

the remaining term of his probation.

III. CONCLUSION

Accordingly, the defendant's Motion to Travel and to Relocate is HEREBY DENIED.

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FSM SUPREME COURT TRIAL DIVISION

GAY JEAN MIGUEL, a minor through MIKEHLA)
MIGUEL, next of kin,)
)
Plaintiff,)
)
vs.)
)
FEDERATED STATES OF MICRONESIA SOCIAL)
SECURITY ADMINISTRATION,)
)
Defendant.)
_____)

CIVIL ACTION NO. 2013-008

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Hearing: July 22, 2015
Decided: June 27, 2016

APPEARANCES:

For the Plaintiff: Salomon M. Saimon, Esq.
Micronesian Legal Services Corporation
P.O. Box 129
Kolonias, Pohnpei FM 96941

For the Defendant: Stephen V. Finnen, Esq.
P.O. Box 1450
Kolonias, Pohnpei FM 96941

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HEADNOTES

Civil Procedure – Summary Judgment – Grounds

A summary judgment motion will be granted 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. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

Civil Procedure – Summary Judgment – Procedure

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

Administrative Law – Judicial Review; Social Security

Any person aggrieved by a final order of the Social Security Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

Administrative Law – Judicial Review; Social Security

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. This applies to all agency action unless Congress by law provides otherwise and it applies to the Social Security Administration appeals since no part of the Social Security Act provides otherwise. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

Social Security – Claims and Benefits

Social Security benefits are not a property right and do not disburse automatically once a claim is filed. A potential beneficiary must fulfill the requirements as set forth in Title 53 of the FSM Code and Social Security regulations before being deemed eligible to receive benefits. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

Social Security – Claims and Benefits

FSM Social Security benefits are not a property right that automatically vests upon the wage earner's death and upon the filing of a claim. The proper procedure under Title 53 and the FSM Social Security Regulations must be adhered to before a claimant may be deemed eligible for benefits. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

Domestic Relations – Adoption; Social Security – Claims and Benefits

A valid claim for adopted child benefits requires proof of adoption and of the adopted child's dependency on the wage earner. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

Domestic Relations – Adoption; Social Security

Social Security's statutory scheme is not unconstitutional, and the exercise of its investigatory functions, which would include the request for evidence of dependency in adoption matters, is lawful as long as it is authorized by law. Thus, Social Security regulations are not *ultra vires*. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

Administrative Law – Judicial Review; Social Security

Parties who appeal Social Security Board decisions are allowed to enter additional evidence for the court's consideration. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 480 (Pon. 2016).

Social Security – Claims and Benefits

Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 480 (Pon. 2016).

Social Security

The Social Security Administrator is given a wide range of discretion as part of his or her administrative powers. Decisions made under the Administrator's discretionary power are also subject to the review by the Board, as well as the FSM Supreme Court. In addition to this discretionary authority, the regulations detail different criteria that the Administrator may follow in forming a decision. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 481 (Pon. 2016).

Social Security

An appeal from a Social Security Board decision will be determined based on the administrative hearing record, other documents as submitted by the parties, and the oral arguments as presented before the court and not on a trial de novo. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 482 (Pon. 2016).

Social Security

Under 53 F.S.M.C. 708, the court's review of Social Security decisions is limited to issues determined on the record at the administrative level. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 482 (Pon. 2016).

* * * *

COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

The defendant, Federated States of Micronesia Social Security Administration (herein "FSMSSA") filed a Motion for Summary Judgment in this matter on April 21, 2015. On June 5, 2015, the plaintiff, Gay Jean Miguel, a minor through Mikehla Miguel, next of kin (herein "Miguel") filed an Opposition to Motion for Summary Judgment. The FSMSSA entered a Reply Supporting Motion for Summary Judgment on June 15, 2015.

A hearing on the pending motions was held on July 22, 2015. Steven V. Finnen, Esq., appeared on behalf of the FSMSSA, and Salomon M. Saimon, Esq., through the Micronesian Legal Services Corporation, appeared on behalf of Miguel. After considering the arguments presented during the hearing and the evidence on the record, the court grants the defendant's summary judgment motion.

II. FACTS

Gay Jean Miguel was born on December 8, 2000 to Jaysleen Hadley and Karvin Mikel. Thomas and Mikehla Miguel are the parents of Karvin Mikel and grandparents of Gay Jean Miguel. A decree confirming the adoption of Gay Jean Miguel by Thomas and Mikehla Miguel was issued on October 3, 2002 by the Pohnpei State Supreme Court. Thomas Miguel passed away on December 1, 2010. Thomas Miguel was 66 years old when the adoption decree was rendered.

A claim for Social Security benefits was filed by Mikehla Miguel on January 13, 2011, claiming Gay Jean Miguel was dependent on Thomas Miguel. A notice from FSMSSA Administrator Alexander Narruhn to Mikehla Miguel denying the claim was issued on October 4, 2011 based on a failure to submit evidence of dependency. Mikehla Miguel appealed the decision to the FSMSSA Board (herein "the Board"), which upheld the denial on January 15, 2013. The Summons and Complaint was filed on March 11, 2013. After the disposition of several issues in this matter, the FSMSSA filed a Motion

for Summary Judgment on April 21, 2015.

III. STANDARD OF REVIEW

Under FSM Civil Rule 56, a motion for summary judgment shall be granted "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." FSM Civ. R. 56(c); Kyowa Shipping Co. v. Wade, 7 FSM Intrm. 93, 95 (Pon. 1995); Kihara Real Estate, Inc. v. Estate of Nanpei, 6 FSM Intrm. 48, 52 (Pon. 1993).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Urban v. Salvador, 7 FSM Intrm. 29, 31 (Pon. 1995); Kyowa Shipping Co., 7 FSM Intrm. at 95; FSM v. Ponape Builders Constr., Inc., 2 FSM Intrm. 48, 52 (Pon. 1985).

Any person aggrieved by a final order of the Board may obtain a review of the order in the Trial Division of the Supreme Court of the Federated States of Micronesia by filing in Court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be served on the Board, by service on its secretary or other designated agent, and thereupon the Board shall certify and file in Court a copy of the record upon which the order was entered. The findings of the Board as to the facts, if supported by competent, material, and substantial evidence, shall be conclusive. If either party applies to the Court for leave to adduce additional material evidence and shows to the satisfaction of the Court that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives, and that such evidence is competent, material, and substantial, the Court may order the additional evidence to be taken by the Board and to be adduced upon the hearing in such manner and upon such conditions as the Court considers proper. The Board may modify its findings and order after receipt of further evidence together with any modified or new findings or order. The judgment of the Court upon the record shall be final, subject to review by the Appellate Division of the Supreme Court upon petition of any aggrieved party, including the Board, within 60 days from judgment.

53 F.S.M.C. 708.

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise and it applies to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Alokoa v. FSM Social Sec. Admin., 16 FSM Intrm. 271, 276 (Kos. 2009).

IV. DISCUSSION

Social Security Benefits

The first issue presented for the court's consideration is to further define Social Security benefits,

in line with the definition as provided in § 100.2 of the FSMSSA regulations as amended in 2012. The court ruled on this issue in Jeanive Neth v. FSM Social Security Administration, 20 FSM R. 362 (Pon. 2016).¹

In Neth, the court held that Social Security benefits are not a property right and do not disburse automatically once a claim is filed, rather, a potential beneficiary must fulfill the requirements as set forth in Title 53 of the FSM Code and the FSMSSA regulations before being deemed eligible to receive benefits. 20 FSM R. at 367.

In line with the decision in Neth, this court holds that FSM Social Security benefits are not a property right which automatically vests upon the death of the wage earner and upon the filing of a claim. The proper procedure under Title 53 and the FSM Social Security Regulations must be adhered to before a claimant may be deemed eligible for benefits.

FSMSSA Regulations as Ultra Vires

Another issue raised by the plaintiff is the invalidity of the FSMSSA Regulations. This court will apply the holding in Neth, which held: 1) that a valid claim for benefits as an adopted child requires proof of adoption and dependency of the adopted child on the wage earner, 2) the regulations are promulgated to assure efficiency, accuracy, and proficiency and prevent abuse and to regulate violations in order to protect the Social Security system, 3) the statutory scheme of the FSMSSA is not unconstitutional, and 4) the exercise of the FSMSSA's investigatory functions, which would include the request for evidence of dependency in the current matter, is lawful as long as it is authorized by law. Therefore, as ruled in Neth, the FSMSSA regulations are not *ultra vires*.

Requirements for Benefits

In summary, Miguel's Complaint claims that the Board ignored sufficient evidence that showed that the adopted child was dependent on the wage earner, thus Miguel is eligible for Social Security benefits. Pl.'s Compl. at 3. In its Motion for Summary Judgment, the FSMSSA argues that Miguel did not provide sufficient proof to show that there was dependency, therefore the requirements as set forth in 53 F.S.M.C. 803(1) and § 100.22 of the FSMSSA regulations were not met.² The decision in Neth

¹ The ruling in Neth applies to several issues in the present matter, and several companion cases, as the facts are similar with slight differences. All proceedings in the Neth matter and the companion cases were argued simultaneously by the parties. These companion cases are: 1) Jeanive Neth v. FSMSSA, Civil Action No. 2013-006, 2) Alpina Celestine v. FSMSSA, Civil Action No. 2013-007, 3) Gay Jean Miguel v. FSMSSA, Civil Action No. 2013-008, 4) Reiel Eliam v. FSMSSA, Civil Action No. 2013-009, and 5) Adilihna Ikalap v. FSMSSA, Civil Action No. 2013-010.

² 53 F.S.M.C. 803: Dependent's benefits.

(1) Every surviving child who:

(a) was dependent upon an individual who died fully insured or currently insured; and

(b) has filed a complete application with the Social Security Administrator for survivor's insurance; shall be entitled to a surviving child's insurance benefit, subject to the earnings test as defined in this subtitle.

§ 100.22 *Evidence of dependency.* A child shall be deemed dependent upon his proven natural

rules on eligibility requirements under the FSMSSA scheme, which will be applied to the present matter.

Here, a letter from the FSMSSA Administrator dated February 11, 2011 notified Miguel that her claim was put on hold because of a lack of evidence to show economic dependency on Thomas Miguel. Def.'s Mot. for Summ. J. at Ex. C. The administrative record above indicates that the Board allowed Miguel to present supporting evidence for her claim, which was never submitted. Further, 53 F.S.M.C. 708 allows parties who appeal decisions of the Board to enter additional evidence for the court's consideration, however, no proof has been offered as part of this litigation.

The FSMSSA is given the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof pursuant to §100.5.³ Accordingly, similar to the holding in *Neth*, the court finds that the Board's dismissal of Miguel's claim based on a lack of evidence of dependency was not erroneous because of the failure to provide evidence, and the actions of the Board are supported by §100.6 of the FSMSSA regulations.⁴

parent or adoptive parent unless such parent was not living in the same household with or contributing to the support of such child.

(a) *When evidence of a child's dependency is needed.* If you or someone on your behalf apply for child's benefits, we may request evidence that the child was the insured person's dependent at a specific time – usually the time you applied or the time the insured died or became disabled. What evidence we request depends upon how you claim to be related to the insured person.

(b) *Preferred Evidence* – at least two types of preferred evidence shall be required.

(1) Evidence that the insured person and child were or are living together in one household;

(2) Evidence that the insured person was/is contributing to the support of the child;

(3) the child is listed as a child beneficiary on the insured person's life insurance policy, if the insured person has or had insured his life;

(4) Official school records showing the insured person as provider for the child; or

(5) At the discretion of the FSMSSA Administrator, any other documents or evidence that will prove dependency of the child on the insured person.

³ §100.5 Responsibility for giving evidence.

When evidence is needed to prove your entitlement to receive or to continue to receive benefits, you will be responsible for obtaining and providing the evidence to us. Upon your request, we will advise you as to what kinds of evidence would be convincing, and we will consider any relevant evidence you give us. Evidence given to us will be kept confidential and not disclosed to anyone but you except as provided in 53 F.S.M.C. 704. You should be aware that 53 F.S.M.C. 605 provides criminal penalties for knowingly misrepresenting the facts or for making false statements to obtain social security benefits for yourself or someone else.

⁴ §100.6 Failure to provide requested evidence.

Generally, you will be asked to provide us by a certain date specific kinds of evidence to prove you are entitled to benefits. If we do not receive the evidence by that date, we may decide to close your claim at the time. If you are already receiving benefits, you may be asked to

Other Claims

In her opposition to FSMSSA's summary judgment motion, Miguel makes additional arguments regarding the authority of the FSMSSA's Administrator, and the consideration of this matter by this court as a *trial de novo*.

The Administrator of the FSMSSA is statutorily created pursuant to 53 F.S.M.C. 702. This section states, in part,

The Board shall appoint a Social Security Administrator who shall have *responsibility for the general administration of the Social Security System*, and who shall have the power to employ and to delegate duties to such employees of the Social Security Administration as deemed feasible and desirable to carry out the provisions of this subtitle.

53 F.S.M.C. 702 (emphasis added).

The Administrator is given a wide range of discretion as part of his or her administrative powers.⁵ Decisions made pursuant to the Administrator's discretionary power are also subject to the review of the Board, as well as this court. In addition to this discretionary authority, the regulations detail different criteria that the Administrator may follow in forming a decision. No evidence has been produced in this matter that suggests that the Administrator had abused his discretion in the denial of benefits in this case.

Finally, the plaintiff argues that "special cause" may exist for the present matter to be heard *de novo*. Pl.'s Opp'n to Def.'s Mot. for Summ. J. at 6. However, in Clarence v. FSM Social Security Administration, 12 FSM Intrm. 635 (Kos. 2004) the court held

An appeal from a Social Security Board decision will be determined on the record below and not on a trial de novo because, under 53 F.S.M.C. 708, the Board must certify and file in court a copy of the record. The Board's findings as to the facts, if supported by competent, material, and substantial evidence, will be conclusive. If either party applies for leave to adduce additional material evidence, and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives and that such evidence is competent, material, and substantial, the court may order the Board to take the additional evidence to be adduced upon the hearing in such manner and upon such conditions as the court considers proper.

provide us by a certain date evidence needed to determine whether you continue to be entitled to benefits or whether your benefits should be terminated or reduced. If you do not provide us the requested evidence by the date given, we may decide that you are no longer entitled to benefits or that your benefits should be terminated or reduced. You may let us know if you are unable to provide us the requested evidence within the specified time, explain why there will be a delay and request additional time. If this delay is due to illness, inability to receive timely evidence you have requested from another source, or a similar circumstance, you will be given additional time to provide us the evidence.

⁵ For example, under the FSMSSA regulations as amended in 2012, the Administrator may consider other documents that may prove dependency under 100.22, he/she may also consider other documents to prove customary adoption under 100.25(3), as well as the discretion to find "extremely limited circumstances" to authorize adoptions after the wage earner's 55th birthday pursuant to 53 F.S.M.C. 603(4).

12 FSM Intrm. at 636.

Accordingly, this matter is determined based on the record of the administrative hearing, other documents as submitted by the parties, and the oral arguments as presented before the court, therefore a *de novo* trial is unwarranted.

Finally, another issue raised in the filings and during oral arguments is the adoption of the child when the wage earner had surpassed fifty-five (55) years of age, pursuant to 53 F.S.M.C. 603(4). Because this court is limited to issues determined on the record at the administrative level under 53 F.S.M.C. 708, the court will not make a determination on this issue.

V. CONCLUSION

The court finds that there are no triable issues in this matter. The defendant's Motion for Summary Judgment is HEREBY GRANTED, and the plaintiff's Complaint is HEREBY DISMISSED. The Clerk shall enter judgment in favor of the defendant.

* * * *

FSM SUPREME COURT TRIAL DIVISION

EOT MUNICIPALITY, ETTAL MUNICIPALITY,)	CIVIL ACTION NO. 2012-1024
LUKINPOCH MUNICIPALITY, MOCH MUNICIPALITY,)	
NOMWIN MUNICIPALITY, PAREM MUNICIPALITY,)	
RUO MUNICIPALITY, SATOWAN MUNICIPALITY,)	
and UDOT MUNICIPALITY,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
JOHNSON ELIMO, in his capacity as Governor of)	
Chuuk State, CHUUK STATE, and FEDERATED)	
STATES OF MICRONESIA,)	
)	
Defendants.)	
)	
FEDERATED STATES OF MICRONESIA,)	
)	
Cross-Claimant/)	
Counter-Cross-Defendant,)	
)	
vs.)	
)	
STATE OF CHUUK,)	
)	
Cross-Defendant/)	
Counter-Cross-Claimant.)	
)	

ORDER GRANTING PARTIAL SUMMARY JUDGMENT