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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

IN THE CASE OF

CLAIM FOR

(Claimant)

Supplemental Security Income

(Wage Earner)

(Social Security Number)

The claimant, _____, filed an application for supplemental security income benefits on September 30, 1992, a protective filing date, alleging disability due to diabetic acidosis. The claim was denied initially but granted upon reconsideration on August 10, 1993. By letter of September 16, 1993, the claimant was notified of her eligibility and the amount of monthly income which the pay office used in figuring her benefit payment monthly amount. The claimant's representative, Nancy Goodwin, requested a reconsideration of the payment amounts to her client. The issues were partially resolved.

A reconsideration notice issued on April 5, 1994 after having been filed on October 1, 1993 denying the claimant's protest of the amounts of "income" used to calculate her monthly benefit. The claimant filed a timely request for hearing and a brief of the issues by the claimant's representative. There is no need to have a hearing. An administrative law judge has the discretion to decide a case on the record and without an oral hearing, if the evidence in the record supports a "fully favorable" finding. **20 C.F.R. 404.948(a)**. The evidence in this record does support a "fully favorable" finding. Therefore, a formal hearing is not necessary.

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The claimant's disability status was decided favorably to the claimant. In calculating the amount of the monthly payment, the Social Security Administration local office notified the claimant that Section 1612 of the Social Security Act requires that in-kind support and maintenance (ISM), along with other forms of unearned income, are considered when establishing SSI eligibility and payment amounts. Rent-free shelter is a type of in-kind support and maintenance in the form of shelter received from outside a household. Since the claimant was living in a house with no requirement to pay rent for the period January 1993 through August 1993, the Social Security office considered this as income to the claimant subject to a maximum income value of \$164.66.

The home in question had been bought by the claimant and she was making monthly mortgage payments. When she was unable to continue making the payments, the mortgage was foreclosed upon and a sheriff's sale was had in December, 1992. The house was bought by the United States Department of Housing and Urban Development (HUD) but the claimant was not served with an eviction notice until August 19, 1993. After being served, she was evicted.

The claimant should not have been charged with ISM for the period January 1993 through August 1993 because the claimant was living in a home in which she had the right of possession and she was not living in the household of another. Social Security Regulation 20 C.F.R. §416.1130 provides that ISM will be considered when a claimant is receiving free shelter in the household of another. However, §416.1132(c)(1) tells us that the claimant was not living in another person's household because she was living in a home in which she had an ownership interest. §416.1212 defines the home exclusion. A home is not counted regardless of its value and it is any property in which an individual has an ownership interest and which serves as the individual's principal place of residence.

Louisiana law under Title XXIII, Chapter 2, Articles 3412 et seq. of the Louisiana Revised Statutes provide that a person who is in corporeal possession of an immovable remains in possession until possession is transferred to another or the person is evicted or expelled. Here, the claimant was not served with the eviction notice until August 19, 1993. The claimant had no control over

REPRESENTATIVE

the issuing of this notice nor the timing of the issuance of the notice of eviction. Once she was evicted, her right of possession ended; she moved after being served.

The Social Security office's determination that the claimant was receiving rent-free shelter since no household member had an ownership interest in the home in which the claimant lived and, thus, the claimant was receiving a form of ISM was in error.

This claim is granted.

FINDINGS

After careful consideration of the evidence of record, the Administrative Law Judge makes the following findings:

1. The claimant filed an application for supplemental security income benefits on September 30, 1992, a protective filing date.
2. The claimant was found disabled and was granted supplemental security income benefits on August 10, 1993.
3. The claimant's home in which she was living and for which she had been making monthly mortgage payments was foreclosed upon and sold by sheriff's sale in December, 1992 and the claimant was served with an eviction notice on August 19, 1993.
4. The decision to pay her the supplemental security income benefits at a reduced payment amount due to the in-kind support and maintenance the claimant allegedly received for the period January 1993 through August 1993 was in error.
5. Until the claimant was served with an eviction notice on August 19, 1993, she had a right of possession to the house in question which arose from her ownership interest.

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6. The claimant is entitled to retroactive benefits for the amount withheld due to the erroneous classification of her interest in the home.

DECISION

It is the decision of the Administrative Law Judge that the claimant did have an ownership interest in the home at issue and income was erroneously attributed to her as being ISM for the period of January 1993 through August 1993.

It is the further decision of the Administrative Law Judge that the claimant is entitled to the full amount of her supplemental security income benefits for the period January 1993 through August 1993 with credit to the Social Security Administration for amounts already paid to the claimant for that period.

It is the decision of the Administrative Law Judge that the claimant was without fault in causing and accepting the overpayment; and that therefore recovery of the overpayment is waived.



E. WILSON CRUMP II
Administrative Law Judge

JUN 09 1995

Date

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LIST OF EXHIBITS

(Claimant)

(Social Security Number)

Exhibit Number	Description	No. of Pages
1	Leads/Protective Filing Worksheet dated 9/30/92	1
2	Application for Supplemental Security Income Benefits filed 12/24/92 (protective filing date 9/30/92) with attached update application of 9/3/93	18
3	Initial Disability Determination by State Agency, Title XVI, dated 4/8/93 (with attachments)	11
4	Supplemental Security Income Notice dated 4/12/93	3
5	Request for Reconsideration filed 6/14/93	2
6	Reconsideration Disability Determination by State Agency, Title XVI, dated 8/10/93 (with attachments)	2
7	Report of Contact dated 9/10/93 with attachments	7
8	Letter dated 8/23/93 to claimant from SSA	2
9	Letter dated 8/27/93 to SSA from representative with attached Support Payment Information	3
10	Statement of Claimant dated 9/9/93	6
11	Social Security Notice of Reconsideration dated 9/16/93	3
12	Request for Reconsideration filed 10/1/93 with attachment	4
13	Letter dated 10/26/93 to SSA from representative	1
14	Letter dated 11/8/93 to SSA from representative	2
15	Letter dated 11/10/93 to representative from SSA with attachments	3
16	Supplemental Security Income Notice of Reconsideration-Disability dated 4/5/94	4
17	Request for Hearing filed 4/18/94 with attached brief	5

LIST OF EXHIBITS

(Claimant)

(Social Security Number)

Exhibit Number	Description	No. of Pages
18	Letter dated 5/27/95 to representative from ALJ	1
19	Submission for On Record Decision by Representative 6-1-95.	3