JOHN ARMAJO,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 97-58-A
BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 8, 1997

This is an appeal from an October 30, 1996, decision of the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), denying an application for general assistance. For the reasons discussed below, the Board affirms the Area Director's decision.

On September 18, 1995, Appellant applied for general assistance from the Wind River Agency, BIA. On October 7, 1995, his application was approved for the period October-December, 1995, and he was advised that his case would be reviewed in December for the period beginning in January 1996. 1/ He submitted another application on January 17, 1996, and, on January 19, 1996, his application was approved for the period January-April, 1996. The approval notice stated: "Your application has been approved until April. Your review is April 8th thru 30th for May. You are required to report any changes in your household or residence or income and bring in your job contacts as soon as possible."

By letter of March 28, 1996, BIA advised Appellant that his general assistance payment for April would be $510. The letter stated further: "YOU ARE NOT ELIGIBLE FOR ADDITIONAL ASSISTANCE until you reapply for May. You may come into the office from April 15th thru April 30."

Appellant did not go to the Agency on or before April 30. On May 14, 1996, he called to ask why he had not gotten a check for May and was again informed that he must reapply. He went to the Agency the following day and completed a new application.

Two days before Appellant submitted his new application, BIA caseworkers were informed by another applicant for general assistance that he (the applicant) had done work for U.S. West in April 1996, that Appellant had been responsible for hiring him and paying him, and that Appellant still owed him $52.50 for his work. The applicant submitted a written statement to this effect.

1/ The record for this appeal begins with September, 1995. Appellant states that he received general assistance for four years prior to the events giving rise to this appeal.

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Based on the information received from this applicant, BIA caseworkers informed Appellant, at the time he submitted his new application, that he would be required to furnish information concerning his alleged work for U.S. West. He was further told that no decision would be made on his new application until he furnished the information. Appellant denied that he had worked for U.S. West but submitted nothing to verify his statement.

On June 27, 1996, Appellant's application for general assistance was denied. The denial letter stated: "THE REASON FOR DENIAL IS information is needed from U.S. West of [sic] your employment and wages earned."

Appellant requested a hearing under 25 C.F.R. § 20.30. The Superintendent, Wind River Agency, conducted a hearing on July 26, 1996. At the hearing, Appellant continued to deny that he had worked for U.S. West.

On July 31, 1996, BIA obtained written statements from five more individuals who alleged that they had worked for Appellant and that Appellant was a subcontractor for U.S. West. All five stated that they had worked for Appellant from September to December (or, in one case, November) 1995. One also stated that he had worked for Appellant during April 1996. On August 1, 1996, BIA obtained a copy of a loan transaction history for a loan Appellant had secured from the Riverton State Bank in the amount of $12,725.37. On August 2, 1996, Appellant submitted a written statement declaring: "I have never been employed by anyone while I have been on General Assistance. No other Income or Resources."

On August 9, 1996, the Superintendent denied Appellant's appeal, stating:

> The record contained six statements from previous employees and a bank statement from the Riverton State Bank which clearly shows that you did in fact receive a loan in the amount of $12,725.37.
>
> In reviewing the record I conclude that you did in fact receive income in the amount of $12,725.37 and are not eligible for General Assistance.

Superintendent's Decision at 2.

Appellant appealed this decision to the Area Director, contending that the Superintendent's decision was based on hearsay evidence. Appellant also contended that, under 25 C.F.R. § 20.30(b), his assistance should have been continued or reinstated until the date of the Superintendent's decision.

The Area Director issued a decision on October 30, 1996. He found that Appellant was not entitled to have his general assistance continued or reinstated under 25 C.F.R. § 20.30(b) because, at the time he reapplied for assistance on May 15, 1996, he was no longer a recipient of assistance but was, instead, an applicant. The Area Director also found that there was evidence in the record that Appellant did have income and that Appellant's written statement to the contrary was insufficient documentation of the fact that he did not have such income.

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On appeal to the Board, Appellant again contends that he was entitled to have his assistance continued or reinstated under 25 C.F.R. § 20.30(b).

Subsection 20.30(b) provides: "Upon request for a hearing by a recipient dissatisfied by a proposed decision the recipient's financial assistance will be continued or reinstated to provide no break in financial assistance until the date of decision by the Superintendent or his designated representative." As is evident, this provision applies to recipients of assistance. Appellant clearly sees himself as a recipient whose assistance was terminated, rather than an applicant whose application for assistance was denied. 2/

Appellant was twice advised that his January 1996 application for assistance had been approved only through April 1996 and that, in order to receive assistance for May he must reapply by April 30. He did not reapply by April 30. Accordingly, his status as a recipient lapsed through his own inaction. The Board finds that BIA properly considered him an applicant and thus not covered by 25 C.F.R. § 20.30(b).

Appellant also contends that his due process rights were violated because BIA based its determination on hearsay evidence; did not gather the evidence after the July 26, 1996, hearing; and did not allow appellant to cross-examine the individuals who made the statements.

It is true that BIA did not assemble most of its evidence concerning Appellant's work and income status until after the July 26, 1996, hearing. Clearly, it would have been better had BIA had the additional information available at the hearing, thereby giving Appellant an opportunity to respond to it at that time. The Board finds, however, for the reasons discussed below, that this lapse is not fatal here.

On at least two occasions prior to the July 26, 1996, hearing, BIA advised Appellant that it had received information about Appellant's alleged employment with U.S. West. Further, BIA specifically requested Appellant to furnish information about this alleged employment. Appellant's only response was to deny that he had been employed. He made no attempt, either before or at the hearing, to furnish any support for his denial. 3/ Further, even after the Superintendent issued his decision, which made clear that BIA had received five additional statements alleging that Appellant

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2/ The terms "applicant" and "recipient" are defined in 25 C.F.R. § 20.1:

"(b) Applicant means an individual or persons on whose behalf an application for assistance and/or services has been made under the part.

* * * * * *

"(u) Recipient means an individual or persons who have been determined as eligible and are receiving financial assistance or services under this part."

3/ The simplest and most persuasive support for Appellant's denial, as it concerned Appellant's alleged work for U.S. West, would have been a statement from U.S. West confirming that Appellant had not worked for that company as an employee or a subcontractor. Appellant does not contend that he attempted to obtain such a statement.

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had been working for U.S. West, as well as information from a bank concerning a loan to Appellant, Appellant made no attempt to refute or explain this evidence. In fact, Appellant has yet to offer any explanation, although he has had ample opportunity to do so in the course of his appeals to the Area Director and the Board.

While the information assembled by BIA may be hearsay in a court of law, it was sufficient to support BIA's decision to request further information from Appellant in support of his application. Moreover, Appellant, as an applicant for assistance, was responsible for showing that he was eligible to receive assistance. Consequently, he was responsible for furnishing information, when requested to do so by BIA, refuting or explaining statements which raised questions about his eligibility. Upon his failure to furnish the requested information, BIA properly denied his application. See, e.g., Wyman v. James, 400 U.S. 309 (1971) (A state may condition the receipt of welfare benefits upon the furnishing of relevant information.) 4/

The BIA decision at issue here addressed only Appellant's application for future assistance, not the question of possible fraudulent statements on his part. 5/ It is clear from the record, however, that BIA was concerned

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4/ Wyman v. James concerned a state requirement that welfare recipients permit home visits by caseworkers. The Supreme Court stated:

"It seems to us that the situation is akin to that where an Internal Revenue Service agent, in making a routine civil audit of a taxpayer's income tax return, asks that the taxpayer produce for the agent's review some proof of a deduction the taxpayer has asserted to his benefit in the computation of his tax. If the taxpayer refuses, there is, absent fraud, only a disallowance of the claimed deduction and a consequent additional tax. The taxpayer is fully within his 'rights' in refusing to produce the proof, but in maintaining and asserting those rights a tax detriment results and it is a detriment of the taxpayer's own making. So here Mrs. James has the 'right' to refuse the home visit, but a consequence in the form of cessation of aid, similar to the taxpayer's resultant additional tax, flows from that refusal. The choice is entirely hers, and nothing of constitutional magnitude is involved."

400 U.S. at 324. So too, Appellant had a right not to produce the information requested by BIA. However, the consequence of his exercise of that right was that his application for assistance was not approved.

5/ Fraudulent statements are subject to 18 U.S.C. § 1001 (1994), which provides:

"(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully))

"(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

"(2) makes any materially false, fictitious, or fraudulent statement or representation; or

"(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

"shall be fined under this title or imprisoned not more than 5 years, or both."

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about the possibility of fraud in this case. The Board assumes that BIA has undertaken a further investigation of possible fraud. If it has not yet initiated an investigation, it should do so immediately.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's October 30, 1996, decision is affirmed.

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Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge

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