

ELIGIBILITY FOR CASH ASSISTANCE PROGRAMS

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I. Basics

II. Cash Assistance

1. Future program simplification changes
2. MFIP (Minnesota Family Investment Program)
3. DWP (Diversionary Work Program)
4. FSS (Family Stabilization Services)
5. WB (Work Participation Cash Benefits)
6. GA (General Assistance)
7. MSA (Minnesota Supplemental Aid)
8. SSI (Supplemental Security Income)
9. SSDI (Social Security Disability Insurance)

III. Immigration Considerations

I. Government Benefits Basics

- o Most benefit programs are need-based & have **INCOME & ASSET** limitations.
- o Most programs have **STATE RESIDENCY** requirements.
- o Most programs have limitations based on **IMMIGRATION STATUS**.
- o Most cash and food benefits are issued **ELECTRONICALLY**.
- o Some programs have limitations based on **AGE** &/or **DISABILITY STATUS**.
- o Most programs include **APPEAL RIGHTS** for applicants & recipients through state or federal agency.

II. Cash Assistance Programs

1. FUTURE PROGRAM SIMPLIFICATION CHANGES:

A. Uniform verification requirements & procedures

- o GA, MSA, MFIP, & DWP will have uniform verification requirements & procedures beginning 2/1/15.
- o The goal is to provide greater uniformity among programs and provide greater simplicity in delivering services at the local level.

B. Uniform determination of self-employment earnings

- Effective 2/1/15, all programs except MSA will use simplified process to determine earned income from self-employment.
- HHs with self-employment income will choose to count:
 - o 50% of gross earnings, **OR**
 - o taxable income as determined from IRS tax form filed within last year.

C. Uniform earned income disregard

Effective 10/1/15, single earned income disregard will be used across programs.

Disregarded will be:

- ❖ First \$65 of earned income, **AND**
- ❖ 50% of any remaining earnings.

D. Uniform personal property limits

Effective **6/1/16**, single asset limit of **\$10,000** will be used across programs but will not affect **MSA** recipients receiving **SSI**.

Assets subject to limit are cash, bank accounts, non-exempted vehicles, & liquid stocks & bonds that can be "readily" accessed without financial penalty.

E. Uniform vehicle limits

Effective **6/1/16**, new vehicle limit will apply to all programs (except **MSA** for those on **SSI**).

- **1 vehicle** per assistance unit member age **≥16** will be excluded.
- Value of any remaining vehicles will be applied to unit's asset calculation.
- **Trade-in value** will be used to determine value of non-excluded vehicles.

F. Certification & recertification

- Effective **2/1/15**, participants whose cases were closed due to failure to complete recertification will be able to get cases reopened and benefits reinstated.
- So long as recertification requirements are met **within 30 days of case closure**, benefits will be reinstated **retroactive** to date of closure.
- Effective **2/1/15**, county agencies determining value of personal property will be required to accept personal statement of that value from participant.

2. **MFIP**: Minnesota Family Investment Program
(Minn. Stat. ch. 256J)

What is MFIP?

- **MFIP** is welfare-to-work cash & food assistance program for low-income families.
- Federal welfare reform law enacted 8/22/96 eliminated **AFDC** (Aid to Families with Dependent Children) family cash entitlement program.
- **AFDC** was replaced with **TANF** (Temporary Assistance for Needy Families) block grants to states.

- **MFIP** is administered by county welfare agencies.
- It has been Minnesota's **TANF** program since 1998.
- State law governs most aspects of program, with some directives from federal law

A. Lifetime MFIP limit & exceptions

- ❑ Federal TANF law required states to impose lifetime limit of 24-60 months on adult caregivers (caregivers ≥ 18) for receipt of family cash assistance.
- ❑ Months need not be consecutive.
- ❑ Minnesota chose 60-month (5-year) limit for **MFIP**.
- ❑ Families may be exempt from 5-year limit.
- ❑ They may also qualify for hardship waiver offering benefits beyond 5 years.

a. Exempt months include those in which

- ☐ caregiver is 60 or older,
- ☐ caregiver is 18 or 19 & going to school,
- ☐ household is experiencing family violence, or
- ☐ caregiver lives in Indian Country.

b. To get extension, recipients must get "hardship waiver" for ill, incapacitated, or "hard to employ." They must:

- ❖ have serious illness or injury severely limiting ability to obtain/maintain "suitable" employment;
- ❖ be needed in home to care for ill/injured HH member;
- ❖ be granted family violence waiver (if complying with terms of employment plan);
- ❖ have low IQ or LD that severely limits ability to obtain/maintain suitable employment;
- ❖ be assessed "unemployable" by vocational specialist; or
- ❖ engage in "work activities" ≥ 30 hrs/wk. (with ≥ 25 hrs/wk. of "work") and be unable to climb out of poverty.

Definition: "Severely limits...person's ability to obtain or maintain suitable employment"

- ❖ qualified professional has determined that participant's condition prevents her from working ≥ 20 or more hours/week; OR
- ❖ qualified professional has determined she has low IQ or LD, and that condition:
 - significantly restricts range of employment she is able to perform, OR
 - significantly interferes with ability to obtain or maintain suitable employment ≥ 20 hours/week.

Assessing non-English-speakers in "hard-to-employ" category

In cases involving low IQ or LD for non-English-speakers,

- ✓ determination of low IQ or LD must be made by qualified professional with experience conducting culturally-appropriate assessments, &
- ✓ report must include statement of assessor's confidence in results.
- ✓ For IQ test, county must accept reports that identify IQ range as opposed to specific score.

- ▶ Months in which HH receives "food only" grant with no cash do not count toward 5-year limit.
- ▶ "Food only" grant means \$ allocated in the electronic benefit account must be spent on food.

B. Work activities

- MFIP has "universal participation" requirement. Almost all participants must have employment plan approved by county (even if plan doesn't call for work).
- Most parents have to work or look for work specified number of hrs/wk.
- # of hours that must be spent in work activities will depend on age of children & whether HH is single-parent or 2-parent.
- Once-in-lifetime work exemption exists for single-parent families with child < 12 months.

- ★ In past, **MFIP** did not encourage education. If available, it was limited to ≤ 24 mos.
- ★ Effective 7/1/14, education options have broadened for **MFIP** recipients.
- ★ Participants may now enroll in post-secondary programs lasting ≤ 4 years.
- ★ Parents < 20 must generally stay in school to qualify for **MFIP**.

C. Categorical eligibility & HH composition

- **MFIP** applicants must be pregnant or have "needy child" in home.
- Blood or legal relationship must be proven between caregiver & child.
- Both parents must be on grant if both are in home, except when 1 parent is on **SSI**, ineligible due to immigration status, or seeking 60-mo. extension).
- HH must include all minor children including siblings, half-siblings, & stepsiblings, along with natural or adoptive parents & stepparents.

D. Income limits & budgeting

- ❖ **MFIP** families must have little income.
- ❖ Effective 10/1/15, new earned income disregards will come into play, where 1st \$65 of earned income, plus $\frac{1}{2}$ of remaining earnings, will be disregarded.
- ❖ New income disregards will effectively raise **MFIP** "exit level" from 115% to 143% of FPG.

- ➔ MFIP eligibility is determined prospectively, using anticipated income.
- ➔ Recipients' income is budgeted retrospectively by 2 mos, so \$\$ received in September affects November's grant amount.
- ➔ Participants may ask for & receive cash supplement, called "Significant Change," up to twice a year to make up for reduction in income due to loss of job or child support.

E. Asset limits

- Under current law, personal property limit is \$2,000 for applicants & \$5,000 for participants.
- Real property used as homestead is excluded.
- Effective 6/1/16, MFIP will have new personal property limitations: \$10,000 in personal property (cash, bank acc'ts, liquid stocks & bonds that can be accessed readily without financial penalty, & vehicles not otherwise excluded).
- Effective 6/16/16, 1 vehicle will be excluded per HH member ≥ 16 years old, regardless of value. Non-excluded vehicles will be assessed by trade-in value.

F. Grants

- Cash grant levels (\$437 for HH of 2, \$532 for HH of 3, \$621 for HH of 4) have been static since 1986.
- Current MFIP grants leave recipients at 60% of FPG. When scrutinizing cash alone, levels for recipients are below 34% FPG.
- Under current MFIP law, grants are reduced by 10% when someone living with family is not caring for HH's children. Reduction is called "shared household standard."
- Shared HH standard will be repealed 1/1/15.

- ➔ Under current law, for most families that have another child while receiving MFIP, their cash grants will not increase for new child due to "family cap."
- ➔ "Family cap" will disappear 1/1/15.
- ➔ MFIP grants are reduced by \$50 for most families living in public or HUD-subsidized housing.
- ➔ Starting 7/1/15, recipients will be eligible for \$110 monthly Housing Assistance grant unless they receive HUD subsidy or are in child-only MFIP units.
- ➔ MFIP can be retroactive to date of application.

G. Sanctions, ineligibility, & overpayments

- ✓ Fleeing felons & parole violators are not eligible for MFIP.
- ✓ Participants convicted of felony-level drug offenses within 10 years of application must have benefits vendor-paid & are subject to random drug-testing as condition of continued eligibility.
- ✓ Those subject to drug-testing will suffer monetary sanctions &/or program disqualification for failing drug tests.

- o Failure to cooperate in developing or following employment plan results in financial sanction.
- o Failure to "fix" sanction causes another sanction following month.
- o Recipients may demonstrate "good cause" for failing to cooperate with employment & training.
- o Applicants & recipients must cooperate with establishment of paternity & collection of child support; failure also results in financial sanction.
- o MA, MinnesotaCare, & child care assistance programs also require cooperation with child support enforcement.

"Good cause" for non-cooperation with child support collection efforts exists when:

Pursuit of support could "reasonably result" in:

- ✓ Physical or emotional harm (of "serious nature") to child, **OR**
- ✓ Physical harm to parent or caregiver that would reduce ability to adequately care for child, **OR**
- ✓ Emotional harm to parent or caregiver, **IF** of such nature or degree that it reduces ability to adequately care for child (must demonstrate emotional impairment that "substantially affects" parent's ability to function).

Additional bases for "good cause":

- ✓ child was conceived as result of incest or rape, **OR**
- ✓ legal proceedings for child's adoption are pending in court, **OR**
- ✓ parent is currently being assisted by social services to resolve issues of whether to keep or place child for adoption. (This exemption lasts only 90 days).

"Best interests of child" are considered in determining "good cause."

Proof of "good cause"

Those claiming good cause have 20 days to provide evidence, including:

- ❖ birth, medical, or law enforcement records indicating child conceived by rape, **OR**
- ❖ court or other records showing adoption pending in court, **OR**
- ❖ court, medical, criminal, child protection, social services, domestic violence advocate services, psychological, or law enforcement records indicating alleged father might inflict physical or emotional harm on child, parent or caregiver,

OR

- ❖ medical records or written statements from "licensed medical professional" indicating emotional health history, status, diagnosis or prognosis re: emotional health of child, parent or caregiver, **OR**
- ❖ written statement from social services agency that parent is deciding whether to keep or place child for adoption, **OR**
- ❖ sworn statements from other individuals that provide evidence supporting a "good cause" claim.

NOTE: if requested by person seeking good cause claim, child support & public assistance agencies "shall" assist in obtaining evidence of good cause.

Duration of "good cause" claim

- ❖ "Good cause" requires annual redetermination, **BUT**
- ❖ "good cause" must be allowed to continue without additional evidence when factors that led to exemption continue to exist.

SANCTIONS:

- o 1st sanction = reduction of 10% of grant.
- o 2nd-6th sanctions = mandatory vendoring with remainder of grant reduced by 30%.
- o Those sanctioned 6 times for non-cooperation with work or child support lose all benefits the 7th month of sanction.
- o Sanction months don't have to be consecutive.
- o Once **MFIP** is closed, it must stay closed a full month.
- o Case will reopen only after participant has been cooperating 30 days.
- o Families in sanction are not eligible for EA.

- Overpayments must be repaid regardless of fault, unless < \$35.
- Overpayment recovery is limited to 12 mos. before discovery for agency error & 6 years before discovery for client error or intentional program violation.
- Fraud is dealt with criminally OR through civil Administrative Disqualification Hearing (ADH) process.
- 1st ADH fraud determination renders adult recipients ineligible for 12 months; 2nd results in 2 years' disqualification; 3rd results in permanent disqualification.
- ADH Disqualification requires clear & convincing proof of intent to defraud.

Other MFIP provisions:

- ❖ Most immigrants residing permanently & lawfully in U.S. can get MFIP.
- ❖ U.S. citizen child of ineligible parents can get "child only" grant.
- ❖ New immigrants in U.S. < 12 mos. will be referred to FSS instead of MFIP.
- ❖ Sponsor-deeming may affect eligibility.

- Complicated requirements for reporting income & asset changes will be simplified beginning 1/1/15.
- New applicants have to meet 30-day state residency requirement unless hardship documented.
- Applicants & recipients can appeal any issue (including imposition of sanction, work issues, grant amounts, denials of benefits) to MN DHS.
- Appeals made within 10 days of notice date, or before effective date of change, preserve benefits pending outcome of appeal.
- Appeal deadlines are 30 days for MFIP cash & 90 days for food portion, (There are "good cause" exceptions for late appeal).
- Appeals of DHS decisions go to state district court.

3. DWP: Diversionary Work Program

(Minn. Stat. § 256J.95)

What is **DWP**?

- ✓ **DWP** is 4-month **TANF**-funded program for new **MFIP** applicants & former **MFIP** recipients reapplying after being off 12 months. Such applicants are ineligible for **MFIP**.
- ✓ **DWP** is administered by county welfare departments.
- ✓ Goal is to provide short-term supports & services for families to get them back to work post-haste.

- ✓ Many aspects of **DWP** are same as in **MFIP**: financial eligibility, state residency, retroactivity, immigration issues, cooperation requirements, & overpayments.
- ✓ During 4 months of **DWP**, family receives no cash. Vendor payments are made for rent & utilities, up to standard **MFIP** grant.
- ✓ Leftover \$ can be given in form of "personal needs" allowance of \$70 per HH member.
- ✓ If no work is secured during 4 months of **DWP**, family gets transferred automatically to **MFIP**.
- ✓ Supports, including **SNAP (Food Stamps)**, **Medical Assistance (MA)**, & **MFIP** child care, should be provided to **DWP** households.

- ✓ **DWP** families have to have an employment plan. It basically says, "Go find a job."
- ✓ Certain families are exempted from **DWP**, including those determined appropriate for **Family Stabilization Services (FSS)** or considered "unlikely to benefit" from **DWP**.
- ✓ Among those exempted from **DWP** are:

- ❖ those determined appropriate for **FSS**,
- ❖ “child only” cases (where parent on **SSI** or **ineligible** due to immigration status),
- ❖ single-parent families with child < 12 months (exemption available **only once** in lifetime),
- ❖ parents **under 20** with no high school diploma who plan to go to school,
- ❖ caregivers age **60 or older**, &
- ❖ **non-citizen immigrants** who arrived in U.S. < **12 months** before applying for assistance.

- **DWP** does not use retrospective budgeting. Budgeting does not change during 4-month period, so recipients who find job get to keep all their earnings.
- Non-cooperation with **DWP** employment plan means disqualification from **DWP** & no eligibility for **MFIP** or **EA**.
- **DWP** months do not count toward MFIP 60-month lifetime limit.

FSS: Family Stabilization Services
(Minn. Stat. § 256J.575)

What is **FSS**?

- ❑ **FSS** is for families not making progress in **MFIP**.
- ❑ **FSS** is administered by county welfare departments.
- ❑ **FSS** was created to increase state's **TANF** work participation rates by taking people not making progress in **MFIP** off **TANF**-funded benefits.

FSS eligibility exists for caregivers who are:

- o granted or eligible for "ill or incapacitated" or hard-to-employ MFIP extensions (including those with low IQ or LD, as well as those granted family violence waiver),
- o applying for SSI or SSDI,
- o non-citizens in U.S. < 12 months, or
- o ≥ 60 years old.

- o FSS has "universal participation" requirement but work requirements are more relaxed than in MFIP.
- o FSS offers increased protections against sanctions, vis-à-vis MFIP & DWP.
- o FSS provides same cash & food benefits as MFIP, has same financial eligibility requirements, & is same as MFIP re: state residency, retroactivity, immigration, fraud, overpayments, & appeals.
- o FSS participants aren't counted in TANF work participation rates.

5. WB: Work Participation Cash Benefits (Minn. Stat. § 256J.621)

What is WB?

- o WB was created to increase Minnesota's TANF participation rates by including in TANF former MFIP recipients exiting MFIP due to earnings.
- o County welfare departments can give participants exiting DWP or MFIP with earnings WB benefits of \$25/mo.

- o Other purpose of **WB** program is to give former recipients “bonus” to help them as they move toward self-sufficiency.
- o Participants must **no longer receive DWP, MFIP, or FSS** in month.

- o Caregivers must be employed certain # hours per mo.
- o **WB** benefits are available **up to 24 consecutive months**.
- o Net income must be **below 200%** of FPG.
- o **WB** months **count for** state in **TANF** participation.
- o Months receiving **WB** **do not count** against participants as **MFIP** months.
- o **State residency, retroactivity, immigration status, overpayments, fraud, & appeal** rights are same as in **MFIP**.

NOTE: **WB** will effectively end on **12/1/14** when statutory program suspension begins.

6. **GA:** General Assistance (Minn. Stat. ch. 256D; Minn. Rules ch. 9500)

What is **GA**?

- **GA** is state-funded, non-family cash program administered by **county welfare** departments.
- **GA** is for adults who **can't work**.
- **GA** is also for **minor children** who can't qualify for **MFIP** because of inability to demonstrate blood or legal relationship to caregiver.

A. Income & assets

- GA has income & asset limits which are very low, but those limits will be changing in next 2 years.
- Currently, most income (earned or unearned) counts dollar-for-dollar to reduce grant, after exclusion of 1st \$50 of earned income.
- New earned income disregards will apply to GA beginning 10/1/15 (1st \$65 plus 50% earnings).
- GA applicants & recipients currently can own only \$1,000 in real or personal property or liquid assets.
- Homestead is excluded, as is vehicle with equity value < \$1,500.
- Beginning 6/1/16, new personal property limits of \$10,000 will apply, and recipients will be able to exclude 1 vehicle entirely.

B. Budgeting & benefit amounts

- ✓ Benefit payments are extremely low: \$203 for single, \$260 for married couple (no increase since 1986).
- ✓ Income is determined prospectively & budgeted retrospectively, as it is in MFIP.

C. Categorical eligibility

Applicants must:

- a. suffer from a permanent or temporary illness, injury or incapacity which:
 - ❖ is "professionally certified"
 - ❖ is expected to continue > 45 days
 - ❖ prevents them from obtaining or retaining employment,

OR

b. be needed in the home on a substantially continuous basis:

- ✓ because of an illness, injury, or incapacity
- ✓ of another household member
- ✓ that has been professionally certified,

OR

c. be placed or residing in licensed or certified facility for physical or mental health or rehabilitation, OR approved chemical dependency inpatient facility, OR domestic violence shelter facility.

- For those in rehabilitation or chemical dependency facilities, placement must be based on illness or incapacity AND
- be according to plan developed or approved by county agency through its director or designated director,

OR

d. be developmentally disabled or mentally ill, IF:

- diagnosed by licensed physician, psychological practitioner, or other "qualified professional" AND
- condition prevents them from obtaining or retaining employment,

OR

- e. have application pending for, or are appealing, denial or termination of SSI or SSDI benefits, IF
- they have a permanent or temporary illness, injury or incapacity
 - which is professionally certified,
 - which is expected to continue > 30 days, and
 - which prevents them from obtaining or retaining employment,

OR

- f. are of "advanced age" (≥ 55):

- which makes them unable to obtain or retain employment because it
- significantly affects their ability to seek or engage in "substantial work,"

OR

- g. have been determined "unemployable" by vocational specialist in consultation with county agency.

- People are considered "employable" if positions exist in local labor market they are capable of performing, regardless of availability of or openings for those positions.
- Onus is on applicant or recipient to obtain vocational assessments.
- Certification must occur annually,

OR

h. have "specific learning disability" (SLD).

❑ SLD must be determined by county agency according to rules adopted by Commissioner that qualify under state Special Education rules.

❑ Must have rehabilitation plan developed or approved by county agency.

❑ Must be following plan,

OR

i. be eligible for displaced homemaker services, programs or assistance, IF enrolled as full-time student, OR

j. be involved with protective or court-ordered services that prevent work at least 4 hours/day, OR

k. be attending high school at least half-time IF over 18 AND primary language is not English,

OR

l. have alcohol or drug addiction (DAA), IF:

✓ DAA is "material" factor that "contributes" to disability, AND

✓ they undergo assessment by county agency to determine amenability to treatment.

➤ If determined NOT amenable to treatment, then GA must be "vendor-paid" for shelter costs up to GA grant amount limit.

➤ If determined amenable to treatment, must be in treatment program or on wait list, AND benefits must be vendor-paid.

D. Other GA provisions

- o GA applicants are required to apply for other benefits for which they may be eligible, & they must reimburse county if later found eligible for another benefit for time they received GA.
- o GA applicants convicted of drug offense after 7/1/97 are ineligible for GA for 5 years after completion of sentence unless they have completed or are participating in drug treatment.
- o Those who "become eligible" under statute are subject to random drug tests as condition of continued eligibility.
- o They will lose benefits for 5 years beginning month following positive drug test or discharge of sentence after conviction for another drug felony.

- o "Fleeing felons" & parole violators are not eligible for GA.
- o GA applicants & recipients are subject to many of same requirements as in MFIP, including state residency, retroactivity, immigration status, overpayments, & fraud.
- o Sponsor-deeming may affect eligibility, & non-citizens must take "steps" toward citizenship.
- o GA has same appeal rights & processes as MFIP.

7. MSA: Minnesota Supplemental Aid (Minn. Stat.. §§ 256D.33-256D.54)

What is MSA?

- ☐ MSA is state supplement administered by counties for recipients of SSI & those who would receive SSI but for excess income.
- ☐ MSA serves primarily to ameliorate effects of high housing costs for those living alone. People in "shared households" are usually ineligible.
- ☐ MSA can pay for furniture replacements & other needs, as well as special medical diets.
- ☐ MSA can be used to pay "representative payee" fees for SSI or SSDI recipients required to have someone manage their federal benefits.

A. Income & assets

- ☐ To qualify, **MSA** applicants have to receive **SSI** or be barely over **SSI** income limits.
- ☐ Income limits for **MSA** are low, & grants are based on "standards of assistance" set out in state law.
- ☐ New earned income disregards take effect for **MSA** 10/1/15.
- ☐ Asset rules are the same as for **SSI** (\$2,000 for single, \$3,000 for married couple).
- ☐ Only **MSA** recipients not on **SSI** will benefit from new uniform property & vehicle limitations taking effect 6/1/16.

B. Miscellaneous provisions

- ▶ Average **MSA** supplement for housing is \$81 for non-institutionalized recipients.
- ▶ Immigration limitations are very strict for **MSA**, as they relate to **SSI**.
- ▶ **MSA** is similar to **MFIP** & **GA** in terms of state residency, retroactivity, fraud, & appeal rights.

- 8. **SSI**: Supplemental Security Income
(42 USC ch. 7, subch. XVI, 1381-1383; 20 CFR pts. 404, 416)
- 9. **SSDI**: Social Security Disability Insurance
(42 USC ch. 7, subch. II, secs. 401-434; 20 CFR pt. 404)

What are **SSI** & **SSDI**?

SSI & **SSDI** are
federal disability benefits
administered by
Social Security Administration (SSA).

A. Disability

- ❖ To qualify for **SSI** or **SSDI**, applicant must be unable to work competitively for ≥ 12 months due to severe impairment or combination of impairments.
- ❖ "Disability" is:
 - ✓ inability to do any "substantial gainful activity"
 - ✓ by reason of medically determinable physical or mental impairment
 - ✓ which can be expected to result in death or which has lasted or can be expected to last for continuous period of ≥ 12 months.

- ❖ Vocational factors (age, education, past work) & physical & mental impairments are considerations in determining adult disability in both programs.
- ❖ **SSI** has special criteria for determining disability in children, often focusing on function.
- ❖ **SSDI** does not have separate disability program for children but does have "Disabled Adult Child" (DAC) benefit for adults disabled before age 22 to get benefits on account of deceased or disabled parent.
- ❖ Claims for **SSI** & **SSDI** will be denied if alcoholism or drug dependence is "contributing" factor "material" to finding of disability.

- Applicants for either program who "meet" or "equal" criteria in one of SSA's "listings" of impairments are categorically eligible.
- Adult applicants who don't "meet" or medically "equal" SSA listing may still be eligible if they prove there are no "substantial" or "gainful" jobs they could perform regularly.
- "Substantial gainful activity" (SGA), which is incompatible with claim for disability, is rebuttably presumed when gross monthly earnings are at least \$1,070.

B. Income & Assets

- **SSI** is **need-based**, not contingent on applicant's work history or earnings.
- **SSI** has **strict income & asset limits**. Even "in-kind" income is counted. Non-excluded resources are limited to **\$2,000** for single person & **\$3,000** for married couple when each spouse is eligible for **SSI**.
- **SSI** recipients not paying pro rata share of HH operating expenses will have grant **reduced by 1/3**.
- To qualify for **SSDI**, recipients (or deceased or disabled parent, spouse, or child) must have **paid into** system through **FICA** wage deductions.
- **SSDI** has **no** income or asset limits, other than limitation on earned income for recipients. Worker's Comp. & other Social Security benefits may reduce payments.

C. Benefit reach

- ❖ **SSI** benefits extend only to disabled or elderly recipients. There are no "dependent" or "survivor" benefits.
- ❖ **SSDI** benefits may be available to **non-disabled dependent minors**, based on "family maximum" formula.
- ❖ **SSDI** derivative benefits may be considered as if they were child support for purposes of setting or modifying child support order for non-custodial parent receiving **SSDI**.

D. Garnishments & attachments

- Neither **SSI** nor **SSDI** can be garnished or attached, for most debts.
- **SSDI** can be garnished for debts from **federal government** programs, such as **SNAP** or student loans.
- **SSDI** can be garnished for child support & maintenance debts. Derivative benefits going to the child on account of disabled parent should be credited as child support.

E. Retroactivity

- ✧ **SSI** benefits are retroactive only to date of application.
- ✧ **SSDI** can be retroactive up to year before date of application, if disability is proved for that period of time.

F. Interaction of work & disability benefits

- Both **SSI** & **SSDI** encourage participation in "Ticket to Work" program through state vocational rehabilitation agencies.
- **SSDI** has "trial work period" (TWP) that allows recipients to try to work before losing benefits.
- **SSI** has no TWP. Most unearned income, cash or in-kind, counts dollar-for-dollar to reduce grant. Half of earned income counts, after \$65 disregard, to reduce grant.
- **SSI** allows Plans for Achieving Self-Support (PASS), which may help some recipients work.

G. Medicare

- Disabled **SSI** recipients under 65 are not eligible for Medicare.
- Disabled **SSDI** recipients under 65 can qualify for Medicare after 2 years of **SSDI** eligibility.

H. Benefit Amounts

- ▶ **SSI** grant amounts are firm & significantly higher than comparable **GA** or **MFIP** grants.
- ▶ **SSI** grants are \$721 for single person & \$1,082 for eligible married couple.
- ▶ **SSI** grants are reduced by 1/3 if recipients aren't paying pro rata share of housing costs.
- ▶ **SSDI** grants are based on workers' earnings histories.
- ▶ If **SSDI** grant is lower than **SSI** payment level, recipients can get "concurrent" consisting of partial **SSI** grant in addition to **SSDI**.
- ▶ Both **SSI** & **SSDI** are usually increased annually with cost-of-living adjustments (**COLAs**).

I. Immigration

- ◎ **SSI** is most restrictive federal program for non-citizens. Eligibility depends on specific immigration status, date of arrival in U.S. or of adjustment to LPR status, & whether "sponsor-deeming" applies.
- ◎ In general, non-citizens immigrating to U.S. after 8/22/96 are either completely ineligible for **SSI** or, if asylees or refugees, eligible only for 7 years after date of grant of refugee status or asylum.
- ◎ **SSDI** has no immigration-related restrictions for those who reside lawfully in U.S.
- ◎ Because **SSDI** is not need-based, sponsor-deeming does not apply.

J. Appeals

- **SSI** & **SSDI** appeal periods are 60 days. Applicants denied have 60 days to request reconsideration. After second denial they have 60 days to request hearing before Administrative Law Judge (ALJ).
- ALJ denials can be appealed within 60 days to Appeals Council (AC) in Virginia. AC appellants are generally precluded from filing new claim until AC rules on appeal.
- AC decisions can be appealed within 60 days to federal district court.
- Deadlines are important in SSA programs, but SSA can grant "good cause" for late appeal.

K. Miscellaneous SSI/SSDI stuff

- ❖ "Fleeing felons" & parole violators aren't eligible for **SSI** or **SSDI**.
- ❖ In general, **overpayments** in both programs must be **repaid**.
 - In **SSI**, SSA can withhold **10%** of benefits from current recipients to recover non-fraud overpaymentst & entire grant for overpayments based on "fraud."
 - In **SSDI**, SSA can withhold entire grant even in non-fraud overpayment cases, but amount of withholding can be negotiated.
- ❖ Overpaid recipients can request **waiver** at any time.
- ❖ Waivers can be granted in both programs if recipients can show they were **without fault** in creating overpayment & **can't afford to repay** overpaid benefits.

III. Immigration Considerations

- Generally, only non-citizens lawfully & permanently in U.S. are eligible for benefits.
- There is 5-year bar (waiting period) affecting eligibility for federally-funded benefits for some non-citizens.
- Some immigrants in U.S. on temporary basis, or in process of adjusting to Lawful Permanent Residency, may qualify for state-funded benefits.
- Eligibility for purely federal benefits will depend on variety of factors.
- Sponsor-deeming makes many immigrants ineligible for an array of federal & state-funded benefits.

ELIGIBILITY FOR CASH ASSISTANCE PROGRAMS

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TABLE OF CONTENTS

	page
I. BASICS	3
II. CASH ASSISTANCE PROGRAMS	3
1. Future program simplification changes	3
2. MFIP (Minnesota Family Investment Program)	5
3. DWP (Diversionary Work Program)	13
4. FSS (Family Stabilization Services)	14
5. WB (Work Participation Cash Benefits)	15
6. GA (General Assistance)	16
7. MSA (Minnesota Supplemental Aid)	18
8. SSI (Supplemental Security Income)	19
9. SSDI (Social Security Disability Insurance)	19
III. IMMIGRATION CONSIDERATIONS	24

I. GOVERNMENT BENEFITS BASICS

- Most benefit programs are **need-based** and have **income and asset limitations**.
 - Most programs have **state residency** requirements.
 - Most programs have limitations based on **immigration status**. Information relating to particular programs is contained in the program sections below. For general immigration-related information, see Section III.
 - Most cash and food benefits are issued **electronically**, via Electronic Benefits Transfer (EBT) cards or direct-deposit.
 - Some benefit programs have limitations based on **age or disability status**.
 - Most programs include **appeal rights** for applicants and recipients via a state or federal agency.
-

II. CASH ASSISTANCE PROGRAMS

1. FUTURE PROGRAM SIMPLIFICATION CHANGES

In 2014, the Minnesota Legislature passed changes to the GA, MSA, MFIP, and DWP programs in an effort to provide greater uniformity among the programs and to provide greater simplicity in delivering services at the local level.¹ The changes are contained in new Minnesota Statutes chapter **256P** at §§ 256P.001-256P.05. They have varying effective dates. Some of the changes will be addressed in discussions of the individual programs.

Chief among the simplification provisions are:

A. UNIFORM VERIFICATION REQUIREMENTS AND PROCEDURES

Effective 2/1/15, all of the programs except MSA will use the same requirements and procedures for verifying information, documenting information, determining items subject to verification, recertifying eligibility, addressing participants' responsibilities for submitting household report forms, and addressing inconsistent information known to the county agency. Laws 2014, c. 312, art.

¹ A summary of these changes can be found in Minnesota DHS bulletin #14-69-05 (7/1/14), entitled "2014 LEGISLATIVE CHANGES FOR ECONOMIC ASSISTANCE PROGRAMS." "DHS" documents, including bulletins, fact sheets, and manuals, are available on the Minnesota Department of Human Services' website, www.dhs.state.mn.us, under "Publications." Manuals include the "Combined Manual" (CM), for cash and food programs; the "Health Care Programs Manual" (HCPM); the Child Care Assistance Program Policy Manual (CCAP); and the MFIP Employment Services Manual. Documents ending in "ENG" are in the Forms/"eDocs" section and can be attained by typing the reference number (e.g., DHS-5891-ENG) into the search slot.

28, § 35, adding new MINN. STAT. § 256P.04.

B. UNIFORM DETERMINATION OF SELF-EMPLOYMENT EARNINGS

Effective 2/1/15, all programs except MSA² will use a simplified process for determining earned income from self-employment. Households with income from self-employment will be given the option of:

- ✂ counting 50% of their gross earnings, OR
- ✂ counting their taxable income as determined from an IRS tax form filed within the last year.

Laws 2014, c. 312, art. 28, § 36, adding new MINN. STAT. § 256P.05, subd. 2.

C. UNIFORM EARNED INCOME DISREGARD

Effective 10/1/15, a single earned income disregard will be used across programs. The counties will disregard:

- ✂ the first \$65 of earned income, AND
- ✂ 50% of any remaining earned income.

Laws 2014, c. 312, art. 28, § 34, adding new MINN. STAT. § 256P.903, subd. 2.

D. UNIFORM PERSONAL PROPERTY LIMITS

Effective 6/1/16, a single asset limit of \$10,000 will be used across programs. Assets subject to the asset limit will be cash, bank accounts, non-exempted vehicles, and liquid stocks and bonds that can be “readily” accessed without financial penalty.³ Laws 2014, c. 312, art. 28, § 33, adding MINN. STAT. § 256P.02, subd. 2.

E. UNIFORM VEHICLE LIMITS

Effective 6/1/16, a new vehicle limit will apply, but not for MSA recipients on SSI. One vehicle per assistance unit member age 16 or older will be excluded. The value of any remaining vehicles will be applied to the assistance unit’s asset calculation. The new law will use trade-in

² MSA recipients who receive SSI will not reap the benefits of the new law, but MSA recipients who get only SSDI may.

³ MSA recipients receiving SSI will not benefit from the new law; they will remain subject to the asset limits of the SSI program: \$2,000 for an individual and \$3,000 for a married couple receiving SSI. 20 C.F.R. § 416.1205(c).

value to determine the value of non-exempt vehicles.⁴ Laws 2014, c. 312, art. 28, § 33, adding MINN. STAT. § 256P.02, subd. 3.

F. CERTIFICATION AND RECERTIFICATION:
30-day reinstatement and self-attestation

Effective 2/1/15, program participants will be able to reinstate cases that were closed due to their failure to complete the recertification process, so long as recertification requirements are met within 30 days of closure. Benefits can be retroactive for the full benefit month. Laws 2014, c. 312, art. 28, § 35, adding new MINN. STAT. § 256P.04, subd. 10.

Also effective **2/1/15**, county agencies determining the value of personal property (i.e., all property that is not real estate that is not exempt from program consideration) **must** accept a signed personal statement from the participant, provided the statement is given under penalty of fraud prosecution. Laws 2014, c. 312, art. 28, § 35, adding new MINN. STAT. § 256P.04, subd. 3.

2. **MFIP: MINNESOTA FAMILY INVESTMENT PROGRAM**

(MINN. STAT. CH. 256J)

What is MFIP?

- ✓ **MFIP** (commonly pronounced EM'-fip), the Minnesota Family Investment Program, is a time-limited welfare-to-work program for families and pregnant women which has **cash** and **food** components. MFIP provides work supports, including child care assistance. It is administered by county welfare agencies. 7 U.S.C. § 2031; MINN. STAT. §§ 119B.05, 256J.01.
- ✓ Federal welfare reform (PRWORA, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8/22/96) eliminated **AFDC** (the Aid to Families with Dependent Children) family cash entitlement program and replaced it with **TANF** (Temporary Assistance for Needy Families) **block grants** to the states. P.L. 104-193; MINN. STAT. §§ 256J.01, subd. 2; 256J.02.
- ✓ **MFIP** has been Minnesota's primary TANF program since 1998. MINN. STAT. § 256J.01. *See also* "HISTORY OF THE MINNESOTA FAMILY INVESTMENT PROGRAM," DHS-5891-ENG (12/13).
- ✓ Because MFIP is funded by federal block grants, state law governs most aspects of the program, with minimal directives from federal law.

⁴ To determine trade-in value, county agencies will use the National Automobile Dealers Association (NADA, also called Blue Book) online car values and car prices guide. When applicants or participants dispute the value, they may secure a written statement from a licensed motor vehicle dealer stating the amount the dealer would pay to purchase the vehicle. The agency "shall" reimburse the applicants or participants for the cost of such written statement if it documents a lower loan value. MINN. STAT. § 256P.02, subd. 3.

Some features of MFIP

A. LIFETIME LIMIT AND EXCEPTIONS

- ❖ Federal TANF law requires states to impose a **lifetime limit** of 24 to 60 months (not necessarily consecutive) on the receipt of family cash assistance for **adult** caregivers (i.e., caregivers 18 and older). Minnesota has chosen the maximum **60-month (5-year) limit**. Months of TANF received in other states count as months used in Minnesota if financed by TANF dollars. MINN. STAT. § 256J.42, subd. 1.
- ❖ In Minnesota, families may be **exempt** from the 5-year limit during certain months. Exempt months include those during which:
 - the caregiver lives in **Indian Country**,
 - the household is experiencing **family violence**, *if* the caregiver is complying with an MFIP employment plan developed with a domestic violence advocate,
 - the caregiver is **60** or older, or
 - the caregiver is **18 or 19** and complying with an MFIP employment plan that includes education.

MINN. STAT. § 256J.42, subds. 3, 4, 5(a), (d).

- ❖ Minnesota families may be able to get MFIP **extended** beyond 5 years if they meet statutory criteria for a **hardship waiver** based on being **ill**, **incapacitated**, or “**hard to employ**.” Extensions are available to caregivers who:
 - have a **serious illness** or injury that severely limits their ability to obtain or maintain “suitable” employment,⁵
 - are **needed in the home** to care for an ill or injured family member,
 - have been granted a **family violence waiver** and are complying with the terms of their employment plan,
 - have a **low IQ** or **learning disability** that severely limits their ability to obtain or maintain suitable employment,
 - are assessed by a vocational specialist as “**unemployable**,” or
 - are engaging in “work activities” at least 30 hours per week, and are **working at least 25 hours a week**, but cannot seem to climb out of poverty. (For 2-parent households, the requirements are 55 hours per week of “work activities” and 45 hours of actual work).

MINN. STAT. § 256J.425.

⁵ “[S]everely limits the person’s ability to obtain or maintain suitable employment” means that 1) a qualified professional has determined that the person’s condition prevents her from working 20 or more hours a week; or 2) if she has an IQ below 80 or a learning disability, a qualified professional has determined that her condition (a) significantly restricts the range of employment she is able to perform; or (b) significantly interferes with her ability to obtain or maintain suitable employment for 20 or more hours per week. MINN. STAT. § 256J.425, Subd. 3(b).

- ❖ Months in which households receive a **“food only”** grant with no cash **do not count** toward the 5-year lifetime limit. A “food only” grant means that money allocated in the electronic benefit account must be spent on food. MINN. STAT. § 256J.42, subd. 1(a).

B. WORK ACTIVITIES

- Federal TANF law includes strict **work requirements** for recipients. 42 U.S.C. § 607.
- MFIP has a **“universal participation”** requirement. Almost all recipients must have an employment plan approved by the county, even if the plan doesn’t call for work. The only exception (available once in a lifetime) is for single-parent families with a child younger than 12 months. MINN. STAT. § 256J.561, subd. 3. In single-parent households, non-disabled adult recipients whose children are all 6 or older must engage in 130 hours of “allowable” work activities each month. Those with children under 6 must engage in allowable activities 87 hours a month. In 2-parent households, adults must engage in a combined total of 55 hours of allowable work activities per week. MINN. STAT. § 256J.55, subd. 1; *see also* MFIP Employment Services Manual, § 7.6 (02/2012), MINIMUM HOURLY ACTIVITY REQUIREMENTS. Child care should be provided for activities included in the employment plan. MINN. STAT. §§ 119B.05, 256J.521.
- In the past, MFIP did not encourage **education options**. However, the Minnesota Legislature significantly broadened education options for families in 2014, **effective 7/1/14**. MFIP participants may now meet all required activity hours with education, and they may enroll in post-secondary programs lasting up to 4 years. Laws 2014, c. 291, art. 11, §§ 18, 21-22, and Laws 2014, c. 312, art. 25, §§ 8-10, amending MINN. STAT. §§ 256J.49, subd. 13(5) and (6), and 256J.53, subds. 1, 2, 5. *See also* DHS bulletin 14-11-02 (7/9/14), “POLICY CHANGES TO EDUCATION AND TRAINING ACTIVITIES IN THE MINNESOTA FAMILY INVESTMENT PROGRAM (MFIP).”
- Federal TANF law measures success by the number of recipients who work a particular number of hours a week, on average, in any given month. This is called the **“participation rate.”** 42 U.S.C. § 607. The Deficit Reduction Act of 2005 (**DRA**) made it more difficult for counties to meet work participation rate requirements, resulting in some changes to family cash assistance programs. DRA increased the percentage of people who had to be working to 50% of single parents and 90% of two-parent families, and it limited what counted as “work.” Participation rates are tied directly to federal funding. DRA of 2005, P.L. 109-171 (2/8/06).
- Parents under 20 generally must **stay in school** to remain eligible for MFIP. MINN. STAT. § 256J.54, subd. 5.

C. CATEGORICAL ELIGIBILITY AND HOUSEHOLD COMPOSITION

- ☼ Applicants must be pregnant (eligible for a one-person grant of \$250 per month) or have a **“needy child”** in the home. MINN. STAT. § 256J.13.
- ☼ A blood or legal relationship must be proven between caregiver and child in order for the child to be eligible for MFIP. MINN. STAT. § 256J.08, subd. 11.

- ★ **Both parents** must be on the MFIP grant if both are in the home (unless they are exempt due to their immigration status or receipt of SSI, or have chosen to be off due to ineligibility for an extension after 5 years). Minnesota has a **mandatory assistance unit composition** requirement. When certain individuals live together, they must be included in the assistance unit: minor children, including pregnant minors; the minor child's minor siblings, minor half-siblings, and minor stepsiblings; the minor child's natural or adoptive parents and stepparents; and the spouse of a pregnant woman. MINN. STAT. § 256J.24, subd. 2.
- ★ In two-parent assistance units where one parent is determined to be ineligible for a hardship extension, the **ineligible parent may choose to be disqualified**, allowing the remaining household members to be treated as if they were in a one-parent unit. MINN. STAT. § 256J.425, subd. 7(c). In such cases, until 1/1/15, that unit's MFIP grant must be calculated using the lower "shared household" standard (described below). **Effective 1/1/15**, however, the "shared household" standard will no longer exist. Laws 2014, c. 312, art 28, §§ 26, 27, amending MINN. STAT. §§ 268J.08, subd. 82a, and 256J.425, subd. 1(b).

D. INCOME LIMITS AND BUDGETING

- Families must have **little income**. However, as indicated above, **effective 10/1/15**, new MFIP earned income disregards will become part of the Minnesota laws. The new statute will require county agencies to **disregard the first \$65** of earned income, **plus one half of the remaining earned income** per month. The new disregards will affect the MFIP "exit" level, which, until 10/1/14, is 115% of the Federal Poverty Guidelines (FPG). MINN. STAT. § 256J.24, subd. 10, to be repealed effective 10/1/14. *See also* 2014 Session Laws, c. 312, art. 28, § 34, adding MINN. STAT. § 256P.03, subd. 2.⁶
- Eligibility for applicants is determined **prospectively** (using anticipated income), and recipients' income is **budgeted "retrospectively."** Retrospective budgeting means that income received in a particular month affects the grant amount two months later. MINN. STAT. § 256J.34, subds. 1, 2, 3.
- Special rules allow recipients to ask for and receive an MFIP cash **supplement** (called "**Significant Change**") up to twice a year when their income decreases by at least 43% due to the loss of a job or child support, when retrospective budgeting doesn't accurately reflect household income. MINN. STAT. §§ 256J.08, subd. 83; 256J.34, subd. 4. *See also* DHS CM § 8.06.15 (11/2013), REMOVING OR RECALCULATING INCOME, and DHS Employment Services Manual § 4.27 (10/2012), SIGNIFICANT CHANGE POLICY. **Effective 10/1/15**, the definition of "significant change" will be a decline in gross income of the amount of the new earned income disregard (\$65 plus one-half of the remaining earned income), or more, from the income used to determine the grant for the current month. Laws 2014, c. 312, art. 28, § 17, amending MINN. STAT. § 256J.08, subd. 83.

⁶ With the increased disregard in 2015, MFIP exit levels (the amount of income participants can have before their MFIP ends) will effectively increase from 115% of FPG to 143% of FPG.

E. ASSET LIMITS

- ➡ MFIP families must have **low assets**. **Real property** is excluded from countable assets if the family is living in it. MINN. STAT. § 256J.20, subd. 2.
- ➡ Under current MFIP law, **personal property** is generally limited to **\$2,000** for applicants and **\$5,000** for participants. The MFIP property limitations statute defines countable and excluded assets. MINN. STAT. § 256J.20, subds. 1, 3.
- ➡ **Effective 6/1/16**, MFIP will have **new personal property limitations**. Under the new law, a person may have equity value of up to **\$10,000** in personal property in the form of cash, bank accounts, liquid stocks and bonds that can be readily accessed without a financial penalty, and vehicles not excluded under the vehicle exception. Laws 2014, c. 312, art. 28, § 33, adding new MINN. STAT. § 256P.02, subd. 2.
- ➡ Under current law, one **motor vehicle** is excluded if it has a loan value of \$10,000 or less. (Subsequent vehicles can be excluded if they have a combined loan value of \$7,500 or less). MINN. STAT. § 256J.20, subd. 3(1).
- ➡ However, **effective 6/1/16**, **new vehicle limitations** will also take effect. Under the new statute, counties may exclude **one vehicle per assistance unit member age 16 or older**, regardless of value, when determining the equity value of personal property. The agency will use trade-in value to determine the value of all additional vehicles (using the NADA online car values and car prices guide). Laws 2014, c. 312, art. 28, § 33, adding new MINN. STAT. § 256P.02, subd. 3.

F. MFIP GRANT LEVELS

- ❖ MFIP cash grant levels (i.e., **\$437** for a household of 2, **\$532** for a household of 3, **\$621** for a household of 4) were set in **1986** and have not been adjusted since. Cash and food grants leave recipients living below 60% of the Federal Poverty Guidelines (FPG). (If cash alone is scrutinized, levels leave recipients living **below 34% of FPG**). MINN. STAT. § 256J.24, subd. 5.
- ❖ Current MFIP law contains a limitation called the “**shared household standard**.” It requires a reduction of the MFIP grant by 10% for households containing a person or people living with the family who are not caring for the household’s children. The shared household standard will be **repealed 1/1/15**. Laws 2014, c. 312, art. 28, § 37(a), repealing MINN. STAT. §§ 256J.08, subd. 82a, and 256J.24, subd. 9.
- ❖ Most families living in public or HUD-subsidized housing will have their cash grant reduced by **\$50**. MINN. STAT. § 256J.37, subd. 3a.
- ❖ Starting **7/1/15**, recipients who are **not** receiving HUD housing subsidies will be eligible for an increase in their cash grant in the form of a **\$110 monthly MFIP housing assistance grant**. The grant is not available to child-only MFIP units. Laws 2013, c. 108, art. 3, §§ 25, 29, amending MINN. STAT. §§ 256J.21, subd. 2, and 256J.35.

- ❖ A **“family cap”** is currently preventing most families that have another child while receiving MFIP from getting an increase in their cash grant for the new child. There are some statutory exceptions. MINN. STAT. § 256J.24, subd. 6. **The family cap will end 1/1/15.** Laws 2013, c. 108, art. 3, § 48, repealing MINN. STAT. § 256J.24, subd. 6, and amending MINN. STAT. § 256J.24, subd. 5.

G. SANCTIONS, INELIGIBILITY PROVISIONS, AND OVERPAYMENTS

- Caregivers who are **fleeing felons** or **parole violators** are not eligible for MFIP. Those convicted of felony-level drug offenses within 10 years of application must have their benefits **vendored** (paid directly to housing and/or utility providers). Additionally, they are subject to **random drug-testing** as a condition of continued eligibility, with significant monetary sanctions and ultimately program disqualifications for failing such a test. MINN. STAT. § 256J.26.
- A recipient’s failure to cooperate in developing or following the terms of an employment plan will result in a **financial sanction** to the household. A failure to “fix” the problem the following month will result in another sanction. Each month the behavior causing the sanction is not fixed counts as a separate sanction.⁷ There are “good cause” bases for non-cooperation, generally related to circumstances beyond the recipient’s control. MINN. STAT. § 256J.46.
- Recipients must also **cooperate** with county efforts to establish **paternity** or collect **child support**. MINN. STAT. §§ 256.741, subd. 5; 256J.30, subd. 11. Failure to cooperate will also result in financial sanctions. MINN. STAT. § 256J.46, subd. 2.⁸
- Recipients may claim **good cause** for not cooperating with child support requirements. Both the child support agency and the public assistance agency must find good cause, which exists when the individual seeking it documents that pursuing child support enforcement services could reasonably result in:
 - physical or emotional harm to child,
 - physical harm to the parent or caregiver that would “reduce the ability to adequately care for the child,” or
 - emotional harm to the parent or caregiver, if such harm is of “such nature or degree” that it would reduce the ability to adequately care for the child.⁹

⁷ A sanction results in a reduction of the household grant by 10% for the 1st month of sanction. For the 2nd through 6th months of sanction (which need not be consecutive), shelter costs must be vendor-paid and the remaining grant is reduced by 30% of the MFIP standard of need (including the food portion). The 7th month of sanction results in case closure. MINN. STAT. § 256J.46.

⁸ The statute also spells out how grants will be affected when a unit is under a “dual” sanction for non-cooperation with employment and child support enforcement. MINN. STAT. § 256J.46, subd. 2a.

⁹ Physical and emotional harm must be “of a serious nature.” A finding of good cause for **emotional** harm must be based on a demonstration of emotional impairment that “substantially affects the individual’s ability to function.” MINN. STAT. § 256.741, Subd. 10(b)(3).

- Good cause also exists when the county agencies believe that pursuit of child support enforcement would be detrimental to the child, **and** the applicant or recipient documents:
 - the child was conceived as result of incest or rape,
 - legal proceedings for the child’s adoption are pending in court, or
 - the parent is currently being assisted by a social services agency to resolve the issue of whether to keep the child or place the child for adoption.

MINN. STAT. § 256.741, Subd. 10.

- Those seeking good cause have **20 days** to provide the public assistance agency with evidence supporting the claim. Evidence includes:
 - birth, medical, or law enforcement records indicating the child was conceived as the result of incest or rape;
 - court or other records indicating legal proceedings for adoption are pending before court;
 - records from court, medical, criminal, child protection, social, or domestic violence advocate services, or from psychological or law enforcement sources, indicating the alleged father “**might**” inflict physical or emotional harm on the child or parent;
 - medical records or written statements from a “medical professional” indicating the emotional health history or status of the parent or child, or indicating a diagnosis or prognosis concerning their emotional health;
 - a written statement from a social services agency that the applicant or recipient is deciding whether to keep or place the child for adoption; or
 - **sworn statements from others** providing evidence supporting a good cause claim.

The child support and public assistance agencies “**shall assist**” in obtaining evidence if the person seeking it so requests. MINN. STAT. § 256.741, Subd. 11.

- “Good cause” exemptions must be redetermined **annually**. MINN. STAT. § 256.741, subd. 13. They must be allowed under subsequent application and redeterminations **without additional evidence** when the factors that led to the exemption continue to exist. *Id.*
- As indicated above in footnote 7, **seven months of sanctions** (for non-cooperation with employment and training, or non-cooperation with child support collection) will result in an MFIP **case closure**. MINN. STAT. § 256J.46, subd. 1(c), (d). Once a case has been closed, it must remain closed for a full month. Families must demonstrate compliance for 30 days before the benefit case can be reopened. *Id.* at 1(f).
- MFIP **overpayments** must be repaid, regardless of fault, unless they are under \$35. MINN. STAT. § 256J.38, subd. 3. Overpayment recovery is limited to 12 months prior to the month of discovery for overpayments resulting from agency error, and to 6 years prior to discovery for overpayments resulting from client error or intentional program violations.

MINN. STAT. § 256J.38, subd. 1(b).

- **Fraud** is dealt with either criminally or through the Administrative Disqualification Hearing (ADH) process, which is a civil law procedure that uses a “clear and convincing” standard of proof. An administrative disqualification finding renders the adult recipient ineligible for assistance for 12 months. A subsequent offense will result in disqualification for 2 years, and a third will disqualify the individual permanently. As in a criminal fraud prosecution, an administrative disqualification determination requires proof of intent to defraud. Recipients should be advised **never to sign a waiver of their right to an ADH hearing** without first consulting counsel. MINN. STAT. §§ 256.046; 256.98, subd. 8(a); 609.52.

Other MFIP Provisions

- ➔ Most **immigrants** permanently and lawfully residing in the U.S. can get MFIP. A U.S. citizen child of ineligible parents can get a “child only” grant. MINN. STAT. §§ 256J.08, subd. 11a; 256J.11. New immigrants (in the U.S. less than a year) will be referred to FSS (*see below*) instead of MFIP. MINN. STAT. § 256J.575. Sponsor-deeming may affect eligibility. MINN. STAT. § 256J.37, subd. 2.
- ➔ Minnesota has had complicated **requirements** for reporting income and asset changes in MFIP. Changes (including address and household composition) must be reported to the county agency within 10 days. MINN. STAT. § 256J.30, subd. 9. (Note that financial workers, employment and training providers, and child care assistance workers don’t always communicate regularly – changes have to be reported to all three separately). The late submission of a Household Report Form (HRF) may trigger a case closure notice. **However, reporting changes scheduled to take effect 1/1/15 and 2/1/15** under new MINN. STAT. ch. 268P represent a simplification of procedures. Laws 2014, c. 312, art. 28, §§ 21-23.
- ➔ Applicants have to meet a **30-day Minnesota residency** requirement unless they can show “unusual hardship.” MINN. STAT. § 256J.12, subds. 1a, 2.
- ➔ MFIP benefits are **retroactive** only to the date of application. MINN. STAT. § 256J.35(b).
- ➔ Applicants and recipients can **appeal** any MFIP issue (including the imposition of a sanction, work issues, grant amounts, or denials of benefits), to DHS. Appeals must be made within 10 days of the date on the notice, or before the effective date of the proposed change, to continue benefits pending outcome of the appeal. The general appeal time is 30 days, but appeals of the food portion can be filed within 90 days. Judicial review of a DHS judge’s decision goes to state district court in the county administering the benefits. MINN. STAT. §§ 119B.16; 256.045; 256J.31, subd. 6; 256J.40.

3. **DWP: DIVERSIONARY WORK PROGRAM**

(MINN. STAT. § 256J.95)

What is DWP?

- ❑ The Diversionary Work Program (DWP) is a **4-consecutive-month TANF-funded program for new MFIP applicants** and former MFIP recipients reapplying after having been off MFIP for 12 months. Most MFIP applicants will get DWP instead of MFIP. DWP is administered by county welfare agencies. MINN. STAT. § 256J.95. *See also* “DIVERSIONARY WORK PROGRAM: EMPHASIZING EMPLOYMENT,” DHS-5848-ENG (12/2013).
- ❑ The goal of DWP is to provide short-term, “necessary services and supports to families which will lead to unsubsidized employment, increase economic stability, and reduce the risk of those families needing longer term assistance” from MFIP. MINN. STAT. § 256J.95, subd. 1(b).
- ❑ **Financial eligibility** criteria, **state residency**, **retroactivity**, **immigration** issues, **cooperation** requirements, and **overpayment** issues are the same as in MFIP.
- ❑ After 4 consecutive months of DWP, recipients who have not secured work are **automatically transferred** to MFIP. *Id.* at subds. 3(c), 12.
- ❑ During the 4 months a household is on DWP, the county agency makes vendor payments for the family’s rent and utilities, up to the standard amount of an MFIP cash grant. *Id.* at subds. 1, 10. If there is a balance available, participants can receive a personal needs allowance of up to \$70 per DWP recipient in the family unit. *Id.* at subd. 1(d). DWP recipients should get **Supplemental Nutrition Assistance Program** (SNAP, a/k/a Food Stamps) benefits and **Medical Assistance** (MA). *Id.* at subd. 7(a)(3).
- ❑ DWP families have to have an **employment plan**. It basically says, “Go find a job.” *Id.* at subds. 2, 11, 15.
- ❑ Certain families are **exempted** from DWP, including those considered “unlikely to benefit” from DWP. *Id.* at subds. 3, 12. Among those exempted are:
 - * households determined to be appropriate for the Family Stabilization Services (FSS) program (*see below*),
 - * **“child-only”** cases (where a parent or caregiver is on SSI, or is ineligible for DWP and MFIP due to immigration status);
 - * single-parent families with a **child under 12 months** of age (this exemption is available once in a lifetime);
 - * **minor parents** without a high school diploma or its equivalent;

- * **parents age 18-19** with no high school diploma who plan to go to school;
- * caregivers **age 60 or older**; and
- * **refugees and asylees** who arrived in the U.S. in the 12 months prior to the application for family cash assistance.

Id. at subd. 3(a); MINN. STAT. § 256J.575.

- ❑ DWP budgeting is not retrospective. It **doesn't change** during the 4-month period. Therefore, recipients fortunate enough to find a job while on DWP have the incentive of getting to keep all of their earned income. *Id.* at subd. 10(d).
- ❑ Non-cooperation with a DWP employment plan or child support enforcement means disqualification for DWP. The household will **not be eligible** for MFIP and may not be eligible for emergency assistance. *Id.* at subds. 4, 16. DWP does have a “good cause” for non-compliance provision. *Id.* at subd. 17.
- ❑ DWP months **do not count** toward the MFIP 60-month lifetime limit. *Id.* at subd. 1(c).
- ❑ DWP grant and work issues can be **appealed** to DHS. *Id.* at subd. 7(c). Time lines and procedures for filing appeals are the same as for MFIP, except that DWP benefits cannot be extended beyond four months by requesting that benefits continue pending appeal. MINN. STAT. § 256J.40.

4. FSS: FAMILY STABILIZATION SERVICES

(MINN. STAT. § 256J.575)

What is FSS?

- The Minnesota Legislature created an alternative to MFIP and DWP called Family Stabilization Services (FSS) that is **not funded with TANF** money to address the increased work participation requirements stemming from the DRA. The program was implemented in early 2008 and is administered by county welfare agencies.
- FSS provides services to families that are **not expected to make, or are not making significant progress in MFIP**. The goal is to stabilize and improve the lives of families at risk of long-term welfare dependency or family instability due to barriers such as physical or mental disability, age, or need to provide care for a disabled household member. MINN. STAT. § 256J.575, subd. 1.
- Those eligible for participation are caregivers:

- who would be eligible for “**ill or incapacitated**” or **hard-to-employ** MFIP extensions (this category includes those with a low IQ or learning disability, as well as people who have been granted a family violence waiver under MINN. STAT. § 256J.425, subd. 3);
- with pending applications for **disability benefits** from Social Security;
- who are non-citizens and have been in the U.S. **fewer than 12 months**,¹⁰ or
- who are **age 60** or older.

Id. at subd. 3.

- FSS also has a “**universal participation**” requirement, but work requirements are more relaxed than in MFIP. *Id.* at subds. 5-6.
- FSS offers increased protective procedures (compared to MFIP or DWP) before a **sanction** for program non-compliance can be imposed. *Id.* at subd. 7.
- Because FSS is not TANF-funded, participants are not counted in the TANF work participation rates. *Id.* at subd. 8(a).
- FSS provides the **same cash and food** benefits that MFIP does, has the same **financial eligibility** requirements as MFIP, and is similar to MFIP with regard to **state residency, retroactivity, immigration** status limitations, **fraud, overpayments, and appeals**.

5. **WB: WORK PARTICIPATION CASH BENEFITS**

(MINN. STAT. § 256J.621)

What is WB?

- The Work Participation Cash Benefits (WB) program took effect in October of 2009 to increase the state’s TANF participation rates by including in those rates former recipients exiting the program due to earnings. *See* Minn. DHS Bulletin # 10-11-02, “WORK BENEFIT PROGRAM (WBP) QUESTION AND ANSWER BULLETIN” (4/12/10). WB, like the other family cash programs, is administered by county welfare agencies.
- Participants exiting DWP or MFIP with earnings are currently eligible for work participation **cash benefits of \$25 per month** to assist in meeting their needs as they continue to move toward self-sufficiency.¹¹

¹⁰ Non-citizens participating in FSS must be provided English as a second language (ESL) opportunities and skills training for up to 12 months. After 12 months, their FSS case manager is supposed to determine whether they should continue with ESL or skills training, or both. *Id.* at subd. 3.

¹¹ At the program’s inception, the amount of benefits was \$50 per month, but the Legislature reduced that amount the following year.

- ☐ To be eligible, participants must **no longer receive DWP or MFIP**. Single caregivers must:
 - be employed at least 87 hours a month if they have a child under age 6; or
 - be employed at least 130 hours per month if they have no children under 6.
- ☐ In 2-parent families, one parent must be employed at least 130 hours per month.
- ☐ WB benefits are available for **up to 24 consecutive months**.
- ☐ Net income must be **below 200% FPG**. See Minn. DHS Bulletin #10-11-02, “WORK BENEFIT PROGRAM (WBP) QUESTION AND ANSWER BULLETIN” (4/12/10).
- ☐ While TANF doesn’t fund the program, months in which benefits are provided **count toward** the TANF work participation requirements. They **don’t count against** participants as MFIP months for purposes of the 60-month time limit.
- ☐ **State residency, retroactivity, immigration status, overpayments, fraud, and appeal rights** are the same as in MFIP.
- ☐ The WB program will effectively **end on 12/1/14**. 2013 session law, Ch. 108, Art. 3, § 30, amending MINN. STAT. §256J.621, subd. 2 by “suspending” the program indefinitely.

6. GA: GENERAL ASSISTANCE

(MINN. STAT. Ch. 256D; MINN. RULES, Ch. 9500)

What Is GA?

- ▶ General Assistance (GA) is a **state-funded, non-family cash** assistance program primarily for **people unable to work**. MINN. STAT. § 256D.01.¹²
- ▶ GA can also provide cash assistance for **minor children** who cannot qualify for MFIP because of an inability to demonstrate the requisite blood or legal relationship to their caregiver. *Id.*
- ▶ GA is administered by county welfare departments. It has income and asset limits, as well as categorical eligibility requirements.

A. INCOME AND ASSETS

- ☐ **Income** and **asset** limits have been **extremely low** but will be changing in the next two years.
- ☐ **Currently**, most income, whether earned or unearned, is counted dollar-for-dollar against the grant, after an exclusion of the first \$50 of earned income. MINN. STAT. §§ 256D.02, subd. 8, and

¹² Work Readiness, the state-funded program for single adults **able to work**, has been gone since 1995.

256D.05, subd. 1(A); MINN. RULES 9500.1223, subps. 2, 5; 1225; 1226.

- ❑ A home in which one resides is excluded for GA, as is a vehicle if the equity value is **under \$1,500**. MINN. STAT. § 256D.08, MINN. RULES 9500.1221, subp. 2.
- ❑ The equity value of all non-excluded real and personal property cannot exceed **\$1,000**. MINN. STAT. § 256D.08; MINN. RULES 9500.1221.
- ❑ The **new earned income disregards** described above in MFIP will apply to GA, **beginning 10/1/15**, making it easier for low-income wage earners who otherwise would be eligible to get GA. Laws 2014, c. 312, art. 28, § 5, amending MINN. STAT. § 256D.06, subd. 1, and referencing new MINN. STAT. § 256P.03.
- ❑ **Effective 6/1/16**, the new **personal property limits** provision will also apply to GA, significantly broadening potential eligibility for benefits. Laws 2014, c. 312, art. 28, § 6, amending MINN. STAT. § 256D.08, subd. 1, and referencing new MINN. STAT. § 256P.02.

B. GA BUDGETING AND BENEFIT AMOUNTS

- ➔ GA benefit amounts were set in **1986** and have not been adjusted since. They are **\$203** for a single person, **\$250** for a child who is ineligible for MFIP, and **\$260** for a married couple. MINN. STAT. § 256D.01, subd. 1a; MINN. RULES 9500.1231, subps. 1, 3, 4.¹³
- ➔ Income is **prospectively** determined and **retrospectively budgeted**, the way it is in MFIP. MINN. RULES 9500.1233, 9500.1243. The new simplification provisions for **verifying and documenting information** will take effect for GA on **2/1/15**. Laws 2014, c. 312, art. 28, § 35, creating new MINN. STAT. § 256P.04.

C. CATEGORICAL ELIGIBILITY

Categorical eligibility for GA exists for people who are:

- unable to work due to a medically-certified **illness or injury** lasting more than 45 days;
- **needed in the home** to care for an ill or disabled household member;
- in a **rehabilitation facility** for treatment of a physical or mental impairment or chemical dependency, *if* the county has approved the placement;
- staying in a **domestic violence shelter**;
- diagnosed as having **developmental disabilities or mental illness** *and* rendered unemployable;
- in the process of **applying for or appealing** a denial of SSI or SSDI, *if* they have medical documentation of an inability to work;
- **55 or older** *and* significantly limited in ability to work;
- assessed by a vocational specialist as being **“unemployable”**;
- **learning disabled**, *if* following a county-approved rehabilitation plan;
- under 18 and **“legally emancipated”** (i.e., on active duty in the U.S. armed forces or having been married or emancipated by a court);

¹³ The legislature last increased GA in 1986, adding **\$2** to the grant amount.

- under 18 and living with an adult with the consent of the county agency;
- eligible for **displaced homemaker services** and enrolled as a full-time student;
- involved with protective or **court-ordered services** that preclude work activities;
- having a first **language other than English** and in high school at least half time; or
- disabled by **alcohol or drug addiction**, if they are following an assessor's recommendation regarding treatment.

MINN. STAT. § 256D.05, subd. 1(a).

D. OTHER GA PROVISIONS

- ▶ GA applicants are required to **apply for other benefits** for which they may be eligible, including Unemployment Insurance (UI), Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI). MINN. STAT. §§ 256D.05, subd. 1(b); 256D.06, subd. 5; MINN. RULES 9500.1245, subp. 7; 9500.1254. They must **reimburse** the county if later found eligible for another benefit. *Id.*
- ▶ Applicants convicted of a **drug offense** after 7/1/97 are **ineligible for 5 years** after completion of their sentence, unless they are participating in drug treatment, have successfully completed drug treatment, or have been assessed by the county agency as not being in need of drug treatment. The statute says that those subject to the limitations of the subdivision who “become eligible” for assistance are subject to random drug testing as a condition of continued eligibility. They **will lose GA benefits for 5 years** beginning the month following a positive drug test or discharge of sentence after conviction for another drug felony. **Fleeing felons** and **parole violators** are also ineligible for GA. MINN. STAT. § 256D.024, subds. 1, 2, 3.
- ▶ GA applicants and recipients are subject to many of the same requirements as in MFIP, including **state residency**, **retroactivity**, **immigration** status, **overpayments**, and **fraud**. Sponsor-deeming may affect eligibility. 8 U.S.C. § 1632, MINN. STAT. §§ 256D.02, 256D.05, 256D.09; MINN. RULES 9500.1219, 9500.1237.
- ▶ GA has the same **appeal rights** as MFIP. MINN. STAT. §§ 256.045, 256D.10; MINN. RULES 9500.1211, subps. 4-7, 9500.1254, subp. 6.

7. MSA: MINNESOTA SUPPLEMENTAL AID

(MINN. STAT. §§ 256D.33-256D.54)

What is MSA?

- ❖ Minnesota Supplemental Aid (MSA) is a state supplement for **recipients of SSI** or people who would be receiving SSI but for excess income. MINN. STAT. §§ 256D.34; 256D.425. It is administered by county welfare departments.
- ❖ MSA serves primarily to **ameliorate** the effects of **high housing** costs for those living alone. *Id.* SSI and SSDI recipients living in “shared households” are usually **ineligible**

due to economies of scale. “Shared household” is not defined in law and is inconsistently defined by counties. MINN. STAT. § 256D.44.

- ❖ MSA can pay for furniture replacements and other needs. It can pay for **special diets** and for “**representative payee**” fees for SSI recipients who are required to have someone manage their benefits. *Id.* at subd. 5.

A. INCOME AND ASSETS

- ❖ The **income limits for MSA** have always been low, but they are not specifically aligned with the amount of SSI a person receives, which is why a person could be eligible for MSA but not be receiving SSI. MSA grants are based on “standards of assistance” set forth in state law. MINN. STAT. § 256D.44. *See also* DHS CM 20.21 (12/2013), MSA ASSISTANCE STANDARDS, indicating that the “living alone standard” is currently \$771. Contrast it with the 2014 standard SSI payment amount of \$721.
- ❖ The new uniform earned income disregard taking effect on **10/1/15** will benefit MSA recipients **who do not receive SSI**. Laws 2014, c. 312, art. 28, § 36, referencing new MINN. STAT. § 256P.05, subd. 1.
- ❖ The **asset limit** for MSA recipients is currently the same as for the SSI program (*i.e.*, very low, **\$2,000** for a single person and **\$3,000** for a married couple receiving SSI). Minn. Stat. § 256D.425, subd. 2.
- ❖ Only those MSA recipients **not receiving SSI** will be able to avail themselves of the new uniform personal property and vehicle limitations taking effect **6/1/16**, as described above. Laws 2014, c. 312, art. 28, § 11, creating new MINN. STAT. § 256P.02 and amending MINN. STAT. § 256D.425, subd. 2.

B. MISCELLANEOUS MSA INFORMATION

- ❖ The average MSA supplement for housing is **\$81** for non-institutionalized recipients.
- ❖ **Immigration** limitations are very strict for MSA; they relate to eligibility for SSI. MINN. STAT. § 256D.34.
- ❖ MSA is similar to MFIP and GA in terms of **state residency, retroactivity, fraud, overpayments, and appeal rights**. MINN. STAT. §§ 256.045, 256.046, 256.98, 256D.385, 256D.395, 256D.49, 256D.51, 256D.52.

8. SSI: SUPPLEMENTAL SECURITY INCOME

9. SSDI: SOCIAL SECURITY DISABILITY INSURANCE

(42 U.S.C. Ch. 7, Subch. XVI, §§ 1381-1383; 20 C.F.R. Pt. 416;
42 U.S.C. Ch. 7, Subch. II, §§ 401-434; 20 C.F.R. Pt. 404)

What are SSI and SSDI?

Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) are **federal**

disability benefits administered by the Social Security Administration (SSA).

	SSI	SSDI
name of program:	Supplemental Security Income	Social Security Disability Insurance, part of RSDI (Retirement, Survivors Disability Insurance) or OASDI (Old Age, Survivors, Disability Insurance)
non-medical eligibility criteria:	need-based program; strict income and resource limitations.	eligibility determined by work history and earnings record of applicant or of retired or deceased wage-earning relative; must meet “insured status” guidelines based on work history and earnings
“waiting period” during which no benefits provided:	None	5 months
benefit retroactivity:	benefits payable only from date of application	benefits payable up to 12 months prior to date of application
who can be paid:	claimant only, no derivative benefits	claimant and dependents up to “family maximum.”
disabled child benefits:	eligibility for children if disabled before 18 and meeting income and resource requirements	eligibility for disabled adult children, based on account of deceased or retired wage-earning relative <i>if</i> disabled before age 22; but <i>only if</i> adult child is a dependent of a worker <i>receiving</i> retirement or disability, <i>or if</i> adult child is survivor of deceased insured worker
benefit amount:	standard federal benefit rate (\$721 per month for single person and \$1,082 for eligible married couple in 2014), plus possible state MSA supplement for recipients who live alone	based on claimant’s work record, the work record of decedent, or the work record of worker on whom claimant is dependent
benefit reductions:	receipt of outside income, earned or unearned, cash or in-kind. Some disregards apply to earned income	receipt of Worker’s Compensation (WC) benefits or other Social Security benefits
onset of disability:	onset can be shown at any time	onset must be proven before expiration of “insured status,” based on work history and earnings
eligibility:	can be elderly (65 or older), blind, or disabled	must be disabled (there are separate requirements for the retirement component of RSDI, which are not addressed here)

A. DISABILITY

- ❖ To qualify for **SSI** or **SSDI**, an individual must be unable to work competitively for at least 12 months due to a severe impairment or combination of impairments.¹⁴ 20 C.F.R. §§ 404.1505; 416.905. The regulations for both programs define disability as “the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” *Id.*
- ❖ **Vocational factors** (age, education and past work), as well as physical and mental impairments, are considerations in determining adult disability in both programs. 20 C.F.R. §§ 404.1545-1569a, 416.945-969a.

¹⁴ As indicated in the chart, a low-income, low-asset person can also qualify for SSI based on age (65 or older) rather than disability.

- ❖ SSI has special criteria for determining disability in children. Determinations for **children** often involve an assessment of how the child is **functioning** in 6 “domains” (areas of function), compared with same-age peers who are not disabled. 20 C.F.R. §§ 416.906, 416.926a.
- ❖ SSDI does not have a separate disability benefit program for children, but adult disabled children of an insured worker who is disabled, retired, or deceased may get benefits through that parent’s account. Benefits are called “**DAC**,” for “Disabled Adult Child.” 20 C.F.R. § 404.350.
- ❖ Applications for SSI and SSDI will be denied if **alcoholism or drug dependence** is a “**contributing**” factor “**material**” to a finding of disability. In other words, applicants will be found eligible only if they would be considered **completely disabled without regard to their usage**. 20 C.F.R. §§ 404.1535, 416.935.
- ❖ Applicants for either program (including children) who “**meet**” the criteria contained in one of SSA’s “**listings**” of **impairments** (at 20 C.F.R. pt. 404, subp. P, Apps. 1 and 2), or who have a different impairment that is medically “**equivalent**” in **severity** to a listed impairment, are categorically eligible. 20 C.F.R. §§ 404.1525-404.1526, 416.925-416.926.¹⁵
- ❖ Adult applicants who do not “meet” or medically “equal” a listing may still be eligible if they can prove **there are no “substantial” and “gainful” jobs** they could perform regularly. “Substantial gainful activity” (SGA) (which is incompatible with a claim for disability) is presumed, rebuttably, when gross monthly earnings are at least \$1,070. SGA levels are adjusted annually. 20 C.F.R. §§ 404.1510, 416.910.

B. INCOME, ASSETS

- ☒ SSI is a **need-based** program not contingent on the applicant’s work history (or lack thereof). The program has strict income and asset limits. 20 C.F.R. §§ 416.1100-1266. Even “in-kind” income is counted for SSI purposes. 20 C.F.R. § 416.1102. Non-excluded resources are limited to **\$2,000** for a single person and **\$3,000** for a married couple when each spouse is eligible for SSI. 20 C.F.R. § 416.1205.
- ☒ SSI recipients who are not paying a pro rata share of household operating expenses will have their grant **reduced by 1/3**. 20 C.F.R. §§ 416.1131 *et seq.*

¹⁵ An example of a **physical** listing is convulsive epilepsy (Listing 11.02). To “meet” the listing, the applicant must have grand mal or psychomotor seizures more frequently than once a month, in spite of at least 3 months’ prescribed treatment, with daytime episodes (loss of consciousness and convulsive seizures) or nocturnal episodes manifesting residuals interfering significantly with activity during the day.

An example of a **mental** listing is depression (Listing 12.04). To “meet” the listing, the applicant must document at least 4 out of the 9 designated symptoms (Part A) and meet the functional (Part B or Part C) criteria. Part B requires “marked” restrictions in at least 2 areas of function [activities of daily living; social functioning; and concentration, persistence *or* pace], or extended periods of decompensation. Part C requires an inability to function outside a highly supportive living arrangement or proof of marginal adjustment.

- ☒ To qualify for SSDI, recipients (or, in some situations, a deceased or disabled parent, spouse, or child) must have **paid into** the system through FICA wage deductions. SSA uses a formula to determine financial eligibility and wage amounts based on age, recency and length of work, and earnings. 42 U.S.C. §§ 402, 608; 20 C.F.R. §§ 404.110-146, 404.330-374, and 404.1505.
- SSDI has **no** income or asset limits, other than a limitation on earned income for **recipients**. Receipt of Workers Compensation (WC) or other Social Security benefits, however, will reduce payments.

C. BENEFIT REACH

- SSI benefits extend only to disabled or elderly recipients, so there are **no “dependent” or “survivor”** benefits. 20 C.F.R. §§ 416.410 *et seq.*
- SSDI, in contrast, may be available to non-disabled **dependent minors**, based on a “family maximum” formula. Such benefits may be considered as if they were child support for purposes of setting or modifying a support order for a non-custodial parent who is receiving SSDI. 20 C.F.R. § 404.350, MINN. STAT. § 518A.31.

D. GARNISHMENTS AND ATTACHMENTS

- SSI and SSDI **cannot be garnished**, for most debts. 42 U.S.C. §§ 407(a); 1383(d)(1). **Exceptions** exist for SSDI (but **not** for SSI) for debts from federal government programs (SNAP, student loans). 31 U.S.C. § 3716; 31 C.F.R. § 285.4. (Some student loans can be discharged if the recipient has subsequently become permanently disabled. *See* <https://www.myeddebt.com/borrower/PDFFrames.jsp?fileName=form.loan.discharge.total.and.permanent.disability.pdf> (Discharge Application: Total and Permanent Disability).)
- SSDI, but **not** SSI, **can be garnished** for child support and maintenance debts. 42 U.S.C. § 659(a). SSDI recipients with a Minnesota child support order may move to modify the order based on decreased income. MINN. STAT. § 518A.39, subd. 2. Also, derivative benefits going to the child on the account of a disabled parent should be credited as child support. MINN. STAT. § 518A.31.

E. RETROACTIVITY

- ➡ SSI benefits are retroactive **only to the date of application**. 20 C.F.R. § 416.501.
- ➡ SSDI benefits can be **retroactive up to a year** before the date of application, if disability is proved for that period of time. 42 U.S.C. § 423(b).

F. INTERACTION OF WORK AND BENEFITS

- ☐ Both SSI and SSDI encourage participation in the “Ticket to Work” program through a state vocational rehabilitation agency.

- ❑ The SSDI program contains a “**trial work period**” (TWP) that allows recipients to try to work before they lose their benefits. 20 C.F.R. § 404.1592.
- ❑ SSI has no TWP. Most unearned income (whether cash or in-kind) **will count** dollar-for-dollar to reduce a grant. Half of **earned** income from a job in the competitive job market **will count** (after a \$65 disregard) to reduce the grant, with some exceptions. 20 C.F.R. §§ 416.1112, 416.1100 *et seq.*
- ❑ SSI does allow Plans for Achieving Self-Support (PASS), which may help recipients start to work. 20 C.F.R. § 416.1226.¹⁶

G. MEDICARE

- ➔ Disabled SSI recipients under 65 are not eligible for **Medicare**. 42 U.S.C. §§ 426, 1395o.
- ➔ Disabled SSDI recipients can qualify for Medicare after 2 years of SSDI eligibility. *Id.*

H. BENEFIT AMOUNTS

- ▶ SSI grant amounts are significantly higher than a comparable GA grant or single adult or child portion of an MFIP grant: **\$721** for a single person and **\$1,082** for a married couple in 2014, when both spouses are on SSI.
- ▶ SSDI grant amounts are based on workers’ earnings histories. If the SSDI payment would be less than the SSI benefit level, the recipient can get “concurrent” benefits consisting of a partial SSI grant in addition to SSDI. *See* 20 C.F.R. §§ 404.110 to 404.290, and appendices.
- ▶ Both SSI and SSDI are usually increased annually with cost-of-living adjustments (COLAs). *See* <http://www.ssa.gov/news/cola>.

I. IMMIGRATION

- SSI is the most restrictive federal program for **non-citizens**. Eligibility depends on specific immigration status, date of arrival in the U.S. or date of adjustment to LPR status, and whether “sponsor-deeming” applies. In general, non-citizens immigrating to the U.S. after August 1996 are going to be either completely **ineligible** for SSI or, if asylees or refugees, eligible for only a limited period of time (**7 years** from the date of the grant of refugee or asylee status). 8 U.S.C. §§ 1611, 1612, 1613, 1631; 42 U.S.C. § 1382j.
- There are no immigration-related restrictions for SSDI for immigrants residing lawfully in the U.S.
- Because SSDI is not need-based, sponsor-deeming does not apply.

¹⁶ Earning gross wages at the “SGA” (Substantial Gainful Activity) level (\$1070 per month in 2014) can result in termination of all benefits for those not on a PASS plan.

J. APPEALS

- SSI and SSDI **appeal** periods are generally **60 days**. Applicants who are denied benefits have **60 days** to request reconsideration. 20 C.F.R. §§ 404.909, 416.1409. Applicants denied benefits on reconsideration have **60 days** to request a hearing. 20 C.F.R. §§ 404.929-955, 416.1429-1455. In the Twin Cities, it generally takes at least **12 months** from the request to get a hearing before an Administrative Law Judge (ALJ).
- ALJ denials can be appealed within **60 days** to SSA's Appeals Council (AC) in Virginia. It can take the AC up to **2 years** to render a decision. 20 C.F.R. §§ 404.967 *et seq.*, 416.1467 *et seq.* In July 2011, Social Security issued a ruling limiting a claimant's ability to file a subsequent application when an appeal on a prior claim is pending at the Appeals Council. Social Security Ruling (SSR) 11-1p; 76 FR 45309 (effective 7/28/11). Those denied at hearing must **make a choice** either to abandon a prior claim (giving up any right to retroactive benefits and possibly losing their "insured" status) or to appeal and wait what may be 2 years for a decision from the AC. A remand from the AC sends a case back to the same ALJ who denied the claim.
- AC decisions can be appealed within **60 days** to **federal district court**. 20 C.F.R. § 404.981, 416.1481.
- Deadlines are very important in SSA programs, but SSA can grant **"good cause" for a late appeal**. 20 C.F.R. §§ 404.911, 416.1411.

K. MISCELLANEOUS SSI/SSDI MATTERS

- SSI and SSDI benefits can be stopped if the recipient is determined to be a **"fleeing felon"** (narrowly defined) or a parole violator (very broadly defined). 42 U.S.C. §§ 402(x)(1)(A), 1382(e)(4)(A).
- In general, SSDI and SSI **overpayments** must be repaid. In the SSI program, SSA can withhold 10% of benefits from current recipients to recover a non-fraud overpayment and an entire grant if the overpayment was based on "fraud." SSA can withhold the full grant in a non-fraud SSDI overpayment case, but the amount of withholding can be negotiated. Overpayment **waivers** can be granted for both programs if the overpaid recipients can show that they were **without fault** in having created the overpayment **and** that they **cannot afford** to repay. 20 C.F.R. §§ 404.506-512, 416.550-556, 416.571.

III. IMMIGRATION CONSIDERATIONS

Some immigration-related limitations affecting the individual programs addressed in this hand-out are included in the benefit sections above. There are some overriding immigration-related factors affecting most benefit programs that are worth knowing about.

➔ **In general, only non-citizens lawfully and permanently residing in the U.S. are eligible for benefits.**

Immigrants without authorization, those with expired documents, and non-immigrants (visitors, students, temporary workers) are ineligible for most benefits.

→ There is a 5-year bar on eligibility for benefits that are 100% federally-funded.

- The 5-year bar is essentially a **waiting period** during which newly arrived immigrants, or those newly-adjusted to Lawful Permanent Resident (LPR) status, are not eligible for benefits, including SSI, SNAP (Food Stamps), MA (Medical Assistance), and federally-funded MFIP. (Those subject to the waiting period can get state-funded MFIP. The other programs do not or no longer have state-funded components).
- The 5-year bar does **not apply to refugees, asylees, or U.S. veterans** or active duty armed forces personnel or their spouses and minor dependents.
- The bar does **not affect state-funded benefits** such as GA, state-funded MFIP, or the state funded food program known as MFAP.
- The bar **does** apply to non-citizens granted “**battered immigrant**” status.

8 U.S.C. §§ 1611(b)(1)(A), 1612, 1613.

→ Some immigrants here on a temporary basis or in the process of adjusting to LPR status may qualify for state-funded benefits.

- Most non-citizen applicants for state-funded assistance (including GA and state-funded MFIP) must take “**steps**” toward obtaining citizenship. Immigrants don’t have to take “steps” if they have lawfully resided in the U.S. fewer than 4 years, are 70 or older, or live in a nursing home, group home, or similar type of facility.
- “Steps” include taking citizenship, literacy, or ESL classes; being on a wait list for literacy or ESL classes; having an application on file for citizenship; or having twice-failed the citizenship test because of an inability to understand the rights and responsibilities of U.S. citizenship.

MINN. STAT. §§ 256D.05, Subd. 8(b); 256J.11, Subd. 3.

→ Eligibility for purely federal benefits (SSI, SNAP, MA) will depend on a variety of factors, including date LPR status was attained, immigration category (refugee, asylee, family-based immigrant, recipient of Diversity Visa, etc.), and applicability of “sponsor-deeming.” (See below).

7 U.S.C. § 2014; 8 U.S.C. §§ 1611, 1612, 1613.

→ Sponsor-deeming makes many immigrants ineligible for a whole range of federal and state-funded government benefits.

- Sponsor-deeming is the **attribution of income** from a sponsor to an immigrant stemming from the 1996 welfare reform law, PRWORA. A year after PRWORA, a legally binding “Affidavit of Support” form (the I-864) was implemented. P.L. 104-193 (8/22/96).
- Deeming using the I-864, for most programs, applies only to **family-based** immigrants (immigrants arriving in the U.S. through a family-based petition, the most common method of immigrating to the U.S.). It also applies to immigrants **adjusting to LPR** status through a family-based petition.
- I-864 deeming does **not apply** to refugees, asylees, Cuban/Haitian entrants, recipients of Diversity Visas, or immigrants with Temporary Protected Status (TPS).
- In general, **100%** of the income and assets of a sponsor and the sponsor’s spouse are considered **fully available** to the immigrant without regard to actual availability. The burden is on the immigrant to prove a lack of income on the sponsor’s part.
- Benefits are deemed using the I-864 **until** the immigrant becomes a U.S. citizen or works 10 years (or gets credited with 40 work quarters) at FICA-covered work, or until the sponsor permanently leaves the U.S. or dies. Divorce from the sponsor, or a relative of the sponsor, usually has no effect on deeming.
- There are **two 12-month exceptions** to the deeming of sponsor income using the I-864:
 - ★ **Indigence exception:** Sponsor-deeming will not apply if the welfare agency determines that, as a result of the sponsor’s failure to provide support, the immigrant is without food and shelter.
 - ★ **Battered immigrant exception:** Sponsor-deeming also will not apply if the immigrant (or child) has been battered or subjected to extreme cruelty by the immigrant’s spouse or parent. The immigrant must no longer live with the batterer, and the battery or cruelty must be shown to be “substantially connected” to the need for benefits.
- In general, **deeming applies** to:
 - ▶ **Cash programs:** SSI, MSA, GA, MFIP, DWP, FSS, WB.
 - ▶ **Food programs:** SNAP, MFAP.
 - ▶ **Health care:** MA (but only for the sponsored immigrant, and not for children or pregnant women).
- Deeming **does not apply** to:
 - ☒ EMA.
 - ☒ MinnesotaCare.
 - ☒ MA for pregnant women or children.
 - ☒ SNAP for children.

- There is a **less pervasive** form of deeming (I-134 deeming) affecting non-family-based immigrants, such as recipients of Diversity Visas. I-134 deeming affects **only MFIP** benefits and **lasts only 3 years**. Unlike I-864 deeming, I-134 deeming takes into account the sponsor's family size and fixed debts. Refugees and asylees are exempt from this form of deeming.

7 U.S.C. § 2014; 8 U.S.C. §§ 1183a, 1621, 1631, 1632; 42 U.S.C. § 608(f); 8 C.F.R. § 213a.2; MINN. STAT. §§ 256B.06, 256D.05, 256J.37, 256L.04.