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

In the Interest of Minor Child(ren):

**V.D.C., DOB 10/03/84; D.J.C., DOB 09/02/86;
M.J.B., DOB 09/01/88; E.S.B., DOB 06/21/91;
and W.W.B., DOB 09/20/94**

**by Debra Crowe,
Petitioner,**

v.

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

Case No.: CV 00-25

**ORDER
(Denial on Remand)**

INTRODUCTION

The Court must determine whether to grant a release of monies from the respective Children’s Trust Funds [hereinafter CTF] for the purchase of a family automobile. The Court must address the noted concerns of the Supreme Court of the Ho-Chunk Nation [hereinafter Supreme Court] in this endeavor. The Court renews its earlier decision to deny the request for the reasons stated below.

PROCEDURAL HISTORY

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The Supreme Court remanded the instant case for proceedings consistent with the appellate decision. *Decision*, SU 00-09 (HCN S. Ct., Oct. 12, 2000) p. 7. In response, the Court mailed *Amended Notice(s) of Hearing* to the parties on October 25, 2000, informing them of the date, time and location of the *Hearing on Remand*. The Court convened the *Hearing* on December 13, 2000 at 10:00 A.M. CST. The following parties appeared at the *Hearing on Remand*: Debra Crowe and Ho-Chunk Nation Department of Justice Attorney Sheila D. Corbine. In conjunction with the *Hearing*, the petitioner submitted documentation to the Court on three (3) occasions: December 1, 11 and 22, 2000. On December 21, 2000, the respondent complied with the Court’s request to supply a legal memorandum, discussing several issues raised at the *Hearing on Remand*.

APPLICABLE LAW

HCN AMENDED AND RESTATED PER CAPITA DISTRIBUTION ORDINANCE

Section 6.01. Minors and Other Legal Incompetents

(a) The interests of minors and other legally incompetent Members, otherwise entitled to receive per capita payments, shall, in lieu of payment to such minor or incompetent Member, be disbursed to a Children=s Trust Fund which shall establish a formal irrevocable legal structure for such CTF=s approved by the Nation=s Legislature as soon after passage of this Ordinance as shall be practical, with any amounts currently held by the Nation for passage for the benefit of minor or 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. Trust assets of such CTF=s shall be invested in a reasonable and prudent manner which protects the principal and seeks reasonable return. The trust assets of each such account maintained for a minor shall be disbursed to the Member-beneficiary thereof upon the earlier of (i) said Member-beneficiary meeting the dual criteria of (a) reaching the age of eighteen (18) and (b) producing evidence of personal acquisition of a high school diploma or an HSED or a GED, if and only if, the Member=s state of residence does not offer a more comprehensive testing

1 alternative (hereinafter defined as Aequivalent academic credential≅) to the Enrollment department, or
2 evidence that a diploma could not be obtained due to handicap or learning disability notwithstanding the
3 minor=s diligent effort to complete high school and obtain a diploma or (ii) the Member reaches the age
4 of twenty-one (21); provided that this provision shall not operate to compel disbursement of funds to
5 Members legally determined to be incompetent. In the event a Member, upon reaching the age of
6 eighteen (18) does not produce proof of personal acquisition of a high school diploma or equivalent
7 academic credential, or evidence of substantial disability and diligent effort to complete high school,
8 such Member=s per capita funds shall be retained in the CTF account and shall be held on the same
9 terms and conditions applied during the Member-beneficiary=s minority until the earliest to occur of (x)
10 the Member produces the required diploma or equivalent academic credential; (y) the Member reaches
11 the age of twenty-one (21); or, (z) the Member is deceased. Notwithstanding the continuation of the
12 CTF up to the Member reaching age twenty-one (21), the Member failing to meet the graduation
13 requirement shall be entitled to directly receive all per capita distributions as and when made to all
14 qualified adult Members after said Member=s eighteenth (18) birthday, unless determined to be legally
15 incompetent and therefore subject to a CTF.

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

16 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

17 Rule 58. Amendment to or Relief from Judgement or Order

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

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

1 sign an order denying the motion, the motion is considered denied. The time for initiating an appeal
from judgement commences in accordance with the Rules of Appellate Procedure.

2 (C) Erratum Order or Reissuance of Judgement. Clerical errors in a court record, including the
3 *Judgement* or *Order*, may be corrected by the Court at any time.

4 (D) Grounds for Relief. The Court may grant relief from judgements or orders on motion of a party
5 made within a reasonable time for the following reasons: (1) newly discovered evidence which could not
6 reasonably have been discovered in time to request a new trial; or (2) fraud, misrepresentation or serious
7 misconduct of another party to the action; or (3) good cause if the requesting party was not personally
8 served in accordance with Rule 5(c)(1)(a) or (b); did not have proper service and did not appear in the
judgement earlier in time.

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10 **FINDINGS OF FACT**

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13 1. The Court incorporates by reference the *Findings of Fact* enumerated in the May 22, 2000 *Order*
14 (*Petition Denied*), pp. 4-5.

15 2. The parties received proper notice of the December 13, 2000 *Hearing on Remand*.

16 3. The petitioner, Debra Crowe, received a Wisconsin Driver's License on November 11, 2000.
17 *Petitioner's correspondence and attachments* (Dec. 1, 2000).

18 4. The petitioner resides at N417 Clark Avenue, Neillsville, WI. *Petitioner's correspondence and*
19 *attachments* (Dec. 22, 2000). The petitioner's residence is situated approximately nine (9) miles from
20 Hatfield, and approximately twelve (12) miles from Neillsville. The nearest hospital is located in
21 Neillsville. *Hearing on Remand* (Courtroom Log/Minutes, Dec. 13, 2000) p. 13.

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24 5. The petitioner relies upon the following individuals for transportation: Howard L. Swallow,
25 residing approximately four (4) miles away; Rita L. Kingswan, residing approximately five (5) miles
26

1 away; and Justine Hill, residing in Eau Claire. *Id.* Also, Bennett R. Blackdeer, paternal uncle (*tega*) to
2 the minor children, resides approximately 500 yards away, and the petitioner expressed no reason to
3 doubt Mr. Blackdeer's willingness to assist in the event of an emergency. Apart from Bennett
4 Blackdeer, the petitioner's nearest neighbors reside approximately two (2) miles away. *Id.*, pp. 13-14.

5
6 6. The petitioner can obtain taxi service at \$21.00 one way from the residence to Neilsville,
7 permitting all six (6) children to accompanying her while grocery shopping. The petitioner did not
8 explain the necessity of having all the children join her for such outings. *Id.*, p. 8.

9 7. The petitioner noted an inability to freely attend family gatherings, school activities and other
10 miscellaneous events. *Id.*, p. 9. Furthermore, the petitioner noted that the desires of the two (2) eldest
11 children, regarding employment and extracurricular involvement, are detrimentally affected by the
12 absence of reliable transportation. *Id.*, pp. 10-11.

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14 8. The petitioner possesses no credit for purposes of securing financing for a vehicle. The
15 petitioner and the father of the four (4) youngest children, Forest C. Blackdeer, have outstanding debts
16 arising from automobile repossession (app. \$8,000.00), *see Hocok Federal Credit Union v. Debra*
17 *Crowe and Forest Blackdeer*, CV 97-142 (HCN Tr. Ct.), and hospital expenses (app. \$8,000.00). *Id.*,
18 pp. 12, 16.

19
20 9. Forest C. Blackdeer, Tribal ID# 439A000136, is currently incarcerated. The petitioner has not
21 sought enforcement of a foreign child support order against Mr. Blackdeer in this Court. The petitioner
22 offered no evidence concerning Foster D. Cloud, Tribal ID# 439A000379, father of the two (2) eldest
23 children. The petitioner maintains enforcement of a foreign child support order against Mr. Cloud.
24 *Debra K. Crowe v. Foster Cloud*, CV 96-84 (HCN Tr. Ct., Feb. 11, 1998).

25
26 10. The petitioner has artificial hips that may require replacement in the near future. The petitioner
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1 received Social Security Income roughly four (4) years ago, but has no legally determined disability at
2 this time. *Id.*, p. 14.

3 11. The petitioner performs infrequent, seasonal craftwork, but maintains no steady employment. *Id.*
4 The petitioner believes that private employers would decline hiring a convicted felon, and, therefore, has
5 made no attempts to apply for jobs within the past year. *Id.*, pp. 12, 15.

6
7 12. The petitioner provides home schooling for her minor children, with the exception of V.D.C.,
8 DOB 10/03/84. V.D.C. attends high school, and the school district provides bus transportation. *Id.*, p.
9 15. The petitioner removed the three (3) eldest children from public elementary school five (5) years
10 ago after teachers designated them as learning-impaired based upon a qualitative examination of reading
11 comprehension and mathematical skills. The petitioner deemed the assessments faulty, attributing the
12 problem to large class size (app. thirty (30) students) and inadequate teacher attention. The petitioner
13 intends on home schooling the minor children until high school age. *Id.*, p. 16.

14
15 13. The residence contains a working telephone.

16 14. The petitioner satisfied the required documentary showing as summarized in *In the Interest of*
17 *Minor Child: R.E.C., DOB 09/15/82, by Excilda Bird v. Ho-Chunk Nation Office of Tribal Enrollment* ,
18 thereby enabling the Court to, at least, consider the automobile request. *Id.*, pp. 17-18 *citing Bird*, CV
19 99-67 (HCN Tr. Ct., Dec. 13, 1999) p. 11.

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22 15. The petitioner requested a release of monies from the minor children's respective CTF accounts
23 for the following purpose:

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25 1998 Dodge Durango SLT, 4 × 4 VIN# 1B4HS28Y4WF129851
 39,651 miles \$22,134.50

26 Joel Bement, Black River Falls, Invoice
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Petitioner's correspondence and attachments (Dec. 11, 2000).

16. The petitioner responded, "I would hope so," when the Court inquired whether the petitioner would have sufficient funds to provide routine maintenance and insurance coverage for a vehicle in the event the Court granted the request.

17. The parties represented that no tribal funds or other state or federal public entitlement program exist to cover the cost associated with the above-enumerated request.

DECISION

The Court announced a four-part test for determining the circumstances under which it would grant a release of monies from the CTF account of a minor child. *See In the Interest of Minor Child: S.D.S., DOB 04/25/83, by Michelle R. DeCora v. Ho-Chunk Nation Office of Tribal Enrollment, CV 00-35 (HCN Tr. Ct., May 4, 2000) p. 7.* The Court derived the four-part test from language appearing in the HO-CHUNK NATION AMENDED AND RESTATED PER CAPITA DISTRIBUTION ORDINANCE [hereinafter PER CAPITA DISTRIBUTION ORDINANCE]. PER CAPITA DISTRIBUTION ORDINANCE § 6.01 (b). The test reads as follows:

First, the Court may only grant a release for the benefit of a beneficiary's health, education or welfare. Second, any such benefit must represent a necessity, and not a want or desire. Third, the parent(s) or guardian(s) must demonstrate special financial need. Finally, the plaintiff must provide evidence of exhaustion of tribal funds and public entitlement programs.

DeCora, CV 00-35 (HCN Tr. Ct., May 4, 2000) p. 7 (internal citations and footnote omitted) quoted with approval in Order (Petition Denied) CV 00-25 (HCN Tr. Ct., May 22, 2000) p. 5. With regards to

1 the aforementioned test, the Supreme Court determined that “[p]arts 1, 3 and 4 of the test are clearly
2 enunciated in the Per Capita [Distribution] Ordinance. . . .” *Decision*, p. 6. The Supreme Court,
3 however, disputed the inclusion of the second prong of the analysis, noting that the “[C]ourt must
4 properly identify the source of the second prong. . . .” *Id.*

5 For thorough illustration, the Court needs to discuss the respective origins of the second and
6 third prongs. As stated above, the test originates from the PER CAPITA DISTRIBUTION ORDINANCE which
7 reads in relevant part:
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9 Funds in the CTF of a minor or legally incompetent member may be
10 available for the benefit of a beneficiary=s health, education and welfare
11 when the needs of such person are not being met from other Tribal funds or
12 other state or federal public entitlement program, and upon a finding of
13 special need by the Ho-Chunk Nation Trial Court. In order to request such
14 funds, (1) a written request must be submitted to the Nation=s Trial Court by
15 the beneficiary=s parent or legal guardian detailing the purpose and needs for
16 such funds. . . .

17 PER CAPITA DISTRIBUTION ORDINANCE § 6.01 (b). The third prong finds its basis in the requirement that
18 the Court determine “a finding of special need,” relating to financial need. The Court interprets the
19 language in this manner since the first sentence directs that “[f]unds . . . may be available for . . . health,
20 education and welfare when the needs . . . are not being met [through other funding sources], and upon a
21 finding of special need. . . .” *Id.* The first reference to “need” clearly points to the minor’s health,
22 education or welfare needs. The Court will not grant a release from a CTF based solely upon testimony
23 illustrating a benefit to a child’s health, education or welfare. *See In the Interest of Stuart Taylor, Jr. by*
24 *Stuart Taylor, Sr. v. Ho-Chunk Nation Enrollment Department*, CV 97-131 (HCN Tr. Ct., Nov. 3, 1997)
25 (denial of a request to purchase a high school class ring). Otherwise, the Court would become inundated

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1 with requests seemingly contrary to the purpose and intent of the legislation.¹

2 The second reference to “need,” phrased in terms of “special need,” would not logically relate to
3 a specific type of health, education or welfare need, but rather indicate a separate required finding. The
4 Legislature would not, in the first instance, permit a CTF release for health, education or welfare needs,
5 and then later in the same sentence require the need to be special. For example, the Court has not
6 previously based its decisions on the seriousness or rareness of an illness or injury so as to constitute a
7 *special* health or welfare need. See *In the Interest of Minor Child: D.M.S.T., DOB 07/01/83, by*
8 *Roxanne Tallmadge-Johnson v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 00-14 (HCN Tr. Ct.,
9 April 13, 2000) pp. 4-5.

11 The foregoing interpretation gains credence due to the “special need” phrase being separated by
12 the conjunction “and,” noting another level of inquiry. Also, the Court determines special need only
13 after concluding that there is an absence of other funding sources: available tribal resources, e.g.
14 legislative funds, see *In the Interest of Minor Children: A.O.W., DOB 02/23/88, and M.F.W., DOB*
15 *02/23/88, by Algie A. Wolters v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 99-40, 41 (HCN Tr.
16 Ct., July 27, 1999) p. 5, and federal or state public entitlement programs. In other words, a health,
17 education or welfare need might exist, but the Court will not release monies from a CTF account if
18 alternative funding, including anticipated parental contributions, is present.

21 The Supreme Court concurs with the requirement that the petitioner demonstrate special

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23 ¹ The Ho-Chunk Nation Legislature [hereinafter Legislature] specifically amended the PER CAPITA DISTRIBUTION ORDINANCE
24 “to make certain conforming amendments to the Trust Declaration in the interest of the Nation and its Youth.” LEG. RES. 2-
25 29-00 E, p. 2. In this regard, the Legislature passed modifications requiring the receipt of a high school diploma prior to
26 disbursement of a CTF account in most instances. The Legislature hoped that these modifications would effectively reverse
27 the disturbing trend of young adults squandering significant amounts of money prior to obtaining a basic education. The
Legislature viewed the absence of firm educational prerequisites as a contributing factor to members deliberately dropping
out of school upon reaching the age of eighteen (18). The Court would undermine the legislative intent if it granted the
release of CTF monies when presented with a mere benefit to a child’s health, education or welfare, in effect partially

1 financial need, i.e. the third prong. The Court has now clearly enunciated the foundation for the second
2 prong, i.e. health, education or welfare need. In actuality, the second prong represents a continuation of
3 the first prong as it modifies the required initial showing. The Court phrased the second prong in terms
4 of “necessity” rather than “need” due to the synonymous meaning of the words,² and to clearly
5 distinguish the component parts of the test.³
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7 The Supreme Court criticized the Court for utilizing a word without a fixed meaning, noting the
8 resulting ambiguity caused by “adopting necessity as a standard of review to determine whether to
9 release CTF monies. . . .” *Decision*, p. 5. The Court, however, did not erect a standard requiring
10 complete reliance upon a single word standing in isolation. Instead, the second-prong is but a
11 component of the four-part analysis, and instructs the petitioner that the alleged “benefit must represent
12 a necessity, and not a want or desire,” *DeCora*, CV 00-35 (HCN Tr. Ct., May 4, 2000) p. 7, thereby
13 providing the *necessary* context for deriving the intended meaning of “necessity.”⁴ The Court meant to
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negating the purpose of an educational requirement.

17 ²THE OXFORD AMERICAN THESAURUS OF CURRENT ENGLISH [hereinafter OXFORD THESAURUS] contains the following entry:

18 necessities: needs, essentials, requisites, requirements, indispensables, fundamentals,
19 necessities, exigencies.

20 OXFORD THESAURUS 495 (1999).

21 ³The Court also mistakenly believed the two (2) words derived from the same linguistic root. In actuality, “need” finds its
22 origins in the prehistoric German, *nauthiz*, which later transformed into the Old High German, *nūt*; introducing itself into the
23 modern English language through the Old English, *nūd*. “Necessity” originates from the Latin, *necess-rius*, evolving through
24 the Old French, *necessaire*, and entering the English language through the Anglo Norman, *necessarie*. THE OXFORD
25 DICTIONARY OF ENGLISH ETYMOLOGY 605-06 (1966); *see also* DICTIONARY OF WORD ORIGINS 362 (1990).

26 ⁴In this respect, the second prong of the Court’s standard resembles the statutory provision interpreted by the Municipal
27 Court of the City of Syracuse in a 1946 decision cited for purposes of illustration by the Supreme Court. *Decision*, p. 5 *citing*
Holbert v. Harrigan, 187 Misc. 858, 860 (1946). The Municipal Court determined that an elderly landlord and his aged
family could not assert an “immediate compelling necessity” in support of evicting first floor tenants in an effort to alleviate
the difficulty of climbing the stairs to their third story residence. *Holbert*, 187 Misc. at 860 *quoting* Rent Regulation for
Housing 8 Fed. Reg. 7322 § 6 (b)(1). After noting the ambiguity inherent in the word “necessity,” the court, in part, arrived
at its decision due to the presence of “the striking words – ‘immediate and compelling,’” providing the appropriate context for
interpreting the word “necessity.” *Holbert*, 187 Misc. at 860.

1 emphasize the plain meaning it was attributing to the word “necessity” by phrasing it as such.⁵ *See Ho-*
2 *Chunk Nation Election Board, Ho-Chunk Nation v. Aurelia Lera Hopinkah*, SU 98-08 (HCN S. Ct.,
3 April 7, 1999) p. 4. The Court would have likewise given rise to charges of ambiguity had it merely
4 incorporated the legislatively chosen word “need” into the second-prong since this noun is also
5 synonymous with “want” or “wish” in certain contexts. *See OXFORD THESAURUS* 496 (1999).⁶ Again,
6 the Court believed it offered sufficient clarity to the second-prong, especially considering its application
7 to the facts of the instant case. *Order (Petition Denied)* p. 6. The Court offers its sincerest apologies for
8 the misunderstanding caused by the wording of the four-part test.

10 Remarking on the analysis, the Supreme Court “[was] not adverse to the adoption of necessity as
11 a part of the standard used in the determination to release CTF monies,” provided the Court could
12 substantiate its presence. *Decision*, p. 6. Furthermore, the Supreme Court “believes that strict and
13 narrow interpretation of the Per Capita [Distribution] Ordinance will deter the granting of CTF monies
14 for other than what is outlined in the Per Capita [Distribution] Ordinance.” *Id.*, p. 5. The Court concurs
15 with this statement, and shall continue to closely scrutinize each *Petition for the Release of Per Capita*
16 *Distribution*.

18 The Supreme Court has further criticized the Court for past inconsistent application of the PER
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20 ⁵ The Supreme Court directed this Court’s attention to a 1921 decision by the Criminal Court of Appeals of Oklahoma
21 wherein the court, after indicating that the word “necessity” was susceptible to various definitions, provided a statutory
22 interpretational guide: “Words used in any statute are to be understood in their ordinary sense, except when a contrary
23 intention plainly appears.” *State v. Smith*, 19 Okla. Crim. 184, 188 (1921) (internal citation omitted). The Criminal Court
24 needed to determine whether an individual engaged in displaying motion pictures on the Sabbath could show that such
25 activity constituted an exempted “necessity” under the state’s Sunday laws, leading the judge to interject that “it would be
26 well to suppress [moving picture shows] that depict acts of crime and sexual suggestions on week days as well as on Sunday.”
27 *Id.*, p. 188. Needless to say, the Criminal Court did not find the exhibition of moving pictures as a “necessity” when
interpreting the word according to its ordinary or plain sense within the relevant statutory context. *Id.*

⁶ The multifarious meanings attributable to words within the English language counsels against reliance upon reference
materials, e.g. dictionaries, when disconnected from obvious purpose, context or intent. “To take a few words from their
context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the
discovery of the purpose of the drafts[person]. . . .” *United States v. Am. Trucking Ass’ns*, 310 U.S. 534, 542 (1940). The

1 CAPITA DISTRIBUTION ORDINANCE and the occasionally resulting designation of cases as not possessing
2 precedential authority. *Id.*, p. 4, fn. 2. This judge fully agrees with the Supreme Court regarding the
3 latter criticism, and has sought to analogize or distinguish such designated cases despite the direction of
4 the Chief Judge. *See Bird*, CV 99-67 (HCN Tr. Ct., Dec. 13, 1999) p. 10, fn. 3. Regarding the former
5 criticism, the Court implores the Supreme Court to recognize the difficulties inherent in these cases.
6 First, the cases do not arise within a traditional adversarial setting. Second, the requests typically raise
7 issues of first impression. Third, the Court attempts to afford the parent(s) and guardian(s) some level of
8 deference in assessing the best interests of their child(ren).⁷ Fourth, the Court has no effective way to
9 determine the character or potential underlying intentions of the parent(s) or guardian(s).⁸ Fifth, the
10 Court only arrived at certain understandings and derivative principles based upon its past experience,
11 due precisely to the nature of the cases.
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14 The Court has reservations concerning certain past approvals of automobile requests, and
15 therefore provides the following guidance. The Court does so at the Supreme Court’s direction to
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17 Court endeavors to discharge its solemn duty of statutory interpretation in accordance with this cautionary note.
18 ⁷ The Court shall consider the appointment of *Guardian ad litem*s in minor per capita request cases, but acknowledges the
19 shortage of *Guardian ad litem*s for present mandated purposes and the lack of relevant training on the issues confronted in
20 this context.

21 ⁸ Chief Judge Mark Butterfield recently noted the following:

22 The Court has screened many requests for vehicles and funds from CTF’s. Some of these
23 requests appear to be thinly disguised attempts by parents, guardians and similarly situated
24 relatives to bail themselves out of financial difficulties of their own making. *See In the
25 Interest of Gary Alan Funmaker, Sr. v. Ho-Chunk Nation*, CV 96-39 (HCN Tr. Ct. Aug. 9,
26 1996) (parent requested CTF money to purchase home and retire debts), *In the Interest of
27 Sterling Cloud by Lionel Cloud*, (HCN Tr. Ct. Oct. 30 1997) (Parent sought CTF money of
14 year old minor to “train” son in family business when child not even eligible for work
permit); *In re Samantha Beale*, CV 99-61 (HCN Tr. Ct. Aug. 23, 1999) (18 year old who
failed to graduate sought CTF money for new Jeep she had already begun purchase on).

28 *In the Interest of the Minor Children: J.L.G., DOB 05/02/82, S.C.G., DOB 12/23/86, A.A.G., DOB 05/09/91, D.A.G., DOB
29 08/29/84, and J.W.G., DOB 12/28/88, by Rae Anna Garcia v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 99-59 (HCN
30 Tr. Ct., Mar. 21, 2001) pp. 2-3. The Court must emphasize that it makes no character judgments within the instant case, but
31 proceeds with its inquiry solely on the facts as presented at the April 18, 2000 *Fact Finding Hearing, Hearing on Remand* and
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1 “formulate a test that can be applied equally, based on the facts of each case.” *Decision*, p. 6. The Court
2 early on recognized that

3 [w]hen a person becomes a parent, that parent inherently accepts the
4 responsibility to provide for the health, education and welfare for that child
5 or children. The Court has severe reservations about compelling the Nation
6 to release the children’s trust funds to cover costs the petitioner has incurred.
7 As a parent, the petitioner has inherently accepted these financial obligations
8 by bringing these children into this world. The Court struggled with the
petitioner pressuring the defendant to take care of his personal debts and
responsibilities with funds set aside for [the] children’s health, education and
welfare.

9 *Funmaker, Sr.*, CV 96-39 (HCN Tr. Ct., Oct. 18, 1996) p. 7. In the instant case, the petitioner
10 acknowledged that the responsibility for purchasing a family automobile properly rests with the parents
11 and not the children. *Hearing on Remand* (Courtroom Log/Minutes, Dec. 13, 2000) pp. 11-12. The
12 petitioner blamed the overall financial position of the family as the reason for not being able to fulfill
13 this responsibility. As stated in the *Findings of Fact*, the poor financial position of the family arises
14 from Forest Blackdeer’s current incarceration; the petitioner’s criminal record which she believes would
15 make it impossible to secure employment; the accumulated debts of the parents which remain
16 outstanding due, in part, to the foregoing; the parents’ decision to home school the children without any
17 objective reasons for doing so, thereby serving as an additional reason not to secure employment;⁹ and
18 the petitioner’s previous disability.
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21 In the May 22, 2000 *Order (Petition Denied)*, the Court rested its decision on the failure of the
22 petitioner to prove necessity, and the Court stands by its earlier finding in this regard. *Order (Petition*
23 *Denied)*, p. 6. The Supreme Court required the Court to clearly enunciate the source of the second
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25 submitted documentation.
26 ⁹ The Court is not criticizing a parent’s decision to home school children, but the decision must be made with a full
27 appreciation of the consequences of such a choice.

1 prong, but did not explicitly disagree with the Court's finding of a lack of necessity. *Decision*, pp. 2-6.
2 For purposes of establishing a clear test in automobile cases, the Court also now addresses the third
3 prong, specifically relating to parental/individual contribution. The Court shall only grant a release of
4 CTF monies for the purchase of an automobile if the petitioner cannot supply such a necessity, provided
5 necessity is shown, because of unforeseeable and/or unusual circumstances, i.e. factors that prove
6 beyond the control of an otherwise reasonably responsible parent or individual.¹⁰
7

8 The Court maintains a principled objection against depleting a child's CTF account for the
9 purpose of purchasing a family automobile due to an unreasonable failure by the parent(s) to fulfill their
10 inherent responsibility to the family. The Court recognizes that it has erected a significant burden
11 relating to the release of a child's CTF monies, but it deems the burden just and fair. The Legislature
12

13 ¹⁰ The Court directs the parties to a recent decision wherein the Court granted an automobile request based upon factors
14 capable of satisfying the presently articulated test. *See In the Interest of Minor Children: T.T.G., DOB 07/24/90, and E.A.G.,*
15 *DOB 11/12/86, by Michael A. Goodbear v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 00-97 (HCN Tr. Ct., Dec. 4,
16 2000). In the *Goodbear* case, the petitioner easily documented a health and welfare necessity arising from the required
17 frequent hospital visits for kidney dialysis and renal treatments for his gravely ill children. *Id.*, p. 1. Even in that case, the
18 Court expressed the following concern:

17 This case is unusual because it reverses the presumption of a parent being financially
18 responsible for the ordinary expenses of living and supporting their children, including
19 housing, food, transportation and clothing. Using a child's money to purchase an automobile
places the burden ordinarily and rightly shouldered by the parent onto the child. It is the
child's money being used and so the benefit of the purchase of the automobile must primarily
advance the interests of the child,

20 the first prong of the four part test. *Goodbear*, CV 00-97 (HCN Tr. Ct., Nov. 3, 2000) p. 3.

21 The Court also directs the parties' attention to another recent automobile approval, representing the only occasion this
22 judge has granted such a petition. *See In the Interest of Minor Child: D.J.P., DOB 07/26/83, by Loretta Patterson v. Ho-*
23 *Chunk Nation Office of Tribal Enrollment*, CV 00-47 (HCN Tr. Ct., July 28, 2000). In that case, the Court based its decision
24 on the following factors: 1) the age of the minor child, seventeen, 2) the absence of the father during the life of the minor
25 child, and the lack of any child support despite efforts to collect by the State of Wisconsin, 3) the minor child's support of the
26 family, D.J.P. and the mother, during the mother's prolonged incapacity, 4) the decision of the minor child to pursue a high
school education through computer correspondence in order to provide for the family, 5) the minor child's anticipated receipt
of a high school diploma in Spring 2000, 6) the lack of reliable transportation, and 7) the necessity of a vehicle for
transportation of the minor child *and the mother* to and from work for purposes of sustaining the household. *Id.*, pp. 5-8. The
Court commended the minor child's voluntary assumption of such a tremendous amount of responsibility for the preservation
of the family unit, behavior seldom seen in the growing category of young adult requests for vehicles. *Id.*, p. 8. Furthermore,

1 may incorporate more flexible standards into the PER CAPITA DISTRIBUTION ORDINANCE in response to
2 the Court’s statutory interpretation and application.

3 **BASED UPON THE FOREGOING**, the Court determines that the petitioner has not satisfied
4 either the second or third prong of the four-part test, and therefore the Court denies the request for a
5 release of CTF monies for the purchase of a family automobile.
6

7 The parties retain the right to file a timely post judgment motion with this Court in accordance
8 with *HCN R. Civ. P. 58, Amendment to or Relief from Judgement or Order*. Otherwise, “[a]ny *final*
9 *Judgement or Order* of the Trial Court may be appealed to the Ho-Chunk Nation Supreme Court. The
10 *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate Procedure* [hereinafter *HCN R. App.*
11 *P.*], specifically [*HCN R. App. P.*], Rule 7, Right of Appeal.” *HCN R. Civ. P. 61*. The appellant “shall
12 within thirty (30) calendar days after the day such judgment or order was rendered, file with the
13 [Supreme Court] Clerk of Court, a Notice of Appeal from such judgment or order, together with a filing
14 [Supreme Court] Clerk of Court, a Notice of Appeal from such judgment or order, together with a filing
15 fee of thirty-five dollars (\$35 U.S.)” *HCN R. App. P. 7(b)(1)*. “All subsequent actions of a *final*
16 *Judgement or Trial Court Order* must follow the [*HCN R. App. P.*].” *HCN R. Civ. P. 61*.
17
18

19 **IT IS SO ORDERED** this 6th day of April, 2001 at the Ho-Chunk Nation Trial Court in Black
20 River Falls, Wisconsin from within the sovereign lands of the Ho-Chunk Nation.
21

22 _____
23 Hon. Todd R. Matha
24 HCN Associate Trial Judge
25

26 _____
27 the Court notes that it disallowed the initial automobile request, as it did in the *Goodbear* case, requiring the petitioner to locate a modest, reliable used vehicle. See *Fact-Finding Hearing* (Courtroom Log/Minutes, June 27, 2000) pp. 11-12.