



INTERIOR BOARD OF INDIAN APPEALS

Estate of Roy Phillip Watlamatt, Estate of Peter Smartlowit,
and Estate of Beverly Ann Tallman

46 IBIA 60 (10/19/2007)

Related Board cases:

46 IBIA 160

46 IBIA 195

46 IBIA 245



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

ESTATE OF ROY PHILLIP)	Order Reversing Decisions
WATLAMATT)	
)	Docket Nos. IBIA 07-67
ESTATE OF PETER SMARTLOWIT)	07-70
)	07-71
ESTATE OF BEVERLY ANN)	
TALLMAN)	October 19, 2007

Appellant Yakama Nation Credit Enterprise (YNCE) appealed to the Board of Indian Appeals (Board) from orders denying rehearing in each of these three Indian probate cases. Each order was issued by the Administrative Law Judge (ALJ) on November 28, 2006.¹ In each case, YNCE had sought rehearing after the ALJ denied the claims that

¹ These appeals were assigned Docket Nos. IBIA 07-67 (Watlamatt), 07-70 (Smartlowit), and 07-71 (Tallman).

YNCE also appealed to the Board in five other probate cases from substantively identical orders denying rehearing in the estates of Charmane Rosella Sanchey (Docket No. IBIA 07-66), Arleia Wesley Jolley (Docket No. IBIA 07-68), Virginia Agnes Yelechchin (Docket No. IBIA 07-69), Diana Kay Broncheau (Docket No. IBIA 07-72), and Eva Marie Shippentower (Docket No. IBIA 07-93). The Board initially consolidated all eight appeals. On August 27, 2007, the Board ordered YNCE to show cause why the ALJ's denial of rehearing in the estates of Jolley and Shippentower should not be affirmed on the ground that YNCE's claims were time-barred under the interim probate regulations in effect in 2001 when Jolley and Shippentower died. *See* 25 C.F.R. § 15.303 (2001); 43 C.F.R. § 4.250(a) (2001). On October 1, 2007, the Board issued a similar show cause order to YNCE in the estates of Sanchey, Yelechchin, and Broncheau, based on the regulations that were in effect when those decedents died. *See* 43 C.F.R. § 4.250(a) (2002). Because YNCE's claims against the estates of Watlamatt, Smartlowit, and Tallman were all undoubtedly timely — each of these decedents died before 2001 and their estates are governed by an earlier version of subsection 4.250(a), *see infra* note 17 — the Board now decides these three appeals separately.

YNCE had filed against each decedent's estate. In identical orders, the ALJ denied rehearing because he found that income from an Indian decedent's trust lands vested in the decedent's heirs on the date of death and that he had discretion to disallow YNCE's claims on the ground that post-death income should not be available or should not be used to pay claims. In each case, as of the date of death, insufficient funds were on deposit in the respective decedent's Individual Indian Money (IIM) account to pay YNCE's claims; however, sufficient funds to pay YNCE's claims were on deposit in each decedent's IIM account by the time of the respective probate hearing.

We conclude that the ALJ erred in disallowing YNCE's claims against the estates of Watlamatt, Smartlowit, and Tallman on the ground that post-death income should not be available or should not be used to pay YNCE's claims. We therefore reverse the denial of rehearing and order the payment of YNCE's claims in each of these estates.

Background

I. Estate of Roy Phillip Watlamatt

Roy Phillip Watlamatt² died testate on June 4, 1998, at White Salmon, Washington. As of the date of Watlamatt's death, he owned interests in property located on the Yakama Reservation and \$51.88 was on deposit in his IIM account.

On August 16, 2000, YNCE submitted two claims against Watlamatt's estate, one for \$2,460.82 and the other for \$61,401.76 plus 7% interest. The claims covered two loans from YNCE to Watlamatt. Attached to each claim was a Note and Disclosure form for each loan and an Assignment of Trust Property and Power to Lease (Assignment). As security for the loan, Watlamatt assigned to YNCE,

(a) [a]ll property, except land, which is now or may in the future be held in trust for me by the United States; (b) all income from trust land in which I now have or may in the future acquire an interest; (c) any income from any source and any funds accruing to my individual Indian account.

Assignment § 3. Watlamatt granted the Bureau of Indian Affairs (BIA) the "authority to demand, collect, sue or receipt for [his] property and income," and to apply such income to his indebtedness to YNCE. *Id.* § 4. The Assignment further provided that if payment were not made as set forth in the loan agreement, BIA could "take possession of any of

² Watlamatt's last name is also spelled "Watlamet" in the record.

[Watlamatt's] trust property or income, and dispose of the same in accordance with instructions of the Commissioner of Indian Affairs, and apply the proceeds on [Watlamatt's] indebtedness." *Id.* The Assignment, which was executed on BIA Form 5-4720 (September 1959), also provided: "It is understood that in the case of my death, this assignment and power to lease *shall constitute a claim against trust funds, income, or trust property superior to that of my heirs.*" *Id.* § 6 (emphasis added). The Yakama Agency Superintendent (Superintendent) approved the Assignment.³

On May 2, 2006, YNCE wrote to the ALJ to clarify that it was only seeking payment for the loan in the amount of \$2,460.82, and not for the \$61,401.76 loan. YNCE stated that the larger loan had already been paid in full.

The ALJ held a hearing to probate Watlamatt's estate on May 15, 2006. At the time of the hearing, sufficient funds were on deposit in Watlamatt's IIM account to pay YNCE's claim. Several family members and two representatives from YNCE attended the hearing. A representative for YNCE testified that she filed YNCE's claim on August 16, 2000, and had made no attempt to collect from non-trust property the money due on the loan. The ALJ inquired whether any of the attendees had any questions about the claim. No one responded.

On June 6, 2006, the ALJ issued an Order Approving Will and Decree of Distribution in Watlamatt's estate, in which he denied YNCE's claim.⁴ The ALJ noted that, as of the date of Watlamatt's death, insufficient funds were on deposit in his IIM account to pay YNCE's claims. Relying on the Board's decision in *Estate of Samuel R. Boyd*, 43 IBIA 11, 23 (2006), the ALJ found that, "post-death income [from Watlamatt's trust or restricted property] vested in decedent's heirs at the instant of his death," and therefore was not considered Watlamatt's personal property available to pay claims. Order Approving Will and Decree of Distribution in Estate of Watlamatt at 2. The ALJ concluded, "[b]ecause the decedent's IIM account balance as of the date of decedent's death was less

³ Subsection 101.20(b) of 25 C.F.R. provides that assignments of trust income may be taken as security for loans, with BIA's approval.

⁴ The order actually denied both of YNCE's claims, apparently overlooking YNCE's letter of May 2, 2006, which clarified that YNCE only sought payment for the claim of \$2,460.82.

than \$1,000, the claims are disallowed in their entirety pursuant to 43 C.F.R. § 4.251(f).” *Id.*⁵

YNCE filed a timely petition for rehearing, which is discussed below, at 66.⁶

II. Estate of Peter Smartlowit

Peter Smartlowit died intestate on September 20, 2000, at Yakima, Washington. At the time of his death, Smartlowit owned an interest in trust or restricted property located on the Yakama Reservation, and his IIM account contained no funds.

On May 2, 2001, YNCE prepared a claim against Smartlowit’s estate to cover two loans from YNCE.⁷ The amount due on one of the loans was \$7,336.00, and the amount due on the other loan was \$4,991.41 plus 9% interest. Each loan was secured by a BIA-approved assignment of income from Smartlowit’s trust property. Attached to the claim were two Note and Disclosure forms and two Assignments, all identical in substance to the forms in Watlamatt’s estate. There is no indication when the claims were received by BIA.

On May 17, 2006, the ALJ held a hearing to probate Smartlowit’s estate. At the time of the hearing, sufficient funds were on deposit in Smartlowit’s IIM account to pay YNCE’s claim. In attendance were several family members and a representative of YNCE.

⁵ Subsection 4.251(f) of 43 C.F.R. (2002) provides that, “[i]f, as of the date of the hearing, less than \$1,000 remains in the IIM account after payment of priority claims is ordered, the general claims may be ordered paid on a pro rata basis or disallowed in their entirety.”

⁶ On September 1, 2006, the ALJ issued a Title Transfer Order, in which he noted that the Yakama Nation (Nation) had elected to purchase certain trust properties of the estate pursuant to the provisions of the Act of August 9, 1946, 60 Stat. 968, as amended by the Act of December 31, 1970, Pub. L. No. 91-627, 84 Stat. 1874, and ordered that the funds from the sale of the interests be distributed to the heirs or devisees. That same day, the ALJ ordered the partial distribution of Watlamatt’s estate, except for \$2,500.00 in Watlamatt’s IIM account, to be retained in case the ALJ were to determine on rehearing that YNCE’s claim should be paid.

⁷ There is no indication in the record of the date YNCE filed its claim or where the claim was filed. However, it is evident from the testimony at the hearing that YNCE submitted the claim prior to the hearing.

YNCE testified that the loan for \$4,991.41 had been paid, and that it only sought payment for the \$7,336.00 loan. The ALJ asked the hearing attendees if they had any questions for YNCE about the loans, and Smartlowit's spouse stated that she did not remember one of the loans.

On July 11, 2006, the ALJ issued an Order Determining Heirs, in which he denied YNCE's claim. He noted that, as of the date of Smartlowit's death, his IIM account contained no funds. Relying on *Estate of Boyd*, the ALJ concluded that, "although [Smartlowit's] IIM account, subsequent to his death, contains proceeds which are sufficient to cover [YNCE's] claimed amount, this forum has no authority to direct that such post-death income proceeds be used to satisfy said claim because such income is not owned by the decedent, but by his heirs." Order Determining Heirs in Estate of Smartlowit at 2. The ALJ observed, however, that nothing in his denial of YNCE's claim should be construed as limiting the "independent authority" of BIA "to take appropriate action on this issue in accordance with the Assignment." *Id.*

YNCE filed a timely petition for rehearing with the ALJ on September 9, 2006. By order dated September 13, 2006, the ALJ notified the Superintendent of the petition for rehearing. However, the Nation, which has contracted certain probate functions pursuant to a Pub. L. No. 93-638 contract, did not learn of the petition for rehearing until November 2, 2006. On October 5, 2006, a Nation realty specialist prepared the probate package for closure, and the Superintendent approved distribution of Smartlowit's estate that same day. On October 6, 2006, the probate package was faxed to the Office of the Special Trustee (OST). On October 17, 2006, OST closed the estate, and distributed the funds in Smartlowit's IIM account to his heirs. BIA's Land Title and Records Office (LTRO) updated the land ownership records. On November 3, 2006, a realty specialist for the Nation notified the ALJ and YNCE that Smartlowit's estate had been closed. By letter dated November 9, 2006, YNCE asked the ALJ to (1) immediately cancel payment of the distribution checks to the heirs; (2) notify the heirs that the distributions were made in error and must be returned to BIA; and (3) direct BIA to place restrictions on the IIM accounts of those to whom funds were distributed in error.

By order dated November 20, 2006, the ALJ directed the Superintendent to take the actions requested by YNCE in its November 9 letter, and to notify the ALJ of the corrective actions it planned to take by December 4, 2006. The Superintendent's response, if any, has not been included in the record before the Board.

III. Estate of Beverly Ann Tallman

Beverly Ann Tallman died intestate on November 10, 1998, at Seattle, Washington. As of her date of death, \$119.20 was on deposit in her IIM account, and she owned interests in public domain allotments in Washington and Oregon as well as in property located on the Yakama Reservation.

On November 17, 1998, YNCE prepared a claim against Tallman's estate in the amount of \$3,136.78 to cover a loan it had made to Tallman.⁸ The loan was secured by a BIA-approved assignment of Tallman's income from her trust or restricted property. Attached to the claim was a promissory note for the loan and an Assignment, identical to the assignments in Watlamatt's and Smartlowit's estates.

On May 18, 2006, the ALJ held a hearing to probate Tallman's estate. At the time of the hearing, sufficient funds were on deposit in Tallman's IIM account to pay YNCE's claim. Several family members and two representatives from YNCE attended the hearing. A representative from YNCE testified that it was only seeking payment of \$1,139.00. The ALJ asked the attendees whether anyone had a question about YNCE's claim and no one responded.

On June 9, 2006, the ALJ issued an Order Determining Heirs, in which he denied YNCE's claim. He noted that as of Decedent's death, \$119.20 was on deposit in Tallman's IIM account, and denied YNCE's claim for the same reasons he did in the Estate of Smartlowit. As in the Estate of Smartlowit, the order stated that nothing in the denial of YNCE's claim should be construed as limiting the "independent authority" of BIA "to take appropriate action consistent with the Assignment." Order Determining Heirs in Estate of Tallman at 2.

YNCE filed a timely petition for rehearing.

⁸ As with the claims submitted by YNCE against Smartlowit's estate, there is no indication in the record of the date of receipt of YNCE's claims by BIA or the ALJ. However, it is evident from the hearing transcript that the claim was submitted prior to the hearing.

IV. Petitions for Rehearing

YNCE's petitions for rehearing in all three estates contained identical grounds for rehearing.⁹ YNCE argued that the ALJ disregarded Board precedent and erred in relying on 43 C.F.R. § 4.251(f) to disallow its claims because the disallowance provision in subsection 4.251(f) pertains to general claims, but YNCE's claims were priority claims. YNCE asserted that, under 43 C.F.R. § 4.252, claims may be paid from income from trust lands, without limitation as to whether or not that income had accrued at the time of death.¹⁰ YNCE also argued that the Board's decision in *Estate of John Joseph Kipp*, 8 IBIA 30 (1980), "authoriz[es] payment [from post-death income] in probate of . . . claims brought by the Tribe and supported by Assignments of the decedent." Petitions for Rehearing filed in Estates of Watlamatt, Smartlowit, and Tallman at 4. YNCE also asserted that *Estate of Boyd* is inapplicable because it did not address the payment of claims.

YNCE attached to each petition for rehearing a declaration by its attorney, in which she stated that she had made inquiries to the Superintendent as to what other process besides a claim in probate is available to protect YNCE's interest in the funds in a decedent's IIM account based on an Assignment of Income from Trust Property. According to YNCE's counsel, the Superintendent advised her that he was not aware of any process other than probate. Counsel testified that she had asked the Superintendent to take action to

⁹ On August 14, 2006, the ALJ received an objection to YNCE's petition for rehearing in Estate of Watlamatt from Joan C. Watlamatt. She stated that she had paid off a loan that was the subject of YNCE's petition for rehearing, and that she was submitting supporting documentation. The documentation reveals that, consistent with YNCE's May 2, 2006, letter, the larger loan had been paid in full. The ALJ did not mention Joan's objection in his Order Denying Petition for Rehearing in Estate of Watlamatt, but did note that the amount in dispute was only \$2,460.82.

On October 17, 2006, Anna Chapman Smartlowit, Smartlowit's spouse and heir, submitted a response to YNCE's petition for rehearing in the Estate of Smartlowit to the ALJ, in which she stated that she concurred with the arguments asserted by YNCE and did not oppose its petition for rehearing.

¹⁰ Section 4.252 provides: "Claims are payable from income from the lands remaining in trust. Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title, or interest, that is taken by an heir, devisee, or legatee remains in or passes out of trust."

enforce the Assignments, and attached letters she had sent the Superintendent requesting action. Counsel stated that the Superintendent did not respond to her letters.

V. Orders Denying Petition for Rehearing

On November 28, 2006, the ALJ issued separate orders denying rehearing in all three estates. The orders denying rehearing are identical except for references to the amounts and dates of YNCE's claims and the dates of the original decisions.

The ALJ acknowledged that 43 C.F.R. § 4.251(f) (2002) did not "strictly" apply to priority claimants. Orders Denying Petition for Rehearing in Estates of Watlamatt, Smartlowit, and Tallman at 2. The ALJ also discussed the preamble to final probate regulations of the Office of Hearings and Appeals (OHA) published on December 31, 2001, and concluded that the preamble "establishes that IIM funds accrued after the date of decedent's death 'may be used for payment of claims.'" *Id.* at 3.¹¹ Relying on 43 C.F.R.

¹¹ In relevant part, the preamble provides:

[Q]uestions have been raised concerning . . . at what point in time the OHA deciding official is to determine the amount of money in the decedent's [IIM] account. Section 4.252 provides that "all trust moneys of the deceased on hand or accrued at the time of death * * * may be used for the payment of claims," which may indicate that the time of death should be used to determine the amount in the IIM account for purposes of § 4.251(e)-(f). On the other hand, § 4.251(g) provides that "claims will not be enforceable against the estate after the estate is closed," which indicates that funds deposited in the IIM account after the date of death are available to pay claims, up until the time the estate is closed.

Section 4.252 is unchanged from the previous version of the OHA probate regulations, published in 1971. Under § 4.251(d) of those regulations, estates could be held open for up to 7 years to allow the payment of some claims. Thus it is clear that § 4.252 was never intended to limit the payment of claims to those [funds] accrued at the time of the decedent's death. In the interim [June 18, 2001] rule, OHA revised § 4.251 to be consistent with the new BIA Rules at 25 CFR 15.305-15.309, and deleted the provision allowing estates to remain open for up to 7 years for the payment of claims. But consistent with 25 CFR 15.308, funds deposited in the IIM account during the probate process itself are available to pay claims. 66 Fed. Reg. 67,652, 67,654 (Dec. 31, 2001).

§ 4.251(b) & (d)(2002),¹² however, he concluded that he still has “discretion to approve or disapprove a priority claim,” *id.* at 2, and that nothing in the preamble, or in 43 C.F.R. § 4.251(e)-(f),¹³ “diminishes such discretionary authority,” *id.* at 3. Citing to *Estate of Boyd*, 43 IBIA 11, and *Running Horse v. Udall*, 211 F. Supp. 586 (D.D.C. 1962), the ALJ concluded that “real property interests owned by a decedent, including funds that accumulated after the date of decedent’s death, are vested in, i.e., owned by, the decedent’s heirs effective immediately on the decedent’s date of death,” *id.* at 6, and that “it is difficult to see how [property owned by the decedent’s heirs] could legitimately be used to satisfy the claim of the *decedent’s* creditor in the absence of the heirs’ consent,” *id.* at 4. The ALJ also found that if the assignment of trust income could be applied after the death of the borrower, it would act as an encumbrance on the real property. The ALJ concluded that YNCE had not shown “an abuse of the discretionary authority to disallow the claim at issue.” *Id.* at 8.¹⁴

¹² Subsection 4.251(b) provides that after the costs of administration, the ALJ “may authorize payment of priority claims” as provided, including claims of an Indian tribe. Subsection 4.251(d) provides that the ALJ “has the discretion to decide that part or all of an otherwise valid claim is unreasonable, reduce the claim to a reasonable amount, or disallow the claim in its entirety.”

¹³ Subsection 4.251(e) (2002) provides:

If, as of the date of the hearing, there is not enough money in the IIM account to pay all claims, the OHA deciding official will order payment of allowed priority claims first, either in the order identified in [subsection 4.251(b)] or on a pro rata (reduced) basis.

¹⁴ In each Order Denying Petition for Rehearing, the ALJ found that YNCE had not presented any evidence at the hearing to show that it had attempted to exhaust other, non-trust sources of compensation or to show the non-existence of non-trust assets. The ALJ noted that, under 43 C.F.R. § 4.250(b), no claim will be paid from trust assets where the deciding official is aware that the decedent’s non-trust estate may be available. He also noted that the Notice of Hearing for the hearings advised creditors that 43 C.F.R. § 4.250(b) imposed an affirmative obligation on claimants to establish by a preponderance of evidence that the claimant has either exhausted remedies against the decedent’s non-trust assets, or that the decedent did not have non-trust assets available to pay the claim. The ALJ suggested that he had discretion to deny YNCE’s claims on this additional ground.

Discussion

I. Introduction and Applicable Regulations

An appellant bears the burden of showing that an order on rehearing was in error. *Estate of Boyd*, 43 IBIA at 15, and cases cited therein.

YNCE contends in all three appeals that 43 C.F.R. §§ 4.251(f)-(g) & 4.252,¹⁵ the December 31, 2001, preamble, and Board precedent support a conclusion that claims may be paid from post-death income.¹⁶ YNCE argues that the ALJ's reliance on *Estate of Boyd* is misplaced because there was no issue in that case about the payment of creditor's claims. YNCE also argues that the ALJ erroneously appears to have found that Washington law governs the payment of claims, but that even under Washington law, lands that have been inherited are still subject to the payment of creditors' claims until the estate is closed. YNCE also argues that, even assuming that post-death income is not available to pay claims, the ALJ provided no reasoned basis for disallowing YNCE's claims to the extent there were funds available in a decedent's account as of the date of death.

Before considering the merits of YNCE's arguments on appeal, however, we must determine whether the ALJ applied the correct version of the regulations in denying YNCE's claims. The submission and consideration of claims against a deceased Indian's trust estate is governed by Federal regulation. *See* 43 C.F.R. §§ 4.250-4.252. The ALJ and YNCE primarily discussed and relied on OHA claims regulations published on December 31, 2001. *See* 66 Fed. Reg. at 67,652. Those regulations were made effective on January 30, 2002, and applied to decedents who died *after* the effective date. *Id.* The decedents in these three appeals died *before* the effective date of the December 31, 2001, regulations: Watlamatt and Tallman died in 1998; Smartlowit died in 2000. Thus, the 2002 regulations did not apply to Watlamatt, Smartlowit, and Tallman, and therefore, the December 31, 2001, preamble and most of the regulations relied on by YNCE and the ALJ do not govern the claims against their estates. Accordingly, we must consider whether

¹⁵ Subsection 4.251(f) is quoted *supra* at note 5. Subsection 4.251(g) of 43 C.F.R. (2002) provides that “[t]he unpaid balance of any claims will not be enforceable against the estate after the estate is closed.” Subsection 4.252 is quoted *supra* at note 10.

¹⁶ Although 43 C.F.R. § 4.252 has not been changed since 1971, the provisions of 43 C.F.R. § 4.251 relied on by YNCE were published in the Federal Register on December 31, 2001, and made effective January 30, 2002. 66 Fed. Reg. at 67,652.

income from trust or restricted property that accrues following an Indian decedent's death is subject to the payment of claims under the pre-2001 regulations.¹⁷

II. Merits

We conclude that the ALJ erred in denying YNCE's claims. Post-death income was available for and subject to the payment of YNCE's priority claims, and none of the regulatory provisions relied on by the ALJ provide a basis for denying YNCE's claims.

The ALJ first determined that the decision whether to disallow YNCE's claims in their entirety was a discretionary one pursuant to 43 C.F.R. § 4.251(b) and (d) (2002). He acknowledged that, under the preamble to the December 31, 2001, final rule, "IIM funds accrued after the date of decedent's death 'may be used for the payment of claims.'" Orders Denying Petition for Rehearing in Estates of Watlamatt, Smartlowit, and Tallman, at 3. The ALJ found however, that the "critical task is determining which party *owns* post-death income generated from trust lands" because, if the post-death income is not owned by the decedent, but by his heirs, the income "could [not] legitimately be used to satisfy the claim of the *decedent's* creditor in the absence of the heirs' consent." *Id.* at 4. Relying on *Estate of Boyd* and *Running Horse*, he found that post-death income was "vested in, i.e., owned by, the decedent's heirs effective immediately on the decedent's date of death," and that it was not an abuse of discretion for him to disallow YNCE's claims on that ground. *Id.* at 6.

Neither the regulatory provisions relied upon — 43 C.F.R. § 4.251(b) and (d) (2002) — nor the preamble language discussed by the ALJ, applies to the estates of Watlamatt, Smartlowit, and Tallman, because all three died before the effective date of those regulatory provisions. *See* 66 Fed. Reg. at 67,652. Neither YNCE nor the ALJ considered whether post-death income is subject to claims under the regulations that governed these three estates, except to discuss 43 C.F.R. § 4.252, which has remained unchanged since 1971. We therefore address whether, under the pre-2001 regulations,

¹⁷ Unlike the five other appeals with which these appeals initially were consolidated, *see supra*, note 1, there is no question that YNCE's claims were timely filed against the estates of Watlamatt, Smartlowit, and Tallman. Prior to changes made in 2001, section 4.250(a) of 43 C.F.R. allowed claims against an Indian decedent's estate to be filed "prior to the conclusion of the first hearing." *See* 43 C.F.R. § 4.250(a) (2000). Although the ALJ did not address the timeliness issue in any of these cases, the record shows that each of YNCE's claims was filed in these estates prior to the conclusion of the first hearing because in each case YNCE's representatives testified about the claims at the hearing.

particularly subsection 4.251(d) and section 4.252, post-death income is subject to YNCE's claims.¹⁸

Subsection 4.251(d) (2000)¹⁹ provides that

[i]f the income of the estate is not sufficient to permit the payment of allowed claims of general creditors within 3 years from the date of allowance; or to permit payment of the allowed claims of preferred creditors, except the United States, within 7 years from the date of allowance, then the unpaid balance of such claims shall not be enforceable against the estate or any of its assets.

This subsection expressly provides that income accruing from the trust or restricted property after the date of death is subject to claims. It allows the estate to be held open for up to seven years from the date of allowance or from the date that the judge initially orders the payment of claims.

Additional support for the proposition that it is proper and legitimate to pay claims from income accruing after the date of death is found in 43 C.F.R. § 4.252. As noted earlier, that subsection provides:

Claims are payable from income from the lands remaining in trust. Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title, or interest that is taken by an heir, devisee, or legatee remains in or passes out of trust.

This regulation allows, and therefore sanctions, the payment of claims from income from land remaining in trust status. The second sentence of section 4.252 indicates that the drafters of the regulations knew how to limit the payment of claims to those funds on

¹⁸ The ALJ first treated YNCE's claims as general, and not priority or preferred, claims, but then conceded on rehearing that YNCE's claims were priority claims. We agree. *See Estate of Kipp*, 8 IBIA at 36 & n.3 (Tribe's claim allowable as a preferred claim where a loan to decedent was secured by assignment of trust income).

¹⁹ Subsection 4.251(d) remained unchanged between 1971 and 2001.

deposit “at time of death,” but chose not to similarly limit the payment of claims from income from lands “remaining in trust.”

Under these regulations, read together, income that accrues after death from real property that remains in trust is subject to YNCE’s claims. There is no evidence in the record that any of the interests in property owned by the decedents will pass out of trust. Sufficient funds to pay YNCE’s claims had accrued in each decedent’s IIM account by the time that BIA submitted the Data for Heirship Finding and Family History (OHA-7) forms to OHA, and thus sufficient funds were available to pay the claims at the time the ALJ issued his decision.

The critical question, according to the ALJ, was not what was allowed under the regulations, but rather “which party *owns* post-death income generated from trust lands.” Orders Denying Petition for Rehearing in Estates of Watlamatt, Smartlowit, and Tallman, at 4. He concluded that if the post-death income is not owned by the decedent, but by his heirs, the income “could [not] legitimately be used to satisfy the claim of the *decedent’s* creditor in the absence of the heirs’ consent.” *Id.* Relying on *Estate of Boyd* and *Running Horse*, the ALJ found that post-death income was owned by the decedent’s heirs, and therefore should not be used to pay claims. Neither of these cases support the ALJ’s denial of YNCE’s claim. And we disagree with the proposition that the heirs’ consent is necessary before YNCE’s priority claims can or should be paid. The assignments at issue in these appeals expressly provide, “[i]t is understood that in the case of my death, this assignment and power to lease *shall constitute a claim against trust funds, income, or trust property superior to that of my heirs,*” and each assignment was approved by the Superintendent. Assignment § 6 (emphasis added).

In *Running Horse*, 211 F. Supp. 586, the court reversed a Departmental decision to allow a general, *unsecured* claim against a deceased Indian’s estate by the South Dakota Department of Public Welfare for old age assistance, to be paid over a five-year period from income accruing from the trust property inherited by decedent’s heirs. The court stated that “[t]he Secretary is not authorized by law to allow debts incurred by an Indian decedent as a charge or encumbrance against the decedent’s trust property in the hands of his Indian heirs.” *Id.* at 588.²⁰

²⁰ Subsection 4.250(g) of 25 C.F.R., promulgated in 1971, provides that “[c]laims of a State or any of its political subdivisions on account of social security or old-age assistance payments shall not be allowed.”

Running Horse did not consider a claim for money owed on a loan secured by an assignment of trust income agreed to by the decedent and approved by BIA pursuant to regulatory authorization. As we noted above, each decedent in this case specifically agreed that YNCE's claim would be superior to that of the heirs.

In *Estate of Kipp*, the Board noted that *Running Horse* suggested that the Secretary lacks authority to allow claims against trust estates. However, the Board concluded that it “remains beyond the authority of this Board to declare invalid the various regulations of the Department allowing the payment of claims.” 8 IBIA at 39 n.8. The Board affirmed an ALJ's decision to approve a claim of the Blackfoot Tribe for the unpaid balance on a loan that was secured by a Departmentally-approved Assignment of Trust Property and Power to Lease, where there were no funds in the decedent's IIM account as of his date of death. *Id.* at 36. We conclude that *Estate of Kipp*, which was decided following *Running Horse*, supports a finding that YNCE's claims should be allowed.

Estate of Boyd is distinguishable because it did not involve any claims nor did it address, even in dicta, the issue of whether claims could be paid with income that accrues after death. Instead, the case involved the choice of applicable law. In that case, the Board held that, in deciding what law of intestacy applies, income generated up to the date of a decedent's death is treated as personal property and passes in accordance with the laws of the decedent's state of domicile, whereas post-death income attaches to the trust real property generating such income and its distribution is governed by the law of the state where the trust real property is located. 43 IBIA at 21-23. *Estate of Boyd* was simply a choice-of-law case. Thus, neither *Estate of Boyd* nor *Running Horse* supports the ALJ's conclusion that it is not legitimate or appropriate to use post-death income to pay YNCE's priority claims.

We disagree with the ALJ that the critical question is when title to post-death income vests in heirs or devisees. Rather, the critical question is the nature of that title, and specifically, whether the individual who inherits the post-death income takes that income subject to a right of the Secretary to allow the payment of claims from that income. As discussed above, the applicable regulations establish that post-death income is available to pay claims, and provide no basis to deny priority claims if funds are available.²¹ The BIA-

²¹ The ALJ appeared to deny YNCE's claims on public policy grounds. He found that the regulations and the December 31, 2001, preamble did not give any consideration to the fact that “because the processing times will vary for different individual cases, similarly situated heirs in different estates will be treated unequally, due to the utilization of an undefined point in time (i.e., ‘after the estate is closed[?]’) to cut off the availability of funds to pay

(continued...)

approved assignments signed by each decedent expressly provided that the assignment constituted a claim superior to that of the decedent's heirs. YNCE contends that this language is from BIA's own form, used pursuant to 25 C.F.R. § 101.20, and it appears that this language has been in use for many years. *See Estate of Martin Spotted Horse, Sr.*, 2 IBIA 265, 268 (1974). Given that the pre-2001 regulations allow the payment of creditor claims from post-death income and the language of the BIA-approved assignments, we conclude that post-death income is subject to claims. And the Secretary's policy, as evidenced by BIA's practices, is to allow Indians to execute assignments that are superior to the rights of heirs.²²

The ALJ also suggested, relying on 43 C.F.R. § 4.250(b) (2002), that he had discretion to deny YNCE's claims because YNCE had not sought payment from non-trust assets. Under subsection 4.250(b) (2002), no claim will be paid from trust assets where the deciding official is aware that the decedent's non-trust estate may be available to pay the claim. Because Smartlowit, Tallman, and Watlamatt all died before 2001, this provision does not apply. The pre-2001 regulations contained no such limitation. Whether or not, under the pre-2001 regulations, it may be reasonable for an ALJ to deny an unsecured claim on the basis that non-trust assets may be available to pay the claim, we do not think it was reasonable to deny YNCE's claims on this ground. YNCE had a priority claim based on a BIA-approved assignment of trust income.

Unlike the current regulations, the regulations that govern the claims against the estates of Smartlowit, Watlamatt, and Tallman do not directly address the scope of the ALJ's discretion to deny claims. Although the decision whether to approve a claim as valid or reasonable may invite some exercise of judgment, no such issue is present with respect to these estates. Although there were insufficient IIM funds to pay the claims on the dates of each decedent's death, sufficient trust funds had accrued by the time the ALJ issued a

²¹(...continued)

claims." Orders Denying Rehearing in Estates of Watlamatt, Smartlowit, and Tallman, at 4 n.3. However, this was a decision for the drafters of the regulations to make, which the Board and the ALJ lack authority to disregard. *See Flynn v. Acting Rocky Mountain Regional Director*, 42 IBIA 206, 213 (2006).

²² Such a policy assists Indians in securing credit, even if it may disfavor apparent heirs. *Cf.* 66 Fed. Reg. 7068, 7074 (Jan. 22, 2001) (noting that many commenters to the proposed BIA regulations stated that "tribal claims should be a priority claim because tribes are generally the major creditor on Indian reservations. Many were concerned that failure to pay tribal loans by the estate would dramatically reduce the availability of credit to Indians.")

decision on whether to allow the claims. There is no evidence in the record to suggest that the claim amounts sought by YNCE are unreasonable or that the heirs objected to the claims. Further, the claims were for the amount due on loans that had been secured by a BIA-approved assignment of trust income. Considering all of these circumstances, we conclude that the ALJ erred in denying YNCE's claims. We therefore vacate the ALJ's denial of rehearing in the Estates of Smartlowit, Watlamatt, and Tallman, and order the payment of YNCE's claims.

Conclusion

We conclude that the ALJ erred in applying the December 31, 2001, regulations to determine whether YNCE's claims against the estates of Watlamatt, Smartlowit, and Tallman should be allowed. We also conclude that the ALJ erred in disallowing YNCE's claims against these estates on the ground that post-death income was not available or should not be used to pay YNCE's claims.

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 reverses the ALJ's denial of rehearing in the Estates of Watlamatt, Smartlowit, and Tallman, and orders the payment of YNCE's claims in those estates.²³

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

²³ As discussed above, BIA prematurely distributed the funds in Smartlowit's IIM account to his heirs despite notification of the filing of a timely petition for rehearing. The ALJ ordered the Superintendent to restrict the funds in Smartlowit's IIM account, and to notify the ALJ concerning what corrective action had been taken. There is no indication in the record that the Superintendent responded to the ALJ's order. BIA must take appropriate action to recover the funds distributed in error to Smartlowit's heirs to pay YNCE's claim. We note that 25 C.F.R. § 115.601 allows BIA to place a restriction on an IIM account where BIA is provided documentation showing that BIA caused an administrative error which resulted in a deposit into an IIM account.