

§ 4.242

(f) At the time the final decision is entered following the filing of a petition for rehearing, the OHA deciding official must direct a notice of such action with a copy of the decision to the Superintendent and to the parties in interest and must mail the same by regular mail to the said parties at their addresses of record.

(g) No distribution may be made under such order for a period of 60 days following the mailing of a notice of decision pending the filing of a notice of appeal by an aggrieved party as herein provided.

§ 4.242 Reopening.

(a) Within a period of 3 years from the date of a final decision issued by an OHA deciding official or by the Board but not thereafter except as provided in §§ 4.203 and 4.206, any person claiming an interest in the estate who had no actual notice of the original proceedings and who was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted may file a petition in writing for reopening of the case. Any such petition must be addressed to the OHA deciding official and filed at his or her office. A copy of such petition must be furnished also by the petitioner to the Superintendent. All grounds for the reopening must be set forth fully. If based on alleged errors of fact, all such allegations must be under oath and supported by affidavits.

(b) If the OHA deciding official finds that proper grounds are not shown, he or she will issue an order denying the petition and setting forth the reasons for such denial. Copies of the OHA deciding official's decision must be mailed to the petitioner, the Superintendent, and to those persons who share in the estate.

(c) If the petition appears to show merit, the OHA deciding official must cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition. Such persons may resist such petition by filing answers, cross-petitions, or briefs. Such filings must be made within such reasonable time periods as the OHA de-

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cid-ing official specifies. The OHA deciding official will then reconsider, with or without hearing as he or she may determine, prior actions taken in the case and may either adhere to, modify, or vacate the original decision. Copies of the OHA deciding official's decision must be mailed to the petitioner, to all persons who received copies of the petition, and to the Superintendent.

(d) To prevent manifest error an OHA deciding official may reopen a case within a period of 3 years from the date of the final decision, after due notice on his or her own motion, or on petition of a BIA officer. Copies of the OHA deciding official's decision must be mailed to all parties in interest and to the Superintendent.

(e) The OHA deciding official may suspend distribution of the estate or the income therefrom during the pendency of reopening proceedings by order directed to the Superintendent.

(f) The OHA deciding official must lodge the record made in disposing of a reopening petition with the title plant designated under § 4.236(b) and must furnish a duplicate record thereof to the Superintendent.

(g) No distribution may be made under a decision issued pursuant to paragraph (b), (c), or (d) of this section for a period of 60 days following the mailing of the copy of the decision as therein provided, pending the filing of a notice of appeal by an aggrieved party.

(h) If a petition for reopening is filed more than 3 years after the entry of a final decision in a probate, it will be allowed only upon a showing that a manifest injustice will occur; that a reasonable possibility exists for correction of the error; that the petitioner had no actual notice of the original proceedings; and that petitioner was not on the reservation or otherwise in the vicinity at any time while the public notices were posted. A denial of such petition may be made by the OHA deciding official on the basis of the petition and available BIA records. No such petition will be granted, however, unless the OHA deciding official has caused copies of the petition and all other papers filed by the petitioner to

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be served on those persons whose interest in the estate might be adversely affected by the granting of the petition, and after allowing such persons an opportunity to resist such petition by filing answers, cross petitions or briefs as provided in paragraph (c) of this section.

APPEALS FROM DECISIONS OF BIA DECIDING OFFICIALS

§ 4.243 Appeals from BIA.

Any appeal filed pursuant to 25 CFR part 15, subpart E, will be referred to an OHA deciding official pursuant to §4.210. The OHA deciding official will review the merits of the case de novo and conduct a hearing as necessary or appropriate pursuant to the regulations in this subpart. The BIA deciding official must forward to the OHA deciding official all documents and other evidence upon which the BIA deciding official's decision was based.

CLAIMS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.250 Filing and proof of creditor claims; limitations.

(a) All claims against the estate of a deceased Indian must be filed with the agency

(i) Within 60 days from the date BIA receives a certified copy of the death certificate or other verification of the decedent's death under 25 CFR 15.101 or

(ii) Within 20 days from the date the creditor is chargeable with notice of the decedent's death, whichever of these dates is later.

(b) No claim will be paid from trust or restricted assets when the OHA deciding official is aware that the decedent's non-trust estate may be available to pay the claim.

(c) All claims must be filed in triplicate, itemized in detail as to dates and amounts of charges for purchases or services and dates and amounts of payments on account. Such claims must show the names and addresses of all parties in addition to the decedent from whom payment might be sought. Each claim must be supplemented by an affidavit, in triplicate, of the claimant or someone in his or her behalf

that the amount claimed is justly due from the decedent, that no payments have been made on the account which are not credited thereon as shown by the itemized statement, and that there are no offsets to the knowledge of the claimant.

(d) Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(e) A claim based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent's death, cannot be allowed.

(f) Claims sounding in tort not reduced to judgment in a court of competent jurisdiction, and other unliquidated claims not properly within the jurisdiction of a probate forum, may be barred from consideration by an interim order from the OHA deciding official.

(g) Claims of a State or any of its political subdivisions on account of social security or old-age assistance payments will not be allowed.

§ 4.251 Priority of claims.

(a) Upon motion of the Superintendent or a party in interest, the OHA deciding official may authorize payment of the costs of administering the estate as they arise and prior to the allowance of any claims against the estate.

(b) After the costs of administration, the OHA deciding official may authorize payment of priority claims as follows:

(1) Claims for funeral expenses (including the cemetery marker);

(2) Claims for medical expenses for the last illness;

(3) Claims for nursing home or other care facility expenses;

(4) Claims of an Indian tribe; and

(5) Claims reduced to judgment by a court of competent jurisdiction.

(c) After the priority claims, the OHA deciding official may authorize payment of all remaining claims, referred to as general claims.

(d) The OHA deciding official has the discretion to decide that part or all of