



Little Traverse Bay Bands of Odawa Indians
7500 Odawa Circle, Harbor Springs, MI 49740

TRIBAL COUNCIL TRAVEL NARRATIVE
Submitted by: Julie Shananaquet, Tribal Council Secretary

Training/Event: Fighting Poverty in Indian Country
Location: Grand Rapids, MI
Date of Event: September 22, 2016

I respectfully submit this travel narrative to my fellow Council members and the Citizens of LTBB.

Wednesday– September 21, 2016

Traveled to Grand Rapids with no additional costs incurred for room due to other housing arrangements.

This report is a summary of the session:

Thursday – September 22, 2016

Prior to presentation regarding Poverty in Indian Country, I attended the State Bar of Michigan, American Indian Law Section meeting. Of special note, Hon. Angela Sherigan was awarded the 2016 Tecumseh Peacekeeping Award and during acceptance gave recognition to our very own Donna Budnick for her influence and mentoring during Angela's early work in Indian country.

Special Interest: Angela Sherigan in process of filing Amicus Brief regarding ICWA and State ruling on definition of Indian Custodial, which now includes "placement agencies" as Indian Custodials. Question raised whether or not Child Services or any other Tribe expressed interest in supporting Brief.

Fighting Poverty in Indian Country - presenters: Internal Revenue Service's Rep. Kim Dunn and Pokagon Legal Rep. Bill Brooks.

Kim Dunn presented an overview of *PL 113-168, Tribal General Welfare Exclusion Act of 2014, "an Act to amend the Internal Revenue Code of 1986 to clarify the treatment of general welfare benefits provided by Indian tribes"*. Ms. Dunn explained that all Gaming Revenue paid in the form of per capita cash payments are taxable and it would be in a tribe's best interest to develop tribal laws/statutes that would provide specific language clarifying that general welfare program and payments shall not be counted as gross income. (We may want to check on and include wording regarding issuance of unnecessary 1099's) Tribal government benefits qualify for exclusion as long as the benefits:

1. Are provided pursuant to a specific Indian tribal government program;
2. Are available to all tribal members who meet the government program's guidelines;^{*1}
3. Are not lavish or extravagant; and
4. Are not compensation for services.^{*2}

^{*1} *There is nothing in IRS rules that establishes or requires an income guideline*

^{*2} *Any services provided that are traditional in nature and in which tribe establishes the payment amount are not taxable. When writing Tribal legislation, Tribe should insure that a clear definition is provided of what traditional services is. (1099 should not be issued and Accounting Departments may need to create line items specific to non-taxable income.)*

The Welfare Exclusion Act, Sec 3, requires that the Secretary of Treasury establish a Tribal Advisory Committee comprised of 7 members. Unfortunately this has not been completed and it was suggested that Tribes push to have this completed and insure that the Tribal representative has knowledge of tribal government programs and traditional activities.

Kim Dunn welcomed questions and comments:

- E-mail address: kim.t.dunn@irs.gov
- Telephone No.: (509)238-3072

Bill Brooks, Pokagon Legal Counsel began his segment with statistics of poverty rate percentages of the American Indians (highest rate). He expressed the need and importance of Tribes to focus and understand the demographics of their community. It appeared to me that focus was geared more on general welfare programs for the elderly and consisted of tiered programs that wouldn't interfere with Social Security benefits. Mr. Brooks mentioned that the Pokagon Tribe had well written legislation on non-taxability of tribal programs. The concern I had with his presentation was the terminology used. I mentioned that certain terminology such as "community" could be limiting tax credit to those living within a geographical location versus general welfare for all tribal citizenship. I also mentioned that tribal program monies should not penalize elders with pensions or other sources of income. Note from earlier segment, Tribes determine whether or not to set income limitations. Mr. Brooks also recommended that tribes familiarize themselves with Income and Asset Rules.

Remark/Recommendation:

- Develop legislation regarding general welfare exclusions

Attachments:

The following attachments are available with hard copy report:

- State Bar of Michigan – American Indian Law Section Agenda
- Tribal General Welfare Exclusion Act of 2014, PL 113-168
- Statement by Rep Devin Nunes H.R. 3043
- State and Federal Public Benefits
- Internal Revenue Service (IRS) Revenue Procedures

A handwritten signature in cursive script, reading "Julie Shanahan". The signature is written in dark ink and is positioned in the lower-left quadrant of the page.

STATE BAR OF MICHIGAN
American Indian Law Section Conference Call
Thursday, September 22, 2016 1:00 PM

STATE BAR OF MICHIGAN
American Indian Law Section - Business Meeting
April 11, 2016

BUSINESS MEETING MINUTES

- I. Call to Order - Roll Call
 Chair - Tanya Sue Wanageshik
 Chair Elect - Cameron Fraser
 Secretary - Tanya Marie Gibbs
 Treasurer - Tina M. Yost

ALLS COUNCIL

Position	Name and P Number	Term Expiration Date
General	Bretsch, Tom Cook P72014 brcok@bhhpa.com	Sept. 30, 2016
General	Burgess, Katherine P72014 kbuc@bhhpa.com	Sept. 30, 2016
General	Richard Scott Yost P21671 rscott@bhhpa.com	Sept. 30, 2016
General	Hon. Wanda T. Singel P61003 wsingel@bhhpa.com	Sept. 30, 2016
General	Phillip H. Tucker P75249 phucker@bhhpa.com	Sept. 30, 2017
General	Tanya Marie Gibbs P78615 tgibbs@bhhpa.com	Sept. 30, 2017
General	John J. Lemire P23814 jlemire@bhhpa.com	Sept. 30, 2017
General	Tanya Sue Wanageshik P72935 twanageshik@bhhpa.com	Sept. 30, 2018
General	Cameron Ann Fraser P71403 cfraser@bhhpa.com	Sept. 30, 2018
General	Hon. Angela Kay Sherrigan P61654 asherrigan@bhhpa.com	Sept. 30, 2018
General	Karrie S. Wichmann P73817 kwichmann@bhhpa.com	Sept. 30, 2016
General	Tina M. Yost P53109 tyost@bhhpa.com	Sept. 30, 2016
Law Student	Whitney Granville whgranv@bhhpa.edu	Sept. 30, 2016
Law Student	Lizbeth Loebler llloebler@bhhpa.edu	Sept. 30, 2016
Commissioner	Joseph P. McNeill jmcneill@bhhpa.com	

II. Approval of Agenda

1. Additions

2. Deletions

III. Approval of Minutes

1. April 11, 2016.

2. Sept. 2, 2016.

IV. Treasurer's Report - Tina M. Yost

1. Old Business

1. ICW American Brief Update - Hon. Angela Sherrigan

1. New Business

1. Contribution to MILLS

2. Election of Committee Members for Expired Terms:

- A. Expiring Terms: Elizabeth Joan Cook; Douglas McIntyre; Richard Scott Ryder; Hon. Wanda T. Singel

- B. New Council Members (4): *Erin Winters, Liz Cook, Alice Waldman, Jennifer*

3. Election of Law Student Members for Expired Terms:

- A. Expired Terms:

- Chair - Cameron Fraser

- Chair Elect - *Tanya Gibbs*

- Secretary - *STW*

- Treasurer - *TKA, WST*

- Treasurer Recipient - Hon. Angela K. Sherrigan *(bold)* *Katy O'Connor*

- Presenter - Hon. Alice Greenleaf Maldonado

VIII. Adjourn

4
Rita Stewart, Jason Stark,

I. Roll Call - Call to Order

- a. Present: John Lemire, Cami Fraser, Liz Cook, Tanya Gibbs, Doug McIntyre, Phillip Tinker, Tina Yost, Hon. Tanya Wanageshik, Scott Ryder (by Proxy to Tanya Wanageshik), Karrie Wichmann
- b. Absent:

II. Approval of Agenda - Motion: Tanya Gibbs; Second Cami Fraser; 9-0-0 Motion Carries.

- a. Additions - none
- b. Deletions - none

III. Treasurer's Report - Tina Yost

- a. Determined that the Section does get automatically billed for conference calls
- b. SBM is getting very strict on expense reimbursement. If you have any expenses that need to be reimbursed, please get receipts to Tina within 30 days.
- c. Any expenditures over \$5,000, you must get a check from SBM first
- d. Currently have approximately \$16,000 in bank account
- e. Approximate cost of Annual Meeting in 2015 \$1,600

IV. Old Business

- a. 2016 Annual Meeting Panel Topic - Tribal Welfare Exclusion Act of 2013

- i. Tribes moving away from per capita to Tribal Welfare Exclusions (income based cash assistance - not considered income like per capita payments are) and the IRS Tax Consequences of those

- ii. Proposed Speakers

1. Lisa Ruby (AMPLP)
2. Jim Keedy (MILS)
3. Christie Jacobs (IRS)

4. Attorney from MI Tribe (Pokagon - recently set this up, GTB - has been set up for some time, NHBPI - exploring this idea currently)

- iii. Motion to approve 2016 Annual Meeting Topic of Tribal Welfare Exclusion Act of 2013, Public Benefits, Per Capita Payments and IRS Tax Consequences by Phillip Tinker; Second by Tina Yost; 9-0-0 Motion Carries

V. New Business

- a. Tecumseh Recipient

- i. Hon. Tanya Wanageshik going to send out email to ALLS Section asking for nominations along with list of past recipients

- b. Annual Young Lawyers Summit (June 3-4)

- i. Tanya Gibbs, Phillip Tinker, John Lemire, and Douglas McIntyre willing to attend

- ii. Motion to approve Silver Level Sponsorship (\$175) of Young Lawyers Summit by Tina Yost, Second Phillip Tinker; 9-0-0 Motion Carries.
- VI. Adjourn.
- a. Motion to adjourn by John Lemire; Second by Karrie Wichman; 9-0-0 Motion Carries.

STATE BAR OF MICHIGAN
American Indian Law Section – Business Meeting
September 2, 2016
BUSINESS MEETING MINUTES

- I. Roll Call – Call to Order
- a. Present: Hon. Tanya Sue Wanageshik, Cami Fraser, Liz Cook, Phillip Tinker (by proxy) to Hon. Tanya Sue Wanageshik, Hon. Karrie Wichman, Hon. Angela Sherigan (by proxy to Cami Fraser), Tanya Gibbs
- b. Absent: Doug McIntyre
- II. Approval of Agenda – Motion by Hon. Karrie Wichman; Second Liz Cook; 7-0-0, Motion Carries.
- a. Additions – Corrections – Hon. Angela Sherigan nominated by Hon. Allie Maldonado
- b. Deletions – none
- III. New Business
2. Tecumseh Recipient
- i. Hon. Angela Sherigan; Hon. Angela Sherigan, Hon. Tanya S. Wanageshik, Phillip Tinker (by proxy), Cami Fraser, Tanya Gibbs.
- ii. John Lowe; Liz Cook, Karrie Wichman
- iii. Hon. Angela Sherigan, Abstaining.
- iv. Motion to select Hon. Angela Sherigan as Tecumseh Recipient; Motion by Cami Fraser; Second Tanya Gibbs; 5-2-1; Motion Carries.
- b. Authorization for TSW to Order Blanket and Reimbursement
- i. Motion to authorize Hon. Tanya Wanageshik to purchase the blanket and be reimbursed by AILS made by Karrie, Wichman; Second by Cami Fraser; 7-0-0; Motion Carries.
- c. Authorization to Order Plaque and Reimbursement
- i. Motion to authorize Hon. Tanya Wanageshik to order the plaque and seek reimbursement by AILS made by Tanya Gibbs; Second by Karrie Wichman; 7-0-0; Motion Carries.
- d. Authorization to purchase nominal gifts for presenters and reimbursement
- i. Motion to authorize Hon. Tanya Wanageshik to order gifts for presenters for a maximum of \$20 each made by Cami Fraser; Second by Karrie Wichman; 7-0-0; Motion Carries.
- e. ICWA Amicus Brief (Hon. Angela Sherigan present for this discussion)
- i. Would like the brief to be limited to the issue regarding the expansion of the definition of “Indian Custodian”
- ii. Hon. Sherigan represents prospective adoptive parents (non-native); Has someone willing to draft the amicus
- iii. Motion to approve AILS drafting an amicus brief on ICWAMIFPA matter limited to the issue of expanding the definition of “Indian Custodian” made by Hon. Karrie Wichman; Second by Tanya Gibbs; 5-2-0; Motion Carries

- iv. Motion to have Hon. Tanya Wamageshk coordinate the payment of the annicus brief filing fee and for reimbursement, if necessary, made by Hon. Karrie Wichman; Second by Tanya Gibbs; 7-0-0; Motion Carries.
- IV. Adjourn.
- a. Motion to adjourn by Cami Fraser; Second by Tanya Gibbs; 7-0-0; Motion Carries.

resulting from the amendments made by subsection (a) expires before the end of the 1-year period beginning on the date of the enactment of this Act, refund or credit of such overpayment (to the extent attributable to such amendments) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

sent - funds

<< 26 USCA § 139E NOTE >>

Deleted 10/29

SEC. 3. TRIBAL ADVISORY COMMITTEE

(a) ESTABLISHMENT.—The Secretary of the Treasury shall establish a Tribal Advisory Committee (hereinafter in this subsection referred to as the "Committee").

(b) DUTIES.—

(1) IMPLEMENTATION.—The Committee shall advise the Secretary on matters relating to the taxation of Indians.

(2) EDUCATION AND TRAINING.—The Secretary shall, in consultation with the Committee, establish and require—

(A) training and education for internal revenue field agents who administer and enforce internal revenue laws with respect to Indian tribes on Federal Indian law and the Federal Government's unique legal treaty and trust relationship with Indian tribal governments; and

(B) training of such internal revenue field agents, and provision of training and technical assistance to tribal financial officers, about implementation of this Act and the amendments made thereby.

(c) MEMBERSHIP.—

*1885

(1) IN GENERAL.—The Committee shall be composed of 7 members appointed as follows:

(A) Three members appointed by the Secretary of the Treasury;

(B) One member appointed by the Chairman, and one member appointed by the Ranking Member, of the Committee on Ways and Means of the House of Representatives;

(C) One member appointed by the Chairman, and one member appointed by the Ranking Member, of the Committee on Finance of the Senate.

*Dr. Alan Goldstein
M. Miller
- Eugene Maguire
- TIA*

(2) TERM.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each member's term shall be 4 years.

(B) INITIAL STAGGERING.—The first appointments made by the Secretary under paragraph (1)(A) shall be for a term of 2 years.

<< 26 USCA § 139E NOTE >>

SEC. 4. OTHER RELIEF FOR INDIAN TRIBES.

(a) TEMPORARY SUSPENSION OF EXAMINATIONS.—The Secretary of the Treasury shall suspend all audits and examinations of Indian tribal governments and members of Indian tribes (or any spouse or dependent of such a member), to the extent such an audit or examination relates to the exclusion of a payment or benefit from an Indian tribal government under the general welfare exclusion, until the education and training prescribed by section 3(b)(2) of this Act is completed. The running of any period of limitations under section 6501 of the Internal Revenue Code of 1986 with respect to Indian tribal governments and members of Indian tribes shall be suspended during the period during which audits and examinations are suspended under the preceding sentence.

(b) WAIVER OF PENALTIES AND INTEREST.—The Secretary of the Treasury may waive any interest and penalties imposed under such Code on any Indian tribal government or member of an Indian tribe (or any spouse or dependent of such a member) to the extent such interest and penalties relate to excluding a payment or benefit from gross income under the general welfare exclusion.

(c) DEFINITIONS.—For purposes of this subsection—

(1) INDIAN TRIBAL GOVERNMENT.—The term "Indian tribal government" shall have the meaning given such term by section 139E of such Code, as added by this Act.

*1886

(2) INDIAN TRIBE.—The term "Indian tribe" shall have the meaning given such term by section 45A(c)(6) of such Code.

Approved September 26, 2014.
LEGISLATIVE HISTORY—H. R. 3043:

CONGRESSIONAL RECORD, Vol. 160 (2014):

Sept. 16, considered and passed House.
Sept. 18, considered and passed Senate.

End of Document

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See Tribal Programs

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Statement for the Record by Rep. Devin Nunes

H.R. 3043 - Tribal General Welfare Exclusion Act

Mr. Speaker, considering a committee report will not accompany H.R. 3043, which is being considered by the House today, I take this opportunity as the author of the legislation to provide some context and congressional intent.

Under current law, taxpayers must generally include all items of income in computing gross income. Internal Revenue Service (IRS) guidance has established a general welfare exclusion under which payments made to individuals by governmental entities pursuant to legislatively provided social benefit programs for the promotion of the general welfare are not included in the recipient's gross income. To qualify under the general welfare exclusion, payment (1) must be made under a government program; (2) must be made for the promotion of general welfare; and (3) must not be made as compensation for services.

In evaluating Indian tribal government programs under the general welfare exclusion, including the second prong of this test ("for the promotion of general welfare"), the IRS has frequently insisted that tribal benefits be based on individualized determinations of financial need. This stipulation prevents the general welfare exclusion from covering programs designed to provide substantially equal benefits to all qualifying members of a tribe or to provide benefits based on determinations of needs that are not financial in nature. These needs would include health coverage programs, education and cultural programs, elder programs, and housing programs.

Under IRS guidance released in June 2014, however, the IRS will conclusively presume that payments from Indian tribes to tribal members and their spouses and dependents will qualify under the general welfare exclusion without a determination of need if certain requirements are met. Under Revenue Procedure 2014-35, the payments (1) must be made pursuant to a specific Indian tribal government program with written guidelines; (2) must not discriminate in favor of the tribe's governing body and be made available to all qualifying members of the tribe; (3) must not be compensation for services; and (4) must not be lavish or extravagant. In addition, only certain types of programs that meet the procedural requirements will qualify for the conclusive presumption. The Revenue Procedure lists 23 such non-exclusive qualifying programs covering housing, education, elder care, health care, culture, and other welfare projects. Taxpayers may apply the rules retroactively to file for refunds for any open tax years.

The provisions in H.R. 3043 would codify this IRS guidance, specifically applying the general welfare exclusion to Indian tribes and payments received by tribal members, their spouses and children. The bill mandates that tribal government benefits would qualify for exclusion under the general welfare doctrine so long as the benefits (1) are provided pursuant to a specific Indian tribal government program; (2) are available to all tribal members (including spouses and dependents) who meet the government program's guidelines; (3) are not lavish or extravagant; and (4) are not compensation for services.

The provisions in H.R. 3043 also require that the tribal program be "for the promotion of general welfare," but would not limit its application through conclusive presumption to specific types or examples of tribal programs. I expect that the IRS will apply this requirement in a manner that is no less favorable than the safe harbor approach in Revenue Procedure 2014-35, and that the IRS will not interpret the statute as requiring individualized determinations of financial need where a

Congressman Devin Nunes
Statement for the Record - Tribal General Welfare Exclusion Act
113th Congress



tribal government has established a program consistent with the statute. In construing the individual statutory requirements, including a determination of whether a program is "for the promotion of general welfare", it is expected that the IRS will develop regulations that are no less favorable to tribes than Revenue Procedure 2014-35, including no limitation of a tribe's ability to address community needs and to make benefits available to all eligible tribal members. This is based on the legislative purpose of the bill as well as the specific statutory construction provision in Section 2(c) of the bill, which states that "reference shall be given to Indian tribal governments for the programs administered and authorized by the tribe to benefit the general welfare of the tribal community."

Provisions in H.R. 3043 also would require the Treasury Department to (1) establish a Tribal Advisory Committee to advise the IRS and Treasury on matters relating to taxation of Indians; (2) establish and provide training and education for IRS agents and tribal financial officers about the new provisions; and (3) suspend audits and examinations of Indian tribal governments and tribal members related to the general welfare exclusion until this education has been provided.

Concerns linger that the IRS may not fully understand the role that general welfare programs play in maintaining tribal culture and tradition, and that these issues should be addressed through government-to-government consultation rather than through tribal or member audits that may deter tribes from preserving culture and tradition or pursuing self-determination. It is intended that the Tribal Advisory Committee address these concerns and work with tribes on a government-to-government basis. This would be accomplished by appointing qualified tribal leaders and in the alternative, qualified tribal financial officers to the Tribal Advisory Committee. Such qualified individuals would have intimate knowledge of federal Indian law and policy, as well as the financial and community needs of Indian tribes. These qualifications would enhance the Department's administration of federal tax policies affecting tribal governments while ensuring that treaty rights and principles of tribal self-governance are properly balanced with federal tax policy.

The provisions in H.R. 3043 codifying the IRS guidance concerning the general welfare exclusion would be effective for tax years for which the period of limitations is open as of the date of enactment. Taxpayers would have one additional year from the date of enactment to file for a refund with respect to any such open tax year. And, the bill would provide the IRS with discretion to waive any interest and penalties under the Code for any tribe or tribal member in connection with the general welfare exclusion.

Mr. Speaker, I appreciate the opportunity to provide clarity, context, and congressional intent for this legislation.

Congressman Devin Nunes
Statement for the Record - Tribal General Welfare Exclusion Act
113th Congress

Rev. Proc. 2014-35, 2014-26 I.R.B. 1110, 2014 WL 2478019 (IRS RRP)

Internal Revenue Service (I.R.S.)
IRS RPR

Revenue Procedure

Released: June 4, 2014
Published: June 23, 2014

26 CFR 601.601: Rules and regulations.

(Also Part I, § 61.)

This revenue procedure provides safe harbors for applying the general welfare exclusion to Indian tribal government programs that provide benefits to tribal members.

SECTION 1. PURPOSE

This revenue procedure describes principles of the general welfare exclusion and provides safe harbors under which the Internal Revenue Service (Service) will conclusively presume that the individual need requirement of the general welfare exclusion is met for benefits provided under Indian tribal governmental programs described in sections 5.02 or 5.03 of this revenue procedure, and will not assert that benefits provided under programs described in section 5.03 of this revenue procedure represent compensation for services. Consequently, under this revenue procedure, the Service will not assert that members of an Indian tribe, as defined in section 4.03 of this revenue procedure, or qualified nonmembers, as defined in section 4.05 of this revenue procedure, must include the value of their benefits described in section 5.02 or 5.03 of this revenue procedure in gross income under § 61 of the Internal Revenue Code (Code) or that the benefits are subject to the information reporting requirements of § 6041.

This revenue procedure provides certainty that the value of the benefits described will be excluded from gross income under the general welfare exclusion. However, this revenue procedure does not limit the applicability to Indian tribes of any existing or future guidance holding that benefits are excluded from gross income under the general welfare exclusion.

SECTION 2. BACKGROUND

01 *Gross Income.* Under § 61(a), except as otherwise provided in subtitle A, gross income means all income from whatever source derived. Under § 61, Congress intends to tax all gains or undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. *Commissioner v. Glushko*, 348 U.S. 426 (1955), 1955-1 C.B. 207.

Section 1.61-1 (a) of the Income Tax Regulations provides that gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, or other property or in-kind benefits, as well as in cash.

Indians are citizens subject to the payment of income taxes. *Squire v. Copenham*, 351 U.S. 1, 6 (1956), 1956-1 C.B. 605, 607.

02 *General welfare exclusion.* Payments made to or on behalf of individuals or other persons under governmental programs are included within the broad definition of gross income under § 61 unless an exclusion applies. See Notice 2003-19, 2003-1 C.B. 699; Rev. Rul. 79-356, 1979-2 C.B. 28. The Service has consistently concluded, however, that certain payments made to or on behalf of individuals by governmental units under governmentally provided social benefit programs for the promotion of the general welfare are not included in a recipient's gross income (general welfare exclusion). See, for example, Rev. Rul. 89-19, 1993-1 C.B. 840 (relocation payment authorized by the Housing and Community Development Act and made by a local jurisdiction to an individual moving from a flood-damaged residence to another residence is not includable in the individual's gross income); Rev. Rul. 74-205, 1974-1 C.B. 20 (replacement housing payments to aid individuals displaced from their homes in acquiring decent, safe, and sanitary dwellings of modest standards are not includable in gross income).

To qualify under the general welfare exclusion, the payments must (1) be made pursuant to a governmental program, (2) be for the promotion of the general welfare (that is, based on need), and (3) not represent compensation for services. Rev. Rul. 2005-46, 2005-2 C.B. 120; Rev. Rul. 82-106, 1982-1 C.B. 16; Rev. Rul. 75-246, 1975-1 C.B. 24. Thus, the general welfare exclusion applies if "the grant [is] received under a program requiring the individual recipient to establish need. Grants received under social welfare programs that [do] not require recipients to establish individual need" do not qualify under the general welfare exclusion. *Harley v. Commissioner*, 88 T.C. 1,293, 1,300 (1987), acq., 1989-2 C.B. 1 (internal citations omitted).

To substantiate that a payment qualifies for the general welfare exclusion, governmental payors and recipient recipients must maintain accurate books or records. These payors and recipients must keep these books or records at all times available for inspection by authorized internal revenue agents or employees, and must maintain them as long as their contents are material in the administration of any internal revenue law. See § 1.6001-1.

Whether a payment qualifies under the general welfare exclusion is determined under the federal income tax laws (including provisions not in the Code), not under the laws of state, local, sovereign tribal, or foreign governments, or other federal laws. Thus, an incentive payment that a United States citizen received from the City of Berlin, Germany under a program to encourage spending and consumption was not excludable from the recipient's gross income simply because it was paid pursuant to a program of a sovereign government when the program did not meet the requirements of the general welfare exclusion under U.S. tax law. *Köcker v. Commissioner*, 87 T.C. 605 (1986).

If the activity engaged in is basically the performance of services, the payments are compensation for services rendered and are includable in the gross income of the recipient. Rev. Rul. 75-246. Thus, Rev. Rul. 74-43, 1974-2 C.B. 333, concludes that payments to participants in a state program that provided short-term employment in disaster relief activities for unemployed individuals, but no training or retraining from the participants obtain better employment opportunities, are compensation includable in gross income under § 61.

In the context of job training programs, however, the Service has held that payments that primarily provide job training skills to unemployed and underemployed individuals to enhance their employability are not compensation for services and, therefore, are excluded from the gross income of recipients under the general welfare exclusion. For example, Rev. Rul. 68-58, 1968-1 C.B. 446, concludes that payments to participants in a program

sponsored by an Indian tribal council to train underemployed and unemployed residents of an Indian reservation in construction skills to enhance employability are excluded from the participants' gross income under the general welfare exclusion because the basic purpose of the program is training.

Payments under training programs that include reasonable and limited allowances for meals, travel, transportation, subsistence, emergency, and other purposes also are excluded from gross income under the general welfare exclusion. Rev. Rul. 75-246 (*Simulation 1*). Allowances on the basis of need to cover certain expenses incident to the training (such as payments for auto insurance or to make the trainee's presence possible, or expenditures for work clothing, without which the trainee could not engage in the work training experience) also are excluded from gross income under the general welfare exclusion. Rev. Rul. 75-246 (*Simulation 3*).

Benefits qualify under the general welfare exclusion only if they are not lavish or extravagant. Whether a benefit is lavish or extravagant depends on the facts and circumstances. For example, replacement housing payments to help displaced individuals and families acquire dwellings of modest standards qualify for exclusion from gross income under the general welfare exclusion. Rev. Rul. 74-205. Assistance to help disaster victims meet necessary expenses or serious needs in the categories of medical or dental, housing, personal property, transportation, and funeral expenses qualifies for exclusion from gross income under the general welfare exclusion, but assistance for nonessential, luxurious, or decorative items does not qualify. Rev. Rul. 75-144, 1975-1 C.B. 17. Payments to compensate individuals for unreimbursed reasonable and necessary personal, living, and family expenses they incur due to a disaster or emergency situation also are excluded from gross income under the general welfare exclusion. Notice 2002-76, 2002-2 C.B. 917 (Q&As 1 and 2).

In general, payments to businesses do not qualify under the general welfare exclusion because the payments are not based on individual or family need. See Rev. Rul. 2005-46, Notice 2003-18, Rev. Rul. 77-77, 1977-1 C.B. 11, however, provides that nonreimbursable grants made under the Indian Financing Act of 1974 to Indians to expand profit-making Indian-owned economic enterprises on or near reservations are excludable from gross income under the general welfare exclusion.

03 Application of the general welfare exclusion to programs of Indian tribal governments. Indian tribal governments have a unique legal status. They have inherent sovereignty and a government-to-government relationship with the United States. Indian tribes have developed a broad range of programs to address their unique social, cultural, and economic issues. In developing these programs, Indian tribes give significant consideration to individual need as well as the needs of the entire community.

The general welfare exclusion applies to payments by Indian tribal governments no less favorably than it applies to payments by federal, state, local, or foreign governments. Payments by Indian tribal governments qualify for the general welfare exclusion if the payments are (1) made pursuant to a governmental program of the tribe; (2) for the promotion of general welfare (that is, based on individual or family need); and (3) not compensation for services. Rev. Rul. 2005-46, Notice 2003-18, Rev. Rul. 75-246, Rev. Rul. 82-106. In addition, programs of Indian tribal governments to help establish Indian-owned economic enterprises on or near a reservation and based on need qualify under the general welfare exclusion regardless of whether the programs receive any federal funding. Compare Rev. Rul. 77-77.

Payments under Indian tribal governmental programs meeting these requirements qualify for the general welfare exclusion whether the revenues that the Indian tribal government uses to fund the programs derive from levies, taxes, service fees, revenues from tribally-owned businesses, or other sources. For example, general welfare pro-

grams may be funded from casino revenues. However, per capita payments to tribal members of tribal gaming revenues that are subject to the Indian Gaming Regulatory Act are gross income under § 61, are subject to the information reporting and withholding requirements of §§ 6041 and 3402(f), and are not excludable from gross income under the general welfare exclusion or the revenue procedure. See 25 U.S.C. §§ 2701-2721 and 25 C.F.R. Part 290.

Because and in recognition of the unique circumstances of Indian tribes and tribal governments described above, this revenue procedure conclusively presumes that the individual need criterion of the general welfare exclusion is met for payments under certain programs of such governments, as set forth in section 5 of this revenue procedure, and the Service will not assert that benefits provided under programs described in section 5.03 of this revenue procedure represent compensation for services.

04 Benefits that are not addressed by this revenue procedure. This revenue procedure does not address benefits under Indian tribal governmental programs that do not fall within the definition of gross income under § 61. For example, an Indian tribal government may provide benefits in the form of public libraries or recreational facilities that are available for the general public use of members of the tribe. Like other taxpayers, members of Indian tribes do not include the value of these benefits in income regardless of whether the requirements of the general welfare exclusion are met because these benefits are not gross income under § 61.

In addition, this revenue procedure does not address certain benefits that members of an Indian tribe may exclude from income under a specific provision of the Code or other federal statute. For example, § 139D provides that gross income does not include the value of medical care (as used in § 213) an Indian tribe (as defined in § 45A(e)(6)) provides to a member of the tribe or the member's spouse or dependents. Thus, a payment that an Indian tribe makes to an Indian medicine man to use traditional practices for the purpose of treating a tribal member's disease may be excludable from the tribal member's gross income under § 139D. See *Tso v. Commissioner*, T.C. Memo. 1990-399. Similarly, this revenue procedure does not address how § 108(f), which provides an exclusion from income for the discharge of certain student loan indebtedness, applies to members of an Indian tribe.

05 Procedural history. Representatives of the Service and Treasury Department consulted with tribal leaders and members of Indian tribes concerning the application of the general welfare exclusion to programs of Indian tribal governments. In Notice 2011-94, 2011-149 I.R.B. 834, the Service invited comments concerning the application of the general welfare exclusion to Indian tribal government programs that provide benefits to tribal members. The Service received over 85 comments from Indian tribal governments and other individuals and groups describing various Indian tribal government programs for tribal members and how the general welfare exclusion should apply to those programs. In response to those comments, the Service issued Notice 2012-75, 2012-51 I.R.B. 715, which proposed a revenue procedure that would provide safe harbors under which the Service would conclusively presume that (i) the individual need requirement of the general welfare exclusion would be met for specific benefits provided under described Indian tribal governmental programs, and (ii) certain benefits an Indian tribal government provides under other described programs are not compensation for services. In response to Notice 2012-75, the Service received over 40 comments from Indian tribal governments and other individuals and groups. The more than 120 comments and consultations were very helpful in preparing this revenue procedure.

06 Changes from Notice 2012-75. In response to comments from Indian tribal governments and other individuals and groups, this revenue procedure makes the following changes from the revenue procedure proposed in

Notice 2013-75:

- (1) Section 3 expands the scope of the revenue procedure from members of Indian tribes, their spouses, and dependents to members of Indian tribes and qualified nonmembers, as well as Indian tribal governments.
- (2) Section 4.04 clarifies that for purposes of this revenue procedure the term "pay" means "pay or reimburse in whole or in part." Conforming changes are made throughout this revenue procedure.
- (3) Section 4.05 adds and defines the term "qualified nonmember" to expand the scope of individuals in section 3 who may qualify to receive benefits described in this revenue procedure.
- (4) Sections 4.07 and 4.08 add and define the terms "service area" and "service unit area" to expand the geographic areas for transportation programs described in section 5.02(2)(g)(i).
- (5) Section 5.01(1) clarifies that a tribal government may provide a benefit described in this revenue procedure directly or indirectly, by payment or reimbursement, and in cash or property.
- (6) Section 5.02(1)(c) clarifies that a benefit will be considered available to any tribal member or qualified nonmember who satisfies the program guidelines even if the program guidelines limit the benefit to an identified group of these individuals (for example, veterans) and although as a practical matter the benefit is not available to all tribal members, qualified nonmembers, or an identified group because of budgetary restraints.
- (7) Section 5.02(1)(f) clarifies that the determination of whether a benefit is not lavish or extravagant depends on the facts and circumstances.
- (8) Section 5.02(2) clarifies that the benefits listed in the parenthetical language in section 5.02(2) are illustrative only rather than an exhaustive list, and that a benefit that meets all other requirements may qualify for exclusion from gross income under this revenue procedure even though the benefit is not expressly described in the parenthetical language. Several sections clarify that the exclusion is not limited to the benefits described: 5.02(2)(g)(iii), 5.02(2)(b)(i), 5.02(2)(b)(ii), 5.02(2)(b)(iv)(A) and (C), 5.02(2)(c)(iv), 5.02(2)(d)(iii), 5.02(2)(d)(iv), 5.02(2)(e)(iii), and 5.03.
- (9) Section 5.02(2)(a) adds that housing programs relating to principal residences also may relate to ancillary structures that are not used in any trade or business or for investment purposes.
- (10) Section 5.02(2)(a)(i) adds housing programs that pay down payments, clarify that rent payments include security deposits, and deletes the reference to "on or near a reservation."
- (11) Section 5.02(2)(a)(ii) clarifies that habitability of housing includes safety issues (including but not limited to mold remediation).
- (12) Section 5.02(2)(a)(iv) clarifies that utility bills include basic communications services, such as phone, internet, and cable.
- (13) Section 5.02(2)(b)(i) clarifies that the benefits may be used in both school activities and extracurricular activities.
- (14) Section 5.02(2)(b)(ii) expands tuition payments to include payments to attend a school (including a

- preschool or online school), removes the requirement that a college or university must be accredited and clarifies that room and board may be off campus and that the housing allowances may be provided to a domestic partner.
- (15) Redesignated section 5.02(2)(b)(iii) adds programs for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education.
- (16) Redesignated section 5.02(2)(b)(iv)(C) changes "necessary clothing" to "appropriate clothing."
- (17) Section 5.02(2)(c) clarifies that the term disabled individuals means individuals who are physically or mentally disabled as defined under applicable law, including tribal government disability codes.
- (18) Section 5.02(2)(f) clarifies that meals for elder and disabled individuals may be provided at a community center or similar facility.
- (19) Former section 5.02(2)(e)(v) is deleted because travel expenses for doctor appointments or other medical care are excluded from income under § 139D.
- (20) Former section 5.02(2)(e)(v) is deleted because expenses for educational, social, or cultural programs are covered in new section 5.02(2)(e)(v).
- (21) Section 5.02(2)(d)(i) expands transportation programs to include transportation costs such as rental cars, substantiated mileage (see, for example, procedures described in Rev. Proc. 2010-51, 2010-51 L.R.B. 883), and fares for bus, taxi, and public transportation, and to include transportation to or from a service area or service unit area as well as to or from an Indian reservation. In addition, the section clarifies that the facilities are those that provide essential services to the public (such as grocery stores or medical facilities).
- (22) Section 5.02(2)(d)(ii) replaces "spouse or dependent" with "qualified nonmember."
- (23) Section 5.02(2)(d)(v) clarifies that the assistance is for transportation emergencies, expands the assistance to all transportation costs, removes the limitation that the individual must be stranded off the Indian reservation, and adds the example of being stranded away from home as a situation to which this transportation assistance program might apply.
- (24) Section 5.02(2)(d)(vi) adds that programs to provide or reimburse the cost of nonprescription drugs include traditional Indian tribal medicines.
- (25) Section 5.02(2)(e)(i) expands the benefits to include payment for all expenses (including admission fees, transportation, food, and lodging) for individuals participating in as well as attending certain tribal activities, and clarifies that the activities include religious activities.
- (26) Section 5.02(2)(e)(ii) expands the benefit to all expenses (including admission fees, transportation, food, and lodging) to visit sites, including other Indian reservations, that are culturally or historically significant for the tribe.
- (27) Section 5.02(2)(e)(iv) adds other bereavement events and subsequent honoring events.
- (28) New section 5.02(2)(e)(v) adds programs that pay transportation costs and admission fees to attend educational, social, and cultural programs supported by the tribe or another tribe, thus extending this benefit, which

had been limited under the proposed revenue procedure to tribal elders and disabled individuals, to all tribal members and qualified nonmembers.

(29) Section 5.03 clarifies the following: (i) the terms of cultural significance must not be lavish or extravagant under the facts and circumstances; (ii) nominal cash honoraria may be provided to religious or spiritual leaders as well as religious or spiritual officials; (iii) the cultural, religious, and social events include but are not limited to the listed events and subsequent honoring events; and (iv) the conclusive presumption that individual need is met also applies to religious or spiritual leaders receiving these benefits.

SECTION 3. SCOPE

This revenue procedure applies to Indian tribal governments, members of Indian tribes, and qualified nonmembers.

SECTION 4. DEFINITIONS

The following definitions apply for purposes of this revenue procedure.

01 Indian tribal government. The term "Indian tribal government" has the same meaning as in § 7701(a)(40) but for purposes of this revenue procedure includes agencies or instrumentalities of the Indian tribal government.

02 Indian tribe. The term "Indian tribe" has the same meaning as in § 454(c)(6).

03 Member of an Indian tribe. The term "member of an Indian tribe" has the same meaning as in 25 C.F.R. § 290.2.

04 Pay. The term "pay" means pay or reimbursement in whole or in part.

05 Qualified nonmember. The term "qualified nonmember" means a spouse, former spouse, legally recognized domestic partner or former domestic partner, ancestor, descendant, or dependent of a member of an Indian tribe.

06 Reservation. The term "reservation" or "Indian reservation" has the same meaning as in § 168(f).

07 Service area. The term "service area" has the same meaning as in 25 C.F.R. § 20.100.

08 Service unit area. The term "service unit area" means an area designated for purposes of administration of Indian Health Service programs under 42 C.F.R. § 136.21(1).

SECTION 5. APPLICATION

01 Application of general welfare exclusion to Indian tribal government programs. If section 5.01(1) or 5.01(2) of this revenue procedure applies, the Service will not assert that members of an Indian tribe or qualified nonmembers must include the value of the applicable benefits in gross income under § 61 or that the benefits are subject to the information reporting requirements of § 6041.

(1) If an Indian tribal government provides a benefit (directly or indirectly, by payment or reimbursement, or in cash or in property) meeting the criteria specified in section 5.02(1) of this revenue procedure and described in section 5.02(2) of this revenue procedure, the Service will conclusively presume that individual need is met for each tribal member or qualified nonmember receiving the benefit.

(2) If an Indian tribal government provides a benefit meeting the criteria specified in section 5.02, the Service

will conclusively presume that individual need is met for each tribal member or qualified nonmember receiving the benefit and that the benefit does not represent compensation for services.

02 Benefits provided by a tribe for which individual need is presumed. Section 5.01(1) of this revenue procedure applies to benefits meeting the general criteria of section 5.02(1) of this revenue procedure and described in section 5.02(2) of this revenue procedure.

(1) **General criteria.** To qualify for exclusion under this revenue procedure, a benefit described in section 5.02(2) of this revenue procedure must meet the following requirements—

(a) The benefit is provided pursuant to a specific Indian tribal government program;

(b) The program has written guidelines specifying how individuals may qualify for the benefit;

(c) The benefit is available to any tribal member, qualified nonmember, or identified group of tribal members or qualified nonmembers (for example, veterans) who satisfy the program guidelines, subject to budgetary restraints;

(d) The distribution of benefits from the program does not discriminate in favor of members of the governing body of the tribe;

(e) The benefit is not compensation for services; and

(f) The benefit is not lavish or extravagant under the facts and circumstances.

(2) **Specific benefits.** Benefits provided under the following programs are benefits described in this section 5.02(2). The benefits listed in the parenthetical language in section 5.02(2) are illustrative only rather than an exhaustive list. Thus, a benefit may qualify for exclusion from gross income under this revenue procedure even though the benefit is not expressly described in the parenthetical language in this section 5.02(2), provided that it meets all other requirements of this revenue procedure.

(a) **Housing programs.** Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that—

(i) Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;

(ii) Enhance habitability of housing, such as by remedying water, sewage, sanitation service, safety (including but not limited to mold remediation), or heating or cooling issues;

(iii) Provide basic housing repairs or rehabilitation (including but not limited to roof repair and replacement); and

(iv) Pay utility bills and charges (including but not limited to water, electricity, gas, and basic communications services such as phone, internet, and cable).

(b) **Educational programs.** Programs to—

(i) Provide students (including but not limited to post-secondary students) transportation to and from school, to—

- tors, and supplies (including but not limited to clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities.
- (ii) Provide tuition payments for students (including but not limited to allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education;
- (iii) Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and
- (iv) Provide job counseling and programs for which the primary objective is job placement or training, including but not limited to allowances for—
 - (A) Expenses for interviewing or training away from home (including but not limited to travel, auto expenses, lodging, and food);
 - (B) Tutoring; and
 - (C) Appropriate clothing for a job interview or training (including but not limited to an interview suit or a uniform required during a period of training).
- (e) *Elter and disabled programs.* Programs for individuals who have attained age 55 or are mentally or physically disabled (as defined under applicable law, including but not limited to tribal government disability codes) that provide—
 - (i) Meals through home-delivered meals programs or at a community center or similar facility;
 - (ii) Home care such as assistance with preparing meals or doing chores, or day care outside the home;
 - (iii) Local transportation assistance;
 - (iv) Improvements to adapt housing to special needs (including but not limited to grab bars and ramps);
 - (d) *Other qualifying assistance programs.* Programs to—
 - (i) Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores);
 - (ii) Pay for the cost of transportation, temporary meals, and lodging of a tribal member or qualified nonmember while the individual is receiving medical care away from home;
 - (iii) Provide assistance to individuals in exigent circumstances (including but not limited to victims of abuse), including but not limited to the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses;
 - (iv) Pay costs for temporary relocation and shelter for individuals involuntarily displaced from their homes (including but not limited to situations in which a home is destroyed by a fire or natural disaster);

- (v) Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals; and
 - (vi) Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).
 - (e) *Cultural and religious programs.* Programs to—
 - (i) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to attend or participate in an Indian tribe's cultural, social, religious, or community activities, such as pow-wows, ceremonies, and traditional dances;
 - (ii) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the tribe, including but not limited to other Indian reservations;
 - (iii) Pay the costs of receiving instruction about an Indian tribe's culture, history, and traditions (including but not limited to traditional languages, music, and dances);
 - (iv) Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and
 - (v) Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the tribe or another tribe.
- .03 Benefits provided by a tribe that are presumed not to be compensation for services.* Except as provided in this section 5.03, section 5.01 of this revenue procedure does not apply to benefits that are compensation for services. However, section 5.01(2) of this revenue procedure applies to benefits provided under an Indian tribal governmental program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances, or nominal cash honoraria provided to religious or spiritual officials or leaders (including but not limited to medicine men, medicine women, and shamans) to recognize their participation in cultural, religious, and social events (including but not limited to pow-wows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and subsequent honoring events). The Service will conclusively presume that individual need is met for the religious or spiritual officials or leaders receiving these benefits and that the benefits do not represent compensation for services.
- SECTION 6. EFFECTIVE DATE**
 This revenue procedure is effective for benefits provided on or after December 6, 2012. Taxpayers may apply this revenue procedure in taxable years for which the period of limitation on refund or credit under § 6511 has not expired.
- DRAFTING INFORMATION**
 The principal author of this notice is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, please contact Mr. Iskow at (202) 317-4718 (not a toll-free number).
 Rev. Proc. 2014-35, 2014-26 IR.B. 1110, 2014 WL 2478019 (IRS RPR)
- END OF DOCUMENT**

STATE AND FEDERAL PUBLIC BENEFITS
SEPTEMBER 21, 2016

I. Law and Policy

- A. Social Security Act – Title IV, 42 USC 601 et seq.
 - B. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).
 - C. Michigan's Social Welfare Act – MCLA 400.1 et seq.
 - D. State Plans for Temporary Assistance to Needy Families (TANF), LIHEAP and Medicaid
 - E. Administrative Policy
 - 1. Bridges Eligibility Manual (BEM)
 - 2. Bridges Administrative Manual (BAM)
- II. Appeals**
- A. What Can You Appeal? BAM 600
 - 1. Notice of Case Action (NOCA)
 - Denial of an application and/or supplemental payments.
 - Reduction in the amount of program benefits or service.
 - Suspension or termination of program benefits or service.
 - Restrictions under which benefits or services are provided.
 - Delay of any action beyond standards of promptness.
 - For **FAP** only, the current level of benefits or denial of expedited service.
 - BAM 600, page 3
 - B. Appeal Process
 - C. How to ask for Hearing
 - 1. **MUST** be in writing and signed by an adult member of the group or their Authorized Hearing Representative (AHR).
 - 2. File an Appearance
 - 3. Request in-person hearing
 - D. Deadline for Requesting a Hearing
 - 1. Client has 90 days from the date on the written notice of case action to request a hearing (BAM 600, page 4)
 - 2. Timely hearing request
 - b. if received within 11 days of an immediate negative action notice, benefits will continue pending the hearing decision

E. Hearing Withdrawal

- 1. Must be in writing
- 2. Be very detailed
- 3. If client is represented, he/she cannot consent to a hearing request withdrawal without the written, signed notice from the representative. BAM 600, page 20.

III. Accessing Benefits

- A. Application Process - <https://www.mibridges.michigan.gov/access/>
 - 1. Online and paper
 - 2. Verification checklist
 - 3. Bridge card
 - 4. MIBridges account

IV. State Cash Assistance – BEM 209

A. Family Independence Program (FIP) Monthly cash benefit

- 1. Reduced if recipient has other sources of income
- 2. Referral to PATH (BEM 229)
- 3. Partnership, Accountability, Training, Hope. (work program)
 - a. must complete AEP – Application Eligibility Period
 - b. possible deferral
 - c. sanction pattern
 - 1. Lifetime ban after three strikes
- 4. Deferrals/Good Cause - BEM 230A and 233A
- 5. School attendance – BEM 245
- 6. Attendance Compliance Test
- 7. Paternity sanctions – BEM 235
- 8. 48/60 month time limit – BEM 234
 - 1. time limit defenses
- 9. MCLA 400.57a et seq.
- 10. Asset test of \$3,000
- 10. Real property must be valued at less than \$200,000

B. State Disability Assistance (SDA) – BEM 261

- 1. Cash assistance to disabled individuals, age 18-64, through semi-monthly checks. Currently set at \$200/315 per month, individual/couple.
- 2. Claimants must have a severe disability that is expected to last 90 days or more. It is possible to receive SDA but not be eligible for Medicaid, as the duration for Medicaid based on disability is 12 months.
- 3. Same criteria as Social Security Disability besides duration (12 months v. 90 days).

4. Can also receive SDA for taking care of someone living in your household who is disabled.
 - i. Does not need to be a relative

V. FOOD ASSISTANCE PROGRAM (FAP) - 7 CFR 271.1 et seq.

A. Debit card with money for food ONLY

1. All cash program benefits are now administered through the EBT program. It works like a debit card.
 - a. emergency food stamps must be processed within seven days of application.
 - b. 30 days if not emergency

2. Budgeting Issues

- a. income changes
- b. Medical expenses for SDV group if > \$35/month
- c. BEM 554 – heat included in rent, see also Home Heating Credit

3. Group size – BEM 212

4. Asset test

- a. \$5,000 liquid
- b. one free car then \$15,000 limit (BEM 400, page 28)

5. Senior Impaired Group (BEM 212)

- a. 60+ and spouse do NOT need to be in group if disabled

III6. Divestment:

7. 3/36 rule for ABAWD

VI. STATE EMERGENCY RELIEF

(Low Income Heat Energy Assistance Program – LIHEAP)

1. Limited cash payments to vendors of good/services to resolve emergency situations involving: rent, utilities, property taxes, house payments, home repairs, furniture appliances, security deposits. Very rarely granted.
2. Can apply online, stops shut off it utility
3. 10 days standard of promptness
4. Minors can apply on behalf of undocumented parents – ERM 202
5. State Emergency Relief Manual (ERM)
 - a. <http://www.mfa.state.nj.us/ohwweb/extern/mandf>
6. Home Heating Credit – MCLA 206-527a, BEM 554
 - a. must get more than \$20 in LIHEAP funds in order to draw down Heat and Utility Deduction (\$539/month for 2015/2016)
 - b. Seniors are the group most impacted by this policy.
 - c. **MUST FILE BY SEPTEMBER 30!!!**

VII. MEDICAL PROGRAMS – 42 USC 1396 et seq.

A. Medicaid

1. Medicaid is a program that pays for medical assistance for certain individuals and families with low incomes and resources. This program

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became law in 1965 and is jointly funded by the Federal and State governments to assist States in providing medical long-term care assistance to people who meet certain eligibility criteria.

2. Categorical Eligibility

- a. pregnant women
- b. children and teenagers
- c. aged, blind and disabled
 - i. 70% of expenditures
 - ii. 27% of eligible population
- d. under 21 – income and asset tests apply
- e. Traditional Medicaid has 30 categories, but most people fall into one of the five above.

3. Healthy Kids Medicaid (State Children's Health Insurance – SCHIP)

- a. state-wide program to provide health care insurance for low-income families and individuals. This includes families with children, pregnant women, and persons under the age of 19.
- b. Pregnant women of any age during pregnancy and the first two months after the birth of the child.
- c. Children age 1-19 must be under 160% of poverty
- d. Pregnant women and children under age 1 must be under 185 % of poverty.

B. MICHID – Not Medicaid. BEM 655

- a. for those under age 19 that do not qualify for MA;
- b. no other insurance;
- c. income not more than 212% of poverty;
- d. \$10.00 monthly premium per family. Call 1-888-988-6300.
- e. If family is disenrolled for failure to pay premiums, they may not re-enroll for six months.
- f. Administered by Department of Community Health (DCH)

C. Medicaid Spenddown BEM 545

D. Divestment BEM 405

1. Community Spouse Allowance
 - a. Patient Pay Amount - BEM 546

VIII. MEDICARD EXPANSION – HEALTHY MICHIGAN PLAN

A. Coverage

1. Not currently eligible for Medicaid
2. Ages 19-64
3. Not eligible for or enrolled in Medicare

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4. Not pregnant
5. Up to 133% of the Federal Poverty Level (FPL) – \$16,242 in 2016

B. Details

1. April 2014
2. No asset test
3. Dental included
4. Open enrollment (unlike the exchange)
5. MIHealth Account
6. Incentives
7. 2% co-pay
 - a. 100-133% of poverty ONLY
 - b. Cannot be denied service

C. Exemptions

1. Not required to pay taxes
2. Required to pay more than 8% of income for lowest plan
3. Uninsured for two or fewer months out of the year

D. Hardship Exceptions

1. Homelessness
2. Eviction
3. Utility shut-off
4. Domestic violence
5. Death of family member
6. Other emergencies

E. Amount of penalty

1. 2% of income or
2. \$325/ adult, whichever is higher
3. \$162.50/child, up to \$975.

VII. Affordable Care Act

A. Health Plans

1. metal levels
2. tax subsidies

B. www.healthcare.gov

C. Advanced Premium Tax Credits (APTC)

1. Based on prediction of income
2. Annual income v. Medicaid, which is monthly

X. Social Security Benefits

A. Differences between SSI and RSDI

B. Supplemental Security Income (SSI) 20 CFR 416 et seq

- a. must be blind, disabled or over age 65.
- b. Disabled means that the client has a physical or mental disability that prevents them from working for 12 months or results in death
- c. For low-income individuals with little or no assets (\$2,000)
- d. Everyone gets the same amount unless they have other income - \$733.00/month individual, \$1,100.00 couple
- e. If approved for SSI, automatically eligible for Medicaid
- f. Disabled children may be eligible
- g. Family income counted

C. Retirement, Survivors and Disability Insurance (RSDI) 20 CFR 404

- a. Amount received is based on how much the individual has contributed through their work record.
- b. Generally you need 10 years of work history to qualify (minimum of \$3,600/year in 2004)
- c. There is no earnings test once you reach full retirement age (FRA).
- d. Can receive reduced retirement benefits at age 62
 - i. Better to get disability benefits, if possible, and then switch to retirement.

D. Assessing Disability

1. Education
2. Past Relevant Work
3. Exertional Impairments v. Non-exertional impairments
 - a. GRIDS

E. Cessation and Overpayments

1. Waiver
 - a. Recoupment
2. Reconsideration
3. Medical Improvement
 - a. Continuing Disability Review

E. Medicare

1. Administered by the Social Security Administration
2. Unavailability for RSDI benefits
3. Age 65 or older
4. Under age 65 with certain disabilities:
5. all ages with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a kidney transplant).
6. Medicare has:
 - i. Part A (Hospital Insurance)
 - ii. Part B (Medical Insurance).
 - iii. Part D (Medigap)

XI. Websites

1. www.ssa.gov - Social Security Administration
2. <http://www.michigan.gov/mibridges>
3. www.mhpl.org - Michigan Poverty Law Program
4. <http://www.mifa.state.mi.us/olmweb/evr.html> - Family Independence Agency
5. a these are the manuals for the Department of Human Service, such as the BEM and BAV
<http://hsscr.org/links.html> - searches multiple Social Security websites
6. Self-help website - www.michiganlegalhelp.org

Lisa Ruby
 Michigan Poverty Law Program
 lruby@mhpl.org
 (734) 998-6100 ext.117

everybody
members.

limitations

Residence within
jurisdiction

nursing
general welfare

capitula Program
Oratory legislation

low income

in specific
demographics

simple application

Poverty Supplemental
Security Assistance Payment