

GRANT F. MOREY

IBLA 88-61

Decided May 12, 1989

Appeal from a decision of the Canon City District Office, Bureau of Land Management, cancelling a Private Maintenance and Care Agreement and taking possession of a wild horse with Freeze Mark No. 84004685.

Affirmed.

1. Evidence: Sufficiency--Wild Free-Roaming Horses and Burros Act

BLM may properly cancel a private maintenance and care agreement for a wild horse and repossess the horse where there is sufficient evidence of improper care of the adopted horse to establish that the adopter violated the terms of the agreement.

2. Accounts: Fees and Commissions--Accounts: Refunds

There is no authority for BLM to refund the adoption fee required under 43 CFR 4750.4-2 when the adopter takes custody of a wild horse, but fails to comply with the terms of the private maintenance and care agreement and governing regulations, thereby justifying BLM in terminating the agreement and repossessing the horse.

APPEARANCES: Grant F. Morey, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Grant F. Morey has appealed from a decision of the Canon City District Office, Bureau of Land Management (BLM), dated October 1, 1987, cancelling his Private Maintenance and Care Agreement (Agreement) with BLM for a wild horse identified by Freeze Mark No. 84004685. Citing 43 CFR 4770.2(b), BLM stated that because appellant had failed to "[p]rovide the facilities described in [his] adoption application," and to "[p]rovide proper feed and water and humane care" for the horse, it had taken immediate possession of the horse for its "protection and well-being."

The record contains a memorandum dated September 24, 1987, to the "Wild Horse File" from Jeffrey A. Weeks, Range Conservationist/Wild Horse Project Inspector, BLM, in which he describes the condition of the horse at the time it was repossessed:

On August 31st, 1987, Susan Rinehart and I went to Guffey Colorado to Grant Morey's place to pick up horse # 84004685. Upon arrival I noticed that a horse shed was partially built and a few poles were stuck in the ground to start a pole corral. The horse was tied on about a 200 foot rope and chain tether. I didn't see any water for the horse. There was some grass hay available and some native * * * grass available. The native grasses were dry and not very palatable. The horse had rope burns on all four legs. The young guy that was taking care of the horse for Grant Morey said that he had to untangle the horse 4 or 5 times a day. The horse also had halter burns behind his ears from pulling on a halter all the time. In my opinion the horse had lost a considerable amount of weight since he was adopted.

In a memorandum by the same date, Susan Rinehart, Range Technician, provides a similar description of the horse and its circumstances:

We found the horse tethered by his halter to a stake. He was supplied with hay at the time, although no water was visible. No green forage was readily available within reach of the horse and the area where he was confined was of low production forage anyway. We loaded the horse with only a little trouble for transportation back to Canon City.

In his statement of reasons for appeal, Morey states: (1) that he was in the process of building a 100- by 100- foot corral and shelter for the horse when he became ill and discontinued the effort; (2) that water was taken to the horse two and three times a day; (3) that the horse was moved around the pasture as needed; (4) that although the horse had been hobbled with rope or wire, which "cut right into him," it was "healing up good" with antiseptic and bacitracin; and (5) that the horse had "fresh alfalfa hay and good green pasture, salt block, and oats here." In addition, Morey enclosed a picture of the horse, asking the Board to judge for itself "if this horse was mistreated in any way by me," and asserting that the horse was in better shape while in his custody than while "at the prison in Canon City."

[1] The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. | 1333(b)(2)(B) (1982), authorizes the Secretary of the Interior to place wild horses with qualified applicants who can assure humane treatment and care. See 43 CFR Subpart 4750. Title to horses placed in private care remains with the Government for a minimum of 1 year after placement and execution of the Agreement and until BLM issues a Certificate of Title. 16 U.S.C. | 1333(c) (1982); 43 CFR 4750.4 and .5. Regulation 43 CFR 4760.1(a) requires the adopter to comply with the Agreement and the regulations. The Standard Agreement (Form 4710-9, at 2) specifically prohibits "[t]reating a wild horse or burro inhumanely." Regulation 43 CFR

4700.0-5(f) defines "inhumane treatment" as "any intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a wild horse or burro and is not compatible with animal husbandry practices accepted in the veterinary community." Failure to comply with the terms of the agreement may result in its cancellation, repossession of the horse subject to it, and disapproval of subsequent requests to adopt additional wild horses or burros. 43 CFR 4770.2(b).

We conclude that BLM properly cancelled the Agreement and repossessed the horse in accordance with 43 CFR 4700.0-5. In previous decisions, the Board has held that BLM, in deciding to cancel an Agreement and repossess a horse, "may rely upon an observed 'deteriorating condition of the animals themselves and * * * the credible reports of third parties' in deciding to repossess the animals and cancel a maintenance Agreement during the first year." Mary Magera, 101 IBLA 116, 119 (1988), quoting Dennis Turnipseed, 66 IBLA 63, 67 (1982). Such an approach does not imply a finding that an adopter has been deliberately cruel. Mary Magera, *supra*; Kathryn E. Spring, 82 IBLA 26, 30 (1984). As applied in the instant case, it simply means that the condition of the horse, as well as the absence of feed and water, was found to reasonably justify its repossession and the cancellation of the Agreement pursuant to 43 CFR 4700.0-5.

Regulation 43 CFR 4770.2(b) provides that failure to comply with the terms of the Agreement may result in its cancellation, repossession of the horse subject to it, and disapproval of subsequent requests to adopt additional wild horses or burros. We conclude that BLM properly cancelled the Agreement and repossessed the horse in this case. We need not address the question of whether BLM would be justified in disapproving appellant's request to adopt an additional horse, since by letter dated January 17, 1989, appellant informed the Board that "[d]ue to [his] medical condition after four (4) operations * * * [he] would be unable to take care of a horse or anything else." However, he requests a "refund of money that [he] paid for the adoption of the Horse," *i.e.*, \$125.

[2] Appellant is not entitled to a refund of the adoption fee. Regulation 43 CFR 4750.4-2(a) provides that "[a]n individual obtaining wild horses and burros shall pay the Bureau of Land Management an adoption fee of \$125 per horse and \$75 per burro * * *." Under certain circumstances, BLM may "adjust or waive" the adoption fee in accordance with 43 CFR 4750.4-2(b), which provides as follows:

The Director may adjust or waive the adoption fee on determining that wild horses or burros in the custody of the Bureau of Land Management are unadaptable when the full adoption fee is required, and that it is in the public interest to adjust or waive the adoption fee stated in paragraph (a) of this section. The adjustment or waiver shall extend only to those persons who are willing to maintain such animals privately, who demonstrate the ability to care for them properly, and who agree to comply with all rules and regulations relating to wild horses and burros.

The regulation does not provide for a refund of the adoption fee when the adopter takes custody of an adoptable horse, but fails to comply with the terms of the Agreement and applicable regulations, thereby justifying BLM in terminating the Agreement and repossessing the horse. A refund of the adoption fee in such a case would be contrary to 43 CFR 4700.0-6(f), which provides that "[f]ees shall normally be required from qualified individuals adopting excess wild horses and burros to defray part of the cost of the adoption program."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, and appellant's request for a refund of adoption fees is denied.

Gail M. Frazier
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge