



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney *CMS*  
DATE: July 7, 2021  
RE: Oneida General Welfare Law: Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?

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### ***Background***

The purpose of the Oneida General Welfare law is to set forth a framework and provide guidelines for the Nation to establish and operate approved programs to provide assistance on a non-taxable basis to eligible members of the Nation which promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment.

Approved programs must be adopted by the Oneida Business Committee through either law or resolution of the Nation, and provide the specific eligibility rules and limitations applied to that program. Examples of approved programs adopted by the Nation include the Pandemic Relief Assistance Program, Oneida Higher Education Pandemic Relief Fund, and the Oneida Nation Assistance Fund. Any assistance received from an approved program under the Oneida General Welfare law is required to be used only for the purpose stated in the approved program description. Currently, the Oneida General Welfare law provides that assistance received by a person from an approved program is not subject to attachment or garnishment by creditors. Assistance received by a person from an approved program is not a per capita payment or income. Assistance provided through approved programs is not attached or garnished for debt or child support owed due to the fact that any assistance provided through an approved program is provided on a needs-based basis for the purpose of promoting the general welfare of the individual and the Nation.

On May 5, 2021, the Legislative Operating Committee directed that a public comment period be held open until June 9, 2021, to allow for the community to provide input as to the following question: Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?

### ***Comments Received***

The Legislative Operating Committee received the following comments regarding this question:

#### ***Comment 1 – Lisa Liggins:***

Garnishment or attachment of General Welfare Payments are against public policy. The purpose of General Welfare Payments, as identified in the notice, are payments “which promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment.”

A member receiving this payment is receiving public support necessary to improve their health, housing, safety through educational benefits to improve employment opportunities, assistance in making utility payments to maintain healthy living conditions, day care assistance so a parent can find and be employed for wages to support a family, assistance in starting up a business that provides income and wages for owners and employees and benefits the Reservation economy.

To attach or garnish a benefit provided to a person in need simply drives up the cost of the benefit to the Nation, or provides a disincentive for a member to improve his or her life after which they can pay debt or child support, etc. The opportunity to take advantage of General Welfare Payments is a positive impact on families and children, as well as the individual obtaining the support. It is not immediate, but long term impacts are equally important in providing self-sustaining member lifestyles and reducing government programming needs overall.

In short, a garnishment or attachment is a one-time action and is not repeatable. It accomplishes two negative goals. First, it removes benefits from a member intended to provide improvements to their lives which allows them to be responsible for their debt or child support payments, etc. Second, it drives two families further into governmental support services – the member who would have received the benefit to improve their lives, and the member who would have received full debt relief or full support payments owed.

*Comment 2 – Raeann Skenandore:*

In response to the question: Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?

Other than where an attachment would benefit the needs of children, a general welfare distribution attached for debts owed to the Nation. Wages can be garnished for debts owed, but a “per capita” distribution should not be used or considered a source of payment for debts owed.

In the scenario where a general welfare distribution payment to a member who owes a debt, both the individual debtor and the Nation Entity often see those distributions as a means to collect the debt. It is already happening. A individual will know or expect to receive a payment. They stop taking personal responsibility for their expenses and allow the debt to grow knowing that the general welfare of per capita payment will cover it. I’ve seen departments also hold off on sending invoices to individuals in the pandemic because the per capita distribution was eliminated. They will wait until a payment distribution is announced before resuming collection activity. That type of mentality is detrimental and promotes the idea of government dependency instead of personal accountability. If I owe a debt, I need to pay it or make arrangements to pay. I shouldn’t wait for a payment distribution to cover it for me. Further, I don’t believe that tribal debt is reported to general collection agencies either. Even that effort may deter individuals from accumulating debt to the Nation. There is no mechanism in place to hold individuals accountable financially when it comes to purchasing tribal goods or services.

*Comment 3 – Jolene Hensberger:*

Hello – thank you for requesting community input on the General Welfare law and whether programs under it should be subject to garnishment or attachment. With the information provided, my input is to not have any programs under the general welfare assistance be subject to attachments or garnishments. The main reason for my response, per the information, is that the welfare assistance programs are not considered income. From my understanding, a writ of attachment or garnishment is to stop or withhold income or earnings; therefore, they should not be considered subject to garnishments or attachments. Thank you!

*Comment 4 – Legal Resource Center (Gerald Hill, Tsyolake House, Wes Martin):*

The General Tribal Council-Legal Resource Center (GTC LRC) has been established by the Oneida General Tribal Council (OGTC) pursuant to Resolution BC Resolution #05-24-17 A Legal Resource Center Emergency Law and adopted BC Resolution# 09-13-171 Legal Resource Center for the purpose of assisting Oneida Tribal Members and Employees to address matters arising out of Oneida Nation laws and policies, and which can be addressed in the courts of the Oneida Nation Judiciary. As officials elected by the OGTC this office is obliged to represent, as best we can, the general concerns of the people who elected us. The membership of the Nation will be those most affected by these proposed laws and thus should have the most opportunity to review and comment on them.

It is in that capacity we wish to make some cursory comments on the two proposed laws named above.

#### ONEIDA GENERAL WELFARE LAW

The Garnishment and Attachment provisions of this law are too stringent to be considered as benefitting the most vulnerable segment of the Nation's membership. For example, consider the likely following outcomes

1. Anymore attachment of Garnishment of any kind right now would be not advisable. Many of the Oneida Membership have been financially devastated by COVID-19, loss of income, behind in bills, rent. This Law should be put on hold for at least two (2) years.
2. If the law should move forward, Garnishment should be on income only, not SS, SSI, Veteran Pension, etc.
3. Tribal Garnishment should not include any grants, subsidized money forms the Oneida Nation.
4. Any foreign Garnishment must be refiled in the Oneida Judiciary and signed by the Oneida Judiciary Judge.
5. Any Garnishment needs to go through the Oneida Judiciary, except debts to the Oneida Nation from Per Capita.
6. Any funds to be Garnished at Bay Bank must be approved by the Oneida Judiciary Court Order.

#### CONCLUSION

For the reasons stated above it is recommended that the LOC delay further processing of these proposed laws until such time as the OBC can formally present them, in their totality, to the duly assembled OGTC.

*Review and Determination by the Legislative Operating Committee*

On June 24, 2021, the Legislative Operating Committee held a work meeting to review and consider the comments that were received from members of the community regarding the question: Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?

The Legislative Operating Committee determined that the Oneida General Welfare law should remain as currently drafted and provide that assistance received by a person from an approved program is not subject to attachment or garnishment by creditors.