



INTERIOR BOARD OF INDIAN APPEALS

Linda Stark; Edward Stark; and Fredrick Stark v. Acting Portland Area Director,
Bureau of Indian Affairs

20 IBIA 121 (07/11/1991)

Reconsideration denied:
20 IBIA 188

Related Board case:
19 IBIA 293



United States Department of the Interior

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

LINDA STARK, EDWARD STARK, AND FREDERICK STARK

v.

ACTING PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-19-A, 91-20-A, and 91-21-A

Decided July 11, 1991

Appeals from decisions denying retroactive general assistance benefits.

Affirmed.

1. Indians: Financial Matters: Financial Assistance

In order to be eligible for general assistance under 25 CFR Part 20, an applicant must reside within an Indian reservation or within the "near-reservation" area designated for the applicant's tribe.

2. Bureau of Indian Affairs: Administrative Appeals: Generally--
Indians: Financial Matters: Financial Assistance

After issuing a decision concerning general assistance benefits, a Bureau of Indian Affairs official may reverse that decision within the time for filing an appeal, provided no appeal has been filed.

APPEARANCES: Linda Stark, Edward Stark, and Fredrick Stark, pro sese; Colleen Kelley, Esq., Office of the Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, Portland, Oregon, for appellee.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellants Linda Stark, Edward Stark, and Fredrick Stark seek review of decisions of the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), denying them retroactive general assistance benefits under a special program. For the reasons discussed below, the Board affirms the Area Director's decisions.

Background

In 1988, the Kalispel and Spokane Tribes and three individual Indians filed suit against Department of the Interior officials, challenging BIA's decision not to offer financial assistance, under its general assistance program, to Indians living in the state of Washington. Kalispel Tribe of Indians v. Brown, No. C-88-126-JLQ (E.D. Wash. filed Mar. 15, 1988). Pursuant to an Amended Settlement Agreement between the parties, 1/ and a March 8, 1990, Agreed Order on Motion for Contempt (Agreed Order), BIA established a special program to offer retroactive general assistance benefits to Indians in Washington State for the period December 1987 through October 1989 (Program). 2/

Paragraph I.F of the Amended Settlement Agreement provides:

Applicants for retroactive benefits shall be required to verify that they met the eligibility criteria pertaining to Indian status, residency, and income and resources codified at 25 C.F.R. Part 20 in each month for which they seek such benefits. For purposes of eligibility for retroactive benefits, no other eligibility criteria shall be imposed. * * *

* * * The BIA will have 90 days from receipt of a completed application to process the claim. If no decision is rendered within this time period, the application will be deemed approved.

The Agreed Order required that a working group be established to formulate procedures for the Program (Agreed Order at paragraphs C, D, and E). The working group issued "Procedures for Operation of the Retroactive General Assistance Program" (Procedures) on April 16, 1990. The Procedures provide at Part III, Determination of Eligibility:

B. Indian Status

1. To be eligible for retroactive benefits, the applicant (and all members of the applicant's household) must be either:

- a. A member of a federally recognized Indian tribe; or
- b. A one-quarter degree blood quantum or more descendant of a member of a federally recognized Indian tribe.

2. An applicant claiming to be a member of a federally recognized tribe must provide verification of membership.

1/ The record copy of this agreement is undated and unsigned.

2/ The Agreed Order extended the period for Indians residing within the service area of the Puget Sound Agency, BIA, to include the months of November 1989 through February 1990. Appellants are apparently not covered by this provision, as they submitted their applications to the Olympic Peninsula Agency.

Acceptable verification includes original, or legible photocopies of:

- a. Enrollment cards;
- b. Certificates of Indian blood; or
- c. Other documents issued by the applicant's tribe or by the BIA which CLEARLY indicate membership status.

* * * * *

D. Residency

1. Residency must be determined for each month for which the applicant requests retroactive benefits.
2. The residency requirement is met for each month the applicant was living in the state of Washington within the boundaries of the reservation of any federally recognized tribe.
3. The residency requirement is met for each month an applicant who is a member of a federally recognized tribe resided in the state of Washington within the designated near-reservation area for his or her tribe.

(Procedures at 6-8).

Edward Stark's application was received at the Olympic Peninsula Agency on March 19, 1990. Linda Stark's and Fredrick Stark's applications were received on March 26, 1990. None of the applications included any verification of appellants' Indian status. Appellants were notified of the deficiencies by notices dated June 13, 1990. On June 22, 1990, a verification of tribal enrollment covering all three appellants was received at the agency. It showed that they were enrolled members of the Port Gamble Klallam Tribe.

The applications of all three appellants were initially approved. ^{3/} By notice dated August 14, 1990, Linda was informed that her application had been approved in the amount of \$4,710. By notice dated August 16, 1990, Edward was informed that his application had been approved in the amount of \$1,884. By notice dated August 16, 1990, Fredrick was informed that his application had been approved in the amount of \$5,925.

All three applications were subsequently denied. Linda's notice of denial, dated September 13, 1990, stated:

^{3/} The notices of approval, as well as the notices of denial, were signed by Curtis L. LeBeau. The notices do not show Mr. LeBeau's position in the agency.

AFTER FURTHER REVIEW WE FOUND THAT YOU DO NOT RESIDE WITHIN ANY TRIBAL RESERVATION BOUNDARIES OR IN THE OFF-RESERVATION SERVICE AREA FOR MEMBERS OF THE PORT GAMBLE KLALLAM TRIBE. THE OFF-RESERVATION SERVICE AREA FOR YOUR TRIBE IS KITSAP COUNTY ONLY. PLEASE DISREGARD THE APPROVAL NOTICE DATED AUGUST 14, 1990.

Edward's and Fredrick's notices, dated August 21, 1990, contained similar statements.

All three appealed their denials to the Area Director, who affirmed the agency decisions by letters dated October 31, 1990 (Linda); October 2, 1990 (Edward); and October 3, 1990 (Fredrick).

Appellants then appealed to the Board. 4/ The Board docketed and consolidated their appeals on November 29, 1990. Only the Area Director filed a brief.

Discussion and Conclusions

In their notice of appeal, appellants contend: "We believe that we do live within the service area of Jamestown, Lower Elwha and Port Gamble because we receive benefits from the above mentioned Tribal Centers."

[1] As noted above, the Procedures require that an applicant reside within an Indian reservation in the State of Washington or within the "near-reservation" area designated for the applicant's tribe. This requirement tracks the residency requirement in 25 CFR Part 20, which was made applicable to the Program by the terms of the Amended Settlement Agreement. 5/

4/ Two other appellants, Sheila Stark and Kenneth Stark, also signed a joint notice of appeal. On Apr. 9, 1991, the Board dismissed Sheila's appeal, following settlement by the parties, and remanded Kenneth's appeal to the Area Director, at the Area Director's request. 19 IBIA 293.

Because Linda's notice of appeal predated the Area Director's decision in her case, she was required to reaffirm her intent to appeal after the Area Director's decision was issued. Her reaffirmance was received on Dec. 17, 1990.

5/ 25 CFR 20.20 provides: "(a) Basic eligibility conditions shall be: * * * (2) The applicant must reside on a reservation; or (3) The applicant must reside near reservation as specifically defined in § 20.1(r) and be a member of the tribe that requested designation of the near reservation service area."

25 CFR 20.1(r) defines "Near reservation" as "[T]hose areas or communities adjacent or contiguous to reservations which are designated by the Commissioner [of Indian Affairs] upon recommendation of the local Bureau Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as: (1) Number of Indian people native to the reservation residing in the area, (2) a written designation by the tribal governing body that members of their

Appellants all stated in their applications that they resided in Port Angeles, Washington, from December 1987 through October 1989. Port Angeles is not, as far as the Board is aware, within an Indian reservation. Moreover, Port Angeles is in Clallam County; the near-reservation area designated for appellants' tribe is Kitsap County. Because there are explicit residency requirements for the Program, it does not matter whether appellants receive tribal services from their own or another tribe, or even whether they reside in a near-reservation area designated for a tribe other than their own. Because they do not reside within an Indian reservation or within the near-reservation area designated for the Port Gamble Klallam Tribe, appellants fail to meet the residency requirements for the Program.

Present appellants have not raised the issue of the timeliness of the Area Director's decisions; however, the issue was raised by Sheila Stark and was addressed by the Area Director in his brief. Under the Amended Settlement Agreement, BIA was required to take action within 90 days of receipt of a completed application. The Area Director argues that appellants' applications were not complete until their verifications of Indian status were received at the agency on June 22, 1990. The Board agrees. The Procedures require that verification of Indian status be included with each application. That requirement was explicitly communicated to appellants on the application form. ^{6/} The Board therefore finds that BIA did not receive appellants' completed applications until June 22, 1990. The notices of denial for appellants were all issued within 90 days of June 22, 1990. Accordingly, the Board concludes that appellants' applications may not be deemed approved under the "automatic approval" provision of the Amended Settlement Agreement.

[2] Although no party has questioned the agency's authority to reverse its initial approval decisions, the Board finds it necessary to address this issue. In accordance with the appeal information given to applicants under the Program, as well as the regulations in 25 CFR Part 2, a decision approving or denying an application becomes final 30 days after the applicant

fn. 5 (continued)

tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation, (3) geographical proximity of the area to the reservation, and (4) administrative feasibility of providing an adequate level of services to the area. The Commissioner shall designate each area and publish the designations in the FEDERAL REGISTER."

The "near-reservation" area designated under this provision for the Port Gamble Klallam Tribe is Kitsap County, Washington. 44 FR 2693 (Jan. 12, 1979). See also Procedures at Appendix 7.

^{6/} The application form stated, in a paragraph captioned "INDIAN BLOOD":

"You and all individuals for whom you are claiming benefits must be members of a federally recognized tribe, or a one-fourth degree or more blood quantum descendant of a member of a federally recognized tribe. You must provide proof of this requirement for yourself and all individuals for whom you are claim benefits in order for your application to be

receives notice of the decision, unless an appeal is filed. ^{7/} The decision approving Edward's and Fredrick's applications were reversed 5 days after they were issued. Clearly, they had not become final when they were reversed. The decision approving Linda's application was issued on August 14, 1990; the decision denying her application was issued on September 13, 1990, exactly 30 days later. If she received the approval decision on August 14, it was final on September 13. However, BIA's daily log for Linda's case shows that the decision was mailed to her. Therefore, the Board concludes that she could not have received it before August 15, 1990. Accordingly, the approval decision was not final on September 13, 1990, when the agency reversed it. ^{8/}

A BIA official has the authority to revoke his or her decision within the time for filing an appeal, *i.e.*, before the decision has become final, provided no appeal has been filed. Fox v. Muskogee Area Director, 18 IBIA 444 (1990). Accordingly, the Board concludes that the agency had the authority to reverse its initial decisions approving appellants' applications.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Portland

fn. 6 (continued)

processed. Acceptable proof is a copy of an enrollment card or certificate of Indian blood issued by your tribal enrollment office or BIA." (Emphasis in original).

^{7/} The "Notice of Approval" and "Notice of Denial" forms used for the Program state that an applicant who disagrees with any part of the decision may either request a hearing before the Agency Superintendent or file an appeal with the Area Director. With respect to a hearing before the Superintendent, the notice forms allow for the insertion of a specific date by which a hearing must be requested. (From the dates in most of the completed notices in the record, it appears that the period allowed was about 20 days from the date of the notice. This accords with the period allowed in 25 CFR 20.30(a) for requesting such hearings.) With respect to an appeal to the Area Director, the notice forms state that the appeal must be received by BIA within 30 days of the applicant's receipt of the notice. The notice forms further state: "IF YOU DO NOT REQUEST A HEARING OR FILE AN APPEAL WITHIN THE TIME LIMITS DESCRIBED ABOVE, THIS DECISION WILL BECOME FINAL."

25 CFR 2.6(b) provides that "[d]ecisions made by officials of the Bureau of Indian Affairs shall be effective when the time for filing a notice of appeal has expired and no notice of appeal has been filed."

25 CFR 2.9 provides that a "notice of appeal must be filed * * * within 30 days of receipt by the appellant of the notice of administrative action."

^{8/} Linda's approval decision stated that her opportunity to request a hearing before the Superintendent expired on September 4, 1990. The decision did not become final on that date, however, because her right to appeal to the Area Director continued until 30 days after she received the decision.

