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

**In the Interest of Adult CTF Beneficiary:
Rainelle M. Decorah, DOB 01/26/85,
Petitioner,**

v.

Case No.: **CV 05-67**

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

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**ORDER
(Partial Granting of Petition)**

INTRODUCTION

The Court must determine whether an adult can access her Children's Trust Fund (hereinafter CTF) account to pay for costs associated with securing legal counsel, satisfying criminal fines and receiving an Alcohol & Other Drugs Assessment ("AODA"). The Court employs the standard enunciated in the PER CAPITA DISTRIBUTION ORDINANCE (hereinafter PER CAPITA ORDINANCE), § 12.8c to assess the merit of the petitioner's request. The analysis and holding of the Court follow below.

PROCEDURAL HISTORY

The petitioner, Rainelle M. Decorah, initiated the current action by filing the August 11, 2005 *Petition for Release of Per Capita Distribution* (hereinafter *Petition*). Consequently, the Court issued a *Summons* accompanied by the above-mentioned *Petition* on August 12, 2005, and served the documents upon the respondent's representative, Ho-Chunk Nation Department of

1 Justice (hereinafter DOJ),¹ by personal service as permitted by *HCN R. Civ. P. 5(C)(1)*. The
2 *Summons* informed the respondent of the right to file an *Answer* within twenty (20) days of the
3 issuance of the *Summons* pursuant to *HCN R. Civ. P. 5(A)(2)*. The *Summons* also cautioned the
4 respondent that a *default judgment* could result from failure to file within the prescribed time
5 period.
6

7 The respondent, by and through DOJ Attorney Leslie Parker Cohan, timely filed its
8 *Answer* on August 30, 2005, requesting that the Court schedule a *Fact-Finding Hearing*. The
9 Court delivered *Notice(s) of Hearing* to the parties on September 7, 2005, informing them of the
10 date, time and location of the *Fact-Finding Hearing*. The Court convened the *Hearing* on
11 October 11, 2005 at 2:30 p.m. CDT. The following parties appeared at the *Hearing*: Rainelle M.
12 Decorah, petitioner, and DOJ Attorney Leslie Parker Cohan, respondent's counsel.
13

14 **APPLICABLE LAW**

15 PER CAPITA DISTRIBUTION ORDINANCE, 2 HCC § 12

16 Subsec. 8. Minors and Other Legal Incompetents.

17 a. The interests of minors and other legally incompetent Members, otherwise entitled to
18 receive per capita payments, shall, in lieu of payments to such minor or incompetent Member, be
19 disbursed to a Children's Trust Fund which shall establish a formal irrevocable legal structure for
20 such CTFs approved by the Legislature as soon after passage of this Ordinance as shall be
21 practical, with any amounts currently held by the Nation for passage for the benefit of minor or
22 legally incompetent Members, and all additions thereto pending approval and establishment of
23 such formal irrevocable structure, to be held in an account for the benefit of each such Member-
24 beneficiary under the supervision of the Trial Court of the Nation. Trust assets of such CTFs
25 shall be invested in a reasonable and prudent manner, which protects the principal and seeks a
26 reasonable return.
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28 ¹ The *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*) permit the Court to serve the *Complaint* upon the DOJ when the plaintiff/petitioner names as a party a unit of government or enterprise. *HCN R. Civ. P. 27(B)*.

1 b. Education Criterion

2 (1) The trust assets of each such account maintained for a minor shall be disbursed to
3 the Member-beneficiary thereof upon the earlier of (i) said Member-beneficiary meeting the dual
4 criteria if [*sic*] (a) reaching the age of eighteen (18) and (b) producing evidence of personal
5 acquisition of a high school diploma to the Department of Enrollment (HSED, GED or any
6 similar substitute shall not be acceptable), or (ii) the Member reaches the age of twenty-five (25);
7 provided that this provision shall not operate to compel disbursement of funds to Members
8 legally determined to be incompetent. In the event a Member, upon reaching the age of eighteen
9 (18) does not produce proof of personal acquisition of a high school diploma, such Member's per
10 capita funds shall be retained in the CTF account and any and all per capita distributions payable
11 to said Member after reaching 18 will be added to such fund and not be paid to the Member and
12 the CFT [*sic*] account and shall be held on the same terms and conditions applied during the
13 Member-beneficiary's minority until the earliest to occur: (1) the Member produces the required
14 diploma; (2) the Member reaches the age of twenty-five (25); or (3) the Member is deceased.

11 c. Funds in the CTF of a minor or legally incompetent Member may be available for the
12 benefit of a beneficiary's health, education, and welfare when the needs of such person are not
13 being met from other Tribal funds or other state or federal public entitlement programs, and upon
14 a finding of special need by the Ho-Chunk Nation Trial Court. In order to request such funds,
15 the following provisions apply:

14 (1) A written request must be submitted to the Trial Court by the beneficiary's parent
15 or legal guardian detailing the purpose and needs for such funds.

16 (2) The parent or legal guardian shall maintain records and account to the Trial Court
17 in sufficient detail to demonstrate that the funds disbursed were expended as required by this
18 Ordinance and any other applicable federal law.

19 (3) Any other standards, procedures, and conditions that may be subsequently
20 adopted by the Legislature consistent with any applicable federal law shall be met.

21 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

22 Rule 5. Notice of Service of Process.

23 (A) Definitions.

24 (2) Summons - 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
26 HCN R. Civ. P. 6) and that a *Default Judgment* may be entered against them if they do not file an
27 *Answer* in the prescribed time. It shall also include the name and location of the Court, the case
28 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.

1 (C) Methods of Service of Process.

2 (1) Personal Service. The required papers are delivered to the party in person by the
3 bailiff, or when authorized by the Court, a law enforcement officer from any jurisdiction, or any
4 other person not a party to the action who is eighteen (18) years of age or older and of suitable
5 discretion.

6 (3) After the first successful service of process, the Court and the parties will then
7 perform all written communications through regular mail at that address. Therefore, each party
8 to an action has an affirmative duty to notify the Court, and all other parties, of a change in
9 address within ten (10) calendar days of such change.

10 Rule 27. The Nation as a Party.

11 (B) Civil Actions. When the Nation is filing a civil suit, a writ of mandamus, or the Nation is
12 named as a party, the *Complaint* should identify the unit of government, enterprise or name of
13 the official or employee involved. The *Complaint*, in the case of an official or employee being
14 sued, should indicate whether the official or employee is being sued in his or her individual or
15 official capacity. Service can be made on the Ho-Chunk Nation Department of Justice and will
16 be considered proper unless otherwise indicated by these rules, successive rules of the Ho-Chunk
17 Nation Court, or Ho-Chunk Nation Law.

18 Rule 58. Amendment to or Relief from Judgment or Order.

19 (A) Relief from Judgment. A *Motion to Amend* or for relief from judgment, including a request
20 for a new trial shall be made within ten (10) calendar days of the filing of judgment. The *Motion*
21 must be based on an error or irregularity which prevented a party from receiving a fair trial or a
22 substantial legal error which affected the outcome of the action.

23 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not
24 later than ten (10) calendar days after entry of judgment, the Court may amend its findings or
25 conclusions or make additional findings or conclusions, amending the judgment accordingly.
26 The motion may be made with a motion for a new trial. If the Court amends the judgment, the
27 time for initiating an appeal commences upon entry of the amended judgment. If the Court
28 denies a motion filed under this rule, the time for initiating an appeal from the judgment
commences when the Court denies the motion on the record or when an order denying the
motion is entered, whichever occurs first. If within thirty (30) days after the filing of such
motion, and the Court does not decide a motion under this Rule or the judge does not sign an
order denying the motion, the motion is considered denied. The time for initiating an appeal from
judgment commences in accordance with the Rules of Appellate Procedure.

(C) Motion to Modify. After the time period in which to file a *Motion to Amend* or a *Motion for
Reconsideration* has elapsed, a party may file a *Motion to Modify* with the Court. The *Motion*
must be based upon new information that has come to the party's attention that, if true, could
have the effect of altering or modifying the judgment. Upon such motion, the Court may modify
the judgment accordingly. If the Court modifies the judgment, the time for initiating an appeal

1 commences when the Court denies the motion on the record or when an order denying the
2 motion is entered, whichever occurs first. If within thirty (30) calendar days after the filing of
3 such motion, and the Court does not decide the motion or the judge does not sign an order
4 denying the motion, the motion is considered denied. The time for initiating an appeal from
judgment commences in accordance with the Rules of Appellate Procedure.

5 (D) Erratum Order or Reissuance of Judgment. Clerical errors in a court record, including the
6 *Judgment* or *Order*, may be corrected by the Court at any time.

7 (E) Grounds for Relief. The Court may grant relief from judgments or orders on motion of a
8 party made within a reasonable time for the following reasons: (1) newly discovered evidence
9 which could not reasonably have been discovered in time to request a new trial; or (2) fraud,
10 misrepresentation or serious misconduct of another party to the action; or (3) good cause if the
11 requesting party was not personally served in accordance with Rule 5(c)(1)(a)(i) or (ii); did not
12 have proper service and did not appear in the action; or (4) the judgment has been satisfied,
13 released, discharged or is without effect due to a judgment earlier in time.

14 **Rule 61. Appeals.**

15 Any final *Judgment* or *Order* of the Trial Court may be appealed to the Ho-Chunk Nation
16 Supreme Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate*
17 *Procedure*, specifically *Rules of Appellate Procedure*, Rule 7, Right of Appeal. All subsequent
18 actions of a final *Judgment* or Trial Court *Order* must follow the HCN *Rules of Appellate*
19 *Procedure*.

20 **FINDINGS OF FACT**

21 1. The parties received proper notice of the October 11, 2005 *Fact-Finding Hearing*.

22 2. The petitioner, Rainelle M. Decorah, is an adult member of the Ho-Chunk Nation, Tribal
23 ID# 439A004586, but has not received the balance in her CTF account due to a failure to satisfy
24 the graduation requirement found in the PER CAPITA ORDINANCE, § 12.8b(1). The petitioner
25 maintains a residence at 482 South Eagle Avenue, Grand Marsh, WI 53936. *Pet.* at 1.

26 3. The respondent, Ho-Chunk Nation Office of Tribal Enrollment, is a division within the
27 Ho-Chunk Nation Department of Heritage Preservation located on trust lands at Ho-Chunk
28 Nation Headquarters, W9814 Airport Road, P.O. Box 667, Black River Falls, WI. *See* DEP'T OF
HERITAGE PRES. ESTABLISHMENT & ORG. ACT OF 2001, § 6.5c; [http:// www.ho-chunknation](http://www.ho-chunknation)

1 .com /government/executive/org_chart.htm (last visited Oct. 17, 2005) (on file with Heritage
2 Pres.).

3
4 4. The petitioner remains ineligible to receive quarterly per capita payments since attaining
5 the age of majority on January 26, 2003. *See* PER CAPITA DISTRIBUTION ORDINANCE, § 12.8b(2).

6 5. The petitioner anticipates receiving her high school diploma within roughly six (6)
7 months from the American School located at 2200 East 170th Street, Lansing, IL 60438. The
8 petitioner has already received a High School Equivalency Diploma. *Fact-Finding Hr'g* (LPER,
9 Oct. 11, 2005, 02:44:00 CDT).

10
11 6. Since in or around mid-September 2005, the petitioner has worked as a Slot Floorperson
12 at Ho-Chunk Casino located in Baraboo, WI, and earns an approximate annual gross wage of
13 \$20,800.00. *Id.*, 02:44:42 CDT.

14
15 7. The federal poverty level for a family of one (1) is \$9,570.00 per year. 70 Fed. Reg.
16 8,373 (Feb. 18, 2005).

17 8. The petitioner has amassed a significant amount of criminal and/or civil fines in
18 connection with eight (8) outstanding cases within four (4) county jurisdictions. The petitioner's
19 obligation currently stands at \$3,963.40 plus interest. Five (5) of the offenses relate to underage
20 drinking. LPER, 02:47:00 CDT.

21
22 9. The petitioner provides her mother \$100.00 per week for rent, and periodically pays for
23 other household expenses. In addition, she reimburses her step-father \$30.00 per week for
24 gasoline required to transport her to work since she lost her driver's license. *Id.*, 02:45:21 CDT.

25
26 10. The petitioner has demonstrated the presence of special financial need. *See* PER CAPITA
27 ORDINANCE, § 12.8c.

1 11. On February 27, 2005, the petitioner received a citation for Operating While Intoxicated
2 ("OWI"). Subsequently, the petitioner received assistance of counsel through the Public
3 Defender's Office, but the attorney withdrew representation after the petitioner declined to accept
4 a plea agreement. The petitioner returned to the Public Defender's Office upon receiving the
5 respondent's *Answer* in the instant case. However, the Public Defender denied the petitioner
6 assistance on the basis of her recent employment. LPER, 02:50:40 CDT.
7

8 12. The petitioner's final pre-trial conference was scheduled for October 12, 2005, with the
9 trial scheduled for October 27, 2005. The petitioner's counsel, Attorney Mark H. Bennett,
10 anticipated requesting a continuance of the trial at the earlier pre-trial. *Id.*, 03:03:09 CDT.
11

12 13. The petitioner requested a release of CTF monies for the following purposes: satisfaction
13 of judicially imposed fines, an attorney retainer, and an AODA fee. The petitioner failed to
14 identify a vendor for the AODA fee.

15		
16	Bennett & Bennett, LLC	\$2,500.00
17	135 West Cook Street	(attorney retainer)
18	P.O. Box 30	
19	Portage, WI 53901-0030	
20		
21	Adams County Court	\$977.40
22	Clerk of Court	(fines: OWI 1st; driving too
23	P.O. Box 220	fast for conditions)
24	Friendship, WI 53934-0020	
25		
26	Columbia County Court	\$722.00
27	Clerk of Court	(fine: operating with PAC
28	P.O. Box 587	.10 or more 1st)
	Portage, WI 53901-0587	
	Dane County Court	\$181.00
	Clerk of Court	(fine: provoke/engage in
	GR10 City-County Building	fight or altercation)
	210 Martin Luther King, Jr. Boulevard	
	Madison, WI 53703	

1 per capita monies “in such amounts as may be *necessary* for the health, education, or welfare, of
2 the minor.” INDIAN GAMING REGULATORY ACT, 25 U.S.C. § 2710(b)(3)(C) (emphasis added).

3 The Court has focused upon this limitation in developing its case law, announcing basic
4 principles and rudimentary understandings that have guided it through a variety of requests.
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6 As stated above, the INDIAN GAMING REGULATORY ACT assumes that only a parent or
7 guardian would need to seek access to trust monies since competent adults would ordinarily
8 receive such funds upon regular distribution. However, the Ho-Chunk Nation Legislature
9 mandates retention of the corpus of a CTF until an adult member obtains either a high school
10 diploma or the age of twenty-five (25) years. PER CAPITA ORDINANCE, § 12.8b(1). The
11 Legislature erected the graduation requirement in response to an actual and/or perceived drop in
12 the graduation rate of Ho-Chunk youth. *See Marvel J. Cloud v. HCN Office of Tribal*
13 *Enrollment*, CV 01-34 (HCN Tr. Ct., July 10, 2001) at 9. In doing so, the Legislature directed
14 that the CTF monies "shall be *held* on the same terms and conditions applied during the
15 Member-beneficiary’s minority." PER CAPITA ORDINANCE, § 12.8b(1) (emphasis added).
16
17

18 Importantly, the Legislature did not require identical treatment in regards to the
19 occasional *release* of such funds. The Court still applies the four-part test, but more strictly.
20 Essentially, "the Court must not undermine [the] intent [of the graduation requirement] by
21 unduly approving releases from the CTF of adult members who have failed to attain a high
22 school diploma. Otherwise, the Court would strip the legislation of its only inducement, *i.e.*, no
23 high school diploma, no CTF." *In the Interest of Adult CTF Beneficiary: Renata White, DOB*
24 *02/27/81 v. HCN Office of Tribal Enrollment*, CV 01-75 (HCN Tr. Ct., Oct. 16, 2001) at 10.
25
26

27 The Court shall now address the requests presented by the petitioner in the instant case.
28 The Court has erected a general rule against retiring the personal debts of adult CTF petitioners

1 through a release of funds, especially when the debt arises in conjunction with a foreign law
2 enforcement process. See e.g., *In the Interest of Adult CTF Beneficiary: Ashley J. Webster,*
3 *DOB 09/17/85 v. HCN Office of Tribal Enrollment*, CV 03-82 (HCN Tr. Ct., Jan. 15, 2004) at
4 12; *In the Interest of Adult CTF Beneficiary: Calvin Whiteagle, DOB 01/03/84 v. HCN Office of*
5 *Tribal Enrollment*, CV 02-12 (HCN Tr. Ct., July 24, 2002) at 9. Therefore, the Court denies the
6 request for payment of criminal and/or civil fines. Payment would not further the petitioner's
7 education, health or welfare, thereby failing the first prong of the above test.
8

9
10 The Court has routinely denied requests for attorney fees in criminal matters due to the
11 presence of an absolute right to be represented by counsel as conferred by the CONSTITUTION OF
12 THE UNITED STATES. See, e.g., *In the Interest of Adult CTF Beneficiary: Selina Littlewolf, DOB*
13 *01/29/84 v. HCN Office of Tribal Enrollment*, CV 04-70 (HCN Tr. Ct., Oct. 19, 2004); *In the*
14 *Interest of Adult CTF Beneficiary: Rory L. Deer, Jr., DOB 09/24/80 v. HCN Office of Tribal*
15 *Enrollment*, CV 01-132 (HCN Tr. Ct., July 9, 2002). Consequently, the above petitioners could
16 not demonstrate exhaustion of otherwise available resources. In the context of these cases, the
17 Court speculated about a future occasion where a tribal member would fail to qualify for public
18 representation due to minimal employment. In such an instance, a release of CTF monies would
19 surely benefit the hypothetical member's welfare and also represent a necessity. However, the
20 Court would then validate the retention of private counsel in the latter circumstance, but relegate
21 the unemployed and/or jailed tribal member to representation by a public defender or court
22 appointed counsel.²
23

24
25 In the present case, the petitioner faces an impending criminal trial with the possibility of
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28 ² The Court must stress that it does not equate provision of legal services by a public defender as inherently inferior to the equivalent services provided by private counsel. Regardless, the existence of the exhaustion requirement produces an illogical, and perhaps unfair, result.

1 a jail sentence. *Compare In re: Shamus Daniel Layman by Paul Layman v. HCN Enrollment*
2 *Dep't*, CV 98-41 (HCN Tr. Ct., July 16, 1998). The petitioner set forth an obvious welfare
3 necessity as well as an educational necessity since potential incarceration could interrupt her
4 progress in obtaining a high school diploma. The Court shall accordingly grant the petitioner's
5 request for an attorney retainer fee.

7 Finally, the Court shall deny the request for an AODA fee. The Ho-Chunk Nation likely
8 offers assessments free of charge to tribal members. As a result, the petitioner has failed to
9 satisfy the exhaustion requirement.

11 **THEREFORE**, based upon the preceding facts and analysis, the Court partially grants
12 the request and directs Fifth Third Bank to deliver a check payable in the following amount to:

13 Bennett & Bennett, LLC \$2,500.00
14 135 West Cook Street
15 P.O. Box 30
16 Portage, WI 53901-0030

16 The check shall bear the following notation: “for Rainelle M. Decorah, DOB 01/26/85, Tribal ID
17 #439A004586.” The petitioner bears the responsibility of contacting the above provider to
18 inform them of the anticipated receipt of the check and the item that the Court has approved for
19 payment.

21 In regards to the granted request, the Court directs the petitioner to “maintain records
22 sufficient to demonstrate that the funds disbursed were expended as required by [the PER CAPITA
23 ORDINANCE] and any applicable Federal law.” PER CAPITA ORDINANCE, § 12.8c(2). The
24 petitioner shall submit a financial report along with relevant documentation (*i.e.*, receipts and
25 invoices) to the Court within three (3) months after receipt of the disbursement, confirming the
26 specified use of the funds. Failure to do so may subject the petitioner to the contempt powers of
27 the Court pursuant to the HO-CHUNK NATION CONTEMPT ORDINANCE and/or repayment of the
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1 amount subtracted from the CTF account. The Court shall maintain an open case file until
2 acceptance of a final accounting, and service of process shall be performed on the address stated
3 in the *Petition* unless parties direct otherwise in writing. *See HCN R. Civ. P. 5(C)(3)*.

4
5 The parties retain the right to file a timely post-judgment motion with this Court in
6 accordance with *HCN R. Civ. P. 58*, Amendment to or Relief from Judgment or Order.
7 Otherwise, “[a]ny final *Judgment* or *Order* of the Trial Court may be appealed to the Ho-Chunk
8 Nation Supreme Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate*
9 *Procedure* (hereinafter *HCN R. App. P.*), specifically [*HCN R. App. P.*], Rule 7, Right of
10 Appeal.” *HCN R. Civ. P. 61*. The appellant “shall within sixty (60) calendar days after the day
11 such judgment or order was rendered, file with the Supreme Court Clerk, a *Notice of Appeal*
12 from such judgment or order, together with a filing fee as stated in the appendix or schedule of
13 fees” *HCN R. App. P. 7(b)(1)*. “All subsequent actions of a final *Judgment* or Trial Court *Order*
14 must follow the [*HCN R. App. P.*].” *HCN R. Civ. P. 61*.

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16
17 **IT IS SO ORDERED** this 18th day of October 2005, by the Ho-Chunk Nation Trial
18 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

19
20
21 _____
22 Honorable Todd R. Matha
23 Chief Trial Court Judge

Ho-Chunk Nation Court System
P.O. Box 70
Black River Falls, WI 54615
(715) 284-2722 or 800-434-4070

