



INTERIOR BOARD OF INDIAN APPEALS

Garrett Connovichnah v. Anadarko Area Director, Bureau of Indian Affairs

9 IBIA 179 (02/19/1982)

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

GARRETT CONNOVICHNAH

v.

ACTING AREA DIRECTOR, ANADARKO AREA OFFICE,

BUREAU OF INDIAN AFFAIRS

IBIA 81-25-A

Decided February 19, 1982

Appeal of a denial of a request for disbursement of all funds held in the appellant's Individual Indian Money account.

Affirmed.

1. Indians: Fiscal and Financial Affairs--Indians: Indian Money Accounts

Under 25 CFR 104.9 the Bureau of Indian Affairs can require the holder of an Individual Indian Money account to submit a plan for disbursement of funds in the account upon a finding that the person, even though under no legal disability, needs assistance in managing his or her financial affairs.

2. Bureau of Indian Affairs: Administrative Appeals: Acts of Agents of the United States--Indians: Indian Money Accounts

When a plan for disbursement of funds in an Individual Indian Money account has been approved, under 25 CFR 104.9 the Bureau of Indian Affairs is obligated to

disburse funds in accordance with the provisions of that plan. The denial of a request to release all funds in violation of an approved plan is, therefore, neither arbitrary, capricious, nor an abuse of discretion.

3. Constitutional Law: Generally--Regulations: Generally

The Boards of Appeals of the Department of the Interior do not have the authority to declare duly promulgated Departmental regulations invalid or unconstitutional.

4. Indians: Fiscal and Financial Affairs--Indians: Indian Money Accounts

An argument addressing the adequacy of an existing approved plan under 25 CFR 104.9 is properly raised to the appropriate officials of the Bureau of Indian Affairs in seeking a modification of the approved plan.

APPEARANCES: Amos E. Black III, Esq., for appellant Garrett Connovichnah. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Garrett Connovichnah (appellant) seeks review of a November 17, 1980, decision of the Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs (BIA), denying his request for disbursement of the balance of funds in his Individual Indian Money (IIM) account. This appeal was referred to the Board of Indian Appeals on April 23, 1981, by the Acting Deputy Commissioner of Indian Affairs pursuant to 25 CFR 2.19(b). For the reasons discussed below, the Board affirms the Acting Area Director's decision.

Background

Appellant is a legally blind Comanche Indian who has intermittently received blind disability assistance since about 1944. He has lived in his house with a sister and her family most of his life. Appellant owns interests in certain trust properties and has an IIM account into which, at different times, funds from grazing and oil and gas leases and from the sale of trust lands have been deposited. The administrative record reveals that throughout the years the welfare division of the Anadarko Area Office has assisted appellant in handling the funds in his IIM account, primarily because appellant appears to be very generous with his money and has repeatedly paid expenses for other family members, sometimes borrowing extensively when he did not have cash. A letter dated July 20, 1955, to appellant from a BIA social worker explains that, because appellant was receiving either state or BIA welfare assistance, the BIA's policy was to assist him in budgeting the funds in his IIM account in order "to help [him] * * * to live free of any indebtedness, live within his own income and earnings from employment and to have cash to satisfy his wants and desires each month when possible." In accordance with this policy, appellant had worked out budget plans several times with the BIA.

In 1978, the BIA agreed to a sale of certain of appellant's trust holdings only after he had submitted a budget stating how the funds would be used. Thus, when \$71,910 was deposited into his IIM account after the July 19, 1979, land sale, appellant had agreed that \$50,000

would be set aside and budgeted to him at the rate of \$350 per month. This monthly figure was raised to \$400, effective January 1, 1980.

On September 22, 1980, after receiving a request from appellant that all funds in his IIM account be released to him, the Anadarko Agency Superintendent denied the request on the grounds that appellant had agreed to budgeting as a condition of the sale. Appellant appealed this decision. On November 17, 1980, the Acting Area Director for the Anadarko Area Office affirmed the denial. Appellant's appeal of this decision, sent to the Secretary of the Interior, was referred to the Commissioner of Indian Affairs. On April 23, 1981, the appeal was transferred to the Board pursuant to 25 CFR 2.19(b). Although a briefing time was given, appellant did not file a brief in support of his appeal.

Discussion, Findings, and Conclusions

The regulations governing IIM accounts are found in 25 CFR Part 104. Section 104.3 states that, "[e]xcept as otherwise provided in this part, adults shall have the right to withdraw funds from their accounts." Section 104.9 sets forth certain restrictions on this right:

Funds derived from the sale of capital assets which by agreement approved prior to such sale by the Secretary or his authorized representative are to be expended for specific purposes, * * * shall be disbursed only in accordance with the agreements (including any subsequently approved modifications thereof) * * *. The funds of an adult whom the Secretary or his authorized representative finds to be in need of assistance in managing his affairs, even though such adult is not non compos mentis or under

other legal disability, may be disbursed to the adult, within his best interest, under approved plans. Such finding and the basis for such finding shall be recorded and filed with the records of the account.

As expressed in the 1955 letter on budgeting sent to appellant, these regulations are intended to help the individual to live within his or her means as long as possible. Primarily they are intended to prevent brief periods of extravagance when lease rentals or land sale funds are deposited into the account followed by extended periods of need for financial assistance. It is not intended, and the Board has no reason to believe that it is ever used, to deprive an individual of access to his or her money, whether for daily needs or unexpected emergencies.

[1] Appellant raises four arguments in his notice of appeal why BIA's refusal to disburse all of the funds in his IIM account should be reversed. One argument is that he is mentally and physically competent and capable of handling his own affairs. The BIA made a finding, documented in the administrative record, that appellant needed assistance in managing his finances because he allowed family members to impose on his generosity and consequently was frequently in need of public financial assistance. Section 104.9, unlike section 104.5 which deals specifically with the handling of the IIM accounts of adults under legal disabilities, requires only a finding that an adult, otherwise competent, needs assistance in managing his or her finances. The BIA's finding in this case is supported by the record and is sufficient under 25 CFR 104.9 to disburse appellant's funds only in accordance with his approved budget, or with any approved modifications of that budget.

[2] A second argument is that the refusal to disburse all of the funds in appellant's IIM account is arbitrary, capricious, and an abuse of discretion. Under section 104.9, BIA is obligated to disburse the funds in appellant's IIM account in accordance with the approved budget and any subsequent modifications. The denial was based on properly promulgated regulations and, therefore, is neither arbitrary, capricious, nor an abuse of discretion.

[3] A third argument raised is that the withholding of these funds is a violation of rights guaranteed under the Oklahoma and United States Constitutions. This argument apparently alleges that 25 CFR 104.9, the authority under which disbursement was denied, is unconstitutional. The Boards of Appeals of the Department of the Interior do not have the authority to declare duly promulgated Departmental regulations invalid or unconstitutional. See, e.g., Amanda Coal Co., 2 IBSMA 395, 87 I.D. 643 (1980); Colorado-Ute Electric Association, Inc., 46 IBLA 35 (1980).

[4] Finally, appellant argues that he "does not desire to have his money budgeted to him in the form of four hundred dollars (\$400.00) monthly for the reason the same is totally inadequate to support himself and his family." This argument, which questions the adequacy of the existing budget, is properly presented to the appropriate division of the Anadarko Agency in an attempt to revise appellant's approved budget. Appellant has previously sought and obtained one modification to the monthly budget. It is possible that changes occurring since

that modification necessitate further review of appellant's circumstances and financial needs. The alleged inadequacy of the amount budgeted monthly, however, does not invalidate the approved budget.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the November 17, 1980, decision of the Acting Area Director, Anadarko Area Office, is affirmed. This decision in no way limits appellant's right to seek a modification of his monthly budget.

This decision is final for the Department.

//original signed
Franklin D. Arness
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge