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

In the Interest of Minor Child:

**S.S., DOB 07/30/82
by Sharon A. Porter,
Plaintiff,**

v.

**Ho-Chunk Nation Office of Tribal Enrollment,
Defendant.**

Case No.: **CV 99-76**

**ORDER
(Petition Granted in Part and Denied in Part)**

INTRODUCTION

This case concerns whether a parent, Sharon A. Porter, can access monies on behalf of her child from the Children=s Trust Fund [hereinafter CTF] to pay for anticipated costs associated with childcare and continuing attendance at high school. The Court employs the standard enunciated in the AMENDED AND RESTATED PERCAPITA DISTRIBUTION ORDINANCE [hereinafter PER CAPITA ORDINANCE] § 6.01(b) to assess the merit of the parent’s request. The Court grants release of funds for costs related to childcare, but denies release of funds for the remainder of the request based on the reasons stated below.

PROCEDURAL HISTORY

The plaintiff, Sharon A. Porter, initiated the current action by filing a *Petition for the Release of*

1 *Per Capita Disbursement* with the Court on September 29, 1999. Consequently, the Court issued a
2 *Summons* accompanied by the above-mentioned *Petition* on September 29, 1999, and delivered the
3 documents to the defendant, Ho-Chunk Nation Office of Tribal Enrollment. The *Summons* informed the
4 defendant of the right to file an *Answer* within twenty (20) days of the issuance of the *Summons* pursuant
5 to the *Ho-Chunk Nation Rules of Civil Procedure* [hereinafter *HCN R. Civ. P.*], Rule 5(B). The
6 *Summons* also cautioned the defendant that a *default judgment* could result from failure to file within the
7 prescribed time period. The defendant, by and through Attorney Sheila D. Corbine, filed a timely
8 *Answer* on October 14, 1999, expressing conditional assent to the *Petition*. The defendant requested that
9 the plaintiff submit several forms of documentary proof to the Court. The plaintiff complied with this
10 request, filing an *Amended Petition* with attached documentation to the Court on November 23, 1999.
11 The Court sent *Notice(s) of Hearing* to the parties on October 21, 1999, stating the date, time and place
12 of the *Fact Finding Hearing*. The following parties appeared at the November 23, 1999 *Fact Finding*
13 *Hearing*: Attorney Sheila D. Corbine and Sharon A. Porter (by telephone).
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18 **APPLICABLE LAW**

19 20 **HO-CHUNK RULES OF CIVIL PROCEDURE**

21 **Rule 5. Notice of Service of Process**

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

26 **HCN AMENDED AND RESTATED PER CAPITA DISTRIBUTION ORDINANCE**

27 **Section 6.01. Minors and Other Legal Incompetents**

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

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

FINDINGS OF FACT

1. The minor child, S.S., DOB 07/30/82, is an enrolled member of the Ho-Chunk Nation, Tribal
ID# 439A004873.

2. The parties received proper notice of the November 23, 1999 *Fact Finding Hearing*.

1 3. On August 13, 1999, Candace Currie gave birth to a child of S.S. The newborn, Satevia S.,
2 resides with the mother, Candace Currie. The newborn is not eligible for enrollment with the Ho-Chunk
3 Nation since the father, S.S., possesses one-quarter blood quantum.

4 4. The plaintiff stated that the mother, Candace Currie, might be enrolled with a Cree Nation in
5 Canada. The parents may seek to enroll Satevia S. with the mother's affiliated tribe or elsewhere based
6 on the varied ancestry of the father, S.S.¹

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8 5. As of October 29, 1999, S.S. was an enrolled sophomore at the Shoshone-Bannock Sr. High
9 School.

10 6. The school system provides bus service which extends to the residence of S.S., but S.S.
11 sometimes neglects to ride the bus. S.S. resides with the plaintiff.

12
13 7. S.S. intends to complete high school and to seek part-time employment to fulfill the obligations
14 of a parent. S.S. does not have adequate access to transportation for purposes of employment.

15 8. The plaintiff owns one automobile which must service the entire household.

16 9. The plaintiff requested a release of CTF monies for the following purposes:

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|----|---|---|-------------|
| 17 | * | 1992 Chevrolet Blazer, 90,500 miles | \$14,327.00 |
| 18 | | VIN# 1GNEK18K2NJ332610 | |
| 19 | | (Cole Chevrolet proposal) | |
| 20 | * | automobile insurance | \$1,368.00 |
| 21 | | (AAA Oregon/Idaho quotation) | |
| 22 | * | Tommy Hilfiger clothing for school | \$1,009.00 |
| 23 | | (The Buckle quotation) | |
| 24 | * | Christmas money for presents and gasoline | \$2,000.00 |
| | | (estimation) | |

25 _____
26 ¹ On December 23, 1999, the Ho-Chunk Nation Office of Tribal Enrollment related that S.S. possesses one-quarter Ho-
27 Chunk blood quantum and other amounts of Shoshone and Navajo blood quantum, totaling seven-eighths overall Indian
Blood quantum.

1 10. Ho-Chunk Nation Social Services does not extend child care or emergency assistance to
2 unenrolled children.

3 11. The plaintiff anticipated utilizing a large portion of the Christmas money allocation for the
4 ongoing care of Satevia S.

5 12. As of September 30, 1999, S.S. had an amount of \$35,603.60 deposited in the CTF account.
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8 **DECISION**
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10 The Court concludes that special need exists in the instant case with regards to the necessary care
11 of Satevia S. The Court declines to restrictively interpret PER CAPITA ORDINANCE § 6.01 (b) as a
12 disbursement mechanism for purposes related solely to the minor beneficiary's health, education or
13 welfare. The Court often stresses the inherent responsibility of a parent to provide for the basic needs of
14 their child(ren). *See e.g. In the Interest of Gary Alan Funmaker, Sr. v. Ho-Chunk Nation*, CV 96-39
15 (HCN Tr. Ct., Oct. 18, 1996) at 7 and *In the Interest of Minor Child: R.E.C., DOB 09/15/82, by Excilda*
16 *Bird v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 99-67 (HCN Tr. Ct., Dec. 13, 1999) at 9.
17 This responsibility is not diminished by the fact that the parent has not attained the age of majority.
18 Rather, the newborn child's health, education and welfare become inextricably intertwined with that of
19 the minor parent's.
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22 The Court further concludes that the plaintiff has exhausted efforts to secure assistance through
23 "other Tribal funds or other state or federal public entitlement program[s]." PER CAPITA ORDINANCE §
24 6.01 (b). Specifically, the plaintiff's level of income disqualifies the family from receiving federal or
25 state aid, and S.S. cannot receive tribal funding since the newborn is not enrolled with the Ho-Chunk
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1 Nation.

2 **THEREFORE**, the Court authorizes Old Kent Bank to release a check in the amount of
3 \$1500.00 from the CTF account of S.S. made payable to Sharon A. Porter at Rt. 1, Box 73-J, Pocatello,
4 ID 83202. The Court directs the plaintiff to “maintain records sufficient to demonstrate that the funds
5 disbursed were expended as required by [the PER CAPITA ORDINANCE] and any applicable Federal law.”
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7 *Id.* In particular, the plaintiff must present an itemized report containing the notarized signatures of both
8 the plaintiff and Candace Currie. The report shall document the specific use of the money toward items
9 necessary for the care of Satevia S. The plaintiff shall submit this report along with relevant
10 documentation (i.e. sales receipts) to the Court within one (1) month after receipt of the disbursement,
11 confirming the specified use of the funds. Failure to do so may subject the plaintiff to the contempt
12 powers of the Court pursuant to the HO-CHUNK NATION CONTEMPT ORDINANCE, HCC 98-004, and serve
13 as a basis to deny any further requests for release of CTF monies.

15 **HOWEVER**, the Court cannot authorize a release of monies from the CTF for the other
16 purposes identified by the plaintiff. As noted above, a parent has an inherent responsibility to provide
17 necessities for their children. Clothing represents such a necessity, and PER CAPITA ORDINANCE § 6.01
18 (b) is not implicated to the extent the clothing *desired* proves more than a necessity. For example, the
19 Court cannot make findings of special need for a \$74.00 pair of Tommy Hilfiger jeans and an \$88.00
20 Tommy Hilfiger sweatshirt.
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22 With regards to the automobile request, the Court has announced the minimum initial showing a
23 plaintiff must satisfy prior to any deliberation upon the issue. *See Bird*, CV 99-67 (HCN Tr. Ct., Dec.
24 13, 1999) at 11. The plaintiff must offer the following documentation prior to any consideration of a
25 request for release of CTF monies for a vehicle purchase:
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- 1) evidence of either unreliable or inadequate transportation;
- 2) copy of a valid Driver's License;
- 3) model, make and year of vehicle;
- 4) odometer reading;
- 5) sales quotation, including registration, fees and taxes;
- 6) Vehicle Identification Number (VIN);
- 7) photographs of the vehicle;
- 8) Kelly's Blue Book value; and
- 9) insurance quotation – minimum state liability standards.

11 *Id.* Above all, the designated automobile must be a “reasonable and prudent purchase.” *Samantha D.*
12 *Beale v. HCN Office of Tribal Enrollment*, CV 99-61 (HCN Tr. Ct., Aug. 23, 1999) at 3. The vehicle
13 must fall in a moderate price range and comport with the proposed usage, travel to and from part-time
14 employment. *Id.*

16 In addition, a state certified copy of a filed petition for child support on behalf of Satevia S. must
17 accompany any future automobile request. The plaintiff provided the grounds for this requirement by
18 emphasizing the intent of S.S. to earn money for the care and support of the newborn child. The Court,
19 however, realizes from its experience that current employment does not necessarily correlate with
20 voluntary child support. Please note, the Court retains discretion to deny a request even if the plaintiff
21 satisfies the foregoing.

24 All parties have the right to appeal a final judgement or order of the Trial Court. If either party is
25 dissatisfied with the decision of this Court, they may file a *Notice of Appeal* with the Ho-Chunk Supreme
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1 Court within thirty (30) calendar days from the date this Court renders such final judgment or order. The
2 *Notice of Appeal* must show service was made upon the opposing party prior to its acceptance for filing
3 by the Clerk of Court. The *Notice of Appeal* must explain the reason the party appealing believes the
4 decision appealed from is in error. All appellate pleadings to the Ho-Chunk Supreme Court must be in
5 conformity with the requirements set by the Ho-Chunk Supreme Court in accordance with the Ho-Chunk
6 Nation *Rules of Appellate Procedure*.
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8 **IT IS SO ORDERED** this December 27, 1999 at the Ho-Chunk Nation Trial Court in Black
9 River Falls, Wisconsin from within the sovereign lands of the Ho-Chunk Nation.
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11 Hon. Todd R. Matha,
12 HCN Associate Trial Judge
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