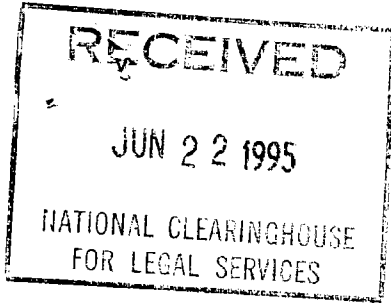


50,728
c
2p.
1016838



DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Social Security Administration
OFFICE OF HEARINGS AND APPEALS

ORDER OF APPEALS COUNCIL

REMANDING CASE TO ADMINISTRATIVE LAW JUDGE

In the case of

Claim for

Eddy Candelaria
(Claimant)

Supplemental Security Income

(Wage Earner)(Leave blank if same as above)

551-54-3741
(Social Security Number)

The Administrative Law Judge dismissed the claimant's request for hearing on February 23, 1995. The claimant has asked the Appeals Council to review the Administrative Law Judge's dismissal.

The Appeals Council grants the request for review under the authority of the Social Security Administration regulations (20 CFR 416.1470). The Appeals Council vacates the Administrative Law Judge's order of dismissal and remands this case for further proceedings (20 CFR 416.1460 and 416.1477).

The Administrative Law Judge dismissed the request for hearing because it was not timely filed. He found that there was no good cause for the late filing. In reaching this conclusion, he held that the representative's argument that they did not receive a second reconsideration determination in a timely manner is irrelevant and that the file indicates that the claimant received the first reconsideration denial himself and could have filed the request for hearing in a timely manner.

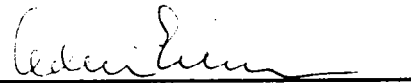
The claimant's representative did not argue that he did not receive a second reconsideration determination. Rather, he stated that the Social Security Administration was notified prior to the reconsideration determination that he was representing the claimant but he was not informed of the determination. There was no mention of a second determination.

The claim file shows that on August 11, 1993, the Social Security Office was informed of the appointment of representation. The representative also filed a reconsideration request at that time. The reconsideration determination was issued on September 17, 1993 but a copy of the notice was not sent to the representative. The representative contact the Social Security Office in January 1994 for status of the claim and when informed that the reconsideration request was denied, filed the request for hearing.

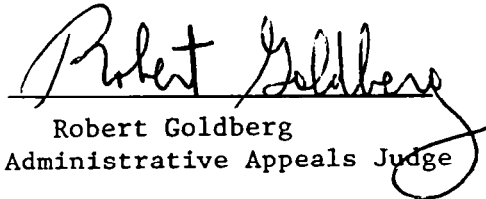
20 CFR 416.1510 provides that a duly appointed representative will obtain information about a claim to the same extent as the claimant. The failure of the administration to notify the representative of the action taken on the request for reconsideration violated the claimant's right to due process. Therefore, the Appeals Council finds that the claimant had good cause for the late filing of the request for hearing. The administration was timely notified of the appointment of representative but failed to notify the representative of the action taken on the claim. The representative diligently followed up on his request and when informed that the reconsideration request was denied, filed the request for hearing.

Accordingly, the Administrative Law Judge will afford the claimant an opportunity for a hearing and decision, and may take any further action needed to complete the administrative record.

APPEALS COUNCIL



Adelaide Edelson
Administrative Appeals Judge



Robert Goldberg
Administrative Appeals Judge

Date: May 9, 1995