

SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS
TUCSON, ARIZONA

C.A.)
)
SSN: ***_**_****) Hearing: May 9, 2002
) 8:30 a.m.
)
Claimant.) Administrative Law Judge
) XXXXXXXXXXXX
_____)

HEARING MEMORANDUM

I. Statement of Case

On April 21, 1997, a Social Security Administration (SSA) Administrative Law Judge (ALJ) found C.A. disabled as of October 19, 1993 based mental and physical impairments. C.A. has received Social Security Disability Insurance (SSDI) payments from 1994 to the present date.

C.A. has worked while receiving SSDI benefits. C.A. has also consistently reported her work activity to SSA (C.A.'s Testimony, Exhibits B-2B, B-2E, B-3E, B-4E and Report of Continuing Disability Interview) SSA determined that C.A.'s trial work period was August 1998 through April 1999 and that her extended period of eligibility started May 1999 and would end if substantial work is performed after 36 months following this date. (Exhibits B-2B and B-3B) On May 18, 1999, SSA notified C.A. that she continued to be disabled, and

therefore eligible for SSDI payments, despite her work and earnings. (Exhibits B-2B and B-8B)

On November 24, 2000, SSA notified C.A. that SSA may decide her disability ended in August 1999 and requested additional information regarding her work and earnings. (Exhibit B-3B) Three days later, SSA conducted a continuing disability review interview with C.A..

Subsequently, a continuing disability review was undertaken by the state agency. (Case Development Sheet and Explanation of Determination)

On January 16, 2001, SSA notified C.A. that, as of August 1999, she was no longer eligible for SSDI because she was doing substantial work. SSA also informed C.A. that she had a \$8550.00 SSDI overpayment because SSA did not stop her checks until January 2001. Thus, the overpayment period is August 1999 to January 2001. (Exhibit B-4B)

On February 2, 2001, C.A. filed a Request for Reconsideration of the January 16, 2001 SSA decision to stop her SSDI benefits and to charge her with an overpayment. C.A. also filed a Request for Waiver of Repayment of the SSDI overpayment on the same date.

On April 11, 2001, the state agency concluded that “there is no medical improvement. Therefore a continuance [of disability] is indicated.” (Exhibit B-4A; see also, Case Development Sheet). C.A. has continued to receive SSDI payments based on her disability.

On September 28, 2001, SSA denied C.A.’s request for a waiver of repayment of the overpayments finding that C.A. was at fault for the overpayment because . . . “A notice was sent to you on May 18, 1999 advising you that your trial work period was expired. It also explained the 36 month extended period of eligibility and substantial gainful activity. Evidence also indicates that *you subsequently contacted us to report your work activity, therefore you were aware that your disability benefits may be affected.*” [Emphasis added] (Exhibit B-3B)

C.A. requested a hearing to challenge this SSA decision.

II. C.A.’s Work History

C.A.’s work at Desert Hills during the 9 month trial work period was found to be not substantial. (Exhibit B-2B) During the period of overpayment, C.A. worked part-time. She

worked two to three days a week at *** Behavioral Health as a call center representative answering the phones. After a few months, she was discharged from this job because she unable to do it. C.A. then worked three days a week at *** Behavioral Health as a behavioral health technician. (Exhibit B2-E and B-3E and Report of Continuing Disability Interview.) She has held subsequent part-time jobs after leaving ***'s employment. (C.A.'s testimony)

III. Issues and Argument

A. Whether C.A. was overpaid Social Security Disability Insurance (SSDI) benefits?

C.A. contends that there is no SSDI overpayment because C.A.'s disability never ceased. According to the state agency's decision of April 11, 2001, there was no medical improvement in C.A.'s disability. C.A.'s work had to be considered during this review. In its explanation of the determination, the state agency discussed C.A.'s work stating that she was "managing to work two days of the wk, but would likely suffer emotional deterioration (sic) under stress." (See, Case Development Sheet, Explanation of Determination.) Further, the continuing disability decision notice provided to C.A. on April 11, 2001 referred to the nine month trial work period. (Exhibit B-8B).

In November 2000, SSA started the continuing disability review process in C.A.'s case. However, before the continuing disability decision was rendered, the local office notified C.A. that her disability ended because of "substantial work." (Exhibit B-4B). The state agency later determined that this same work was not substantial in the first step of the evaluation process required in continuing disability reviews as the agency went on to determine whether there had been medical improvement in the subsequent evaluation steps. 20 C.F.R. 404.1594(f). The agency found there was no medical improvement. The evidence clearly shows that the local SSA

office staff made a premature decision finding that C.A. was no longer disabled based on her work activity, and as a result, C.A. was improperly charged with an overpayment of SSDI benefits from 8/99 to 1/01. As such, the overpayment is not valid.

B. If there is an overpayment, whether recovery of the overpayment should be waived?

1. Whether C.A. was without fault in causing the overpayment as defined by 42 C.F.R. 404.507?

The evidence establishes that C.A. fully cooperated with SSA by reporting her work to SSA when there were job changes and when requested by SSA. (C.A.'s testimony and work activity reports in the record) In fact, SSA admits in its waiver denial that C.A. contacted SSA to report her work activity. (Exhibit B-3D) Although she earned substantially more during the trial work period, C.A. was notified by SSA that her work during the trial work period was not substantial and she continued to be eligible for SSDI payments despite these earnings. (Exhibit B-2B) Further, C.A. received letters from SSA stating that her SSDI benefits would increase the following year based on previous year's earnings. (SSA Notice of Changes in Benefits dated 11/4/99 and 11/2/00). All of these factors led C.A. to believe that despite her work activity, she continued to be eligible for SSDI benefits.

2. Whether recovery of the overpayment would defeat the purpose of Title II of the Act as defined by 42 C.F.R. 408.508, or, be against equity and good conscience as defined by 42 C.F.R. 404.509?

As demonstrated by C.A.'s request for waiver, C.A. would be deprived of income required for ordinary and necessary living expenses if she is required to repay this overpayment. (Exhibit B-4E). Further, C.A. received these benefits in reliance of SSA's actions after she

reported her work and she continued to receive payments.

V. Conclusion

There is no overpayment of SSDI benefits from August 1999 to January 2001 because SSA, through the state agency, has consistently determined that C.A. is disabled since her initial onset of disability despite her work and earnings.

If this court finds there is an overpayment, C.A. should be granted a waiver of repayment of the overpayment on the basis that she is not at fault for causing the overpayment as she reported her work to SSA on a timely and consistent basis, she cooperated with SSA to the best of her ability and understanding, and she can not afford to repay the overpayment. Further, it would be against equity and good conscience to require C.A. to repay this overpayment.

Respectfully Submitted by:

XXXXXXXXXX, Attorney for C.A.