



INTERIOR BOARD OF INDIAN APPEALS

Reva Northrup v. Acting Western Regional Director, Bureau of Indian Affairs

42 IBIA 136 (01/20/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

REVA NORTHRUP : Order Dismissing for Lack of
Appellant, : Jurisdiction
 :
v. :
 :
 : Docket No. IBIA 04-85-A
ACTING WESTERN REGIONAL :
DIRECTOR, BUREAU OF :
INDIAN AFFAIRS, :
Appellee. : January 20, 2006

Reva Northrup (Appellant) seeks review of a February 25, 2004 decision of the Acting Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning a request for Housing Improvement Program (HIP) funds. For the following reasons, the Board dismisses this appeal as moot.

Background

Appellant is an enrolled member of the Fort McDermitt Paiute-Shoshone Tribe of Nevada (Tribe). The Tribe operates a HIP under a contract with BIA pursuant to the Indian Self-Determination Act, Pub. L. 93-638, 25 U.S.C. § 450 *et seq.* HIP is a safety-net program that provides grants to the neediest of Indian families for the cost of services to repair, renovate, replace, or provide housing. *See* 25 C.F.R. § 256.5. Regulations governing the program are codified at 25 C.F.R. Part 256.

On August 21, 2002, Appellant submitted an application for HIP funding, requesting financial assistance to make repairs and renovations to her residence.

On December 20, 2002, an employee of the HIP office in BIA's Western Region reviewed Appellant's application to determine whether the materials she submitted satisfied the documentation requirements under 25 C.F.R. § 256.13. ^{1/} The employee completed a

^{1/} Departmental regulations effective at the time Appellant submitted her HIP application provided that an individual applying for HIP must, *inter alia*, provide "proof of ownership

form entitled "Checklist for HIP Application." The employee wrote "No" next to the requirement that Appellant provide proof of ownership of the residence or land for which she sought funds.

Appellant apparently was placed on the fiscal year (FY) 2003 HIP eligibility list. On November 20, 2003, the Regional Director wrote to the chairperson of the Tribe, requesting it to immediately remove Appellant's name from the 2003 HIP selection list. The Regional Director based the request on two grounds: (1) Appellant reportedly had "voluntarily submitted documentation to a Tribal Official, asking to be removed from the HIP listing [and] * * * informed the Regional Housing Specialist with this same information"; and (2) BIA had learned that Appellant and her spouse had two homes, which the Regional Director stated would have disqualified her from HIP eligibility under 25 C.F.R. §§ 256.5 and 256.6. The Regional Director requested the Tribe to submit the name of the next eligible applicant, citing time constraints that could cause funding for the Tribe's 2003 HIP program to lapse on December 31, 2003. The Regional Director stated that Appellant could "re-apply in the next program year, should the above-mentioned factors change." The Regional Director copied Appellant on the letter.

By letter dated November 24, 2003, the tribal vice-chairperson wrote the BIA Housing Specialist confirming the conversation she had had with Appellant and had reported to BIA, in which Appellant stated she wished to withdraw her application.

On November 25, 2003, the tribal chairperson wrote the BIA Housing Specialist recognizing that Appellant had been dropped from the eligibility list and recommending that the next person on the priority list be granted funding instead.

By letter dated December 30, 2003, Appellant, through counsel, submitted a "Notice of Appeal" of the Regional Director's November 20, 2003 letter to the tribal

of the residence and/or land: (1) For fee patent property, you must provide a copy of a fully executed Warranty Deed, which is available at your local county court house; (2) For trust property, you must provide certification from your home agency; (3) For tribally owned land, you must provide a copy of a properly executed tribal assignment, certified by the agency; or (4) For multi-owner property, you must provide a copy of a properly executed lease." 25 C.F.R. § 256.13(g) (2002). The HIP regulations were revised on December 20, 2002, but the substance of this provision remains the same.

chairperson directing that Appellant be dropped from the Tribe's HIP priority list. 2/ Appellant alleged that she had never withdrawn her application for HIP funds and argued that the ownership of multiple homes is not a disqualifying factor under the regulations. She also requested that any action regarding the allocation of HIP funds for the Tribe be stayed pending the appeal and that a reasonable bond be set pursuant to 25 C.F.R. § 2.5(a).

The Regional Director responded to Appellant's appeal on February 25, 2004. The Regional Director stated that, based on further inquiries into Appellant's eligibility by the Interior Department's Office of the Solicitor, he determined that Appellant was never eligible for HIP funds, even before BIA had learned that she had supposedly withdrawn her application and was the owner of two houses, because she had failed to establish, by providing documentary proof, that she owned the house for which she requested funds. See 25 C.F.R. §§ 256.9 & 256.13(g). The Regional Director noted that Appellant might wish to reapply in the future with proper documentation indicating that she met all applicable eligibility criteria. The Regional Director denied Appellant's request for a stay as moot.

Appellant filed a timely appeal to the Board. In her notice of appeal, Appellant states that she owns the residence for which she sought funding and attaches a copy of a deed dated August 13, 1987 showing that the house was conveyed to her by the Tribe. Appellant also asserted that, in any event, the regulations do not require documentation of home ownership to satisfy HIP criteria. She also requests the Board to stay the allocation of HIP funds to the Tribe and that a reasonable bond of \$1.00 be set.

In response to the request for a stay, the Board issued an order directing the Regional Director to provide a report on the status of FY 2003 and FY 2004 HIP funds within the control of the Regional Director and available or potentially available to the Tribe. The Regional Director responded that there were no more FY 2003 funds to distribute. With respect to FY 2004 funds, the Regional Director stated that BIA and Tribal authorities were in the midst of the application process and that Appellant could participate in that process. 3/ The Regional Director asserted that the appeal, which

2/ The November 20, 2003 letter was signed by an Acting Regional Director, and it appears that by filing an "appeal" with the Regional Director, Appellant in effect was asking the Regional Director to review and reconsider the November 20 letter.

3/ Because BIA informed the Board that the HIP funds for FY 2003 had been distributed, there was no action the Board could take to "stay" the expenditure of those funds pending Appellant's appeal. Appellant notes that the regulations provide for an eligible but

pertains only to FY 2003 funding, was moot unless Appellant could “propose a lawful and practicable remedy whereby the funds previously expended on the other tribal applicants can be recovered and given over” to Appellant. Regional Director’s Status Report and Response at 2.

Appellant filed an objection to the Regional Director's status report.

The Board issued an order for briefing on mootness. Both parties filed briefs in response.

Both parties have also advanced arguments regarding alleged misstatements by Appellant on her HIP application. Appellant has admitted to making mistakes on her application. See Affidavit of Appellant, June 7, 2004.

Discussion

The doctrine of mootness in the federal courts is based on the case-or-controversy limitations set forth in Article III, § 2, of the United States Constitution. Pueblo of Tesuque v. Acting Southwest Regional Director, 40 IBIA 273, 274 (2005). Although the Board, as an executive branch forum, is not bound by the same constitutional constraints, it has consistently followed the same principles of declining to consider moot cases, in the interest of administrative economy. Id. Mootness may occur when nothing turns on the outcome of an appeal. See Brown v. Navajo Regional Director, 41 IBIA 314, 318 (2005), and cases cited therein.

The Board has recognized an exception to the mootness doctrine where there is a potentially recurring question that is capable of repetition yet evading review. San Carlos Apache Tribe v. Western Regional Director, 41 IBIA 210, 217-18 (2005); Shoshone-Paiute Tribes of the Duck Valley Reservation v. Phoenix Area Director, 18 IBIA 423, 427 (1990). Such a situation may arise where, as here, an order has a sufficiently short-term effect such that the relief sought cannot expect to be provided within the time it takes for the Board to process and decide an appeal.

unfunded HIP application to be carried forward into the next year where there are extenuating circumstances, see 25 C.F.R. § 256.14(d)(2), but because Appellant’s FY 2003 application was not deemed eligible, this provision did not apply and Appellant’s application was not carried forward into 2004. Nor did Appellant reapply for HIP funding in 2004. Furthermore, Appellant provides no authority for or argument in support of the proposition that the Board could or should stay the expenditure of appropriated funds to which Appellant claims a right.

Here, absent the application of an exception, Appellant’s claim is moot because the FY 2003 HIP funds have already been distributed and the Board cannot order the relief sought by Appellant — reinstatement and funding of her FY 2003 HIP application. Appellant, however, asks the Board to invoke the “capable of repetition yet evading review” exception to mootness.

The “capable of repetition, yet evading review” exception does not apply in this case. To satisfy the capable of repetition requirement, Appellant must show that there is a “reasonable expectation” that she would be subjected to the same action again. See Sahmaunt v. Anadarko Area Director, 17 IBIA 60, 64 (1989); see also Lewis v. Continental Bank Corp., 494 U.S. 472, 481 (1990).

Appellant has not offered any evidence or argument to establish that she could be subject to the same action and alleged error again. The question before the Board is whether the Regional Director correctly determined that Appellant was not eligible for HIP funding based on her failure to supply documentation that established her ownership of the residence for which she sought the funding. Since the issuance of the Regional Director’s decision, Appellant has obtained such documentation and is now on notice that BIA considers such documentation necessary; thus we may presume she will include the documentation in any future application for HIP funds. There is, therefore, no reasonable expectation that BIA will again reject a HIP application submitted by Appellant on the grounds that she challenges here. Thus, the “capable of repetition yet evading review” exception to mootness does not apply.

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 dismisses this appeal as moot.

I concur:

// original signed
Katherine J. Barton
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge