

# ELIGIBILITY FOR CASH ASSISTANCE PROGRAMS

September 2014

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## 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.
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## 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.<sup>1</sup> 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.

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<sup>1</sup> 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](http://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 MSA<sup>2</sup> 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.<sup>3</sup> 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

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

<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>4</sup> 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,<sup>5</sup>
  - 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.

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<sup>5</sup> “[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, subs. 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.<sup>6</sup>
- 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, subsd. 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.

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<sup>6</sup> 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 have 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 **vended** (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.<sup>7</sup> 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.<sup>8</sup>
- 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.<sup>9</sup>

<sup>7</sup> A sanction results in a reduction of the household grant by 10% for the 1<sup>st</sup> month of sanction. For the 2<sup>nd</sup> through 6<sup>th</sup> 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 7<sup>th</sup> month of sanction results in case closure. MINN. STAT. § 256J.46.

<sup>8</sup> 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.

<sup>9</sup> 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**,<sup>10</sup> 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.<sup>11</sup>

<sup>10</sup> 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.

<sup>11</sup> 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.<sup>12</sup>
- ▶ 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

<sup>12</sup> 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.<sup>13</sup>
- ➔ 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);

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<sup>13</sup> 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).

	<b>SSI</b>	<b>SSDI</b>
<b>name of program:</b>	Supplemental Security Income	Social Security Disability Insurance, part of RSDI (Retirement, Survivors Disability Insurance) or OASDI (Old Age, Survivors, Disability Insurance)
<b>non-medical eligibility criteria:</b>	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
<b>“waiting period” during which no benefits provided:</b>	None	5 months
<b>benefit retroactivity:</b>	benefits payable only from date of application	benefits payable up to 12 months prior to date of application
<b>who can be paid:</b>	claimant only, no derivative benefits	claimant and dependents up to “family maximum.”
<b>disabled child benefits:</b>	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
<b>benefit amount:</b>	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
<b>benefit reductions:</b>	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
<b>onset of disability:</b>	onset can be shown at any time	onset must be proven before expiration of “insured status,” based on work history and earnings
<b>eligibility:</b>	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.<sup>14</sup> 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.

<sup>14</sup> 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.<sup>15</sup>
- ❖ 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.*

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<sup>15</sup> 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.<sup>16</sup>

### 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.

<sup>16</sup> 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.

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## 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.