

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

**8.139.420.1 ISSUING AGENCY:** New Mexico Human Services Department.  
[02/01/95; 8.139.420.1 NMAC - Rn, 8 NMAC 3.FSP.000.1, 05/15/2001]

**8.139.420.2 SCOPE:** General public.  
[02/01/95; 8.139.420.2 NMAC - Rn, 8 NMAC 3.FSP.000.2, 05/15/2001]

**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. Administration of the human services department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).  
[02/01/95; 8.139.420.3 NMAC - Rn, 8 NMAC 3.FSP.000.3, 05/15/2001]

**8.139.420.4 DURATION:** Permanent.  
[02/01/95; 8.139.420.4 NMAC - Rn, 8 NMAC 3.FSP.000.4, 05/15/2001]

**8.139.420.5 EFFECTIVE DATE:** February 1, 1995.  
[02/01/95; 8.139.420.5 NMAC - Rn, 8 NMAC 3.FSP.000.5, 05/15/2001]

**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 human services department.  
[02/01/95; 8.139.420.6 NMAC - Rn, 8 NMAC 3.FSP.000.6, 05/15/2001]

**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 \$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 165% 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 aliens, 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 alien 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 department 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 department 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.

[2/1/1995, 7/1/1997, 6/1/1999; 8.139.420.8 NMAC - Rn, 8 NMAC 3.FSP.426, 05/15/2001; A, 02/14/2002; A, 04/01/2010; A, 09/01/2021]

### **8.139.420.9 SPONSORED ALIENS:**

**A. Definition of a sponsored alien:** An alien 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 aliens are sponsored. Only in the event that the sponsored alien is eligible in accordance with of 8.139.410.9 NMAC shall HSD 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 alien was admitted for permanent residence.

**C. Sponsor:** An individual who has executed an affidavit of support or similar agreement on behalf of an alien, as a condition of the alien's entry or admission into the United States as a permanent resident.

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

- (1) an alien participating in the food stamp program as a member of the sponsor's food stamp

household;

- (2) an alien sponsored by an organization or group rather than an individual;
- (3) an alien who is not required to have a sponsor under the Immigration and Nationality

Act; or

- (4) an alien that ISD has determined is indigent.

(a) For purposes of this paragraph, the term indigent means that the sum of the eligible sponsored alien'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 130% 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 alien is indigent, the amount that HSD 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 alien spouse, alien parent of a battered child, or child of a battered alien, for 12 months after HSD 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, HSD 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 alien does not live with the batterer.

**E. Sponsored aliens' responsibility:** HSD shall attribute the entire amount of income and resources to the applicant eligible sponsored alien until the alien provides the information specified below. The sponsored alien is responsible for:

(1) obtaining the cooperation of the alien'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 aliens for whom the alien's sponsor has signed an affidavit of support;

(3) reporting the require information about the sponsor and sponsor's spouse should the alien 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 alien at the time of initial application and at recertification:

(1) the full amount of the income and resources of an alien'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 alien was admitted;

(4) date of the alien's entry or admission as a lawful permanent resident as established by INS;

(5) the alien's date of birth, place of birth, and alien 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 alien'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 alien, until the alien achieves US citizenship through naturalization or has worked 40 qualifying quarters of coverage as defined by the social security administration. If the sponsored alien can demonstrate that the alien's sponsor is the sponsor of other aliens, HSD shall divide the income by the number of such sponsored aliens. 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 alien 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 alien 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 alien income:** If an alien has already reported gross income information about the alien's sponsor according to TANF sponsored alien rules, that income amount shall be used for food stamp deeming purposes.

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

**H. Deemed resources:**

(1) The full amount of the resources reduced by \$1500 of a sponsor and the sponsor's spouse (if living with the sponsor) shall be deemed to be the resources of the sponsored alien until the alien 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 alien can demonstrate that the alien's sponsor is the sponsor of other aliens, HSD shall divide the resources by the number of such sponsored aliens. Resources available to the sponsor shall be determined in accordance with the provisions found in 8.139.510 NMAC.

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

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

**J. Sponsors:**

(1) **Sponsoring more than one alien:** If the sponsored alien can demonstrate that the alien's sponsor is the sponsor of other aliens, HSD shall divide the income and resources by the number of such sponsored aliens

(2) **Alien switches sponsors:** If the alien reports that the alien has 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 an alien 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 alien until the alien achieves US citizenship through naturalization or has worked 40 qualifying quarters of coverage as defined by the social security administration. If the alien sponsor dies, the income and resources shall no longer be attributed to the alien.

**K. Awaiting verification:** Until the alien provides information or verification necessary to determine eligibility, the sponsored alien 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 alien in determining the eligibility and benefit level of the remaining household members. If the sponsored alien refuses to cooperate in providing information or verification, other adult members of the alien'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 alien in obtaining verification.

**L. Over-issuance:** An alien's sponsor and the alien 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 an alien or the alien 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 an alien's sponsor has good cause or is without fault for supplying the incorrect information, the alien'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 alien 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 alien. Problems caused by the inability of a sponsor or alien 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 alien's household, or both. HSD 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 alien's sponsor first, the caseworker shall ensure that a claim is established against the alien's household if the sponsor fails to respond to a demand letter within 30 days of receipt. HSD shall return to the alien's sponsor and/or the alien'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 an alien'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 HSD. In addition, the restitution bureau shall follow up the written demand letter with personal contact, if possible. HSD 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 an alien'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 alien.

**(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 alien households:** Before initiating collection against a sponsored alien'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 alien. Claims collection against a household shall be pursued regardless of the current eligibility status of sponsored alien or alien 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 alien, 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 alien'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 alien, 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 aliens and their sponsors. A sponsor and alien, at the time the sponsor executes an affidavit of support or similar agreement on behalf of the alien, 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 HSD 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 alien and sponsor and enable HSD to verify required information supplied by the alien which is essential for eligibility determinations.

[02/01/95, 07/01/98; 8.139.420.9 NMAC - Rn, 8 NMAC 3.FSP.428, 05/15/2001; A, 02/14/2002]

**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:** HSD 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 HSD 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.

[02/01/95, 01/01/97; 8.139.420.10 NMAC - Rn, 8 NMAC 3.FSP.429, 05/15/2001]

**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: [RESERVED]**