

GOVERNMENT BENEFITS BASICS

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I. GOVERNMENT BENEFITS BASICS

- ▶ Most benefit programs are **need-based** and have **income** and **asset limitations**.
- ▶ Most programs have **state residence** requirements.
- ▶ Most programs have limitations related to **immigration status**.
- ▶ Most cash and food benefits are issued **electronically**.
- ▶ Some benefit programs have limitations based on **age** or **disability status**.
- ▶ Most programs include **appeal rights** through federal or state agency.
- ▶ When in doubt, please contact your local **legal aid** office and ask to talk to someone in the benefits or economic justice unit.

II. QUICK LISTS OF HANDY ACRONYMS

A. Benefit Programs

- **BSF** Basic Sliding Fee child care
- **CHIP** Children's Health Insurance Program
- **DWP** Diversionary Work Program
- **EA** Emergency Assistance
- **EGA** Emergency General Assistance
- **EMA** Emergency Medical Assistance
- **FSS** Family Stabilization Services
- **GA** General Assistance
- **MA** Medical Assistance
- **MA-EPD** Medical Assistance for Employed Persons with Disabilities
- **MFAP** Minnesota Food Assistance Program
- **MFIP** Minnesota Family Investment Program
- **MNCare** MinnesotaCare
- **MSA** Minnesota Supplemental Aid
- **RCA** Refugee Cash Assistance
- **SNAP** Supplemental Nutrition Assistance Program
- **SSDI** Social Security Disability Insurance
- **SSI** Supplemental Security Income
- **UI** Unemployment Insurance

B. Other relevant acronyms

- ▶ **ABAWD** Able-Bodied Adult without Dependents (SNAP)
- ▶ **AC** Appeals Council (SSDI/SSI)
- ▶ **ADH** Administrative Disqualification Hearing
- ▶ **AFDC** Aid to Families with Dependent Children

- ▶ **ALJ** Administrative Law Judge (SSDI/SSI)
- ▶ **CCAP** Child Care Assistance Programs
- ▶ **CDR** Continuing Disability Review (SSDI/SSI)
- ▶ **COLA** Cost of Living Adjustment
- ▶ **CVT** Center for Victims of Torture
- ▶ **DAA** Drug Addiction or Alcoholism (GA, SSDI/SSI)
- ▶ **DAC** Disabled Adult Child (SSDI)
- ▶ **DEED** Minnesota Department of Employment and Economic Development (UI)
- ▶ **DHS** Minnesota Department of Human Services
- ▶ **EBT** Electronic Benefit Transfer
- ▶ **EPE** Extended Period of Eligibility (SSDI)
- ▶ **FPG** Federal Poverty Guidelines¹
- ▶ **HAG** Housing Assistance Grant (MFIP, FSS)²
- ▶ **HSJ** Human Services Judge (DHS)
- ▶ **IPV** Intentional Program Violation
- ▶ **LPR** Lawful Permanent Resident
- ▶ **MAGI** Modified Adjusted Gross Income (MA, MNCare)
- ▶ **PASS** Plan to Achieve Self-Support (SSI)
- ▶ **SGA** Substantial Gainful Activity (SSI, SSDI)
- ▶ **SMI** State Median Income (BSF)
- ▶ **SMRT** State Medical Review Team
- ▶ **SSA** Social Security Administration (SSI/SSDI)
- ▶ **SSR** Social Security Ruling (SSI/SSDI)
- ▶ **SUA** Standard Utility Allowance (SNAP)
- ▶ **TANF** Temporary Assistance for Needy Families (MFIP, DWP)
- ▶ **TFP** Thrifty Food Plan (SNAP)
- ▶ **TWP** Trial Work Period (SSDI)
- ▶ **ULJ** Unemployment Law Judge (UI)

III. CASH ASSISTANCE PROGRAMS

1. FAMILY CASH PROGRAMS: MFIP, DWP, AND FSS

A. What Is MFIP?

Minnesota Family Investment Program

42 U.S.C. §§ 601 *et seq.*; 7 U.S.C. § 2031; MINN. STAT. c. 256J

- MFIP (EM-fip) is Minnesota’s primary need-based family cash assistance program.
- MFIP is time-limited **welfare-to-work** program for families and pregnant women. It has both cash

¹ Poverty level in 2019 is defined as \$12,490/year for household of 1; \$16,910 for HH of 2; \$21,330 for HH of 3; \$25,750 for HH of 4; \$30,170 for HH of 5; \$34,590 for HH of 6; \$39,010 for HH of 7; \$43,430 for HH of 8. \$4,420 is added per person for HHs above 8.

² HAG is not official acronym.

and food components. Minnesota obtained waiver from U.S. Dept. of Agriculture to incorporate Food Stamp benefits (now SNAP) into MFIP program. 7 U.S.C. § 2031; MINN. STAT. § 256J.24, subd. 5a. 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.

- MFIP’s predecessor, **AFDC**, was eliminated by federal welfare reform and replaced with **Temporary Assistance to Needy Families (TANF) block grants** to states. PUB. L. 104-193, 8/22/96, PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996; 42 U.S.C. §§ 601 *et seq.*; MINN. STAT. §§ 256J.01, subd. 2; 256J.02. **MFIP** has been Minnesota’s TANF program since 1998. MINN. STAT. § 256J.01. *See also* DHS-5891-ENG (08/18), HISTORY OF THE MINNESOTA FAMILY INVESTMENT PROGRAM.³
- **State law** governs most aspects of MFIP, with overarching directives from federal law.

a. CATEGORICAL ELIGIBILITY AND HOUSEHOLD COMPOSITION

- Applicants must be **pregnant** (eligible for 1-person grant of \$250 per month) or have “**needy child**” in home. 42 U.S.C. § 608(a)(1); MINN. STAT. § 256J.13. **Blood or legal relationship** must be proven between caregiver and child. MINN. STAT. § 256J.08, subd. 11 (but *see* MINN. STAT. § 256p.04, subd. 15(2) – can use personal statement to establish relationship.)
- Minnesota has **mandatory assistance unit composition** requirement. **Both parents** must be on MFIP grant *if* both are in home (unless they are exempt due to immigration status or receipt of SSI, have been disqualified, *or* have chosen to be off due to ineligibility for extension after 60 months of MFIP). Mandatory unit members are: minor children, including pregnant minors; minor child’s minor siblings, minor half-siblings, and minor step-siblings; minor child’s natural or adoptive parents and stepparents; and spouse of pregnant woman. MINN. STAT. § 256J.24, subd. 2.

b. INCOME LIMITS AND BUDGETING

- **Eligibility** for MFIP applicants is determined **prospectively** (using anticipated income). MINN. STAT. § 256J.34, subd. 1. **Grants** are budgeted **prospectively** for first 2 months to calculate assistance payments, then “**retrospectively**” thereafter. In **retrospective budgeting**, grant amounts are based on income received 2 months prior, so October’s MFIP grant will be based on income received in August. *Id.*, subds. 1 - 3.
- Special rules allow participants to request receive cash **supplement** (called “**Significant Change**”) up to 2 months in 12-month period when they experience large loss in gross income due to employment or child support changes, and 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 (08/2019), REMOVING OR RECALCULATING INCOME.

³ MN DHS documents (bulletins, fact sheets, and manuals) are available on DHS website, www.dhs.state.mn.us, under “publications.” Manuals include Combined Manual (CM) for cash and food programs; Minnesota Health Care Programs Eligibility Policy Manual (MHCP); Child Care Assistance Program Policy Manual (CCAP); and MFIP and DWP Employment Services Manual. Documents ending in “ENG” are in Forms/“eDocs” section and can be attained by typing reference number (*e.g.*, DHS-5891-ENG) into search slot. Bulletins that are more than 2 years old that are not reissued are considered obsolete and are not available on the DHS website.

- MFIP currently **disregards first \$65** of participants' earned income, **plus half of remaining earned income**. MINN. STAT. § 256P.03, subd. 2.
- Child support payments are considered unearned income. Counties must exclude from household income **\$100** in child support received for assistance units with 1 child and **\$200** in child support for units containing 2 or more children. MINN. STAT. § 256P.06, subd. 3(xvi). *See also* MINN. STAT. §§ 256J.21, subd. 2(49); 256J.33, subd. 4(5).
- Income of new spouse is excluded for 12 consecutive months from date of marriage certificate, provided that combined household income does not exceed 275% FPG. Disregard applies to new spouse of existing MFIP caregiver and, in household where both spouses are already members of MFIP household, to designated spouse. MINN. STAT. §§ 256J.45, subd. 2(14), and 256P.06, subd. 2(b). *See also* DHS Bulletin #18-69-02C (6/5/19), NEW SPOUSE INCOME POLICY FOR CASH AND CHILD CARE ASSISTANCE PROGRAMS.

c. ASSET LIMITS

- ❖ MFIP has not had **real property** limits since 2016. MINN. STAT. § 256P.02.
- ❖ Applicants and recipients may have equity value of up to **\$10,000** in cash, bank accounts, non-exempt motor vehicles, and liquid stocks and bonds that can be readily accessed without financial penalty. MINN. STAT. § 256P.02, subd. 2. Participants may exclude **1 motor vehicle per assistance unit member age 16 or older**, regardless of value. Additional vehicles are assessed by trade-in value. MINN. STAT. § 256P.02, subd. 3.⁴

d. MFIP GRANT LEVELS

- Cash grant levels (**\$250** for household of 1, **\$437** for 2, **\$532** for 3, **\$621** for 4, **\$697** for 5, **\$773** for 6, **\$850** for 7, **\$916** for 8, **\$980** for 9, and **\$1,035** for 10) were established in **1986** and remained static for 33 years. In 2019, cash and food grants left recipients living below 56% of Federal Poverty Guidelines (FPG). (If cash alone were scrutinized, grant levels in 2019 were **below 32% of FPG**. Even with Housing Assistance Grant (HAG) (*see below*), they were **below 39%** of FPG). MINN. STAT. §§ 256J.24, subd. 5; 256J.35; 256J.88; DHS CM § 20.09 (10/2018), MFIP/DWP ASSISTANCE STANDARDS.
- Effective 2/1/2020, the MFIP cash portion will **increase by \$100 per month per household!** Laws 2019, 1st Spec. Sess, c. 9, art. 1, § 20, amending MINN. STAT. § 256J.24, subd. 5 (adding (b)).
- Cash grants for most families living in public or HUD-subsidized housing are reduced by **\$50**, unless caregiver is at least 60, on SSI, ill or incapacitated, or needed in home to care for ill or incapacitated household member. MINN. STAT. § 256J.37, subd. 3a.
- Most MFIP recipients **not** subject to \$50 housing deduction are eligible for **\$110 monthly HAG**. HAG is **cash supplement** with no restrictions on its use. It is available to all MFIP households **except** ones subject to \$50 HUD deduction *and* ones in which caregiver is not mandatory unit member (e.g., is grandparent, aunt or uncle, sibling, etc.) and is ineligible or opts to be off grant. MINN. STAT. §§ 256J.21, subd. 2(48); 256J.35(a); and 256J.88.

⁴ Prior to June 2016, MFIP personal property was limited to **\$2,000** for applicants and **\$5,000** for participants. One motor vehicle was excluded from consideration as asset, but only if it had trade-in value of **\$10,000** or less.

- HAG is available to families without regard to whether they are **homeless**, doubled up, or living in shelters. It is **never prorated** and is not vendor-paid when household is in sanction. It is issued even when household’s cash portion is suspended due to excess income, but it ends once MFIP case is closed. Months receiving HAG **are counted** toward TANF 60-month lifetime MFIP limit, but households can opt out of receiving HAG to preserve future MFIP months. Unlike regular MFIP cash grant, HAG is always determined **prospectively**. MINN. STAT. §§ 256J.21, subd. 2(48); 256J.35(a); and 256J.88.

e. EMPLOYMENT AND EDUCATION REQUIREMENTS

- Federal TANF law includes mandates that recipients “**work**” or try to work. 42 U.S.C. §§ 602(a)(1)(A) (ii), (iii); 607; MINN. STAT. § 256J.55, subd. 1. MFIP has “**universal participation**” requirement and most participants must have **employment plan** approved by county, even if plan doesn’t call for work. MINN. STAT. § 256J.561; DHS Bulletin # 19-11-05 (10/1/19), WORK WILL ALWAYS PAY... WITH MFIP.
- Once-in-lifetime work exception is available to parents with child under 12 months. (In 2-parent families, only 1 parent can claim exemption in given month). 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 per month. In **2-parent** households, adults must engage in combined total of 55 hours of allowable work activities per week. MINN. STAT. § 256J.55, subd. 1; *see also* MFIP and DWP Employment Services Manual, § 7.6 (05/2018), MINIMUM HOURLY ACTIVITY REQUIREMENTS. Child care should be provided for activities included in employment plan. MINN. STAT. §§ 119B.05, 256J.521.
- Participants may meet all required activity hours with education and may enroll in post-secondary programs lasting up to 4 years. MINN. STAT. §§ 256J.49, subd. 13(a)(5), (6); 256J.53.
- Success in MFIP is measured by “participation rate,” number of participants who work particular number of hours per week, on average. 42 U.S.C. § 607. **Deficit Reduction Act (DRA) of 2005** increased percentage of people who had to be working to 50% of single parents and 90% of 2-parent families and narrowed what counted as “work.” Participation rates are tied directly to federal funding. DRA of 2005, PUB. L. 109-171 (2/8/06).
- Parents under 18 generally have to **stay in school** to remain eligible for MFIP. 42 U.S.C. § 608(a)(4); MINN. STAT. § 256J.54, subd. 5. Parents 18 or 19 without high school diploma may choose work or school. *Id.*, subd. 1(b).

f. LIFETIME LIMIT, EXEMPTIONS, AND EXTENSIONS

- TANF law requires states to impose **lifetime limit** of 24 to 60 months (not necessarily consecutive) on receipt of family cash assistance for **adult** caregivers (18 and older). Minnesota has chosen maximum **60-month limit**. Months of TANF received in other states count as months used in Minnesota. 42 U.S.C. § 608(a)(7); MINN. STAT. § 256J.42, subd. 1.
- In Minnesota, families may be exempt from 60-month (5-year) limit during certain months. **EXEMPT MONTHS** include those during which:
 - caregiver lives on certain **Indian reservations**, is **60** or older, or is **18 or 19** and complying with

MFIP employment plan that includes education; *or*

- household is experiencing **family violence**, *if* caregiver is complying with MFIP employment plan developed with domestic violence advocate; *or*
- household includes **individual with severe enough level of disability** to qualify for certain disability services.

MINN. STAT. §§ 256J.42, subds. 3, 4, 5(a), (d); 256J.425, subd. 5.

➔ Minnesota families may be able to get MFIP extended beyond 60 months if they meet statutory criteria for **hardship waiver**. **EXTENSIONS** are available to caregivers who:

- have **serious illness** or injury severely limiting their ability to obtain or maintain “suitable” employment,
- are **needed in home** to care for ill, injured, or incapacitated household member or **meet special medical criteria** (receiving PCA, etc.),
- have been granted **family violence waiver** and are complying with terms of employment plan,
- have **IQ below 80** or **learning disability** that severely limits their ability to obtain or maintain suitable employment,
- are assessed by vocational specialist as “**unemployable**,” or
- are engaging in “work activities” at least 30 hours, and are **working at least 25 hours per week**, but continue to qualify financially for MFIP. (For 2-parent households, requirements are combined 55 hours of weekly “work activities” including 45 hours of actual work.)

MINN. STAT. § 256J.425; DHS CM § 11.33.06 (12/2014), MFIP HARD TO EMPLOY EXTENSION CATEGORY.

➔ In 2-parent assistance units where 1 parent is ineligible for hardship extension, **ineligible parent may choose to be disqualified**, allowing remaining household members to be treated as if they were in 1-parent unit. MINN. STAT. § 256J.425, subd. 7(c).

➔ Months in which family receives “**food only**” grant **do not count** toward 60-month lifetime limit. “Food only” grant means household does not receive any MFIP cash benefits for month. 7 U.S.C. § 2031; MINN. STAT. §§ 256J.24, subd. 5a; 256J.42, subd. 1(a). As noted, while months in which **HAG** is received **do count** toward lifetime limit, recipients can opt out of receiving it to preserve future MFIP months.

g. INELIGIBILITY PROVISIONS, SANCTIONS, AND OVERPAYMENTS

- Caregivers who are **fleeing felons or parole violators** are not eligible for MFIP. 42 U.S.C. § 608(a)(9); MINN. STAT. §§ 256J.26, subds. 2, 3; 609B.435, subd. 3.
- Those convicted of felony-level drug offenses within 10 years of application or recertification must have their benefits **vendor-paid** and submit to **random drug-testing** as condition of ongoing eligibility, with monetary sanctions and potential program disqualification if they test positive for “illegal controlled substance[s].” Drug-testing provisions also apply to households receiving MFIP food-only benefits. MINN. STAT. §§ 256J.26, subd. 1; 609B.435, subd. 1.

- Failure to cooperate in developing or following terms of employment plan will result in **financial sanction** to household. Failure to “fix” problem following month will result in another sanction. Separate sanction is assessed every month that sanction-causing behavior is not corrected. MINN. STAT. § 256J.46. There are “**good cause**” bases for noncompliance, generally related to circumstances beyond participant’s control. *Id.*; also MINN. STAT. § 256J.57.
- Participants must assign their right to child support and **cooperate** with county efforts to establish **paternity** or collect **child support**. 42 U.S.C. § 608(a)(2), (3); MINN. STAT. §§ 256.741, subds. 2, 5; 256J.30, subd. 11. Failure to cooperate will also result in financial sanctions. MINN. STAT. § 256J.46, subd. 2.⁵ Participants may also claim **good cause** for not cooperating by documenting that pursuing support could reasonably result in **physical or emotional harm** to child, physical harm to parent or caregiver that would reduce ability “to adequately care for the child,” or emotional harm to parent or caregiver if such harm is of “such nature or degree” as to reduce ability to adequately care for child. MINN. STAT. § 256.741, subds. 9 - 13. Other good cause bases are listed in statute. *Id.* at subd. 10.
- **Employment sanction** will result in **10% grant reduction** 1st month. (For **child support sanction**, reduction is 30%.) For 2nd through 6th months (which need not be consecutive), shelter costs must be vendor-paid and **remaining grant is reduced by 30%** of MFIP standard of need (including food portion). **Seventh month of sanction** for noncompliance with either employment or child support enforcement results in **case closure**. MINN. STAT. § 256J.46. Once case has been closed, it must remain closed for full month. Families must **demonstrate compliance for 30 days** before benefits can begin again. *Id.* at 1(f), 2.
- MFIP **overpayments** not caused by agency error have to be repaid, unless they are under \$35. Overpayments are recouped from recipients by withholding 3% of benefits in non-fraud cases, and 10% of benefits where fraud has been determined. Recovery is limited to 6 years prior to discovery for overpayments resulting from either client error or **Intentional Program Violation (IPV)**. MINN. STAT. § 256P.08.
- Participants and former participants are no longer responsible for overpayments caused by **agency error**, *unless* amount “is large enough that a reasonable person would know it is an error.”⁶ MINN. STAT. § 256P.08, subd. 2(c).⁷
- **Fraud** is dealt with criminally or through **Administrative Disqualification Hearing (ADH)** process (civil law procedure that uses “clear and convincing” standard of proof). Adult disqualified through ADH is ineligible for assistance for 12 months. Subsequent incident results in 2-year disqualification, and 3rd disqualifies adult permanently. As in criminal fraud prosecution, disqualification determination requires proof of **intent** to defraud. Recipients should **not waive right**

⁵ Statute spells out how grants are calculated when unit is under “dual” sanction for non-cooperation with employment and child support enforcement. MINN. STAT. § 256J.46, subd. 2a.

⁶ There is clear discrepancy between statute and manual provision relating to determination of which overpayments are subject to waiver of recovery. Statutory language results in more favorable outcome to recipients and former recipients. Compare MINN. STAT. § 256P.08, subd. 2(c), to DHS CM § 25.12.03 (08/2019), OVERPAYMENTS EXEMPT FROM RECOVERY.

⁷ Agency-error overpayment waiver law also applies to DWP, MFAP, GA, MSA, and RCA. MINN. STAT. § 256P.08, subd. 2(c).

to **ADH** without first consulting counsel. MINN. STAT. §§ 256.046; 256.98, subd. 8(a); 609.52, subd. 4.

OTHER MFIP PROVISIONS

- ❖ Applicants have to meet **30-day Minnesota residency** requirement unless they can show “unusual hardship.” MINN. STAT. § 256J.12, subds. 1a, 2.
- ❖ MFIP benefits are **retroactive** to date of application. MINN. STAT. § 256J.35(b).
- ❖ MFIP is available to most **noncitizens** residing permanently and lawfully in U.S. U.S. citizen children of ineligible parents can receive cash, food portion, and HAG. MINN. STAT. §§ 256J.08, subd. 11a; 256J.11; 256J.21, subd. 5; 256J.35. New immigrants (in U.S. less than 1 year) will be referred to FSS instead of MFIP. MINN. STAT. § 256J.575, subd. 3(a)(3). Attribution of sponsor income may affect financial MFIP eligibility for some nonticizens. MINN. STAT. § 256J.37, subd. 2. Noncitizens receiving state-funded MFIP must take “steps” toward citizenship. MINN. STAT. § 256J.11, subd. 3.
- ❖ Applicants and recipients can **appeal** any MFIP issue, including imposition of sanction, work issues, grant amounts, and denials of benefits or good cause, to **DHS Human Services Judge (HSJ)**. Recipients must appeal within 10 days, or before effective date of proposed action, to continue getting benefits during appeal process. Appeal deadlines are 30 days for cash portion (90 with showing of good cause), and 90 days for food portion (governed by federal SNAP regulations). HSJ decisions can be appealed to state district court. MINN. STAT. §§ 119B.16; 256.045; 256J.31, subd. 6; 256J.40.

B. What Is DWP?

Diversionary Work Program

MINN. STAT. § 256J.95

- ❑ **DWP is 4-consecutive-month** TANF-funded program for **new MFIP applicants** and former MFIP participants reapplying after having been off MFIP at least 12 months. Most applicants for family cash assistance will get DWP rather than MFIP. DWP is administered by county welfare agencies. MINN. STAT. § 256J.95. *See also* DHS-5848-ENG (02/2019), DIVERSIONARY WORK PROGRAM: EMPHASIZING EMPLOYMENT.
- ❑ 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 families needing longer term assistance from MFIP. MINN. STAT. § 256J.95, subd. 1(b). Caregivers must have DWP **employment plan**, which basically says, “Go find a job.” *Id.* at subds. 2(b), 11, 15.
- ❑ **Financial eligibility, state residency, retroactivity, immigration** issues, **household** composition, **cooperation** requirements, and **overpayments** are same as in MFIP.
- ❑ Unlike MFIP, DWP generally does **not give cash grant**. Instead, during 4 months family is on DWP, county agency makes payments directly to family’s housing and utility providers, up to standard MFIP cash grant amount (not including HAG). MINN. STAT. § 256J.95, subds. 1(d), 10. If remainder occurs after vendor payments have been made, participants can receive cash personal needs allowance of up to \$70 per DWP recipient (adult or child). *Id.* at subd. 1(d).

- ❑ DWP participants should get SNAP and MA or MNCare, as well as MFIP Child Care. MINN. STAT. § 256J.95, subd. 7(a)(3). They are **not eligible** for **HAG**. DHS CM § 13.03.09 (01/2017), MFIP HOUSING ASSISTANCE GRANT.
- ❑ County will **exempt** families from DWP if it considers them “unlikely to benefit” from program. MINN. STAT. § 256J.95, subds. 3, 12. Exempt households include those with caregivers applying for **SSI**, “**child-only**” units, parents with **child under 1** (this exemption is available once in parent’s lifetime), **minor parents** without high school diploma or its equivalent, **parents 18-19** with no high school diploma who choose to go to school, caregivers **60 or older**, and **noncitizens** arriving in U.S. less than 12 months before applying for assistance. *Id.* at subds. 3(a), 12; MINN. STAT. § 256J.575.
- ❑ DWP grants **do not get reduced** by earned income during 4-month DWP period. Participants fortunate enough to get job while on DWP may **keep all earnings**. MINN. STAT. § 256J.95, subd. 10(d).
- ❑ Participants who, without good cause, **fail to cooperate** with DWP employment plans, are **disqualified** from DWP and ineligible for MFIP during those 4 months. MINN. STAT. § 256J.95, subds. 4, 16, 17.
- ❑ DWP months **do not count** toward MFIP 60-month lifetime limit. MINN. STAT. § 256J.95, subd. 1(c).
- ❑ After 4 consecutive months of DWP, participants are **transferred** to MFIP. Simple change request form is required. MINN. STAT. § 256J.95, subds. 3(c), 12(e).
- ❑ DWP grant and work issues can be **appealed** to DHS. MINN. STAT. § 256J.95, subd. 7(c). Timelines and procedures are same as in MFIP, except that DWP benefits cannot be extended beyond 4 months by appealing early and requesting ongoing benefits pending appeal. MINN. STAT. § 256J.40.

C. What Is **FSS**?

Family Stabilization Services

MINN. STAT. § 256J.575

- Legislature created **FSS** in 2008 as alternative to MFIP and DWP to address increased work participation requirements in Deficit Reduction Act of 2005. FSS is funded wholly with **state** money. It is administered by county welfare agencies.
- FSS is for families that are not making or expected to make **significant progress** in MFIP due to “variety of barriers to employment.” MINN. STAT. § 256J.575, subd. 1. Caregivers are eligible if they:
 - ✓ are categorically eligible for “**ill or incapacitated**” or **hard-to-employ** MFIP hardship **extensions**, whether or not they have used up their 60 months of MFIP;
 - ✓ have pending applications for **disability** benefits (SSI or SSDI) from Social Security;
 - ✓ are **60** or older; or
 - ✓ are not citizens and have been in U.S. **fewer than 12 months**.⁸

⁸ Noncitizens participating in FSS must be given English as Second Language (ESL) opportunities and skills training for up to 12 months; their FSS case managers must then meet with them to determine whether they should continue in FSS and, if so, whether they should continue with ESL, skills training, or both. MINN. STAT. § 256J.575, subd. 3(b).

MINN. STAT. § 256J.575, subd. 3.

- Participants must have individualized “**family stabilization plan**” identifying their “most appropriate path to unsubsidized employment, family stability, and barrier reduction.” MINN. STAT. § 256J.575, subds. 2(b), 5. FSS offers increased protective procedures (compared to MFIP or DWP) before **sanction** for non-cooperation can be imposed. *Id.* at subd. 7(c) – (e).
- FSS months **count** toward 60-month lifetime MFIP limit. DHS CM § 11.30 (07/2018), 60-MONTH LIFETIME LIMIT. Participants are **not counted** in TANF work participation rates. MINN. STAT. § 256J.575, subd. 8(a).
- Noncitizens participating in FSS must take steps toward citizenship. MINN. STAT. § 256J.11, subd. 3.
- Unlike DWP participants, those receiving FSS **are eligible** for **HAG**.⁹
- FSS provides **same cash and food** benefits that MFIP does, has same **financial eligibility** requirements as MFIP, and is similar to MFIP regarding **state residency, retroactivity, immigration, fraud, overpayments, and appeals**.

2. NON-FAMILY CASH PROGRAMS: GA, MSA, RCA

A. What Is GA?

General Assistance

MINN. STAT. c. 256D; MINN. R. c. 9500

- **GA is state-funded, non-family cash** assistance program administered by county welfare agencies. It is primarily for adults who are **unable to work**. MINN. STAT. § 256D.01.¹⁰
- GA can also provide cash assistance for **minor children** who cannot qualify for MFIP because of inability to demonstrate blood or legal relationship to their caregiver. Counties must approve placement of child.¹¹ MINN. STAT. § 256D.05, subd. 1(a)(9).

a. INCOME AND ASSETS

- ❑ GA program **disregards \$65 and then half of remaining earnings**. MINN. STAT. §§ 256D.06, subd. 1;

⁹ Google expired DHS Bulletin #15-68-06, 6/1/15, IMPLEMENTING THE MFIP HOUSING ASSISTANCE GRANT: “All MFIP eligible families, including those on FSS, are eligible for the MFIP Housing Assistance Grant...”.

¹⁰ It is Minnesota policy “that eligible households unable to provide for themselves and not otherwise provided for by law” are “entitled to receive grants of [GA] necessary to maintain a subsistence reasonably compatible with decency and health.” MINN. STAT. § 256D.01, subd. 1. Notwithstanding statutory policy, grant amount for single recipient has been stagnant for 33 years at \$203 per month.

¹¹ Some counties will approve placement on only temporary basis. They may require caregiver to **establish legal relationship** so that household can receive federally-funded benefits (MFIP) rather than state-funded benefits (GA). MFIP also now allows establishment of relationship by personal statement. MINN. STAT. § 256P.04, subd. 15(2).

256P.03, subd. 2; 256P.05, subd. 2. In-kind earnings, such as rent reduction in return for caretaking, count as income for GA. MINN. STAT. § 256P.01, subd. 3 (superseding MINN. R. § 9500.1223, subp. 2(Q)).

- ❑ **Real property** does not count, and **personal property** limits allow GA applicants and recipients to have up to **\$10,000** in non-excluded assets. MINN. STAT. § 256P.02. **One vehicle** per driving-age household member is excluded, without regard to its equity value.¹² MINN. STAT. § 256P.02, subd. 3.

b. GA BUDGETING AND BENEFIT AMOUNTS

- Like MFIP, current GA benefit amounts were established in **1986**. Unlike MFIP, which is getting a \$100-per-household increase beginning 2/1/20, GA grants have not increased since 1986: **\$203** for single adult, **\$250** for child who is ineligible for MFIP, and **\$260** for married couple. MINN. STAT. § 256D.01, subd. 1a; MINN. R. § 9500.1231, subps. 1, 3, 4.
- Eligibility is determined **prospectively** and income is **budgeted retrospectively**, as it is in MFIP. MINN. R. §§ 9500.1233, 9500.1243.

c. CATEGORICAL ELIGIBILITY

Categorical eligibility for GA exists for adults who are:

- ✓ unable to work due to medically-certified **illness or injury** lasting more than 45 days;
- ✓ **needed in home** to care for ill or disabled household member;
- ✓ in **rehabilitation facility** for treatment of physical or mental impairment or **Drug Addiction or Alcoholism (DAA)**, *if* county has approved placement;
- ✓ rendered unemployable because of **developmental disability or mental illness**;
- ✓ **applying for** or **appealing** denial or termination of SSI or SSDI, *with* medical documentation of inability to work for 30 days or more;
- ✓ **55 or older** (of “advanced age”) *and* significantly limited in ability to work;
- ✓ assessed by vocational specialist as “**unemployable**”;
- ✓ **learning disabled**, *if* following county-approved rehabilitation plan;
- ✓ enrolled as full-time student *and* eligible for **displaced homemaker services**;
- ✓ involved with protective or **court-ordered services** that preclude work at least 4 hours per day;
- ✓ having first **language other than English** *and* in **high school** at least half-time; or
- ✓ disabled by **DAA**, *if* following assessor’s recommendation regarding treatment.

MINN. STAT. § 256D.05, subd. 1(a). GA eligibility also exists for children under 18 who are “**legally emancipated**” (i.e., on active duty in U.S. armed forces, married or formerly married, or emancipated by court), or **living with adult** with consent of legal custodian and county agency. *Id.* at subd. 1(a)(9).

d. OTHER GA PROVISIONS

- GA applicants are required to **apply for other benefits** for which they may be eligible. MINN. STAT. §§ 256D.05, subd. 1(b); 256D.06, subd. 5; MINN. R. §§ 9500.1245, subp. 7; 9500.1254, subp. 7. They must **reimburse** county if later found eligible for another benefit covering same period of time. *Id.*

¹² Prior law limited real and personal property to **\$1,000** and equity value of motor vehicle to **\$1,500**.

- Applicants convicted of particular **drug offenses** after 7/1/97 are **ineligible** for GA until **5 years after completion** of court-ordered sentence. They can become eligible **during** 5 years by participating in drug treatment, successfully completing treatment, or having assessment to determine if they need treatment. Those who become eligible during 5-year period are subject to **random drug-testing**; they lose eligibility for 5 years beginning any month they test positive for “illegal controlled substance” or are convicted of another drug felony. MINN. STAT. § 256D.024, subd. 1.
- **Fleeing felons** and **parole violators** are ineligible for GA. MINN. STAT. § 256D.024, subds. 2, 3.
- GA applicants and recipients are subject to many of same requirements as exist in MFIP, including **state residency, retroactivity, overpayments, and fraud**, and they have same **appeal rights**. MINN. STAT. §§ 256.045; 256.046; 256D.02, subd. 12a; 256D.10; 256P.08; MINN. R. §§ 9500.1211, subps. 4 – 7; 9500.1219, subp. 3; 9500.1237, subps. 2, 4; 9500.1254, subp. 6.
- Non-citizen applicants may be subject to income attribution from sponsors. Most non-citizens must take “steps” toward citizenship. 8 U.S.C. § 1632; MINN. STAT. § 256D.05, subd. 8.
- Counties must approve or deny GA application within **30 days**; additional 30 days may be granted to those needing additional time to verify eligibility. MINN. R. § 9500.1213, subp. 7.

B. What Is MSA?

Minnesota Supplemental Aid

MINN. STAT. §§ 256D.33 - 256D.54

- ❖ **MSA** is county-administered state supplement for **recipients of SSI** *or* people who would receive SSI but for small amount of excess income. MINN. STAT. §§ 256D.34, 256D.425.
- ❖ MSA serves primarily to **ameliorate** effects of **high housing** costs for individuals and married couples living alone. MINN. STAT. § 256D.34. SSI and SSDI recipients living in “shared households” are usually **ineligible** for MSA due to economies of scale. MINN. STAT. § 256D.44; DHS Bulletin 17-69-01 (12/1/17), CLARIFICATION OF MINNESOTA SUPPLEMENTAL AID LIVING ARRANGEMENT POLICY.

a. INCOME AND ASSETS

- **Income limits for MSA** are not specifically aligned with amount of SSI person receives, which is why someone could be over-income for SSI but receive MSA. Grants are based on “standards of assistance” set forth in state law. MINN. STAT. § 256D.44. *See also* DHS CM § 20.21 (03/2019), MSA ASSISTANCE STANDARDS, indicating that “living alone standard” is currently \$832. (Contrast it with 2019 standard SSI payment amount of \$771.)
- All MSA recipients may deduct \$65 and then have half of remaining earnings excluded from consideration as income under federal SSI earned income disregards. 20 C.F.R. § 416.1112 (for SSI recipients); MINN. STAT. § 256P.03 (for SSDI recipients).
- **Asset limit** for MSA recipients on SSI is same as for SSI (**\$2,000** for single person, **\$3,000** for married couple). MINN. STAT. § 256D.425, subd. 2. Only MSA recipients **not receiving SSI** can avail themselves of higher uniform property and vehicle policy. MINN. STAT. §§ 256D.425, subd. 2; 256P.02.

b. MISCELLANEOUS MSA INFORMATION

- ▶ Average MSA housing supplement is **\$81** for non-institutionalized recipients (i.e., those not getting all of their food and shelter needs met by residential facility). Some recipients with severe disabilities and high housing costs may qualify for additional “shelter needy” benefit. MINN. STAT. § 256D.44, subd. 5(g).
- ▶ MSA can also pay for home repairs, furniture replacements, special diets, and “representative payee” fees for recipients required to have someone manage their SSI/SSDI. MINN. STAT. § 256D.44, subd. 5.
- ▶ MSA’s **immigration** limitations are same as for SSI, which is most restrictive program for non-citizens. MINN. STAT. § 256D.385.
- ▶ MSA **overpayments** are collected as they are in MFIP, except that State may recoup only 3% of MSA standard of need or amount of MSA payment, whichever is less, from current recipients. MINN. STAT. § 256P.08, subd. 4(c).
- ▶ MSA is similar to MFIP and GA regarding **state residency, retroactivity, fraud, and appeal rights**. MINN. STAT. §§ 256.045, 256.046, 256.98, 256D.385, 256D.395, 256D.51, 256D.52.

C. What Is RCA?

Refugee Cash Assistance

8 U.S.C. § 1522; 45 C.F.R. §§ 400.200 *et seq.*; DHS CM c. 30

a. CATEGORICAL ELIGIBILITY

- **RCA** is federal benefit for refugees and asylees who are **ineligible for SSI and MFIP**. It is available for **up to 8** months after grant of asylum or refuge. To be eligible, refugees and asylees cannot attend school full-time, and they must accept most offers of suitable employment. DHS CM § 30.03 (02/2017), REFUGEE CASH ASSISTANCE.
- **RCA assistance units** are usually comprised of single adults or married couples. Minors who are “legally emancipated” or living with adult with consent of agency acting as legal custodian may also qualify if they can’t get MFIP. DHS CM § 30.03.03 (02/2019), RCA ASSISTANCE UNITS.
- Grant **standards** are same as for MFIP-plus-HAG, i.e., \$360 for 1-person unit and \$547 for 2. DHS CM § 30.03.06 (03/2017), RCA ASSISTANCE STANDARDS; DHS Bulletin #17-06-01 (1/4/17), INCREASE IN MONTHLY ASSISTANCE STANDARDS FOR REFUGEE CASH ASSISTANCE (RCA).

b. MISCELLANEOUS RCA PROVISIONS

- ▶ DHS contracts with **local resettlement agencies** in metro-area counties (Anoka, Carver, Dakota, Hennepin, Olmsted, Ramsey, Scott and Washington) to administer RCA benefits. Certain eligible individuals in those counties who don’t have connections to local resettlement agencies (such as Iraqi or Afghan Special Immigration immigrants, asylees, Cuban/Haitian Entrants, victims of Trafficking, Amerasians, etc.) can apply at and have their claims processed by **county welfare agencies**, which also administer RCA in non-metro counties. DHS CM § 30.03.01 (11/2017), PROCESSING RCA APPLICATIONS.

- ▶ **Income and assets, budgeting, overpayments, and appeals** are similar to MFIP. DHS CM §§ 30.03.09 (02/2019), DETERMINING RCA GROSS INCOME; 30.03.12 (01/2017), RCA ASSET LIMITS; 30.03.15 (12/2016), RCA BUDGETING; 30.03.18 (01/2017), RCA OVERPAYMENTS AND UNDERPAYMENTS; 30.24 (01/2003), RCA/RES APPEALS.

3. HOUSING ASSISTANCE: Housing Support

What Is Housing Support?

MINN. STAT. c. 256I (Housing Support Act)

Housing Support (formerly Group Residential Housing [GRH]), is state-funded income supplement that directly pays room and board for seniors and adults who have conditions limiting their self-sufficiency. Recipient must be low-income, categorically eligible, and placed in eligible setting, such as adult foster care, board and lodging, supervised living, supportive housing, or assisted living facility. Housing Support is sometimes used to pay for homeless shelter stays and for certain supportive housing for people who have been homeless. Program’s goal is to reduce homelessness and prevent institutionalization MINN. STAT. §§ 256I.02; 256I.03, subd. 3; <https://mn.gov/dhs/people-we-serve/seniors/economic-assistance/housing/programs-and-services/housing-support.jsp>.

a. CATEGORICAL ELIGIBILITY

Applicants must be at least 65, meet particular GA criteria,¹³ be certified disabled by SSA or SMRT, or receive licensed residential crisis stabilization services. MINN. STAT. § 256I.04. County agency must approve residence. *Id.* at subd. 1a. Beginning 7/1/20, individuals who are homeless upon discharge from residential behavioral treatment program will have up to 3 months’ eligibility. Laws 2019, 1st Spec. Sess, c. 9, art 6, §68.

b. INCOME AND ASSETS

- Housing Support applicants **on SSI** are subject to income and asset limits of SSI program. 20 C.F.R. c. 416, subps. K, L; MINN. STAT. § 256I.03, subd. 7.
- For applicants who have **GA** basis of eligibility, income and resource limits are those of GA program. MINN. STAT. § 256I.04, subd. 1(b).
- For applicants who have been found to meet age or disability criteria but who **are not receiving SSI** or **GA**, income formula is little complicated. *See* MINN. STAT. § 256I.04, subd. 1. Generous uniform asset limits **do apply** to this group. MINN. STAT. § 256P.02.

c. MISCELLANEOUS HOUSING SUPPORT PROVISIONS

- Like GA, Housing Support is considered “**interim assistance**,” so payments made on behalf of SSI or SSDI applicant will have to be repaid to state if SSI or SSDI application is ultimately approved for same period of time. MINN. STAT. § 256I.04, subd. 1c.

¹³ Some GA eligibility bases are **not** applicable to Housing Support, such as performing court-ordered services, caring for relative in home, receiving displaced homemaker services, having primary language other than English, or being “emancipated” minor. MINN. STAT. §256I.04, subd. 1.

- Housing Support programs vary in extent of **services offered**. Some provide room and board only; others offer supplemental services, sometimes in private rental setting rather than actual “group residence.” MINN. STAT. § 256I.03, subd. 8. These may include tenancy or employment supports, or assistance with basic living, social skills, household management, or health.¹⁴ Some programs specialize in services for people experiencing long-term homelessness. *Id.* at subds. 8, 11, 12. **Reimbursement rates** vary depending on level of services provided. MINN. STAT. § 256I.05.
- **Minimum services** for most providers are food preparation/service for 3 daily on-site nutritional meals; housekeeping; bed, linen, bedding, laundering, and clothing storage; and maintenance/operation of building and grounds. MINN. STAT. § 256I.04, subd. 2f. Requirements do not apply to some programs licensed through agencies other than DHS or Minn. Dept. of Health. *Id.* at 2a, 2f.
- Housing Support payments are **retroactive** to date of application. MINN. STAT. § 256I.04, subd. 2. GA, SSI, or SSDI payments go directly to housing provider, and recipients get “**personal needs allowance**” of \$102 per month. DHS CM § 20.24 (01/2019), PERSONAL NEEDS ALLOWANCE.
- Housing Support issues can be **appealed** to DHS for HSJ hearing. MINN. STAT. § 256.045, subd. 3(a); DHS CM §§ 27.03 (06/2011), APPEALABLE ISSUES; 27.06 (12/2014), CLIENT APPEAL RIGHTS.
- Recipients of Housing Support are exempt from overpayment laws applying to MFIP, GA, & MSA. MINN. STAT. § 256P.08, subd. 1. It is not clear if statutory authority exists to collect Housing Support overpayments, except in cases of fraud.

4. EMERGENCY PROGRAMS: EA, EGA

A. What Is EA?

Emergency Assistance

MINN. STAT. § 256J.626

- ❖ EA is administered by county welfare departments and provides 1-time cash payment to **pregnant women** and **families with minor children** to resolve crises and avoid destitution.¹⁵ It is most commonly used for rent, security deposits, and utilities but may also be available for transportation and other basic need items, depending on county’s EA policy.
- ❖ EA funds are **block-granted** to counties through “MFIP Consolidated Fund,” and each county has its own EA policy. To be eligible, family income must be **below 200% FPG**. MINN. STAT. § 256J.626, subd. 3. Outside of that limitation, counties have great deal of **discretion** in meting out emergency funds. Counties decide:

¹⁴ For most people in adult foster care setting, services will be paid for by Medical Assistance (MA) waivers.

¹⁵ “Minor children” include 18 year-old full-time students who are in secondary school or pursuing full-time course of vocational or technical training designed to make them fit for gainful employment. MINN. STAT. §256J.08, subd. 60.

- **which crises** are covered;
- **how quickly** EA applications are processed;
- **how much** EA will be issued;
- **how frequently** EA can be issued; and
- additional factors, such as whether household's income must have been spent in certain ways during discrete look-back period.

- ❖ EA must **resolve** crisis. Applications may be denied if maximum available grant isn't sufficient to solve crisis, or if household can't meet its expenses prospectively.
- ❖ 30-day state **residency requirement** may be **waived** if "unusual hardship" is shown (i.e., family is without adequate shelter or food). MINN. STAT. § 256J.12, subds. 1a, 2.
- ❖ Benefit levels **vary** by county and by situation. Benefits can be **retroactive** to date of application, but counties may limit back rent and utility payments, and some counties will not pay security deposits if family has already moved into unit.
- ❖ **Overpayments** and **fraud** are addressed in EA as they are in MFIP and GA. **Appeals** may be made to DHS to challenge EA decisions, including benefit amount or denial of EA. **Expedited** appeal hearings may be requested.

B. What Is EGA?

Emergency General Assistance

MINN. STAT. § 256D.06, subd. 2; MINN. R. § 9500.1261

- EGA** is 1-time payment administered by counties to help **single adults**, families **without minor children**, and families with minor children **not receiving** MFIP, DWP, or FSS resolve crises and avoid destitution. Most counties use EA for families with children and limit EGA to childless households.
- EGA funds are **block-granted** to counties. Each county creates its own guidelines for issuance and eligibility. Counties have some discretion to decide **which crises** are covered, **how quickly** EGA applications will be processed, **how much** EGA will be issued, and whether household's income must have **been spent in particular way** retroactively.
- EGA applicants must:
 - ✓ **not receive** MFIP, DWP, or FSS;
 - ✓ have net income for 12-month period **at or below 200% FPG**;¹⁶ and
 - ✓ **not have used EGA within 12 months.**

MINN. STAT. § 256D.06, subd. 2(b).

¹⁶ EA statute restricts EA to those living *below* 200% FPG. For **EGA**, there is discrepancy between EGA statute (applicants must have income "*no greater than*" 200% of FPG) and CM (they "*must have a current net income under* 200%" of FPG). MINN. STAT. § 256D.06, subd. 2(b); DHS CM § 04.03 (10/2017), EMERGENCY AID ELIGIBILITY – CASH ASSISTANCE.

- EGA issuances must **resolve crisis**, as in EA. Unit must be “in an emergency situation in which it is without, or will lose within 30 days after application,” **basic need** item (usually rent or utilities). Situation must threaten **unit members’ health or safety**. MINN. STAT. § 256D.06, subd. 2(a); DHS CM § 04.03 (10/2017), EMERGENCY AID ELIGIBILITY – CASH ASSISTANCE.
- State **residency** requirements are same as for GA. Benefits can be **retroactive** to date of application. **Overpayments, fraud, and appeals** are dealt with as they are for EA.

5. DISABILITY PROGRAMS: SSDI, SSI

What Are SSDI and SSI?

Social Security Disability Insurance and Supplemental Security Income

(42 U.S.C. c.7, Tit. II, §§ 401 – 34; Tit. XVI, §§ 1381 - 83f; 20 C.F.R. pts. 404, 416)

SSI and SSDI are **federal disability benefits** administered by SSA.

	SSI	SSDI
Name of Program	Supplemental Security Income	Social Security Disability Insurance, part of RSDI (Retirement, Survivors, Disability Insurance)/OASDI (Old Age, Survivors, Disability Insurance)
Non-Medical Eligibility Criteria	need-based program; strict income and resource limitations	eligibility determined by work history and earnings record of applicant or of retired or deceased wage-earning relative; must meet “insured status” guidelines based on work history and earnings
“Waiting Period” (No Benefits)	None	5 months from onset of disability
Benefit Retroactivity	benefit payments can begin month following month of application	benefits payable up to 12 months before date of application, <i>if</i> disability is established for that period
Who Can Be Paid	claimant only, no derivative benefits, no benefits upon death	claimant and non-disabled dependents up to “family maximum” amount (individualized according to SSA formula re: wage-earner’s work history, age, and wage credits)
Disabled Child Benefits	eligible if disabled before 18 and meeting income and resource requirements	disabled adult children (DAC) may be eligible, based on account of deceased or retired wage-earning relative <i>if</i> adult child was disabled before age 22; but <i>only if</i> adult child is dependent of worker <i>receiving</i> retirement or disability <i>or</i> survivor of deceased insured worker
Benefit Amount	standard federal benefit rate (\$771 per month for single person & \$1,157 for eligible married couple in 2019); SSI recipients who live alone or have special needs may get state supplement (MSA)	varies, based on claimant’s work record or work record of decedent or worker on whom claimant is dependent
Benefit Reductions for:	receipt of outside income, earned or unearned, cash or in-kind; some disregards apply	receipt of certain types of other benefits, including Worker’s Compensation (WC) and other Social Security benefits
Onset of Disability	no limitations	must be proven before expiration of “insured status” based on work history and earnings
Categorical Eligibility	elderly (65 or older), blind, or disabled	disabled (other parts of RSDI address age & survivor benefits)

a. DISABILITY

- ❖ To qualify for **SSI** or **SSDI** disability benefits, adult must be unable to work competitively for at least 12 months due to severe impairment or combination of impairments. 20 C.F.R. §§ 404.1505,

416.905. Both programs **define disability** as “inability to do any **substantial gainful activity [SGA]** 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 considerations** (age, education, past work) may be factors in determining **adult** disability. 20 C.F.R. §§ 404.1545 - 69a, 416.945 - 69a.
- ❖ Applications will be denied if **Drug Addiction or Alcoholism (DAA)** is “**contributing**” factor “**material**” to determination of disability. Applicants must be considered completely disabled **without regard to usage**. 20 C.F.R. §§ 404.1535, 416.935; SSR 13-2p (3/23/13), TITLES II AND XVI: EVALUATING CASES INVOLVING DRUG ADDICTION AND ALCOHOLISM (DAA).
- ❖ Applicants for either program (including children seeking SSI) who “**meet**” 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 non-listed impairment that is **medically equivalent in severity** to listed impairment, are categorically eligible. 20 C.F.R. §§ 404.1525 - 26, 416.925 - 26.
- ❖ Adult SSI or SSDI applicants who do not “meet” or medically “equal” listing may still qualify if they prove there are **no “substantial” and “gainful” jobs** they could perform on ongoing, sustained basis as result of their impairments. SGA is incompatible with claim for disability and rebuttably presumed when gross monthly earnings are at least \$1,220. (SGA amounts are adjusted annually.) 20 C.F.R. §§ 404.1510, 416.910.
- ❖ Child **SSI** applicants who do not “meet” or medically “equal” child’s listing (20 C.F.R. Pt. 404, subp. P, App. 2) may get SSI if they have impairment “**functionally**” **equivalent** to listing. They must have “extreme” limitation in 1 of 6 “domains,” or “marked” limitations in 2 domains: acquiring and using information, interacting and relating with others, moving about and manipulating objects, caring for oneself, attending and completing tasks, or “health and physical well-being.” Comparison group is non-disabled children same chronological age. 20 C.F.R. §§ 416.906, 416.926a.
- ❖ SSDI does not have disability program for children, but adult children of insured worker who is disabled, retired, or deceased may get **Disabled Adult Child (DAC)** benefits through that parent’s account if they prove they became disabled before age 22. 20 C.F.R. § 404.350.

b. INCOME AND ASSETS

- ☒ **SSI is need-based** and not contingent on applicant’s work history. It has strict income and asset limits. 20 C.F.R. §§ 416.1100 - 1266. Even “in-kind” income counts. 20 C.F.R. § 416.1102. Non-excluded resources cannot exceed **\$2,000** for single person and **\$3,000** for married couple. 20 C.F.R. § 416.1205. Most recipients who don’t pay pro rata share of household operating expenses have their grant **reduced by 1/3**. 20 C.F.R. §§ 416.1130 - 1148.
- ☒ First \$65 of **earned** income and half of remaining earnings are excluded for **SSI**. 42 C.F.R. § 416.1112. **Unearned** income generally counts **dollar-for-dollar** to reduce SSI grants. 42 C.F.R. § 416.1123.
- ☒ To qualify for **SSDI**, recipients (or, in some situations, deceased or disabled parent, spouse, or child) must have **paid into** system through FICA wage deductions. SSA uses formula to determine

financial eligibility and wage amounts based on age, recency and length of work, and earnings. 42 U.S.C. § 402; 20 C.F.R. §§ 404.110 - 146, 404.330 - 374.

- ☒ Aside from SGA limitation, **SSDI** has **no** income or asset limits. Receipt of Workers' Compensation and some other benefits may 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 - 435.
- **SSDI**, in contrast, may be available to non-disabled **dependent minors**, based on “family maximum” formula. Derivative benefits may be considered child support. 20 C.F.R. § 404.350; MINN. STAT. § 518A.31. SSDI auxiliary benefits may also be available to some **spouses, divorced spouses, widowed spouses, and parents**. 20 C.F.R. §§ 404.330 - 346, 404.370 - 74.

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 to federal government (SNAP overpayments, student loans). 31 U.S.C. § 3716; 31 C.F.R. § 285.4. Some student loans can be discharged if recipient has subsequently become permanently disabled. *See* DISCHARGE APPLICATION: TOTAL AND PERMANENT DISABILITY, <https://secure.disabilitydischarge.com/registration>.
- **SSDI** (but **not** SSI) **can be garnished** for child support and maintenance debts. 42 U.S.C. § 659(a); MINN. STAT. § 518A.39, subd. 2.

e. RETROACTIVITY

- ➔ **SSI** benefits can be retroactive **to date of application**, and they can begin month after month of application if disability is proved for that period of time. 20 C.F.R. § 416.501.
- ➔ **SSDI** benefits can be **retroactive up to year** before date of application if disability is proved for that time period. 42 U.S.C. § 423(b). No SSDI benefits are available during **5-month waiting period** after date of onset of disability. *Id.* at (c)(2).

f. WORK AND BENEFIT INTERACTION

- ☐ Both **SSI** and **SSDI** encourage participation in “Ticket to Work” program through state vocational rehabilitation agency. *See* <http://www.ssa.gov/work/>.
- ☐ **SSDI** has 9-month non-consecutive **Trial Work Period (TWP)** that allows recipients to try to work before losing benefits. 20 C.F.R. § 404.1592. TWP is followed by 36-consecutive-month **Extended Period of Eligibility (EPE)** (“reentitlement period”) during which recipients can continue to work. Benefits stop any month in EPE that recipients engage in SGA; they start again when SGA stops. At end of EPE, benefits will terminate in first month recipient engages in SGA. 20 C.F.R. § 404.1592a. There is an expedited reinstatement procedure for people who stop working after losing benefits this way.

- ❑ **SSI** has no TWP or EPE. Half of **earnings** from job in competitive job market **counts** (after \$65 disregard) to reduce grant, with some exceptions. 20 C.F.R. §§ 416.1110-1112. **SSI** has **Plan to Achieve Self-Support (PASS)** program to help recipients prepare for work. 20 C.F.R. § 416.1226.

g. MEDICARE

- ➔ Disabled **SSI** recipients under 65 are not eligible for **Medicare**. 42 U.S.C. §§ 426, 1395.
- ➔ Disabled **SSDI** recipients under 65 qualify for Medicare **2 years** after disability onset. 42 U.S.C. § 426(b).

h. BENEFIT AMOUNTS

- ▶ **SSI** grant amounts are fixed and significantly higher than comparable GA or MFIP grants: **\$771** for single person and **\$1,157** for married couple in 2019.
- ▶ **SSDI** grant amounts vary and are based on workers' earnings histories. If SSDI payment is less than \$771 SSI grant, recipient can get "concurrent" benefits consisting of partial SSI grant to supplement SSDI, with \$20 disregarded. Monthly concurrent benefits are **\$791**. See 20 C.F.R. §§ 404.110 - 290, and appendices.
- ▶ Most years, SSI and SSDI are increased with **Cost of Living Adjustments (COLAs)**. See <http://www.ssa.gov/news/cola>.

i. CITIZENSHIP AND IMMIGRATION STATUS

- **SSI** is most restrictive federal program for **non-citizens**. Eligibility depends on immigration status, date of adjustment to LPR status or arrival in U.S., and whether "sponsor-deeming" applies. Most non-citizens coming to U.S. after 8/22/96 are **ineligible** for SSI or, if asylees or refugees, eligible for only **7 years** from date of grant of refuge or asylum. 8 U.S.C. §§ 1611 - 13, 1631; 42 U.S.C. § 1382j.
- **SSDI** does not have immigration-related restrictions for non-citizens residing **lawfully** in U.S. Sponsor-deeming does not apply because benefit is not need-based.

j. APPEALS

- SSI and SSDI **appeal** periods are **60 days**. Applicant can request reconsideration by appealing within **60 days**. 20 C.F.R. §§ 404.909, 416.1409. Following reconsideration (2nd) denial, applicants can request **Administrative Law Judge (ALJ)** hearing within **60 days**. 20 C.F.R. §§ 404.929- 55, 416.1429 - 55. In Twin Cities, it usually takes **18-24 months** from request for hearing to be scheduled. SSA can grant "**good cause**" for **late appeal**. 20 C.F.R. §§ 404.911, 416.1411.
- SSI or SSDI recipients who undergo **Continuing Disability Review (CDR)** that results in determination they are no longer disabled must appeal within **10 days** to have benefits continue pending outcome of appeal. 20 C.F.R. §§ 404.1597a, 416.996.
- ALJ hearings are usually in person but increasingly are held by video conference. While applicants can affirmatively opt out of video alternative at present, SSA is seeking to eliminate opt-out option.

- ALJ denials can be appealed within **60 days** to SSA’s **Appeals Council (AC)** in Virginia. AC decisions can take more than **year**. 20 C.F.R. §§ 404.967 - 981; 416.1467 – 1481. Usually, claimants are precluded from filing subsequent application while appeal on prior claim is pending at AC. SSR 11-1p, 7/28/11, TITLES II AND XVI: PROCEDURES FOR HANDLING REQUESTS TO FILE SUBSEQUENT APPLICATIONS FOR DISABILITY BENEFITS. Remand from AC will usually return case to same ALJ who denied claim.
- AC decisions can be appealed within **60 days** to **federal district court**. 20 C.F.R. §§ 404.981, 416.1481.

k. MISCELLANEOUS SSI/SSDI MATTERS

- SSI and SSDI benefits can be stopped if recipient is **“fleeing felon”** (narrowly defined) or parole violator (very broadly defined). 42 U.S.C. §§ 402(x)(1)(A), 1382(e)(4)(A).
- Most **overpayments** must be repaid. SSA can withhold 10% of **SSI** from current recipients to recover non-fraud overpayment and entire grant for overpayments based on “fraud,” although lower amounts can be negotiated. In **SSDI**, full grant can be withheld even in non-fraud cases, but amount of withholding can be negotiated. Usually, SSA must apply portion of overpaid individual’s SSDI benefits to Medicare Part B premiums. 20 C.F.R. § 404.502(d). Overpayment **waivers** can be granted for either program if overpaid recipients show they were **without fault** in creating overpayment **and can’t afford** to repay SSA, or if recovery of overpayment would be against equity and good conscience. 20 C.F.R. §§ 404.506 - 12, 416.550 - 56, 416.571.
- SSI recipients are **excluded** from **MFIP** grant. (Household of 3 with member on SSI gets MFIP grant for household of 2). SSI benefits, and other income of SSI recipients, don’t count as income for MFIP. SSDI does count dollar-for-dollar against MFIP for other household members **unless** SSDI recipient is **also receiving** SSI (i.e., recipient gets **concurrent** SSI and SSDI benefits). MINN. STAT. § 256J.24, subd. 3(a)(1).
- Recipients of concurrent benefits will receive SSI benefits on certain day of month and SSDI benefits on another.
- Having attorney greatly enhances chance of getting SSDI or SSI, although more significant factor may be which ALJ presides over hearing, given significant disparities in ALJ approval rates. There is no basis for removing ALJ, except for proven bias.
- Hearing office must provide notification at least 75 days in advance of hearing. Applicants and representatives must submit all evidence and legal briefs to ALJ **at least 5 business days** before hearing. 20 C.F.R. §§ 404.935(a), 404.938(a), 404.949; 416.1435(a), 416.1438(a), 416.1449.
- You can go to SSA website (ssa.gov) or Google to see Social Security rulings (SSRs); internal operating guidance (Program Operations Manual System - POMS); “Listings” of impairments; and administrative hearing guidance (Hearings, Appeals & Litigation Law Manual – HALLEX). ALJ approval rates are available at https://www.ssa.gov/appeals/DataSets/03_ALJ_Disposition_Data.html.

6. UNEMPLOYMENT: UI

What Is UI?

Unemployment Insurance

MINN. STAT. c. 268

- UI** program provides workers unemployed “**through no fault of their own**” partial temporary wage replacement. UI is administered by Minnesota **Department of Employment and Economic Development (DEED)**. MINN. STAT. § 268.03, subd. 1.
- Each state has its own UI rules, with limited federal restrictions.
- Benefits are **not** “need based,” and program has neither unearned **income** nor **asset** limits. Eligibility is based on wages in specified 12-month period. Part-time workers get 50% wage disregard, subject to some restrictions. MINN. STAT. §§ 268.07; 268.085, subd. 5.
- To be eligible, workers must have had “**base period**” wages from covered work of at least \$2,900. (Amount may be adjusted upward.) MINN. STAT. §§ 268.035, subds. 4, 6, 7; 268.07. Base period is 12 months, ending 1 to 6 months before date of application. *Id.*
- Benefits vary** depending on work history but are usually about 50% of wages over past year. They are generally available for up to 26 weeks, subject to federal or state extensions.
- There are no state **residency** requirements, but work must have been performed in Minnesota. (Applicants who worked in another state generally have to apply in that state.)
- Noncitizen** workers are eligible for UI only if they were lawfully admitted for permanent residence at time of employment, lawfully present for purposes of employment, or permanently residing in U.S. “under color of law” at time of employment. MINN. STAT. § 268.085, subd. 12(b). Sponsor-deeming does not apply because UI is not need-based benefit.
- UI overpayments** must be repaid. MINN. STAT. § 268.18, subds. 1, 6. UI has extremely strict **penalties** in cases of **misrepresentation**. When recipients are found to have received UI by “making a false statement or representation without a good faith belief as to [its] correctness...”, they are disqualified from receiving further UI benefits **until** they have repaid not only overpaid benefits, but penalty equal to 40% of UI *and* any interest accruing. *Id.* at subd. 2.
- UI applicants must be 3 “As”:
 - **AAVAILABLE** for suitable employment,
 - **ABLE** (medically) to work, and
 - **ACTIVELY** seeking suitable employment.

MINN. STAT. § 268.085, subds. 4a, 15, 16. These factors are determined on week-to-week basis.

- Applying for SSI/SSDI is considered (rebuttable) evidence that UI applicant is **not able** to work. Students must be willing to quit school to be “available.” MINN. STAT. § 268.085, subds. 4a, 15-16.

- Applicants must accept all offers of “suitable” employment. Refusal without “good cause” results in 8-week disqualification. MINN. STAT. § 268.085, subd. 13c.
- Special rules apply for workers unemployed after having worked for **temporary employment agencies**, *if* at least 25% of wage credits are from such agencies. Within 5 calendar days after completion of “suitable job assignment,” worker must affirmatively request additional suitable job assignment. Failure to do so is “quit.” MINN. STAT. §§ 268.035, subd. 23a(h); 268.095, subd. 2(e).

a. Job Loss and Disqualifications

Workers separated **VOLUNTARILY** (i.e., they **QUIT** their job) are ineligible for UI unless they meet certain statutory exceptions. Quit must have been where:

- ★ job **wasn’t “suitable”** *and* lasted fewer than 30 days, *or*
- ★ quit was:
 - ➔ to **accept better job** (defined objectively, with heavy emphasis on pay and benefits);
 - ➔ due to **loss of child care**, *so long as* reasonable efforts were made to obtain other child care *and* employer, following applicant request, denied accommodations;
 - ➔ due to **domestic abuse, sexual assault, or stalking** of employee or immediate family member;
 - ➔ due to “**serious illness**,” *if* employer was informed of illness and would not accommodate it;
 - ➔ due to **chemical dependency** (CD), but *not* if worker was previously diagnosed with CD or underwent CD treatment *and* since that time failed to make consistent efforts to control CD;
 - ➔ because of illness, injury, or disability of **immediate family member**, *if* employer was informed of illness *and* would not accommodate it;
 - ➔ to **relocate** to accompany spouse who has been transferred to new job location;
 - ➔ because of **announced layoff** within **30 days**;
 - ➔ from **part-time** employment *if* employee had at least \$2,900 in base period wages from **full-time** employment; *or*
 - ➔ for “**good reason caused by the employer.**”
- ★ “**Good reason caused by the employer**” is one:
 - ▶ that is directly related to employment;
 - ▶ for which employer is responsible;
 - ▶ that is adverse to worker; *and*
 - ▶ that would compel average, reasonable worker to quit and become unemployed rather than remain in employment.

In many cases, employees are required to complain to employer and give employer reasonable opportunity to correct problem.

MINN. STAT. § 268.095, subs. 1 - 3.

If separation was **INVOLUNTARY** (i.e., employee was **LAI D OFF** or **FIRED**), separation must have been for reasons **other than “employment misconduct”** or “**aggravated employment misconduct.**” MINN. STAT. § 268.095, subs. 4, 5, 6, 6a.

★ “Employment misconduct” is:

- ✓ intentional, negligent or indifferent conduct,
- ✓ on job or off job,
- ✓ that is serious **violation of standards of behavior** employer has right reasonably to expect of employee (DEED interprets this very broadly).

MINN. STAT. § 268.095, subd. 6(a).

★ “Employment misconduct” is NOT:

- conduct that was consequence of **mental illness** or impairment;
- conduct that was consequence of **inefficiency** or **inadvertence**;
- simple unsatisfactory conduct** or **poor performance**;
- conduct **average, reasonable worker would have engaged in** under circumstances;
- conduct that was consequence of **inability** or **incapacity** (not necessarily linked to medical issue);
- good faith **errors in judgment** *if* judgment was required;
- absence because of illness or injury**, *with* proper notice to employer;
- absence**, with proper notice to employer, to **provide care** to immediate family member with illness, injury or disability;
- conduct that was consequence of **CD**, *unless* worker was previously diagnosed with or had treatment for **CD** and has since failed to make consistent efforts to control it; or
- conduct that was consequence of **domestic abuse, sexual assault, harassment, or stalking** of employee or immediate family member.

MINN. STAT. §268.095, subd. 6(b). If conduct leading to discharge involved only **single incident**, “that is an important fact that must be considered” in deciding whether conduct rises to level of “employment misconduct.” *Id.* at subd. 6(d).

★ **Aggravated employment misconduct** is commission of any act, on job or off, that would amount to gross misdemeanor or felony *if* it had significant adverse effect on employment. For employees of nursing homes, group homes, or similar facilities, aggravated misconduct includes acts of patient or resident abuse, financial exploitation, and recurring or serious neglect. MINN. STAT. §268.095, subd. 6a.

★ Workers disqualified for quit or employment misconduct can “work off” disqualification by earning \$1,450 in covered wages. Aggravated employment misconduct also results in cancellation of all wage credits from that job.

b. Procedure

- **Applications** for UI are made to DEED. They can be made in person, by mail, or online at www.uimn.org. MINN. STAT §§ 268.069, 268.07, subd. 1(a).
- Workers must **request benefits** weekly by phone or online, including when appeals are pending. MINN. STAT. § 268.085, subd. 1.
- Benefits can be requested 2 weeks retroactively from week of application, if applicant is

unemployed and meets other requirements during those weeks. First week benefits are requested is non-payable “waiting” week. MINN. STAT. §§ 268.035, subd. 26; 268.085, subd. 1(6).

- Appeals must be made within **20 days** of DEED’s mailing of decision. Late appeals are dismissed for lack of subject matter jurisdiction. In contrast to most benefit programs, **THERE IS NO “GOOD CAUSE” PROVISION FOR LATE APPEAL.** MINN. STAT. §§ 268.101, subd. 2(f); 268.103.
- Evidentiary **hearings** are held by ULJs, usually by telephone. In-person hearings may be granted in rare cases. MINN. STAT. § 268.105, subd. 1. Appeals of ULJ decisions can be made within **20 days** by seeking **reconsideration** from same ULJ who presided over appeal. *Id.* at subd. 2.
- Final decisions can be appealed to Minnesota Court of Appeals by obtaining Writ of Certiorari within **30 days** of issuance of reconsideration decision. MINN. STAT. § 268.105, subd. 7. Court **must** issue writ if petition was timely and properly filed. There is **no filing fee** for employee UI appeals to Court of Appeals. MINN. R. CIV. APP. PRO. 107.03(g).

IV. FOOD ASSISTANCE PROGRAMS

1. SNAP

What Is SNAP?

Supplemental Nutrition Assistance Program

7 U.S.C. §§ 2011 – 31; 7 C.F.R. §§ 271 – 81

- ❑ **SNAP**, formerly known as Food Stamps, is **100% federally-funded** program designed to raise levels of nutrition in low-income households. SNAP is administered by county welfare agencies. 7 U.S.C. §§ 2011, 2013; 7 C.F.R. § 271.1.
- ❑ As federally-funded stand-alone program, SNAP has no **state residency** requirements. (MFIP food portion has 30-day state residency requirement, consistent with MFIP policies, but applicants can get SNAP in meantime.) People moving from state to state cannot receive benefits in new state until SNAP case in old state has been closed. 7 C.F.R. § 273.3; MINN. STAT. § 256J.12.
- ❑ SNAP eligibility is premised on **“household”** concept when people buy and prepare food together. People do not have to be related to be part of SNAP household, but some related individuals must be on same SNAP grant even if they buy and prepare food separately. Some exceptions exist for recipients who are elderly and disabled. 7 C.F.R. § 273.1.
- ❑ **Fleeing felons** and **parole violators** are ineligible for SNAP. 7 U.S.C. § 2015(k); 7 C.F.R. §§ 273.1(b)(7)(ix), 273.11(n). Although no federal law requires drug-testing non-MFIP SNAP recipients, state policy requires random drug testing as condition of continued SNAP eligibility for people who admit in writing on Combined Application Form (CAF) that they committed and were convicted of drug felony within 10 years of date of application or recertification. DHS CM § 11.27.03.01 (06/2017), DRUG FELONS – SNAP.

- ❑ SNAP uses **individualized grant analysis** to determine eligibility and grant amounts.¹⁷ It factors in rent, heat and utility costs; out-of-pocket medical bills; and family size. 7 U.S.C. § 2014; 7 C.F.R. § 273.9. Minnesota has been using **Standard Utility Allowances (SUAs)** to simplify otherwise complicated program for some years. Under SUA policy, state does not use **actual** utility expenses to determine food support grants. Instead, units that identify they incur heating, cooling, electricity, and/or phone expenses are entitled to apply single utility standard (\$490), standard electric allowance (\$143), and/or phone utility allowance (\$49). DHS CM § 18.15.09 (10/2019), UTILITY DEDUCTIONS.
- ❑ SNAP is available to people with **income** up to **165% FPG**. Most households have **no asset limits**.¹⁸ MINN. STAT. § 256D.0515. *See also* DHS CM § 13.06 (12/2016), SNAP CATEGORICAL ELIGIBILITY/ INELIGIBILITY.
- ❑ Most **Able-Bodied Adults without Dependents (ABAWDs)** between 18 and 49 can get SNAP only **3 months in 36-month period**, *unless* they are working 20 hours per week or participating in **Food Stamp Employment and Training (FSET)** program, which not all counties offer. (ABAWDS may get additional 3 “banked months” as well). People who are homeless are exempt from work requirements, and ABAWDs can “earn” additional months of eligibility. 7 U.S.C. § 2015(o)(2) - (3); 7 C.F.R. §§ 273.7, 273.24; DHS CM § 11.24 (03/2019), ABLE-BODIED ADULTS WITHOUT DEPENDENTS.
- ❑ SNAP and MFIP food benefits are distributed by **Electronic Benefit Transfer (EBT)** cards. Food benefits have been issued electronically for decades to minimize stigma. 7 U.S.C. § 2016(h). *See also* DHS CM § 24.04 (12/2014), HOW BENEFITS ARE PAID.
- ❑ Non-MFIP recipients living with MFIP households may qualify for SNAP as separate “**Uncle Harry**” food support units. DHS CM § 22.24 (10/2019), UNCLE HARRY FOOD SUPPORT BENEFITS.
- ❑ SNAP amounts are based on **Thrifty Food Plan (TFP)** developed by U.S. Department of Agriculture (USDA) as minimal standard of family food use and costs. TFP is not intended to cover all food needs and is not very realistic as sole source of income for food.¹⁹ 7 U.S.C. § 2012(u); DHS CM §§ 22.12.01 (10/2019), HOW TO CALCULATE BENEFIT LEVEL – SNAP/MSA/GRH; 20.12 (10/2019), SNAP ASSISTANCE STANDARDS.
- ❑ SNAP eligibility and grant amounts are generally determined **prospectively**, based on anticipated income, for non-MFIP households.²⁰ Eligibility can be **retroactive** to date of application. 7 C.F.R. §§ 273.10, 273.21.

¹⁷ By contrast, MFIP food portion is fixed amount, based on household size.

¹⁸ USDA published proposed rule on 7/24/19 that would **eliminate categorical eligibility** for SNAP for recipients of MFIP, DWP, and FSS. Rule would result in reduction of SNAP eligibility to 130% FPG and in re-imposition of asset limit for all households. 60-day public comment period has passed; final rule will probably be published in 2020.

¹⁹ For example, TFP amounts are \$194 for HH of 1; \$355 for HH of 2; \$509 for HH of 3; \$646 for HH of 4; \$768 for HH of 5; \$921 for HH of 6; \$1,018 for HH of 7; and \$1,164 for HH of 8, with \$146 per additional HH member. DHS CM § 22.12.01 (10/2019), HOW TO CALCULATE BENEFIT LEVEL – SNAP/MSA/GRH.

²⁰ Only “Uncle Harry” SNAP households are subject to retrospective budgeting. DHS CM § 22.06 (08/2019), HOW AND WHEN TO USE RETROSPECTIVE BUDGETING.

- ❑ SNAP can be used to buy only **food, beverages, and food-producing seeds or plants**. It cannot be used for alcohol, tobacco, pet food,²¹ soap, toothpaste, toilet paper, diapers, non-prescription drugs, or other non-food items. 7 U.S.C. § 2012(k).
- ❑ SNAP has limitations based on **immigration status**. Factors include immigration category, date of arrival in U.S. or adjustment to LPR status, country of origin, age, disability status, and applicability of sponsor-deeming. 8 U.S.C. §§ 1183a, 1612, 1613, 1631; 7 U.S.C. §§ 2014(i), 2015(f); 7 C.F.R. § 273.4.
- ❑ Federal law mandates issuance of **expedited food support** within 7 days for those in extreme poverty. State law requires issuance within **5 working days**. Applicants seeking expedited benefits must affirmatively request them. 7 U.S.C. § 2020(e)(9); MINN. STAT. §§ 256J.28, subd. 1; 393.07, subd. 10a; DHS CM § 4.06 (12/2018), EMERGENCIES – 1ST MONTH PROCESSING.
- ❑ SNAP **overpayments** must be repaid. **Fraud** is dealt with in SNAP as it is in MFIP. 7 U.S.C. § 2015; 7 C.F.R. §§ 273.13, 273.16. Overpayment collection is limited to 12 months prior to month of discovery in cases of agency error, and 6 years prior to month of discovery for client error or cases involving IPVs. Special fraud provisions apply to those who buy or sell SNAP benefits or use them in way contrary to state law. MINN. STAT. § 393.07, Subd. 10(c).
- ❑ SNAP **appeals** (and appeals of MFIP food) are made to DHS. Applicants and recipients have **90 days** to request hearing. 7 C.F.R. § 273.15(g); MINN. STAT. §§ 256.045; 256J.28, subd. 2(b). DHS decisions can be appealed to state district court. MINN. STAT. § 256.045.

2. MFAP

What Is MFAP?

Minnesota Food Assistance Program

MINN. STAT. § 256D.053

- ❑ **MFAP** is state-funded program created in 1998 to provide food support to **lawfully-residing noncitizens** who had become ineligible for Food Stamps (now SNAP) as result of 1996 welfare reform law. MFAP is administered by county welfare departments. MINN. STAT. § 256D.053, subd. 1.
- ❑ Federal law changes in 1998 and 2002 enabled many non-citizens to re-qualify for federally-funded food benefits. As result, in 2003 Minnesota chose to limit MFAP eligibility to lawfully residing noncitizens age **50 or older**. MINN. STAT. § 256D.053, subd. 1.
- ❑ MFAP **follows all SNAP** regulations, except for those related to noncitizen eligibility. MINN. STAT. § 256D.053, subd. 3.
- ❑ ABAWD rules do not apply. DHS CM § 11.24 (03/2019), ABLE-BODIED ADULTS WITHOUT DEPENDENTS.
- ❑ MFAP applicants must be Minnesota **residents**. They must reside **lawfully** in U.S. and may be required to take “steps” toward citizenship. Sponsor-deeming may affect eligibility. MINN. STAT. § 256D.053, subd. 2; *see also* MINN. STAT. § 256D.05, subd. 8.

²¹ Pet food may be allowable *medical* expense in calculating income for SNAP if it is considered “maintenance cost” for service animal for someone with disability. DHS CM §18.12.03 (09/2016), ALLOWABLE SNAP MEDICAL EXPENSES.

- ❑ **Financial eligibility, grant amounts, retroactivity, fraud, and appeals** are same as in SNAP. MINN. STAT. § 256D.053, subd. 3. Overpayments are same as in MFIP. In contrast to SNAP, MFAP overpayments are potentially waivable if caused by agency error. MINN. STAT. § 256P.08.

V. HEALTH CARE PROGRAMS

1. MA

What Is MA?

Medical Assistance

MINN. STAT. c. 256B; MINN. R. c. 9505

- ⚙️ **MA** is Minnesota’s Medicaid program, federal health care program for low-income people whose resources are not adequate to meet their health care costs. MA covers most medically-necessary health care services and devices. MINN. STAT. §§ 256B.01, 256B.056.
- ⚙️ MA is increasingly being administered by state, although there is still county welfare agency component for some applicants and recipients. Applications for MA may be made by phone, by mail, in person, or online. MINN. STAT. § 256B.04, subd. 18. State and counties prefer to have people apply online through MNSure system. “Navigators” are available to assist with applications and questions. See <https://www.mnsure.org/help/find-assister/find-navigator.jsp>.
- ⚙️ MA applicants must be Minnesota **residents**. MINN. STAT. § 256B.056, subd. 1.
- ⚙️ To qualify for MA, applicants must have **basis** of eligibility, which means they must be:
 - **pregnant** or within 60 days of having given birth;²²
 - in **family** with children under 18 (including MFIP family);
 - **under 21**;
 - **65 or older**;
 - **certified disabled** by Social Security or State Medical Review Team (SMRT); or
 - **21 to 64**, with no minor children, **income at or below 133% FPG**, and **no Medicare** eligibility.

MINN. STAT. §§ 256B.055; 256.056, subd. 4.

- ⚙️ **Income limits** vary by eligibility basis. Infants and pregnant women can have higher incomes than older children, parents, and adults without children. With exception of disabled adults and people 65 or older, **Modified Adjusted Gross Income (MAGI)** will be used to determine financial eligibility for most recipients. 26 U.S.C. § 5000A; 26 C.F.R. § 1.36B-1; MINN. STAT. § 256B.056, Subd. 1a(a)(1). **Five percent income disregard** applies to income standard for all bases except that of elderly or disabled adults. Under current law, MA income limits (factoring in income disregards) are:
 - children up to age 2 = **288%** of FPG;
 - pregnant women = **283%** of FPG;

²² State law allows self-attestation of pregnancy. MINN. STAT. § 256B.055, subd. 6.

- children ages 2-18 = **280%** of FPG;
- parents; caretaker relatives; 19 and 20-year old children; and adults who are under 65, have no minor children, and are not disabled or on Medicare = **138%** of FPG; and
- disabled adults (certified by Social Security or SMRT) = **100%** of FPG.

MINN. STAT. §§ 256B.055, 256B.056, 256B.057, 256B.06; <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-3461A-ENG>, INSURANCE AFFORDABILITY PROGRAMS INCOME AND ASSET GUIDELINES, effective 7/1/19-6/30/20 (07/19).

- ⚙ **MA does not have asset limits for non-disabled adults, pregnant women, or children.** Asset limit for adults who are elderly or certified disabled is \$3,000 for household of 1 and \$6,000 for household of 2, plus \$200 for each dependent. MINN. STAT. § 256B.056.
- ⚙ Some applicants with income over eligibility limits may qualify for MA with “**spenddown**” if they incur expenses for medical care that are higher than amount of their excess income. Spenddown is like deductible that must be incurred (but not necessarily paid) before MA kicks in. MINN. STAT. § 256B.056, subd. 5. There is no spend-down for non-disabled adults without children. DHS MHCP § 2.2.3.6 (4/1/19), MEDICAL SPENDDOWN. Disabled adults with income over 100% FPG must “spend down” to 81% of FPG (100% beginning 7/1/22) to qualify. MINN. STAT. § 256B.056, subd. 5c(b).
- ⚙ People with disabilities who have onerous spenddowns may qualify for **Medical Assistance for Employed Persons with Disabilities (MA-EPD)** and eliminate spenddown. **MA-EPD** is available to recipients of SSDI or those certified disabled by SMRT, if they are “employed” (earning more than \$65 per month in wages with FICA and Medicare tax withheld, or for which they file tax returns); have no more than \$20,000 in assets, excluding retirement accounts; and pay monthly premiums based on income. MINN. STAT. § 256B.057, subd. 9. Minimum premium is \$35. *Id.*
- ⚙ Most MA recipients must see providers within **managed care network**. MINN. STAT. § 256B.035; DHS MHCP § 1.6 (8/1/16), HEALTH CARE DELIVERY.
- ⚙ Recipients may be placed on restricted choice of providers (**Minnesota Restricted Recipient Program [MRRP]** and health plan equivalents) for perceived abuse of system. Drug-seeking behaviors are especially scrutinized, as is overuse of emergency room for non-emergent ailments. MINN. R. § 9505.2165, subp. 10b.
- ⚙ MA benefits can be **retroactive up to 3 months** before date of application, *if* eligibility criteria can be met for those months. MINN. STAT. § 256B.061; MINN. R. § 9505.0110.
- ⚙ “**Prior authorization**” is required for certain services and procedures, such as many dental services, back surgery, home care services, etc. Standards for approval are **medical necessity** and **cost-effectiveness**. MINN. STAT. § 256.991; MINN. R. §§ 9505.5010, 9505.5030.
- ⚙ Recipients have small **co-pays** for office visits and most medications. Anti-psychotic medications are exempted. MINN. STAT. § 256B.0631. American Indians enrolled in federally-recognized tribes are exempt from co-pays and deductibles. Cost-sharing for all MA recipients is capped at 5% of family’s income. *Id.*, subds. 2, 3.
- ⚙ Federal MA eligibility factors for noncitizens include immigration status, sponsor-deeming, and 5-

year bar on receipt of federal benefits.²³ MA no longer has state-funded component, except in program offering services from a **center for victims of torture (CVT)** (including St. Thomas University interprofessional center). 8 U.S.C. §§ 1613, 1631 - 1632; MINN. STAT. § 256B.06, subds. 4 - 5.

- ⚙ Noncitizens receiving care from a **CVT** are eligible for state-funded MA when receiving CVT services, regardless of immigration status, MA basis of eligibility, income, or assets. 42 U.S.C. §§ 1397aa *et seq.*; MINN. STAT. § 256B.06, subd. 4(j); DHS MHCP §§ 2.5.2 (6/1/16), MEDICAL ASSISTANCE FOR PEOPLE RECEIVING SERVICES AT THE CENTER FOR VICTIMS OF TORTURE; 2.5.2.2 (6/1/16), MA-CVT NON-FINANCIAL ELIGIBILITY; 2.5.2.2.1 (6/1/18), MA-CVT BASES OF ELIGIBILITY; and 2.5.2.3 (6/1/16), MA-CVT FINANCIAL ELIGIBILITY.
- ⚙ Sponsor-deeming and 5-year bar **do not apply** to lawfully-admitted noncitizen **children and pregnant women** who otherwise would be eligible for MA. Their MA benefits are funded by **Children’s Health Insurance Program (CHIP)**. 42 U.S.C. §§ 1397aa *et seq.*
- ⚙ MA applicants must **cooperate with medical child support** enforcement efforts. Failure to cooperate results in loss of benefits for adults. MINN. STAT. § 256B.056, subd. 6. Limited “good cause” exceptions for non-cooperation exist, as in MFIP, for cases where pursuit of child support could be expected to cause harm to parent or child. MINN. STAT. § 256.741, subds. 10 - 11, 13.
- ⚙ MA statutes and rules address many complex issues relating to eligibility for, and coverage by, MA, including asset transfers and long-term care, waived programs, payment of Medicare premiums, and covered services. MINN. STAT. c. 256B, MINN. RULES c. 9505.
- ⚙ **Overpayments and fraud** are generally same as in MFIP. Waiver for overpayment recovery can exist in some circumstances. Where coverage is through managed care, overpayment is usually amount of monthly “capitation” paid to managed care. MINN. STAT. § 256.98; MINN. R. § 9505.0131.
- ⚙ **Appeal** rights are same as in MFIP, but recipients in managed care also have appeal and grievance rights through their health plans. DHS appeal period is **30 days**, or 90 days with showing of good cause for late appeal. MINN. R. § 9505.0130.
- ⚙ State managed care **ombudsman’s** office is good resource for help with managed care issues: 651-431-2660 or 800-657-3729; <https://mn.gov/dhs/people-we-serve/adults/health-care/health-care-programs/programs-and-services/ombudsman-for-managed-care.jsp>.

²³ Sponsor income is especially problematic for noncitizens subject to sponsor-deeming because MA **counts** sponsor income but MNCare **excludes** it. Some noncitizens subject to deeming were in untenable position of being over-income for MA due to inclusion of sponsor income, but under-income for MNCare because sponsor income is excluded. (For those “otherwise lawfully residing” in U.S., income generally has to be between 133% and 200% FPG for MNCare). To fix problem, Minnesota created “**safety net**” policy. Using MNCare income methodology, if projected annual income is below 100% FPG, applicants can get MA; if it is between 101% and 132% FPG, they can get MNCare. DHS MHCP § 2.2.3.3 (12/1/18), INCOME LIMIT: SAFETY NET PROVISION.

2. MNCare

What Is MNCare?

MinnesotaCare

MINN. STAT. c. 256L; MINN. R. c. 9506

- **MNCare** provides health care for low-income Minnesotans **ineligible for MA** because income is too high, categorical MA eligibility can't be established, or immigration status precludes eligibility. MINN. STAT. § 256L.02, subd. 1; MINN. R. § 9506.0020, subp. 1.
- MNCare is administered by state. It is Basic Health Plan Option (BHP) under Affordable Care Act (ACA). MINN. STAT. § 256L.02, subd. 5.
- To be eligible, families or individuals cannot have employer-subsidized or other health coverage considered “minimum essential coverage.” Employer-subsidized “minimum essential coverage” must be affordable and provide “minimum value” as defined in 26 C.F.R. § 1.36B-2.²⁴ MINN. STAT. § 256L.07, subds. 2, 3(a). *See also* 26 U.S.C. § 5000A.
- **Income limits** are **200%** of FPG across board. MNCare, like MA, uses MAGI to determine financial eligibility. As practical matter, MNCare is available to:
 - adults with income **between 133% and 200%** FPG, and
 - children and adults with income below **200%** FPG who are ineligible for MA due to immigration status.

MINN. STAT. §§ 256L.01, subd. 5; 256L.04, subds. 1, 7, 10.
- MNCare **does not have asset limits**. MINN. STAT. § 256L.17, subds. 1 – 5 (repealed 2013).
- MNCare is more **limited in coverage** than MA. Most home-based care is excluded. MINN. STAT. § 256L.03, subd. 1. MNCare does cover inpatient hospitalization, inpatient mental health care, and CD services. MINN. STAT. § 256L.03, subds. 1, 3(a).
- State **residency** requirements are same as in MA. 42 C.F.R. § 435.403; MINN. STAT. § 256L.09, subd. 2.
- Recipients, except for youth under 21, must pay monthly **premiums** based on income. **Copayments** are required, but not for minor children. MINN. STAT. §§ 256L.15, subd. 2; 256L.03, subds. 1a, 5; 256L.06, subd. 3; MINN. R. § 9506.0040. American Indians enrolled in federally-recognized tribes are exempt from co-pay and deductible requirements. MINN. STAT. § 256L.03, subd. 5(a).
- MNCare applications are through MNSure website, which usually requires trained navigator to access.
- MNCare coverage is **not retroactive**. It starts after eligibility decision has been made and first premium payment has been received by state. MINN. STAT. § 256L.05, subd. 3; MINN. R. § 9506.0030, subp. 4.

²⁴ “Minimum essential health coverage” includes **Medicare**. MINN. STAT. § 256L.07, subd. 3(b).

DHS has 45 days to determine eligibility. MINN. STAT. § 256L.05, subd. 4.

- All MNCare coverage is provided through **managed care** companies. MINN. STAT. § 256L.12.
- **Noncitizens** are eligible for MNCare if they meet income guidelines and are lawfully present in U.S., ineligible for MA due to immigration status, and not on Medicare. Sponsor income is **not deemed**. MINN. STAT. § 256L.04, subd. 10.²⁵
- **Overpayments** and **fraud** are dealt with as they are in MA. Overpayment amount is typically what state paid to managed care for months at issue (capitation rate). MINN. STAT. §§ 256.98, 256L.18.
- **Appeal** rights are same as in MA. MINN. STAT. § 256L.10; MINN. R. § 9506.0070.

3. EMA

What Is EMA?

Emergency Medical Assistance

42 U.S.C. § 1396b(v); 8 U.S.C. § 1369; 42 C.F.R. § 440.255; MINN. STAT. § 256B.06, subd. 4(f) – (i), (k) - (l)

- **EMA** is federally- and state-funded health care program administered by state and county welfare departments providing coverage for care and services to treat “**emergency medical condition**” primarily for noncitizens ineligible for MA or MNCare due to immigration status. MINN. STAT. §256B.06, subd. 4(f).
- **Emergency medical services** are services required for medical conditions with acute symptoms of such severity (including severe pain) that absence of immediate medical attention could reasonably be expected to result in:
 - placement of patient’s **health in serious jeopardy**,
 - serious **impairment to bodily functions**, or
 - serious **dysfunction of any bodily organ or part**.²⁶

42 U.S.C. § 1396b(v)(3); 8 U.S.C. § 1369(d); 42 C.F.R. § 440.255(c).

- EMA is available only for **emergent medical needs**. It covers only services delivered in emergency room or ambulance, on in-patient basis at hospital, or for follow-up if “directly related” to original services provided. Exceptions exist for some care and treatment provided in other settings without which person’s “cardiovascular or respiratory” condition would be jeopardized within 48 hours. EMA coverage also includes kidney dialysis and some cancer treatments (surgery,

chemotherapy, radiation therapy).²⁷ MINN. STAT. § 256B.06, subds. 4(f) - (k).

²⁵ Noncitizens with **DACA** (Deferred Action for Childhood Arrivals) status became eligible for MNCare on 1/1/17. DHS MHCP § 3.2.1.2 (6/1/19), **LAWFUL PRESENCE AND DACA**.

²⁶ Federal regulation includes phrase “sudden onset,” which is not in federal statute. 42 C.F.R. § 440.255(c)(1).

- Pregnant women who are **undocumented**, have expired documents, or are non-immigrants **are eligible** for prenatal care, childbirth, and 2 months of post-partum care funded by **CHIP**. 8 U.S.C. §§ 1613, 1631 - 1632; 42 U.S.C. §§ 1397aa *et seq.*; MINN. STAT. § 256B.06, subs. 4(i), 5. EMA coverage for labor and delivery is available to certain pregnant women who are not lawfully present and are ineligible for CHIP-funded MA because they have other health coverage or excess income. DHS MHCP § 2.5.3.2 (12/22/16), EMA NON-FINANCIAL ELIGIBILITY.
- **State residency** requirements, **retroactivity**, **overpayments**, **fraud**, and **appeal rights** are same as in MA, although there is no health plan involvement in EMA and thus no appeal right through managed care.

VI. CCAP

1. MFIP CHILD CARE

What Is MFIP Child Care?

MFIP Child Care

MINN. STAT. § 119B.05; MINN. R. C 3400

- ❖ **MFIP Child Care** provides **child care subsidy** to MFIP, DWP, FSS, “transition year,” and “transition year extension” families. It is administered by county welfare departments or contracting agencies. MINN. STAT. § 119B.05. Applications for child care must be approved or denied within 30 calendar days of receipt. MINN. R. § 3400.0035, subp. 2(C).
- ❖ MFIP Child Care is available to MFIP, DWP, and FSS participants who are **employed**, attending **employment orientation or job search**, in **job support or training activities**, or in other activities included in employment or family stabilization plan. MINN. STAT. § 119B.05, subd. 1.
- ❖ MFIP Child Care is also available to “**transition year**” families that have received MFIP assistance for at least 3 of last 6 months before losing MFIP eligibility,²⁸ and to **transition year “extension”** families that have used up transition year and are on wait list for BSF child care. MINN. STAT. § 119B.05, subd. 1. *See also* MINN. STAT. § 119B.011, subs. 20, 20a.
- ❖ Financial eligibility is same as for MFIP, DWP, or FSS for participants of those programs. For transition benefits, financial criteria are same as for BSF child care. MINN. STAT. §§ 119B.03, 119B.05, 119B.09.
- ❖ So long as household’s income is at or below 67% of State Median Income (SMI), **income from new spouse** is **exempt** from household income determinations for **1 year** beginning month after month of marriage. Provision does not apply to transition year or transition year extension

²⁷ Under current statutory EMA scheme, noncitizens with emergent medical needs may receive piecemeal health care -- getting EMA, for example, to treat colon cancer, but forgoing coverage for chronic conditions such as diabetes or depression.

²⁸ Beginning 3/23/20, the definition of “transition year families” will include families receiving MFIP or DWP for at least **1** of the last 6 months before losing eligibility. Laws 2019, 1st Spec. Sess., c. 9, art. 1, §3, amending MINN. STAT. 119B.011, subd. 20.

households. MINN. STAT. § 256P.06, subd. 2. See DHS Bulletin #18-69-02 (11/16/18), NEW SPOUSE INCOME POLICY FOR CASH AND CHILD CARE ASSISTANCE PROGRAMS; DHS CCAP § 6.63 (04/2019), NEW SPOUSE INCOME POLICY; DHS CM §22.11 (06/2019), NEW SPOUSE INCOME.

- ❖ All recipients with incomes at or above 75% FPG are required to make **copayments**, which are based on income. Copayments may be as low as \$2. MINN. STAT. § 119B.12.
- ❖ Eligibility is now determined every 12 months. This means that so long as SMI remains under 85% FPG, copays will not increase until household's annual redetermination, even if household income increases. MINN. STAT. § 119B.025, Subd. 4. Some households need to report more frequently based on changes in work or education schedule, household configuration, etc.
- ❖ Eligibility is **retroactive** to later of date application was received by county; beginning of employment, education, or training; or determination that applicant is participating in employment and training services. MINN. STAT. § 119B.09, subd. 7.
- ❖ **State residency** and **immigration** requirements are same as in MFIP.
- ❖ Recipients must be **in required activities** certain number of hours per week. Child care is available for **school** if school is included in employment plan. Recipients can get child care for up to 240 hours of job search activities per year. MINN. STAT. §§ 119B.011, subds. 20, 20a; 119B.05; 119B.10. Beginning 9/21/20, applicants who are **homeless** are eligible for 60 hours of child care assistance per service period for 3 months and are exempt from activity participation requirements during that period. Additional hours may be authorized as needed. Laws 2019, Spec. Sess. 1, c. 9, art. 1, § 10, amending MINN. STAT. § 119B.09 by adding subd. 3.
- ❖ MFIP Child Care has fixed rules about amount of commuting time covered and payments for absent days. In 2-parent households, both parents need to be in authorized activities, or 1 parent has to document inability to care for child(ren). MINN. STAT. §§ 119B.05, 119B.10.
- ❖ **Overpayments** and **fraud** are dealt with as they are in MFIP, except there are no agency error overpayment waivers. Outstanding overpayments and copay debts must be paid in full, or payment arrangement must be made, before former recipients can again receive MFIP Child Care. For participants, overpayments are repaid through increase in copay. MINN. STAT. § 119B.11, subd. 2a.
- ❖ **Appeal rights** are same as in MFIP. MINN. STAT. § 119B.16.

2. BSF CHILD CARE

What Is BSF Child Care?

Basic Sliding Fee Child Care

MINN. STAT. § 119B.03; MINN. R. C 3400

- **BSF** provides **child-care subsidy** to households **not eligible** for MFIP, DWP, FSS, or transitional MFIP child care assistance. BSF receives federal and state funding and is administered by county welfare departments or contracting agencies. MINN. STAT. § 119B.03. Applications must be approved or denied within 30 days of receipt. MINN. R. §3400.0035, subp. 2(C).

- BSF funds are allocated to counties by state pursuant to statutory formula. Counties may have waiting lists for BSF benefits, some of which may be long.
- Household **income** must not exceed 47% of SMI at program entry and 67% of SMI at redetermination (12 months later). Program exit is 85% of SMI. MINN. STAT. § 119B.09, subd. 1; CCAP § 6.3 (10/2017), INCOME LIMITS.
- Eligibility is now determined annually rather than every 6 months. Copays between periods of redetermination will not increase even if household income increases, unless income exceeds 85% SMI. Minn. Stat. 119B.025, subd. 4. Some households need to report more frequently based on changes in work or education schedule, household configuration, etc.
- BSF pays portion of child care costs based on **sliding fee** scale. MINN. STAT. §§ 119B.03, 119B.09, 119B.12.
- Eligibility is based on **immigration status** of **child** rather than that of parent; children residing lawfully in U.S. are eligible without regard to parents' immigration status. Sponsor income does not affect eligibility. DHS CCAP § 4.15 (10/2018), CITIZENSHIP AND IMMIGRATION STATUS.
- Recipients **work** certain number of hours per week to qualify for BSF. As with MFIP Child Care, recipients can engage in up to 240 hours of annual job search activities. BSF can be used for education. MINN. STAT. § 119B.10.
- Recipients must **cooperate with child support** enforcement at application and redetermination times, but not necessarily in between. MINN. STAT. § 119B.09, subd. 1.
- **State residency** requirements are same as in MFIP. **Retroactivity, overpayments, fraud, and appeal rights** are same as in MFIP Child Care.

VII. ADDITIONAL IMMIGRATION CONSIDERATIONS

Most need-based benefits are available only to noncitizens lawfully and permanently in U.S.

Noncitizens without authorization or with expired documents, and non-immigrants (visitors, students, temporary workers), are ineligible for most benefits. *See, e.g.,* 8 U.S.C. § 1641(b) - (c); MINN. STAT. §§ 256B.06, subd. 4 (MA); 256D.05, subd. 8 (GA); 256J.11 (MFIP); 256L.04, subd. 10 (MNCare). An exception is EMA.

Eligibility for 100% federal benefits (SSI, SNAP, MA) will depend on variety of factors, including date LPR status was attained, immigration category, and applicability of “sponsor-deeming.”

8 U.S.C. §§ 1611 - 13. *See also* 7 U.S.C. §§ 2014(i), 2015(f) (SNAP); 42 U.S.C. §§ 1382c, 1382j (SSI); 42 U.S.C. § 1396b(v) (MA).

There is 5-year bar (waiting period) for federal benefits for some noncitizens.

- Bar is **waiting period** during which newly arrived (or newly-adjusted-to-LPR) noncitizens are not eligible for federally-funded benefits, including **SSI, SNAP, MA, and MFIP**. 8 U.S.C. § 1613. Minnesota has full state-funded option for MFIP and limited state option for food support (*see* MFAP section); it has none for MA unless recipients are receiving services from CVT.

- In spite of bar, certain categories of noncitizens can get **SNAP** benefits **without having to wait 5 years**: those certified disabled by SSA or SMRT, children, elderly immigrants who were 65 or older on 8/22/96, and noncitizens from highlands of Laos. 7 U.S.C. § 2012(j); 8 U.S.C. §§ 1612 - 13. Bar does **not apply** to **refugees, asylees, U.S. veterans**, or active duty armed forces personnel or their spouses and minor dependents. 8 U.S.C. § 1613.
- Unfortunately, bar **does** apply to noncitizens granted “**battered immigrant**” status. 8 U.S.C. § 1613.

Most noncitizens applying for state-funded assistance (GA, Housing Support, MFAP, and state-funded MFIP) must take “steps” toward citizenship.

- “Steps” include taking citizenship, literacy, or ESL classes, or being on wait list for ESL or literacy classes. Having application on file for citizenship and awaiting testing or swearing-in date, applying for language or civics waivers, twice failing citizenship test, or being unable to understand rights and responsibilities of citizenship are also “steps.”
- Noncitizens don’t have to take steps if they have legally resided in U.S. fewer than 4 years; are at least 70; or live in Housing Support (GRH), nursing home, or similar type of facility.

MINN. STAT. §§ 256D.05, subd. 8(b); 256J.11, subd. 3; DHS CM §§ 11.03.24 (08/2019), NON-CITIZENS –LAWFULLY RESIDING PEOPLE; 11.03.03 (08/2019), NON-CITIZENS – MFIP/DWP CASH; DHS MHCP APPENDIX H (6/1/17), LAWFULLY PRESENT NONCITIZENS.

Sponsor-deeming makes many noncitizens ineligible for host of benefits.

- Sponsor-deeming is artificial **attribution of income** from sponsor to noncitizen.
- For most programs, deeming applies only to noncitizens who are: **family-based**, having come to U.S. through petition filed by immediate relative (most common method of U.S. immigration); in U.S. to work in business owned by family member; or **adjusting to LPR** status through family-based petition.
- Deeming does **not apply** to refugees, asylees, Cuban/Haitian entrants, recipients of T- or Diversity Visas, or immigrants with Temporary Protected Status (TPS).
- Generally, **100%** of income and assets of sponsor **and** sponsor’s spouse are attributed to immigrant without regard to actual availability. Burden is on immigrant to prove decline in sponsor’s income. Deeming is less extreme in SNAP context.
- Deeming lasts **until** immigrant becomes U.S. citizen or works 10 years (or gets credited with 40 work quarters) at FICA-covered work, or until sponsor dies. Divorce from sponsor or relative of sponsor usually has no effect on deeming.
- There are two **12-month exceptions** to deeming of sponsor income:
 - Indigence: Sponsor income won’t count if welfare agency determines that, due to sponsor’s failure to provide support, immigrant is without food and shelter.

- **Battered immigrant:** Sponsor income won't count if immigrant (or child) has been battered or subjected to extreme cruelty by immigrant's spouse or parent or person living in household. Immigrant must no longer live with batterer, and battery or cruelty must be "substantially connected" to need for benefits.

Deeming applies to:

- **cash programs:** SSI, MSA, GA, GRH, MFIP, DWP, FSS.
- **food programs:** SNAP (but not for children), MFAP.
- **health care:** MA (but not for pregnant women or children).

Deeming does not apply to:

- **non-need-based cash programs:** SSDI, UI
- **food benefit:** SNAP for children, WIC (Women, Infants and Children), School Breakfast/School Lunch
- **health programs:** MNCare, Medicare, EMA, CHIP and MA for pregnant women or children.

7 U.S.C. § 2014(i); 8 U.S.C. §§ 1183a, 1631 - 1632; 42 U.S.C. § 608(f); 8 C.F.R. § 213a.2; MINN. STAT. §§ 256B.06, subd. 5 (MA); 256D.05, subd. 8(a) (GA); 256J.37, subd. 2 (MFIP).

"Public charge" rule may have chilling effect on noncitizens' receipt of public benefits.

- Federal government published **public charge rule** on 8/14/19 that was scheduled to take effect 10/15/19. On 10/11/19, courts in several states **enjoined government from enforcing new rule**.
- If rule takes effect, it will affect **adjustment to LPR** status for some noncitizens and **admissibility** of other noncitizens to U.S.
- Rule will **broaden** types of public benefits considered in public charge determination beyond cash programs to include SNAP, MA (with some exceptions), and public and Section 8 housing.
- This Public charge Rule will **not affect naturalization** or provide for **deportation**. Primary impact is on ability to immigrate or adjust.
- Rule will not be retroactive and does not require scrutiny of benefits received by anyone other than person seeking admission or adjustment.
- Stay tuned on this subject.....