NOTE: This disposition is nonprecedential.

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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January 29, 2016

IBLA 2014-261	)	Freezemark # 06853558
	)	
ROCHELLE WHITE	)	Wild and Free-Roaming Horses and
	)	Burros
	)	
	)	Affirmed

ORDER

Rochelle White (Appellant) appeals from a decision dated July 7, 2014 (Decision), of the Southeastern States Field Office (Jackson, Mississippi) of the Bureau of Land Management (BLM). In the Decision, BLM cancelled Appellant's Private Maintenance and Care Agreement (PMACA) for a wild horse and prohibited her from adopting a wild horse or burro in the future. We affirm the Decision.

I. LEGAL STANDARDS

This matter is governed by the Wild Free-Roaming Horses and Burros Act of 1971 (Act) and BLM's implementing regulations. 16 U.S.C. §§ 1331-1340 (2012); 43 C.F.R. Part 4700. The Act authorizes BLM to place wild horses with qualified applicants who can assure humane treatment and care of the animals. 16 U.S.C. § 1333(c) (2012); *see* 43 C.F.R. Subpart 4750; *Jerry Dixson*, 165 IBLA 125, 126 (2005).

The Act and its implementing regulations require an adopter of a wild horse to comply with his/her PMACA and the regulations set forth in 43 C.F.R. Part 4700. 16 U.S.C. § 1333(c) (2012); 43 C.F.R. §§ 4700.0-5, 4750.4-1, 4750.5, 4760.1(a), and 4770.1(g). An adopter is financially responsible for the proper care and treatment of the wild horses covered by a PMACA. 43 C.F.R. § 4750.4-1(e); PMACA at unpag. 3, Administrative Record (AR), Ex. 11. An adopter must provide shelter for and adequate feed and water to adopted horses. 43 C.F.R. § 4750.3-2(a)(3)(iii)-(iv). Further, wild horses covered by a PMACA may not be transferred to the care of another individual for more than 30 days without prior BLM approval. *See* AR, Ex. 11; *see also* 43 C.F.R. § 4750.4-19(b).

If an adopter violates the terms of a PMACA, BLM may cancel it, repossess the adopted horse, and prohibit the adopter from adopting additional animals in the future. 43 C.F.R. §§ 4770.1, 4770.2(b); *see, e.g., Jerry Dixson*, 165 IBLA at 127. BLM may rely on inspection and/or credible third parties as evidence that terms of a PMACA have been violated. *Noel Benoist,* 131 IBLA 138, 142 (1994)(citing cases). In order to show BLM's decision should not be upheld, the burden of proof is on an appellant to prove by a preponderance of the evidence BLM's decision is inconsistent with the Act or its implementing regulations or has no rational basis. *Kathleen Ness*, 186 IBLA 263, 266-67 (2015); *see also Nikki Lippert*, 160 IBLA 149, 155-56 (2001); *John Linjatie*, 137 IBLA 390, 393 (1997); *Ted L. Barber, Sr.*, 156 IBLA 59, 63 (2001), and cases cited.

II. FACTUAL SUMMARY

On December 29, 2009, Appellant signed a PMACA adopting one horse, bearing Freezemark 06853558. *See* AR, Ex. 11. In doing so, Appellant agreed to the terms of the PMACA, including: "Adopters are financially responsible for providing proper care [of the adopted horse[s]]," and "[a]dopters shall not transfer animals for more than 30 days to another location or to the care of another individual without the prior approval of [BLM]." AR, Ex. 11, PMACA at unpag. 3. "Failure to comply with these terms may result in the cancellation of the agreement, repossession of the animals, and disapproval of requests for adoption of additional animals." *Id.*

On October 11, 2012, a BLM Program Specialist called Appellant to obtain her address so that Appellant could send her a statement about the horse. AR, Ex. 1. Since Appellant did not answer the call, the Program Specialist left her a message. On the same day, Appellant returned the Program Specialist's call. Appellant provided her an e-mail address, and said she would give a statement about the horse and provide BLM with a new address. AR, Ex. 9 (Casefile Log) at unp. 1. On October 15, 2012, the Program Specialist e-mailed Appellant, provided Appellant with her e-mail address, and requested a statement on the horse. AR, Ex. 7 (E-Mails). On that same date, the Program Specialist also e-mailed Appellant and said she would send Appellant the title application as soon as BLM received the new address. *Id.* On November 27, 2012, the Program Specialist telephoned the Appellant, left a message, and provided an e-mail address for BLM's contact. AR, Ex. 9 at unp. 1 (Casefile Log). After Appellant's October 11, 2012, contact with BLM, the record shows she did not contact BLM again until after BLM issued the Decision. *See* AR, Ex. 9 (Casefile Log).

On July 2, 2014, Appellant's mother telephoned the BLM Program Specialist and said Appellant "abandoned the horse" on her property and "has not been out to take care of the horse for over 3 mo[nths]." AR, Ex. 9 (Casefile Log) at unp. 1. At the time of the telephone call on July 2, 2014, the horse had been boarding with Appellant's mother for at least several months. AR, Ex. 1, Ex. 3.

On July 7, 2014, BLM issued the Decision and mailed it to Appellant's address listed on the PCAMA. In the Decision, BLM stated: "We have received complaints that you have ceased to pay the boarding fee on both horses and have not been caring for the animals for several months.[1] This is considered abandonment and is in direct violation of your agreement. Numerous attempts to contact you have been unsuccessful." *Id.* BLM concluded: "Based on the above information your PMACA has been cancelled. You will also be prohibited from adopting any wild horses or burros in the future." *Id.* The Decision was returned by the U.S. Post Office stamped "not deliverable as addressed/unable to forward." AR, Ex. 5 (certified mail receipt).

On July 28, 2014, BLM faxed a copy of the Decision to Appellant. *See* AR, Ex. 2. On August 2, 2014, Appellant submitted her Notice of Appeal (NOA) to the Board. On September 8, 2014, BLM filed a letter-response and administrative record with the Board.

November 2, 2015, the Board ordered the Appellant to produce evidence, if it existed, to support the argument in her NOA that she provided monetary or other support for the horse between April 1, 2014, and July 6, 2014. Although sent to the address she provided to the Board, the order was returned by the Postal Service with the stamp "attempted –not known/unable to forward." Since Appellant did not timely provide her change of address to the Board, she effectively waived her right to receive notice of proceedings before the Board. *See* 43 C.F.R. § 4.22(d).

On January 4, 2016, after the Board granted an extension of time to file, we received BLM's Answer. On January 14, 2016, the Office of the Solicitor, representing BLM, forwarded to the Board an email message from Appellant giving a new address. Appellant has not responded to the Board's November 2, 2015, order.

III. ANALYSIS

We must determine whether to uphold BLM's Decision by considering: Has Appellant shown by a preponderance of the evidence that BLM acted contrary to law or its decision lacked a rational basis in concluding Appellant violated her PMACA by not financially supporting the horse and leaving it in the care of her mother.

Violating a term or condition of the PMACA is a prohibited act. 43 C.F.R. § 4770.1(g). Among the terms of the PMACA, were the following: "Adopters are financially responsible for providing proper care [of the adopted horse[s]]," and "[a]dopters shall not transfer animals for more than 30 days to another location or to

[1] While BLM's Decision refers to "both horses" and "animals," only one horse is subject to Appellant's PCAMA and involved in this appeal.

the care of another individual without the prior approval of [BLM]." AR, Ex. 11, PMACA at unpag. 3; *see also* 43 C.F.R. § 4750.4-1 (PMACA terms and conditions). In deciding that Appellant had violated the terms of her PMACA, BLM relied on a statement by Appellant's mother. She stated Appellant "abandoned the horse" and "has not been out to take care of the horse for over 3 mo[nths]." AR, Ex. 9 (Casefile Log) at unp. 1. That evidence provides sufficient support for BLM's Decision that Appellant had not paid for the care or provided care to the horse for several months. *See Noel Benoist*, 131 IBLA at 142. Since BLM has a rational basis for its Decision and the decision is supported by applicable law, it is Appellant's burden to show BLM erred.

In an effort to show error in BLM's Decision, Appellant contends she has not abandoned the horse and has fulfilled financial responsibilities for the horse. However, Appellant has not provided evidence to corroborate her assertions. For instance, Appellant asserts she provided funds to her mother for feed and boarding, while she and her husband searched for a home where they could move the horse. NOA at unp. 2; AR, Ex. 3 (Appellant's E-Mail to BLM, July 24, 2014). However, she has not provided any cancelled checks or other corroborating evidence for such payments. When the Board ordered Appellant to produce evidence showing she did provide monetary or other support for the horse, if such evidence existed, Appellant did not respond.

Furthermore, Appellant appears to admit she did leave the horse in her parents care for an extended period of time. For instance, Appellant indicates that on or about April 2014 she was kicked out of her parents' house, and she indicates there was a dispute with her parents that lasted "a few months," and that the parents were taking care of the horse during her absence. *See* NOA at 1-2.

Based on our review of the record, we conclude Appellant has not shown BLM's Decision lacked a rational basis or was contrary to law.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision is affirmed.

/s/
Eileen G. Jones
Chief Administrative Judge

I concur:

/s/
James F. Roberts
Deputy Chief Administrative Judge