

## Ordinance 21-05

An ordinance to amend the Elder Supplemental Income Program to include needy Band members 55 years of age and older who are disabled, and to restrict assignment of benefits to nursing homes and similar institutions.

The District I, District II, and District III Representatives introduced the following Bill on the 8th day of March 2005, which was vetoed by the Chief Executive on March 15, 2005. Compromise was held, and Bill is re-introduced on this 29th day of March 2005.

### Preamble

The Band Assembly of the Mille Lacs Band of Ojibwe hereby enacts this Bill for the purposes of: (1) amending the Program to include needy Band members 55 years of age and older who are disabled; and (2) restricting assignment of Program benefits to nursing homes and similar institutions.

### Title I

#### Section 1. As used in this Bill:

- (a) "Elder Assistance Program" or "Program" means the Mille Lacs Band Elder Supplemental Income Program, the needs-based supplemental income program established by the Band;
- (b) "Elder Assistance Program Account" means the interest bearing account established to fund the Program; and
- (c) "Program Document" means the document entitled "Elder Needs-Based Supplemental Income Program" initially established under Band Ordinance 08-02, as amended.
- (d) "TANF Director *or other designated representative*" means the Band employee formerly referred to as the "Benefit Issuance Director."

Section 2. The Band Assembly of the Mille Lacs Band of Ojibwe Indians recognizes the importance of the Band's Elders to the community, as well as their special needs. The Assembly has determined that the Program is a suitable method to provide welfare assistance to needy Band members 55 years old and older who have become disabled. The Assembly has also determined that the Program is intended to supplement rather than replace or subsidize other needs-based programs, and is concerned that benefits not be automatically assigned to nursing homes and similar facilities if the effect of such assignment is solely to subsidize other welfare programs.

Section 3. No later than September 30, 2005, an additional appropriation will be made to the Account from the Permanent Initiative Fund to fund additional Program costs pursuant to this Bill, which should fully endow the Account for the biennium ending September 30, 2007. The need for future appropriations to the Account shall be assessed during every biennium budget cycle thereafter, taking into consideration the likely number of additional expected needy members 55 years of age and older who are disabled.

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Section 4. Based on the foregoing, the Program Document is hereby amended as set forth below. *Italic text indicates changes to existing law.*

Section 1.4 of the Program Document is amended to read as follows:

**1.4 Age, Income and Resource Limitations.** Assistance under the Program will be limited to: (1) enrolled Band members 62 years of age and over whose income and resources fall beneath minimum levels, as determined under the rules of the Program; and (2) enrolled Band members 55 years of age and over who are Disabled as defined herein and whose income and resources fall beneath minimum levels, as determined under the rules of the Program.

A new definition of "Disabled" shall be inserted alphabetically in section II. of the Program Document, to read as follows:

**Disabled** means (1) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months; or (2) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. Any tribal member 55 years of age applying under the category of disabled is required to provide proof of such disability by showing proof of such finding by the federal Social Security Administration (SSA) prior to receiving any benefits from this Program. Any tribal member between 55 and 62 years of age whose disability ends thereby ending his/her eligibility for the federal SSA program shall immediately report such change of circumstance to the *TANF Director, or other designated representative*, thereby ending their benefits under this Program.

Section 5.8 of the Program Document is amended to read as follows:

**5.8 Termination of Benefits.** Benefits shall terminate on death of a beneficiary, or on failure of the beneficiary to satisfy other Program requirements. Excess benefits paid for any reason may be recoupable from the beneficiary, including from other payments from the Band. Benefits may also be reduced, suspended or terminated as provided elsewhere herein, including but not limited to §§ 5.12 and 5.14.

Section 5.10 of the Program Document is amended to read as follows:

**5.10 TANF Director or Other Designated Representative Review.** Any determination described in § 5.9 shall be subject to review on written request by an aggrieved individual within 30 days of the date of the Notice of Determination to the *TANF Director or other designated representative*. The Director shall review all relevant evidence presented by the aggrieved individual and/or his or her Authorized Representative and any knowledgeable Band Financial Worker, as well as any other relevant available evidence, and issue a written decision on the matter, which shall be mailed or delivered to the affected Band member and/or his or her

Authorized Representative. Such decision shall: (a) state the results of the Director's review; (b) inform the recipient of the right to request an appeal to the Band's Court of Central Jurisdiction; and (c) advise the recipient that failure to appeal within 30 days of the date of the Director's written decision shall cause the decision to become final.

Section 5.12 of the Program Document is amended to read as follows:

**5.12 Spendthrift, Non-Assignment and Related Provisions**

a. Payments under the Program may not be accelerated, assigned, hypothecated or pledged, and shall be exempt from any administrative, court garnishment, or other legal action.

b. The Program is designed as a needs-based welfare program. No person, including any Applicant or Recipient, shall be deemed to have a property interest or enforceable expectancy of any kind in the Program, Program assets, potential future payments, or any other feature of the Program, except that monies actually received by a Recipient shall thereupon become property of the Recipient.

c. The Program is designed to complement, rather than subsidize or replace other governmental or private assistance programs. Such payments shall not be subject to levy, attachment, assignment, seizure or interception by any third person or entity, including any non-Band governmental agency, or any nursing home, assisted living unit, retirement home, or other elder care facility, for the purposes of recouping care-related expenses which would otherwise be borne by another assistance program. This provision may not be defeated by appointment or designation of such third person or entity as the Recipient's attorney-in-fact, guardian, or Authorized Representative, or through any similar device.

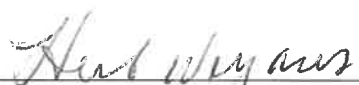
d. Any effort by an Applicant or Recipient to assign, hypothecate, or pledge payments under the Program, or any effort by a third person or entity to levy upon, attach, seize or otherwise obtain control of such payments in violation of any portion of this section 5.12, shall be grounds to reduce, suspend or terminate payments under the Program to a Recipient. Any such decision shall be made initially by the Band's TANF Director, *or other designated representative*, which shall be in writing in the form provided for Director's decisions under § 5.10. Such decisions shall be appealable to the Court of Central Jurisdiction under § 5.11.

Section 5. Notwithstanding § 5.4 of the Plan Document, persons who were 55 years old or older who were disabled between October 1, 2004, and the date of enactment of this Bill, may apply for benefits retroactively, and may receive benefits for any period back to that date for which they can prove they were otherwise eligible. To obtain any benefit for any period prior to full approval of the Program, an Applicant must obtain a Notice of Determination under § 5.9 of the Program Document establishing such eligibility no later than four months following the date of enactment of this Bill.

**Ordinance 21-05**

Re-introduced to the Band Assembly on this  
Twenty-Ninth day of March in the year  
two thousand five.

Passed by the Band Assembly on this  
Twenty-Ninth day of March in the year  
two thousand five.

  
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Herb Weyaus, Speaker of the Assembly

APPROVED

Date: March 29, 2005

  
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Melanie Benjamin, Chief Executive

**OFFICIAL SEAL OF THE BAND**