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NOTE TO PROCESSING CENTER  
FURTHER ACTION NECESSARY

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

DECISION UPON REMAND BY THE  
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

IN THE CASE OF

CLAIM FOR

MONSERRATE GHIGLIOTTY  
(Claimant)

Retirement Insurance Benefits

(Wage Earner)

073-16-8513  
(Social Security Number)

This case is before me pursuant to a Remand Order by the United States District Court for the District of Vermont (Exhibit 17). The District Court has remanded an Administrative Law Judges' decision which found that the claimant was overpaid \$1601.40 in mother's insurance benefits from June 1972 through January 1979. After reviewing this record in its entirety and in light of the results of the evidentiary development ordered by the District Court, I have determined that a decision fully favorable to the claimant can be issued without a hearing. This fully favorable decision is issued on-the-record in accordance with and subject to the hearing requirements of 20 CFR 404.948(a).

The rather convoluted factual background of this claim has been thoroughly discussed in the decisions issued by previously assigned Administrative Law Judge, the Appeals Council, and the District Court (Exhibits 10, 15, and 16). In view of my disposition in this case, it is sufficient to note that, in a reconsideration determination issued on June 3, 1991, the Social Security Administration ("the Administration") determined that, based on her remarriage in 1972, the claimant was overpaid \$1601.40 in mother's insurance benefits from June 1972 through

REPRESENTATIVE

MONSERRATE GHIGLIOTTY  
073-16-8513

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January 1979. In a hearing decision which was latter modified and affirmed by the Appeals Council this overpayment determination was upheld. The claimant, through her representative, Attorney Meris Berquist of the Vermont Senior Citizens Law Project, vigorously contended that she did not receive the benefits in question and, thus, was not overpaid. Judicial review subsequently was requested. In reviewing this case, the District Court ultimately found that substantial evidence did not support the Administration's decision and remanded this matter with specific instructions to determine whether the checks in question were negotiated by contacting a designated office in the Department of Treasury which responds to inquiries regarding the negotiation of government checks (Exhibit 19).

After this claim was assigned to me on remand, a November 1, 1994 request for information regarding the checks in question was submitted to the designated office of the Department of Treasure. To date, I have received no information from the Department of Treasury showing that the checks in question were negotiated by the claimant. Consistent with the District Court's remand order, I therefore am unable to find that substantial evidence in this record demonstrates the existence of an overpayment to the claimant.

Finally, I note that while this matter was pending before me, the claimant, without abandoning her claim that she was not overpaid the benefits in question, formally requested waiver of any overpayment on equitable and financial grounds. In view of my foregoing determination that this record fails to demonstrate that the claimant was overpaid the benefits in question, her request for waiver of such overpayment is moot.

Accordingly, I conclude that the claimant was not overpaid \$1601.40 in mother's insurance benefits from June 1972 through January 1979.

**REPRESENTATIVE**

MONSERRATE GHIGLIOTTY  
073-16-8513

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FINDINGS

After careful consideration of the record, the undersigned enters the following findings:

1. The record fails to demonstrate that the claimant negotiated mother's insurance benefit checks issued by the Social Security Administration from June 1972 through January 1979.
2. The claimant was not overpaid mother's insurance benefits of \$1601.40 from June 1972 through January 1979.

DECISION

It is the decision of the Administrative Law Judge that the claimant was not overpaid \$1601.40 in mother's insurance benefits from June 1972 through January 1979.

  
\_\_\_\_\_  
PAUL S. CARTER  
Administrative Law Judge

JAN 25 1995  
\_\_\_\_\_  
Date

EH:jcc

REPRESENTATIVE

MONSERRATE GHIGLIOTTY

073-16-8513

Claimant/Applicant

Social Security Number

Wage Earner

EXHIBITS LIST

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>NO. OF PAGES</u>	<u>COURT TRANSCRIPT PAGE NO.</u>
1	Statement of Claimant or Other Person, 02/24/87	2	64-65
2	Request for Reconsideration, 11/23/88	2	66-67
3	Social Security Notice, 12/09/88	2	68-69
4	Payment Worksheet, 07/18/89	10	70-80
5	Social Security Benefit Information, 03/05/90	1	81
6	Social Security Notice, 06/03/91	6	82-87
7	Request for Hearing, 07/18/91, with attachments	5	88-92
8	Application for Mother's Insurance Benefits dated 05/07/69	4	93-96
	DOCUMENTS RECEIVED SUBSEQUENT TO HEARING		
9	Letter dated 11/25/91 received from Attorney Meris L. Berquist of Vermont Senior Citizens Law Project	1	97

**LIST OF EXHIBITS**

Monseratte Ghigliotty

073-16-8513

(Claimant)

(Social Security Number)

(Wage Earner) (Leave blank in Title XVI Cases or if name is same as above)

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>NO. OF PAGES</u>
<u>DOCUMENTS IN CONNECTION WITH COURT REMAND</u>		
10	Notice of Decision by William J. Wilkin, Administrative Law Judge, 02/28/92	0
11 (AC 12)	Request for Review of Hearing Decision/Order 03/20/92	3
12	Court Transcript	21
13 (AC 16)	Correspondence to Appeals Council from Vermont Senior Citizens Law Project 07/14/92	2
14	Correspondence to claimant from Appeals Council, 08/13/92	3
15	Decision of Appeals Council, 11/04/92	3
16	United States District Court for the District of Vermont, Certification, 02/09/93	1
17	United States District Court for the District of Vermont, Opinion and Order, 04/11/94	4
18	Order of Appeals Council Remanding Case to Administrative Law Judge, 04/30/94	2
19 (AC 22)	Correspondence to Appeals Council from Vermont Senior Citizens Law Project, 09/24/92	2
20 (AC 1)	Statement of Claimant or Other Person, undated	2
21 (AC 2)	Determination of Benefit Adjustment, 02/16/70	1
22 (AC 3)	Annual Report of Earnings 1975 & 1976	2
23 (AC 4)	Correspondence, 09/06/77	1
24 (AC 5)	Determination of Benefit Adjustment, 07/29/77	1
25 (AC 6)	Determination of Benefit Adjustment, 08/29/77	1
26 (AC 7)	Total Earnings Enforcement output for 1978-1979	2

## LIST OF EXHIBITS

Monserrate Ghigliotty

(Claimant)

073-16-8513

(Social Security Number)

(Wage Earner) (Leave blank in Title XVI Cases or if name is same as above)

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES
27 (AC 8)	Determination of Benefit Adjustment, 01/22/79	1
28 (AC 9)	Determination of Benefit Adjustment, 04/27/79	1
29 (AC 10)	Master Beneficiary Record of output dated 05/02/80	3
30 (AC 11)	Correspondence, 02/07/92	1
31 (AC 13)	Copy of Claimant's Birth Certificate	1
32 (AC 14)	Correspondence to Vermont Senior Citizens Law Project from Appeals Council, 05/19/92	1
33 (AC 15)	Correspondence to Appeals Council from Vermont Senior Citizens Law Project, 07/08/92	1
34 (AC 17)	Correspondence to claimant from Appeals Council, 08/13/92	3
35 (AC 18)	Correspondence to Appeals Council from Vermont Senior Citizens Law Project, 08/17/92	1
36 (AC 19)	Correspondence received from claimant, 08/20/92	1
37 (AC 20)	Correspondence to Meris L. Berquist from Appeals Council, 08/26/92	1
38 (AC 21)	Correspondence from Jeannette Fore Mangiacotti, 09/13/92	1
39	Correspondence from Vermont Senior Citizens Law Project to Social Security Administration with related documents, 09/12/91	14
40	Request for Waiver of Overpayment Recovery or Change in Repayment Rate, undated	3
41	Correspondence received from Meris L. Berquist, Esquire, requesting waiver 03/29/94	1

LIST OF EXHIBITS

Monserrate Chigliotti

(Claimant)

073-16-2510

(Social Security Number)

(Wage Earner) (Leave blank in Title XVI Cases or if name is same as above)

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>NO. OF PAGES</u>
42	Correspondence to Department of Treasury, 11/01/94 from Office of Hearings and Appeals	1
43	Correspondence from Meris Sarquist, Esquire, 11/29/94	2
44	Report of Contact, 01/05/95	1

EXHIBIT 1

NOTICE TO SOCIAL SECURITY AND SSI CLAIMANTS  
WHO HAVE RECEIVED A FAVORABLE DISABILITY DECISION  
FROM AN ADMINISTRATIVE LAW JUDGE

An Administrative Law Judge made a favorable disability decision on your claim for Social Security and/or Supplemental Security Income benefits. A copy of the judge's decision is attached. Of course, you must meet all other eligibility requirements before you can receive benefits.

As a result of the court case, Chagnon v. Schweiker, which affects resident of Vermont, the court set a time by which past and current benefits must be figured. Social Security has 60 days to figure these benefits. The 60 days start on the date of the Administrative Law Judge's decision.

Social Security has 80 days to figure Supplemental Security Income past benefits for people whose past benefits need more review. If you are one of these people, you will receive another notice soon.

In any event, Social Security will get in touch with you. They will ask you about the facts they need to know to figure your benefits. Be sure to answer all their questions. If you do not, your benefits may be delayed. Also, your benefits could be delayed if Social Security cannot get in touch with you.

Some people may not be well enough to handle their own benefits. They will need a representative payee to help them. If Social Security has trouble finding a payee for them, their benefits may be late.

Social Security has 60 or 80 days to figure your benefits. Mailing the checks by the Treasury Department takes another 10 days. If your benefits don't arrive in that time, call any Social Security Office. You may also notify Vermont Legal Aid, whose offices are listed in your telephone book.

EXHIBIT 2

NOTICE TO SOCIAL SECURITY AND SSI CLAIMANTS  
WHO HAVE RECEIVED A FAVORABLE DISABILITY DECISION  
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Some people may not be well enough to handle their own benefits. They will need a representative payee to help them. If Social Security has trouble finding a payee for them, their benefits may be late.

Your public assistance office paid you money while we worked on your claim. You agreed to have us send them your past benefits to repay that money. We will send your past benefits to your public assistance office within 60 days (or 80 days if appropriate) of the Administrative Law Judge's decision. If your past benefits are more than they paid you, they will return the difference to you. We will send you a letter when we send the check to your public assistance office.

Social Security has 60 or 80 days to figure your benefits. Mailing the checks by the Treasury Department takes another 10 days. If your benefits don't arrive in that time, call any Social Security Office. You may also notify Vermont Legal Aid, whose offices are listed in your telephone book.