INTERIOR BOARD OF INDIAN APPEALS

Darlene Rock v. Western Regional Director, Bureau of Indian Affairs

64 IBIA 5 (10/19/2016)

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

DARLENE ROCK,	)	Order Dismissing Appeal
Appellant,	)	
	)	
v.	)	Docket No. IBIA 16-001
	)	
WESTERN REGIONAL DIRECTOR,	)	
BUREAU OF INDIAN AFFAIRS,	)	
Appellee.	)	October 19, 2016

The Bureau of Indian Affairs (BIA) may exercise its discretion to restrict an Individual Indian Money (IIM) account upon receipt of an order from a court of competent jurisdiction awarding child support from that IIM account.[1] An account holder, in turn, may request a hearing to challenge the encumbrance, and has a right to appeal the final decision to the Board of Indian Appeals (Board).[2] In this case, BIA received a tribal court judgment in the amount of $66,383.71 against Marcel Nunez for a child support obligation that was in arrears, and subsequently placed an encumbrance on Nunez's IIM account to pay $253.77 a month towards satisfaction of the judgment. Nunez waived his right to a hearing. But Darlene Rock (Appellant), the obligee of the child support judgment, appealed the encumbrance plan on the grounds that the monthly payment for arrears was too low and resulted in an unduly long period of time to repay the debt owed to her. The Regional Director of the BIA Western Regional Office (Regional Director) dismissed the appeal, concluding that Appellant had no procedural or regulatory authority to appeal an encumbrance on Nunez's account. Appellant now asks the Board to reverse the Regional Director's decision, and adjust the encumbrance plan to increase the amount for payment of the arrears in child support.

We need not decide whether Appellant had standing to challenge the encumbrance of Nunez's IIM account, because the encumbrance plan on appeal has since been revised, mooting Appellant's challenge seeking an adjustment. Appellant was given an opportunity to respond to BIA's revision to the encumbrance plan on appeal, but no response was

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[1] 25 C.F.R. § 115.601(b)(1).

[2] *See* 25 C.F.R. §§ 115.605, 115.619.

received by the Board. Therefore, Appellant has failed to show how a case or controversy still exists after BIA's revision of the original encumbrance plan, and we dismiss this appeal as moot.

Background

On November 7, 2014, the Judicial Court of the Tohono O'odham Nation issued a judgment against Nunez to pay child support in arrears in the amount of $66,383.71, to Appellant for the benefit of their four children. Order for Freezing of Assets Pending Claim for Payment of Judgment for Arrears and Current Child Support at 2, *In re: Marcel Daniel Nunez, Jr., et al.*, Case No. 00-PPC-8220 (Judicial Ct. of the Tohono O'odham Nation Nov. 7, 2015) (Administrative Record (AR) 15).[3] On February 12, 2015, the Superintendent for the BIA Papago Agency (Superintendent) notified Nunez of BIA's intent to restrict his IIM account in connection with the Tribal Court order. Letter from Superintendent to Nunez, Feb. 12, 2015, at 1 (Notice of Encumbrance) (AR 11). BIA proposed to encumber Nunez's account for monthly payments of $253.77 until the amount in arrears was satisfied. *Id.* Nunez waived his right to a hearing. Waiver of Right to a Hearing on Changing the Status of an IIM Account, Feb. 26, 2015 (AR 10); *see also* 25 C.F.R. § 115.606.

After learning of the encumbrance plan, Appellant wrote to BIA to express her concern that the monthly payment for child support arrears was too low, and requested that BIA adjust the encumbrance. Letter from Appellant to BIA, Apr. 2, 2015, at 1 (AR 8). Appellant argued that the Tribal Court "made it clear that [Nunez] has a legal obligation to fulfill payment as soon as possible," but that under the current encumbrance plan, it would "take [Nunez] 24 years to pay in full. This is unacceptable and needs adjustment immediately." *Id.* at 2. Appellant requested that the plan be changed to lump-sum payments of at least $20,000 per year over a 4-year period, "to achieve the best possible outcome for the welfare of my minor children." *Id.*

In the August 19, 2015, decision (Decision) now on appeal, the Regional Director rejected Appellant's objection to the encumbrance plan, concluding that there was "no procedural or regulatory authority for an individual (who is not the account holder) to request an adjustment of child support funds distributed from an IIM account under an IIM

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[3] Nunez was ordered to pay a total of $769 per month in support for his four children in an Order of Child Support that became effective December 21, 2001. AR 15 at 1. According to records provided by the Arizona Department of Economic Security, Nunez commenced routine payment of child support beginning in February 2013, by which time arrears amounted to $66,383.71. *See* Arrears Calculation Report, Apr. 7, 2014, at 6 (AR 16).

encumbrance plan." Decision at 1 (AR 4). The Regional Director stated that the existing encumbrance plan would "remain in effect until January of 2016, when an annual review of the case will be completed," and that the Superintendent would "re-assess the current situation and circumstances and may adjust the encumbrance plan at that time." *Id.*

Appellant appealed to the Board. Appellant argues that the payment plan would spread payment of the debt over more than 20 years, which would place an undue hardship on their four children. Reply Brief (Br.), Feb. 26, 2016, at 1 (unnumbered). Appellant also repeats her request for an adjustment of the plan to a lump-sum payment of $20,000 a year, over 4 years, to satisfy the debt by the time their youngest child reaches the age of majority. *Id.* at 1-2 (unnumbered). Appellant contends that she "just want[s] the father to pay his obligated responsibility to his children, and if the Federal Government has overall jurisdiction, then enact an encumbrance plan that will benefit Mr. Nunez by paying his due diligence and be over with it in four years." *Id.* at 3 (unnumbered).

Discussion

On July 11, 2016, the Board issued an Order for Status Report from the Regional Director inquiring whether BIA had completed its annual review of the IIM encumbrance plan for Nunez in January 2016, as previously scheduled. On July 25, 2016, the Board granted the Regional Director's request for an extension of time to complete the status report, and allowed Appellant 7 days to file a response upon receipt of the report. The Regional Director, through Departmental counsel, submitted the status report on July 27, 2016. The Board has not received a response from Appellant.

The Regional Director affirmed that meetings to review Nunez's IIM account encumbrance plan began on January 26, 2016. Regional Director's Status Report, July 27, 2016, at 1 (Status Report). A team of BIA and Office of the Special Trustee (OST) specialists[4] met with Nunez and his wife to discuss changes to the plan, and it was discovered that Nunez's health had declined and would require "a new monthly personal expense." *See id.* at 1-2. Nunez also reported his intent to repair a house for the couple to live in with his stepchildren, and requested access to "the entire unobligated balance of his IIM account" to accomplish the repairs. *Id.* at 2. BIA considered Nunez's reported income and expenses, visited his home, and concluded that "[i]t did not appear Mr. Nunez was living beyond his means." *Id.* BIA also toured the home Nunez sought to renovate for use by his family, and noted that it required extensive structural and plumbing work. *Id.*

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[4] The team included the Regional Social Worker, IIM Policy Specialist, OST Deputy Trust Administrator, and IIM Social Worker.

The Regional Director reported that as of March 17, 2016, the "true arrears balance" totaled $62,830.93. *Id.* at 3. Based on BIA's review, "[i]t was recommended that Mr. Nunez's personal allowance be increased to $2,800.00 and a one-time disbursement of $8,000.00 be provided to Mr. Nunez for the renovation of the home he wished to occupy. It was also recommended all child support payments remain the same for the next two years."[5] *Id.* The Regional Director concluded that despite the child support judgment against him, BIA's trust responsibility required that it devise a plan to ensure that Nunez's needs are being met, and that the revised plan was recommended due to his health and home renovation needs. *Id.* The Regional Director explained that "at the end of the distribution plan (April 2018) all issues will be reviewed again." *Id.*

Appellant has not responded to the Status Report, or otherwise argued that her objections continue to apply to the revised encumbrance plan under BIA's newly proffered reasoning.

The Board "does not consider appeals that are moot." *Schmidt v. Bureau of Indian Affairs*, 54 IBIA 173, 177 (2011). The doctrine of mootness is based on the principle that an active case or controversy must be present at all stages of the litigation. *Forest County Potawatomi Community v. Deputy Assistant Secretary – Indian Affairs*, 48 IBIA 259, 264 (2009). When nothing turns on the outcome of the appeal, and the Board can no longer grant the requested relief, the appeal is deemed to be moot. *Id.*

Appellant appealed from the Regional Director's dismissal of her request to adjust the original encumbrance plan provisions for payment of arrears in child support. But the original encumbrance plan has now been revised, a new decision has been issued, and the plan that Appellant objected to no longer exists.[6] Thus, to the extent that the relief sought

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[5] While the Regional Director recommended that child support payments "remain the same for the next two years," he also advised that child support for the oldest child will cease when she turns 18 in November 2016. Status Report at 3. Child support for the second oldest child will also end after he turns 18 in November 2017. *See id.* Although it is not addressed in the status report, presumably the cessation of child support for these children would result in a commensurate increase in the monthly arrears payments, without any need for Appellant to request or BIA to initiate an interim review of the encumbrance plan.

[6] Although the amount of the monthly child support arrears payment was not adjusted in the revised encumbrance plan, the decision to maintain the original amount was informed by updated health and financial information. *See* Status Report. Appellant was given the opportunity to respond to BIA's reasoning as provided in the Status Report and to show that her objections to the arrears payment provisions of the encumbrance plan continued, but chose not to do so.

is an adjustment of the original encumbrance plan, BIA has taken action that has now mooted this appeal.

To the extent that Appellant appeals the Regional Director's determination that she lacked standing to challenge the encumbrance of Nunez's IIM account, the Board has not questioned Appellant's standing to appeal to the Board from that determination. However, Appellant has not objected to the revised encumbrance plan, in light of BIA's reasoning on review, and as such has not shown the Board that a case or controversy remains after BIA's revision to the original encumbrance plan. For these reasons, we dismiss this appeal as moot.

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
Robert E. Hall
Administrative Judge

//original signed
Thomas A. Blaser
Chief Administrative Judge