ESTATE OF JOHN BEAR SHIELD

IBIA 80-37 Decided June 5, 1981

Appeal from order by Administrative Law Judge Frederick W. Lambrecht denying petition for rehearing.

Affirmed.

1. Indian Probate: Rehearing: Generally

A petition for rehearing deficient under provisions of 43 CFR 4.241 in that it was not made under oath and did not state grounds upon which it was based was properly denied by the Administrative Law Judge. The petition for rehearing which failed to conform to regulatory requirements and also failed to show probable error, was properly denied.

APPEARANCES: Anita Remerowski, Esq., and Yvette Hall War Bonnet, Esq., for appellants Wilma Joyce Bear Shield White Pipe and Velda Bear Shield, guardian ad litem for minor children William Bear Shield, Jr., Bernadine Bear Shield, and Todd John Bear Shield.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On August 9, 1979, following two probate hearings, an order determining heirs was entered in the probate of the intestate estate of decedent John Bear Shield. A claim made against the estate in the amount of $11,480 was allowed by the order in the sum of $5,860. On October 9, 1979, a petition for rehearing was filed by appellants and Marilyn Bearshield Marshall, pro sese. The petition in its entirety recites: "Petition for rehearing to disallow claim of Beatrice Duncan against the John Bearshield estate." The petition is signed by the three petitioners and dated "Oct 5, 1979."

On appeal petitioners, through counsel, contend they should be excused from compliance with the requirements of 43 CFR 4.241 governing rehearings for equitable considerations and because the hearings were held at a location "hundreds of miles" from petitioners' residences.

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Appellants do not, however, set forth the factual basis upon which they base the foregoing contentions. From the notice of appeal and brief in support of the appeal filed with this Board, it is clear that appellants' position in this matter is that the creditors' claim by Mrs. Duncan based upon care she rendered to the decedent should be disapproved entirely because it is not based upon a definitive promise of payment by decedent.

A review of the entire record on appeal does not support appellants' position. Much of the evidence in this probate was taken on written deposition. Nothing indicates that appellants could not have appeared in similar fashion to present evidence to the Indian probate Administrative Law Judge. Appellants were on notice throughout the proceedings that probate of decedent's estate was in progress within the Department. They were informed of the presentation by Mrs. Duncan of her claim and the nature of the claim. Finally, they were informed of the approval of the claim, and the reasons why it was approved. They have failed to explain why the objections now made to the claim could not have been presented earlier.

The record on appeal contains a lengthy examination of claimant concerning the basis of the claim which sufficiently supports the finding by the Administrative Law Judge that the claim was based upon care given for a promise of compensation within the meaning of 43 CFR 4.250(d) and (e). There is no indication that his order erred by allowing payment in the amount found. 1/ Under the circumstances of this case, the need for administrative finality of proceedings in Indian probate is more compelling than petitioners' argument that a third hearing into this matter is required. Based upon the facts of this case, the showing offered by appellants is inadequate to justify rehearing. (See Estate of Ireland, 1 IBIA 67, 78 I.D. 66 (1971)).

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order denying petition for rehearing is affirmed.

This decision is final for the Department.

Franklin D. Arness
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

1/ The general propriety of the payment of such claims is not subject to question within the Department on legal grounds. See Estate of Kipp, 8 IBIA 30, 87 I.D. 98 (1980).

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