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**IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF ARIZONA**

**FRED BEGAY,**

Plaintiff,

vs.

**OFFICE OF NAVAJO AND HOPI  
INDIAN RELOCATION, an  
administrative agency of the  
United States,**

Defendant.

) Case No.

) **COMPLAINT FOR JUDICIAL  
REVIEW**

**PRELIMINARY STATEMENT**

1. This action is brought by Fred Begay to obtain judicial review of an administrative decision of the Office of Navajo and Hopi Indian Relocation (hereinafter "ONHIR") finding that he is not entitled to relocation assistance benefits pursuant to the Navajo-Hopi Settlement Act ("Act"), 25 U.S.C. §640d and the regulations and policies promulgated thereunder. Specifically, the agency found that Fred Begay was not a self-supporting

1 head of household when he moved from the Hopi Partitioned Lands  
2 (H.P.L.).  
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### 5 **I. Jurisdiction and Venue**

6 2. This court has jurisdiction pursuant to 28 U.S.C. §1331, 5 U.S.C.  
7 §701-706, and 25 U.S.C. §640d-14(g), as this action is an appeal from an  
8 eligibility determination of Defendant ONHIR, an administrative agency of  
9 the United States located in Flagstaff, Arizona. Plaintiff has exhausted his  
10 administrative remedies.  
11

### 12 **II. Parties**

13 3. Plaintiff is an enrolled member of the Navajo Nation subject to  
14 relocation from his family's home on the Hopi Partitioned Lands (H.P.L.) as  
15 a consequence of the Navajo-Hopi Settlement Act.  
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18 4. Defendant ONHIR is an independent federal agency created by  
19 Congress pursuant to 25 U.S.C. §640d-11 to carry out the relocation of  
20 members of the Navajo and Hopi Tribes who resided on land that was  
21 partitioned to the other tribe, and to provide relocation assistance benefits  
22 for all households required to relocate pursuant to 25 U.S.C. §640d to  
23 "insure that persons displaced as a result of the Act are treated fairly,  
24 consistently and equitably so that these persons will not suffer the  
25

1 disproportionate adverse, social, economic, cultural and other impacts of  
2 relocation.” 25 CFR §700.1(a).

3  
4 **III. FACTS**

5 5. Plaintiff Fred Begay was born on February 7, 1960 in the Indian  
6 Health Services Hospital in Tuba City, Arizona. He grew up approximately  
7 30 miles east of Tuba City on the HPL, in the Coalmine area with his  
8 mother, Evelyn George and step-father, Ben George. The family’s HPL  
9 homesite was located approximately 1 ½ miles south of the Coalmine  
10 Chapter House. Fred grew up at his family’s HPL homesite with his other  
11 siblings including Elvira Chischillie, Frieda Begay and Fanny Begay.  
12 Evelyn and Ben George, Elvira Chischillie, Frieda Begay were all certified  
13 for relocation benefits from Fred Begay’s HPL Coalmine homesite. Evelyn  
14 and Ben George relocated from the HPL Coalmine homesite on April 20,  
15 1989.  
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19 6. Fred’s highest level of education is 8<sup>th</sup> grade. He began working,  
20 by herding sheep and training horses for his uncle Keith George, after he  
21 dropped out of school at the age of 14. During this time period Fred also  
22 worked in Utah for approximately 2-3 weeks on a turkey farm and picking  
23 potatoes. He also worked for the Coalmine Chapter House on the 10 day  
24 work program as well as odd jobs in Phoenix, Arizona.  
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1 7. In late 1979 or 1980, when Fred was 19 or 20 years old, Fred met  
2 Leslie Hosteen through his uncle, Keith George, and Leslie hired Fred to  
3 work for him as a roofer and general maintenance worker. Leslie Hosteen  
4 was a sub-contractor for the Ramsey Construction company that built  
5 relocation homes for Defendant ONHIR.  
6

7 8. Jonathan Sakiespewa, a member of the Hopi Tribe, also worked  
8 part-time for Ramsey Construction through Leslie Hosteen when he was in  
9 high school and transitioned to full-time in 1982 when he graduated from  
10 high school. Fred and Jonathan worked for Leslie Hosteen on a crew of 4  
11 people. Leslie used his vehicle to transport his work crew to the various  
12 jobsites. Jonathan and Leslie lived in Tuba City and they would pick Fred  
13 up at his family's HPL homesite in Coalmine and then drive to their various  
14 jobsites. Occasionally Fred stayed at his uncle, Keith George's, home in  
15 Tuba City when there was not enough time in between jobs to return to his  
16 family's HPL homesite or if Fred was working for Mr. George herding sheep  
17 or training horses.  
18

19 9. Leslie and Jonathan testified at Fred's administrative hearing that  
20 Fred lived with his family on the HPL and that they picked him up or  
21 dropped him off after work at the HPL homesite the majority of the time.  
22 Many times during the winter Fred would also walk from his HPL homesite  
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1 to meet Leslie Hosteen at the highway for a ride to work due to the poor  
2 road conditions in the area where his family's homesite was located.

3  
4 10. Fred was paid by Leslie Hosteen in cash, as were all the other  
5 workers including Jonathan Sakiespewa and, as was the custom for  
6 construction workers on the reservation at that time. There were two  
7 methods Leslie Hosteen would use to pay Fred. Fred was paid by the  
8 "square" if he was loading shingles and roofing the home. Fred earned  
9 approximately \$90-\$150 per house for loading shingle and roofing. Fred  
10 was also paid \$7.00 per hour for clean up or maintenance work which he  
11 would do before and after the roofing work was done. Fred worked  
12 approximately 30-40 hours per week. Fred estimated that on average he  
13 completed roofing three (3) homes a month in addition to his clean up and  
14 maintenance work. Fred worked year round although the winter months  
15 were often slower.  
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19 11. Fred's crew worked on approximately 100 relocation homes all  
20 over the reservation from 1979 or 1980 until 1986 including in Tuba City,  
21 Cow Springs, Chinle, Sanders (New Lands), Manyfarms, Red Lake,  
22 Copper Mine, Kaibeto, Rocky Ridge, Navajo Mountain and Shiprock. The  
23 crew slept in tents at the jobsites when they were working away from the  
24 Tuba City/Coalmine area.  
25

1           12. Jonathan Sakiespewa worked with Fred from 1982-1987. When  
2 Jonathan left for employment in Texas in 1987 Fred was still working for  
3 Ramsey Construction. Fred continued to work for Ramsey Construction  
4 until 1995.  
5

6           13. Plaintiff Fred Begay applied for relocation benefits on July 29,  
7 2010. Because Fred had become totally blind in an industrial accident by  
8 2010, his application for relocation benefits was completed by his sister.  
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10           14. On February 27, 2008, the Federal District Court in the matter  
11 of *Noller Pete Herbert v. ONHIR*, CV-06-3014-PCT-NVW found ONHIR had  
12 breached its fiduciary duty to all Navajo and Hopi individuals “subject to  
13 relocation” by failing to inform them of their potential eligibility for relocation  
14 benefits prior to the deadline of July 7, 1986. *Herbert* at 12. In compliance  
15 with *Herbert*, ONHIR issued its first Policy Memorandum #14 on October  
16 10, 2008 and a revised version on July 27, 2009 which provided in  
17  
18 pertinent part:  
19

20           **D. Persons whom ONHIR will certify as being eligible for**  
21           **Relocation Benefits**

22           ONHIR will certify for Relocation Benefits persons who file a timely  
23 and complete Application for Relocation Benefits which is accepted by  
24 ONHIR and who prove to ONHIR’s satisfaction that:  
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- 1 a. The person, if a Navajo, was a resident of what became the  
2 Hopi Partitioned Lands (“HPL”) on December 22, 1974 and had  
3 not moved to what became the HPL on or after December 22,  
4 1973; and
- 5 b. The person, if a Hopi, was a resident of what became the  
6 Navajo Partitioned Lands (“NPL”) on December 22, 1974, and  
7 had not moved to what became the NPL on or after December  
8 22, 1973; and
- 9 c. The person became a Head of Household on or before the  
10 earlier of the date the person left the HPL (if a Navajo) or NPL  
11 (if a Hopi) or July 7, 1986; and
- 12 d. The person did not knowingly reject Relocation Benefits; and
- 13 e. The person has not already received Relocation Benefits as a  
14 Head of Household or spouse (or spouse equivalent) of a Head  
15 of Household; and
- 16 f. The person did not relocate with a Head of Household as a  
17 member of that household prior to the person becoming a Head  
18 of Household him/herself.
- 19 g. The person did not sign the Accommodation Agreement with  
20 the Hopi Tribe; and
- 21 h. The person did not previously apply for Relocation Benefits.
- 22 i. The Application for Relocation was filed on a timely basis.

23 15. Plaintiff was initially denied relocation benefits on May 11,  
24 2012. ONHIR’s reason for its decision to deny benefits was that Plaintiff  
25 was not a “Head of Household” when he left the HPL or by July 7, 1986,

1 whichever date is earlier. To be a Head of Household a person must meet  
2 one of the following criteria: be married, be a parent, or be self-supporting.

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4 16. Plaintiff filed a timely notice of appeal on July 23, 2012. The  
5 appeal was accepted July 30, 2012.

6  
7 17. Plaintiff's first administrative appeal hearing was held before  
8 ONHIR on July 25, 2014. At that hearing the parties advised the Hearing  
9 Officer that the whereabouts of Leslie Hosteen, Mr. Begay's prior employer,  
10 had recently been obtained by ONHIR and the hearing was continued to  
11 allow time for Plaintiff to contact and interview Mr. Hosteen about Mr.  
12 Begay's prior employment and income.

13  
14 18. A second administrative appeal hearing was held October 9,  
15 2015. Testimony was provided by the Plaintiff; his sister Elvira Chischilly;  
16 his former employer/supervisor Leslie Hosteen; and his former co-worker  
17 Jonathan Sakiespewa. The witnesses all testified consistently about  
18 Plaintiff's employment with Leslie Hosteen beginning in the late 1970's or  
19 early 1980's and continuing until 1995. According to the uncontroverted  
20 testimony Plaintiff worked thirty hours a week and was paid at least \$7.00  
21 per hour by Mr. Hosteen from approximately 1980 through July 7, 1986.  
22 Plaintiff's annual income during that period of time was approximately  
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1 \$4,800, well above the \$1,300 annual income required to be considered a  
2 head of household according to ONHIR's regulations and policies.

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4 19. Plaintiff and his witnesses also testified consistently that during  
5 the same period of time Plaintiff resided at his family's HPL homesite in the  
6 Coalmine area, except when he was temporarily away from his home for  
7 employment, until his parents relocated in 1989. This uncontroverted  
8 testimony established that Plaintiff was a permanent resident of the HPL  
9 until at least July, 1986 and therefore met the residency requirements to be  
10 eligible for relocation benefits.  
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12  
13 20. In his decision dated December 4, 2015, Hearing Officer Harold  
14 Merkow found Plaintiff was a legal resident of the HPL on December 22,  
15 1974. He also found that Plaintiff retained his legal residency until  
16 sometime before or in 1982. The Hearing Officer further found that  
17 Plaintiff's HPL residency terminated sometime before or in 1982 when he  
18 stayed temporarily with his Uncle Keith George in Tuba City to  
19 accommodate his employment schedule and transportation.  
20

21  
22 21. The Hearing Officer also found that Plaintiff did not prove he was  
23 a self-supporting head of household at any time before July 7, 1986  
24 because Plaintiff failed to present any written pay records, written work  
25 journals, tax documents, or any other written evidence of his employment

1 or income with Leslie Hosteen from 1979-1986. Plaintiff and all of his  
2 witnesses were found by the Hearing Officer not to be credible.

3  
4 22. Defendant ONHIR issued a Notice of Final Agency Action on  
5 January 12, 2016, adopting and affirming the Hearing Officer's Findings of  
6 Fact, Conclusions of Law and Decision issued December 4, 2015.

7  
8 23. The administrative hearing record establishes that Defendant's  
9 denial of Fred Begay's claim for relocation benefits is arbitrary, capricious  
10 and an abuse of discretion; not supported by substantial evidence, not in  
11 accordance with applicable law and; occurred without observance of  
12 procedure required by law.

13  
14 24. ONHIR Management Manual ("MM") §25 CFR §700.138 *et seq.*  
15 provides that in order to attain head of household status an applicant, if  
16 single, must have supported himself as of the time he moved off the HPL or  
17 no later than July 7, 1986. 25 CFR §700.69. In order to be self-supporting,  
18 ONHIR policy requires that applicant establish that he earned at least  
19 \$1,300 in at least one year prior to moving off the HPL. ONHIR policy also  
20 recognizes that "[i]n some circumstances, individuals may be able to show  
21 that they are self-supporting without the benefit of tax returns and wage  
22 statements because of the lifestyle on the HPL. It is common for  
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1 individuals to make a living from livestock or support themselves through  
2 odd jobs throughout the reservation.”

3  
4 25. The intent of the ONHIR policy is to recognize that an individual  
5 can establish that they were self-supporting without tax returns or other  
6 written records because of the lifestyle of the traditional Navajos who lived  
7 on the HPL in the 1970's and 1980's. ONHIR's statutory mandate was to  
8 implement the Settlement Act consistent with the goals and intent of  
9 Congress. Further, the purpose of the Settlement Act was to “take into  
10 account all the social, economic, cultural, and other adverse impacts on  
11 persons involved in the relocation and ... to avoid or minimize [them],” see  
12 S.Rep.No. 1177, 93 Cong., 2d Sess. 35 (1974), and “to take cognizance to  
13 the hardships that the relocates are subject to and develop procedures  
14 [accordingly],” see S. Rep. No. 1158, 95<sup>th</sup> Cong., 2d Sess. 4 (1978).

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17 26. The ONHIR published a Plan Update in 1990 which defined  
18 residency for the purpose of relocation benefits. It rejected “actual  
19 occupancy” as a requirement and instead chose “legal residency” as the  
20 operative definition. Legal residency is, according to the ONHIR,  
21

22  
23 Where a person might be temporarily away, but maintained  
24 substantial, recurring contact with an identifiable homesite.  
25 This interpretation considered the fact that many persons  
would leave the partitioned lands temporarily to seek  
employment, job training, or other opportunities. Yet, they

1 maintained strong ties to their homes and community and  
2 *considered themselves* residents.

3 Id. (emphasis added). The agency justified its choice of definition as  
4 follows:  
5

6 [T]he definition of legal residency best met both legal  
7 requirements and circumstances of life on the partitioned  
8 lands. By reflecting the cultural traditions and economic  
9 realities of the people affected by relocation, this  
10 interpretation fulfilled the intent of Congress to provide for a  
11 thorough and generous program.

12 27. The purpose of the Navajo-Hopi Settlement Act, 25 U.S.C. §640-  
13 d et seq. is to “insure that persons displaced as a result of the Act are  
14 treated fairly, consistently and equitably so that these persons will not  
15 suffer the disproportionate adverse, social, economic, cultural and other  
16 impacts of relocation.” 25 CFR §700.1(a).

17 28. “The United States Supreme Court has repeatedly recognized  
18 ‘the distinctive obligation of trust incumbent upon the Government in its  
19 dealings with [Native Americans].” Bedoni v. Navajo-Hopi Indian  
20 Relocation Comm’n, 878 F.2d 1119, 1124 (9<sup>th</sup> Cir. 1989) (quoting Seminole  
21 Nation v. United States, 316 U.S. 286, 296, 62 S.Ct. 1049, 86 L.Ed. 1480,  
22 96 Ct. Cl. 561 (1942)) (alteration in original) (citations omitted). This  
23 obligation is reflected in the ONHIR’s own Plan Update that it is “the intent  
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1 of Congress to provide for a thorough and generous [relocation benefit]  
2 program.”

3 **IV. Claims for Relief**

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5 29. Plaintiff Fred Begay complains that Defendant ONHIR’s eligibility  
6 Decision to deny him relocation benefits, to which he is entitled as a matter  
7 of law, adversely affects him.

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9 30. Further that Defendant ONHIR’s eligibility decision is arbitrary,  
10 capricious and an abuse of discretion.

11 31. Further that Defendant ONHIR’s eligibility decision is not  
12 supported by substantial evidence.

13  
14 32. Further that Defendant ONHIR’s eligibility decision is not in  
15 accordance with applicable law.

16 33. And finally Defendant ONHIR’s eligibility decision occurred  
17 without observation of procedure required by law.

18  
19 **V. Prayer for Relief**

20 WHEREFORE, Plaintiff Fred Begay prays that this Court:

- 21 (a) Assume jurisdiction over the matter;
- 22 (b) After judicial review, enter judgment holding the eligibility  
23 determination of Defendant ONHIR to be contrary to law  
24 and set it aside;
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(c) Order the Defendant to issue a new determination that Plaintiff Fred Begay is eligible for relocation assistance benefits and award those benefits to him.

(d) Award Plaintiff costs and reasonably attorneys' fees pursuant to 28 U.S.C. §2412.

(e) Grant such other relief as this Court deems just and proper.

RESPECTFULLY submitted this 15th day of November, 2016.

/s/ Lee Phillips  
Lee Phillips  
Attorney for Plaintiff Fred Begay