

POKAGON BAND OF POTAWATOMI INDIANS SUPPLEMENTAL ASSISTANCE PROGRAM ACT

Section 1. Title.

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

Section 2. Purpose.

The purpose of this Act is to:

- A. establish the Program to provide Supplemental Benefits to address a recognized need in the Band community and to ensure the general welfare of the Band community and qualified Citizens;
- B. supplement, but not replace, federal, state, and county assistance programs;
- C. ensure that the Supplemental Benefits are, to the fullest extent possible, fully excludable for purposes of determining eligibility for state and federal programs; and
- D. ensure that the Supplemental Benefits are tax-free, including under the Tribal General Welfare Exclusion Act (“TGWEA”) (codified at 26 U.S.C. § 139E *et seq.*), because:
 - 1. the Program is administered under specific guidelines established under this Act;
 - 2. the Program does not discriminate in favor of any person, including members of the Tribal Council;
 - 3. the Supplemental Benefits are available only to Citizens who meet the requirements of this Act;
 - 4. the Supplemental Benefits are for the promotion of the general welfare of the Band community and qualified Citizens;
 - 5. the Supplemental Benefits are not lavish or extravagant, including because the Tribal Council has determined that the actual general welfare needs of qualified Citizens exceed the amount of the Supplemental Benefits; and
 - 6. the Supplemental Benefits are not compensation for services.

Section 3. Authority and Construction.

- A. The Tribal Council is vested with the sovereign powers of the Band not inconsistent with any provisions of the Constitution, including the 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. The Tribal Council enacts this Act, 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 Section 3.B.2 of the Band’s Gaming Revenue Allocation Plan, as amended, which provides that the Band may use net revenue from its gaming operations to provide for the general welfare of the Band and Citizens based on a recognized need in the Band community and eligibility criteria that ensures benefits are distributed to persons on the basis of such need.
- C. This Act shall be construed, and the Program shall be administered, in a manner consistent with the above purposes.
- D. Although this Act requires a showing of individual need or means testing, nothing in this Act shall constitute an admission by the Band that individual need or means testing is required under the TGWEA, rather under the TGWEA, a showing of individual need or means testing is not required and such requirement can distort certain tribal cultural and community values.

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. “Act” means this Supplemental Assistance Program Act.
- B. “Applicant” means a Citizen who is eighteen (18) years of age or older.
- C. “Band” means the Pokagon Band of Potawatomi Indians.
- D. “Citizen” means an enrolled member of the Band.
- E. “Constitution” means the Constitution of the Band.
- F. “Department” means the Department of Social Services of the Band.
- G. “Director of Accounting” means the Director of the Accounting Department of the Band.
- G. “Director of Social Services” means the Director of the Department or his or her designee.
- I. “Disabled Person” means 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”).
- J. “Elder” means a Citizen who is fifty-five (55) years of age or older.

- K. “Elders Support Benefit” or “Elders Support Benefit Payment” means the monthly payment made by the Band to all eligible Elders, pursuant to the Elders Support Benefit Program Policy.
- L. “Elders Support Benefit Program Policy” means the policy established by Tribal Council Resolution 22-04-18-06.
- M. “Finance Board” means the Finance Board established under the Finance Board Ordinance of the Band.
- N. “Include” or “Including” regardless of whether capitalized or not shall not be limiting and shall be deemed to be followed by “without limitation”.
- O. “Income” means 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 or any Elders Support Benefit Payment or Per Capita Payment. 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.
- P. “Net Available Resources” includes all ownership interests in assets or property, including 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 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.
- Q. “Per Capita Payments” means payments made by the Band to Citizens in accordance with the Indian Gaming Regulatory Act and the Gaming Revenue Allocation Plan, as amended (Tribal Council Resolution Number 05-10-12-02).
- R. “Program” means the Supplemental Assistance Program established under this Act.
- S. “Recipient” means any Applicant that receives Supplemental Benefits.
- T. “Supplemental Benefits” means the benefits established under the Program to provide financial assistance to Citizens in need of assistance.
- U. “Tribal Council” means the governing body of the Band established under Article IX of the Constitution.

- V. “Tribal Court” means the trial level court of the Band.
- W. “Treasurer” means the Tribal Council Treasurer.

Section 5. Eligibility.

- A. Supplemental Benefits shall be limited to those Applicants that:
 - 1. Are either:
 - a. Elders who are eligible to receive Elders Support Benefit Payments; or
 - b. Disabled Persons and are receiving Per Capita Payments at the time an Application is filed under Section 6 of this Act; and
 - 2. Have an annual Income that is not more than \$13,500; and
 - 3. Have Net Available Resources that 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.
- 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, the Applicant must execute disclaimers that waive the Applicant’s right to receive Elders Support Benefit 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 Social Services 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 of Social Services, 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 of Social Services.
- F. A disclaimer of Elders Support Benefit Payments is valid only if it is in writing, if it clearly disclaims all interest in the Elders Support Benefit Payments, is signed by the Applicant and notarized by an official authorized to administer oaths, and, if it is received

by the Director of Social Services. An Applicant who disclaims his or her Elders Support Benefit Payments shall not be sent an Elders Support Benefit Payment. The Director of Social Services shall provide a copy of the Applicant's disclaimer of Elders Support Benefit Payments to the Director of Accounting.

- G. The disclaimer of Elders Support Benefit Payments provided for in subsection 5.F shall be provided on forms supplied by the Department. The Department shall also supply disclaimer of Per Capita Payments forms; 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 Citizen shall be eligible for or shall receive Supplemental Benefits if the Citizen's Per Capita Payment or Elders Support Benefit Payment is currently subject to an order from a court of competent jurisdiction stating that the Citizen is delinquent with regard to a court-ordered child support obligation.
- I. No Citizen shall be eligible for or shall receive Supplemental Benefits if the Citizen's Per Capita Payment or Elders Support Benefit Payment is currently subject to a garnishment under a notice of levy where compliance with the notice of levy is required under applicable federal law, and the notice of levy is recognized by the Tribal Court.
- J. Eligibility for Supplemental Benefits 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.
- B. Applications shall be submitted in person, by U.S. mail, or by private courier to the Department.
- 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 Support Benefit 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 to verify that the Applicant meets the eligibility requirements stated in Section 5, which may include 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. A determination of whether the Applicant is eligible for the Supplemental Benefits shall be made by the Director of Social Services pursuant to this Act.
- F. If after review of the application, the Department determines that the Applicant is not eligible for Supplemental Benefits, it shall deny the Applicant's application.
- G. The Department's decision shall be final, subject to appeal as provided in Section 7 of this Act.
- H. The Department 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 any change in his or her income or assets that

may affect his or her eligibility for Supplemental Benefits under this Act;
and

- d. A statement informing the Applicant that the Department 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 Supplemental Benefits;
 - 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 Support Benefit Payments by executing a Revocation of Disclaimer form provided by the Department;
 - 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 who is denied Supplemental Benefits by decision of the Department 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. The Applicant or Recipient shall include with the request for appeal a statement explaining why the decision denying Supplemental Benefits 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 Band employee in the Department 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 denying Supplemental Benefits to an Applicant or Recipient 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 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 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 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 may challenge and seek review by the 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's 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.

Section 8. Payment of Supplemental Benefits.

- A. Upon approval of the application and written notice of approval from the Director of Social Services to the Treasurer, the Band shall pay Supplemental Benefits to the Recipient on a monthly basis, in an amount equal to the sum of the following:
1. 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; and
 2. Any holiday gift payment that the Band may make that month to Citizens who are eighteen (18) years of age or older; and
 3. If the Recipient is not an Elder, five hundred dollars (\$500); and
 4. If the Recipient is an Elder, any monthly Elders Support Benefit Payment that the Recipient would have otherwise received pursuant to the Elders Support Benefit

Program Policy 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 of Social Services' written notice of approval to the Treasurer. Recipients shall not be entitled to payments for any period prior to the date the Director of Social Services 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 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. The Notice of Withdrawal shall include a Revocation of Disclaimer that revokes the Applicant's disclaimer of Elders Support Benefit Payments. A Revocation of Disclaimer shall be valid only if it is in writing, signed by the Citizen, and if it is received by the Department.

Section 9. Continuing Eligibility.

- A. In order to continue to receive Supplemental Benefits, a Recipient must continue to meet the eligibility requirements of the Program.
- B. A Recipient shall immediately notify the Department 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 shall conduct an annual eligibility review for each Recipient, 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 to verify Income and Net Available Resources in order to establish the Recipient's continuing eligibility for Supplemental Benefits; and
 - 3. A review and analysis by the Director of Social Services, 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 to determine eligibility for Supplemental Benefits, 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 and the Department determines that the Recipient remains eligible for Supplemental Benefits.
- F. Upon completion of the annual eligibility review, the Department shall provide each Recipient with written notice by U.S. mail of its determination whether the Recipient continues to remain eligible for Supplemental Benefits. If the Department determines that the Recipient is no longer eligible, the notice shall include the information listed in subsection 6.H.2.
- G. The Department shall provide written notice to the Director of Accounting and the 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 Director of Accounting shall provide a report to the 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 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.

The payment of Supplemental Benefits 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. 11-05-23-06, 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; and on November 16, 2015, by adoption of Tribal Council Resolution No. 15-11-16-02, amendments were made to Subsections 2.G and 5.A to correct typographical errors, and Section 2 and Subsection 8.A were amended; and on February 29, 2016, by adoption of Tribal Council Resolution No. 16-02-29-07, amendments, which are effective May 1, 2016, were made to Sections 4, 5, and 8(A); and on April 18, 2022, by adoption of Tribal Council Resolution No. 22-04-18-09, amendments throughout the Act were made, including to address the repeal of the Elders Stipend Policy and the adoption of the Elders Support Benefit Program Policy.