

Quinnehtukqut Legal News



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www.ptla.org/quinnehtukqut/qlegal.htm

A Newsletter for Native Americans in Connecticut

Summer 2006



Native American Legal Briefs

—Indian Country—

ON January 3, 2006, the Connecticut Supreme Court issued its decision in the case of *Jo-ann Dark-Eyes v. Commissioner of Revenue Services*, finding that Jo-ann Dark Eyes, a member of the Mashantucket Pequot Tribe, owed back income taxes to the state. Tribal members pay federal taxes, but those who earn their income on a reservation and live there do not need to pay state taxes. In this case, the Tribal member earned money from the Tribal Council on the Reservation and lived on land owned by the Tribe. The decision focused on whether that land qualified as "Indian Country" so as to exempt the Tribal member from the requirement to pay state taxes.

In 1983, the US congress passed a Settlement Act giving federal recognition to the Mashantucket Pequots in settlement of its land claims and set up "settlement funds" to buy lands that were designated as "settlement lands." Settlement land bought with settlement funds automatically became part of the Reservation. The Tribe bought the land in question in 1993. The land was within the private settlement lands but was not bought with settlement funds. In 1998, at the request of the Tribe, the land was taken into trust for the Tribe by the US government and became part of the reservation. Jo-ann Dark Eyes lived on the land from 1993 until 1998. The Connecticut Revenue Service ruled that the land did not qualify as Indian Country until 1998, when it was formally taken in trust. The Connecticut Supreme Court upheld that finding in this decision.

The Court first noted that statutes involving Indians must be construed liberally in favor of the Indians. The Court then looked at the Settlement Act and the federal Indian Civil Rights Act to make sure that the definitions of Indian Country did not conflict. The Court found that they did not. It then went on to look at the definition of Indian Country contained in the Civil Rights Act. The Court noted that:

"Congress has defined Indian country broadly to include formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States."

The Court stated that the land in question did not qualify as a "formal reservation" until it was taken into trust by the US government. The Court then looked at whether the land qualified as a "dependent Indian community:"

"...Congress indicated that a federal set-aside and

a federal superintendence requirement must be satisfied for a finding of a 'dependent Indian community' The federal set-aside requirement ensures that the land in question is occupied by an 'Indian community'; the federal superintendence requirement guarantees that the Indian community is sufficiently 'dependent' on the Federal Government that the Federal Government and the Indians involved, rather than the States, are to exercise primary jurisdiction over the land in question."

The Court concluded that there had been no "set aside", finding that the terms of the Settlement Act showed, at most,

an intent . . . to allow [the Tribe] to acquire those lands within the designated area that the private landholders had agreed to sell to the tribe during settlement negotiations without necessarily incurring a commitment to exercise jurisdiction over all activities on that land by the tribe, to the presumptive exclusion of state laws.

The Court also looked at whether the Indian Gaming Regulatory Act prohibited the state from taxing the Tribal member in this case. The Court found that "the

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Medicare Savings Programs

The following article appeared in the April 2006 edition of *CARN Evers*. It may be viewed at www.larecc.org. Click on the *CARN Evers* link.

If you are covered by Medicare, you may be able to get assistance to pay for your Medicare premiums, deductibles, and co-payments. The programs that would cover these expenses are commonly referred to as the Medicare Savings Programs and can be applied for at local Department of Social Services (DSS) office.



The CHOICES program can assist in applying for the Medicare Savings Programs. Their statewide toll-free number is 1-800-994-9422. Medicare Part B beneficiaries pay a premium of \$88.50 each month. Every January, this premium is increased based on cost of living adjustment. This premium is automatically deducted from your Social Security check. If you are eligible for a Medicare Savings Program, DSS will pay this premium and you will have \$88.50 a month more income.

In determining eligibility, DSS examines your income and assets. The Medicare Savings Programs encompasses three separate programs. Each one has different income and asset criteria. The three programs are:

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www.ptla.org

Pine Tree Legal Assistance is a non-profit organization that gives free legal help to poor people with civil (non-criminal) legal problems in Maine.

Pine Tree operates a special Native American Unit in its Bangor, Maine office. The unit is staffed by attorneys Paul Thibeault, Judith Plano, Mike Guare, Jeff Ashby and Peter Sabonis, by Paralegal Danny Mills, and is headed by attorney Eric Nelson. Judith, Mike and Danny have worked with the Unit for several years. Paul has specialized in Indian Law since 1983. Jeff has worked on Native American issues out of our Presque Isle Office. Peter works with KIDS Legal out of the Bangor office and handles Native American Youth issues. Eric has worked at Pine Tree for many years on behalf of migrant farmworkers and Native Americans.

Pine Tree attorneys are not licensed to practice law in Connecticut. However, the Native American Unit may be able to give information and help to low-income Native Americans in Connecticut with federal legal problems, such as questions about the Indian Child Welfare Act and the Jay Treaty. Pine Tree can also refer cases to lawyers in Connecticut. The telephone number is 1-800-879-7463.

You can find a list of Indian Legal Services Programs in your state on the web at www.judicare.org/nails.html.

("Medicare" continued from front page)

- ❖ **Qualified Medicare Beneficiary program (QMB)** pays not only your Part B premium, but also all other Medicare deductibles and co-payments (up to the Medicaid rate for that service) to medical providers that accept both Medicare and Medicaid. For one person, the gross monthly income cannot exceed \$1,024.00 and countable assets cannot be more than \$4,000.00. For a couple, the income cap is \$1,514.00 and countable assets cannot be more than \$6,000.00.
- ❖ **Specified Low Income Beneficiary program (SLMB)** pays the Part B premium of \$88.50. Gross monthly income for one person cannot exceed \$1,187.40, or \$1,734.00 for a couple. For one person, the countable assets cannot be more than \$4,000.00, or \$6,000.00 for a couple.
- ❖ **Additional Low Income Beneficiary program (ALMB)** pays the Part B \$88.50 premium. Gross income cannot exceed \$1,309.95 for an individual or \$1,899.00 for a couple. There is no asset limit for this program, but unlike the other two programs, it is not an entitlement and has limited funds.

Medicare Savings Programs can help with Medicare premiums, co-payments, and deductibles, and can provide a subsidy for the new Medicare Part D prescription drug program. If you are on one of the Medicare Savings Programs, you are automatically enrolled in a low-income subsidy that will cover your Part D Plan's premiums, deductibles, and limit your co-payments to \$1.00 to \$5.00 per prescription. The income caps on these programs are adjusted in January and April each year. Up to date information on these programs, including an application form, is available on the Connecticut Legal Services' website at www.ctelderlaw.org



Important information for People who are Eligible for MEDICARE & MEDICAID and for People who are on MEDICARE & ConnPACE

The following information appears on the larcc website. It may be viewed at www.larcc.org/. Click on the "Hot Topics" link



If You Are Dually Eligible for Medicare and Medicaid... YOU CANNOT BE CHARGED A COPAY!

- The new Medicare Drug Program (Part D) calls for co-pays for all prescription drugs. However, the State of Connecticut has said that it will cover the costs of any co-pay on your behalf.
- If the pharmacist asks you for a co-pay, just tell him or her that, under the law, the pharmacist MUST give you the prescriptions and bill the State of Connecticut Department of Social Services for the co-pay.

GET THE PRESCRIPTIONS YOU NEED

- If you are dually eligible, the Department of Social Services also will pay for your prescription drugs with no co-pay if they are not on your current Medicare Part D plan's formulary.

If You Are on Medicare with ConnPace...

- You may not be charged a copay of more than \$16.25 for any drug.
- The Connecticut Department of Social Services will pay for your prescription drugs, even if they are not on your Medicare Part D formulary.
- Show the pharmacist the following card which will explain the new laws.
- Keep the card with you for the next time.
- Tell others that these cards are now available at Statewide Legal Services (in both English and Spanish)

If you have any questions or problems call:

Statewide Legal Services at 1-800-453-3320
Center for Medicare Advocacy (800) 262-4414
Dept. of Social Services Pharmacy Unit (860) 424-5150
Attorney General-Health Fraud Unit (860) 808-5355

I am a ConnPACE recipient and also on Medicare Part D. I MAY NOT BE CHARGED A CO-PAY OF MORE THAN \$16.25 FOR ANY DRUG.

Rather, the Connecticut Department of Social Services MUST be billed for any copays in excess of \$16.25 under all Part D drug plans. DSS Provider Bulletin PB 2005-75, pages 2-3 (Dec. 2005); PB 2006-21 (April 2006).

See Other Side for Information About DSS Coverage for Drugs Not Covered Under Medicare Part D Plans.

ConnPACE/ Medicare recipients are covered by the Dept. of Social Services for most drugs not covered by their Medicare Part D plans. Pharmacists are required to bill DSS directly when the Part D plan says a drug is not covered.

See PA 05-2 (Nov. 2, 2005 Spec. Sess.); DSS Provider Bulletins PB 2005-75 (Dec. 2005) & 2006-21 (Apr. 2006)

Questions?

Attorney General-Health Fraud Unit (860) 808-5355
Center for Medicare Advocacy (800) 262-4414
Statewide Legal Services (800) 453-3320 (also contact SLS for updates of this card, which was issued May 22, 2006)

The Quinnehtukqut Legal News is published by Pine Tree Legal Assistance, Inc. The views expressed by individual authors in this Newsletter are not necessarily shared by Pine Tree Legal Assistance or its staff.

Executive Director of PTLA: Nan Heald, Esq.

Native American Unit:

Directing Attorney: Eric Nelson, Esq.

Staff Attorneys: Mike Guare, Esq.

Judith Plano, Esq.

Paul Thibeault, Esq.

Jeff Ashby Esq.

Peter Sabonis, Esq.

Paralegal: Danny Mills

Editorial Assistant: Cushing Pagon Samp

You may contact us at Quinnehtukqut Legal News, Pine Tree Legal Assistance, Coe Building, 61 Main St., Room 41, Bangor ME 04401. Or you can send e-mail to jplano@ptla.org or call 1-800-879-7463.

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gaming act does not expressly preempt state taxation of income received by tribal members from reservation gaming activity." Therefore, the state was not prevented from taxing the Tribal member.

Federal Recognition Update:

In October of 2005, the Bureau of Indian Affairs issued its Reconsidered Final Determination To Decline To Acknowledge the Eastern Pequot Indians of Connecticut and the Paucatuck Eastern Pequot Indians of Connecticut and its Reconsidered Final Determination To Decline To Acknowledge the Schaghticoke Tribal Nation. This is the first time that the Bureau has reversed its decision to grant federal recognition.

The Schaghticoke had been acknowledged as a Tribe in January of 2004. The Eastern Pequots and the Paucatuck Eastern Pequots had been acknowledged as one Tribe (the Historical Eastern Pequots) in July of 2002. In May of 2005, the final decisions in both cases were vacated and sent back for reconsideration because the Board of Indian Appeals found that both of the original decisions put too much weight on the fact that the Tribes had been recognized by the State of Connecticut. In both Reconsidered Final Determinations, the Deputy Secretary of the Interior Department found that neither Tribe could meet criteria (b) and (c) of the required criteria used for establishing federal acknowledgement ("b" requires that a Tribe show that it is a "community that has existed from historical times until the present"; "c" requires that the Tribe has exercised political influence or authority during the same time period).

The Deputy Secretary found that there were gaps of several years where there was not enough evidence to show either community or political influence and that the state recognition was not enough to fill in those gaps. In addition, with regard to the Pequots, the Secretary found that the fact that the Eastern Pequots had split into two different communities demonstrated lack of community and lack of political influence. He concluded that: "The two separate communities that existed after 1983 were not the same community as existed previously, although they shared a common origin."

Statewide Legal Services of Connecticut, Inc.

Statewide Legal Services slsct.org/

Statewide Legal Services is a legal aid telephone Hotline program. They talk to callers about many different non-criminal legal problems. Some of the problems they can talk to you about include family, employment, benefits (like social security, welfare and medical), and housing. There is no charge for their services, but they can only help people with very low incomes.

Telephone Numbers To Call:

In the Middletown calling area: 1-860-344-0380

From other places in Connecticut: 1-800-453-3320

Statewide Legal Services has changed hours to concentrate more staff during the busiest calling hours.

Monday, Wednesday : Tuesday, Thursday,
9AM-3PM Friday: 9AM-4PM

You'll get through faster by using the "redial" button rather than hanging up and redialing manually if the line's busy..

The articles in this paper are meant to give information, *NOT to give legal advice*. No one should interpret any law without the help of an attorney who has been told all the facts.

We Want To Hear From You!

If you have comments, articles or ideas on how this Newsletter can be helpful to you, please let us know.

Please send articles or letters to:

Quinnehtukqut Legal News, Pine Tree Legal Assistance, Coe Building, 61 Main Street, Room 41, Bangor, ME 04401.

Or you can send e-mail to csamp@ptla.org.



INDEX of COMMUNITY RESOURCES

This is a list of some key resources, which will offer you service or direct you to the best local resource.



CRISIS SERVICES
(available 24 hours a day)



INFOLINE

www.infoline.org

INFOLINE is an integrated system of help via the telephone – a single source for information about community services, referrals to human services, and crisis intervention. It is toll-free and operates 24 hours a day, 365 days a year. Multilingual caseworkers and TDD access is available.

211



Child Abuse and Neglect:

Child Abuse & Neglect Hotline
www.state.ct.us/dcf/HOTLINE.htm

1-800-842-2288

TDD 1-800-624-5518



Domestic Violence:

www.ctadv.org/

Statewide Hotline: This toll-free number will connect you to the nearest domestic violence agency.

888-774-2900



Elder Abuse and Neglect:

INFOLINE (for after hours emergencies).....211
Connecticut Department of Social Services
 (Statewide toll-free number):.....1-888-385-4225
www.ct.gov/dss/cwp/view.asp?a=2353&q=305232



Poison Control:

Connecticut Poison Control Center
poisoncontrol.uchc.edu/

800-222-1222
 TDD 866-218-5372



Sexual Assault Crisis Programs: (Hotline Numbers)

Call 888-999-5545 to get the name of the sexual assault crisis service nearest you or go to their website at www.comsacs.org/.



Youth Crisis:

Contact the nearest Youth Service Bureau through your town hall



LEGAL RESOURCES



Lawyer Referral Service: www.ctbar.org/article/articleview/291
 This service can recommend a private lawyer who, for a small fee, will assess a case and give an estimate of charges.
 Fairfield County 203-335-4116
 Hartford 860-525-6052
 New Haven Area/Waterbury/Middlesex County 203-562-5750
 New London/Norwich 860-889-9384

Legal Assistance Programs:

These organizations give free civil legal help to income eligible people. This help includes telephone advice, referrals, direct representation, and giving out self-help material, depending on the priorities and resources of the organization.

STATEWIDE Statewide Legal Services 1-800-453-3320
 in Middletown 860-344-0380

Statewide Legal Services (slsct.org/) screens cases for all legal assistance programs in the state, giving brief service and advice, community education materials, and referrals to local legal services offices for non-criminal cases. **Please call Statewide Legal Services first**, unless you have an emergency that needs to be settled that day or you are over age 60.

◆ Bridgeport	Connecticut Legal Services www.connlegalservices.org/ContactCLS.htm	203-336-3851
◆ New Britain	Connecticut Legal Services	860-225-8678
◆ New London	Connecticut Legal Services	860 447-0323
◆ Stamford	Connecticut Legal Services	203-348-9216
◆ Willimantic	Connecticut Legal Services	860-456-1761
◆ New Haven	New Haven Legal Assistance www.nhlegal.org/index.htm	203-946-4811
◆ Hartford	Greater Hartford Legal Aid, Inc (serving Greater Hartford) www.ghla.org/index.htm	860-541-5000

Law School Legal Clinics: Law school legal clinics provide legal assistance to low-income clients.

Quinnipiac University School of Law Legal Clinics 203-582-3238
law.quinnipiac.edu/x317.xml
University of Connecticut Law School 860-570-5165
www.law.uconn.edu/clinics/

Center for Medicare Advocacy www.medicareadvocacy.org/
 This organization gives legal advice, written materials and representation to elderly and disabled people denied Medicare coverage for home health care, skilled nursing, facility care,

rehabilitation and other health services. Services are free to residents of Connecticut. Telephone: 860-456-7790

Connecticut Legal Rights Project www.mindlink.org/clrp.html
 This organization helps low-income adults who have or are perceived to have psychiatric disabilities. Its staff may also help clients to protect their civil rights in conservatorship and commitment proceedings or in discrimination in housing.
 Telephone toll-free: 877-402-2299

Connecticut Lawyer's Legal Aid to The Elderly
 This organization offers legal help to low-income elderly in the Hartford area. Telephone: 860-273-4303

Children's Law Center www.clcct.org/
 This organization gives legal representation to children in northeastern Connecticut using a lawyer/mental health team approach. The Center also provides legal information about situations involving children through the Children's Lawline (1-888-LAW-DOOR) Telephone: 860-232-9993

Connecticut Women's Education and Legal Fund
www.cwecalf.org/
 This organization provides a free telephone counseling, information and legal referral line for help on discrimination, harassment and family matters. The group also offers community education and training, mainly in employment and family law.
 Telephone: 800-479-2949

CTElderlaw.org www.ctelderlaw.org/
 CTElderLaw.org was created to provide comprehensive, current information on elder law, government programs and legal assistance for residents of Connecticut age 60 and older. It is a service of Connecticut Legal Services, Inc.

Discrimination:

Connecticut Commission on Human Rights and Opportunities
www.state.ct.us/chro/index.html

Capitol Region:
 99 Asylum Ave.
 Hartford, CT 06105
 Tel.: 860-566-7710
 TDD: (860) 566-7710

Southwest Region:
 1057 Broad Street
 Bridgeport CT 06604
 Tel.: 203-579-6246
 TDD: 203 579-6246

West Central Region:
 Rowland State Government Center
 55 West Main St.
 Suite 210
 Waterbury CT 06702-2004
 Tel.: 203-805-6530
 TDD: 203-805-6579

Eastern Region:
 100 Broadway
 Norwich CT 06360
 Tel.: 860-886-5703
 TDD: 860-886-5707

Central Office
 21 Grand Street
 Hartford CT 06106
 Tel.: 860-541-3400
 800-477-5737
 TDD: 860-541-3459



Social Security: www.ssa.gov/

Statewide1-800-772-1213



Some Helpful Native American Web Sites

- ☐ Pine Tree Legal Assistance: www.ptla.org
- ☐ Index of Native American Resources on the Internet:
www.hanksville.org/NAresources
- ☐ Native Links: www.johnco.com/native/
- ☐ Aboriginal Links:
www.bloorstreet.com/300block/aborcan.htm
- ☐ Legal Assistance Resource Center of Connecticut
www.larcc.org
- ☐ Statewide Legal Services: slsct.org/

