

MAR 18 2013

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

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ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

NEIKOJ ABON, for and on behalf of)
BEJAK ABON, a minor child,)
)
Petitioner,)
)
v.)
)
MARSHALL ISLANDS SOCIAL)
SECURITY ADMINISTRATION)
)
Defendant.)
_____)

CIVIL ACTION NO. 2012-025)
)
ORDER GRANTING RESPONDENT'S)
MOTION FOR SUMMARY JUDGMENT)

TO : Tiantaake Beero, MLSC, counsel for petitioner
David Strauss, counsel for respondent

Neikoj Abon filed an action against the Marshall Islands Social Security Administration (MISSA) on behalf of Bejak Abon, a minor child, to force MISSA to pay Bejak survivors' insurance benefits. MISSA filed a motion for summary judgment on the basis of a MISSA regulation which required a petition for customary adoption of a child filing for benefits must have been filed by the wage earning adoptive parent, which was not done in this case. The court enters judgment for MISSA on that basis.

I. FACTS.

On October 17, 2011, Neikoj Abon filed a petition for confirmation of customary adoption and change of name, asking that the court confirm the adoption of Bejak Leon by herself and her late husband Abner Abon, who had died on May 13, 2011. On October 25, 2011, the court granted the petition, confirming the adoption by petitioner Neikoj Abon and her late husband, and changing the name of the child to Bejak Abon. Abner Abon had died on May 13,

2011, prior to the filing of the petition. Abner had been employed and his eligible survivors could collect payment of benefits from MISSA.

II. DISCUSSION

Former MIRC 56(c)¹ requires “The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” The parties do not contend there are any material facts at issue.

Under the Social Security Act of 1990, a surviving child of an insured worker is “entitled to a monthly surviving children’s insurance benefit.”² The Act defines child as “a person’s natural, legally adopted, customarily adopted or step child; provided the worker’s parental rights with respect to the child have not been terminated by law or custom.”³ Under this authority, a customarily adopted child is eligible for surviving children’s insurance benefits.

However, in 2010 MISSA adopted Rule No. 2010-01, “Regarding Customary Adoption of Children” (“Rule”). Section 2 of the Rule sets out the eligibility requirements for surviving

¹The court notes that recent amendments to the MIRC took effect on March 4, 2013. The amended rules “govern all proceedings in action brought after they take effect and *also further proceedings in actions then pending*, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedures apply.” (emphasis added.) In light of the advanced stage of the proceedings when the amendments went into effect, the court believes it would be infeasible and unjust to apply the amendments to the current action. In any case, the standard for summary judgment remains virtually the same, although it now appears at MIRC 56(a).

²49 MIRC Sec. 139(1).

³49 MIRC Sec. 103(h).

child benefits for a child, including a customarily adopted child. Subsection d of section 2 requires “A Petition for Confirmation of Customary Adoption of the Child was filed by the adoptive parent, and a Decree confirming the customary adoption of the Child by the adoptive parent was issued by the court.” For the purposes of the Rule, an adoptive parent is defined as the wage earner.⁴ It is the application of this subsection 2.d that is at issue in this case.

MISSA argues that Bejak does not qualify for surviving child benefits under the terms of the Rule. Although Bejak was customarily adopted, the petition was not filed by the wage earning adoptive parent as required by Section 2.d. The wage earning adoptive parent, Abner Abon, was deceased at the time of filing. The petition for confirmation of customary adoption was filed by Abner’s wife who was not the wage earner.

Petitioner’s response is simple. The petition for customary adoption, though not filed by Abner Abon (the wage earner), was filed *on his behalf* by his wife Neikoj Abon. The court in its decree confirmed “the customary adoption of Bejak Abon by Neikoj Abon and Abner Abon.”⁵

Petitioner equates filing “on behalf of,” as was done in the customary adoption petition, with “filing by,” as required by the Rule. They are not the same. While MISSA has not explicitly addressed the purpose of the Rule, it may be reasoned from the overall structure and content of the Rule that it is designed to prevent unmeritorious applications for children’s survivors’ benefits from those who were not truly adopted under custom and dependent upon the

⁴Section 1(c).

⁵Opposition to Defendant’s Motion for Summary Judgment, filed January 31, 2012, at p. 5.

wage earner.⁶ By requiring the petition to be filed by the wage earner, as set out in Section 2.d, it insures a clear expression of intent by the wage earner that the asserted adoption took place and also reduces the possibility of unverifiable assertions of adoption occurring after the death of the wage earner. This purpose would be thwarted if the court were to interpret “filing by” to mean “on behalf of.”

Although Petitioner has not explicitly argued the Rule results in a denial of due process or equal protection, case law in the U.S. suggests the Rule would withstand such challenge. In *Stanton v. Weinberger*, 502 F.2d 315 (1974), the court found that amendments to the child insurance benefits law, under which applicant did not qualify for benefits because she was born after workman's entitlement to old-age benefits, did not deny due process and did not invidiously discriminate against adopted children, where Congress saw a need to provide safeguards against abuse through adoption. Citing *Jimenez v. Weinberger*, the court stated:

Jimenez recognizes a legitimate governmental interest in the prevention of spurious claims. 417 U.S. at 636, 94 S.Ct. 2496. A classification designed to prevent claims of that nature has a rational basis and is not invidious. Congress saw a need to provide safeguards against abuse through adoption. The method adopted in the 1965 amendments is reasonable. In our opinion the different treatment given adopted children does not run afoul of either due process or equal protection requirements.⁷

⁶The court notes Section 3(c) of the Rule requires “The MISSA Board may accept appeals from denied applications provided the appeal is submitted in writing within 180 days of the denial of the application.” MISSA has not argued failure to exhaust administrative remedies. If such exhaustion is viewed as an affirmative defense, it has been waived. If exhaustion is necessary to confer jurisdiction upon the court, it may not have been waived. As that argument is not raised, the court will not consider it.

⁷*Stanton v. Weinberger*, 502 F.2d 315, 320.

MISSA has a legitimate governmental interest in the prevention of unwarranted claims. The classification established by the Rule is rationally related to that interest and does not discriminate on an improper basis. Similar to *Jiminez* and *Stanton*, the Rule does not “run afoul of either due process or equal protection requirements.”

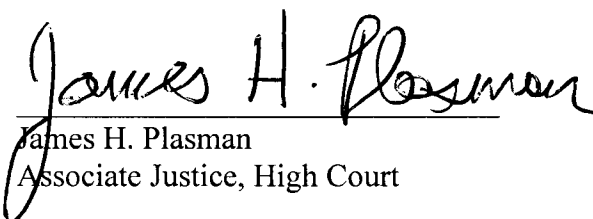
III. CONCLUSION.

The parties are in agreement that there are no material facts at issue in this case. The moving party, MISSA, is entitled to judgment as a matter of law. The court finds that the application for benefits for the minor child Bejak Abon was properly rejected by MISSA. The Petition for Confirmation of Customary Adoption of Bejak was not filed by the wage earner adoptive parent, Abon Abner, who was deceased at the time the petition was filed. The section 2.d of the Rule requiring the petition be filed by the wage earner adoptive parent was a proper exercise of governmental power and did not result in a denial of due process nor equal protection to the minor child, Bejak.

ORDER

Based upon the forgoing, it is hereby ORDERED that MISSA’s motion for summary judgment is GRANTED. Judgment is entered for respondent/defendant Marshall Islands Social Security Administration and the matter is dismissed.

Date: March 18, 2013.


James H. Plasman
Associate Justice, High Court