

SOCIAL SECURITY ADMINISTRATION  
OFFICE OF HEARINGS AND APPEALS  
TUCSON, ARIZONA

M.B. ) ADMINISTRATIVE LAW JUDGE  
 ) XXXXXXXXXXXX  
SSN: \*\*\*-\*\*-\*\*\*\* )  
 )  
Claimant. ) HEARING: TUESDAY, JUNE 5, 2001  
 ) 9:15 a.m.

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**CLOSING ARGUMENT**

M.B. received Social Security Disability Insurance for herself and her children in good faith. She had no idea that she was not entitled to the benefits when she received them. She relied on the workers at the Social Security Administration (SSA) to tell her if she was eligible for the benefits. During the overpayment period, she did not receive any letters from Social Security that lead her to believe that she was not eligible for benefits because she was working.

M.B.'s mental disabilities contributed to her limited understanding of SSA's rules on working. According to the medical evidence and the SSA Administrative Law Judge's decision finding M.B. disabled, her disabilities include Borderline Intellectual Functioning with a verbal IQ score of 77, a dependent personality disorder and a seizure disorder controlled by medication. The ALJ also noted that M.B.'s educational level was limited or less in that she graduated from high school, but only with a modified certificate and by taking special education classes. (ALJ Disability Decision dated 1/25/91)

According to her high school records, M.B. was in the Educably Mentally Handicapped (EMH) program. When she was almost 19 years old, she was reading at a 4.8 grade level, spelling at a 3.3 grade level and doing arithmetic at a 6.9 grade level. It was noted that her specific weaknesses included reading comprehension and organization of ideas. (IEP dated 2/10/83).

M.B.'s ability to read letters and to fill out forms from SSA was severely limited due to her reading comprehension problems. When M.B. was unable to understand a letter or form she received from SSA, she would ask another adult to read and explain it to her. Her father, her mother-in-law and her father-in-law all helped her read her SSA letters and fill out SSA documents. During the overpayment period, nothing they read from SSA lead them to believe that M.B. may not be eligible for disability benefits because she was working.

Further, M.B.'s ability to understand SSA concepts such as "trial work period" and "substantial gainful activity" is nonexistent. To deny her waiver request, the SSA Representative relied on a letter dated November 19, 1991 to find that M.B. should have known she was being overpaid because that letter tells her that her trial work period had ended and it contained an explanation of substantial gainful activity. (Exhibits B-3; B-13, page 2) Even if she understood these concepts, the November 19, 1991 letter does not tell her that she was not eligible for disability benefits because she was working. To the contrary, it tells her that she continues to be eligible for benefits despite the fact that she was working. It also states that her claim would

be reviewed from time to time to see if she was still eligible for disability benefits and that she would be contacted by SSA if there was any question as to her eligibility. This language clearly placed the burden of the review on SSA. It also lead one to believe that SSA would contact M.B. if they needed information from her. It does not direct M.B. to contact SSA under any circumstances. At this point, M.B. understood the following: SSA knew she was working and she was eligible for disability checks even though she was working.

The trial work period information referred to in the November 19, 1991 letter defined trial work period and substantial gainful activity. (Claimant's exhibit #12) Although M.B. did not understand these terms, she thought they meant that she could earn \$500 a month and still be eligible for benefits. She knew that she had to "keep her hours down" and she often told her employers that she could not have too many hours. The problem, however, was that she did not understand how to calculate her hours or her wages to know if she was over \$500 a month, so she did not know she was earning too much. Also, she remembers reporting her work to SSA on her son's annual representative payee reports. All of these things lead her to believe that SSA was watching how much she earned and that SSA would notify her if she was earning too much.

M.B.'s belief that SSA knew that she was working throughout the overpayment period was confirmed when she received letters from SSA such as the letters dated November 17, 1997 which informed her that her check and her sons' checks would be increased based to the wages she earned during the previous year. (Claimant's exhibits 5,

6, 7)

Here, it appears that SSA did very little in this case for several years causing the overpayment to grow out of control. SSA could have discovered this problem sooner independent of M.B.'s report that she was working. SSA knew she was working, they knew she was working when she was approved for benefits, they knew she was working when they increased her benefits based on previous year's wages, and they knew she was working when M.B. reported it on her representative payee reports. Yet, it appears that SSA did nothing for several years. In fact, it appears that on May 26, 1999, SSA still did not know that SSA knew about M.B.'s past work because a notice was sent to her for proof of wages from 1/93. (Claimant's exhibit #4) A notice asking for similar information back to 1/92 had already been sent to M.B. on July 28, 1998 (Claimant's exhibit #3), M.B. had already responded to a previous notice on June 24, 1998 by reporting her work activity (Exhibit B-4), and SSA had already stopped M.B.'s disability checks in September 1998. (Exhibit B-6, B-7) Despite all this activity, SSA asked for her work activity again in May 1999.

M.B. cooperated with SSA in good faith, and within her limitations, to receive benefits that she believed were due her and her children. SSA's delay in reviewing her case and discovering this overpayment sooner was an inexcusable failure that caused great harm to M.B. and her family. SSA knew that she was working from the beginning when she started receiving benefits, SSA increased her checks over the years based on her wages, and SSA provided her with an inadequate information in her notices. For

these reasons, M.B. should be found eligible for waiver of repayment of this large overpayment as she is without fault and she can not afford to repay it. Further, it would be against equity and good conscience to recover this overpayment from her.

Respectfully Submitted,

XXXXXXXXXX, Attorney for M.B.