

In the United States Court of Federal Claims

No. 102-63
(Filed: August 4, 1998)

JESSIE SHORT, et al.,

Plaintiffs,

v.

THE UNITED STATES,

Defendant,

and

HOOPA VALLEY TRIBE,

Defendant-Intervenor.

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ORDER

The court has considered plaintiffs' motion to require the government to deposit per capita shares of minors and incompetent adults in individual Indian money accounts, the government's response thereto, and plaintiffs' reply to the government's response. The parties have waived oral argument.

Plaintiffs' counsel assert that they have identified 43 heirs of plaintiffs that are entitled to some or all of a deceased plaintiff's judgment, but who are not competent to receive these monies directly because they are minors. Plaintiffs' counsel further maintain that they have identified several adult plaintiffs who lack the mental capacity to manage their affairs, and are therefore incompetent to receive directly their share of the judgment. Plaintiffs' counsel has asked the court to order the government to deposit monies owed to minors and incompetent adults into individual Indian money ("IIM") accounts under the supervision and control of the Bureau of Indian Affairs ("BIA").

Plaintiffs rely on the BIA regulations that govern the use of IIM accounts. Section 111.1 of Code of Federal Regulations ("CFR") title 25 provides, in part here pertinent, that "[i]n making all annuity and other per capita payments . . . the shares of competent Indians

will be paid to them directly and the shares of incompetents and minors deposited for expenditure under the individual Indian money regulations." 25 C.F.R. § 111.1 (1997). Section 115.4 governs the operation of IIMs held for the benefit of minors, see 25 C.F.R. § 115.4, and provides that "[a] per capita share of judgment funds which exceeds \$100 in total amount at the time actual payment is made, including the investment income accruing thereto, of a minor shall not be disbursed until the minor reaches 18 years of age." 25 C.F.R. § 115.4(b). All other funds held for a minor in an IIM account "may be disbursed in such amounts deemed necessary in the best interest of the minor for the minor's support, health, education, or welfare" to prescribed persons. 25 C.F.R. § 115.4(a). Finally, § 115.5 provides that "[t]he funds of an adult who is non compos mentis or under other legal disability may be disbursed for his benefit for such purposes deemed to be for his best interest and welfare." 25 C.F.R. § 115.5.

The government argues that any monies owed to plaintiffs or their heirs are damages to be paid out of the Judgment Fund, not trust property. The government contends that this court specifically held in its April 10, 1985 order that these monies are not trust property, but rather are properly characterized as personal property, and thus maintains that the BIA should not be ordered to serve as custodian of such personal property. With respect to the allegedly incompetent adult plaintiffs, the government further argues that there is an insufficient factual basis to conclude that these plaintiffs are legally incompetent, and not simply impaired in some manner. The government proposes that judgment monies owed to minor heirs be paid to their legal representatives for distribution, and that representatives be selected now for any minors that do not already have one.

The court is not persuaded by the government's argument that monies owed pursuant to the Short judgment are damages and therefore personal property, not trust property. The fact that a lawsuit was necessary to compel the government to make the payments at issue does not excuse the government from its fiduciary obligations to members of Indian tribes with respect to those payments. Furthermore, the court's April 10, 1985 order did not characterize payments arising out of this action as personal property. Rather, the court held that plaintiffs who died before the judgment was entered died owning a chose in action, and that this chose in action was personal property. The fact that the property inherited, a right to sue the government, was personal property has no bearing on the character of property recovered pursuant to the resulting lawsuit.

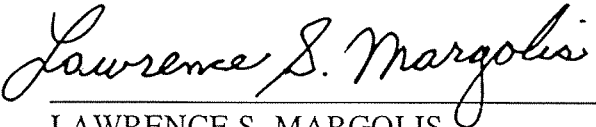
The relevant BIA regulations are clear. A minor Indian's share of a per capita payment must be "deposited for expenditure under the individual Indian money regulations." 25 C.F.R. § 111.1. Pursuant to those regulations, a minor's share that exceeds \$100 when payment is made cannot be disbursed from the IIM account until the minor reaches 18 years of age. See 25 C.F.R. § 115.4(b). A minor's share that does not exceed \$100 may be disbursed if doing so is in the best interest of the minor. See 25 C.F.R. § 115.4(a). In either case, the BIA must first establish an IIM account and act as custodian over its proceeds. The court concludes, therefore, that for each minor entitled to payment pursuant to the judgment in this case, the

BIA must establish an IIM account and administer the minor's share of the judgment in accordance with the individual Indian money account regulations.

The individual Indian money account regulations pertaining to incompetent adults are equally clear. An incompetent Indian's share of a per capita payment must be "deposited for expenditure under the individual Indian money regulations," 25 C.F.R. § 111.1, to be disbursed for purposes deemed to be in his or her best interest. See 25 C.F.R. § 115.5. The term "incompetent" refers, however, to a person suffering from a legal disability, not to someone who is simply impaired in some manner. See 25 C.F.R. § 115.5 (entitled "Adults under legal disability"). This court does not have jurisdiction to determine whether the allegedly incompetent adult plaintiffs suffer from a legal disability. Furthermore, there has been no allegation that a court with such jurisdiction has made such a finding. The BIA is not, therefore, obligated at this time to establish IIM accounts for these plaintiffs. Such an obligation would arise, however, upon a determination by a court of competent jurisdiction that a plaintiff is in fact legally disabled.¹

It is hereby ORDERED:

Plaintiffs' motion to require the government to deposit per capita shares of minors and incompetent adults in individual Indian money accounts is granted in part and denied in part. The Bureau of Indian Affairs shall establish and maintain an individual Indian money account for each minor entitled to payment pursuant to the judgment in this case. The Bureau shall deposit a minor's share of the judgment into his or her account, and shall manage this account in accordance with the individual Indian money accounts regulations. The Bureau shall do likewise for any adult plaintiffs declared legally disabled by a court of competent jurisdiction.



LAWRENCE S. MARGOLIS
Judge, U.S. Court of Federal Claims

¹ Plaintiffs have offered the declaration of a former BIA employee purportedly familiar with the BIA's utilization of IIM accounts. According to the declarant, the BIA has in the past established IIM accounts for impaired Indians who had not been declared legally disabled. To the extent that the BIA has such a practice, it would be fair and just to continue that practice with respect to the handful of plaintiffs at issue here.