

POKAGON BAND OF POTAWATOMI INDIANS
SUPPLEMENTAL ASSISTANCE PROGRAM ACT

Section 1. Title.

This Act shall be known as the Pokagon Band Supplemental Assistance Program Act.

Section 2. Purpose.

The purpose of this Act is to establish the Pokagon Band Supplemental Assistance Program in order to provide supplemental financial assistance to address a recognized need in the Pokagon Band community and to ensure the general welfare of qualified Members of the Pokagon Band of Potawatomi Indians. This Program is intended to supplement, but not replace, federal, state, and county assistance programs. Supplemental Benefits under this Act are intended to be tax-free under the Internal Revenue Service's general welfare doctrine. This Act shall at all times be construed and this Program shall be administered in a manner consistent with these purposes.

Section 3. Authority and Intent.

- A. Authority. The Tribal Council is vested with the sovereign powers of the Band not inconsistent with any provisions of the Constitution, including without limitation those enumerated powers set forth in Article IX, Section 2, of the Constitution. The Tribal Council has the power and authority to enact this Act and establish the Supplemental Assistance Program.

- B. Intent. The Pokagon Band enacts, in accordance with Section 11 of the Indian Gaming Regulatory Act of 1988, as amended (Pub. Law. 100-497, October 17, 1988, 102 Stat. 2472; codified at 25 U.S.C. § 2701 *et seq.*), and § 3.B.2 of the Pokagon Band of Potawatomi Indians, Gaming Revenue Allocation Plan, as amended (Res. No. 05-10-12-02, October 12, 2005) which provides that the Band may use net revenue from its gaming operations to provide for the general welfare of the Band and its members based on a recognized need in the Pokagon Band community and eligibility criteria that ensures benefits are distributed to persons on the basis of such need. The Tribal Council, by enacting legislation that establishes a program to promote the general welfare of the Band, intends that payments made under the program will be fully excludable from the gross income of the recipients of such payments for purposes of determining eligibility for state and federal programs and federal and state tax liability.

Section 4. Definitions.

The following terms, whenever used or referred to in this in this Act, shall have the respective meanings stated below, which shall apply regardless of whether such terms are used in their singular or plural form:

- A. “Applicant”: An enrolled member of the Pokagon Band who is eighteen (18) years of age or older.
- B. “Constitution”: The Constitution of the Pokagon Band of Potawatomi Indians.
- C. “Department of Social Services” or “Department”: The Department of Social Services of the Pokagon Band of Potawatomi Indians.
- D. “Disabled Person”: A person that has been determined by the U.S. Social Security Administration to be eligible for benefits under either the Social Security disability insurance program (“SSDI”) or Supplemental Security Income program (“SSI”).
- E. “Elder”: A person who is fifty-five (55) years of age or older.
- F. “Elders Stipend” or “Elders Stipend Payment”: The monthly payment made by the Band to all eligible Elders, pursuant to the Elders Supplemental Stipend Program established by Tribal Council Resolution Number 07-11-10-01, as amended.
- G. “Income”: The return in money from one’s business, labor, or capital invested; gains, profits, salary or wages. The gain derived from capital or from labor or effort, or both combined, including profit or gain through sale or conversion of capital, any financial benefit derived from disability insurance, worker’s compensation benefits, a pension plan, IRA or other retirement or deferred compensation plan. The term Income shall not include benefits received by an Applicant or Recipient under the U.S. Social Security Administration’s SSI and SSDI programs. The term Income includes both earned and unearned income and may include as deemed Income of the Applicant some or all of the Income of a spouse and any other persons residing with the Applicant.
- H. “Member”: An enrolled member of the Pokagon Band of Potawatomi Indians.
- I. “Net Available Resources:” The term “Net Available Resources” shall include, but not be limited to, all ownership interests in assets or property, including but not limited to all real property with a value over \$50,000, whether held in fee, trust or otherwise, all automobiles valued over the first \$5,000 in equity, boats, equipment, inventory or personal items or effects, including but not limited to stocks, bonds, mutual funds, cash or investment accounts or other liquid assets such as bank accounts and cash on hand. The term Net Available Resources may include some or all of the Net Available Resources of a spouse or other persons residing with the Applicant.
- J. “Per Capita Payments”: Payments made by the Band to its enrolled members in accordance with the Indian Gaming Regulatory Act and the Gaming Revenue Allocation Plan, as amended (Tribal Council Resolution Number 05-10-12-02).
- K. “Pokagon Band” or “Band”: The Pokagon Band of Potawatomi Indians.
- L. “Program”: The Supplemental Assistance Program established under this Act.

- M. “Recipient”: Any Applicant that receives Supplemental Benefits.
- N. “Supplemental Benefits”: The benefits established under this Act to provide financial assistance to Members in need of assistance.
- O. “Tribal Council”: The governing body of the Pokagon Band of Potawatomi Indians, in accordance with P.L. 103-323 and Article IX of the Constitution.

Section 5. Eligibility.

- A. Supplemental Benefits under this Program shall be limited to those Applicants that:
 - 1. a. Are Elders who are eligible to receive Elders Stipend Payments, or
 - b. Are Disabled Persons and are receiving Per Capita Payments at the time an Application is filed under Section 6 of this Act;
 - 2. Have an annual Income that is not more than \$13,500;
 - 3. Whose Net Available Resources do not exceed \$50,000 at any time during the period between the time an application is filed and Supplemental Benefits are provided to the Applicant; and
- B. The Applicant shall have the burden of proving his or her eligibility under this Program.
- C. Any Applicant that meets the necessary requirements to obtain benefits under SSI is presumed to meet the income and available resource eligibility requirements of this Act, provided that the Applicant submits documents verifying his or her eligibility for SSI benefits along with a completed application with all supporting documentation, including any necessary disclaimers.
- D. In order to be eligible to receive Supplemental Benefits under this Act the Applicant must execute disclaimers that waive the Applicant’s right to receive Elders Stipend Payments and Per Capita Payments.
- E. A disclaimer of Per Capita Payments is valid only if it is in writing, if it clearly disclaims all interest in Per Capita Payments, if it is signed by the Applicant and notarized by an official authorized to administer oaths, and if it is received by the Enrollment Coordinator or Tribal Council. The Director of the Department of Social Services or the Director’s designee shall be responsible for verifying with the Enrollment Coordinator or Tribal Council whether an Applicant has executed and filed a disclaimer of Per Capita Payments. Upon request from the Director or the Director’s designee, pursuant to an application for Supplemental Benefits, the Enrollment Coordinator or the Secretary of the Tribal Council shall provide a copy of an Applicant’s disclaimer of Per Capita Payments to the Director.

- F. A disclaimer of Elders Stipend Payments is valid only if it is in writing, if it clearly disclaims all interest in the Elders Stipend Payments, is signed by the Applicant and notarized by an official authorized to administer oaths, and, if it is received by the Director of the Department of Social Services or the Director's designee. An Applicant who disclaims his or her Elders Stipend Payments shall not be sent an Elders Stipend Payment. The Director or the Director's designee shall provide a copy of the Applicant's disclaimer of Elders Stipend Payments to the Director of the Band's Department of Finance.
- G. The disclaimer of Elders Stipend Payments provided for in subsection 5.F shall be provided on forms approved by the Band's Office of General Counsel and supplied by the Department of Social Services. The Department shall also supply disclaimer of Per Capita Payments forms approved by the Band's Office of General Counsel; however, it is not required that the Applicant use the disclaimer of Per Capita Payments form supplied by the Department in order for the Applicant to execute a valid disclaimer of Per Capita Payments.
- H. No person shall be eligible for or shall receive Supplemental Benefits if his or her Per Capita Payment is currently subject to an order from a court of competent jurisdiction stating that such person is delinquent with regard to a court-ordered child support obligation.
- I. Eligibility for Supplemental Benefits under this Act shall be limited to one Applicant per household.

Section 6. Application Procedures.

- A. Applications for Supplemental Benefits shall be made on forms provided by the Department of Social Services.
- B. Applications shall be submitted in person, by U.S. mail, or by private courier to the Department of Social Services.
- C. The application form shall require that the Applicant provide, at a minimum, the following information:
 - 1. The Applicant's name and address;
 - 2. The Applicant's living arrangements, e.g., whether the Applicant's residence is owned or rented by the Applicant or whether the Applicant resides with one or more other persons who own or rent the Applicant's residence;
 - 3. The Applicant's annual Income; and
 - 4. A statement detailing the Applicant's Net Available Resources.

- D. In addition to the application provided in subsection 6.C, the Applicant shall submit the following documents along with the application:
1. A copy of the Applicant's federal or state income tax return for the preceding tax year or the Applicant's W-2 or 1099 form for such tax year if the Applicant has not yet filed a tax return;
 2. Documentation verifying that the Applicant temporarily or permanently lost the sole or primary source of income reported on the Applicant's most recent federal or state tax return;
 3. A copy of any determination or eligibility letters from the federal government stating the Applicant is eligible to receive SSI;
 4. An original executed disclaimer of the Applicant's Elders Stipend Payment required under subsections 5.D and 5.F;
 5. A copy of the executed disclaimer of the Applicant's Per Capita Payment required under subsection 5.D and 5.E; and
 6. Any other information or documents requested by the Department of Social Services to verify that the Applicant meets the eligibility requirements stated in Section 5, which may include without limitation, information and documents concerning the Income and Net Available Resources of the Applicant's spouse and other persons residing with the Applicant.
- E. All applications shall be returned to and shall be processed by the Department of Social Services. A determination of whether the Applicant is eligible for the Supplemental Benefits shall be made by the Director of the Department of Social Services or the Director's designee pursuant to this Act.
- F. If after review of the application, the Department determines that the Applicant is not eligible for benefits under this Act, it shall deny the Applicant's application.
- G. The Department of Social Services' decision shall be final, subject to appeal as provided in Section 7 of this Act.
- H. The Department of Social Services shall notify the Applicant of its decision by U.S. mail.
1. If the Applicant is approved, the notice shall include the following information:
 - a. The amount of Supplemental Benefits that the Applicant will receive on a monthly basis;

- b. The day of each month by which the Department anticipates each payment should have been issued;
 - c. A statement informing the Applicant that he or she must immediately notify the Department of Social Services of any change in his or her income or assets that may affect his or her eligibility for Supplemental Benefits under the requirements of this Act; and
 - d. A statement informing the Applicant that the Department of Social Services will conduct annual eligibility reviews of all Recipients between the months of May and July.
2. If the Applicant is denied, the notice shall include:
- a. The specific reason(s) the Applicant is not eligible for benefits under the Act;
 - b. A statement informing the Applicant that he or she may appeal the decision denying benefits;
 - c. A description of the appeal procedure, as stated below in Section 7;
 - d. A statement informing the Applicant that if he or she decides not to appeal, the Applicant may revoke his or her disclaimer of Elders Stipend Payments by executing a Revocation of Disclaimer form provided by the Department of Social Services;
 - e. A statement informing the Applicant that if he or she decides not to appeal, the Applicant may revoke his or her disclaimer of Per Capita Payments by executing a revocation of disclaimer and filing it with the Enrollment Coordinator or Tribal Council; and
 - f. A statement informing the Applicant that he or she may re-apply for Supplemental Benefits if the Applicant has a change in circumstances such that the specific reason(s) for which the Applicant was rejected are no longer applicable.

Section 7. Administrative Appeal and Tribal Court Review.

- A. Administrative Appeal. Any Applicant or Recipient denied Supplemental Benefits by decision of the Department of Social Services may appeal such decision by filing a written request for an appeal signed and dated by the Applicant or Recipient along with a copy of the notice described in subsection 6.H above with the Department of Social Services. The Applicant or Recipient shall include with the request for appeal a statement explaining why the decision denying Supplemental Benefits under the Program was in error and copies of any documents that support the explanation. The appeal shall

be heard by a hearing officer appointed by the Tribal Council, provided that no Pokagon Band employee in the Department of Social Services may be appointed as hearing officer.

1. Scope of the Hearing Officer's Authority. The scope of the Hearing Officer's authority is limited to declaratory relief in the review of decisions of the Department of Social Services denying an Applicant or Recipient Supplemental Benefits under this Act and shall not extend to any other decisions of the Department.
2. Time for Filing an Appeal. An appeal authorized under this Section must be filed within thirty (30) days from the date of the Department's notice to the Applicant or Recipient.
3. Rules of Procedure on Appeal.
 - a. The Hearing Officer's review of the Department's decision shall be limited to the record before the Department at the time the Department rendered a decision. Upon receipt of a notice from the Hearing Officer that an appeal was filed, the Department shall promptly provide a true copy of the record to the Hearing Officer.
 - b. No special forms or pleadings for filing an appeal shall be required, provided that an appeal shall not be considered to have been filed with the Hearing Officer unless the Hearing Officer receives an original document requesting an appeal of the Department's decision that is signed and dated by the Applicant or Recipient.
 - c. The Hearing Officer may hear directly from the Applicant or Recipient and the Department before rendering a decision, provided that the Hearing Officer shall rely solely on the record and shall not receive testimony or other new evidence. The Hearing Officer may allow an Applicant or Recipient or the Department to participate in an appeal hearing by telephone.
 - d. The Hearing Officer's decision shall be signed by the Hearing Officer and shall include findings of fact based on evidence in the record, conclusions of law, and a notice informing the Applicant of the right to challenge the Hearing Officer's decision in the Tribal Court within sixty (60) days of the date of the notice of decision. The Hearing Officer shall endeavor to provide notice by certified mail, return receipt requested, to the Applicant or Recipient and the Department of Social Services of a decision within ten (10) days of the date of the hearing.

- e. A decision by the Hearing Officer constitutes a final decision in the matter for the Pokagon Band, which may be challenged in the Tribal Court in accordance with Subsection 7.B.
- 4. **Standard of Review.** The Hearing Officer shall review the Department's decision regarding the denial of Supplemental Benefits and return the matter to the Department of Social Services for further consideration if the Hearing Officer concludes that the necessary facts for the Department's decision were not supported by reasonable evidence or that the Department applied this Act incorrectly. The Hearing Officer shall give deference to any reasonable interpretation of applicable law or other legal standards by the Department.
- B. **Tribal Court Review.** An Applicant, a Recipient, or the Department of Social Services may challenge and seek review by the Pokagon Band Tribal Court of any adverse decision of the Hearing Officer on an appeal under subsection 7.A of this Act.
 - 1. **Time for Filing Tribal Court Challenge.** A challenge of an adverse decision of the Hearing Officer must be filed with the Tribal Court within sixty (60) days from the date of the Hearing Officer's decision notice in this subsection A.
 - 2. **Standard of Tribal Court Review.** The Tribal Court may find the Department of Social Services' decision to be arbitrary or capricious and shall return the matter to the Department for further consideration if:
 - a. The evidence in the record is clearly not adequate to support the necessary facts for the Department's decision;
 - b. The Department applied the applicable law or other legal standards incorrectly; or
 - c. The Department applied incorrect laws or legal standards.
 - 3. The Tribal Court shall, except for compelling reasons, limit its review to the administrative record.
 - 4. The Tribal Court shall give deference to the reasonable interpretation and application of this Act by the Department of Social Services.

Section 8. Payment of Supplemental Benefits.

- A. Upon approval of the application and written notice of approval from the Director of the Department of Social Services or the Director's designee to the Pokagon Band Treasurer, the Band shall pay Supplemental Benefits to the Recipient on a monthly basis, in an amount equal to five-hundred dollars (\$500) plus any monthly Per Capita Payment that may be in effect at the time the Supplemental Benefit payment is made, subject to the requirements of this Act.

- B. The Supplemental Benefits shall be payable only to the Recipient and eligibility shall automatically terminate upon the death of the Recipient.
- C. Payments to a Recipient shall commence within thirty (30) days of the Director's written notice of approval to the Pokagon Band Treasurer. Recipients shall not be entitled to payments for any period prior to the date the Director approves the Applicant's application and eligibility for benefits.
- D. An Applicant may withdraw his or her application and a Recipient may withdraw from the Program by executing and filing with the Department of Social Services a Notice of Withdrawal. The Notice of Withdrawal shall be supplied upon request to an Applicant or Recipient on a form supplied by the Department of Social Services. The Notice of Withdrawal shall include a Revocation of Disclaimer that revokes the Applicant's disclaimer of Elders Stipend Payments. A Revocation of Disclaimer shall be valid only if it is in writing, signed by the member, and if it is received by the Department of Social Services.

Section 9. Continuing Eligibility.

- A. In order to continue receiving Supplemental Benefits, a Recipient must continue to meet the eligibility requirements of the Program.
- B. A Recipient shall immediately notify the Department of Social Services of any changes in his or her Income or Net Available Resources which would affect his or her ability to meet the Program's eligibility requirements.
- C. The Department of Social Services shall conduct an annual eligibility review for each Recipient under this Program, which shall be conducted within six (6) months of the annual anniversary date when each Applicant was first determined to be eligible for Supplemental Benefits.
- D. Annual continuing eligibility reviews shall include:
 - 1. A home visit or telephone interview with the Recipient for the purposes of completing a recertification form;
 - 2. Submission by the Recipient of a federal or state tax return or W-2 or 1099 form and any other documents and information required by the Department of Social Services to verify Income and Net Available Resources in order to establish the Recipient's continuing eligibility for benefits under the Program; and
 - 3. A review and analysis by the Director of the Department of Social Services or his or her designee, of the recertification form and all information obtained from the Recipient to determine whether the Recipient remains eligible for benefits.

- E. If the Recipient fails to submit, in a timely manner, all information and documents required by the Department of Social Services to determine eligibility for Supplemental Benefits under this Act, the Recipient shall cease to be eligible for such Supplemental Benefits and shall not receive Supplemental Benefits unless and until the Recipient submits all required information and documents to the Department of Social Services and the Department determines that the Recipient remains eligible for Supplemental Benefits.
- F. Upon completion of the annual eligibility review, the Department of Social Services shall provide each Recipient with written notice by U.S. mail of its determination whether the Recipient continues to remain eligible for Supplemental Benefits under this Act. If the Department of Social Services determines that the Recipient is no longer eligible, the notice shall include the information listed in subsection 6.H.2.
- G. The Department of Social Services shall provide written notice to the Finance Director and the Tribal Council Treasurer of all continuing eligibility denials.

Section 10. Creation and Maintenance of Program Fund.

- A. Tribal Council may create a Supplemental Assistance Program Fund in the amount to be determined by the Tribal Council, which shall be funded by the Band's General Fund. The Supplemental Assistance Program Fund shall be held in a separate interest bearing account approved by the Finance Board.
- B. The Supplemental Benefits shall be paid first from the interest earned by the Supplemental Assistance Program Fund and second from the principal of the Supplemental Assistance Program Fund.
- C. After the Supplemental Assistance Program Fund is initially funded, the Finance Board shall ensure that the Supplemental Assistance Program Fund maintains an average monthly balance in an amount determined by Tribal Council at all times. In the event the Supplemental Assistance Program Fund falls below this amount, the Finance Board shall promptly seek approval from the Tribal Council to replenish the Supplemental Assistance Program Fund from available resources in the Band's General Fund in order to maintain the stated minimum balance.
- D. After the close of the fiscal year, the Finance Director shall provide a report to the Tribal Council Treasurer detailing on a monthly basis the Supplemental Assistance Program Fund balances for the fiscal year just ended, interest earned, and the total amount of disbursements from the fund.

Section 11. Repeal of Conflicting Laws; Severability.

All other laws, regulations, and policies that may be inconsistent with or in conflict with this Act are hereby repealed.

Section 12. Anti-Assignment.

No Supplemental Benefits payable or to become payable under this Act shall be subject to anticipation or assignment, either by voluntary or involuntary assignment, by any Recipient, or to the attachment by, interference with or control of, any creditor of a Recipient, or to be taken or reached by any legal or equitable process in satisfaction of any debt or liability of a Recipient prior to its actual receipt by the Recipient. Any attempted conveyance, transfer, assignment, mortgage, pledge, or encumbrance of the Supplemental Benefits prior to payment thereof shall be void.

Section 13. Benefits Subject to the Availability of Funds.

Payment of benefits under this Act shall be subject to the availability of funds.

Section 14. No Vested Right.

Nothing contained in this Act, including any amendments, shall be construed so as to vest in any person any right or interest in any tribal gaming or other revenues, or assets. The Tribal Council reserves the right to amend, repeal or otherwise modify this Act or any ordinance, resolution or tribal code relating to this Act at any time in its sole discretion, subject to applicable tribal and federal law.

Section 15. Violation of Act.

A. Any Indian person who:

1. intentionally violates or willfully fails to comply with any provision of this Act, or
2. obtains or attempts to obtain Supplemental Benefits by purposely and knowingly presenting false or fraudulent information to the Band shall be guilty of a crime and shall be subject to a maximum fine of \$5,000 or 1 year imprisonment, or both.

LEGISLATIVE HISTORY

The "Supplemental Assistance Program Act" was enacted on April 3, 2007 by adoption of Tribal Council Resolution No. 07-04-03-06; on December 8, 2007, subsection 4(E) was amended by adoption of Tribal Council Resolution No. 07-12-08-06; on November 10, 2009, Sections 4, 5, 6, 7, and 9 were amended by adoption of Tribal Council Resolution No. 09-11-10-02; and on February 28, 2011 by adoption of Tribal Council Resolution No. 11-02-28-03 provisions in Section 4 and Section 11 were amended to withdraw the delegation of authority to the Family Welfare Commission to review decisions regarding requests for Special Distributions from minors' trust accounts; and on May 23, 2011, by adoption of Tribal Council Resolution No. 11-05-23-__, subsection 8(A) was amended to provide for a regular supplemental stipend payment of \$500 in addition to the amount of the monthly per capita payment.