the Immigration and Nationality Act; or
- (4) a non-citizen that ISD has determined is indigent.

(a) For purposes of this paragraph, the term indigent means that the sum of the eligible sponsored non-citizen's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance the sponsor and others provide, does not exceed one hundred thirty percent of the poverty income guidelines for the household's size.

(b) The caseworker shall determine the amount of income and other assistance provided in the month of application.

(c) If the non-citizen is indigent, the amount that the HCA shall count shall be the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date. Each indigence determination is renewed for additional 12-month periods.

(5) A battered non-citizen spouse, non-citizen parent of a battered child, or child of a battered non-citizen, for 12 months after the HCA determines that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer. After 12 months, the HCA shall not deem the batterer's income and resources if the battery is recognized by a court or the INS and has substantial connection to the need for benefits, and the non-citizen does not live with the batterer.

**E.** Sponsored non-citizen's responsibility: The HCA shall attribute the entire amount of income and resources to the applicant eligible sponsored non-citizen until the non-citizen provides the information specified below. The sponsored non-citizen is responsible for:

- (1) obtaining the cooperation of the non-citizen's sponsor(s) to provide the caseworker, at the time of application or recertification, with the information or documentation necessary to determine the income and resources of a sponsor and a sponsor's spouse;
- (2) providing the names and other identifying factors of other non-citizens for whom the non-citizen's sponsor has signed an affidavit of support;
- (3) reporting the require information about the sponsor and sponsor's spouse should the non-citizen obtain a different sponsor during the certification period;
- (4) reporting a change in income should the sponsor or the sponsor's spouse change or lose employment or die during the certification period.

**F.** Information required: The following information shall be obtained from the non-citizen at the time of initial application and at recertification:

- (1) the full amount of the income and resources of a non-citizen's sponsor;
- (2) the full amount of the income and resources of a sponsor's spouse, if the spouse is living with the sponsor;
- (3) provision of the Immigration and Nationality Act under which the non-citizen was admitted;
- (4) date of the non-citizen's entry or admission as a lawful permanent resident as established by INS;
- (5) the non-citizen's date of birth, place of birth, and non-citizen registration number;
- (6) number of dependents claimed or who could be claimed as dependents by the sponsor and the sponsor's spouse for federal income tax purposes;
- (7) name, address and phone number of the non-citizen's sponsor;
- (8) the above information shall be verified at initial application and at recertification.

**G.** Deemed income:

(1) The monthly income of the income of a sponsor and the sponsor's spouse (if living with the sponsor) shall be considered the unearned income of the sponsored non-citizen, until the non-citizen achieves US citizenship through naturalization or has worked 40 qualifying quarters of coverage as defined by the social security administration. If the sponsored non-citizen can demonstrate that the non-citizen's sponsor is the sponsor of other non-citizens, the HCA shall divide the income by the number of such sponsored non-citizens. The spouse's income shall be counted even if the sponsor and spouse were married after the sponsoring agreement was signed. The

monthly income attributed to the sponsored non-citizen is the total gross earned and unearned income (less exclusions) of the sponsor and sponsor's spouse (if living with the sponsor) at the time the household containing the sponsored non-citizen member applies or is recertified for participation in the FSP, reduced by:

(a) a twenty percent earned income amount for the portion of the income determined as earned income of the sponsor and the sponsor's spouse; and  
(b) an amount equal to the FSP's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes.

(2) TANF-sponsored non-citizen income: If a non-citizen has already reported gross income information about the non-citizen's sponsor according to TANF sponsored non-citizen rules, that income amount shall be used for food stamp deeming purposes.

(3) Sponsor-paid money: Actual money paid to the non-citizen by the sponsor or the sponsor's spouse shall not be counted as income to the non-citizen unless the amount paid exceeds the amount deemed to the non-citizen. The amount paid that actually exceeds the amount deemed shall be counted as income to the non-citizen, in addition to the deemed amount.

**H. Deemed resources:**

(1) The full amount of the resources reduced by \$1,500 of a sponsor and the sponsor's spouse (if living with the sponsor) shall be deemed to be the resources of the sponsored non-citizen until the non-citizen achieves US citizenship through naturalization or has worked 40 qualifying quarters of coverage as defined by the social security administration. The spouse's resources shall be counted even if the sponsor and spouse were married after the sponsoring agreement was signed. If the sponsored non-citizen can demonstrate that the non-citizen's sponsor is the sponsor of other non-citizens, the HCA shall divide the resources by the number of such sponsored non-citizens. Resources available to the sponsor shall be determined in accordance with the provisions found in 8.139.510 NMAC.

(2) TANF sponsored non-citizen resources: If a non-citizen has already reported all resource information on the non-citizen's sponsor according to TANF sponsored non-citizen rules, that resource amount shall be used for food stamp deeming purposes as the amount to be attributed to the non-citizen.

**I. Determining eligibility and benefit amount:** The amount of income and resources deemed to be that of the sponsored non-citizen is considered in determining the eligibility and benefit amount of the household of which the non-citizen is a member.

**J. Sponsors:**

(1) Sponsoring more than one non-citizen: If the sponsored non-citizen can demonstrate that the non-citizen's sponsor is the sponsor of other non-citizens, the HCA shall divide the income and resources by the number of such sponsored non-citizens.

(2) Non-citizen switches sponsors: If the non-citizen reports that they have changed sponsors during the certification period, deemed income and resources shall be recalculated based on information and verification about the new sponsor and the sponsor's spouse. The change shall be handled in accordance with change-reporting requirements, time frames and procedures, as appropriate.

(3) Loss of sponsorship: If a non-citizen loses their sponsor, and does not get another, the full amount of the income and resources of the previous sponsor continues to be attributed to the non-citizen until the non-citizen achieves US citizenship through naturalization or has worked 40 qualifying quarters of coverage as defined by the social security administration. If the non-citizen sponsor dies, the income and resources shall no longer be attributed to the non-citizen.

**K. Awaiting verification:** Until the non-citizen provides information or verification necessary to determine eligibility, the sponsored non-citizen is ineligible. The caseworker shall determine the eligibility of any remaining household members. The caseworker shall consider available to the remaining household members the income and resources of the ineligible non-citizen in determining the eligibility and benefit level of the remaining household members. If the sponsored non-citizen refuses to cooperate in providing information or verification, other adult members of the non-citizen's household are responsible for providing the information or verification required. If the caseworker subsequently receives information or verification, the caseworker shall act on the information as a reported change in household membership in accordance to timeliness standards. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as the household provides the needed sponsor information or verification. The caseworker shall assist the non-citizen in obtaining verification.

**L. Over-issuance:** A non-citizen's sponsor and the non-citizen shall be jointly liable for repayment of any over-issuance of food stamp benefits resulting from incorrect information provided by the sponsor. The sponsor

of a non-citizen or the non-citizen shall also be independently responsible for the obligation to repay any over-issuance of food stamp benefits resulting from incorrect information provided by the sponsor.

**(1)** Good cause/sponsor: If a non-citizen's sponsor has good cause or is without fault for supplying the incorrect information, the non-citizen's household is solely liable for repayment of the over-issuance. The caseworker shall determine whether good cause exists in such situations, and shall consider the facts and circumstances, including information submitted by the non-citizen and by the sponsor. Good cause includes, but is not limited to, a misunderstanding by a sponsor of the responsibility to report information about the sponsor's resources and income or a lack of information provided at the time a sponsor executed the affidavit of support or similar agreement on behalf of the non-citizen. Problems caused by the inability of a sponsor or non-citizen to speak, read, or write English may constitute good cause.

**(2)** Establishing the claim: If a sponsor does not have good cause, the caseworker shall determine whether to establish a claim for the over-issuance against the sponsor or the non-citizen's household, or both. The HCA may choose to establish claims against both parties at the same time or to establish a claim against the party considered most likely to repay first. If a claim is established against the non-citizen's sponsor first, the caseworker shall ensure that a claim is established against the non-citizen's household if the sponsor fails to respond to a demand letter within 30 days of receipt. The HCA shall return to the non-citizen's sponsor or the non-citizen's household any amounts repaid in excess of the total amount of the claim.

**(3)** Claims collection against sponsor:

**(a)** The restitution bureau initiates a collection action by sending a non-citizen's sponsor a written demand letter which informs the sponsor of the amount owed, the reason for the claim, and how the sponsor may pay the claim. The sponsor shall be informed that they shall not be held responsible for repayment of the claim if the sponsor can demonstrate good cause or absence of personal fault for the incorrect information having been supplied to the HCA. In addition, the restitution bureau shall follow up the written demand letter with personal contact, if possible. The HCA may pursue other collection actions as appropriate to obtain payment of a claim against any sponsor who fails to respond to a written demand letter. The restitution bureau shall end a collection action against a sponsor at any time if it has documentation that the sponsor cannot be located, or if the cost of further collection efforts is likely to exceed the amount that can be recovered. If a non-citizen's sponsor responds to a written demand letter and is financially able to pay the claim at one time, the restitution bureau shall collect a lump sum cash payment. The restitution bureau shall negotiate a payment schedule with the sponsor for repayment of the claim, as long as payments are made in regular installments. For more information on handling claims, see 8.139.640.11 NMAC.

**(b)** Exception: A sponsor who is participating in the food stamp program as a household shall be excluded from any demand for repayment of the value of food stamp benefits issued to a sponsored non-citizen.

**(4)** Fair hearing: A sponsor is entitled to a fair hearing either to contest a determination that the sponsor was at fault for giving incorrect information, or to contest the amount of the claim.

**(5)** Claims collection against non-citizen households: Before initiating collection against a sponsored non-citizen's household for repayment of an over issuance caused by incorrect information having been supplied concerning the sponsor or sponsor's spouse, a caseworker shall determine whether the incorrect information supplied was due to an inadvertent household error or an intentional program violation (IPV) on the part of the non-citizen. Claims collection against a household shall be pursued regardless of the current eligibility status of sponsored non-citizen or non-citizen households.

**(a)** Intentional misrepresentation: If sufficient documentary evidence exists to substantiate that incorrect information was provided by an act of IPV on the part of the non-citizen, the case shall be referred as a request for IPV disqualification, in accordance with the procedures in 8.139.647.8 NMAC. A claim against an non-citizen's household shall be handled as an inadvertent error claim until there is a determination of an IPV by an administrative disqualification hearing official or a court of appropriate jurisdiction.

**(b)** Misunderstanding/unintended error. If it is determined that incorrect information was supplied because of a misunderstanding or unintended error on the part of the sponsored non-citizen, the claim shall be handled as an inadvertent household error claim.

**M.** Memorandum of agreement: An agreement has been entered into by the secretary of the United States department of agriculture (USDA), the U.S. secretary of state, and the U.S. attorney general regarding sponsored non-citizen and their sponsors. A sponsor and non-citizen, at the time the sponsor executes an affidavit of support or similar agreement on behalf of the non-citizen, will be informed of the requirements of Sec. 1308 of P.L. 97-98. Under the agreement, the bureau of consular affairs of the state department and local INS offices provide information to the HCA that is needed to carry out the provisions of the agreement. The agreement lists the specific

information that must be released by all parties to facilitate identification of the non-citizen and sponsor and enable the HCA to verify required information supplied by the non-citizen which is essential for eligibility determinations. [8.139.420.9 NMAC - Rp 8.138.420.9 NMAC, 7/16/2024]

**8.139.420.10 HOMELESS HOUSEHOLDS:** Homeless households residing in public or private nonprofit shelters for homeless individuals will be exempt from the residents of an institution eligibility requirements (Subsection A of 8.139.400.13 NMAC). Such households may not be denied benefits for lack of a conventional or fixed residence, or be required to have a street address or post office box for mailing purposes. Homeless households may use their food stamp benefits to purchase meals from homeless meal providers that have been authorized by FCS to accept coupons for meal payments.

**A.** Homeless shelter standard: The HCA will use a standard estimate of shelter expenses for households in which all members are homeless and are not receiving free shelter throughout the calendar month. All homeless households that incur, or reasonably expect to incur, shelter expenses during a month will be eligible for the homeless shelter standard unless higher shelter expenses are verified. The homeless shelter standard, which includes both shelter and utility expenses, is adjusted annually, and is effective every October (Paragraph (3) of Subsection F of 8.139.500.8 NMAC).

**B.** Restrictions:

**(1)** Households: No special restrictions will be imposed on homeless households living in shelters.

**(2)** Homeless meal providers: Homeless meal providers may not act as authorized representatives for homeless households. If a homeless shelter is authorized by FNS as a homeless meal provider, the shelter may not require a homeless household to surrender its food stamp benefits to the shelter. The shelter can only request voluntary use of food stamp benefits from homeless food stamp recipients.

**(3)** Cost of food: A shelter for the homeless may not require households using food stamp benefits to pay more than the average cost of the food purchased by the homeless meal provider. For purposes of this section, "average cost" will be calculated by averaging food costs over a period of up to one calendar month. The value of donated foods from any source will not be used to calculate the average cost, nor to determine the amount requested from food stamp recipients. All indirect costs, such as those incurred in the acquisition, storage, or preparation of the food used in meals, will also be excluded. Homeless meal providers may only use uncanceled, unmarked \$1 food stamp benefit amounts in making change for meal purchases by homeless households. Change in the form of cash or credit slips is prohibited. In addition, if other shelter residents have the option of eating free or making a monetary donation, food stamp recipients in the shelter must be given the option of eating free or making a voluntary donation in money or food stamp benefits.

**C.** Shelter authorization procedures:

**(1)** To be authorized to accept food stamp benefits from homeless recipients, a homeless meal provider must file an application with FNS and be determined eligible as a homeless meal provider. The conditions that a homeless meal provider must meet are:

**(a)** the homeless meal provider must be a public organization or a private, nonprofit organization defined by the IRS (I.R.C. 501(c)(3));

**(b)** the homeless meal provider must serve meals that include food purchased by the organization (providers serving meals consisting entirely of donated food are not authorized); and

**(c)** the homeless meal provider must obtain written approval from the HCA that the organization does in fact serve meals to homeless persons.

**(2)** FNS may limit the participation of any homeless meal provider in order to preserve the integrity of the food stamp program.

[8.139.420.10 NMAC - Rp 8.138.420.10 NMAC, 7/16/2024]

#### **HISTORY OF 8.139.420 NMAC:**

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

ISD 460.0000, Action on Households with Special Circumstances, 8/15/1980.

ISD-Rule 451.0000, Food Assistance - Action on Households with Special Circumstances, 11/5/1982.

ISD-Rule 450.0000, Action on Households with Special Circumstances, 10/13/1983.

ISD-Rule 450.0000, Food Assistance - Action on Households with Special Circumstances, 4/24/1984.

ISD-Rule 457.0000, Food Assistance - Residents of Drug/Alcoholic Treatment and Rehabilitation Programs, 11/5/1982.

ISD-Rule 458.0000, Food Assistance - Other Households with Special Circumstances, 11/5/1982.  
ISD-Rule 458.0000, Food Assistance - Other Households with Special Circumstances, 2/23/1983.  
ISD-Rule 458.0000, Food Assistance - Other Households with Special Circumstances, 10/13/1983.  
ISD FS 240, Special Food Stamp Households, 2/2/1988.

**History of Repealed Material:** 8.139.420 NMAC - Recipient Requirements - Special Households (filed 4/26/2001) Repealed effective, 7/16/2024.

**Other:** 8.139.420 NMAC - Recipient Requirements - Special Households (filed 4/26/2001) Replaced by 8.139.420 NMAC - Recipient Requirements - Special Households, effective 7/16/2024.