

TITLE 36. MASHANTUCKET PEQUOT TRIBAL DISABILITY PROGRAM

36 M.P.T.L. § 1

§ 1. Findings, Purpose and Authority

The Tribe finds that:

a. It is the public policy of the Tribe to encourage and offer opportunities for adult members of the Tribe to maintain employment to support themselves and their families. It is further the objective of the Tribe that families within the MPTN Community will live healthier, longer lives, and will develop, enhance and maximize their human potential to establish and achieve personal, community and professional goals.

b. The provisions of this law are necessary to insure that members who are permanently unable to work in any capacity and support themselves through gainful employment as a result of a Disability have the financial and associated support services necessary to help them achieve a better quality of life.

c. The proper and responsible regulation of public well-being and health requires that the minimum financial needs of such disabled tribal members are provided through a government program to insure that their basic human needs are satisfied.

d. The Tribe enacts this law pursuant to its inherent authority and its responsibility to regulate public health, well-being and safety within its territory and for its membership.

36 M.P.T.L. § 2

§ 2. Definitions

a. "Benefit Determination" means a notification, in writing, approved by the Tribal Health Services Professionals, issued by the Program Administrator to the applicant (or his or her Financial Conservator), that indicates a finding of approval or denial of his or her application for Disability Income Benefits and/or addresses a Participant's Continued Qualification for the Program, wherein Disability Income Benefits may be continued, suspended or terminated.

b. "Case Manager" means a professional who coordinates medical, behavioral health and social services required for the benefit of the Participant.

c. "Continued Qualification" means the process by which information is obtained, monitored and reviewed in order to determine that the Participant remains qualified to receive Disability Income Benefits and Transition Payments under this law.

d. "Disability" as it is used in this law, means a determination by an attending physician and specialist, if required by the Program Administrator, that an individual, due to his or her medical or psychological condition is permanently unable to perform work-related duties in any capacity, for life.

e. "Disability Income Benefit(s)" means the benefit amounts as determined by Tribal Council, from time to time, payable under the Program.

f. "Dual Diagnosis" means diagnoses for both substance dependency and mental health disability which prevents the applicant from working as determined by an appropriate provider and specialist, if required. Substance dependency means dependence on an addictive substance including, but not limited to, alcohol, illicit substances and/or prescribed narcotics.

g. "Disability Review Board" means a selection of qualified persons or entities as appointed by Tribal Council.

h. "Financial Conservator" means an individual appointed by a court of competent jurisdiction to protect and manage the financial affairs of a person who is unable to do so due to physical or mental limitations. Any permission, consent or other action that may be required by an applicant or Participant under this law may be completed by a duly appointed Financial Conservator.

i. "Mashantucket" means the Mashantucket Pequot Reservation as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe or any other area subject to the Tribe's jurisdiction.

j. "Offset Income" means any 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, scholarship fund distribution and any workers compensation payment or short or long term disability benefit attributable to the Participant's employment, plus any other distribution of money received by the Participant through United States Social Security Disability Insurance ("SSDI") and does not include United States Social Security Administration Supplemental Security Income ("SSI").

k. "Participant" means any applicant who is approved to receive Disability Income Benefits or Transition Payments.

l. "Pre-Qualified Applicant" means an applicant who has been qualified through the SSI or SSDI programs.

m. "Program" means the Mashantucket Pequot Tribal Disability Program.

n. "Program Administrator" means the Director of MPTN Tribal Health Services, or designee, or such other person(s) or entity (ies) as may subsequently be appointed by the Tribal Council who shall administer the Program herein.

o. "Protected Health Information" means health information of applicants and Participants which is protected from disclosure in accordance with Tribal law.

p. "Transition Payments" mean up to twenty-six (26) weeks of payments in the weekly amount of the prior Disability Income Benefit made to a compliant Participant with a Dual Diagnosis who is ready to re-enter the workforce and who is working diligently to do so as determined by the Program Administrator.

q. "Tribal Health Services Professionals" means a select group of Tribal Health Services employees as designated by the Tribal Council, which shall

include the Program Administrator, and who shall approve, by majority, Benefit Determinations prior to issuance.

r. "Tribe" means the Mashantucket Pequot Tribe.

36 M.P.T.L. § 3

§3. Eligibility Requirements

To be eligible to receive Disability Income Benefits, an applicant must:

- a. Be a duly enrolled member of the Tribe in good standing;
- b. Be between the ages of 18 year and 59 years of age;
- c. Be registered with the MPTN Tribal Health Services;
- d. Pursue any potential benefits he or she may be eligible for under SSI, SSDI, short term disability, long term disability or workers compensation program;
- e. Have completed all necessary release authorizations and consent forms for release of Protected Health Information and supplied or verified all information requested by the Program Administrator;
- f. Not have earnings that are more than the Disability Income Benefit amount annually (or the equivalent thereof for any pro-rata period) from the following income sources:
 - (1) any other distribution of money to the applicant by or on behalf of the Tribe including, but not limited to, any Incentive program distribution or per capita payment;
 - (2) Any distributions from a Short or Long Term Disability employment benefits or any workers compensation benefit for which the applicant is entitled; and
 - (3) Any distributions from United States Social Security Disability Insurance.

36 M.P.T.L. § 4

§4. Initial Qualification and Benefit Determination

- a. If the applicant is determined not to be eligible pursuant to the criteria of Section 3 above, or is determined not to have a permanent Disability, or is determined not to have a Dual Diagnosis, then the Program Administrator will notify the applicant of the Benefit Determination and provide a written explanation setting forth the reason(s) for the determination.
- b. If the applicant is determined to be eligible pursuant to the criteria of Section 3 above, and is determined to be a Pre-Qualified Applicant, to have a permanent Disability, or to have a Dual Diagnosis, then the Program Administrator will notify the applicant of the Benefit Determination approving the application and the effective date of the Disability Income Benefits, which shall be the latter of the date of the Disability or the date of the application.

c. The Program Administrator must issue a Benefit Determination in writing within thirty (30) days of receipt of all requested information.

d. In making a Benefit Determination, including any eligibility determination, Disability determination, Continued Qualification determination, or Transition Payment eligibility, the Program Administrator may request information and must ensure that information is verified. All financial information must be verified by the Finance Department. The Program Administrator may:

- (1) Require that the applicant furnish financial information to the Finance Department, including his or her most recent federal income tax return, if applicable, complete with all supporting schedules and W-2 forms.
- (2) Verify information with the Tribal Clerk as may be required to determine or verify the birthdate/age, and current contact information of any applicant.
- (3) Require any other information reasonably necessary to make a determination under this law.
- (4) In his/her discretion, forward all relevant information to UNUM, or other qualified medical claims review provider, to provide a recommended Benefit Determination or part thereof.

36 M.P.T.L. § 5

§5. Continued Qualification

a. The Program Administrator shall, from time to time, but at least bi-annually, require a Participant to establish Continued Qualification for such benefits.

b. In order for a Participant to satisfy the Continued Qualification requirements to receive Disability Income Benefits or Transition Payments, a Participant must:

- (1) Remain eligible;
- (2) Continue to have a Disability or Dual Diagnosis as certified by a designated provider or specialist, as required;
- (3) Have a second specialist document the Disability or Dual Diagnosis, if required by the Program Administrator. The second specialist must be a specialist designated or approved by the Program Administrator in accordance with the Disability Procedures. If a second specialist is required by the Program Administrator, and this specialist's determination conflicts with the prior specialist's determination, this second specialist's determination shall be final.
- (4) Actively participate in any required programs;

- (5) Comply with reasonable requests for additional information as may be required in §4(d);
- (6) Pursue any potential benefits under SSI, SSDI, short term disability, long term disability or workers compensation program; and
- (7) Otherwise comply with the requirements of this law.

c. For Participants with a Dual Diagnosis the Program Administrator will require compliance with reasonable, specific programs or treatment plans, as recommended by a Participant's provider and/or Case Manager, as a condition to receiving or continuing to receive Disability Income Benefits or Transition Payments.

d. If a Participant receives any Offset Income, he/she is required to notify the Program Administrator within thirty (30) days upon receipt and will be subject to repayment of any payments made which he/she is not entitled to as a result of receipt of the Offset Income.

e. If a Participant becomes incarcerated while receiving Disability Income Benefits or Transition Payments, he/she is required to notify the Program Administrator within thirty (30) days. Payments will be suspended during the period of incarceration, and the Participant will be required to satisfy the Continuing Qualification requirements of this section upon release.

f. If a Participant fails to satisfy the provisions of this Section 5, the Program Administrator will issue a Benefit Determination notifying the Participant that their Disability Income Benefits or Transition Payments will be suspended or terminated.

36 M.P.T.L. § 6

§6. Payment of Benefits

a. Participants shall receive Disability Income Benefits less any Offset Income, income taxes, garnishments and other deductions. The maximum amount of the Disability Income Benefit shall be reviewed and determined by Tribal Council periodically. The Chief Financial Officer of the Tribe, or designee, shall make arrangements to disburse all Disability Income Benefits under this law through such means of payment as may be feasible and efficient in his or her sole discretion.

b. The Tribe will withhold from Disability Income Benefits and Transition Payments for federal income tax. In addition, the Tribe will withhold from payments for Connecticut income tax for residents of the State of Connecticut only. No state income tax will be withheld for residents of Mashantucket. The responsibility to remit any state income taxes withholdings, other than for the states the Tribe is registered, rests with the Participant.

c. Participant who has a Dual Diagnosis shall be required to be in an approved treatment plan and have a Financial Conservator who shall receive and administer, on behalf of the Participant, the Disability Income Benefits and Transition Payments. The Disability Income Benefits for a Participant with a Dual Diagnosis are limited to a lifetime maximum of 26 weeks and

require strict compliance with a treatment plan. If successful, the Participant may then obtain Transition Payments for up to an additional 26 week period provided that the following are met:

- (1) Participant complies with this law including all Continued Qualification requirements;
- (2) Participant also complies with Vocational Rehabilitation, Career Life/Assessment & Planning, or other recommended transition program, as appropriate, and as referred by the Case Manager;
- (3) Offset Income shall still apply during the Transition Payments period, except that the first \$288.00 per week (representing \$15,000 on an annualized basis) of any earned income (i.e., Form W-2 income and self-employment income) received by a Participant shall not be included as Offset Income.

d. The Tribe has the right to deduct from or offset against any amounts otherwise payable to a Participant under this law for any documented amounts that may be owed to the Tribe by said Participant, including any overpayment of benefits received under this Title 36 or as otherwise allowed by applicable law.

36 M.P.T.L. § 7

§7. Disability Review Board

a. In the event the applicant or Participant does not agree with a Benefit Determination, the applicant or Participant may, within thirty (30) days from the date of issuance of the Benefit Determination, request a review by the Disability Review Board, and may submit such additional evidence that the applicant or Participant deems necessary to prove his or her entitlement to such Disability Income Benefits.

b. The Disability Review Board shall review the Benefit Determination and any additional evidence presented. The Disability Review Board shall determine whether there was a reasonable basis for the Benefit Determination and shall issue a Final Decision including a written explanation in support thereof within thirty (30) days of receipt of the applicant or Participant's request for review.

c. An appeal of the Disability Review Board's Final Decision may be filed with the Mashantucket Pequot Tribal Court pursuant to Section 9 of this law.

36 M.P.T.L. § 8

§8. Administration

a. The Program Administrator shall adopt comprehensive procedures to ensure the effective application of this law.

b. An annual audit of the Program shall be conducted by the Mashantucket Pequot Tribal Internal Audit Department, with its findings reported to the Tribal Council no later than June 30 of each calendar year.

§9. Tribal Court Review

a. Right to Appeal. The Final Decision issued by the Disability Review Board 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 Disability Review Board 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.

§10. Penalties for Fraud

a. Any person who provides false information in an effort to obtain Disability Income Benefits or Transition Payments under this law or during the monitoring process for Continued Qualification for payments or to obtain benefits under any other MPTN financial assistance program shall be prohibited from obtaining benefits under this law for a period of seven (7) years.

b. Any person who obtains any benefits under this law by willfully providing false information in an effort to obtain or maintain Disability Income Benefits or Transition Payments 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 (1) year in jail and/or a fine of not more than \$5,000.

c. Any person who is convicted of defrauding the Tribe may be subject to provide full restitution to the Tribe, as determined by the Tribal Court.

§11. Effective Date

This law shall take effect as of January 4, 2015.

Historical and Statutory Notes

Derivation.

Effective July 1, 2012, this Title 36, the Mashantucket Pequot Disability Program, was enacted via TCR080912-01 of 05.

Amendments.

Effective December 13, 2012, TCR121312-06 of 10 amended ch. 1 §10 to increase the penalties for providing false information to obtain assistance under this title or any other tribal program.

Effective July 24, 2014, TCR072414-04 of 09 amended ch. 1 § 6 Authorizing Transition Pay During Transition Period by adding § f.

Effective January 4, 2015, TCR112414-03 of 03 amended Title 36, Mashantucket Pequot Tribal Disability Program, to adjust qualifications for benefits.