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

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In the Interest of Adult CTF Beneficiary:

Tasha Hand, DOB 08/07/1988,

Petitioner,

v.

Case No.: **CV 11-08**

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

Respondent.

**ORDER
(Petition Denied)**

INTRODUCTION

This case concerns whether the petitioner can access monies from the Children's Trust Fund (hereinafter CTF) to pay for costs associated with an automobile, by paying off the existing principal and interest on an existing car loan. 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, Tasha Hand, initiated the current action by filing the January 31, 2011 *Petition for Release of Per Capita Distribution* (hereinafter *Petition*). Consequently, the Court issued a *Summons* accompanied by the above-mentioned *Petition* on the same date, and served the documents upon the respondent's representative, Ho-Chunk Nation Department of Justice

1 (hereinafter DOJ),¹ by personal service as permitted by *HCN R. Civ. P. 5(C)(1)*. The *Summons*
2 informed the respondent of the right to file an *Answer* within twenty (20) days of the issuance of
3 the *Summons* pursuant to *HCN R. Civ. P. 5(A)(2)*. The respondent, by and through, DOJ
4 Attorney Paul Rosheim, filed a timely February 10, 2011 *Answer*, requesting that the Court
5 schedule the matter for a *Fact-Finding Hearing*. See *Respondent's Answer* at 8.
6

7 In response, the Court mailed *Notice(s) of Hearing* to the identified parties on February
8 28, 2011, informing them of the date, time and location of the *Fact-Finding Hearing*. The Court
9 convened the *Hearing* on March 22, 2011 at 1:30 p.m. CST. The following parties appeared at
10 the *Fact-Finding Hearing*: Tasha Hand, petitioner, and DOJ Attorney Paul Rosheim,
11 respondent's counsel. On April 19, 2011, the petitioner submitted successive forms of
12 documentation regarding income, monthly expenses, and vehicle pay off balance.
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14 **APPLICABLE LAW**

15 **PER CAPITA DISTRIBUTION ORDINANCE, 2 HCC § 12**

16 **Subsec. 8. Minors and Other Legal Incompetents.**

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18 a. The interests of minors and other legally incompetent Members, otherwise entitled to
19 receive per capita payments, shall, in lieu of payments to such minor or incompetent Member, be
20 disbursed to a Children's Trust Fund which shall establish a formal irrevocable legal structure for
21 such CTFs approved by the Legislature as soon after passage of this Ordinance as shall be
22 practical, with any amounts currently held by the Nation for passage for the benefit of minor or
23 legally incompetent Members, and all additions thereto pending approval and establishment of
24 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. Trust assets of such CTFs
shall be invested in a reasonable and prudent manner, which protects the principal and seeks a
reasonable return.

25 **b. Education Criterion.**

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

15 (2) Transition Rule. The following rule pertains to Tribal Members who reached age
16 eighteen (18) on or before November 1, 2000 and have not received their CTF account due to
17 failure to meet the graduation requirement shall [*sic*] receive the quarterly or other periodic per
18 capita distributable to them with respect to all per capita payments made on or before November
19 1, 2001; after which periodic payments shall be added to their CTF account until they qualify for
20 the distribution of the CTF by virtue of the provisions of paragraph 8b, above.

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

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

28 (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 other applicable federal law.

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

HO-CHUNK NATION RULES OF CIVIL PROCEDURE

Rule 5. Notice of Service of Process.

(A) Definitions.

(2) Summons - The official notice to the party informing him/her that he/she is identified
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

1 *Answer* in the prescribed time. It shall also include the name and location of the Court, the case
2 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.

3 (C) Methods of Service of Process.

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

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

10 Rule 23. Naming Parties.

11 Every action shall be brought in the name of the real party in interest, however, a guardian,
12 trustee or other person in a fiduciary position may sue in his/her own name without joining the
13 party for whose benefit the action is maintained. Matters with minors and incompetents as
14 parties shall be filed using only initials and date(s) of birth.

15 Rule 27. The Nation as a Party.

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

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

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

25 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not
26 later than ten (10) calendar days after entry of judgment, the Court may amend its findings or
27 conclusions or make additional findings or conclusions, amending the judgment accordingly.
The motion may be made with a motion for a new trial. If the Court amends the judgment, the
28 time for initiating an appeal commences upon entry of the amended judgment. If the Court
denies a motion filed under this rule, the time for initiating an appeal from the judgment

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) days after the filing of such
3 motion, and the Court does not decide a motion under this Rule or the judge does not sign an
4 order denying the motion, the motion is considered denied. The time for initiating an appeal from
5 judgment commences in accordance with the Rules of Appellate Procedure.

6 (C) Motion to Modify. After the time period in which to file a *Motion to Amend* or a *Motion for*
7 *Reconsideration* has elapsed, a party may file a *Motion to Modify* with the Court. The *Motion*
8 must be based upon new information that has come to the party's attention that, if true, could
9 have the effect of altering or modifying the judgment. Upon such motion, the Court may modify
10 the judgment accordingly. If the Court modifies the judgment, the time for initiating an appeal
11 commences when the Court denies the motion on the record or when an order denying the
12 motion is entered, whichever occurs first. If within thirty (30) calendar days after the filing of
13 such motion, and the Court does not decide the motion or the judge does not sign an order
14 denying the motion, the motion is considered denied. The time for initiating an appeal from
15 judgment commences in accordance with the Rules of Appellate Procedure.

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

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

25 Rule 61. Appeals.

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

FINDINGS OF FACT

1. The parties received proper notice of the March 22, 2011 *Fact-Finding Hearing*.
2. The petitioner, Tasha Hand, is member of the Ho-Chunk Nation, Tribal ID No.:
439A004607, but has not received the balance in her CTF account due to a failure to satisfy the

1 graduation requirement found in the PER CAPITA ORDINANCE, § 12.8b(1). The petitioner
2 maintains a residence at 530 Washington Ave., Apt. 1, Wisconsin Dells, WI 53965. *Pet.* at 2.

3 3. The respondent, Ho-Chunk Nation Office of Tribal Enrollment, is a sub-entity of the Ho-
4 Chunk Nation, a federally recognized Indian tribe with principal offices located on trust lands at
5 the Ho-Chunk Nation Headquarters, W9814 Airport Road, P.O. Box 667, Black River Falls, WI
6 54615.

7
8 4. The petitioner remains ineligible to receive quarterly per capita payments since attaining
9 the age of majority on August 7, 2006. *See* PER CAPITA DISTRIBUTION ORDINANCE, § 12.8b(2).

10 5. The petitioner requested a release of CTF monies for costs associated with paying off an
11 outstanding automobile loan.

12
13 Capital Auto Credit \$6,337.45
14 3100 E. Washington Ave.
15 Madison, WI 53704

16 6. The petitioner currently finances a 2001 Ford Windstar with approximately 140,000
17 miles. *Finding of Fact Hr'g* (LPER at 2, Mar. 22, 2011, 01:35:34 CST).

18 7. The petitioner does not currently have a valid driver's license. *Id.* at 3, 01:36:21 CST.

19 8. The van is not insured, and the petitioner is unable to obtain automobile insurance quotes
20 because she does not have a valid driver's license. *Id.*; *Apr. 19, 2011 Correspondence* at 3.

21 9. The petitioner requested a release of CTF monies for costs associated with the pay off of
22 an automobile in order to have transportation to work, to assist with household duties, and to get
23 her minor child to her doctor's appointments. LPER at 2, 01:34:07; 01:50:30 CST. The petitioner
24 is the only individual in the household with a vehicle. *Id.* at 6, 01:50:27 CST.

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26 10. One of the petitioner's minor children must go to semi-annual checkups at the UW
27 Madison Children's Hospital, due to a previous serious illness. *Id.* at 6, 01:49:23 CST.
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1 11. The petitioner currently resides with her mother and two (2) minor children. *Id.* at 3,
2 01:38:13, 01:38:20 CST.

3 12. The petitioner's only source of income is through her recent employment with Holiday
4 Inn Express in Wisconsin Dells. *Id.* at 3, 01:37:47 CST. She earns \$8.00 per hour and works
5 approximately forty (40) hours per week. *Id.*

6 13. The petitioner does not currently receive child support from the children's father, who
7 was recently deported to Mexico. *Id.* at 4, 01:41:09 CST.

8 14. The petitioner's income is insufficient to cover her monthly living expenses including
9 rent, car payment, cell phone, cable and internet, and hospital bills. Ms. Hand is currently
10 receiving state assistance through WIC and Foodshare. *Id.* at 8, 01:55:39 CST.

11 15. The Court finds that no tribal funding source or state or federal public entitlement
12 programs exist to cover the above-enumerated costs.

13 16. The Office of Tribal Enrollment stated that the petitioner should have valid driver's
14 license and car insurance prior to releasing CTF monies for the payoff of the automobile. *Id.* at
15 10, 02:00:24 CST.

19 DECISION

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21 The Court applies a four-part test when determining the circumstances under which it
22 would grant a release of monies from the CTF account of a tribal member. *See In the Interest of*
23 *Minor Child(ren): V.D.C., DOB 10/03/84, et al., by Debra Crowe v. HCN Office of Tribal*
24 *Enrollment, CV 00-25 (HCN Tr. Ct., Apr. 6, 2001) at 7 (citing In the Interest of Minor Child:*
25 *S.D.S., DOB 04/25/83, by Michelle R. DeCora v. HCN Office of Tribal Enrollment, CV 00-35*
26 *(HCN Tr. Ct., May 4, 2000) at 7). The Court derived the four-part test from language appearing*
27 *in the PER CAPITA ORDINANCE, § 12.8c. Crowe, CV 00-25 at 7. First, the Court may only grant*
28

1 a release for the benefit of a beneficiary's health, education, or welfare. Second, any such
2 benefit must represent a necessity, and not a want or desire. Third, the parent or guardian must
3 demonstrate special financial need. Finally, the petitioner must provide evidence of exhaustion
4 of tribal funds and public entitlement programs. *Id.* at 8.

5 The Court closely examines each *Petition for Release of Per Capita Distribution* in
6 fulfillment of its statutory obligation to supervise the CTF accounts. PER CAPITA ORDINANCE, §
7 12.8a. The Court performs this supervision against the backdrop of federal enabling legislation.
8 Specifically, the INDIAN GAMING REGULATORY ACT requires that parents or guardians receive
9 per capita monies “in such amounts as may be *necessary* for the health, education, or welfare, of
10 the minor.” INDIAN GAMING REGULATORY ACT, 25 U.S.C. § 2710(b)(3)(C) (emphasis added).
11 The Court has focused upon this limitation in developing its case law, announcing basic
12 principles and rudimentary understandings that have guided it through a variety of requests.
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15 As stated above, the INDIAN GAMING REGULATORY ACT assumes that only a parent or
16 guardian would need to seek access to trust monies since competent adults would ordinarily
17 receive such funds upon regular distribution. However, the Ho-Chunk Nation Legislature
18 mandates retention of the corpus of a CTF until an adult member obtains either a high school
19 diploma or the age of twenty-five (25) years. PER CAPITA ORDINANCE, § 12.8b(1). The
20 Legislature erected the graduation requirement in response to an actual and/or perceived drop in
21 the graduation rate of Ho-Chunk youth. *See Marvel J. Cloud v. HCN Office of Tribal*
22 *Enrollment*, CV 01-34 (HCN Tr. Ct., July 10, 2001) at 9. In doing so, the Legislature directed
23 that the CTF monies “shall be *held* on the same terms and conditions applied during the
24 Member-beneficiary's minority.” PER CAPITA ORDINANCE, § 12.8b(1) (emphasis added).
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1 Importantly, the Legislature did not require identical treatment in regards to the
2 occasional *release* of such funds. The Court still applies the four-part test, but more strictly.
3 Essentially, “the Court must not undermine [the] intent [of the graduation requirement] by
4 unduly approving releases from the CTF of adult members who have failed to attain a high
5 school diploma. Otherwise, the Court would strip the legislation of its only inducement, *i.e.*, no
6 high school diploma, no CTF.” *In the Interest of Adult CTF Beneficiary: Renata White, DOB*
7 *02/27/81 v. HCN Office of Tribal Enrollment, CV 01-75 (HCN Tr. Ct., Oct. 16, 2001) at 10.*

9 However, the petitioner's request differs from a typical adult petition because she bases
10 the request on the purported needs of her minor child. The Court recognized in a similar case
11 that a “newborn child’s health, education and welfare become inextricably intertwined with that
12 of the minor parent’s.” *In the Interest of Minor Child: S.S., DOB 07/30/82, by Sharon A. Porter*
13 *v. HCN Office of Tribal Enrollment, CV 99-76 (HCN Tr. Ct., Dec. 27, 1999) at 5.* In this case,
14 the petitioner has reached the age of majority, but the needs of the children still represent the
15 needs of the adult. The Court consequently focuses both on the health, education and welfare of
16 the petitioner and the minor children. This methodology will likely foster greater access to one's
17 CTF account, but unlike the above discussion, the Court does not believe that the more relaxed
18 approach will influence a tribal member's family planning or potential marital decisions.
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21 The Court shall now address the request presented by the petitioner for financial
22 assistance, by paying off the existing principal and interest on an existing car loan. In addition to
23 the aforementioned four (4) prong test, a petitioner must demonstrate the following preliminary
24 evidentiary showing for an automobile purchase: the lack of a reliable vehicle; the possession of
25 a valid driver's license; the anticipated purchase; the vehicle's odometer reading; the presentation
26 of a complete sales quotation; the vehicle's VIN Number; the presentation of a complete sales
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1 quotation; the provision of a vehicle photograph; the indication of a Kelley Blue Book retail
2 value; and an automobile insurance quote. *In the Interest of Minor Child: S.S., DOB 07/30/1982,*
3 *by Sharon A. Porter v. Office of Tribal Enrollment*, CV 99-76 (HCN Tr. Ct., Dec. 27, 1999) at 6-
4 7. Furthermore, the requested purchase must also represent a commercially reliable vehicle, *i.e.*,
5 less than six (6) years old with an odometer reading of less than 75,000 miles. *See In Re: L.L.L.*
6 *by Helen Littlesoldier v. HCN Enrollment Dep't*, CV 97-03 (HCN Tr. Ct., Mar. 11, 1997) at 2.
7
8 The petitioner fails to demonstrate a preliminary evidentiary showing.

9 Specifically, the petitioner requests the release of \$6,337.45, from her CTF account to
10 pay off the existing principal and interest on a 2001 Ford Windstar with 140,000 miles. The
11 vehicle is not commercially reliable, since it is over six (6) years old and has significant mileage.
12 Furthermore, the petitioner fails to provide automobile insurance quotes due a lack of driver's
13 license. The Court cannot justifiably release monies from a CTF account to pay for an uninsured
14 vehicle.²

16 **BASED UPON THE FOREGOING ANALYSIS**, the Court denies the petitioner's
17 request to pay for costs associated with an automobile, by paying off the existing principal and
18 interest on an existing car loan. The petitioner has not demonstrated the necessary facts, and
19 therefore the Court denies the request for a release of CTF monies for the pay off of a vehicle.
20 The parties retain the right to file a timely post judgment motion with this Court in accordance
21 with *HCN R. Civ. P. 58, Amendment to or Relief from Judgment or Order*. Otherwise, "[a]ny
22 final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme Court. The *Appeal*
23 must comply with the *Rules of Appellate Procedure* [hereinafter *HCN R. App. P.*], specifically
24 *Rules of Appellate Procedure, Rule 7, Right of Appeal.*" *HCN R. Civ. P. 61*. The appellant
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28 ² The Court will not encourage noncompliance with applicable state laws; Wisconsin law requires all vehicles be insured. *See Wis. Stat. § 344.62(1)*.

1 “shall within sixty (60) calendar days after the day such judgment or order was rendered, file
2 with the Supreme Court Clerk, a *Notice of Appeal* from such judgment or order, together with a
3 filing fee as stated in the appendix or schedule of fees” *HCN R. App. P. 7(b)(1)*. “All
4 subsequent actions of a final *Judgment* or *Trial Court Order* must follow the [*HCN R. App. P.*.”
5
6 *HCN R. Civ. P. 61*.

7 **IT IS SO ORDERED** this 29th day of June 2011, by the Ho-Chunk Nation Trial Court
8 located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

9
10 _____
11 Honorable Amanda L. Rockman
12 Interim 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

