



INTERIOR BOARD OF INDIAN APPEALS

Estate of Samuel R. Boyd

43 IBIA 11 (04/19/2006)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF SAMUEL R. BOYD : Corrected and Supplemented Order  
: Vacating Denial of Rehearing, and  
: Affirming in Part and Reversing in  
: Part Order Determining Heirs  
:  
: Docket No. IBIA 04-119  
:  
: April 19, 2006

Upon further review by the Board, and for the reason given in footnote 12, below, the Board's April 6, 2006 Order Vacating Denial of Rehearing, and Affirming in Part and Reversing in Part Order Determining Heirs, is hereby withdrawn and this order is substituted.

This is an appeal from a May 10, 2004 order by Administrative Law Judge William E. Hammett (ALJ) denying rehearing in the estate of Samuel R. Boyd (also known as Samuel Boyd, Samuel Raymond Boyd, or Samuel Ray Boyd) (Decedent), deceased Yakama Indian, Probate No. IP SA 97 N 98. The denial of the petition let stand an Order Reinstating Case and Order Determining Heirs entered by the ALJ on March 23, 2004. Appellant Regina Wheeler, *pro se*, is Decedent's maternal half sister. For the reasons stated below, the Board vacates the May 10, 2004 order denying rehearing and affirms in part and reverses in part the March 23, 2004 order determining heirs.

## Factual Background

Decedent was born in 1947 in Lewiston, Idaho and died intestate on September 6, 1975 in San Francisco, California. Decedent did not marry, father any children, or adopt any children. Decedent's parents, Raymond and Mary Sturgis Boyd, predeceased him. Decedent's father was a member of the Spokane Tribe; Decedent and his mother were enrolled members of the Yakama Nation (Nation). Decedent was survived by Appellant and two full blood brothers, Leonard Boyd and Eugene Boyd. Eugene Boyd subsequently died, leaving as his sole heir his daughter, Adrina Wynecoop, Decedent's niece.

Decedent's family did not learn of his death until 2004. For many years prior to his death, Decedent had no permanent address and traveled between California, Washington, and Oregon. Decedent would occasionally call Appellant and Leonard Boyd to inform them of his whereabouts, and until 1974 or 1975, returned to the Yakama Reservation to pick up his per capita checks. In 1975, Decedent stopped picking up his per capita checks and neither family nor known friends saw Decedent after that. In the late 1970s, Leonard Boyd searched for Decedent in San Francisco and Sacramento. In 1983, Appellant and Leonard Boyd wrote to the Superintendent of the Yakama Agency (Superintendent) requesting that BIA "proceed with presumption of death" for Decedent.

In a letter dated March 14, 1990, Appellant renewed her request that the Superintendent provide information about the procedures to be followed in order to have Decedent declared dead. On November 9, 1990, Appellant filed a petition with the Superior Court of Yakima County 1/ to be appointed temporary trustee of Decedent's estate and to have the estate distributed. The court issued an order appointing her temporary trustee on November 15, 1990, and on November 27, 1990, Appellant forwarded the order to the Yakama Agency and the Spokane Agency and requested that BIA provide her with an estate inventory.

On January 8, 1991, a Yakama Agency realty officer forwarded Decedent's "probate case file" to the ALJ and noted that Decedent's family wished to proceed with a "presumption of death." By letter dated March 19, 1991, the ALJ advised the realty officer that he did not enter the requested presumption of death of Decedent as a pending probate case because he did not believe the evidence submitted in support of the presumption was sufficient. In an effort to provide such evidence to the ALJ, in the early 1990s Appellant contacted a number of state and tribal agencies, including law enforcement, the Social Security Administration, and a number of family members to obtain information about Decedent. At the same time, BIA realty officers sent letters to a number of state agencies and Indian centers requesting that they search their records for information about Decedent.

On February 10, 1995, Appellant and Leonard Boyd wrote to the Superintendent asking how they should proceed with their search and efforts to have Decedent declared dead. By letter dated February 15, 1995, the Superintendent responded that BIA had contacted the ALJ, who had informed BIA that he would not consider holding a probate hearing until every effort had been made to locate Decedent. The Superintendent's letter

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1/ The Nation spells its name "Yakama." See 68 Fed. Reg. 68180 (Dec. 5, 2003). The County, however, spells its name "Yakima."

further stated that the Agency was “attempting to exhaust every possible source of information to locate [Decedent].”

On February 7, 1997, Appellant obtained a certificate of death for Decedent from the Yakima County coroner. The certificate listed Decedent’s residence as the “Yakama Indian Reservation” and stated that he had “been missing from Yakima County since 1975 and is presumed to be deceased.” On January 26, 1998, a realty officer at the Yakama Agency again forwarded Decedent’s “probate case file” to the ALJ.

The ALJ held a presumption of death hearing on July 16, 1998. Appellant, Leonard Boyd, and Adrina Wynecoop attended the hearing. The ALJ also heard testimony identifying potential heirs and establishing that Decedent did not execute a last will and testament. At the conclusion of the hearing, the ALJ took the case under advisement until he received additional information about the efforts to locate Decedent.

In 1999 and 2000, the ALJ wrote a number of letters to the Superintendent requesting information about the status of the search for Decedent. On January 30, 2001, Appellant filed a “petition to close Estate of [Decedent] \* \* \*: Request update and court hearing” with the ALJ. Between 2001 and 2003, the ALJ continued to write letters to the Superintendent stating that he needed additional information and requesting an update on the efforts to locate Decedent.

In the fall of 2003, the Yakama Agency learned of the existence of a death certificate from the state of California for Decedent showing that he died on September 6, 1975 in San Francisco. The Superintendent apparently did not immediately inform the ALJ of the existence of the death certificate because on November 17, 2003, the ALJ issued an Order Striking Case from Docket of Pending Cases, stating that the Yakama Agency had not submitted documentation sufficient to establish a presumption of death. On January 29, 2004, BIA filed a copy of the California death certificate with the ALJ. 2/

On March 23, 2004, the ALJ issued an Order Reinstating Case and Order Determining Heirs. In the order, he determined that Decedent had died on September 6, 1975 in San Francisco, California, and that “apparently \* \* \* San Francisco was his place of permanent residence.” Order at 2. The ALJ found that “all of \* \* \* [D]ecedent’s Indian

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2/ The death certificate was incomplete but included a social security number for the deceased person. On February 17, 2004, an employee of the Yakama Nation Tribal Enrollment Office certified that Decedent’s social security number, listed in the Tribal Enrollment Office, matched the social security number on the death certificate.

trust property[ ] descended from his father, Raymond Boyd,” 3/ id. at 3, and that this property consisted of interests in allotments located on the Spokane reservation and funds in an IIM account derived from per capita payments and income earned from his Spokane allotment interests. The ALJ found that based on certifications from a representative of the Nation’s realty office, as of March 19, 2004, Decedent’s IIM account was worth \$337,259.26. Of this amount, \$26,796.54, together with interest, represented per capita payments made after Decedent’s death. The ALJ’s order found that the source of the remaining funds represented income earned from the Spokane allotment interests, but the order did not distinguish between any such funds on deposit in Decedent’s IIM account on the date of his death, and income from Decedent’s allotment interests that may have been deposited after his death.

Because the Spokane allotments were located in the state of Washington, the ALJ found that Decedent’s interests in the allotments must be distributed in accordance with Washington state law. He determined that under Washington’s “half blood statute,” Appellant, as a half blood maternal sister, was not entitled to inherit any of Decedent’s interests in the Spokane allotments. He found that Washington law dictated that all of Decedent’s allotment interests on the Spokane Reservation would descend in equal shares to his full blood brothers, Leonard Boyd and the late Eugene Boyd, whose share passed to his daughter, Adrina Wynecoop. 4/

With respect to the funds in Decedent’s IIM account, the ALJ first found that the Nation should be reimbursed for the amount of the per capita payments it made to Decedent’s IIM account after his death. 5/ The ALJ identified California law as applicable to the intestate distribution of the remaining funds in the IIM account and concluded that these funds would be distributed equally between Leonard Boyd and Adrina Wynecoop, as Eugene Boyd’s sole heir.

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3/ Appellant has not disputed that Decedent’s interests in the Spokane allotments descended from Decedent’s father, Raymond Boyd.

4/ Eugene Boyd died on November 3, 1983, and his estate was probated. The ALJ took notice of the probate record and order in Eugene Boyd’s estate, which found that Eugene Boyd’s sole heir was his daughter, Adrina Wynecoop.

5/ In a February 25, 2004 letter to the Superintendent, a member of the Yakama Tribal Council requested that all of the per capita payments made to Decedent’s IIM account after his death in 1975 be repaid to the Tribal trust account.

Finally, the ALJ denied Appellant's claim for the costs and expenses she incurred in her search for Decedent. The ALJ concluded that there was no evidence that Appellant was authorized by BIA to conduct the search, and that, in any event, there was no legal or regulatory authority that would empower BIA to authorize her to conduct such a search. The ALJ therefore determined that Appellant "must be considered as having voluntarily performed the activity" and accordingly denied her claim. Order at 4.

Appellant filed a timely petition for rehearing 6/, arguing that the ALJ had "misapplied and misconstrued" Washington's half blood statute. Petition for Rehearing at 3. Appellant also argued that the ALJ had erred in denying her claim for the costs associated with her search for Decedent because the ALJ and the other interested parties knew that she was expending funds in her search but did not object and because the 1990 Yakima County Superior Court order appointing her temporary trustee gave her "'color' of authority to conduct inventory, research of heirs and determining bills \* \* \*." Id.

On May 10, 2004, the ALJ issued an Order Denying Appellant's Petition for Rehearing. He concluded that he had correctly applied Washington state law on intestate succession in his order determining heirs. The ALJ also reiterated his conclusion that Appellant had failed to show any "legal authority which authorized her to be paid for her search" and never asserted that she conducted her search for Decedent pursuant to a contract to perform such services. The ALJ therefore affirmed his previous conclusion that her search was voluntary and that her claim must be denied.

Appellant timely appealed from the ALJ's May 10, 2004 order denying rehearing and filed an opening brief.

#### Discussion

The Board has consistently held that when challenging a denial of rehearing, the appellant bears the burden of showing that the decision was in error. See Estate of Kristi Lynn Maketa, 32 IBIA 86, 87 (1998); Estate of Sam Poengerah, 28 IBIA 92, 94 (1995).

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6/ Appellant's filing was captioned "Appeal from Order Determining Heirs," but in his May 10, 2004 order, the ALJ stated that he would treat Appellant's "appeal" as a petition for rehearing.

Appellant makes the following arguments on appeal:

- With respect to the ALJ's ruling that Appellant is not entitled to inherit any of Decedent's Spokane allotment interests, Appellant argues that the ALJ misapplied Washington's half blood statute, and that he should have taken into account Decedent's Yakama enrollment and applied Yakama Nation probate law, which does not distinguish between half blood and full blood relatives. Appellant also suggests that the ALJ misconstrued Washington law because common law disfavors a distinction between half and full blood inheritance.
- With respect to the ALJ's ruling that Appellant is not entitled to inherit any funds from Decedent's IIM account, Appellant argues that the law of the domicile of a decedent applies to the distribution of personal property, and that Decedent's domicile was not California, but the Yakama reservation in Washington. As such, she argues that Yakama Nation law should apply, and that the Nation's probate code does not distinguish between half and full blood relations.
- Finally, Appellant argues that the ALJ's denial of her claim for the costs associated with her search for Decedent was in error because the Yakama Nation Probate laws allow for reasonable expenses to be recovered from an estate and because Appellant detrimentally relied on her understanding that she would be reimbursed for such costs.

We will address each issue in turn.

#### Decedent's Interests in Allotments on the Spokane Reservation

Under 25 U.S.C. § 348, when an Indian owning trust or restricted real property dies intestate, the property ordinarily passes in accordance with the laws of intestate succession of the state in which the property is located. Estate of Anthony Munks, 42 IBIA 100, 102 (2006); Estate of Reuben Mesteth, 16 IBIA 148, 150 (1988). Because Decedent died owning interests in property on the Spokane Reservation in Washington, Washington state law on intestate succession governs the descent of Decedent's allotment interests.

Section 11.04.015 of the Washington Revised Code establishes the general rules of descent and distribution for estates of persons dying intestate. Subsection (c) of that section provides:

If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

Washington law has carved out an exception to section 11.04.015 for half blood relatives of a decedent. Section 11.04.035 provides, in relevant part:

Kindred of the half blood shall inherit the same share which they would have inherited if they had been of the whole blood, unless the inheritance comes to the intestate by descent, devise, or gift from one of his ancestors, or kindred of such ancestor's blood, in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance \* \* \* .

The “ancestor” whose blood is to be considered pursuant to section 11.04.035 is the one from whom the property immediately came to the decedent. Estate of Munks, 42 IBIA at 103; In re Estate of Pearl Fitzhugh Little, 106 Wash. 2d 269, 278-80 (1986).

Appellant argues that the ALJ improperly applied Washington Revised Code Section 11.04.035 and that instead he should have applied the probate laws of the Yakama Nation because Decedent’s “ancestry and enrollment was with the mother, who was an enrolled member of the Yakama Tribe.” Opening Brief at 4. She also argues that common law disfavors a distinction between half and full blood inheritance. Id. at 4.

Appellant raises the argument that the Yakama Nation probate laws should apply to the descent of Decedent’s allotment interests for the first time on appeal. Because the Board ordinarily will not consider arguments presented for the first time on appeal, we will not consider this argument further in this case. Estate of Helen Hesuse, 41 IBIA 324, 327 (2005); Estate of Mary Red Cherries, 38 IBIA 103, 104 (2002). <sup>7/</sup> We will, however, address Appellant’s remaining and apparently alternative argument — that the common law disfavors a distinction between full blood and half blood inheritance — because this argument is relevant to Appellant’s argument that the ALJ misconstrued Washington law.

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<sup>7/</sup> The Board notes that Appellant provides no legal support for her argument that Yakama Nation probate law should apply to the distribution of Decedent’s Spokane allotment interests. Appellant makes only the bare assertion that because of Decedent’s enrollment, Yakama probate law should govern the distribution of all of Decedent’s property, presumably including property that is not located within the Yakama reservation.

In making this argument, Appellant attempts to rely on the Washington Supreme Court's decision in Estate of Little. In that case, the paternal half blood relatives of the decedent appealed the trial court's award of decedent's estate (consisting of real property) to full blood relatives. The Washington Supreme Court affirmed the trial court's decision that Washington Revised Code section 11.04.035 mandated that the paternal half blood relatives were precluded from inheriting the decedent's estate because decedent had inherited the property at issue from her mother. Appellant points to language in the decision stating that "statutes of this kind are not favored in American law," 106 Wash. 2d at 277, in support of her argument. But the Washington Supreme Court noted that despite this general rule, the statute at issue "must be construed to give effect to \* \* \* [its] legislative intent. And this intention must be the intention expressed in the statute itself where the meaning of the statutory language is plain." Id. The court then went on to examine the plain language of section 11.04.035 and affirmed the lower court's decision. Therefore, regardless of whether statutes limiting the inheritance rights of relatives of the half blood are disfavored in American law, the plain language of section 11.04.035 excludes relatives of the half blood from inheriting property that came to the intestate by descent, devise or gift from one of his ancestors, where the half blood relative is not "of the blood" of "such ancestors."

The Board therefore concludes that the ALJ appropriately based his decision regarding Decedent's Spokane allotment interests on Washington's half blood statute. Further, as described below, we conclude that the ALJ was correct in determining that under the statute Appellant is excluded from inheriting any of Decedent's allotment interests.

Inheritance is determined as of the time of a decedent's death. Estate of Emery McCoy Red Feather, Sr., 41 IBIA 320, 322 (2005). At the time of Decedent's death in 1975, Washington Revised Code sections 11.04.015(c) and 11.04.035 were in place. Therefore, these laws provide the framework for determining the distribution of Decedent's interests in the Spokane allotments.

Leonard Boyd and Eugene Boyd, as issue of Decedent's mother and father, are full blood brothers of Decedent. Therefore, the ancestral property restrictions established by section 11.04.035 do not apply to them and both are entitled to take an interest in Decedent's property under 11.04.015(c). 8/ Because Appellant is the half blood sister of Decedent, however, the Board must determine whether the restrictions in section

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8/ As noted earlier in this decision, Eugene Boyd died on November 3, 1983, leaving Adrina Wynecoop as his sole heir.

11.04.035 preclude her from inheriting any of Decedent's allotment interests. The ALJ determined — and Appellant does not dispute — that Decedent's property interests on the Spokane reservation descended from his father, Raymond Boyd. Accordingly, Raymond Boyd is the ancestor whose blood is to be considered for purposes of applying the ancestral property restrictions on inheritance. Appellant, as Decedent's maternal half sister and not of the blood of a common ancestor on Decedent's father's side, is not "of the blood" of Raymond Boyd. Thus, under section 11.04.035, she is not eligible to inherit any of Decedent's allotment interests that descended from Raymond Boyd.

The Board therefore concludes that the ALJ correctly determined that under Washington law, Decedent's Spokane allotment interests are to be distributed in equal, undivided shares to Leonard Boyd and Adrina Wynecoop, as Eugene Boyd's sole heir.

#### Decedent's IIM Account

Appellant argues that the ALJ erred in excluding her from inheriting any of Decedent's IIM account funds because Decedent's IIM account is "personal property" and "subject to the laws of [Decedent's] domicile." Opening Brief at 5. Appellant asserts that although Decedent was a "transient," Decedent stayed with her when he was on the Yakama reservation. *Id.* Appellant therefore appears to argue that the Yakama reservation was Decedent's domicile and, as such, the Yakama Nation probate laws should govern the distribution of Decedent's IIM account funds.

Appellant's argument, however, is presented for the first time on appeal. As noted above, the Board ordinarily will not consider issues presented for the first time on appeal, particularly with respect to evidentiary issues that could have been raised earlier. We note, however, that there is ample evidence in the record to support the ALJ's finding that Decedent's "place of permanent residence," or domicile, was San Francisco, California, <sup>9/</sup> and that the Board has consistently stated that it will not disturb an administrative law

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<sup>9/</sup> Although Decedent had his per capita checks from the Nation delivered to Appellant's residence in Washington until the early 1970s, after that time Decedent requested that BIA change the address it kept on file for him to a California address. Further, according to BIA, Decedent's last known address was at the American Indian Center in Sacramento, California. And at the July 16, 1998 presumption of death hearing, Leonard Boyd testified that San Francisco was Decedent's "favorite city." He stated that in 1974 he asked about Decedent at the Indian Center in Oakland and was told that he had been living in a hotel in downtown Oakland. Leonard Boyd went to the hotel in Oakland, and the manager said Decedent had moved to Sacramento two months earlier.

judge's findings of fact when those facts are supported by substantial evidence in the record. Estate of Philip Malcolm Bayou, 19 IBIA 20, 21 (1990).

On the other hand, the Board finds that the ALJ's order is internally inconsistent and erroneous with respect to the application of California law to Decedent's IIM account funds. The Board is authorized by 43 C.F.R. § 4.318 to "exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate." Because the Board concludes that the ALJ appears to have either misapplied Washington law or misconstrued California law in determining the distribution of Decedent's IIM account funds, we now invoke this authority to correct the error.

Appellant is correct that an IIM account is personal property. Estate of Walter A. Abraham, 24 IBIA 86, 87 (1993). In Estate of Richard Doyle Two Bulls, 11 IBIA 77, 80 (1983), the Board, relying on 25 U.S.C. § 373, stated broadly that all trust property, including trust personal property, passes in accordance with the law of the state where the property is "located." Although the Board subsequently questioned this broad interpretation of section 373 in Estate of Maketa, 32 IBIA at 87 n.2, we conclude here that our statement in Two Bulls was correct.

Section 373 governs the disposition by individual Indians of trust property (real and personal) by will. The statute does not address intestate succession, except in the situation where a will has been set aside as fraudulent. In that case, section 373 provides that property is to be distributed "in accordance with the laws of the State wherein the property is located." Although the language of section 373 specifically addresses the situation where a will has been set aside, we see no reason Congress would not have intended the same result when no will ever existed. Therefore, we conclude that section 373's rule for intestate succession of personal property should be applied even where no will existed. <sup>10/</sup> Accordingly, in this case we must next determine where Decedent's IIM account was located.

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<sup>10/</sup> At issue in Estate of Two Bulls was the inheritance of trust real property, not trust personal property. As such, 25 U.S.C. § 373 did not govern the outcome of that case. Nevertheless, we find the Board's statement about the applicability of section 373 to trust property to be an accurate interpretation of that statute. We note that our view of section 373 is consistent with the rule articulated by Congress in 25 U.S.C. § 348, which provides that intestate succession of trust real property is governed by the law of the state in which the property is located.

An IIM account is best characterized as “intangible” personal property — i.e., “property [that] has no intrinsic and marketable value, but is merely the representative or evidence of value, such as certificate of stocks, bonds, promissory notes, copyrights, and franchises.” Black’s Law Dictionary 809 (6<sup>th</sup> ed. 1990). The United States Supreme Court has ruled that intangible personal property is found “at the domicile of its owner.” Delaware v. New York, 507 U.S. 490, 503 (1993) (quoting Texas v. New Jersey, 379 U.S. 674, 680 n.10 (1965)). Therefore, applying the rule stated in section 373, and consistent with the Supreme Court’s ruling, IIM account funds that are part of the estate of a decedent would pass in accordance with the law of the state where the decedent was domiciled. 11/

Accordingly, the Board concludes that the rule stated in section 373 governing the descent and distribution of property applies to the present case. Therefore, the heirs to the IIM funds in Decedent’s estate, that is, the funds that had accumulated in his IIM account or were due and owing on the date of his death, and any interest earned on those funds, are determined by the law of the state of Decedent’s domicile — California. 12/

We now turn to the ALJ’s application of California law to determine whether Appellant was entitled to inherit an interest in Decedent’s IIM account. In his decision, the ALJ initially identified California law as applicable to Decedent’s IIM account, which as we have concluded above, was the correct choice of law. The ALJ, however, cited to California Probate Code section 6402. Order at 2. And later in the order, he concluded that Appellant is precluded from sharing in Decedent’s IIM account funds under Washington’s half blood statute. Id. at 4. The Board concludes first that the ALJ appears to have improperly applied Washington law to determine the distribution of the IIM account funds. The Board also concludes, however, that even if the ALJ had applied the California law he referred to in his order, California Probate Code section 6402, this, too, would have been in

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11/ To the extent that our decision in Estate of Abraham suggested a possible distinction between a decedent’s domicile and the location of his IIM account, we conclude that the Supreme Court’s treatment of intangible personal property negates any such distinction.

12/ A decedent’s estate is fixed at the time of death. “Estate” means “the trust cash assets, restricted or trust lands, and other trust property owned by the decedent at the time of his or her death.” 25 C.F.R. § 15.2, 43 C.F.R. § 4.201. “Trust cash assets” are defined as “the funds held in an IIM account that had accumulated or were due and owing to the decedent as of the date of death.” 43 C.F.R. § 4.201.

The Board’s withdrawn April 6, 2006 order did not distinguish between any funds in Decedent’s IIM account that are to be considered personal property of the estate, and those that may have accumulated after Decedent’s death from his real property interests.

error. As explained below, application of the proper California probate law results in Appellant inheriting a one-third share in Decedent's personal property, in this case his IIM account funds that had accumulated or were due and owing on the date of his death. The Board therefore finds that the ALJ improperly precluded Appellant from inheriting any interest in Decedent's IIM account funds, at least without making a finding that on the date of his death, Decedent's IIM account had a zero balance and no amounts were due and owing.

Although the ALJ cites to California Probate Code section 6402, which establishes the general rules of descent and distribution for persons dying intestate, that section does not apply where, as in this case, the decedent died before January 1, 1985. Cal. Prob. Code § 6414 ("this part does not apply where the decedent died before January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the decedent died before January 1, 1985"). Instead, the law in place at the time of Decedent's death must be applied. In 1975, California probate law — similar to Washington law — provided that half blood relatives of the decedent who were not of the blood of an ancestor of the decedent were excluded from inheriting property of the decedent which had come to the decedent from such ancestor. Cal. Prob. Code § 254. <sup>13/</sup> The California Supreme Court, however, has held that this provision applied only to real property. Estate of Katherine Ryan, 21 Cal. 2d 498, 512-13 (1943). Because the funds in Decedent's IIM account are trust or restricted personal property, under Estate of Ryan, the ancestral property restrictions established in section 254 did not apply. Therefore, the general rules of descent and distribution that were in effect in 1975 apply. As of 1975, these rules were codified at section 225 of the California Probate Code, which provided that where there is no surviving issue or spouse, and no surviving parents, the property is distributed in equal shares to a decedent's brothers and sisters. Applying this law, Appellant, Leonard Boyd, and Adrina Wynecoop, as Eugene Boyd's sole heir, take equal shares in any funds that had accumulated in Decedent's IIM account as of the date of his death, or were due and owing at that time.

The Board concludes that the ALJ erred in applying either Washington state law or California Probate Code section 6402 and in determining as a matter of law that Appellant was not entitled to any interest in Decedent's IIM account funds. We therefore reverse the portion of his March 23, 2004 order determining the heirs of Decedent's IIM account with

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<sup>13/</sup> Section 254 of the California Probate Code was repealed in 1983 by Cal. Stat. Ch. 842 § 19, and replaced with section 6406, which provides that relatives of the half blood inherit the same share they would inherit if they were of whole blood. 1983 Cal. Stat. Ch. 842 § 55. Section 6406 was repealed and reenacted without change in 1990.

respect to any funds that were in Decedent's IIM account as of the date of his death, or which were due and owing on that date, and any accrued interest on those funds.

On the other hand, any income from Decedent's allotment interests that accrued following his death, and interest on that income, which may have been deposited in his IIM account, is properly distributed in equal shares to Leonard Boyd and Adrina Wynecoop, as heirs of those allotment interests. Because the estate is fixed at the time of death, see supra note 12, income that accumulated after Decedent's death from those allotments was never the personal property of Decedent nor, technically, part of his estate, even though it may have been deposited in his IIM account pending the completion of probate. See also Rev. Code Wash. § 11.04.250 (2006) (title to real property vests immediately in heirs upon a decedent's death); In re Estate of Ida Patrick, 195 Wash. 105, 79 P.2d 969 (1938) (title to real property and the right to rents, issues and profits thereof vest in heirs at the instant of death of decedent). As such, and because Decedent died intestate, the allotment income accumulating following his death properly attaches to the allotment interests themselves, and should be distributed to Leonard Boyd and Adrina Wynecoop in accordance with the ALJ's order and Washington State law.

#### Appellant's Claim for Costs and Expenses Incurred in Her Search for Appellant

Finally, we turn to Appellant's contention that the ALJ erred in denying her claim for costs and expenses she incurred "in the closing out of the estate \* \* \*." Opening Brief at 5. She argues that the Revised Yakama Code permits the recovery of "reasonable costs and expenses," and attached to her notice of appeal the provisions of the Revised Yakama Code pertaining to the filing of claims against the Decedent's estate. Id. Appellant asserts that, "without her years of phone calls, traveling to meet people and seek out documents and information, trips to the post office with envelopes and typed letters and postage to the many agencies, tribes, hospitals, vital statistics, social security administration, police departments etc. this estate might not now be closed." Id. She argues that the ALJ and "the other interested parties" were "fully aware for many years" that she was incurring expenses but did not object to her activities, and thus she is entitled to "the equitable remedy of detrimental reliance." Id.

Appellant's argument that Yakama law applies again is made for the first time on appeal. Even if the Board were to consider it, however, Appellant's bare assertion that Yakama law provides for the recovery of "reasonable costs and expenses" presumes that she acted with some sort of authorization for her actions. Appellant has not argued or offered any evidence that she conducted the search for Decedent pursuant to a contract with the Nation or BIA, or that the Nation or BIA told her she would be reimbursed. We reject Appellant's other argument — that her extensive efforts to search for Decedent and the

ALJ's and others' acquiescence to those efforts entitle her to "the equitable remedy of detrimental reliance" — on the same basis. Further, Appellant's simple assertion that the ALJ and the other interested parties did not object to her search is insufficient to sustain Appellant's burden of proof. Accordingly, the Board agrees with the ALJ that Appellant has failed to point to any legal authority that supports her claim for costs and expenses incurred in her search for Decedent, and concludes that the ALJ properly denied Appellant's claim.

### Conclusion

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 Board vacates the ALJ's denial of rehearing and affirms in part and reverses in part the March 23, 2004 order determining heirs. In accordance with the March 23, 2004 order determining heirs, Leonard Boyd and Adrina Wynecoop are entitled to receive equal shares in Decedent's Spokane allotment interests. As such, Leonard Boyd and Adrina Wynecoop are also entitled to receive equal shares in any income from those interests that accrued following Decedent's death and that was deposited into Decedent's IIM account, including accrued interest on such income. Also in accordance with the March 23, 2004 order, the Nation is entitled to be repaid the \$26,796.54 (and accrued interest) paid into Decedent's account following his death. We reverse the ALJ's order with respect to any funds that had accumulated in Decedent's IIM account as of the date of Decedent's death, and any funds that were due and owing on that date. Any such funds, and accrued interest on such funds, shall be distributed one-third to Appellant, one-third to Leonard Boyd, and one-third to Adrina Wynecoop. 14/

I concur:

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// original signed  
Amy B. Sosin  
Acting Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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14/ Because this order substitutes for the withdrawn April 6, 2006 order, the date of this order — April 19, 2006 — shall be the date from which the 30-day time period begins for filing a motion for reconsideration. See 43 C.F.R. § 4.315.