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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

ANNABELLE BEGAY,

Plaintiff,

vs.

OFFICE of NAVAJO and HOPI
INDIAN RELOCATION,
an ADMINISTRATIVE
AGENCY of THE UNITED STATES,

Defendant.

No.

COMPLAINT FOR JUDICIAL
REVIEW

I. PRELIMINARY STATEMENT

1. This action is brought by Plaintiff, Annabelle Begay, to obtain judicial review of an administrative decision of the Office of Navajo and Hopi Indian Relocation finding that she is not entitled to relocation assistance benefits pursuant to the Navajo-Hopi Land Settlement Act (“Settlement Act”), Pub. L. No. 93-531, §12, December 22, 1974, 88 Stat. 1716 (formerly codified at 25 U.S.C. §640d), and the regulations promulgated

1 thereunder. The agency wrongfully found that Plaintiff was not a legal resident of the
2 Hopi Partitioned Lands at the time she became a self-supporting head of household.

3 **II. JURISDICTION AND VENUE**

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5 2. This court has jurisdiction pursuant to 28 U.S.C. §1331, 5 U.S.C. §701-706, and
6 the Settlement Act, Pub. L. No. 93-531, §12, December 22, 1974, 88 Stat. 1716, as this
7 action is an appeal from an eligibility determination of Defendant Office of Navajo and
8 Hopi Indian Relocation (“ONHIR”), an administrative agency of the United States,
9 located in Flagstaff, Arizona.

10 3. Plaintiff has exhausted her administrative remedies.

11
12 4. Venue is proper in this District pursuant to Pub. L. No. 93-531, §15(g),
13 December 22, 1974, 88 Stat. 1719, as amended by Pub. L. No. 100-666, §10, July 8,
14 1980, 102 Stat. 3929, November 16, 1988, which requires appeals of ONHIR eligibility
15 determinations to be brought in this Court.

16 **II. PARTIES**

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18 5. Plaintiff Annabelle Begay is an enrolled member of the Navajo Nation subject
19 to relocation from her family home on the Hopi Partitioned Lands (“HPL”) as a
20 consequence of the Settlement Act.

21
22 6. Defendant ONHIR is an independent federal agency created by the United
23 States Congress pursuant to the Settlement Act, Pub. L. No. 93-531, §12, December 22,
24 1974, 88 Stat. 1716, as amended by Pub. L. No. 100-666, §4(a), November 16, 1988, 102
25 Stat. 3929, 3934, to carry out the relocation of members of the Navajo and Hopi Tribes

1 who resided on land that was partitioned to the other tribe, and to provide relocation
2 assistance benefits for all households required to relocate. ONHIR has a fiduciary duty to
3 administer its program in a fair manner and to insure that relocatees receive the full
4 benefits to which they are entitled.

6 **III. FACTS**

7 7. Plaintiff was born on December 8, 1960. Plaintiff and her family had a
8 home at Coal Mine Mesa on land that was partitioned to the Hopi Tribe (“HPL”). Her
9 father is Roger Begay, Sr. and her mother is Anna Begay. Plaintiff’s father was found to
10 be eligible for relocations benefits by ONHIR and received a relocation home in 1990.

11 8. Plaintiff’s father, Roger Begay, Sr., applied for relocation benefits and was
12 initially denied by ONHIR. The Hearing Officer reversed ONHIR’s denial in August
13 1986, and ONHIR certified Plaintiff’s father as eligible for relocation assistance benefits.

14 9. Plaintiff’s younger sister by four years, Annette Begay, was born on
15 December 6, 1964. Annette Begay applied for relocation benefits, was initially denied by
16 ONHIR, and had an appeal hearing before the Hearing Officer on April 20, 1988.
17 ONHIR upheld the Hearing Officer’s decision denying Annette’s appeal when it issued
18 Final Agency Action in 1988, but later reversed the Hearing Officer’s decision and
19 certified Annette as eligible for relocation assistance benefits on May 27, 1994.

20 10. Plaintiff attended the Tuba City Boarding School from first grade through
21 the third grade, and Tuba City Public Schools from the fourth through the twelfth grade.
22 During the time Plaintiff attended school, her home remained at Coal Mine Mesa on the
23 HPL. When Plaintiff stayed in the dormitory at the Tuba City Boarding School, her
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1 father would check her out and bring her home to Coal Mine Mesa almost every
2 weekend. When Plaintiff attended the Tuba City Public Schools, she took the school bus
3 from her family's Coal Mine Mesa home.

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5 11. When Plaintiff attended Tuba City High School from 1977 through 1980,
6 she took the school bus from Coal Mine Mesa. When winter weather made travel from
7 Coal Mine Mesa difficult, Plaintiff stayed in a one-room shack in Tuba City built by her
8 father.

9
10 12. Plaintiff graduated from Tuba City High School in 1980. After graduating
11 from high school, Plaintiff babysat for the children of two sets of relatives: Donald and
12 Eleanor Williams from 1980-1981 and Phillip and Laurie Zahne through the spring of
13 1982. Donald was the son of Plaintiff's great aunt Sally Williams, who raised Plaintiff's
14 father Roger Begay from childhood, and Donald and Sally were also from Coal Mine
15 Mesa. Donald and Eleanor rented a home in Tuba City where Plaintiff would stay, and
16 Plaintiff would return to Coal Mine Mesa on weekends with her aunt and uncle or her
17 parents. Donald Williams was determined eligible for relocation assistance benefits by
18 ONHIR. When Plaintiff babysat for the Zahne's, she returned to her family's homesite at
19 Coal Mine Mesa on the weekends and sometimes on weekday evenings.

20
21 13. Plaintiff began working for the Navajo Tribe in the spring of 1982 and her
22 Social Security Earnings Statement reflects total earnings in 1982 in the amount of
23 \$3,008.00. ONHIR stipulated at Plaintiff's hearing on November 8, 2013 that Plaintiff
24 attained self-supporting head-of-household status in 1982 based on wages reported on her
25 Social Security Earnings Statement.

1 14. When Plaintiff worked for the Navajo Tribe in 1982, she continued to
2 reside at her family's homesite at Coal Mine Mesa on the HPL. Plaintiff testified at her
3 November 2013 hearing that she commuted from Coal Mine Mesa when she worked for
4 the Navajo Tribe in Tuba City in 1982.

5
6 15. Plaintiff registered with and began voting in Coal Mine Chapter elections in
7 1982, and remained a Coal Mine Chapter member until 2008.

8 16. Plaintiff applied for relocation benefits pursuant to 25 C.F.R. §700.138 on
9 April 21, 2009. On Plaintiff's application, in response to the question of when she
10 moved from the HPL, she responded, "April 1990, with parents when they had to relocate
11 and vacate the residence in HPL land."

12
13 17. Defendant denied Plaintiff's application for relocation benefits by letter
14 from the dated March 27, 2012, stating she had not attained head-of-household by 1979,
15 the year that ONHIR asserted Plaintiff's family moved from the HPL.

16 18. The date through which Plaintiff resided on the HPL is significant.
17 Plaintiff must show she continued her legal residence on the HPL through the time she
18 became a head-of-household. Applicants attain head-of-household status through either
19 marriage, having a child, or earning sufficient income as a single person.
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21 19. On April 24, 2012, Plaintiff filed an appeal of ONHIR's denial of
22 relocation benefits and the appeal was accepted by ONHIR as timely on May 9, 2012.

23 20. An administrative hearing on Plaintiff's appeal was held on November 8,
24 2013. Testifying for the Plaintiff were her father Roger Begay and herself. Defendant
25 did not present any witnesses.

1 21. On October 25, 2013, consistent with ONHIR's policy on discovery,
2 Plaintiff disclosed to ONHIR the documents Plaintiff intended to use to support her claim
3 for benefits, which included documents from Roger Begay's and Annette Begay's
4 ONHIR case files. ONHIR's reciprocal disclosure as required by 25 CFR §700.313(a)(3)
5 did not contain affidavits from Plaintiff's father Roger Begay and Nelson and Sally
6 Williams prepared in 1986. Nor were the substance of these documents used for
7 impeachment by the Defendant at Plaintiff's hearing on November 8, 2013. 25 CFR
8 §700.313(a)(3) requires that relocation applicants receive all pre-hearing discovery that is
9 relevant to the determination to be made by the Presiding [Hearing] Officer.
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11 22. Post-Hearing briefs for the Plaintiff and ONHIR were submitted to the
12 Hearing Officer simultaneously on December 12, 2013. Exhibits attached to Plaintiff's
13 Post-Hearing Brief included: ONHIR's notice of eligibility to Annette Begay dated May
14 27, 1994; NHLSP's notice to ONHIR of Intent to Appeal Annette's claim to federal court
15 dated April 13, 1994; Roger Begay's Quitclaim Deed dated October 24, 1989; a Coal
16 Mine Mesa Chapter Resolution from 1983 affirming Roger Begay's continued
17 membership in that chapter; a sworn, Notarized statement from a Bernard Phillips dated
18 May 1986 stating that Roger Begay still had livestock at Coalmine in 1985 and that Mr.
19 Phillips helped round up the livestock that year; documents from Sally and Nelson
20 Williams' ONHIR case file, including their BIA family card and a hand-drawn map that
21 was referred to during Plaintiff's hearing.
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1 23. When Defendant's Post-Hearing Brief submitted to the Hearing Officer on
2 December 12, 2013 was received by Plaintiff's counsel, the text cited to the affidavits
3 from Roger Begay and Nelson and Sally Williams. Footnotes 4 and 5 of the Brief stated
4 that such affidavits were part of the appeal record, but neither was attached to
5 Defendant's Brief as an exhibit, nor were they disclosed by Defendant prior to the
6 hearing. Defendant did not ask Roger Begay any questions at Plaintiff's hearing
7 concerning the affidavits.
8

9 24. Defendant's Post-Hearing Brief made no reference to documents from
10 Annette Begay's case file, or the fact that ONHIR certified Annette as eligible for
11 relocation benefits on May 27, 1994.
12

13 25. The Hearing Officer issued his decision on January 10, 2014, upholding
14 Defendant's denial of relocation benefits. In his Conclusions of Law, the Hearing
15 Officer found that, "[o]n December 22, 1974, applicant was a legal resident of Coal Mine
16 Chapter on the HPL." He did not find Plaintiff to be a resident of Coal Mine Mesa in
17 1982 at the time Plaintiff became a head-of-household.
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19 26. In this decision, the Hearing Officer relied on the affidavits provided to him
20 by ONHIR in his finding that Annabelle Begay and her family permanently moved from
21 their homesite at Coal Mine Mesa on the HPL to Tuba City in 1979. The Hearing Officer
22 also based his credibility findings on the non-disclosed affidavits, finding neither Plaintiff
23 nor her father credible based on their testimony of continued residency beyond 1979.
24 The Hearing Officer stated that Plaintiff's testimony had "no evidentiary value and [was]
25 and unreliable artifact about the family's living situation from and after 1979."

1 27. The Hearing Officer found that Plaintiff became a self-supporting head-of-
2 household in 1982 when she earned “sufficient income from her job with Water
3 Resources in Tuba City”.

4 28. Plaintiff filed a Motion for Reconsideration of the Hearing Officer’s
5 decision on January 28, 2014 and attached as exhibits ONHIR’s pre-hearing disclosures
6 to Plaintiff’s counsel; NHLSP’s pre-hearing disclosures to ONHIR, and two exhibits
7 NHLSP had attached to its Post-Hearing Brief for Plaintiff. In the Motion for
8 Reconsideration, Plaintiff argued that the Hearing Officer based his decision on evidence
9 that ONHIR did not disclose prior to the hearing and thus it cannot be part of the
10 administrative record; that the Hearing Officer’s credibility findings are based on
11 evidence outside of the administrative record; and that the Hearing Officer ignored
12 Plaintiff’s properly disclosed documentary evidence that supported Plaintiff and her
13 father’s continued legal residency on the HPL through and beyond 1979.

14 29. ONHIR filed a Response on January 31, 2014. ONHIR argued that
15 Plaintiff was aware of the documents ONHIR failed to disclose prior to Plaintiff’s
16 hearing, because Plaintiff’s counsel reviewed the file containing those same documents,
17 and that such documents were exempt from disclosure requirements since ONHIR used
18 them for impeachment. ONHIR’s counsel admitted that his statement in ONHIR’s Post-
19 Hearing brief that the Roger Begay affidavit was part of Plaintiff’s administrative record
20 was false but argued that it was harmless error.

21 30. The Hearing Officer issued an order on February 25, 2014, denying
22 Plaintiff’s request for reconsideration and affirming his original decision. The Hearing
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1 Officer stated that he may take judicial notice of Roger Begay's previous testimony at his
2 own hearing, and that Plaintiff's counsel examined the case file of Roger Begay prior to
3 Plaintiff's hearing. The Hearing Officer further stated that Roger Begay's testimony at
4 Plaintiff's hearing was "materially" inconsistent with testimony at his own hearing, and
5 that Roger Begay's testimony "trumps" documentary evidence from his own file showing
6 that he and the family continued to reside at Coal Mine Chapter from 1982 onwards. The
7 Hearing Officer went so far to say that the "presentation of contrary testimony at the
8 current appeal hearing, testimony that was easily impeachable, borders on the
9 perpetration of a fraud on this tribunal."
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12 31. The Hearing Officer also stated that "the undersigned is entitled to know **all**
13 of the circumstances in an applicant's appeal" (emphasis in original), and referred to the
14 "older relative's appeal" (Plaintiff's father). However, the Hearing Officer failed to
15 acknowledge the circumstance of Roger Begay's testimony at Annette Begay's 1988
16 hearing which is also part of Plaintiff's administrative record. The Hearing Officer failed
17 to acknowledge that ONHIR accepted Roger Begay's testimony as credible evidence to
18 support ONHIR's reversal of the Hearing Officer's adverse decision in Annette Begay's
19 appeal in 1988, resulting in ONHIR's certification of Annette Begay as eligible for
20 relocation benefits in 1994.
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22 32. ONHIR issued Notice of Final Agency Action in Plaintiff's case, adopting
23 and affirming the Hearing Officer's Findings of Fact, Conclusions of Law, and Decision,
24 on March 21, 2014.
25

1 33. The Administrative Hearing Record establishes that Defendant’s denial of
2 Plaintiff Annabelle Begay’s claim for relocation benefits is arbitrary, capricious and an
3 abuse of discretion; that it is not supported by substantial evidence, is not in accordance
4 with applicable law; and that it occurred without observance of procedure required by
5 law.
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7 34. The purpose of the Navajo-Hopi Settlement Act, Pub. L. No. 93-531, §12,
8 December 22, 1974, 88 Stat. 1716, is to, “insure that persons displaced as a result of the
9 Act are treated fairly, consistently and equitably so that these persons will not suffer the
10 disproportionate adverse, social, economic, cultural and other impacts of relocation.” 25
11 CFR §700.1(a). The denial of Plaintiff’s application for relocation assistance benefits by
12 ONHIR violates the Settlement Act.
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14 **IV. CLAIM FOR RELIEF**

15 35. Plaintiff Annabelle Begay complains that Defendant ONHIR’s decision to
16 deny her relocation assistance benefits to which she is entitled as a matter of law
17 adversely affects her;
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19 36. ONHIR’s final decisions regarding eligibility determinations are subject to
20 judicial review under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706.

21 37. This Court shall set aside an agency decision that is, “unsupported by
22 substantial evidence,” or that is “arbitrary, capricious, an abuse of discretion, or otherwise
23 not in accordance with law [.]” 5 U.S.C. § 706(2)(A), (E).
24

25 38. Defendant ONHIR’s decision to deny Plaintiff Relocation Benefits is
arbitrary, capricious and an abuse of discretion.

