



INTERIOR BOARD OF INDIAN APPEALS

Winnebago County, Wisconsin, Department of Social Services
v. Acting Minneapolis Area Director, Bureau of Indian Affairs

29 IBIA 192 (05/15/1996)



United States Department of the Interior

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

WINNEBAGO COUNTY, WISCONSIN, DEPARTMENT OF SOCIAL SERVICES, Appellant v. ACTING MINNEAPOLIS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	: Order Docketing, Dismissing, and : Referring Appeal to the Assistant : Secretary - Indian Affairs : : : Docket No. IBIA 96-64-A : : : May 15, 1996
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Appellant Winnebago County, Wisconsin, Department of Social Services appealed from an April 19, 1996, decision issued by the Acting Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA). The decision denied appellant's request for payment of attorney fees under 25 CFR 23.13(b)(6), which states: "(b) The Area Director shall certify that the client is eligible to have his or her appointed counsel compensated by BIA unless: * * * (6) Funds are not available for the particular fiscal year." The decision stated that an appeal could be filed with the Board of Indian Appeals.

The Board addressed the appeal procedures in 25 CFR 23.13 in Spears v. Sacramento Area Director, 27 IBIA 93 (1994). Under section 23.13(c), appeals from denials of certification of eligibility for payment of attorney fees under 25 CFR 23.13(a)-(c) are taken to the Assistant Secretary - Indian Affairs, while under 25 CFR 23.13(f), appeals from decisions concerning the amount of payment under 25 CFR 23.13(d)-(f) are taken to the Board.

Appellant's request was denied under 25 CFR 23.13(b)(6). Nothing before the Board indicates that appellant was seeking something other than certification of eligibility for payment. Accordingly, the Board concludes that this appeal should be before the Assistant Secretary.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1 and 25 CFR 23.13, this appeal from the Acting Minneapolis Area Director's April 19, 1996, decision is docketed, dismissed, and transferred to the Assistant Secretary - Indian Affairs.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge