

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE  
HO-CHUNK NATION TRIAL COURT**

---

**In the Interest of Choice A. Decorah** **ORDER (Guardianship Designation)**  
**By Adam Hall, HCN Enrollment Department,**

Case No.: **CV 98-38**

---

On May 13, 1998, the petitioner requested that the Ho-Chunk Nation Trial Court make a formal guardianship appointment on behalf of Choice A. Decorah. Choice Decorah was about to become or recently became 18 years, thus eligible to access his minor trust funds in the amount of \$25,628.77. The petitioner had reason to believe that Choice had limited mental capacity and was unable to handle a large sum of money. The Court has found that sufficient evidence and testimony indicate Choice A. Decorah has mental and physical limitations to be considered an adult incompetent. Therefore, the Court has determined the Nation maintain an adult incompetent trust fund account on Choice A. Decorah’s behalf. Furthermore, this Court finds Wanda Decorah, grandmother and custodian of Choice Decorah, shall serve as his guardian for matters of health, education and welfare, particular in petitioning this Court for access of the ward’s trust fund account.

**APPLICABLE LAW**

ART VII. Sec 5. Jurisdiction of the Judiciary.

(a) The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs and traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its officials and employees, shall be a party. Any such case or controversy arising within the jurisdiction of the Ho-Chunk Nation shall be filed in Trial Court before it is filed in any other court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of the Nation's sovereign immunity.

ART VII. Sec 6. Powers of the Tribal Court.

(a) The Trial Court shall have the power to make findings of fact and conclusions of law. The Trial Court shall have the power to issue all remedies in law and in equity including injunctive and declaratory relief and all writs including attachment and mandamus.

**HCN AMENDED AND RESTATED PER CAPITA DISTRIBUTION ORDINANCE (JULY 1997)**

1 Section 6.01 Minors and other legal incompetents.

2 (a) The interests of minors and other legally incompetent Members, otherwise entitled to receive per  
3 capita payments, shall in lieu of payment to such minor or incompetent Member, be disbursed to a  
4 Children's Trust Fund which shall be established for each such member. The Ho-Chunk Nation shall  
5 establish a formal irrevocable legal structure for such CTFs approved by the Nation's Legislature as  
6 soon after passage of the Ordinance as shall be practicable, with any amounts currently held by the  
7 Nation for passage for the benefit of minor and legally incompetent Members, and all additions thereto  
8 pending approval and establishment of such formal irrevocable structure, to be held in an account for  
9 the benefit of each such Member-beneficiary under the supervision of the Trial Court of the Nation.  
10 Trust assets of such CTFs shall be invested in a reasonable and prudent manner which protects the  
11 principal and seeks a reasonable return. The trust assets of each such account maintained for a minor  
12 shall be disbursed to the Member-beneficiary thereof upon reaching the age of eighteen (18); provided  
13 that, this provision shall not operate to compel disbursement of funds to Members legally determined  
14 to be incompetent.

15 (b) Funds in the CTF of a minor or legally incompetent member may be available for the benefit of a  
16 *beneficiary's health, education and welfare when the needs of such person are not being met from*  
17 *other Tribal funds or other state or federal public entitlement program, and upon a finding of special*  
18 *need by the Ho-Chunk Nation Trial Court.* In order to request such funds, (1) a written request must  
19 be submitted to the Nation's Trial Court by the beneficiary's parent or legal guardian detailing the  
20 purpose and needs for such funds, and; (2) the parent or legal guardian shall maintain records and  
21 account to the Trial Court in sufficient detail to demonstrate that the funds disbursed were expended as  
22 required by this Ordinance and any applicable federal law, and; (3) any other standards, procedures  
23 and conditions that may be subsequently adopted by the Legislature consistent with any applicable  
24 federal law shall be met.

25 *Id.* (Emphasis added).

26 **FINDINGS OF FACT**

- 27 1. Choice A. Decorah is an enrolled member of the Ho-Chunk Nation, tribal id. #439A004350.
- 28 2. Choice A. Decorah (d.o.b. 03/18/80) lives with his maternal grandmother, Wanda Decorah in  
29 Wisconsin Dells, Wisconsin.
- 30 3. Choice A. Decorah's mother is Jeanette Decorah. No one was declared the father for this matter.
- 31 4. On or about April 17, 1998, a meeting occurred between the Ho-Chunk Nation Enrollment  
32 Department and Choice Decorah, Wanda Decorah and two other unidentified family members.
- 33 5. Based on the April 17, 1998 meeting, the petitioner believed Choice Decorah was not capable of  
34 handling the lump sum disbursement of \$25,628.77 after he turns 18 years of age. Also, Wanda  
35 Decorah said she was designated as Choice's guardian but Wanda Decorah offered no legal

1 documentation supporting this assertion. (*See Affidavit by Janice Swiggum and Affidavit by Kari*  
2 *Kilday*)

3 6. On or about May 13, 1998, the petitioner requested the Court to impound the per capita for Choice  
4 Decorah until questions about his competency could be answered.

5 7. During the June 25, 1998 *Hearing*, Ms. Wanda Decorah testified that she is the payee for Choice  
6 regarding Social Security Income (SSI) Benefits.

7 8. During the July 13, 1998 *Hearing*, Ms. Wanda Decorah provided the Court with a letter indicating  
8 that the SSI benefit was stopped because the Social Security Administration (SSA) understood that  
9 Choice A. Decorah received trust fund money after he turned 18 years old. She further testified that  
10 Choice had not received three months of SSI benefits because of this pending proceeding.

11 9. On or about July 13, 1998, the Court appointed Ms. Tracey L. Schwalbe as guardian ad litem for  
12 Choice A. Decorah.

13 10. During the September 16, 1998 *Hearing*, Wanda Decorah said she did not want trust fund money  
14 for Choice A. Decorah if this would cut off his SSI benefit and receiving Medical Assistance(MA)  
15 coverage. He needed MA coverage because he is practicing for the Special Olympics.

16 11. On September 15, 1998, Guardian ad litem Schwalbe filed a report regarding Choice A. Decorah's  
17 competency based on information and belief from Choice's school records, a school psychologist's  
18 affidavit,<sup>1</sup> and the interview with Wanda Decorah. Ms. Schwalbe was unable to gain information from  
19 the SSA at the time of her report.<sup>2</sup>

20 \_\_\_\_\_  
21 <sup>1</sup> The Court sealed this record since it is confidential information. Only the present Guardian Ad Litem for Choice,  
Tracey Schwalbe, Choice A. Decorah, Wanda Decorah, and Counsel Todd Matha can request to review this report.

22 <sup>2</sup> During the September 16, 1998 *Hearing*, the Choice Decorah family filed a notice from the SSA stating that  
23 Wanda Decorah has served as Choice's representative payee since July 31, 1991. This SSA *Report of Confidential Social*

24

25

26

27 i:\CV 98-38

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECISION**

Pursuant to the HCN AMENDED AND RESTATED PER CAPITA DISTRIBUTION ORDINANCE (JULY 1997), Sec. 6.01

The Ho-Chunk Nation shall establish a formal irrevocable legal structure for such CTFs approved by the Nation’s Legislature as soon after passage of the Ordinance as shall be practicable, with any amounts currently held by the Nation for passage for the benefit of minor and legally incompetent Members, and all additions thereto pending approval and establishment of such formal irrevocable structure, to be held in an account for the benefit of each such Member-beneficiary under the supervision of the Trial Court of the Nation.

The Court had to make a determination, in the best interest of Choice A. Decorah, who has been determined to have mental limitation, whether his per capita distribution shall remain in an adult incompetent trust fund account. Upon such action deemed appropriately, the Court must also designate a guardian to handle Choice’s trust fund account.

The original petition alluded to Choice Decorah’s inability to handle a large sum of money. In fact, this *Petition* was instigated by address verification form (usually signed by the adult tribal member) submitted by the Choice Decorah family and a follow up meeting between Choice Decorah family and the HCN Enrollment Department. The *Address Verification Form* was signed by Wanda Decorah, without any indication of legal guardianship, power of attorney or authority to do so on Choice’s behalf. The discussion at the meeting led the Enrollment Department staff to be concerned about Choice’s ability to handle the large sum of money. (See *Affidavit by Janice Swiggum* and *Affidavit by Kari Kilday*)

---

*Security Benefit Information* was signed by an officer in the Portage, Wisconsin office.

1 In the past, the Court has relied on medical or legal documentation which previously concluded  
2 such tribal member's mental incapacities. At the onset of this case, no such records existed. It was  
3 difficult to obtain legal and/or medical documentations regarding Choice Decorah, possible guardianship  
4 designation from his family. However, in the *hearings* of June and July 1998, testimony by Choice  
5 Decorah's family indicated that Choice had mental disabilities to potentially warrant that the Court place  
6 Choice's per capita distribution monies into a trust fund account. Choice attended one of the first  
7 *hearings*, and it was physically notable of the limitations he had with both speech and language. The  
8 family indicated that Wanda received SSI for Choice consistently until this trust fund issue arose.  
9 Additionally, the family indicated that Choice is participating in the Special Olympics swim team. The  
10 medically definitive information offered to this Court regarding the competency level of Choice A.  
11 Decorah was offered by the Guardian ad litem Tracey L. Schwalbe. Ms. Schwalbe interviewed the  
12 Wisconsin Dells School District Psychologist, Ms. Gail Webb.<sup>3</sup> In addition, Ms. Schwalbe was able to  
13 review Choice Decorah's school records. The psychologist's *Affidavit* and *Psychological Report-Three*  
14 *Year Reevaluation* articulated that Mr. Decorah has been a special education student in the Wisconsin  
15 Dells School District since 1991. He has moderate to severe cognitive disabilities and speech/language  
16 that are unlikely to change in the future. In Ms. Webb's opinion, 'consideration should be made to  
17 protect Choice in medical and financial decisions as he would be turning 18 years in March 1993.' In  
18 the testimony of Wanda Decorah, she confirmed that Choice does have mental and physical limitations.  
19 Based on the testimonies and evidence, the Court is convinced sufficient records exist to determine  
20 Choice lack competency to personally handle his financial and social matter on his own. In Choice's  
21 best interest, this Court finds that his per capita distribution monies shall remain in the trust fund  
22 account.

23 Next, the Court must identify an adult who can serve as Choice's guardian in this matter. In Ms.

---

24 <sup>3</sup> Ms. Webb is licensed by the Wisconsin Department of Public Instruction.  
25

1 Schwalbe's opinion Ms. Wanda Decorah is most appropriate individual in Choice's life to be designated  
2 as his guardian. Counsel for the petition did not object. Ms. Wanda Decorah does not object to  
3 accepting the responsibilities since she has always cared for Choice.<sup>4</sup> Therefore, this Court finds that  
4 Ms. Wanda Decorah shall be designated as legal guardian for Choice A. Decorah. Ms. Wanda Decorah  
5 shall exercise the legal responsibilities and obligations for tending to the health, education and welfare  
6 on Choice A. Decorah's behalf. This responsibility includes but is not limited to, acting and petitioning  
7 for release of trust fund monies on Choice A. Decorah's behalf.

8

9

10

11

12 **IT IS SO ORDERED** on this 30th day of September 1998, *Nunc Pro Tunc* September 16, 1998,  
13 at the Ho-Chunk Nation Trial Court in Black River Falls, Wisconsin from within the sovereign lands of  
14 the Ho-Chunk Nation.

15

16 

---

Hon. Joan Greendeer-Lee  
HCN Associate Trial Court Judge

17

18

19

20

21

22

23 <sup>4</sup> The mother, Jeanette Decorah, filed a notice with the Court during the September 16, 1998 *Hearing*, indicating  
24 that her mother, Wanda Lee Decorah, was granted custody of Choice Allen Decorah on June 25, 1991 in Sawyer County,  
Wisconsin. Ms. Jeanette Decorah requested that her mother continue in custody of her son.

25

26

27 i:\CV 98-38

28