

11/22/96

NOTE TO PROCESSING CENTER
FURTHER ACTION NECESSARY

SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals

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DECISION

DEC 19 1996

IN THE CASE OF

CLAIM FOR

NATURAL GAS HOME
FOR LEASE AND USE INC.

BEVERLY LEVIS
(Claimant)

Supplemental Security Income

(Wage Earner)

008-50-4244
(Social Security Number)

This matter comes before the undersigned Administrative Law Judge pursuant to a timely request for hearing filed on December 15, 1996. A hearing was subsequently before the undersigned administrative law judge on August 22, 1996 in Burlington, Vermont. Although the claimant did not appear in person to testify on her own behalf, her interests were represented by her attorney, William Dysart of the Vermont Senior Citizen Law Project

The general issue to be determined is whether supplemental security income benefits paid to the claimant for the period October 1994 through May 1995 constituted an overpayment. It must be determined whether an overpayment has occurred and what is the specific amount of the overpayment. It further must be determined whether the overpayment may be waived. After carefully evaluating all the documents identified in the record as exhibits, the claimant's testimony and the arguments presented, I find that the claimant has been overpaid benefits and that the amount of this overpayment has been properly calculated. Finally, I find that the claimant was without fault in causing the overpayment and that recovery of the overpayment would defeat the purposes of 'the Act. Recovery of the overpayment is thereby, appropriately, waived.

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It has been determined that the claimant had been overpaid \$4,089.66 in supplemental security income benefits for the period October 1994 through May 1995 due to the receipt of a \$10,000.00 inheritance which pushed her resources in excess of the resource limitations for supplemental security income payment eligibility. While the regulations at 20 CFR 416.1121(g) classify inheritances as a type of unearned income rather than as a resource, the regulations at 20 CFR 416.1207(d) provide that types of unearned income such as this convert into countable resources, as defined at 20 CFR 416.1201(a)⁵, for determining supplemental security income payment eligibility if retained the first moment of the following month such unearned income is received. Therefore in this instance the \$10,000.00 inherited unearned income which the claimant initially received on October 15, 1994 converted into a countable resource for determining her supplemental security income payment eligibility the first moment of November 1994.

The claimant has argued that no overpayment was created because the inheritance at issue was not a countable resource between October 1994 and May 1995 because she discharged, by the intentional voluntary act of cancellation or renunciation, the obligation of the decedent's estate to pay the inherited bequest as provided under Vermont law. According to the claimant's affidavit, the claimant informed the executrix of the estate that she would refuse the decedent's bequest. Despite the claimant's refusal of the bequest, the executrix forwarded a check in the amount of \$10,000.00 to the claimant. The claimant informed the executrix that in order to effectuate her refusal of the bequest she would not negotiate the \$10,000.00 check that she had received. Rather the claimant retained the check thinking that not negotiating the check was the same as refusing the bequest and discharging the executrix of the obligation to pay the bequest (Exhibit 8).

While the undersigned is mindful of the implicit logic behind the claimant's argument, the undersign does not find it to be an acceptable basis for the premise that no overpayment was created. Although the claimant chose not to exercise her right to avail herself of the resources bequested to her, the claimant has not

⁵20 CFR 416.1201(a) defines resources as cash or other liquid assets or any real or personal property that an individual owns and could convert to cash to be used for her support and maintenance.

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provided any specific legal authority under Vermont state law that her intentional voluntary acts were sufficient to discharge the executrix of the decedent's estate of her obligation to pay the bequested inheritance. The ambiguity of the alleged sufficiency of the claimant's intentional voluntary act is made all the more clear by the fact that while the claimant did not negotiate the inheritance check, neither did she take any affirmative steps to return the check to the executrix prior to it becoming a stale negotiable instrument in May 1995. Because the claimant retained possession of the check, she could have at anytime prior to it becoming a stale negotiable instrument in May 1995 and despite her refusal of the bequest, negotiated the check, thereby recanting her refusal of the inherited bequest. Further, the claimant did ultimately accept the bequest when the executrix of the decedent's estate issued a second \$10,000.00 check in April 1995 which the claimant deposited into her bank account in May 1995.

Therefore, it is apparent that the overpayment of supplemental security income benefits to the claimant was created by the claimant's receipt of a \$10,000.00 inheritance that amounted to the claimant possessing resources in excess of the resource limitations for supplemental security income payment eligibility. The claimant's resources in excess of the resource limitations caused the claimant to no longer be eligible for supplemental security income payments. Since, as a result, the claimant had been paid supplemental security income benefits in excess of the amount she was entitled to, the ensuing overpayment was created. There is no evidence documented in the record that the overpayment amount calculated is incorrect.

The next issue to be determined is whether the claimant is at fault in causing the overpayment. The undersigned finds that, based on the evidence documented in the record, the claimant is without fault in causing the overpayment of supplemental security income benefits pursuant to 20 CFR 416.552. The evidence shows that the overpayment at issue was not the result of the claimant's failure to furnish information which she knew or should have known to be material, was not the result of an incorrect statement made by the claimant which she knew or should have known to be incorrect and was not the result of the claimant's failure to return a payment which she knew or could have been expected to know was incorrect.

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It appears from the evidence documented in the record, mainly the claimant's affidavit, that she did possess the knowledge that the regulations would require her to have in order to be found at fault for causing the overpayment by any of the means enumerated at 20 CFR 416.552 (a)-(c). The claimant was under an honest impression, regardless of whether or not that impression was correct, that not negotiating the inheritance check was a sufficient intentional voluntary act to discharge the executrix of the decedent's estate of the obligation to pay the bequested inheritance under Vermont state law and therefore was not a countable resource for purposes of determining her continued eligibility for supplemental security income benefit payments.

According to the claimant's affidavit she had never been given information explaining the rules on resources and transfer of resources either at the time of her application for supplemental security income payments or while she was receiving monthly benefit payments. The claimant states that she did not know that an overpayment could result from retaining the non-negotiated inheritance check and that had she known of this possible result, she would have signed the check over to other heirs of the decedent in order to preserve her financial eligibility for supplemental security income payments and to avoid the occurrence of an overpayment.

Even though the claimant ultimately accepted the the \$10,000.00 bequest, once she became knowledgeable of the resource rules, she promptly reported to the Administration this change in the status of her resources and spent them down on items for her support and maintenance in order to restore her financial eligibility for supplemental security income benefit payments. Most likely, the claimant would have taken these very same steps had she possessed this knowledge when she initially received the inherited bequest in October 1994. The regulations contemplate that a finding of without fault in causing an overpayment can legitimately be made on the basis of claimant's lack of knowledge of esoteric particulars of the social security program. While the claimant's lack of knowledge regarding resources may not be sufficient for the undersigned to find that an overpayment was not created, her lack of such knowledge is sufficient to find that she was without fault in causing the

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occurrence of the overpayment. Taking into account all of the surrounding circumstances, it can be said that the claimant was without fault in causing the overpayment.

The next issue to be determined is whether recovery of the overpayment would be against equity and good conscience or defeat the purpose of the Act. The claimant has stated in the record that she is unable to re-pay the overpaid benefits (Exhibit 2). The claimant's August 1995 overpayment waiver request financial statement indicates that she no longer has possession of the overpaid funds (Exhibit 2-3). This statement also indicates that while her sole current total monthly income constitutes entirely of her now reinstated supplemental security income benefit entitlement, which amounts to \$524.91, her current total monthly expenses amounts to \$895.00, indicating that she does not have sufficient funds to meet her everyday living expenses and necessities, never mind funds remaining to repay an overpayment (Exhibit 2).⁶ Under such circumstances it can be said that requiring the claimant to repay the overpaid amount out of her current receipt of social security benefits would defeat the purposes of the Social Security Act. Therefore, I find that recovery of the overpayment would defeat the purpose of the Social Security Act. Therefore recovery of the overpayment is appropriately be waived.

FINDINGS

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

1. The claimant was overpaid supplemental security income benefit payments between October 1994 and May 1995 in the total amount of \$4,089.66 as a result of her lack of knowledge regarding resources in excess of the supplemental security income resource eligibility limitations as they applied to her receipt of a \$10,000.00 inheritance.

⁶The claimant's supplemental security income benefit payments were reinstated in November 1995 after she had documented that her resources were spent-down below the \$2,000.00 supplemental security income eligibility resource limitations on medical expenses, property taxes and the painting of her residence (Exhibit 8).

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2. The claimant was without fault in causing the overpayment because she did not possess the required knowledge regarding resource limitations and transfer of resources.
3. Recovery of the overpayment would defeat the purpose of the Act because recovery of the overpayment would deprive the claimant of income required for ordinary and necessary living expenses.
4. Recovery of the overpayment is hereby waived.

DECISION

It is the decision of the Administrative Law Judge that the claimant was overpaid supplemental security income benefits in the amount of \$4,089.66; that she was without fault in receiving and accepting the overpayment; and that recovery of the overpayment would defeat the purpose of the Act, therefore recovery of the overpayment is appropriately waived.


FREDERICK HARAP
Administrative Law Judge

NOV 22 1996

Date

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