

SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS
TUCSON, ARIZONA

J.W.)
) Hearing: November 1, 2001
SSN: ***_**_****) 10:15 a.m.
)
Claimant.) Administrative Law Judge
_____) XXXXXXXX

HEARING MEMORANDUM

I. Statement of Case

On December 18, 1992, a Social Security Administration (SSA) Administrative Law Judge (ALJ) found J.W. disabled as of December 20, 1990 based on back problems and depression. (Exhibit 1) In SSA records dated August 5, 1999, Claimant's primary diagnosis was noted as paranoid schizophrenia. (Exhibit 8)

J.W. received Social Security Disability Insurance (SSDI) payments from June 1991 to June 1999. (Exhibits 6, 17) J.W. also received SSI in some months during this period. (Exhibits 38, 47/11, 47/15). J.W. sometimes worked while receiving benefits. (Exhibit 28/2, J.W.'s Affidavit)

On June 22, 1994 and July 5, 1994, SSA notified J.W. that she continued to be eligible for SSDI payments despite her work and earnings. SSA determined that J.W.'s trial work period was April 1992 through December 1992 and her extended period of eligibility was from January 1993 to January 1996. SSA also found that J.W.'s work earnings in 1993 and 1994 were not substantial. (Exhibits 39, 40, 41)

On September 16, 1999, SSA notified J.W. that, as of October 1998, she was no longer

eligible for SSDI due to work and earnings. SSA also informed her that her last month of eligibility for SSDI was December 1998. (Exhibit 6, 11) J.W. received SSDI payments until June 1999 when they were finally stopped. (Exhibit 17)

On October 19, 1999, SSA notified J.W. that she was overpaid \$29,340.00 for SSDI benefits paid to her from January 1992 to December 1998. (Exhibits 12, 18) A couple days earlier, SSA had notified J.W. that she was overpaid \$2166.00 for SSDI benefits paid to her from January 1999 to June 1999. (Exhibit 17) Thus, SSA charged J.W. with an overpayment of every SSDI payment she received between 1992 and 1999. (Exhibit 12, 17, 18)

The record indicates that J.W. received Supplemental Security Income (SSI) payments which were eventually charged as an overpayment. (Exhibits 38, 47/11, 47/15) On March 9, 2001, the U.S. Department of Treasury intercepted J.W.'s federal income tax refund to repay SSDI and SSI overpayments to SSA. According to the Department of Treasury's letter, \$1410.57 was recouped for the SSA office in Baltimore, Maryland and \$1168.47 was recouped for the SSA office in Kansas City, Missouri. (Exhibit 47/15)

SSA denied J.W.'s requests for a waiver of repayment of the overpayments finding that J.W. was at fault for the overpayments because she could not prove she reported her work to SSA. (Exhibits 20, 21, 22, 24) J.W. requested a hearing. (Exhibit 26)

II. J.W.'s Work History

J.W. was working at Goodwill in December 1992 when the SSA ALJ found her disabled. She worked at XXXXXXXX off and on between 1991 and 1994 through a vocational rehabilitation program. (Exhibits 39, 41/2, 41/3, J.W.'s Affidavit) J.W. did not work in 1995. She had a couple of unsuccessful work attempts in 1996 and 1997. (Exhibit 28/2, 35, J.W.'s

Affidavit)

J.W. had several jobs in 1998, some more successful than others. In October 1998, she started babysitting in a private home. While babysitting, she was hired at XXXXXXXX. When she found out that she could not physically do the job at the nursing home, she continued to do private babysitting until she started working at XXXXXXXXXXXX in May 1999. (Exhibit 42, 45, J.W.'s Affidavit)

In May 1999, J.W. started working as a temporary worker for XXXXXXXX as a machine operator. She originally obtained this job through XXXXXXXXXXXX. She eventually became a permanent employee. (Exhibit 45, J.W.'s Proposed Exhibit regarding work activity from 1991 to 1999, J.W.'s Affidavit)

III. J.W.'s Disability

In 1990, J.W. was hospitalized for mental problems. At that time, she was diagnosed with major depression. She applied for SSA disability benefits based on her medical and psychological conditions. She continues to have health problems. Her current medical conditions include back problems, migraine headaches, high cholesterol and high blood pressure. Her mental diagnosis was eventually changed to paranoid schizophrenia, which includes ongoing symptoms of memory loss, confusion, hearing voices and depression. On June 29, 2001, J.W. took a medical leave of absence from her job at XXXXXXXX and she has not returned to work there. At this time, she is trying to complete training in another field of work and she has reapplied for SSDI benefits. (Exhibit 8, J.W.'s Affidavit)

IV. Argument

A. SSA Erroneously Charged J.W. with an SSDI Overpayment from January 1992 Through December 1998 Based on Substantial and Gainful Work Activity.

SSA erroneously charged J.W. with a SSDI overpayment from January 1992 to December 1998 based on its finding that J.W. had engaged in substantial work as of October 1998. (Exhibit 11, 18) SSA improperly charged J.W. with an overpayment for this period for at least three reasons: (1) SSA previously found J.W.'s work prior to 1994 was not substantial, (2) J.W. did not engage in substantial work nor did she have significant earnings in 1995, 1996, 1997 and (3) SSA determined that J.W. work was substantial as of October 1998 making her ineligible for benefits after December 1998.

There is no question that SSA was aware of J.W.'s work from 1992 to 1994. The SSA ALJ made a finding of disability in 1992 when J.W. was working. (Exhibit 1, 28/2) In July 1994, SSA reviewed J.W.'s work activity from 1992 to 1994, determined that it was not substantial and advised J.W. she continued to be eligible for disability benefits. (Exhibit 39, 40) J.W. had no earnings in 1995, she earned \$62.66 in 1996, \$182.50 in 1997, and \$1774.43 in 1998. (Exhibit 28/2) J.W. worked for seven different employers in 1998. She earned a total of less than \$500 from five of the employers, she earned \$578 from one employer and she earned approximately \$400 a month as a "self employed" babysitter starting in October 1998. (J.W.'s Proposed Exhibit regarding work activity from 1991 to 1999) SSA made an explicit finding that J.W.'s work in 1998 was not substantial or gainful until October 1998. This made J.W. ineligible for SSDI benefits after December 1998. (Exhibit 6, 11) SSA's own evidence clearly demonstrates that there no basis to find that J.W. was overpaid SSDI benefits from January 1992 through December 1998.

B. SSA Has Presented Insufficient Evidence to Support a Finding That a SSI Overpayment Also Occurred While J.W. Was Receiving SSDI Benefits.

SSA has provided insufficient evidence to show that J.W. was overpaid SSI for any reason during this period. There is no SSI notice of overpayment in the record. Also, there is no specific reference to the amount or the months that a SSI overpayment occurred in the record. For this reason, it is difficult for J.W. to know whether SSA has properly charged an SSI overpayment.¹ The only reference to a SSI overpayment is in the collection documents J.W. has provided this court. SSA has not proven by the evidence that a SSI overpayment has occurred, and as such, SSA should be barred from pursuing repayment of this overpayment.

Further, despite a lack of evidence supporting SSDI and the SSI overpayments, SSA has already collected most of the SSI overpayment and a portion of the SSDI overpayment from J.W. through a federal tax intercept. (Exhibit 47/15)

C. If There is an Overpayment, J.W. Should Be Granted a Waiver of Repayment of The Overpayment Because She Reported Her Work and Cooperated with SSA.

The record indicates that in 1994, SSA advised J.W. that she was responsible for reporting work and earnings to SSA and that such work could affect her eligibility for continuing disability payments. (Exhibits 39, 40) J.W. states that she didn't always understand the letters she received from SSA, but if SSA asked her to call, she would. She also states that she reported jobs which lasted more than a few days to SSA. (Exhibit 47/5, J.W.'s Affidavit) Unfortunately, due to her mental disability, J.W. does not specifically remember when she reported her jobs or who she spoke to when doing this. The SSA record contains some evidence that she reported

¹ This is also a potential due process problem.

jobs to SSA. (Exhibit 31) However, a lack of evidence in the record is not conclusive as to whether she contacted SSA to report her work. J.W. has tried, to the best of her ability, to cooperate with SSA. This evidenced by J.W.'s attempts to complete forms for SSA when asked to by SSA. (Exhibit 27, 31, 42) Previously, SSA failed to consider J.W.'s mental condition in deciding whether she should qualify for a waiver.

V. Conclusion

There is no overpayment of SSDI benefits from January 1992 to December 1998 for the reasons stated in this memorandum. In addition, SSA has provided insufficient evidence to show that a SSI overpayment occurred. If this court finds there is no overpayment, SSA should refund to J.W. any amount already collected for the overpayments. Further, J.W. should be granted a waiver of repayment of any remaining overpayment on the basis that she reported her work to SSA and she cooperated with SSA to the best of her ability, in light of her mental condition.

Respectfully Submitted by:

XXXXXXXXXX, Attorney for J.W.