



INTERIOR BOARD OF INDIAN APPEALS

Darwin Moore v. Portland Area Director, Bureau of Indian Affairs

28 IBIA 58 (06/09/1995)



United States Department of the Interior

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

DARWIN MOORE

v.

PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 95-3-A

Decided June 9, 1995

Appeal from a decision concerning a termination of general assistance benefits.

Reversed.

1. Indians: Financial Matters: Financial Assistance--Indians: Social Services

General assistance benefits may not be terminated because of the recipient's failure to comply with a requirement which is not clearly set out in the regulations governing the general assistance program and of which the recipient has not otherwise been informed.

APPEARANCES: Appellant, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Darwin Moore seeks review of an August 31, 1994, decision of the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning the termination of appellant's general assistance benefits. For the reasons discussed below, the Board reverses the Area Director's decision.

Appellant is an enrolled member of the Klamath Tribe (Tribe), which operates a general assistance program pursuant to a grant made under the Indian Self-Determination Act (P.L. 93-638). ^{1/} In June 1993, he applied for general assistance under the tribal program. He was approved on June 14, 1993, for assistance beginning June 4, 1993.

On June 8, 1994, the Tribe's Employment Coordinator wrote to appellant, stating:

Jerry Herman of GHR Resources wants to put together an all Indian
20 Man Fire Fighting Crew. * * *

^{1/} 25 U.S.C. § 450-450n (1988 and Supps.).

There will be a **mandatory meeting** at Klamath Tribal Administration Office, June 15th at 1:00 pm with Jerry Herman to explain in more detail on the positions & training. In order for it not to affect your General Assistance you need to attend the meeting.

You need to make an effort at applying for any job position that is referred to you. Please keep in touch and let me know how things are going with you. Do not hesitate to call if you have any question. [Emphasis in original.]

Appellant did not attend the June 15, 1994, meeting. On June 16, 1994, the Tribe's Caseworker issued a notice informing appellant that his general assistance benefits would be terminated effective July 4, 1994. In the space for "Reason for Decision," the notice stated: "For not attending the 'mandatory' meeting with Jerry Herman of GHR Resources at the Tribal Office on 6-15-94." The notice informed appellant that he had the right to request a hearing before the Field Representative, Chiloquin Sub-Agency, BIA, or to appeal the termination to the Area Director. 2/ By letter of June 22, 1994, appellant requested a hearing. The hearing was held on July 5, 1994.

Appellant stated that he had been out of town for about a week and had returned the day of the meeting; that by the time he saw the June 8, 1994, letter, it was too late to attend the meeting; and that he called the Employment Coordinator on that day and again the following day, but found her unavailable on both occasions. Appellant further stated that he checked his mail only about once a week and that his brothers normally checked it.

The Field Representative issued a decision on July 6, 1994, upholding the termination. Appellant then appealed to the Area Director, who affirmed the Field Representative's decision on August 31, 1994. The Area Director stated:

[T]he following provisions in the regulations that govern the Bureau Social Services program, including P.L. 93-638 contracted programs, unless otherwise provided in a contract, were considered:

(1) Employment. (1) An applicant or recipient must actively seek employment, including use of available tribally or Bureau-funded employment assistance services. [25 CFR 20.21(i)(1)] 2/

2/ It appears from these facts that the Tribe has chosen to assume only the staff level functions of the BIA social services program under its P.L. 93-638 grant, leaving the hearing and appellate functions with BIA. Under other circumstances, a tribal decision made under a P.L. 93-638 contract or grant might not be appealable to BIA. See Martin v. Billings Area Director, 19 IBIA 279, 98 I.D. 200 (1991).

(d) [sic] Redeterminations. " - - -. Recipients are required to immediately inform the Bureau of any changes in status which may affect their eligibility or amount of assistance" [25 CFR 20.21(d)]

The following factors regarding your situation were considered:

1. You were out of town for "about a week," therefore, this is viewed as your unavailability for potential employment should an opportunity have arisen. Being out of town also prevented you from actively seeking employment as required by the above cited regulation.

2. You are required to inform your worker any time there is a change in your circumstances that affects your eligibility and/or the amount of the grant you receive. Because your absence from the community affected your ability to actively seek employment and/or find out about employment opportunities, your not notifying the general assistance program affected your eligibility, as well as the amount of your grant.

3. The rationale that because you only checked your mail once a week is not acceptable as reason why your assistance should have continued [sic].

General assistance is temporary financial assistance that is provided to eligible Indians to meet only basic needs when no other resources are available. For this reason applicants and recipients are required to actively seek all available opportunities to obtain employment. Your being out of town and not notifying the general assistance program affected your eligibility and your grant amount. For these reasons, the decision of the Hearing Officer to uphold the Caseworker's decision to terminate your general assistance grant is upheld.

(Area Director's Aug. 31, 1994, Decision at 2-3).

Appellant appealed this decision to the Board. No briefs were filed.

Discussion and Conclusions

In his notice of appeal to the Board, appellant asserts that he was never informed that he must notify tribal general assistance personnel when he was going out of town. No discussion of this specific point appears in the transcript of the July 5, 1994, hearing or in the decision of the Field Representative. For purposes of this appeal, the Board accepts appellant's assertion as accurate, because neither the Tribe nor the Area Director has disputed it.

Even if he was not specifically informed of this requirement, however, appellant is bound by it if it appears in the regulations governing BIA's

general assistance program in 25 CFR Part 20. ^{3/} This is so because of the well-established rule that regulations governing a Federal program are binding on all those who participate in the program, regardless of actual knowledge of the regulations. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

The Area Director cited 25 CFR 20.21(d)(1) and 20.21(i)(1). Neither of those provisions explicitly requires that a general assistance recipient report an out-of-town trip. Subsection 20.21(d)(1) requires reporting of any change in status which might affect eligibility or the amount of assistance. ^{4/} It clearly appears that the term "status" in this provision means "status as an eligible recipient of general assistance." The basic eligibility requirements for the general assistance program are set out in the immediately preceding subsection 20.21(c), which also incorporates by reference the general eligibility requirements in subsection 20.20(a). None of these eligibility requirements deals specifically with residence or travel, and there is nothing in them that would alert appellant to the fact that a one-week trip out of town could alter his status as an eligible recipient of general assistance.

Eligibility for general assistance is also affected by the employment requirements of subsection 20.21(i)(1). This subsection provides:

An applicant or recipient must actively seek employment, including use of available tribally or Bureau-funded employment assistance services. The individual is also required to accept available local employment. An individual who does not comply will not be eligible for general assistance. These requirements do not apply to:

[certain categories of individuals, none of which are relevant here].

There are no cross-references between this subsection and subsection 20.21(c) which, as discussed above, includes the principal provisions concerning eligibility.

The Area Director read 25 CFR 20.21(d)(1) and 20.21(i)(1) together to conclude that appellant was required to notify general assistance personnel

^{3/} Under 25 CFR 271.4(h), the eligibility requirements of various BIA programs must be followed by tribes which operate the programs pursuant to P.L. 93-638 contracts or grants, unless a waiver is obtained from the Commissioner of Indian Affairs. There is no indication of any such waiver in this case. It is apparent that both BIA and the Tribe have considered 25 CFR Part 20 applicable to the Tribe's Program.

^{4/} 25 CFR 20.21(d)(1) provides in its entirety:

"The Bureau shall determine eligibility and the amount of the BIA general assistance payment based on its best estimate of income and circumstances which will exist in the month for which the Bureau is to provide

that he would be out of town. While this interpretation might be comprehensible to BIA and tribal employees, who work with these regulations every day, the Board does not believe that the average person reading the regulations would understand them in this way. For one thing, the requirement for reporting changes in status, which appears in subsection 20.21 (d) (1), appears, by virtue of its location, to relate to the eligibility criteria in the immediately preceding subsection. It has no immediately obvious connection to subsection 20.21 (i) (1), which is located nearly four columns later in the Code of Federal Regulations. Moreover, subsection 20.21 (i) includes its own reporting and enforcement provisions, *i.e.*, a requirement for reporting job search efforts (20.21 (i) (3)) and a penalty for failure to comply with the requirements of the subsection (20.21 (i) (4)). ^{5/} Thus, subsection 20.21 (i) appears to be a self-contained provision governing employment obligations. Under these circumstances, the Board finds it unlikely that the ordinary reader would understand that a general assistance recipient must report a short out-of-town trip to tribal workers under subsection 20.21 (d) (1) because it might affect his/her employment search obligations under subsection 20.21 (i) (1).

Because the regulations do not clearly set forth a requirement for reporting such trips, and because there is no evidence that the Tribe or BIA informed appellant of such a requirement, the Board finds that, under the circumstances of this case, appellant should not be penalized for failing to notify general assistance personnel that he would be out of town for a week. ^{6/}

fn. 4 (continued)

assistance. Recipients are required to immediately inform the Bureau of any changes in status which may affect their eligibility or amount of assistance. The Bureau shall redetermine eligibility:

"(i) Whenever there is an indication of a change in circumstances;

"(ii) Not less frequently than every three (3) months for individuals who are not exempt under 20.21 (i) from seeking or accepting employment;

"(iii) Not less frequently than one [sic] every six (6) months for all households."

^{5/} 25 CFR 20.21 (i) (4) provides:

"Individuals not exempt [from the job search requirement] who refuse, or otherwise fail to seek and accept available local employment, or who voluntarily and without good cause do not maintain their employed status, will not be eligible to receive general assistance for a period of 60 days following the date of application, or eligibility redetermination."

Appellant was not found to be in violation of the job search requirements of subsection 20.21 (i). In fact, as noted below, he was considered to be in compliance with those requirements. In a perhaps ironic twist, appellant appears to have had his benefits completely terminated for what seems to have been an inadvertent offense, when he would have suffered only a 60-day suspension had he deliberately failed to comply with the job search requirements.

^{6/} The Board does not hold that BIA or the Tribe may not require that a general assistance recipient notify tribal workers if he/she intends to

The Area Director also held that appellant's failure to attend the June 15, 1994, meeting was not excused by the fact that he only checked his mail once a week. There was disagreement at the hearing as to whether appellant had been informed that he could expect to receive job information by mail:

[Employment Coordinator]: Well any time I have somebody come into the office and apply for [general assistance] I always tell them to be expecting a letter in the mail because I do send out letters if I can't get them by phone and I do tell them that.

[Appellant]: Really, you have never told me that. Really, I think this is the 1st time I've ever talked to you besides on the phone.

[Employment Coordinator]: Who did you talk to when you applied for [general assistance]? I had to have got ah right here Darwin Moore and that is the only way you could get it is through me.

[Appellant]: Not through the phone?

[Employment Coordinator]: Unless someone else did it.

[Appellant]: Is that possible, because I don't think I have ever talked to you.

(Tr. at 3). In his appeal to the Area Director, appellant contended: "I was never told to check the mail everyday to look for letters concerning jobs, as [the Employment Coordinator] said she had told me. [The Employment Coordinator] said that she also signed me up for [general assistance] but it was [the Caseworker] who signed me up [Emphasis in original]" (Notice of Appeal to Area Director at 2).

The documents in the administrative record indicate that appellant's general assistance application was handled by the Caseworker and that the Caseworker referred appellant to the Employment Coordinator. The documents do not show, however, that appellant actually spoke to the Employment Coordinator. The referral sheet contains a brief summary of a conversation with appellant, but it was signed by an individual other than the Employment Coordinator. The Employment Coordinator's statement at the hearing does not show that she had actually informed appellant that he might receive job information by mail. Rather, she simply described her general practice in this regard. The Board finds no clear evidence that the

fn. 6 (continued)

leave town. Such a requirement would seem to be entirely reasonable. The Board holds only that, in order to enforce such a requirement, BIA and/or the Tribe must be able to show that the recipient has been informed of the requirement.

Employment Coordinator, or anyone else, informed appellant that he might receive job information by mail.

It appears from the record that appellant had complied with all other requirements of the general assistance program. The Field Representative so noted in his decision: "It is unfortunate that this situation occurred since it appears by your record, that you have obeyed all previous requirements of the program" (Field Representative's July 6, 1994, Decision at 2). The Caseworker stated at the hearing that appellant had regularly and timely submitted the required job search reports (Tr. at 4). On the basis of appellant's record of compliance with program requirements and the lack of convincing evidence that he was informed that he might receive job information by mail, the Board finds it more likely than not that he was not so informed.

[1] On balance, the record does not support a conclusion that appellant was informed of, or should have known from reading the regulations, that he was required to report his intent to leave town for a week or that he was required to check his mail on a daily or near-daily basis. While neither requirement is unreasonable per se, the Board finds that it is unreasonable to enforce such requirements against a general assistance recipient when it cannot be shown that he was informed of the requirements.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's August 31, 1994, decision is reversed.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge