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FURTHER ACTION NECESSARY

SOCIAL SECURITY ADMINISTRATION  
Office of Hearings and Appeals

DECISION

DEC 12 1996

IN THE CASE OF

CLAIM FOR

Walter Friedl  
\_\_\_\_\_  
(Claimant)

Retirement Insurance Benefits  
\_\_\_\_\_

\_\_\_\_\_  
(Wage Earner)

081-12-7525  
\_\_\_\_\_  
(Social Security Number)

INTRODUCTION

This case is before the Administrative Law Judge on a request for hearing. A hearing was held on October 23, 1996 in New York, NY, at which the claimant appeared and testified. The claimant was represented by Jane Landry-Reyes, Esq. of BLS Legal Services Corp.

The issues to be decided in this case are (1) whether the claimant was overpaid retirement insurance benefits, and (2) whether recovery of the overpayment, if one exists, shall be waived.

After carefully considering the entire hearing record, and for the reasons set forth below, it is the conclusion of the Administrative Law Judge, that there was an overpayment made to the claimant. However, the claimant is without fault and will not have to repay the amount in question under the "waiver" provision of the Social Security Act.

APPLICABLE LAW & REGULATIONS

The Social Security Act and Regulations provide that recovery of an overpayment shall be waived if the overpaid individual was without fault in causing or accepting the overpayment and if recovery of the overpayment would either defeat the purpose of Title II of the Social Security Act, or be against equity and good conscience.

"Fault," as used in "without fault," applies only to the individual. The overpaid individual or any other individual from whom the Administration seeks to recover the overpayment is not relieved of liability and is not "without fault" solely because the Social Security Administration may have been at fault in making the overpayment. In determining whether an individual is without fault, the Administration will consider all pertinent circumstances, including his age, intelligence, education and physical and mental condition. What constitutes fault (except for "deduction overpayments") depends on whether the incorrect payment resulted from:

- (a) An incorrect statement made by the individual which he knew or should have known to be incorrect; or
- (b) Failure to furnish information which he knew or should have known to be material; or
- (c) With respect to the overpaid individual only, acceptance of a payment which he either knew or could have been expected to know was incorrect (20 CFR 404.507).

If the individual was without fault in accepting the incorrect payment, then it must be determined whether recovery of the incorrect payment would defeat the purpose of the Act or be against equity and good conscience.

In general, "defeat the purpose of Title II" means defeat the purpose of benefits under this title, i.e., to deprive a person of income required for ordinary and necessary living expenses. This depends on whether the person has an income or financial resources sufficient for more than ordinary and necessary needs, or is dependent upon all of his current benefits for such needs. Adjustment or recovery will defeat the purpose of Title II in (but is not limited to) situations where the overpaid person needs substantially all of his current income (including Social Security monthly benefits) to meet his current ordinary and necessary living expenses (20 CFR 404.508).

"Against equity and good conscience" means that adjustment or recovery of an incorrect payment (under Title II or Title XVIII) will be considered inequitable if an individual, because of a notice that such payment would be made or by reason of the incorrect payment, relinquished a valuable right or changed his or her position for the worse. In reaching such a determination, the individual's financial circumstances are irrelevant (20 CFR 404.509).

#### DISCUSSION

The claimant began receiving retirement insurance benefits in 1982 at age sixty-three. The claimant was subsequently convicted of a felony and incarcerated from October 25, 1993 through December 14, 1993. At that time he was put into a "work release" program until August 1994. However, in May 1994, his benefits were terminated by the Social Security Administration (SSA) and charged with an overpayment. SSA contended that a person could not receive benefits while incarcerated. The record shows that the claimant had been paid retirement insurance benefits during the period beginning October 25, 1993 through May 1994.

Pursuant to 20 CFR §404.468(a), "no monthly benefits will be paid to any individual for any month any part of which the individual is confined in jail, prison, or other penal institution or correctional facility for conviction of a felony." §404.468(c) states that "an individual is considered confined even though he or she is temporarily or intermittently outside of that facility (e.g. on work release)." As the law is quite clear on this issue, the Administrative Law Judge finds that the claimant did receive an overpayment of benefits for the period beginning October 25, 1993 to May 1994.

The Administrative Law Judge must now determine whether the claimant was "at fault" with regard to receiving the overpayment of benefits. In his request for waiver of overpayment, the claimant noted that (1) he was not made aware that he could not receive benefits while incarcerated and (2) he cannot repay any overpayment amount without it causing an undue financial hardship. These allegations are consistent with the other evidence of record, and are therefore, fully credible.

Based on the written statements of record and the hearing testimony, the Administrative Law Judge finds that the claimant was without fault in causing the overpayment, and that recovery of the overpayment would defeat the purpose of Title II of the Social Security Act under 20 CFR §404.508. Consequently, the overpayment must be waived.

#### FINDINGS

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

1. The claimant was not entitled to benefits beginning October 25, 1993 through May 1994.
2. The claimant was overpaid benefits.
3. The claimant was without fault in causing and accepting the overpayment (20 CFR 404.507).

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4. Recovery of the overpayment would defeat the purpose of title II of the Social Security Act (20 CFR 404.508).
5. Recovery of the overpayment is waived (20 CFR 404.506).

DECISION

It is the decision of the Administrative Law Judge that the claimant was without fault in causing and accepting the overpayment; that recovery of the overpayment would defeat the purpose of Title II of the Social Security Act; and that therefore recovery of the overpayment is waived.



MARK J. HECHT  
Administrative Law Judge

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Date