



INTERIOR BOARD OF INDIAN APPEALS

Nelson Blaine, Jr. v. Great Plains Regional Director, Bureau of Indian Affairs

37 IBIA 149 (02/22/2002)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

NELSON BLAINE, JR.,  
Appellant

v.

GREAT PLAINS REGIONAL DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee

: Order Affirming Decision  
:  
:  
:  
: Docket No. IBIA 01-108-A  
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:  
: February 22, 2002

This is an appeal from a February 20, 2001, decision of the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), declining to release funds from the Individual Indian Money (IIM) account of Mark Jeffrey Stengel, Jr., a.k.a. Mark Jeffrey Blaine (Mark), a minor. <sup>1/</sup> Appellant Nelson Blaine, Jr., is Mark's adoptive father. For the reasons discussed below, the Board affirms the Regional Director's decision.

In November 1991, the Superintendent, Crow Creek Agency, BIA, accepted a voluntary deposit into Mark's IIM account. The funds derived from settlement of a suit against the United States for the wrongful death of Mark's mother, Jacqueline Stengel. The request for voluntary deposit was made by Mark's grandmother, Melvina St. John, who was also the administratrix of the estate of Jacqueline Stengel.

On May 25, 2000, the Crow Creek Tribal Court issued an order declaring Mark to be the adopted child of Appellant and his wife, Barbara. In June 2000, Appellant requested a disbursement of \$6,000 from Mark's IIM account. The funds were disbursed to Appellant on June 28, 2000. BIA records state that the disbursement was made for Mark's living expenses and personal needs. In early November 2000, Appellant requested a second disbursement

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<sup>1/</sup> At all times relevant to the decision on appeal, the regulations governing IIM accounts were those found in 25 C.F.R. Part 115 prior to Mar. 23, 2001, when a revised version of Part 115 went into effect. In this appeal, the prior regulations, which control here, will be designated "former 25 C.F.R. [section number]."

from Mark's IIM account. A disbursement in the amount of \$5,000 was made to Appellant on November 7, 2000. <sup>2/</sup> BIA records state that the disbursement was made for Mark's personal needs and expenses.

On November 17, 2000, Mark and Appellant signed a request for disbursement of \$12,000 from Mark's IIM account. The request stated: "I need this money for living expenses." On November 27, 2000, Mark and Appellant signed a second request for the same amount. That request stated: "I will be using my money for living expenses for myself, my adopted Mother Barbara Anne Blaine and my Blaine Family."

On November 28, 2000, the Superintendent denied the requests, stating in a letter to Appellant:

I feel it is in the best interest of this child that his judgment funds shall remain in his IIM account. [<sup>3/</sup>]

You received disbursements from his account on two separate occasions this year, check #15,347,181 dated June 28, 2000 in the amount of \$6,000.00 and check #15,235,076 dated November 07, 2000 in the amount of \$5,000.00.

It is my understanding that Mark receives [monthly Social Security payments]. I feel this is a reasonable amount of assistance money for care and support of Mark.

Appellant appealed the Superintendent's decision to the Regional Director, who affirmed it on February 20, 2001. Appellant then appealed to the Board.

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<sup>2/</sup> Appellant states that his request was for \$5,000. In a declaration filed in this appeal, the Superintendent states that Appellant requested \$11,000 but that only \$5,000 was approved. The administrative record does not include contemporaneous documentation of events related to Appellant's first two disbursement requests.

<sup>3/</sup> The Regional Director concedes in this appeal that the Superintendent erred in referring to the funds in Mark's account as "judgment funds." Indeed, there is no evidence that any of the funds in the account derived from judgment funds.

Under former 25 C.F.R. § 115.4(b), a minor's per capita share of judgment funds, if more than \$100 at the time of payment, could not be disbursed until the minor reached the age of 18.

It is apparent from Appellant's filings that he believes he and Mark have an absolute right to withdraw funds from Mark's IIM account at will. <sup>4/</sup> That is simply not the case.

Former 25 C.F.R. § 115.4(a) provided:

Funds, other than a per capita share of judgment funds \* \* \*, of a minor may be disbursed in such amounts deemed necessary in the best interest of the minor for the minor's support, health, education, or welfare to parents, legal guardians, fiduciaries, or to persons having the control and custody of the minor under plans approved by the Secretary, or the minor directly, upon such conditions as the Secretary may prescribe. The Secretary will require modification of an approved plan whenever deemed in the best interest of the minor.

In decisions construing former 25 C.F.R. Part 115, the Board has held that BIA had discretion in approving disbursements from IIM accounts. E.g., Jackson County, Oregon v. Phoenix Area Director, 31 IBIA 126, 131 (1997); Muscogee (Creek) Nation v. Muskogee Area Director, 28 IBIA 24, 31 (1995); Miller v. Anadarko Area Director, 26 IBIA 97, 102 (1994). The Board has also held that its authority to review such BIA discretionary decisions is limited. E.g., Jackson County, 31 IBIA at 131. See also 43 C.F.R. § 4.330(b)(2).

An appellant who challenges a BIA discretionary decision bears the burden of showing that BIA did not properly exercise its discretion. E.g., Cox v. Acting Muskogee Area Director, 35 IBIA 43, 46 (2000); Evans v. Sacramento Area Director, 28 IBIA 124, 127 (1995), and cases cited therein.

Far from making the showing required to carry his burden of proof, Appellant instead demonstrates through his filings in this appeal that there was ample reason for BIA to deny Appellant's request for the \$12,000 disbursement. For example, at page 4 of his reply brief, Appellant describes how the \$6,000 disbursement was spent:

Mark wanted to go to Valley Fair in Minneapolis Minn and I agreed. Mark made the authorization of disbursement from his IIM account for \$6,000.00 to paint the house, outside & inside & kitchen shelves, plus appliances. When Mark received his money he took 2 friends & whole family, we went in 2 vehicles and stayed in motels and had a very good time. Between motels, meals, Valley Fair & gas Mark spent \$3,000.00 easily. \* \* \*

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<sup>4/</sup> For example, Appellant argues at page 9 (unnumbered) of his reply brief:

"It is within the legal responsibilities of the parents to do whatever and however they want to spend or save Mark's funds. BIA has no authority over Mark as a minor, or the parents as it comes to funds in the IIM account."

When we got back Mark went to K-Mart & bought himself a new bike, a big CD player & one for Barbara, many CDs & clothes for himself. Then Barbara had the house painted white on outside & inside and our kitchen cupboards repainted. Then Mark spent the rest on food, etc.

Appellant seems not to realize that many of the expenditures he describes are questionable ones under the standards of former 25 C.F.R. § 115.4(a), which authorized disbursements only when the funds would be used “in the best interest of [Mark] for [Mark’s] support, health, education, or welfare.”

Appellant’s failure to understand the restrictions on disbursements from minors’ IIM accounts is also evident in a request he made to the Board when he filed his opening brief. In that request, Appellant asked the Board to order BIA to disburse \$3,500 from Mark’s IIM account to pay off Appellant’s car loan, as well as \$1,575 to pay Appellant’s back rent.

The Board would not, in any case, order BIA to disburse funds from Mark’s IIM account because the authority to determine which disbursements should be approved is within BIA’s discretion, not this Board’s. Further, Appellant makes no attempt whatsoever to show that the disbursements he seeks would comply with the standards of either former 25 C.F.R. § 115.4(a) or present 25 C.F.R. Part 115, Subpart C (the subpart concerning the IIM accounts of minors).<sup>5/</sup> Plainly, both sets of regulations contemplate that funds disbursed from a minor’s IIM account will be used for support of the minor, not for support of the minor’s parents, or to pay expenses which are solely the responsibility of the parents. As it was put by a different Superintendent in recommending denial of a requested increase in a monthly allowance from a minor’s IIM account: “We \* \* \* do not deem it proper nor customary for a child to be expected to provide half the support for its parent, which appears to be the case here, rather than the customary role of parent providing for child.” Quoted in Smith v. Acting Billings Area Director, 18 IBIA 36, 39 n.5 (1989).

Nothing in the record or in Appellant’s filings shows that Appellant ever offered BIA any support for a conclusion that a disbursement of \$12,000 from Mark’s IIM account would be “in the best interest of [Mark] for [Mark’s] support, health, education, or welfare.” The Board finds that Appellant has failed to show that BIA did not properly exercise its discretion in denying the disbursement.

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<sup>5/</sup> Appellant’s request to the Board was made after the new regulations went into effect. The new regulations are considerably more detailed and exacting than the former regulations. See, e.g., with respect to disbursements from the IIM accounts of minors, 25 C.F.R. §§ 115.414 and 115.417 (2001).

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 Regional Director's February 20, 2001, decision is affirmed. 6/

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//original signed  
Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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6/ The arguments made by Appellant but not discussed in this decision have been considered and rejected.