



INTERIOR BOARD OF INDIAN APPEALS

Melvin Antone v. Assistant Secretary - Indian Affairs

12 IBIA 186 (03/02/1984)



United States Department of the Interior

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

MELVIN ANTONE

v.

ASSISTANT SECRETARY--INDIAN AFFAIRS

IBIA 83-40-A

Decided March 2, 1984

Appeal from a decision of the Assistant Secretary--Indian Affairs denying a request for a waiver of the Housing Improvement Program regulations.

Affirmed.

1. Indians: Housing: Home Improvement Program Funds

Due process issues would be raised if the Bureau of Indian Affairs were to change an application for Housing Improvement Funds from category D, new housing, to category C, downpayment, without notice to the applicant.

APPEARANCES: Melvin Antone, pro se; Percy Squire, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On August 1, 1983, the Board of Indian Appeals (Board) received a notice of appeal from Melvin Antone (appellant), who is seeking review of a May 10, 1983, decision of the Assistant Secretary--Indian Affairs (appellee). Appellee upheld the denial of a waiver of the Housing Improvement Program (HIP) regulations. Appellant sought a waiver so that he could obtain an additional HIP grant. For the reasons discussed below, the Board affirms appellee's decision.

Background

Appellant, a member of the Kashia Band of Pomo Indians (tribe), Stewart's Point Rancheria, Hopland, California, applied in 1979 for HIP assistance. Regulations governing this program are set forth in 25 CFR Part 256. ^{1/} Appellant sought assistance under category D, new housing

^{1/} The regulations in 25 CFR Part 256 formerly appeared in 25 CFR Part 261. They were renumbered without substantive change by notice published in the Federal Register (47 FR 13327 (Mar. 30, 1982)). This opinion will cite only the Part 256 numbers.

(25 CFR 256.4(d)), which provides funds for financing the construction of new standard housing when it is established that there is no reasonable prospect that standard housing can be financed from other sources. The administrative record shows that by letter dated June 12, 1979, the Acting Superintendent of the Central California Agency, Bureau of Indian Affairs (BIA), informed appellant that he was not eligible for a category D grant because his income appeared to be sufficient to make payments on a mortgage. The Acting Superintendent told appellant he appeared to be eligible for a category C downpayment grant (25 CFR 256.4(c)). Grants under category C, which are limited to \$5,000, are provided to make the applicant eligible to receive housing loans from tribal, Federal, or other sources of credit.

By tribal resolution dated September 9, 1979, the tribe supported appellant's application for an HIP grant on an emergency basis so that he could obtain a downpayment on a mobile home. Appellant subsequently received \$4,000 for such a downpayment and purchased a mobile home.

By letter dated September 12, 1980, appellant was informed that, as soon as BIA received its fiscal year 1981 HIP funds, he would be given an add-on grant to pay Pacific Gas and Electric Company to extend overhead power lines to supply electricity to his mobile home. The letter also informed appellant that he would not be eligible for any additional HIP assistance. Appellant subsequently received \$774.90 for the electrical connection.

In 1982 appellant forwarded to BIA an invoice for improvements to his mobile home. By letter of September 13, 1982, the Acting Superintendent denied payment on the grounds that under 25 CFR 256.5(b), appellant was not eligible for further assistance.

On November 2, 1982, appellant requested that BIA waive the HIP regulations as permitted under 25 CFR 256.10. Appellant requested the waiver because he was a totally disabled veteran and because the mobile home was unfurnished when purchased so that he incurred additional expenses for furniture. Based on the amount of his outstanding bills and the high cost of living, appellant requested that BIA place him in category D so that his mortgage could be paid off. The mortgage balance was apparently \$33,647.

Appellant's request for a waiver was forwarded to the Deputy Assistant Secretary--Indian Affairs (Operations), who declined to waive the restriction in 25 CFR 256.5(b). He stated that the HIP regulations were intended to assist needy families by providing them with decent shelter and not to assist families in paying off their mortgages. Furthermore, the Deputy Assistant Secretary concluded that to assist appellant a second time would not be in the best interests of Indians who needed, but had not received, HIP assistance. Appellant was informed of this decision by letter dated January 10, 1983, from the Acting Superintendent.

Appellant sought review of this decision. Appellee affirmed the denial in a letter dated May 10, 1983. The letter granted appellant a right of appeal to the Board because the decision was based on an interpretation of law. After some initial confusion over whether appellant's appeal to the

Board would be forwarded by the agency or should be filed directly by him, the Board received a notice of appeal on August 1, 1983. ^{2/} Briefs on appeal have been filed by both parties.

Discussion and Conclusions

The purpose of the HIP program and BIA's policy in administering it are set forth in 25 CFR 256.3:

The Bureau of Indian Affairs' housing policy is consistent with the specific objectives of the National housing policy which declares that every American family should have the opportunity for a decent home and a suitable living environment. * * * Every effort will be made to use Housing Improvement Program funds in conjunction with other programs so the result will be a greater amount of housing improved than would otherwise be possible with the Housing Improvement Program funds alone.

Section 256.5 sets forth the eligibility criteria for participation in the program. Subsection (b) of that regulation states that "[a]fter July 1, 1975, an applicant can only receive assistance one time under categories given in paragraphs (b), (c), and (d) of § 256.4." Section 256.10 provides that a request for a waiver of the regulations in Part 256 will be considered if substantial justification is presented in accordance with the provisions of 25 CFR 1.2. Under section 1.2, the Secretary has reserved the authority to waive or make exceptions to regulations in 25 CFR Chapter I where permitted by law and where he finds that waiver or exception is in the best interest of the Indians.

[1] Appellant received a category C grant. Therefore, he would normally be bound by the restriction in 25 CFR 256.5(b) that an applicant is eligible to receive assistance only once. Appellant argues, however, that he had requested category D assistance, and that this request was changed to category C without notice to him and, therefore, without his knowledge or consent. Under category D, appellant could have received a much larger grant than under category C, which has a \$5,000 limitation. A change from category D to category C without notice to the applicant could result in a significant diminution of the assistance for which the applicant might be eligible and thus would raise issues relating to due process.

The record in this case, however, does not support appellant's argument that he had no knowledge that his application was being considered only for category C assistance. By letter dated June 12, 1979, to which appellant refers in his notice of appeal, the Acting Superintendent clearly informed appellant that he was not considered eligible for category D assistance, but

^{2/} Appellee acknowledges that BIA was responsible for the late filing of the notice of appeal and specifically declines to challenge the Board's jurisdiction on the grounds that the appeal was not timely filed. Appellee's brief at 5-6.

was eligible for assistance under category C. Furthermore, the tribal resolution of September 9, 1979, stated that the tribe supported a downpayment grant for appellant. Appellant thus had notice that he was being considered for something different from what he had requested. There is no evidence that appellant ever questioned these decisions or the fact that he later received only funds for a downpayment on the mobile home and was responsible for making monthly mortgage payments.

The Board finds that appellant was given sufficient notice of the change from a category D to a category C grant.

Appellant's decision not to waive the restriction of 25 CFR 256.5(b) was not an abuse of discretion. The restriction is a reasonable attempt to conserve limited funds and to provide assistance to as many people as possible. The waiver provisions of 25 CFR 1.2 and 256.10 allow the Secretary to consider whether an individual's special circumstances justify additional assistance. In this case, although appellant alleges hardship, he has not shown that his situation warrants extraordinary relief.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, and by the May 10, 1983, decision of the Assistant Secretary--Indian Affairs, that decision is affirmed.

//original signed
Bernard V. Parrette
Chief Administrative Judge

We concur:

//original signed
Franklin D. Arness
Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge