



INTERIOR BOARD OF INDIAN APPEALS

Lloyd Carter v. Acting Billings Area Director, Bureau of Indian Affairs

20 IBIA 195 (08/20/1991)



# United States Department of the Interior

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

LLOYD CARTER

v.

ACTING BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-17-A

Decided August 20, 1991

Appeal from a determination that a general assistance recipient had received an overpayment.

Reversed.

1. Indians: Financial Matters: Financial Assistance

Under 25 CFR Part 20, general assistance provided by the Bureau of Indian Affairs is intended to be a secondary or residual source of financial assistance and may not duplicate assistance received from other sources.

2. Indians: Financial Matters: Financial Assistance

Bureau of Indian Affairs Manual provisions concerning general assistance are without the force of law when sought to be applied against parties outside the Bureau. However, those provisions may be enforced against the Bureau where not to do so might result in a deprivation of benefits to an applicant for general assistance.

APPEARANCES: Lloyd Carter, pro se.

## OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Lloyd Carter seeks review of an October 19, 1990, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), holding that appellant had received a general assistance overpayment of \$810 and requiring appellant to repay that amount. For the reasons discussed below, the Board reverses the Area Director's decision.

### Background

Appellant is an unenrolled Shoshone Indian residing on the Wind River Reservation. During the period at issue in this appeal, his household included his two minor children, his wife, and his wife's daughter. In October 1989, appellant's application for general assistance under

25 CFR Part 20 was approved at the Wind River Agency, BIA. He was determined eligible to receive payments of \$265 per month, covering himself and his two children. At the time appellant's application was approved, and throughout the period at issue, appellant's wife was receiving Aid to Families with Dependent Children (AFDC) payments for herself and her daughter in the amount of \$320 per month.

In April 1990, the social worker responsible for appellant's case attended a training session at which she came to understand that the amount of appellant's monthly payments had been calculated incorrectly because inadequate consideration had been given to the AFDC payment received by appellant's wife and stepdaughter. The agency recalculated appellant's payments and determined that he was entitled to only \$130 per month. <sup>1/</sup> By letter of July 9, 1990, appellant was informed that he had been overpaid a total of \$810 between October 1989 and March 1990 and that he would have to repay that amount. He requested a hearing before the Superintendent, Wind River Agency, in accordance with 25 CFR 20.30. A hearing was held on July 27, 1990. On August 10, 1990, the Superintendent issued a decision affirming the initial determination that appellant had been overpaid.

Appellant appealed to the Area Director, who affirmed the Superintendent's decision on October 19, 1990, stating in part:

Prior to the adjustment of your general assistance grant in April 1990, the agency was duplicating and supplementing an AFDC grant. \* \* \* .

In determining eligibility for and determining the amount of the general assistance payment, the Bureau will consider all types of income and other liquid assets available to meet need unless specifically excluded by Federal statute (25 CFR 20.21(f)). The AFDC grant received by your wife and stepdaughter is considered as income in determining eligibility for and the amount of the general assistance payment. The Bureau general assistance payment cannot duplicate, enhance, or provide an alternative to public assistance. Thus, the Bureau general assistance grant plus the AFDC payment cannot exceed the monthly AFDC payment standard for the State where the applicant resides. Otherwise, the Bureau grant will duplicate the AFDC payment since the AFDC payment includes shelter costs. Persons receiving AFDC cannot be included in a Bureau general assistance grant (25 CFR 20.21(c)(1), 25 CFR 20.21(c)(3) and 66 BIAM 5.4C(3)(b)(c)).

\* \* \* \* \*

---

<sup>1/</sup> In August 1990, appellant's monthly payment was again recalculated. At that time, it was increased to \$390, because appellant's stepdaughter had left home and his wife was therefore no longer eligible for AFDC. See also note 7, below.

\* \* \* Your household is a mixed household meaning that there are both eligible recipients and ineligible household members. Income into the household is considered unless disregarded under Federal statute. In 25 CFR 20.21(f) Resources (2) unearned income includes but is not limited to (iii) Assistance provided by a State, county or local agency. The AFDC grant would be considered as income available to your household. Bureau general assistance is defined as a secondary or residual source of assistance for eligible Indian people.

(Area Director's Decision at 2-3).

Appellant's notice of appeal from this decision was received by the Board on November 5, 1990.

### Discussion and Conclusions

Appellant argues that the Area Director's interpretation of the regulations in 25 CFR Part 20 is in conflict with BIA Manual (BIAM) provisions interpreting those regulations. He contends that the BIAM makes it clear that AFDC payments received by his wife and stepdaughter cannot be taken into consideration in calculating his general assistance payment. Appellant relies on the introductory provisions of Bulletin 7, 66 BIAM Part 5, as well as 66 BIAM 5.4C, 5.5A(3) (a) and (d) (ii), and 5.5B(4). 2/

[1] The policy governing BIA general assistance is set out at 25 CFR 20.3, which provides: "When assistance or services are not being provided by state, local, or other agencies, general assistance \* \* \* shall be provided for eligible Indians by the Bureau in a manner designed to promote personal and family unity and economic and social stability, working toward attainment of self-sufficiency." The regulations define "BIA general assistance" as "a secondary or residual source of assistance for eligible Indian people and means financial aid payments to eligible Indian individuals and households for assistance in meeting the cost of essential needs." 25 CFR 20.1(m). The general assistance regulations were amended in 1985 to reflect limitations contained in the Act of October 12, 1984, 98 Stat. 1837, which made appropriations for the Department of the Interior for FY 1985. 3/

2/ The administrative record for this appeal includes Bulletin 6 but not Bulletin 7. Bulletin 6 expired on Feb. 22, 1990. Although the date on which Bulletin 6 went into effect is not shown on the record copy, the Board assumes, for purposes of this decision, that it was in effect in October 1989 and thus was effective during most of the period covered by this appeal. The Board also assumes that the relevant provisions of Bulletin 7 are essentially the same as the corresponding provisions of Bulletin 6.

3/ The Act of Oct. 12, 1984, 98 Stat. 1837, 1848, provided:

"[A]fter September 30, 1985, no part of any appropriation (except trust funds) to the Bureau of Indian Affairs may be used directly or by contract for general or other welfare assistance (except child welfare assistance) payments (1) for other than essential needs (specifically identified in

See 50 FR 39924 (Sept. 30, 1985). It is clear that BIA seeks to ensure that BIA general assistance payments do not duplicate assistance received from other resources.

A number of regulatory and BIAM provisions are relevant to this appeal and are therefore quoted at the outset. 25 CFR 20.21 provides:

(c) \* \* \* Indians, in order to be considered eligible for general assistance under this part, must meet the requirements prescribed in § 20.20(a); and the following conditions;

(1) Must not receive financial assistance from AFDC or Supplemental Security Income (SSI);

\* \* \* \* \*

(e) Standards of Assistance. (1) Where the Bureau operates a general assistance program, its standard of assistance shall be the AFDC payment standard used in the State where the applicant or recipient resides. \* \* \* The AFDC payment standard \* \* \* is the amount from which the Bureau will subtract net income and liquid assets to determine eligibility for and the amount of the Bureau's general assistance payment.

\* \* \* \* \*

(f) Resources. In determining eligibility for and the amount of the general assistance payment, the Bureau shall consider all types of income and other liquid assets available for support and maintenance unless otherwise disregarded under § 20.21(g), or specifically excluded by Federal statute. \* \* \*

\* \* \* \* \*

(2) "Unearned income" includes but is not limited to:

---

fn. 3 (continued)

regulations of the Secretary or in regulations of the State public welfare agency pursuant to the Social Security Act adopted by reference in the Secretary's regulations) which could not be reasonably expected to be met from financial resources or income (including funds held in trust) available to the recipient individual which are not exempted under law from consideration in determining eligibility for or the amount of Federal financial assistance or (2) for individuals who are eligible for general public welfare assistance available from a State except to the extent the Secretary of the Interior determines that such payments are required under sections 6(b)(2), 6(i), and 9(b) of the Maine Indian Claims Settlement Act of 1980 (94 Stat. 1793, 1794, 1796; 25 U.S.C. 1725(b)(2), 1725(i), 1728(b))."

(i) Income from: Interest; oil and gas and other mineral royalties; rental property; cash contributions such as child support and alimony; retirement, disability and unemployment benefits; per capita payments not excluded by Federal statute; sale of trust land and real or personal property which is not set aside for the purpose of reinvestment in trust land or a primary residence, or if set aside, has not been reinvested in trust land or a primary residence at the end of one year from the date the income was received; Federal and State tax refunds. All of the above shall be counted to the extent they are not disregarded by Federal statute.

(ii) Income in kind contributions providing shelter at no cost to the individual or household: In establishing the amount of the in kind contribution, the Bureau shall use the amount for shelter included in the standard, if identifiable, or 25 percent of the standard unless there is evidence provided that the value of free shelter is less; and,

(iii) Assistance provided by a State, county or local agency.

(g) Disregards. \* \* \*

\* \* \* \* \*

(2) The Bureau shall disregard as income, or other liquid assets:

(i) The first \$1000 of liquid resources available to the household;

\* \* \* \* \*

(h) Payments. (1) The Bureau shall make assistance payments in an amount not to exceed the difference between the Bureau standard of assistance and all resources not otherwise disregarded.

The provisions of Bulletin 6, 66 BIAM Part 5, corresponding to the provisions cited by appellant from Bulletin 7, are as follows:

[5.4]C. Assistance from other Governmental Programs. Clients who are receiving Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI) payments in their own right, or whose needs are included in such payments, are not eligible for Bureau general assistance. \* \* \*

\* \* \* \* \*

(3) Bureau general assistance shall not be used:

\* \* \* \* \*

(c) To supplement AFDC, public assistance, or SSI payments.

\* \* \* \* \*

[5.5A](3) Persons Whose Needs May be Included in a Budget. A determination to include the needs of an individual or members of a family group in the assistance budget shall be made after a careful analysis of the current living arrangements of an individual or family group.

(a) \* \* \* [A] determination must be made to designate a head of household for payment purposes. The head of household shall be the individual who is responsible for shelter costs \* \* \*

\* \* \* \* \*

(d) When determining the total unmet need, the following categories of individuals are not to be considered as eligible members of the household:

\* \* \* \* \*

(ii) AFDC recipients.

\* \* \* \* \*

[5.5B](4) Family members who are receiving AFDC or SSI are not included in the Bureau grant; therefore, no consideration is given to any of the resources held by them when computing the \$1,000 resource limit for general assistance.

Neither the regulations nor the BIAM provide a clear or immediate answer to the question posed in this appeal. The regulations explicitly provide that an AFDC recipient is not eligible for BIA general assistance. They are far from explicit, however, concerning the effect to be given to the AFDC income of a family member residing with an applicant for BIA general assistance. See, e.g., 25 CFR 20.21(f)(2), supra, concerning unearned income, in which there is no mention of this situation. As the Board understands AFDC, the payments are normally intended for the support of a child and the child's caretaker relative, although the needs of other household members may apparently be taken into account. See, e.g., 42 U.S.C. § 602(a)(7)(A) (1988). Nothing in the record here, however, indicates that appellant's needs were included in his wife's AFDC payment; rather, references to the AFDC payment indicate that it was intended to cover only appellant's wife and stepdaughter. <sup>4/</sup> For purposes of this

<sup>4/</sup> Although the Federal AFDC statute authorizes states to consider the needs of household members other than the child and caretaker relative, it does not require such consideration. Appellant's wife and stepdaughter received their payments under the Wyoming AFDC program. The Board has no

decision, the Board assumes that the AFDC payment was intended for appellant's wife and stepdaughter only. Given this assumption, the question becomes whether or to what extent the AFDC payment may be considered "income \* \* \* available for support and maintenance" of appellant and his two children within the meaning of 25 CFR 20.21 (f).

The BIAM does not explicitly address this question. It does provide, however, that a family member who is a beneficiary of an AFDC payment may not be included in a BIA general assistance grant. 66 BIAM 5.5A(3)(d)(ii). Further, it explicitly excludes the resources of an AFDC recipient from the resource limitation imposed upon general assistance recipients: "Family members who are receiving AFDC or SSI are not included in the Bureau grant; therefore, no consideration is given to any of the resources held by them when computing the \$1,000 resource limit for general assistance." 66 BIAM 5.5B(4). <sup>5/</sup> The general sense derived from the BIAM provisions quoted above is that family members who are AFDC recipients are intended to be disregarded when an application for BIA general assistance is considered.

The Area Director's decision indicates that one of BIA's concerns is to avoid duplicating payments for shelter expenses. The BIAM explicitly addresses this concern in only one context. 66 BIAM 5.5A(3)(e) provides for proration of shelter expenses in certain cases:

Where there is more than one family group living in one dwelling when general assistance is sought, the caseworker is required to prorate the common expenses of shelter, utilities, and household expenses to provide a grant or grants not to exceed state allowances for those shared expenses. If actual expenses are less than the state allowances, proration shall be based on the actual amounts. When one or more of the family groups receive AFDC, the proration rule shall be applied when computing the general assistance grant.

There is no definition of "family group" in the BIAM; the Board assumes, however, that appellant and his wife are considered members of a single family group, in accordance with the common understanding of the term. Under such an assumption, section 5.5A(3)(e) is inapplicable here. Even

---

fn. 4 (continued)

information concerning the provisions of the Wyoming program on this point. In any event, the amount of the AFDC payment received by appellant's wife and stepdaughter, \$320 per month, is the amount for two people, including shelter, under the Wyoming AFDC payment standard. See note 7, below.

<sup>5/</sup> No corresponding exclusion for the income of a family member AFDC recipient appears in the following section, 66 BIAM 5.5C, concerning income. One might assume, because specific mention of an exclusion is made in the section on resources but not in the section on income, that AFDC income of family members is not intended to be excluded. However, the Board declines to make such an assumption solely upon this slender evidence.

so, the section is of interest because it employs a methodology for avoiding duplication of shelter and related expenses which appears to be compatible with AFDC. 6/

Neither the regulatory nor the BIAM provisions set out a procedure for addressing the shelter duplication problem where an AFDC recipient is a member of the applicant's family group, rather than a member of another family group sharing the household. However, BIA's initial calculation of appellant's payment indicates that BIA attempted to address the problem by excluding an amount for shelter from appellant's payment, presumably because shelter was included in the AFDC payment received by appellant's wife and stepdaughter. 7/ BIA's initial calculation also indicates that appellant's

6/ Under AFDC, shelter expenses may also be prorated. See 42 U.S.C. § 612 (1988):

"A State plan for aid and services to needy families with children may provide that, in determining the need of any dependent child or relative claiming aid who is living with other individuals (not claiming aid together with such child or relative) as a household \* \* \*, the amount included in the standard of need, and the payment standard, applied to such child or relative for shelter, utilities, and similar needs may be prorated on a reasonable basis."

The Senate report on this provision explains that it "allow[s] States to prorate the portion of the AFDC grant for shelter and utilities whenever the assistance unit shares the household with other individuals. \* \* \* [T]he adoption of this optional provision recognizes the fact that where individuals share a household, the shelter and utility expenses for each individual are less." S. Rep. No. 494, 97th Cong., 2d Sess. 49 (1982), reprinted in 1982 U.S. Code Cong. & Admin. News 781, 825.

7/ All of BIA's calculations were based on the Wyoming AFDC payment standards. A chart included in the record indicates that these standards were as follows:

ELIGIBLE PERSONS	SUPPLIED SHELTER PAYMENT LEVEL	SHELTER INCLUDED PAYMENT LEVEL
1	\$115.00	\$195.00
2	\$205.00	\$320.00
3	\$265.00	\$360.00
4	\$310.00	\$390.00
5	\$345.00	\$450.00
6	\$405.00	\$510.00
7	\$425.00	\$575.00
8	\$475.00	\$640.00
9	\$530.00	\$700.00
10	\$580.00	\$765.00
11 or more	Add \$12 for each person over 10	Add \$12 for each person over 10

BIA's initial calculation of appellant's payment, \$265 per month, was based upon the "shelter supplied" level for 3 people. After appellant's

family was perceived as consisting of two assistance units: an AFDC unit, including appellant's wife and stepdaughter, and a BIA general assistance unit, including appellant and his two children.

The Area Director's decision takes an entirely different approach, one which goes beyond mere avoidance of duplication of shelter expenses. Under the Area Director's methodology, the total payment to the family is the focus. All family members, including AFDC recipients, are included in the count for general assistance purposes; as a result, AFDC payments are treated as income to the entire family. 8/

Clearly, in light of the policy guiding the general assistance program, it is necessary for BIA to take steps to avoid duplicating payments from other sources. The Board reaches no conclusion concerning whether the Area Director's methodology, per se, is an appropriate means of accomplishing this goal. The Board finds, however, that it is in conflict with the BIAM provisions in effect during the period at issue in this appeal. A fair reading of those provisions indicates that AFDC recipients are not to be included in the count of family members for purposes of determining the amount of a BIA general assistance payment. E.g., 66 BIAM 5.5A(3)(d): "When determining the total unmet need, the following categories of individuals are not to be considered as eligible members of the household: \* \* \* (ii) AFDC recipients." Under the Area Director's methodology, AFDC recipients are included in the count and are, in essence, considered as eligible recipients. Further, because AFDC recipients are included in the general assistance family unit under this methodology, BIA general assistance payments are "supplemental" to AFDC payments, in violation of 66 BIAM 5.4C(3)(c).

[2] The BIAM is an internal operating manual. The Supreme Court has held that its provisions may not be used to deprive general assistance applicants of benefits for which they would otherwise be eligible. Morton v. Ruiz, 415 U.S. 199 (1974). Provisions contained only in the BIAM are without the force of law when sought to be applied against parties outside BIA. See, e.g., Allen v. Navajo Area Director, 10 IBIA 146, 162-65, 89 I.D. 508, 517-18 (1982). On the other hand, provisions of the BIAM may be enforced against BIA. Price v. Portland Area Director, 18 IBIA 272, 276 n.4 (1990). Having issued the BIAM, BIA is obligated to abide by its terms where not to do so might result in a deprivation of benefits to an applicant for general assistance. Further, to the extent the regulatory and BIAM

---

fn. 7 (continued)

wife became ineligible for AFDC because her daughter had left home, appellant's payment was increased to \$390, the "shelter included" payment level for 4 people. Thus it is clear that BIA recognized that an amount for shelter was included in the AFDC payment.

8/ The Area Director's calculation began with the "shelter included" level for five people, \$450 per month, and deducted the \$320 AFDC payment received by appellant's wife and stepdaughter, to arrive at an amount of \$130.

