

TITLE 35. MASHANTUCKET PEQUOT TRIBAL ELDERS FINANCIAL ASSISTANCE

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.

35 M.P.T.L. § 2

§ 2. Definitions

a. "Administrator" means the Chief Financial Officer of the Tribe or her designee, or such other officer as may subsequently be appointed by the Tribal Council to make determinations of eligibility under this Title.

b. "Offset Income" means the sum of--

(1) Wages, salaries, tips, and any other income received by the recipient 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 recipient 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 recipient 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 recipient's employment by the Tribe.

Notwithstanding the foregoing, the first \$25,000 of such income received by a Participant shall not be included in Offset Income for purposes of calculating the limitation in benefits provided under Section 5 of this Law.

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

d. "Payment Year" means the calendar year.

e. "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.

f. "Standard of Need" means the standard established from time to time by the Mashantucket Pequot Tribal Council to measure the amount of income necessary to meet the basic human needs of a participant. The initial standard of need is Fifty Thousand Dollars (\$50,000.00) applicable to the Payment Year commencing January 1, 2011. The Tribal Council may, by Council resolution, adjust the standard of need.

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

35 M.P.T.L. § 3

§ 3. Determination of Eligibility

a. Any Exempted Participant may apply to the Administrator for financial assistance under this Title on a form made available by the Administrator, and shall not be subject to the limitations on benefits regarding offset income as provided in Section 5¹ of this Law.

b. Any Participant may apply to the Administrator for financial assistance under this Title on a form to be made available by the Administrator. 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.

c. The Administrator shall determine the age of any individual applying for financial assistance under 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 financial assistance under Title 35.

d. In the event that the Administrator determines that the individual is not eligible for the full amount of financial assistance under this Title 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 assistance, if any, to which such individual is entitled.

e. In the event that the Administrator denies the application for assistance under this Section or determines that the individual is not eligible for the full amount of financial assistance under this Title, the Administrator shall provide a written explanation of her 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

¹ 35 M.P.T.L. § 5.

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 4² of this Law.

35 M.P.T.L. § 4

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

a. The tribal court is granted jurisdiction over an appeal seeking review of a final determination by the Finance Committee under this Title; provided that such appeal is filed with the tribal court within thirty (30) days following the issuance of the Finance Committee's final determination and is filed by the person aggrieved by such final determination. The tribal court is also granted jurisdiction to hear any claim brought pursuant to Section 6(b)³ of this Title by the Administrator to recover excess payments.

b. The Tribe hereby expressly waives its sovereign immunity from suit in the tribal court for an appeal seeking review of a final determination by the Finance Committee under this Title.

c. The appeal under this section shall be instituted in the same manner that an employee appeal is instituted under Rule 3 of the Mashantucket Pequot Rules of Civil Procedure⁴, except that the appeal under this section may only be brought against the Mashantucket Pequot Tribal Nation as the defendant. No separate cause of action shall exist against an agent, servant or employee of the Tribe acting within the scope of his or her employment or authority, and nothing in this law shall be construed to waive the sovereign immunity of the Tribe to the extent applicable to an agent, servant or employee of the Tribe and such sovereign immunity is waived only for purposes of an action against the Tribe in tribal court as specifically provided in this Section 4.

d. Within thirty (30) days of filing the appeal the Finance Committee, or its designee, shall certify to the Tribal Court the record considered in rendering the final determination which record shall consist of all evidence and materials before the Administrator and the Finance Committee, the Administrator's decision, and the Finance Committee's decision.

e. In deciding the appeal, the Court shall consider the record and any additional evidence it decides appropriate pursuant to Section 4(g) of this Title.

f. The Court shall determine whether there was a reasonable basis for the Finance Committee's final determination. If the Court determines that there

² 35 M.P.T.L. § 4.

³ 35 M.P.T.L. § 6(b).

⁴ 35 M.P.R.C.P. Rule 3.

was no reasonable basis to support the Finance Committee's final determination then the Court may reverse or modify the final determination. Otherwise, the Court shall affirm the Finance Committee's final determination.

g. Either party to the appeal may, within twenty (20) days of the certification of the record, file a request with the Court to present additional evidence to the Court. The party making such request shall specify, in detail, the additional evidence requested, the form of the evidence, and explain how the additional evidence is relevant and probative. In addition, the requesting party shall explain the good and sufficient reasons for failure to present the evidence in the proceedings or record before the Administrator. The other party may file an objection to such additional evidence or seek permission to present responsive evidence.

h. All appeals filed under this Title shall be tried to the tribal court and not to a jury. No costs shall be taxed against the Tribe.

i. The following shall not apply in appeals filed under this Law: (1) any rule of law imposing absolute or strict liability, or providing for punitive or exemplary damages; and (2) any order for injunctive relief.

35 M.P.T.L. § 5

§ 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 financial assistance under this Title during such Payment Year; provided that the first \$25,000 of Offset Income shall not be calculated as Offset Income for purposes of this limitation. There is no income limitation or requirement for Exempt Participants.

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 financial assistance, 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 financial assistance 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 individual's Federal income tax return as filed with the Internal Revenue Service within thirty days after filing such return. Every Participant receiving financial assistance 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 individual's Federal income tax return.

d. Exempted Participants are not subject to the income limitations in this Section 5, beginning as of the date they become Exempted Participants.

35 M.P.T.L. § 6

§ 6. Payment of Benefits; Recovery of Excess Payments

a. A Participant who is eligible for financial assistance under this Title shall receive an amount on a monthly basis equal to one twelfth, or on a bi-weekly basis equal to one twenty-sixth, of the Standard of Need with respect to such Payment Year, less applicable offsets. The Chief Financial Officer of the Tribe shall make arrangements to disburse financial assistance under this Title through such means of payment as may be feasible and efficient in his or her sole discretion. For any Tribal Member who reaches Benefit Age after December 31, 2010, payments of financial assistance under this Title shall be prorated from the first day of the month following the Participant's 60th birthday to the end of the Payment Year.

b. In the event that the Administrator determines that a Participant has received financial assistance under this Title in excess of the amount to which such Participant was properly entitled under this Title, the Administrator shall make demand for return of such excess payment and shall unless such demand is satisfied within thirty days of notice to the Participant (i) offset such excess payments against future financial assistance under this Title 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 or 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 financial assistance under this Title or for purposes of verification of eligibility of earned income or to obtain financial assistance from any other tribal program shall be subject to denial of eligibility for financial assistance under this Title for a period of seven years. The Administrator shall notify any individual subject to this penalty of such denial of eligibility. Such denial shall be subject to review by the Tribal Court in accordance with Section 4 of this Title.

b. Any person who obtains financial assistance by willfully providing false information on an application to establish eligibility for financial assistance under this Title or for purposes of verification of eligibility 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. Financial assistance payments under this Title are subject to federal taxation and will have applicable tax withheld in accordance with regulations of the Internal Revenue Service. Financial assistance payments under this Title to participants who are not residents of Mashantucket are also subject to state income taxes (where applicable), and will have applicable taxes withheld.

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 assistance 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 recipient and no benefits shall be paid to the estate of a recipient except as provided in Section 11.

35 M.P.T.L. § 11

§11. Death Benefit

The Tribe shall pay bona fide and documented funeral expenses for a deceased Elder up to a maximum of \$10,000. Said funds shall be made available to the Director of Tribal Member Services and paid directly to the service providers.