

**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 Mashantucket Pequot Tribal 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 basic human needs of such disabled tribal members are provided through a government program to the extent necessary for individuals with a Disability or a Dual Diagnosis.

d. 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 an Indian general welfare benefit pursuant to the Mashantucket Pequot Disability Program with the program being administered under specified guidelines which do not discriminate in favor of the governing body of the Tribe and the benefits provided under the Disability program are available to any tribal member who meets the guidelines, are for the promotion of general welfare, are not lavish and extravagant, and are not compensation for services.

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 their Financial Conservator or Power of Attorney), that indicates a finding of approval or denial of their application for Disability Benefits and/or addresses a Participant's Continued Qualification for the Program, wherein Disability Benefit 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 Benefits and Transition Benefits 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 their medical or psychological condition is permanently unable to perform work-related duties in any capacity, for life.

e. "Disability Benefit(s)" means the benefits provided to Participants under this law 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 with the total annual cost of such benefits being determined by the Mashantucket Pequot Tribal Council, from time to time.

f. "Disability Procedures" mean the program rules and procedures created by the Program Administrator pursuant to Section 8 of this law and which comply with the requirements 26 U.S.C. Section 139E including that the program does not discriminate in favor of members of the governing body of the Tribe and the benefits provided under the Disability program are available to any tribal member who meets the guidelines, are for the promotion of general welfare, are not lavish and extravagant, and are not compensation for services.

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

h. "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.

i. "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.

j. "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.

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

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

m. "Power of Attorney" means an individual who is capable of acting in the best interests of an applicant or Participant and has been granted authority in writing to act for an applicant or Participant in specified or all legal or financial matters. Any permission, consent or other action that may be required by an applicant or Participant under this Law may be completed by a duly authorized Power of Attorney.

n. "Program" means the Mashantucket Pequot Tribal Disability Program provided under this Law and as more fully implemented by the Program Administrator under the Disability Procedures developed by the Program Administrator and which comply with the requirements set forth in 26 U.S.C. Section 139E to be considered an exclusion from gross income for general welfare benefits provided by an Indian tribal government.

o. "Program Administrator" means the Director of the Mashantucket Pequot 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.

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

q. "Transition Benefits" mean up to six (6) months of benefits in the monthly amount of the prior Disability 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.

r. "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.

s. "Tribe" means the Mashantucket Pequot Tribe.

36 M.P.T.L. § 3

### **§ 3. Eligibility Requirements**

To be eligible to receive Disability 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. Not be a Participant in 35 M.P.T.L., the Elders Financial Assistance Program or the Tribal Family Support Program;
- d. Be registered with the Mashantucket Pequot Tribal Health Services;
- e. Not be working, except as may be permitted for Dual Diagnosis Participants; and
- f. 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.

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 Disability Benefits will become effective on the first day of the month following approval, but in no event can approval be made effective prior to 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 Benefits eligibility, the Program Administrator may request information and must ensure that information is verified. All financial information must be verified by the Tribal Finance Department. The Program Administrator may:
  - 1. Require that the applicant furnish financial information to the Tribal Finance Department, including their 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,

membership status and current contact information of any applicant.

3. Require any other information reasonably necessary to make a determination under this Law.
4. In their discretion, forward all relevant information to a qualified medical claims review provider for 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 annually, determine that a Participant continues to qualify for Disability Benefits.

b. In order for a Participant to satisfy the Continued Qualification requirements to receive Disability Benefits or Transition Benefits, 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, then a third specialist shall be designated and the determination for whether a Participant has a Disability or Dual Diagnosis shall be based on the majority of the three specialists.
4. Actively participate in any required programs;
5. Comply with reasonable requests for additional information as may be required in §4(d); and
6. 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 health care provider and/or

Case Manager, as a condition to receiving or continuing to receive Disability Benefits or Transition Benefits.

d. If a Participant receives any income from either Title 35, the Elders Financial Assistance Program or the Tribal Family Support Program while receiving income under this Program, they are required to notify the Program Administrator immediately and the Participant will be required to repay any Benefits provided which they are not entitled to as they can only receive income from one MPTN Financial Assistance Program at a time.

e. If a Participant is convicted of a crime and incarcerated while receiving Disability Benefits or Transition Benefits, they are required to notify the Program Administrator within thirty (30) days of their incarceration. Benefits will be suspended beginning thirty-one (31) days after incarceration. The Participant will be required to satisfy the Continuing Qualification requirements of this section upon their release. The Participant shall be required to repay any Disability Benefits or Transition Benefits received which they were not entitled to while incarcerated.

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 Benefits or Transition Benefits will be suspended or terminated.

36 M.P.T.L. § 6

**§ 6. Provision of Benefits**

a. Participants are eligible to receive Disability Benefits in a total annual benefit amount determined by the Tribal Council for the program less:

1. Any garnishments for Support Orders (as defined in 6 M.P.T.L. ch. 9) against any portion of the Disability Benefit paid in cash; and
2. other allowable deductions.

The maximum annual amount of the Disability Benefit shall be reviewed and determined by Tribal Council periodically. The Chief Financial Officer of the Tribe, or designee, shall make arrangements to provide the Disability Benefits under this law through such means as may be feasible and efficient in their sole discretion; provided that such is in compliance with 26 U.S.C. Section 139E, as amended from time to time, and such other laws or regulations that may govern the exclusion from gross income of general welfare benefits provided by Indian tribal governments.

b. The Disability Benefits provided under this Law are part of a social benefit program for the promotion of general welfare and are not included in a recipient's gross income pursuant to 26 U.S.C. Section 139E.

c. A Participant who has a Dual Diagnosis shall be required to be in an approved treatment plan and, if required by the Program Administrator, have a Financial Conservator or Power of Attorney (as determined in the Program Administrator's discretion) who shall receive and administer, on behalf of the Participant, any cash portion of the Disability Benefits and Transition Benefits. The Disability Benefits for a Participant with a Dual Diagnosis are limited to a lifetime maximum of six (6) months and require strict compliance with a treatment plan. If successful, the Participant may then obtain Transition Benefits for up to an additional six (6) month period provided that the following are met:

1. Participant complies with this law including all Continued Qualification requirements; and
2. Participant also complies with Vocational Rehabilitation or other recommended transition program, as appropriate, and as referred by the Case Manager.

d. The Tribe has the right to deduct from or offset against any Benefits 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. Prior to any offset, the Tribe's Finance Department will send written notice to the Participant setting forth the amount of the offset and how the offset amount was calculated. Such notice shall be sent to the last known address of Participant or to Participant's Financial Conservator or Power of Attorney, if any.

e. The Disability Benefit terminates upon the death of a Participant unless the Participant has filed with the Program Administrator a Benefit Successor Designation Form. If the Participant has filed a Benefit Successor Designation Form, previously earned benefits as of the date of the Participant's date of death plus benefits which would have been distributed through the end of the remaining calendar year may be subject to tax withholding and will be paid to the Participant's named beneficiary.

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 their entitlement to such Disability 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 and amend, as necessary, Disability Procedures to ensure the effective application of this law.

b. An audit of the Disability Program shall be conducted by the Mashantucket Pequot Tribal Internal Audit Department at least every three (3) years, with the findings of such audit reported to the Tribal Council.

36 M.P.T.L. § 9

#### **§ 9. Tribal Court Review**

a. Right to Appeal. The Final Decision issued by the Disability Review Board may be appealed to the Mashantucket Pequot 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 Tribal 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.



36 M.P.T.L. § 10

**§ 10. Penalties for Fraud**

a. Any person who provides false information in an effort to obtain Disability Benefits or Transition Benefits under this law or during the monitoring process for Continued Qualification or to obtain benefits under any other Mashantucket Pequot financial assistance program shall be prohibited from obtaining benefits under this law and any other Mashantucket Pequot financial assistance programs 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 Benefits or Transition Benefits 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.

36 M.P.T.L. § 11

**§ 11. Effective Date**

This Law and any amendments made thereto shall take effect as of the date of the Tribal Council Resolution enacting or amending this Law, unless otherwise specifically stated in the resolution or in the terms of this law.

**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.

Effective May 1, 2020. TCR052220-01 of 03 amended Title 36, Mashantucket Pequot Tribal Disability Program to authorize the Director of Tribal Health Services, as Program Administrator, to adopt and amend the Disability Procedures, as necessary, to ensure the effective application of Title 36.

Effective March 24, 2022, TCR032422 amended 36 M.P.T.L. to allow benefits which would have been distributed through the end of the remaining calendar year of the Participant's death be paid to a named beneficiary.

Effective June 9, 2022, TCR060922-01 amend 36 M.P.T.L. related to incarceration.

Effective April 27, 2023, TCR042723-04 amended 36 M.P.T.L. to make consistent with of Tribal Member benefit programs and eliminating offset income.