



INTERIOR BOARD OF INDIAN APPEALS

Estate of Josephine Old Chief Vielle

37 IBIA 63 (11/21/2001)



United States Department of the Interior

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

ESTATE OF JOSEPHINE OLD CHIEF : Order Affirming Decision in Part, Vacating
VIELLE : it in Part, and Remanding Matter to the
: Administrative Law Judge
:
: Docket No. IBIA 02-16
:
: November 21, 2001

Appellant Shirley Vielle DeRoche seeks review of an October 19, 2001, order denying rehearing issued in the estate of Decedent Josephine Old Chief Vielle by Administrative Law Judge James H. Heffernan. IP SL 184F 99. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that order in part, vacates it in part, and remands the matter to Judge Heffernan for further consideration.

Appellant raised two issues in her petition for rehearing: (1) the validity of certain claims by the Social Security Administration for alleged overpayments to Decedent during her lifetime; and (2) the distribution of a portion of Decedent's estate to Helen Old Chief After Buffalo. Both of these issues were decided against Appellant.

On appeal, Appellant raises only the first issue. The Board concludes that Appellant has abandoned her second issue. It therefore affirms that part of the October 19, 2001, order that denied rehearing as to the distribution of Decedent's estate.

As to the alleged Social Security overpayments, Appellant states that she mistakenly provided information with her petition for rehearing that related to the wrong period of time. On appeal, she has presented information relating to the correct time period and asks that this information be considered.

The October 19, 2001, order shows that the denial of rehearing as to alleged overpayment to the Social Security Administration was based solely on the fact that Appellant had presented information concerning the wrong period of time. Appellant did allege error in Judge Heffernan's decision, but supported that allegation with the wrong information. Under these circumstances, the Board vacates that part of the October 19, 2001, order which denied rehearing as to the validity of the Social Security Administration's claim, and remands this matter to Judge Heffernan for consideration of the information relating to the correct time period.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Heffernan's October 19, 2001, order denying rehearing is affirmed in part and vacated in part. The matter is remanded to Judge Heffernan for consideration of the information which Appellant has presented on appeal. The decision on remand will be appealable to the Board and should advise the interested parties of their right to appeal.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge