

1 The plaintiff, Shawn Blackdeer, initiated the current action by filing a *Petition for the Release of*
2 *Per Capita Disbursement* with the Court on April 8, 1999. Consequently, the Court issued a *Summons*
3 accompanied by the above-mentioned *Petition* on April 8, 1999, and delivered the documents by
4 certified mail to the defendant, Ho-Chunk Nation Office of Tribal Enrollment. An agent of the
5 defendant signed for the certified mailing on April 9, 1999 as indicated on the Domestic Return Receipt.
6 The *Summons* informed the defendant of the right to file an *Answer* within twenty (20) days of the
7 issuance of the *Summons* pursuant to the *Ho-Chunk Nation Rules of Civil Procedure* [hereinafter *HCN*
8 *R. Civ. P.*], *Rule 5(B)*. The *Summons* also cautioned the defendant that a *default judgment* could result
9 from failure to file within the prescribed time period. The defendant, by and through Kari L. Kilday,
10 filed a timely *Answer* on April 9, 1999, expressing conditional assent to the *Petition*. The defendant
11 requested that the plaintiff submit two forms of documentary proof to the Court: a family financial
12 statement and a current CTF account statement. The plaintiff complied with this request, faxing the
13 documentation to the Court on April 29, 1999. The Court sent *Notice(s) of Hearing* to the parties on
14 April 28, 1999, stating the date, time and place of the *Fact Finding Hearing*. The Court mailed the
15 *Notices* to the correct previously identified addresses of the parties. The following parties appeared at
16 the May 13, 1999 *Fact Finding Hearing*: Kari L. Kilday. Shawn Blackdeer failed to appear. The Court
17 proceeded to hold the hearing by authority of *HCN R. Civ. P. 44(C)* absent any objection from the
18 defendant and because of the plaintiff's informal request for an expedited hearing.

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APPLICABLE LAW

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22 HO-CHUNK RULES OF CIVIL PROCEDURE

23 Rule 5. Notice of Service of Process

24 (B) *Summons*. The *Summons* is the official notice to the party informing him/her that he/she is identified
25 as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (*See, HCN. R.*
Civ. P. 6) and that a *Default Judgment* may be entered against them if they do not file an *Answer* in the
limited time. It shall also include the name and location of the Court, the case number, and the names of

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1 the parties. The *Summons* shall be issued by the Clerk of Court and shall be served with a copy of the
2 filed complaint attached.

3 Rule 44. Presence of Parties and Witnesses

4 (C) Failure to Appear. If any party fails to appear at a hearing or trial for which they received proper
5 notice, the case may be postponed or dismissed, a judgement may be entered against the absent party, or
6 the Court may proceed to hold the hearing or trial.

7 HCN AMENDED AND RESTATED PER CAPITA DISTRIBUTION ORDINANCE

8 Section 6.01. Minors and Other Legal Incompetents

9 (a) The interests of minors and other legally incompetent Members, otherwise entitled to receive per
10 capita payments, shall, in lieu of payment to such minor or incompetent Member, be disbursed to a
11 Children=s Trust Fund which shall establish a formal irrevocable legal structure for such CTF=s
12 approved by the Nation=s Legislature as soon after passage of this Ordinance as shall be practical, with
13 any amounts currently held by the Nation for passage for the benefit of minor or legally incompetent
14 Members, and all additions thereto pending approval and establishment of such formal irrevocable
15 structure, to be held in an account for the benefit of each such Member-beneficiary under the
16 supervision of the Trial Court of the Nation. Trust assets of such CTF=s shall be invested in a
17 reasonable and prudent manner which protects the principal and seeks reasonable return. The trust
18 assets of each such account maintained for a minor shall be disbursed to the Member-beneficiary thereof
19 upon the earlier of (i) said Member-beneficiary meeting the dual criteria of (a) reaching the age of
20 eighteen (18) and (b) producing evidence of personal acquisition of a high school diploma or an HSED
21 or a GED, if and only if, the Member=s state of residence does not offer a more comprehensive testing
22 alternative (hereinafter defined as Aequivalent academic credential≅) to the Enrollment department, or
23 evidence that a diploma could not be obtained due to handicap or learning disability notwithstanding the
24 minor=s diligent effort to complete high school and obtain a diploma or (ii) the Member reaches the age
25 of twenty-one (21); provided that this provision shall not operate to compel disbursement of funds to
26 Members legally determined to be incompetent. In the event a Member, upon reaching the age of
27 eighteen (18) does not produce proof of personal acquisition of a high school diploma or equivalent
28 academic credential, or evidence of substantial disability and diligent effort to complete high school,
29 such Member=s per capita funds shall be retained in the CTF account and shall be held on the same
30 terms and conditions applied during the Member-beneficiary=s minority until the earliest to occur of (x)
31 the Member produces the required diploma or equivalent academic credential; (y) the Member reaches
32 the age of twenty-one (21); or, (z) the Member is deceased. Notwithstanding the continuation of the
33 CTF up to the Member reaching age twenty-one (21), the Member failing to meet the graduation
34 requirement shall be entitled to directly receive all per capita distributions as and when made to all
35 qualified adult Members after said Member=s eighteenth (18) birthday, unless determined to be legally
36 incompetent and therefore subject to a CTF.

37 (b) Funds in the CTF of a minor or legally incompetent member may be available for the benefit of a
38 beneficiary=s health, education and welfare when the needs of such person are not being met from other
39 Tribal funds or other state or federal public entitlement program, and upon a finding of special need by
40 the Ho-Chunk Nation Trial Court. In order to request such funds, (1) a written request must be
41 submitted to the Nation=s Trial Court by the beneficiary=s parent or legal guardian detailing the purpose
42 and needs for such funds; and, (2) the parent or legal guardian shall maintain records and account to the
43 Trial Court in sufficient detail to demonstrate that the funds disbursed were expended as required by this
44 Ordinance and any applicable federal law; and, (3) any other standards, procedures and conditions that

1 may be subsequently adopted by the Legislature consistent with any applicable federal law shall be met.

2 3 **FINDINGS OF FACT**

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5 1. The minor child, C.B.B, is an enrolled member of the Ho-Chunk Nation, Tribal ID#
6 439A004569.

7 2. The parties received proper notice of the May 13, 1999 *Fact Finding Hearing*.

8 3. The mother of the minor child, Shawn M. Blackdeer, has shown a personal financial inability to
9 pay for the required orthodontic care.

10 4. Dr. Jeffrey H. Fordice, D.D.S., directed a letter to the Court explaining the planned orthodontic
11 procedures and establishing the cost for such procedures at \$3590.00. Dr. Fordice has overseen
12 orthodontic care for C.B.B. since November 20, 1997.

13 5. C.B.B. experiences difficulty chewing and swallowing food, often choking.

14 6. The Ho-Chunk Nation Department of Health withdrew coverage for orthodontics under its At-
15 Large Health Management/Insurance Program on March 10, 1999, thereby affecting the ongoing
16 orthodontic treatment of C.B.B.

17 7. Dr. Fordice scheduled C.B.B. to resume orthodontic care for the abovementioned problem on
18 May 25, 1999.

19 8. As of April 29, 1999, C.B.B. had a total amount of \$32,074.30 deposited in the CTF.

20 9. No state or federal entitlement programs exist to cover the cost of orthodontic treatment. Access
21 to tribal funds for the same purpose proves speculative, and the expressed immediacy of the situation
22 counsels against reliance on an uncertain alternative.²

23 ² The Court directed the defendant at the May 13, 1999 *Fact Finding Hearing* to ascertain whether or not the Ho-
24 Chunk Nation Legislature has established standards for granting financial assistance to members from the Charitable
25 Contributions line item. The Court had noted legislative assistance granted to an Area V member for a similar concern as
26 recorded in the legislative meeting minutes of April 13, 1999. The defendant, however, responded by expressing overall
27 uncertainty with the process. In that the statutory standard impliedly requires a beneficiary to exhaust tribal resources prior to

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DECISION

The Court concludes that special need exists in the instant case in light of the documented financial position of the family coupled with the urgency of the orthodontic care. The Court further concludes that the plaintiff has reasonably exhausted efforts to secure assistance through other tribal funds or other state or federal entitlement programs. The Court notes that it previously granted release of CTF monies for the orthodontic needs of a minor child in the case of *In the Interest of C.J.T. by Bonnie Hanson v. HCN Enrollment Department*, HCN Tr. Ct., March 25, 1998, thereby recognizing the apparent health benefit derived from such care. Based upon the foregoing, the Court deems that the request of the plaintiff satisfies the standard articulated in the *HCN Amended and Restated Per Capita Distribution Ordinance* § 6.01 (b).

The Court accordingly directs the Ho-Chunk Nation Treasury Department to release a check in the amount of \$3,590.00 made payable to Shawn Blackdeer. The Court appoints Shawn Blackdeer the trustee of C.B.B. for the purpose of properly distributing and accounting for such funds. The trustee shall submit a financial accounting report to the Court within six (6) months of the disbursement of the CTF check. The report shall include copies of all bills, receipts and other documentation corroborating the expenditure of the authorized funds. The Court shall close the case upon receipt of final accounting or when the minor child becomes eligible for receipt of the balance of the CTF account in accordance with the *HCN Amended and Restated Per Capita Distribution Ordinance* § 6.01 (a).

All parties have the right to appeal a final judgement or order of the Trial Court. If either party is dissatisfied with the decision of this Court, they may file a *Notice of Appeal* with the Ho-Chunk

accessing CTF monies, this Court must direct like petitioners to the HCN Legislature absent exigent circumstances or future clarification from the HCN Legislature.

1 Supreme Court within thirty (30) calendar days from the date this Court renders such final judgment or
2 order. The *Notice of Appeal* must show service was made upon the opposing party prior to its acceptance
3 for filing by the Clerk of Court. The *Notice of Appeal* must explain the reason the party appealing
4 believes the decision appealed from is in error. All appellate pleadings to the Ho-Chunk Supreme Court
5 must be in conformity with the requirements set by the Ho-Chunk Supreme Court in accordance with the
6 Ho-Chunk Nation *Rules of Appellate Procedure*.

7 **IT IS SO ORDERED** this May 21, 1999 at the Ho-Chunk Nation Trial Court in Black River
8 Falls, Wisconsin from within the sovereign lands of the Ho-Chunk Nation.

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10 Hon. Todd R. Matha,
HCN Associate Trial Judge

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