

AN ACT

RELATING TO PUBLIC ASSISTANCE; ENACTING THE EDUCATION WORKS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Education Works Act".

Section 2. DEFINITIONS.--As used in the Education Works Act:

A. "benefit group" means a pregnant woman or a group of people that includes a pregnant woman or at least one dependent child living with a parent, legal guardian or relative within the fifth degree of consanguinity;

B. "cash assistance" means cash payments disbursed from the maintenance of effort funds of the state and not from funds from the temporary assistance for needy families block grant;

C. "department" means the human services department;

D. "dependent child" means a natural or adopted child or ward who is seventeen years of age or younger;

E. "earned income" means cash or payment in kind that is received as wages from employment or payment in lieu of wages; or 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;

F. "federal act" means the federal Social

Security Act and rules promulgated pursuant to that act;

G. "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;

H. "household group" means a group of people that consists of a benefit group and any other person who resides in a household regardless of whether they are related or have a legal support responsibility for a member of the benefit group, but does not include:

(1) landlords;

(2) tenants; or

(3) members of a registered nonprofit organization or church who provide shelter to a benefit group through a program sponsored by the nonprofit organization or church;

I. "landlord" means the owner of an estate in land or rental property who has leased it to another person called the tenant;

J. "parent" means natural parent, adoptive parent, stepparent or legal guardian;

K. "person" means an individual;

L. "recipient" means a person who receives cash assistance or services pursuant to the Education Works Act;

M. "secretary" means the secretary of the department;

N. "services" means child-care assistance and cash assistance for education- or employment-related

transportation costs and one-time payment per year for education costs;

O. "tenant" means a person who pays rent for the use and occupancy of real property owned by a landlord; and

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, either cash or in-kind resulting from union membership; gifts; contributions; and real property income.

Section 3. APPLICATION.--

A. Application for cash assistance or services shall be made to the department's county office in the county or district in which an applicant resides. 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 having custody of or residing with a dependent child who is a household group member and shall contain a statement of the age of the child, the child's residence, a complete statement of the amount of property in which the applicant has an interest, a statement of all income that he and other household group members have at the time of the filing of the application and other information required by the department.

B. At the time of application for cash assistance and services, an applicant shall identify household group members who are 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 household group or benefit group.

C. An applicant shall report to the department the names of all of the members of the applicant's household group or benefit group. A household group may contain more than one benefit group.

D. Not later than forty-five days after an application is filed, the department shall provide to an applicant a resource planning session to ascertain his immediate needs, assess financial and nonfinancial options, make referrals, act on the application and develop an individual responsibility plan.

E. The applicant shall immediately be referred to the children, youth and families department to apply for child-care services.

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 meet semi-annually with

a recipient to review the current financial eligibility of a household group and to review and revise his individual responsibility plan.

H. The number of recipients in the education works program shall be limited to that number for which funding is available.

Section 4. ELIGIBILITY--RESTRICTIONS--REQUIREMENTS.--

A. A recipient is eligible if he demonstrates that:

(1) at the time of application he does not have a bachelor's degree;

(2) he has been accepted or has been determined to be eligible to enroll in a two- or four-year post-secondary degree program;

(3) he has the ability to succeed in the educational program that he has chosen; and

(4) the degree he will receive will increase his ability to engage in full-time paid employment.

B. A recipient shall not receive any cash assistance or services funded by the temporary assistance for needy families block grant.

C. A recipient shall apply for all financial grants or scholarships available.

D. A recipient shall meet the requirements of the educational institution during the twenty-four months that the recipient receives services pursuant to the Education Works Act. The department shall assume that a recipient spends one and one-half hours studying for every

hour of class time.

E. If a recipient does not attend summer school full time, he shall engage in work for at least twenty hours per week. A recipient may continue to attend school during the summer session.

F. A recipient may participate in a program pursuant to the Education Works Act for no more than twenty-four months. If the participant leaves the program for good cause, including a verifiable need to take care of a family member with special needs, a physical or mental health problem, illness, accident, death or a serious personal or family problem that necessitates reduced participation or time off from education, training or work, the recipient shall not be prohibited from resuming the program when the recipient is able and ready to return to the program.

G. A recipient may only earn one degree through the Education Works Act program.

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

Section 5. FINANCIAL STANDARD OF NEED.--

A. The secretary shall adopt a financial standard of need based upon the availability of state funds.

B. The cash benefit level for a benefit group not living in government-subsidized housing or receiving government-subsidized housing payments shall be increased by an amount equal to that received by participants pursuant to

the New Mexico Works Act.

C. 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 and adoption payments, if the child for whom the payment is received is 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 and unearned income that belongs to a person seventeen years of age or younger who is not the head of household;
- (10) unearned income that belongs to the household group but not to the benefit group; and
- (11) other income sources as determined by the department.

D. Earned income over one hundred thirty percent of the federal poverty guidelines that belongs to the household group but not to the benefit group is countable income. The department shall count the entire household group to determine family size when applying the federal

poverty guidelines.

E. The department shall count the entire household group to determine family size when applying the financial standard of need. For a benefit group to be eligible to participate:

(1) gross countable earned income that belongs to the household group but not to the benefit group must not exceed one hundred eighty-five percent of the financial standard of need; and

(2) net countable earned income that belongs to the household group must not equal or exceed the financial standard after applying the disregards set out in Paragraphs (1) through (4) of Subsection F of this section.

F. 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 gross income:

(1) one hundred fifty dollars (\$150) of monthly earned income and one-half of the remainder, or for a two-parent family, two hundred fifty dollars (\$250) 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 at 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.

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.

H. Cash assistance received pursuant to the Education Works Act shall be considered to be the same as cash assistance received pursuant to the New Mexico Works Act.

Section 6. RESOURCES.--

A. Liquid and nonliquid resources owned by the household group but not the benefit group shall not 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 recipient;
- (4) the value of burial plots and funeral contracts for family members;
- (5) the value of work-related equipment up to one thousand dollars (\$1,000);
- (6) in areas without public transportation, the value of one motor vehicle for each recipient enrolled in a two- or four-year post-secondary degree program; and
- (7) in areas with public transportation,

the value of one motor vehicle.

Section 7. INELIGIBILITY.--The following are ineligible to be members of a benefit group:

A. an inmate or patient of a nonmedical institution;

B. a person who, in the two years preceding application, assigned or transferred real property unless he:

(1) received or receives a reasonable return;

(2) attempted to or attempts to receive a reasonable return; or

(3) attempted to or attempts to regain title to the real property;

C. a minor child who has been absent or is expected to be absent from the home for forty-five days;

D. a person who does not provide a social security number or who refuses to apply for one;

E. a person who is not a resident of New Mexico;

F. a person who fraudulently misrepresented residency to receive assistance in two or more states simultaneously except that such person shall be ineligible for only ten years;

G. a person who is a fleeing felon or a probation and parole violator;

H. a person concurrently receiving supplemental security income, tribal temporary assistance for needy families, bureau of Indian affairs general assistance or

adoption subsidies; and

I. 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, unless he demonstrates good cause.

Section 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 is 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 of the income support division of the department. 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 of the income support division shall review the record of the proceedings and shall make his final decision on the record. The recipient or his representative shall be notified in writing of the director's final decision and the reasons for the decision. The written notice shall inform the recipient of his right to judicial review pursuant to Section 39-3-1.1 NMSA 1978. The department shall be responsible for ensuring that the decision is enforced.

F. A recipient may appeal the final decision of the director of the income support division to district court pursuant to Section 39-3-1.1 NMSA 1978.

G. The department shall not authorize or allow expenditures in excess of the amounts previously

