

TITLE 35. MASHANTUCKET PEQUOT TRIBAL ELDERS BENEFIT PROGRAM

35 M.P.T.L. § 1

§ 1. Findings, Purpose and Authority

The Tribe finds that:

- a. There are Elder members of the Tribe who may have chosen to retire or who may have reduced capacity to secure gainful employment or otherwise obtain sufficient income to be self-supporting; and
- b. It is the policy of the Tribe to assure the essential welfare of its members by providing financial assistance to those Elders in need.
- c. The Tribe enacts this law pursuant to its inherent authority and responsibility to regulate public health, well-being and safety within its territory and for its membership. Further, the Tribe enacts this law with the intent to provide options for Elder tribal members to receive benefits. Elders may participate in the Mashantucket Pequot Elders Benefit Program by choosing to receive direct benefit payments or by participating in the Indian general welfare benefit pursuant to the program. Both options are administered under specified guidelines that do not discriminate in favor of the governing body of the Tribe and are available to any Elder tribal member who meets the guidelines. The Indian general welfare benefits are for the promotion of general welfare, are not lavish and extravagant, and are not compensation for services.

35 M.P.T.L. § 2

§ 2. Definitions

- a. "Administrator" means the Chief Financial Officer of the Tribe or his/her designee, or such other officer as may subsequently be appointed by the Tribal Council to make determinations of eligibility under this Title.
- b. "Benefit Age" means the age of sixty years of age; provided, however, that solely with respect to any member who had attained the age of fifty-five years of age as of December 31, 2010, Benefit Age shall be deemed to mean the age of fifty-five years of age.
- c. "Elder Benefits" means benefits provided pursuant to the Mashantucket Pequot Elders Benefit Program to Participants under this law which can be in the form of direct taxable cash payments (Taxable Benefit) or non-taxable benefits provided to Participants in the Indian general welfare benefit directly or indirectly, by payment or reimbursement, in cash or in property or provision of services, which meet the requirements set forth in 26 U.S.C. Section 139E (Non-Taxable Benefit). The total annual cost of Elder Benefits, including both options described in this Section 2(c), shall be determined by the Mashantucket Pequot Tribal Council, from time to time.

d. "Exempted Participant" means any member of the Mashantucket Pequot Tribal Nation in good standing who has attained the age of seventy years.

e. "Offset Income" means the sum of-

- (1) Wages, salaries, tips, and any other income received by the Participant and required to be reported on Form W-2 or added to such amounts for purposes of reported employment income on a United States Individual Income Tax Return, plus
- (2) net earnings from self-employment received by the Participant and required to be reported for purposes of the Self-Employment Tax on a United States Individual Income Tax Return, plus
- (3) any other distribution of money to the Participant by or on behalf of the Tribe including, but not limited to, any Incentive program distribution, per capita payment, earned income supplement, meeting stipend, and any workers compensation payment or long-term disability benefit attributable to the Participant's employment by the Tribe.

Notwithstanding the foregoing, such income received by a Participant in an amount equal to the difference between \$75,000 and the Standard of Need (the "Offset Exemption") shall not be included in Offset Income for purposes of calculating the limitation in benefits provided under Section 5 of this Law.

f. "Participant" means a member of the Mashantucket Pequot Tribal Nation in good standing who has reached Benefit Age.

g. "Payment Year" means the calendar year.

h. "Standard of Need" means the standard established from time to time by the Mashantucket Pequot Tribal Council to measure the amount of funds available and the income necessary to meet the basic human needs of a Participant. The Tribal Council may, by Council resolution, adjust the Standard of Need.

35 M.P.T.L. § 3

§ 3. Determination of Eligibility

a. Any Exempted Participant may apply to the Administrator for Elder Benefits under this Title on a form made available by the Administrator, and through December 31, 2018 shall not be subject to the limitations on benefits regarding Offset Income as provided in Section 5 of this Law. Effective January 1, 2019, Exempted Participants shall be subject to the limitations on benefits regarding Offset Income as provided in Section 5 of this Law.

b. Any Participant may apply to the Administrator for Elder Benefits under this Title on a form to be made available by the Administrator. They will have the option to choose to receive the Taxable Benefit or, effective April 1, 2021, participate in the Non-Taxable Benefit option. The form shall require that a copy of the applicant's most recent federal income tax return, complete with all supporting schedules and W-2 forms, be appended to the application. For any Exempted Participant, the Administrator, in his or her sole discretion, may waive the requirement for a Participant to provide a copy of their most recent income tax return.

c. The Administrator shall determine the age of any individual applying for Elder Benefits under this Title 35 through use of birth certificates or, in the case of a missing birth certificate, such other evidence of age as the Administrator finds clear and convincing. The Administrator is authorized to request and receive information from the Tribal Clerk as may be required to determine or verify the birth date and age of any individual applying for Elder Benefits under this Title 35.

d. In the event that the Administrator determines that the individual is not eligible for the full amount of Elder Benefits for which such applicant has applied as a result of Offset Income, the Administrator shall notify the applicant of the determination of the amount of Elders Benefit, if any, to which such individual is entitled.

e. In the event that the Administrator denies the application for Elder Benefits under this Section or determines that the individual is not eligible for the full amount of Elder Benefits under this Title, the Administrator shall provide a written explanation of the determination setting forth the reason(s) for the determination, and if the individual does not agree with such determination, an appeal of Administrator's decision may be filed with the Finance Committee of the Mashantucket Pequot Tribal Council, which will review the Administrator's determination and decide whether to uphold, reverse or modify the determination. The Finance Committee shall set forth its decision in writing. If an individual is aggrieved by the decision of the Finance Committee, an appeal may be filed in the Tribal Court in accordance with Section 4 of this Law.

35 M.P.T.L. § 4

§ 4. Tribal Court Review of Finance Committee's Decision

a. Right to Appeal. The Final Decision issued by the Finance Committee may be appealed to the Tribal Court in accordance with 40 M.P.T.L. ch. 3. A written appeal on a form provided by the Tribal Court Clerk must be submitted to the Tribal Court. Claims shall be brought only against the Tribe, and there shall be no separate cause of action against any division, agency, committee, office, entity or instrumentality of the Tribe, or against any officer, agent, servant or employee of the Tribe. All appeals under this Title shall be heard by the court, not a jury. A fifty dollar (\$50.00) filing fee is required to be paid to the Tribal Court for such an appeal. No costs shall be taxed against the Tribe.

b. Tribal Court Standard of Review. The Tribal Court shall review the Final Decision of the Finance Committee pursuant to 40 M.P.T.L. ch. 3, §8.

c. Court of Appeals. Pursuant to 40 M.P.T.L., ch. 3 §10, decisions by the Tribal Court may be appealed to the Mashantucket Pequot Court of Appeals. Any decision of the Court of Appeals shall be final.

§ 5. Income Limitation

a. No Participant who receives Offset Income during any Payment Year in an amount equal to or greater than the Standard of Need shall be eligible for Elder Benefits under this Title during such Payment Year; provided that the Offset Exemption amount shall not be calculated as Offset Income for purposes of this limitation.

b. Any Participant who receives Offset Income during any Payment Year in an amount less than the Standard of Need and is otherwise eligible for financial assistance under this Title shall be entitled to Elder Benefits, with respect to any Payment Year, in an amount equal to the difference between the Standard of Need and the Offset Income received by such Participant during such Payment Year.

c. A Participant who receives Elder Benefits under this Title shall affirm under penalties of perjury the amount, if any, of Offset Income to which such Participant is entitled with respect to each Payment Year, and shall annually furnish a copy of such Participant's federal income tax return as filed with the Internal Revenue Service within thirty days after filing such return or such other date as maybe determined by the Administrator. Every Participant receiving Elder Benefits under this Title shall also execute in such form as may be required by the Administrator a consent to the disclosure by the Internal Revenue Service to the Administrator of a true copy of such Participant's federal income tax return.

d. Through December 31, 2018, Exempted Participants are not subject to the income limitations in Section 5, beginning as of the date they become Exempted Participants. Effective January 1, 2019, Exempted Participants shall be subject to the income limitations in Section 5.

§ 6. Payment of Benefits; Recovery of Excess Payments

a. A Participant who is eligible for Elder Benefits under this Title shall receive Elder Benefits in an amount determined by the Tribal Council, from time to time. Annually, Participants shall have the option to participate in the Non-Taxable Benefit program or receive Taxable Benefits. This selection shall be binding. The Chief Financial Officer of the Tribe shall make arrangements to disburse Elder Benefits under this Title through such means as may be feasible and efficient in his/her sole discretion. In no event shall any Participant or Exempted Participant be entitled to benefits for any period of time prior to ninety (90) days before the date the Participant or Exempted Participant properly completed an application for benefits and provided all required forms and documentation to the Administrator under Section 3 of this Title.

b. In the event that the Administrator determines that a Participant has received Elder Benefits under this Title in excess of the amount to which such Participant was properly entitled, the Administrator shall make demand for return of such excess payment and unless such demand is satisfied within thirty (30) days of notice to the Participant the Administrator may (i)

offset such excess payments against future Elder Benefits that may be payable to the Participant, or (ii) commence an action in Tribal Court to recover such excess payment with interest for the period from the payment of such excess amount to the time of recovery of such excess payment at the interest rate charged with respect to the same period for purposes of late payment of Federal Income Taxes for an individual; provided, however, that the Administrator in his/her sole discretion may waive the demand for interest in the event that the Administrator determines that the excess payment resulted solely from an error by the Administrator in calculating benefits payable.

35 M.P.T.L. § 7

§ 7. Penalties for Fraud

a. Any person who provides false information on an application to establish eligibility for Elder Benefits under this Title or for purposes of verification of earned income or to obtain financial assistance from any other tribal program shall be subject to denial of eligibility for Elder Benefits under this Title for a period of seven years. The Administrator shall notify in writing any individual subject to this penalty of such denial of eligibility. Such denial shall be considered a Final Decision subject to review by the Tribal Court in accordance with Section 4 of this Title.

b. Any person who obtains Elder Benefits by willfully providing false information on an application to establish eligibility for Elder Benefits under this Title or for purposes of verification of earned income shall be guilty of the criminal offense of defrauding the Tribe. Whoever is convicted of such offense shall be punished by incarceration for up to one year in jail and/or a fine of not more than \$5,000.

35 M.P.T.L. § 8

§ 8. Income Taxation and Other Deductions and Offsets

a. Except in the case where an Elder chooses to receive the Non-Taxable Benefit pursuant to the Tribe's program established in accordance with 26 U.S.C. Section 139E, Elder Benefits under this Title are subject to federal taxation and will have applicable tax withheld in accordance with regulations of the Internal Revenue Service. Taxable Benefits under this Title to Participants who are not residents of Mashantucket are also subject to state income taxes (where applicable).

b. The Tribe has the right to deduct from or offset against any amounts otherwise payable to a Participant under this Title 35 for any amounts that may be owed to the Tribe by said Participant, or as otherwise allowed by applicable law.

35 M.P.T.L. § 9

§ 9. Effective Date

This Title shall take effect upon enactment with respect to the authority of the Administrator to receive and process applications for Elder Benefits and to render determinations of eligibility and with respect to the authority of the Tribal Court to review such determinations. The assistance provided

pursuant to this Title shall commence on January 1, 2011, unless a later commencement date is established by Tribal Council.

35 M.P.T.L. § 10

§ 10. Termination of Benefits

The benefits paid under this Title shall cease upon the death of the Participant and no benefits shall be paid to the estate of a Participant.

Historical and Statutory Notes

Derivation.

Effective October 28, 2010, TCR102810-03 of 03 enacted the Mashantucket Pequot Tribal Elders Financial Assistance Law.

Amendments.

Effective April 19, 2012, TCR041912-05 of 08 amended ch. 1, §2(f) of 35 M.P.T.L. by amending the definition of "Standard of Need".

Effective November 19, 2012 TCR111912-01 of 01 amended ch. 1, §10 and added a new §11. Effective December 13, 2012, TCR121312-06 of 10 amended ch. 1, §7 to increase the penalties for providing false information to obtain assistance under this title or any other tribal program.

Effective October 30, 2014, TCR103014-07 of 09 amended ch. 1, §2(f) of 35 M.P.T.L. by amending the definition of "Standard of Need".

Effective July 27, 2017, TCR072717-05 of 05 amended 35 M.P.T.L. by eliminating section 11 in its entirety.

Effective September 27, 2018, TCR092718-01 of 07 made amendments to MPTL 35 to provide greater parity for all participants of the Elder Financial Assistance Program.

Effective April 1, 2021, TCR020421-01 of 07 made amendments to 35 M.P.T.L. by including an optional "opt-in" GWE compliant benefit payment feature for Tribal Elders.