



INTERIOR BOARD OF INDIAN APPEALS

Muscogee (Creek) Nation v. Muskogee Area Director, Bureau of Indian Affairs

18 IBIA 135 (02/01/1990)



# United States Department of the Interior

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

MUSCOGEE (CREEK) NATION

v.

ACTING MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-65-A

Decided February 1, 1990

Appeal from a decision of the Acting Muskogee Area Director concerning a requested use of miscellaneous assistance funds under an Indian Self-Determination Act contract for a social services program.

Vacated and remanded.

1. Contracts: Indian Self-Determination and Education Assistance Act: Regulations--Indians: Social Services

In accordance with 25 CFR 271.4(h), a tribal contractor under the Indian Self-Determination Act, 25 U.S.C. §§ 450-450(n) (1982 and Supps.), must apply the eligibility criteria for the contracted program which are established in the Bureau of Indian Affairs' regulations governing the program.

2. Contracts: Indian Self-Determination and Education Assistance Act: Regulations--Indians: Social Services

Under the Bureau of Indian Affairs' social services program regulations, the eligibility criteria for miscellaneous assistance in 25 CFR 20.23 do not incorporate the eligibility criteria for general assistance in 25 CFR 20.21.

APPEARANCES: Hazel E. Elbert, Deputy to the Assistant Secretary - Indian Affairs (Tribal Services), for appellee.

## OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Muskogee (Creek) Nation challenges a March 13, 1989, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning appellant's request to use miscellaneous assistance funds for "exceptional cases" under its Indian Self-Determination Act (P.L. 93-638) 1/ contract for a social services program. For the reasons

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1/ 25 U.S.C. §§ 450-450n (1982 and Supps.).

discussed below, the Board vacates that decision and remands this case for further proceedings.

### Background

Appellant operates a social services program pursuant to a contract awarded under P.L. 93-638 (Contract No. G07C14208061), covering the period October 1, 1987, through September 30, 1990. By letter of February 21, 1989, appellant requested that \$60,000 in funds allocated to "general assistance" under its program be transferred to "miscellaneous assistance." <sup>2/</sup> Apparently, prior to this request, appellant's Principal Chief had discussed the matter at a meeting with Area Office personnel, at which he had described certain "exceptional cases" for which appellant proposed to use miscellaneous assistance funds.

By letter of March 13, 1989, the Area Director denied appellant's request to use miscellaneous assistance funds for "exceptional cases," although he stated that he was recommending approval of a transfer of \$48,000 in funds from general assistance to miscellaneous assistance, apparently to be used to provide funds for burials. He enclosed a copy of a draft revision of 25 CFR 20.23, concerning miscellaneous assistance, noting that, under the draft, "disaster and emergency assistance is defined and limited as, 'resulting from fire, flood or acts of nature only.'" (Emphasis in original.) He further stated: "According to the Solicitor, Central Office, these are the only instances when [miscellaneous assistance] funds, other than for burials, can be expended. No regulations exist to give 'exceptions' on any level. We caution you not to expend [miscellaneous assistance] funds for purposes other than stated."

Appellant filed a notice of appeal with the Area Director. By letter of April 18, 1989, the Area Director informed appellant about new appeal regulations for BIA and the Board, which became effective on March 13, 1989. See 54 FR 6478 and 6483 (Feb. 10, 1989). Appellant then filed a combined notice of appeal and statement of reasons with the Board. A response was filed by the Washington, D.C., office of BIA.

### Discussion and Conclusions

BIA's financial assistance and social services program is governed by regulations at 25 CFR Part 20. Four specific programs are included: general assistance, child welfare assistance, miscellaneous assistance, and family and community services.

"Miscellaneous assistance" is defined at 25 CFR 20.1(q) as "a financial payment made for burial services, to facilitate the provision of emergency food or disaster programs, or for other financial needs not defined in this part but related to assistance for needy Indians."

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<sup>2/</sup> These are categories of financial assistance available under BIA's social services program. See discussion infra.

25 CFR 20.23 provides:

Miscellaneous assistance.

In the absence of other resources, miscellaneous assistance shall be provided to eligible Indians meeting the requirements prescribed in § 20.20(a): [3/] Provided, That they reside in areas where comparable miscellaneous assistance is not available or is not being provided to all residents on the same basis from a State, county or local public jurisdiction.

"Need" is defined at 25 CFR 20.1(s) as "the deficit after consideration of income and other liquid assets necessary to meet the cost of basic need items and special need items as defined by the Bureau standard of assistance for the State in which the applicant or recipient resides."

Appellant proposes to define needy people, for purposes of its miscellaneous assistance program, as those who have "insufficient income to provide a reasonable subsistence compatible with decency and health." Appellant further proposes to provide one-time assistance to individuals who, although receiving assistance from other sources, find themselves in emergency situations because of inability to pay utility or medical bills. 4/

In its filing with the Board, BIA argues that appellant is required to use (1) the definition of "need" in 25 CFR 20.1(s) and (2) the eligibility requirements for general assistance in 25 CFR 20.21, in particular the requirement at 25 CFR 20.21(c)(1) that general assistance recipients "[m]ust not receive financial assistance from AFDC [Aid to Families with Dependent Children] or Supplemental Security Income (SSI)."

Appellant's proposed program does not fall within either of the first two categories in BIA's definition of "miscellaneous assistance" at 25 CFR 20.1(q). It therefore must be considered under the third category, i.e., "other financial needs not defined in this part but related to assistance for needy Indians." Although this category is a rather nebulous one, it

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3/ 25 CFR 20.20(a) provides:

"Basic eligibility conditions shall be:

"(1) The applicant must be an Indian, except that in the States of Alaska and Oklahoma a one-fourth degree or more Indian or Native blood quantum will be an additional eligibility requirement; and

"(2) The applicant must reside on a reservation; or

"(3) The applicant must reside near reservation as specifically defined in § 20.1(r) and be a member of the tribe that requested designation of the near reservation service area."

4/ In its appeal, appellant provided case histories for a number of the "exceptional cases" for which it proposed to provide miscellaneous assistance.

seems clear that services falling under it can be offered only to "needy" Indians. 5/

[1] Under 25 CFR 271.4(h), appellant is required to use the eligibility criteria established in 25 CFR Part 20 for its contracted social services program, unless the criteria have been waived by the Commissioner of Indian Affairs. 6/ Appellant does not argue, and there is nothing in the record here to show, that there has been such a waiver in this case. Appellant's P.L. 93-638 contract also requires that "[a]n applicant's general assistance or miscellaneous assistance need shall be determined in accordance with the definition of 'Need' as provided in 25 CFR 20.1(s) and also in accordance with the definition of 'Resource' as provided in 25 CFR 20.1(w)." 7/ Contract No. G07C14208061, Article IV, Attachment C, at 1.

BIA's first argument is therefore accepted. The Board finds that appellant is not free to adopt its own definition of "need" or "needy" but, under 25 CFR 271.4(h) and appellant's P.L. 93-638 contract, is required to apply the definition of "need" at 25 CFR 20.1(s) in determining eligibility for its miscellaneous assistance program.

[2] The Board rejects, however, BIA's argument that all the eligibility criteria for general assistance, and in particular the requirement that the recipient not receive AFDC or SSI payments, also apply to miscellaneous assistance. 25 CFR 20.20(b) makes it clear that each of the four social

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5/ BIA notes that, under certain circumstances, emergency short-term assistance may be provided to Indians under 25 CFR 20.20(c) without regard to normal eligibility requirements, but argues that such circumstances are not present in this case. 25 CFR 20.20(c) provides:

"Upon written request of an appropriate tribal governing body or the appropriate Bureau line official, the Deputy Assistant Secretary may authorize emergency short-term assistance and services to Indians, not otherwise eligible under this part, who reside on a reservation or in designated near-reservation areas, when necessary to meet need as defined at § 20.21(s) [sic, probably should be § 20.1(s)] and prevent hardship caused by fire, flood or acts of nature."

6/ 25 CFR 271.4(h) provides:

"The regulations in this part are not meant to and do not change the eligibility criteria which individuals must meet to be eligible for any program currently operated by the Bureau. The eligibility criteria for each Bureau program is [sic] given in the part of 25 CFR Chapter I, which deals with that program. A contractor shall use the existing Bureau eligibility criteria in operating all or parts of a Bureau program under a contract under this part unless a waiver is obtained from the Commissioner."

7/ 25 CFR 20.1(w) defines "resources" as

"income and other liquid assets available to an Indian person or household to meet current living costs, unless otherwise specifically excluded by Federal statute. Liquid assets are those properties in the form of cash or other financial instruments which can be converted to cash, such as savings or checking accounts, promissory notes, mortgages and similar properties."

services programs is intended to have its own eligibility criteria: "The applicant must further [after meeting the basic eligibility conditions in subsection 20.20(a) (see footnote 3 supra )] meet the additional eligibility requirements for each of the specific programs of assistance or services as set forth in §§ 20.21 through 20.24 in order to be eligible for assistance or services under that program." Accordingly, the eligibility criteria for miscellaneous assistance recipients must be found in section 20.23. This section does not purport to incorporate the eligibility criteria for general assistance listed in section 20.21. Neither does it specifically provide that applicants who receive AFDC or SSI payments are ineligible.

Rather, section 20.23 requires that miscellaneous assistance recipients meet the criteria in section 20.20(a) and further requires that they "reside in areas where comparable miscellaneous assistance is not available or is not being provided to all residents on the same basis from a State, county or local public jurisdiction."

An additional requirement in section 20.23 is that "other resources" be absent. In its filing with the Board, BIA states: "We interpret the regulation to mean that all resources are to be utilized and considered before using miscellaneous assistance funds. The case record should reflect the applicant's resources, or the absence of resources." The Board agrees that this criterion requires appellant to consider all of an applicant's resources, as defined in 25 CFR 20.1(w), before providing miscellaneous assistance funds. Appellant must therefore take an applicant's AFDC or SSI payments into consideration. However, no provision of section 20.23 requires that appellant reject outright applicants who receive AFDC or SSI payments.

The Board finds that the Area Director erred in holding that miscellaneous assistance may be provided only for burials or for disaster and emergency assistance. The definition of "miscellaneous assistance" in 25 CFR 20.1(q) encompasses a third category of assistance in which a program such as appellant proposes, modified as discussed in this opinion, may fall. The draft revision of 25 CFR 20.23, upon which the Area Director relied, appears to limit the uses of miscellaneous assistance funds as the Area Director states. However, this case is controlled by existing regulations, not draft regulations which may become effective in the future.

In accordance with the discussion above, the Board holds that appellant must require that applicants for its miscellaneous assistance program: (1) meet the definition of "need" at 25 CFR 20.1(s); (2) meet the criteria in 25 CFR 20.20(a); (3) reside in areas where comparable miscellaneous assistance is not available or is not being provided to all residents on the same basis from a State, county or local public jurisdiction; and (4) lack other resources, as "resources" is defined at 25 CFR 20.1(w). The Area Director should approve appellant's program if appellant revises its proposal to comply with these requirements. 8/

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8/ The Board does not hold that appellant's initial request for a transfer of \$60,000 must be approved or that appellant's program, if approved, should

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Muskogee Area Director's March 13, 1989, decision is vacated, and this case is remanded for further proceedings as appropriate.

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//original signed

Anita Vogt  
Administrative Judge

I concur:

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge

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fn. 8 (continued)

be funded in any particular amount. Clearly, the amount of funding for the program is dependent upon a number of factors not involved in this appeal.