



INTERIOR BOARD OF INDIAN APPEALS

Bobbie M. Lattergrass v. Aberdeen Area Director, Bureau of Indian Affairs

33 IBIA 188 (03/03/1999)



United States Department of the Interior

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

BOBBIE M. LATTERGRASS, : Order Affirming Decision
Appellant :
 :
v. :
 :
 : Docket No. IBIA 98-31-A
ABERDEEN AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : March 3, 1999

Appellant Bobbie M. Lattergrass seeks review of an October 17, 1997, decision of the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), finding that she was not eligible to receive BIA general assistance (GA). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant began receiving assistance from the North Dakota State Aid to Families with Dependent Children (AFDC) program in or around 1995. On March 15, 1997, Appellant won \$800. She apparently spent the entire \$800 in March 1997. She reported her winnings to the State AFDC program in early April 1997, and was informed that the State would prorate the amount and that she would consequently be ineligible for AFDC assistance during May, June, and part of July 1997.

On April 28, 1997, Appellant applied for BIA GA. The BIA Agency caseworker determined that Appellant was not eligible for BIA GA for the month of May 1997, but might be eligible after that. Appellant requested a hearing. The Superintendent, Turtle Mountain Agency (Superintendent), presided over a hearing held on May 28, 1997. On June 4, 1997, the Superintendent held that Appellant was not eligible for BIA GA during any of the three months.

Appellant appealed to the Area Director. On October 17, 1997, the Area Director held that Appellant was not eligible for BIA GA at all. This decision was based on the facts that Appellant was eligible for AFDC assistance from the State of North Dakota, and was receiving such assistance, even though her winnings made her temporarily ineligible for AFDC.

Appellant appealed to the Board. Both Appellant and the Area Director filed briefs on appeal.

Appellant devotes almost all of her brief to a discussion of what she alleges was the erroneous treatment of her \$800 non-recurring income under the BIA GA regulations. This argument is based in large part on the fact that three officials at the Agency reached three different

conclusions as to whether and/or for how long she was eligible for BIA GA. It is unfortunate that there was such confusion over Appellant's eligibility. However, the opinions and decisions of those Agency officials are not at issue in this appeal. The decision under review is the one issued by the Area Director. Although the Area Director's decision is not a model of clarity, it was not based on the treatment of Appellant's unearned income, but instead on the finding that Appellant did not meet the threshold eligibility requirements for receipt of BIA GA.

Appellant mentions the Area Director's decision, but makes no attempt to show that the Area Director erred in concluding that Appellant was not eligible for BIA GA. The Board has consistently held that an appellant who fails to make any allegation concerning how an Area Director's decision is in error, let alone any argument in support of such an allegation, has not carried her burden of proof. See, e.g., Thurston County Board of Supervisors v. Aberdeen Area Director, 33 IBIA 154 (1999), and cases cited therein. Appellant has not carried her burden of proving that the Area Director erred in her determination of Appellant's basic eligibility for BIA GA.

In the last paragraph of her brief, Appellant reiterates arguments she made to the Area Director regarding the recording of the Agency hearing and the Superintendent's pre-hearing knowledge of her case. Appellant did not develop these arguments, but instead stated that she "reserve[d] the right to address them once we see how the [Area] Director seeks to defend them." Opening Brief at 5. Appellant did not file a reply brief.

For purposes of this discussion only, the Board assumes that the hearing was not fully recorded and/or transcribed. However, under the circumstances of this case, in which the Area Director based her decision on the law, not on any facts brought out during the hearing, such error is harmless. Furthermore, any due process arguments which Appellant may have had in regard to the Superintendent's consideration of her application were remedied by the Area Director's independent consideration of her appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Aberdeen Area Director's October 17, 1997, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge