



## INTERIOR BOARD OF INDIAN APPEALS

Danna Runsabove and Knierim, Fewer & Christoffersen, P.C. v. Rocky Mountain  
Regional Director, Bureau of Indian Affairs

46 IBIA 175 (01/18/2008)



# 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

DANNA RUNSABOVE and KNIERIM, ) Order Affirming Decision  
FEWER & CHRISTOFFERSEN, )  
P.C., )  
Appellants, )  
v. ) Docket No. IBIA 06-3-A  
ROCKY MOUNTAIN REGIONAL )  
DIRECTOR, BUREAU OF )  
INDIAN AFFAIRS, )  
Appellee. ) January 18, 2008

Appellants Danna Runsabove (Danna) and Knierim, Fewer & Christoffersen, P.C. (Knierim, Fewer), as legal guardian and attorneys, respectively, for Joseph Clark, appealed to the Board of Indian Appeals (Board) from an August 12, 2005, decision (Decision) of the Rocky Mountain Regional Director (Regional Director), Bureau of Indian Affairs (BIA).<sup>1</sup> The Regional Director upheld a May 10, 2005, decision by the Fort Peck Agency Superintendent (Agency; Superintendent) to suspend fixed monthly payments from Clark's IIM account to Danna and Bill Runsabove (Bill) for direct care services by them to Clark and denied payment to Knierim, Fewer of an invoice for legal services.

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<sup>1</sup> In this appeal, Knierim, Fewer purports to represent Clark "by and through his legal guardian, Danna Runsabove" with respect to the Regional Director's denial of payment from Clark's Individual Indian Money (IIM) account to Danna Runsabove, Bill Runsabove, and Knierim, Fewer. Notice of Appeal at 1. Because Clark has been determined to be *non compos mentis*, any appeal must be brought by Danna, as guardian for Clark, when her own personal interests are not implicated. However, where, as here, the guardian's personal interests are implicated, the appeal must be prosecuted in her individual capacity to avoid conflict with her role as Clark's guardian. She may, however, appeal BIA's decisions with respect to the denial of payment to Bill Runsabove and to Knierim, Fewer in her guardian capacity.

The Regional Director determined that the direct care services, as described by Danna and Bill, overlapped with direct care services provided to Clark by a professional service provider, Eldercare. The Regional Director found that Danna and Bill's duties changed when the professional service provider was retained and that, while BIA would pay Danna and Bill for work not performed by the professional provider, Danna and Bill had an obligation to document Clark's unmet needs and additional care requirements, and to provide more detail concerning the direct care services they are providing. The Regional Director also affirmed the Superintendent's decision to deny payment of legal fees because the fees were not included in a BIA-approved IIM account distribution plan; Appellants did not show that Clark benefitted from the legal services provided by Knierim, Fewer; and the description of services provided was vague.

We conclude that Appellants have not carried their burden of showing that the Regional Director's decision was unreasonable or unsupported by the evidence. We affirm the Decision to suspend fixed monthly payments to Danna and Bill because the factual record supports the Regional Director's finding of an apparent overlap between the professional care services and those being provided by Danna and Bill and because it was not unreasonable for the Regional Director to require Danna and Bill to document Clark's unmet need for additional direct care services and to provide a more detailed description of their services. We also affirm the Regional Director's decision to deny the request for payment of legal fees on the grounds set forth by the Regional Director.

### **Factual Background**

Clark is an 85-year-old member of the Assiniboine and Sioux Tribes of the Fort Peck Reservation (Tribes). In 1988, the Fort Peck Tribal Court (Tribal Court) declared Clark mentally incompetent. The Tribal Court appointed Danna, who is Clark's great-niece and Bill's spouse, as Clark's sole legal guardian in January 2005.<sup>2</sup> Clark lives by himself in a new home purchased for him in 2004 in Frazer, Montana. His home is located across the street from Danna and Bill.

Disbursements from Clark's IIM account apparently have been made in accordance with annual "distribution plans" approved by BIA. *See* 25 C.F.R. §§ 115.617(a), 115.701. The record provided to the Board includes the entire plan for August 27, 2003, through

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<sup>2</sup> Apparently, Danna has been one of Clark's guardians continuously since 1988, with the exception of a few months in 2001. It also appears that the Tribal Court was reconsidering her guardianship status in 2005 when this matter was under review by the Regional Director. We have not been informed of the outcome of the Tribal Court proceeding.

August 26, 2004 ('03-'04), and three pages from the plan for August 27, 2004, through August 26, 2005 ('04-'05).<sup>3</sup> For the '03-'04 year, monthly payments of a fixed amount were authorized for Genie Wilder, Clark's sister. These payments are designated as "gift to sister," *see* Distribution Plan, Aug. 27, 2003-Aug. 26, 2004, at 6, and were requested by "the current guardians on behalf of Mr. Clark," Letter from Superintendent to Danna, Mar. 11, 2004, at 1.<sup>4</sup> Appellants do not object to the payments to Wilder. The '03-'04 distribution plan also authorized monthly payments of \$500 each for Danna and Bill for "caretaker expenses" along with payments for Clark's monthly living expenses and utilities. Distribution Plan, Aug. 27, 2003-Aug. 26, 2004, at 4-5.

In 2003, BIA's Social Services staff visited Clark on several occasions to evaluate his circumstances and his needs. Notes of their visits, along with one visit by the Tribes' sanitation officer, are included in the record. As a result of these in-home visits, BIA determined that Clark would benefit from professional in-home care. By August 15, 2004, in-home services were being provided for Clark by Home Care Services (HCS). These services were identified as "bathing, dressing, hygiene, toileting, meal prep, eating, exercise, med assist, and housecleaning" one or two days each week and occasional laundry. Service Delivery Records for Joseph Clark. Payments to HCS were authorized in Clark's '04-'05 distribution plan. Payments also continued to be made to Danna and Bill.<sup>5</sup>

According to the record, a dispute arose between HCS, Bill, and Danna, and HCS declined to continue to care for Clark after February 2005 without a written contract. Apparently, Danna declined to authorize a contract with HCS, which prompted the

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<sup>3</sup> The excerpts from the '04-'05 distribution plan authorized one-time disbursements for Valley View Home (also known as "Eldercare"), NeMont Water, Inc., and Agland Co-op, and monthly disbursements to Pegasus Satellite TV and Home Care Services.

<sup>4</sup> Also in the record is a monthly budget for September 2003-August 2004 that recites payment of a fixed amount each month as "GIFT — Genie Wilder, only surviving sister." Monthly Budget for Joseph Clark, Sept. 2003-Aug. 2004, at 1. Clark signed this two-page budget with his thumbprint and his two co-guardians at that time, Donald Clark and Danna, also signed the budget. Donald Clark died in October 2004, leaving Danna as Clark's sole guardian.

<sup>5</sup> As previously noted, the record does not contain a complete copy of the '04-'05 distribution plan for Clark's account nor does the record identify whether BIA relied on a written care plan from the Danna and Bill that describes the services that they would be providing.

Superintendent to require a new care plan from Danna for Clark's care. In March 2005, the present dispute began when the Superintendent sent three letters demanding that Danna provide him with a care plan for Clark.

An undated, one-page document appears in the record from Danna in which she informs BIA that she has applied to "Eldercare" for services to Clark in his home four days a week; one additional day each week, Clark would attend day care at Eldercare and receive physical therapy. Danna also explained that she and Bill would continue to care for Clark seven days a week "as [they have] been doing," e.g., driving him to activities and medical appointments, providing meals, shopping, maintenance, security, etc. "Care Plan for Joseph Clark," signed by Danna, undated.<sup>6</sup>

On April 11, 2005, Eldercare began providing in-home care to Clark. According to the record, Eldercare provided the following services to Clark four days each week from 11 a.m. to 7 p.m.: meal preparation, companionship, housekeeping, and occasional baths. Eldercare Service Flowsheets, April & May 2004. Eldercare also provided transportation on Wednesday afternoons for Clark to attend senior daycare and receive physical therapy. Occasionally, services were provided on a Saturday or a Sunday. During the month of April 2005, Eldercare billed for 113 hours of regular time and 8 hours of overtime (from April 11-30, 2005) for its services to Clark; for the month of May 2005, Eldercare billed for 184 hours of regular time and 5 hours of overtime.

On April 27, 2005, Danna and Bill each submitted statements to BIA describing the services each had performed for Clark during the previous month. Danna asserted that she provided the following: "shopping[,] . . . daily housecleaning and laundry[,] . . . assist[ing] in his care and activities[,] . . . prepar[ing] evening and week-end meals[,] . . . tak[ing] care of business affairs, setting up doctor appointments[,] and getting his medicine." Bill described his services as "[o]n a daily basis, personal care, bathing and shaving, Monday to Sundays." Bill also said that he prepares breakfast, lunches, and some suppers for Clark; spends time with him "helping [him] and assisting him;" provides security; does minor repair work at Clark's house; and ensures that Clark takes his medication.

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<sup>6</sup> The only date that appears on this statement is the date it was faxed by BIA Social Services, which is shown to be July 28, 2005. Because the statement itself indicates that Danna "ha[s] applied for services for [Clark]" from Eldercare, which services subsequently began on April 11, 2005, we assume that Danna submitted the statement to BIA sometime between April 5, 2005 (the date on the attached application to Eldercare), and April 11, 2005. *Id.*

Also on April 27, 2005, Danna submitted a statement requesting that BIA pay a bill from Knierim, Fewer. Attached to her statement is an invoice dated April 20, 2005, from Knierim, Fewer for \$3,064.90, including a “previous balance” of \$2,939.90. The remaining balance of \$125.00 covered services in March and April of 2005 consisting of a March 24, 2005, teleconference with Danna regarding problems with Clark’s house; a March 31, 2005, meeting with Danna regarding a BIA letter concerning Clark; and an April 8, 2005, teleconference with Danna regarding Clark’s care plan. The invoice does not list the hourly rate, the amount of time billed, or identify the individual(s) at Knierim, Fewer who provided legal services. There is no documentation in the record to explain the “previous balance” of \$2,939.90.<sup>7</sup>

By letter dated May 10, 2005, the Superintendent notified Appellants of his decision to discontinue BIA’s monthly disbursement of \$500 each to Danna and Bill. He determined that Eldercare was providing direct care to Clark, BIA was managing Clark’s financial needs, and “the guardian should assume the responsibility for any additional care without compensation.” Superintendent’s Decision at 1. The Superintendent also denied the request for payment from Knierim, Fewer. He concluded that a written request for legal counsel was not submitted to BIA in accordance with 25 C.F.R. § 115.414.<sup>8</sup>

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<sup>7</sup> The record contains a letter dated February 7, 2005, from the Superintendent to Knierim, Fewer that refers to an earlier invoice received by BIA on January 18, 2005, for legal services “rendered at the request of Danna Runsabove, guardian of Joseph Clark.” In the February 7 letter, the Superintendent requested more information from Knierim, Fewer, including the number of hours billed and the hourly rate. There is no copy of the January 18 invoice in the record nor does the record reflect any response by Knierim, Fewer to the Superintendent’s letter.

<sup>8</sup> Section 115.414 is part of Subpart C (“IIM Accounts: Minors”) of Part 115. It provides:

What is an authorized disbursement request?

An authorized disbursement request is the form or letter that must be approved by the BIA that specifies the funds to be disbursed from an IIM account. The authorized disbursement request may not be issued to disburse funds from a minor’s supervised account unless an approved distribution plan exists, the amount to be disbursed is in conformity with the distribution plan and the disbursement will be made to an individual or third party specified in the plan.

Appellants appealed the Superintendent's decision to the Regional Director. Appellants provided additional information concerning the services Danna and Bill perform for Clark and an explanation for the need for legal services.

On August 12, 2005, the Regional Director issued the decision that is the subject of the present appeal. The Regional Director implicitly rejected the Superintendent's position that a guardian is not entitled to any payments for services to a ward. However, relying on the bills submitted by Eldercare for services performed in April and May 2005, and the statements submitted by Danna and Bill on April 27, 2005, the Regional Director determined that their services duplicated at least some of the services provided by Eldercare. The Regional Director stated, "BIA will not pay \$500 each month for Danna and Bill . . . for work that may be performed by [Eldercare]." Decision at 3. With respect to those services provided by Danna and Bill that did not duplicate Eldercare's services, the Regional Director also sought greater detail: (1) What security services and minor repair work does Bill provide and (2) How many hours do shopping, setting up doctor appointments, getting medication, and personal care, bathing, and shaving require? The Regional Director affirmed the Superintendent's decision to suspend the monthly payments to Danna and Bill. He noted however, that

BIA will pay for work not performed by [Eldercare] but it must be documented in a request to the Superintendent. This [work] must be included in a distribution plan. . . . Statements may be submitted for work performed for . . . Clark, by Danna and Bill . . . , and these will be evaluated for payment by the BIA.

The BIA recognizes the unique role that guardians perform and supports addressing needs when they arise. If an unmet need exists, it is incumbent upon the guardians to bring it to the attention of the BIA. The BIA will initiate an assessment and evaluation if the [ward's] circumstances change or upon the request of the guardian.

*Id.*

The Regional Director also affirmed the Superintendent's decision to deny the request for payment of legal services from Knierim, Fewer. The Regional Director rejected Appellants' argument that 25 C.F.R. § 115.414 is not applicable because it pertains to minors, noting that a policy clarification issued by the BIA Director on September 7, 2004, states that 25 C.F.R. Part 115 "will also apply to adult supervised IIM accounts." Decision at 4. The Regional Director noted that, under 25 C.F.R. § 115.414, a disbursement cannot be made unless an approved distribution plan exists, and that this condition was not

met in the request for payment of legal fees in this case. The Regional Director also found that Appellant had not shown how Clark has benefitted from legal services provided by Knierim and that the services provided were “vague.” *Id.* at 5.

Appellants appealed to the Board, and submitted an opening brief. No other briefs were submitted.

## Discussion

### I. Introduction

Appellants argue that the Regional Director erred in (1) suspending the monthly payments to Danna and Bill; and (2) denying the request for payment of Knierim, Fewer’s legal bills. We conclude that BIA properly acted within its discretion in suspending the monthly disbursements to Danna and Bill, and denying Knierim, Fewer’s request for payment.

### II. Governing Regulations

Regulations provide that the trust funds of an adult Indian who is *non compos mentis*<sup>9</sup> or under other legal disability “may be disbursed for his benefit for such purposes deemed to be for his best interest and welfare, or the funds may be disbursed to a legal guardian or curator under such conditions as the Secretary or his authorized representative may prescribe.” 25 C.F.R. § 115.102; *see also Jackson County v. Phoenix Area Director*, 31 IBIA 126, 138 (1997). Thus, BIA is vested with wide discretion in the payment of claims from the IIM account of a ward under a legal disability, *see Blaine v. Great Plains Regional Director*, 37 IBIA 149, 151 (2002), *Jackson County*, 31 IBIA at 137, and that discretion is exercised by BIA in accordance with its fiduciary duties as trustee of the account, *Muskogee (Creek) Nation v. Muskogee Area Director*, 28 IBIA 24, 31 (1995) (“First and foremost is the principle that, in determining what claims may be paid from an IIM account, BIA ‘is bound by the trust responsibility of the United States toward the Indians for whom the funds are held.’”).

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<sup>9</sup> *Non-compos mentis* is defined as a “person who has been determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.” 25 C.F.R. § 115.002. “Court of competent jurisdiction” includes a tribal court with jurisdiction. *Id.*

The regulations also provide that “funds from [restricted] accounts may only be withdrawn under a BIA approved distribution plan.” 25 C.F.R. § 115.701; *cf. id.* § 115.414.<sup>10</sup> When BIA determines that an IIM account should be placed under restriction and supervised, BIA then consults with the guardian of the account holder, if one has been appointed, to devise a “distribution plan.” *Id.* § 115.617(a). The distribution plan, which is valid for one year, *id.*, identifies appropriate payments to be made from the IIM account on behalf of the account holder and includes a certification that the plan is in his best interest, *cf. id.* § 115.421 (detailing the information to be contained in a distribution plan for accounts of minors); *see also Jackson County*, 31 IBIA at 138-39.<sup>11</sup> Thus, disbursements to a guardian must be used for the adult’s needs, and are not to be squandered or used for improper purposes. *Jackson County*, 31 IBIA at 139. A higher level of BIA scrutiny

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<sup>10</sup> We note that the Regional Director cited to section 115.414 in his Decision, which addresses disbursements from the accounts of minors, rather than to section 115.701, which directly addresses disbursements from the restricted accounts of adults. However, because both sections require that disbursements be made in conformance with the distribution plan, the citation to section 115.414 is harmless.

<sup>11</sup> The regulations do not provide more detailed rules governing disbursements from the accounts of adults under legal disability; they do however provide detailed rules governing disbursements from the accounts of minors. Regulations setting forth detailed rules for supervised accounts for adults were proposed in 2000. *See* 65 Fed. Reg. 43,874, 43,912-43,914 (July 14, 2000). However, these regulations were removed from the final regulations governing IIM accounts published January 22, 2001. *See* 66 Fed. Reg. 7068, 7075-7076 (Jan. 22, 2001) (noting that BIA had removed provisions relating to IIM accounts for adults in response to many comments from tribes and individual Indians concerned with the provisions, and that provisions would be re-proposed at a later date). To date, no new regulations governing the supervised accounts of adults have been proposed.

By policy clarification memorandum dated September 7, 2004, the BIA Director set forth procedures for disbursements from supervised adult IIM accounts. *See also* Memorandum from Commissioner of Indian Affairs to All Regional Directors, June 28, 2002. The September 7 memorandum explains that the “best interest of an adult . . . account holder should be based on documented unmet need.” Memorandum from BIA Director to All Regional Directors, Sept. 7, 2004, at 3; *see also* 25 C.F.R. § 115.102. The memorandum clarifies that disbursements from supervised adult accounts must be made pursuant to BIA-approved distribution plans, *see* 25 C.F.R. § 115.701, and requires disbursement requests to be supported by an itemized list or invoice/bill.

necessarily is required when it is requested to disburse funds to a private guardian as opposed to a public guardian. *Id.*

### III. Standard of Review

In reviewing decisions involving an exercise of discretion, such as the approval or disapproval of disbursements from IIM accounts, the Board's role is limited to determining whether BIA's decision is in accordance with the law, is supported by the record, and is adequately explained. *McClurkin v. Eastern Oklahoma Regional Director*, 44 IBIA 125, 129 (2007). In particular, BIA must provide a reasoned basis for its decision. *Jackson County*, 31 IBIA at 139. The Board does not substitute its judgment for that of BIA. *Id.* at 131. An appellant who challenges a BIA discretionary decision bears the burden of showing that BIA did not properly exercise its discretion. *Blaine*, 37 IBIA at 151.

### IV. Requested Disbursements from Clark's IIM Account

#### A. Payment for Direct Services Provided by Danna and Bill

We conclude that Appellants have not met their burden of demonstrating that the Regional Director's decision with respect to the suspension of payments to Danna and Bill is arbitrary or unsupported by law or by fact and, therefore, we affirm his decision.

The Regional Director reviewed the record and construed Danna's and Bill's written statements of April 27, 2005, as requests for disbursement of monthly salaries for services provided to Clark. The Regional Director determined that the services duplicated, at least in part, the services provided by Eldercare. In particular, the Regional Director noted duplication in the meal preparation, housekeeping, laundry, and transportation services. The Regional Director also addressed a few of the services that only Danna and Bill provide and indicated that more information was needed, e.g., a description of the actual work performed and the number of hours expended on each task. The Regional Director stated that "BIA will pay for work not performed by [Eldercare] but it must be documented in a request to the Superintendent [and t]his [work] must be included in a distribution plan." Decision at 3. The Regional Director also explained that "[i]f an unmet need exists [for Clark], it is incumbent upon the guardians to bring it to the attention of the BIA. The BIA will initiate an assessment and evaluation if the [ward's] circumstances change or upon the request of the guardian." *Id.* He also expressly stated that Danna and Bill could provide any additional services that were deemed necessary. The Regional Director also explained that, once the need for additional services is identified, greater detail is required in Danna's and Bill's invoices, which would then "be evaluated for payment by the BIA." *Id.*

Appellants contend that the Regional Director's decision to suspend monthly disbursements to Danna and Bill is arbitrary and capricious, and inconsistent with allowing the fixed payments to Wilder to continue. They assert that the Agency staff is well aware of the services provided by Danna and Bill, through meetings with them and through observing their services firsthand at Clark's home. As they did before the Regional Director, Appellants describe the services provided to Clark, and assert generally that the services provided by Eldercare are insufficient to meet Clark's needs. Appellants dispute that there is any duplication of services between the services provided by Danna and Bill vis-a-vis the services provided by Eldercare. Appellants argue that Eldercare provides services from 11:00 a.m. to 7 p.m. during the week whereas Danna and Bill provide breakfast to Clark every morning and additional meals on the weekends, run errands, and do housecleaning and maintenance for Clark. Finally, Appellants argue that it is "absurd" for BIA to issue payments from Clark's account to Wilder, who is providing no services to Clark, while at the same time refusing to pay for "legitimate services." Opening Brief at 4.

We cannot say that it is unreasonable or an abuse of discretion for the Regional Director to conclude that Danna and Bill must identify the services each provides to Clark and, to the extent they overlap with services provided by Eldercare, explain why the services are necessary in addition to the same services provided by Eldercare. Appellants claim to be providing the same caretaker services to Clark that they provided to him (1) before HCS was hired, (2) while HCS was employed 1-2 days a week, and (3) for the same time period that Eldercare provided 121 hours of service to Clark. The Regional Director's decision is consistent with BIA's fiduciary responsibilities on Clark's behalf: He explained that additional information is required in order to distinguish what services Clark needs that are not provided by Eldercare and to explain any overlap in services. Although Appellants claim that BIA already knows this information, Appellants fail to present any evidence in support of their allegations — e.g., in the form of affidavits — despite the opportunity to do so on appeal to the Regional Director and again on appeal to the Board. *See Jackson County*, 31 IBIA at 133; *All Materials of Montana, Inc. v. Billings Area Director*, 21 IBIA 202, 211 (1992). Finally, the Regional Director did not rule out payments to Danna and Bill nor do we read his decision as necessarily ruling out fixed payments as long as they are properly supported and justified.

We also conclude that it is reasonable for the Regional Director to require greater detail, similar to the detail provided by Eldercare and HCS, in Danna's and Bill's monthly invoices for payment: It assists BIA in distinguishing the services provided by Eldercare

from the services provided by Danna and Bill to the extent that their services may otherwise be duplicative.<sup>12</sup>

To the extent that Appellants complain that it is “inconsistent” for BIA to allow Wilder to receive automatic monthly payments from Clark’s IIM account without performing any services, the comparison is not well taken. It is undisputed that the monthly payment to Wilder is a gift, while Danna and Bill represent that they are entitled to payment for specific, direct services provided to Clark. Therefore, Wilder is not expected to perform services to be eligible for her monthly gift, and BIA’s approval of this monthly gift and disapproval of payments to Danna and Bill are not, without more, either arbitrary or inconsistent with one another.

Because Appellants have not demonstrated that the Regional Director’s decision is arbitrary or unsupported by law or by facts, we affirm his decision to suspend payments to Danna and Bill.

#### B. Payment for Knierim, Fewer’s Legal Services

We conclude that Appellants have failed to show that BIA did not properly exercise its discretion in denying payment to Knierim, Fewer, and we affirm the Regional Director’s decision. The Regional Director based his decision to deny payment of legal fees on three grounds: (1) legal services were not included in a BIA-approved distribution plan, as required by 25 C.F.R. § 115.414; (2) Appellants did not show how Clark benefitted from the legal services provided by Knierim, Fewer; and (3) the services provided were “vague.” Decision at 5.<sup>13</sup>

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<sup>12</sup> It does not appear from Appellants’ opening brief that they dispute the Regional Director’s determination that greater detail is necessary in the monthly invoices. Instead, it appears that Appellants’ argument is that BIA already is aware of the nature of services provided by Danna and Bill.

<sup>13</sup> At the outset, we note that Appellants, in their opening brief, assert that detailed invoices were provided to the Bureau. However, they do not provide any copies of such invoices or additional details about the amounts or dates of those invoices. Only one invoice from Knierim, Fewer appears in the record and Knierim, Fewer has not objected to the Regional Director’s record as incomplete. *See* 43 C.F.R. § 4.336 (“Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing”). The invoice in the record is dated April 20, 2005, and reflects a balance

(continued...)

On appeal to the Board, Appellants assert that Danna clearly articulated the need for Clark to have legal representation at meetings wherein “the distribution plan was being developed,” and detailed invoices were provided to BIA to account for these services. Opening Brief at 5. Appellants argue that the Regional Director erred in labeling Knierim, Fewer’s invoices as “vague,” particularly as many of the entries on the invoices related to direct communication with Agency staff. Appellants assert that it was necessary to hire Knierim, Fewer to represent Clark because BIA “made unreasonable requests for psychiatric and medical examinations which were unwarranted and against Clark’s wishes” and did not advocate Clark’s best interests by allowing him to live in a substandard home. *Id.* at 6.

We affirm the Regional Director’s decision to deny payment of the April 20th invoice for legal services. It is undisputed that legal services were not an approved expenditure in the ‘04-‘05 distribution plan for Clark’s IIM account. Therefore, it was well within the Regional Director’s discretion to deny payment on this ground alone.<sup>14</sup>

We also affirm the Regional Director’s denial of payment on the grounds that the invoice is vague. The invoice does not identify the number of hours of work performed or the hourly rate, as the Superintendent had requested from them in connection with an earlier invoice. *See* Letter from Superintendent to Knierim, Fewer, Feb. 7, 2005. No details are provided concerning the \$2,939.90 “previous balance.”<sup>15</sup>

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<sup>13</sup>(...continued)

forward of \$2,939.90 and new charges of \$125.00 for a total due of \$3,064.90. It is evident that at least one other invoice was presented to BIA for payment, which was received January 18, 2005. *See* Letter from Superintendent to Knierim, Fewer, dated Feb. 7, 2005. However, because the record, and the Regional Director’s decision, address only the invoice of April 20th, our decision today affects only the decision to deny payment of that invoice.

<sup>14</sup> As previously noted, the record does not contain a complete copy of the ‘04-‘05 distribution plan for Clark’s IIM account. Because Appellants do not dispute the Regional Director’s conclusion that the distribution plan makes no provision for the payment of legal services, we may presume that his conclusion is correct.

<sup>15</sup> Although several letters appear in the record from Knierim, Fewer to BIA, the work done preparing these letters has not been detailed in any invoices included in the record, nor is there any explanation of how these letters benefitted Clark. *See, e.g.*, Letter from Ryan Rusche of Knierim, Fewer to Superintendent, Mar. 17, 2005; Letter from Laura

(continued...)

As for Clark's need for legal representation, Appellants argued to the Regional Director in very general terms that Clark "has the right to his own counsel to address issues such as [the defects in his newly-purchased manufactured home]." Letter from Knierim, Fewer to Regional Director, June 10, 2005, at 4. On appeal to the Board, Appellants argue for the first time that Clark also required legal services to avoid psychiatric and medical examinations sought by BIA as well as a move to a nursing home. However, Appellants provide no evidentiary support for any of these allegations but argue that BIA was well aware of the legal services because of meetings and phone conversations between BIA and the attorneys. We reject this argument. It is Appellants' responsibility to provide sufficient evidence to BIA to enable BIA to determine that the services benefit Clark, are in his best interest, and that any charges are appropriate and not excessive.

Therefore, we conclude that Appellants have not shown that the Regional Director abused his discretion in affirming the Superintendent's decision to deny payment of legal fees.

### Conclusion

For the reasons set forth herein, we affirm the Regional Director's decision to suspend payments to Danna Runsabove and Bill Runsabove based on their April 27, 2005, statements of work performed. We also affirm the Regional Director's decision to deny payment of Knierim, Fewer's April 20, 2005, invoice for legal services.

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 affirms the Regional Director's August 12, 2005, decision.

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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<sup>15</sup>(...continued)

Christoffersen of Knierim, Fewer to Superintendent, June 24, 2004; Letter from Laura Christoffersen of Knierim, Fewer to Superintendent, June 22, 2004.