

§ 4.250

CLAIMS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.250 Filing and proof of creditor claims; limitations.

(a) All claims against the estate of a deceased Indian must be filed with the agency

(i) Within 60 days from the date BIA receives a certified copy of the death certificate or other verification of the decedent's death under 25 CFR 15.101 or

(ii) Within 20 days from the date the creditor is chargeable with notice of the decedent's death, whichever of these dates is later.

(b) No claim will be paid from trust or restricted assets when the OHA deciding official is aware that the decedent's non-trust estate may be available to pay the claim.

(c) All claims must be filed in triplicate, itemized in detail as to dates and amounts of charges for purchases or services and dates and amounts of payments on account. Such claims must show the names and addresses of all parties in addition to the decedent from whom payment might be sought. Each claim must be supplemented by an affidavit, in triplicate, of the claimant or someone in his or her behalf that the amount claimed is justly due from the decedent, that no payments have been made on the account which are not credited thereon as shown by the itemized statement, and that there are no offsets to the knowledge of the claimant.

(d) Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(e) A claim based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent's death, cannot be allowed.

(f) Claims sounding in tort not reduced to judgment in a court of competent jurisdiction, and other unliquidated claims not properly within the jurisdiction of a probate forum, may be barred from consideration by an in-

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terim order from the OHA deciding official.

(g) Claims of a State or any of its political subdivisions on account of social security or old-age assistance payments will not be allowed.

§ 4.251 Priority of claims.

(a) Upon motion of the Superintendent or a party in interest, the OHA deciding official may authorize payment of the costs of administering the estate as they arise and prior to the allowance of any claims against the estate.

(b) After the costs of administration, the OHA deciding official may authorize payment of priority claims as follows:

(1) Claims for funeral expenses (including the cemetery marker);

(2) Claims for medical expenses for the last illness;

(3) Claims for nursing home or other care facility expenses;

(4) Claims of an Indian tribe; and

(5) Claims reduced to judgment by a court of competent jurisdiction.

(c) After the priority claims, the OHA deciding official may authorize payment of all remaining claims, referred to as general claims.

(d) The OHA deciding official has the discretion to decide that part or all of an otherwise valid claim is unreasonable, reduce the claim to a reasonable amount, or disallow the claim in its entirety.

(1) If a claim is reduced, the OHA deciding official will order payment only of the reduced amount.

(2) An OHA deciding official may reduce or disallow both priority claims and general claims.

(e) If, as of the date of the hearing, there is not enough money in the IIM account to pay all claims, the OHA deciding official will order payment of allowed priority claims first, either in the order identified in paragraph (b) of this section or on a pro rata (reduced) basis.

(f) If, as of the date of the hearing, less than \$1,000 remains in the IIM account after payment of priority claims is ordered, the general claims may be ordered paid on a pro rata basis or disallowed in their entirety.