IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

HUGH HELD and)
KELLEY RICHARDSON-WRIGHT,)
on behalf of themselves)
and all other similarly situated,)
) Civil Action No. 2:15-cv-01732
Plaintiffs,)
)
v.)
)
CAROLYN W. COLVIN, in her official	,)
capacity as Acting Commissioner of Social)
Security Administration,)
)
Defendant.)

DECLARATION OF ERIK JONES

Pursuant to 28 U.S.C. § 1746, I, Erik Jones, declare as follows:

- 1. I am the Associate Commissioner of the Office of Public Service and Operations Support (OPSOS), which is a branch within the Office of Operations in the Social Security Administration (SSA). I make this declaration based on my own personal knowledge, on information contained in the records of SSA, and/or on information provided to me by SSA employees.
- 2. As the Associate Commissioner of OPSOS, I provide operational, programmatic and administrative support to the Deputy Commissioner for Operations, regional offices, field offices, program service centers, central operations, and headquarters staff components. I am responsible for the operational delivery of public service and the overall effectiveness and efficiency of operational components. I oversee and conduct studies, analyses, and implementation planning on a myriad of issues related to SSA's benefit programs and provide

leadership on public service delivery, budget, management information, and administration issues.

SUPPLEMENTAL SECURITY INCOME OVERPAYMENTS

- One of the areas for which OPSOS has responsibility is the assessment of overpayments made to recipients of Supplemental Security Income (SSI) by technicians. SSI is a needs-based program administered by SSA that provides monthly payments to people with limited income and resources who are disabled, blind, or age 65 or older. One feature of that program is that, in determining an individual's eligibility and payment amount, the income and resources of the individual and the individual's ineligible spouse, if any, are taken into account. Accordingly, SSA's recognition of an individual's marriage may affect the individual's SSI eligibility or payment amount, depending on the amount of the ineligible spouse's income and resources. In addition, if both spouses are SSI eligible, SSA is required to pay SSI benefits based on a couple's rate that is less than twice an eligible individual's rate. If there is a delay between the individual's change in marital status and the date on which SSA learns of the change, the amount paid to the individual or couple could be more than that owed the individual or couple and that excess will constitute an overpayment.
- 4. OPSOS also has responsibility over technician determinations as to whether a waiver requested by an SSI recipient determined to have received an overpayment should be granted. SSI recipients who have been determined to have received overpayments can request waiver at any time; there is no deadline to request waiver.

UNITED STATES V. WINDSOR

5. Prior to June 26, 2013, SSA did not recognize marriages between two persons of the same sex in light of section 3 of the Defense of Marriage Act, 1 U.S.C. § 7 (DOMA). For

that reason, SSI beneficiaries who were married to spouses of the same sex under state law were treated as single for purposes of determining their SSI eligibility and payment amounts.

- 6. On June 26, 2013, the Supreme Court found section 3 of DOMA to be unconstitutional in <u>U.S. v. Windsor</u>. As a result of the decision in <u>Windsor</u>, Section 3 of DOMA no longer precludes the federal government from recognizing marriages between persons of the same sex under the laws of states that give legal recognition to such marriages.
- 7. In some instances, this meant that SSI beneficiaries who previously received benefits as single individuals notwithstanding the fact that they were married to spouses of the same sex now were required to have their benefits redetermined as married individuals.
- 8. Although SSA determined that the plaintiffs in this case, Hugh Held and Kelley Richardson-Wright, had received overpayments for a period between the date on which Windsor's invalidation of section 3 of DOMA became effective and the respective dates on which their SSI eligibility and payment amounts were redetermined, those overpayments were waived in April 2015.

HUGH HELD

9. Following a periodic SSI eligibility redetermination for Mr. Held in April 2014, approximately ten months after the <u>Windsor</u> decision, SSA reduced the amount of Mr. Held's SSI benefits based on consideration of his spouse's income and resources. Because his marital recognition status had in fact changed effective July 2013 (the first month following the <u>Windsor</u> decision), SSA determined that he had received overpayments over a period from July 2013 to May 2014.

- 10. On or about October 2, 2014, Mr. Held filed a Request for Reconsideration (Form SSA-561) of the benefit reduction. A copy of Mr. Held's Request for Reconsideration is attached hereto as Exhibit A (personal information reducted).
- 11. SSA has considered Mr. Held's Request for Reconsideration to be a request for waiver, and, on or about April 29, 2015, made a determination to grant this request for waiver.
- 12. By letter dated April 30, 2015, SSA notified Mr. Held that it had granted his request for waiver of the overpayment. A copy of the April 30, 2015 letter is attached hereto as Exhibit B (personal information redacted).
- 13. By a subsequent letter dated May 1, 2015, SSA further notified Mr. Held that because it had granted the request for waiver of the overpayment, he was not required to repay the overpayment. The letter also notified Mr. Held that his overpayment balance was \$0.00. A copy of the May 1, 2015 letter is attached hereto as Exhibit C (personal information redacted).
- 14. As a result of the agency's determination to waive Mr. Held's overpayment, his current overpayment balance is \$0.00.
- 15. Because SSA waived Mr. Held's overpayment, he has no overpayment outstanding to SSA.

KELLY RICHARDSON-WRIGHT

16. Following a periodic SSI eligibility redetermination for Ms. Richardson-Wright in or around November 2014, approximately four months after the <u>Windsor</u> decision, SSA reduced the amount of Ms. Richardson-Wright's monthly SSI benefit to an amount based on the applicable SSI couple's rate. Because her marital recognition status had in fact changed effective July 2013 (the first month following the <u>Windsor</u> decision), SSA determined that she had received overpayments over a period from September 2013 to December 2014.

- 17. On or about January 15, 2015, Ms. Richardson-Wright filed a Request for Reconsideration (Form SSA-561-U2). A copy of Ms. Richardson-Wright's Request for Reconsideration is attached hereto as Exhibit D (personal information redacted).
- 18. SSA has considered Ms. Richardson-Wright's request for reconsideration to be a request for waiver, and, on or about April 30, 2015, made a determination to grant this request for waiver.
- 19. By letter dated April 30, 2015, SSA notified Ms. Richardson-Wright that it had granted her request for waiver of the overpayment. The letter also notified Ms. Richardson-Wright that because it had granted the request for waiver of the overpayment, she was not required to repay the overpayment, and that her overpayment balance was \$0.00. A copy of the April 30, 2015 letter is attached hereto as Exhibit E (personal information redacted).
- 20. SSA records show that, as a result of the agency's determination to waive Ms. Richardson-Wright's overpayment, her current overpayment balance is \$0.00.
- 21. Because SSA waived Ms. Richardson-Wright's overpayment, she has no overpayment outstanding to SSA.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of June 2015.

Erik Jones

EXHIBIT A

Page 1 of 1

Page

INSERT THIS END FIRST

Client Name: Hugh Allan Held

Document Description: Request for Reconsideration

Form Name: 561

Printed by: V. Munoz



RQID:8D405554915 SSN:392787288 DOCTYPE:1100 RF: CS:dleb

Request ID:	BD405554915
Site ID:	951
SSN:	
Document Type:	1100

Form Specific Information:

2014

Prior Edition May Be Used Until Exhausted 2138912888 Form SSA-561-U2 (04-2013) ef (04-2013) OCT-07-2014 14:52

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P.003

Claims Folder

EXHIBIT B

SI9

Social Security Administration **Supplemental Security Income**

Notice of Reconsideration

SOCIAL SECURITY
WILSHIRE CENTER
4000 WILSHIRE BLVD
LOS ANGELES, CA 90010-9918
Date: May 01, 2015
Claim Number:

HUGH A. HELD

Dear HUGH HELD

Reconsideration Filed: October 2, 20

After reviewing your case, we have made a fully favorable decision on your appeal. The overpayment of \$6205.30 has been waived. You will not have to pay this money back.

If You Disagree With The Decision

If you disagree with this decision, you have the right to request a hearing. A person who has not seen your case before will look at it. That person is an Administrative Law Judge (ALJ). The ALJ will review your case again and look at any new facts you have before deciding your case.

- You have 60 days to ask for a hearing.
- The 60 days start the day after you receive this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason if you wait more than 60 days to ask for a hearing.
- You have to ask for a hearing in writing. We will ask you to sign a form HA-501-U5, called "Request for Hearing." Contact one of our offices if you want help.

Please read the enclosed pamphlet, "Your Right to an Administrative Law Judge

Page 2 of 3

Hearing and Appeals Council Review of Your Social Security Case." It contains more information about the hearing.

How The Hearing Process Works

The ALJ will mail you a letter at least 20 days before the hearing to tell you its date, time and place. The letter will explain the law in your case and tell you what has to be decided. Since the ALJ will review all the facts in your case, it is important that you give us any new facts as soon as you can.

The hearing is your chance to tell the ALJ why you disagree with the decision in your case. You can give the ALJ new evidence and bring people to testify for you. The ALJ also can require people to bring important papers to your hearing and give facts about your case. You can question these people at your hearing.

It Is Important To Go To The Hearing

It is very important that you go to the hearing. If for any reason you can't go, contact the ALJ as soon as possible before the hearing and explain why. The ALJ will reschedule the hearing if you have a good reason.

If you don't go to the hearing and don't have a good reason for not going, the ALJ may dismiss your request for a hearing.

If You Want Help With Your Appeal

You can have a friend, representative, or someone else help you. There are groups that can help you find a representative or give you free legal services if you qualify. There also are representatives who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it.

Suspect Social Security Fraud?

Please visit http://oig.ssa.gov/r or call the Inspector General's Fraud Hotline at 1-800-269-0271 (TTY 1-866-501-2101).

If You Have Questions

We invite you to visit our website at www.socialsecurity.gov on the Internet to find general information about Social Security. If you have any specific questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 877-803-6308. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY 6TH FLOOR SUITE 650 611 W 6TH STREET LOS ANGELES, CA 90017-3106

Page 3 of 3

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

If you plan to visit an office you may call ahead to make an appointment. This will help us serve you more quickly.

Social Security Administration

EXHIBIT C

Social Security Administration **Supplemental Security Income**

Overpayment Information

SOCIAL SECURITY
WILSHIRE CENTER
4000 WILSHIRE BLVD
LOS ANGELES, CA 90010-9918
Date: April 30, 2015
Claim Number:
SI9

HUGH A. HELD

Dear HUGH HELD

We are writing to tell you that we are waiving the collection of your Supplemental Security Income overpayment of \$6205.30. This means you will not have to pay this money back.

The Reason For Our Decision

For us to waive the collection of your overpayment, two things have to be true.

• It was not your fault that you got too much Supplemental Security Income.

AND

• Paying us back would mean you cannot pay your bills for food, clothing, housing, medical care, or other necessary expenses, or it would be unfair for some other reason.

Based on the facts we have, we found that both of these are true about you. Therefore, you will not have to pay us back.

If You Disagree With The Decision

If you disagree with the decision, you have the right to appeal. We will review your case again and consider any new facts you have. A person who did not make the first decision will decide your case.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason if you wait more than 60 days to ask for an appeal.
- You have to ask for an appeal in writing. We will ask you to sign a form SSA-561-U2, called "Request for Reconsideration." Contact one of our offices if you want help.

How to Appeal:

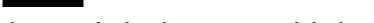
There are two ways to appeal. You can pick the one you want. If you meet with us in person, it may help us decide your case.

- Case Review. You have the right to review the facts in your file. You can give us more facts to add to your file. Then we will decide your case again. You will not meet with the person who decides your case.
- **Informal Conference** . You will meet with the person who decides your case. You can tell that person why you think you are right. You can give us more facts to help prove you are right. You can bring other people to help explain your case.

If You Want Help With Your Appeal

You can have a friend, representative or someone else help you. There are groups that can help you find a representative or give you free legal services if you qualify. There also are representatives who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a representative who is eligible for direct pay, we will withhold up to 25 percent



Page 3 of 3

of any past due benefits to pay toward the fee.

Suspect Social Security Fraud?

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SOCIAL SECURITY 6TH FLOOR SUITE 650 611 W 6TH STREET LOS ANGELES, CA 90017-3106

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

Social Security Administration

EXHIBIT D



INSERT THIS END FIRST



Fax Coversheet **NDRed**



Request ID: 0000000000000052998299NB Document Type Code: 7222

Site ID: \$DF CoSSN: 029602773

RETURN DOCUMENTS TO: DONOVAN, J. DATE SUBMITTED: 04/08/2015

SUBMISSION INFORMATION:

Document Type Description: 561-Request to file a Reconsideration Remarks: FILING DATE 1/15/2015

	Claimant's Name	RICHARDSON- WRIGHT, KELLEY SUE
	Program	T16
Associated Clalms:	Claim SSN BIC/10	ī

Filing Date

Claim Type

06/06/2012

Disability

Please discard the paper coversheet after verification of submission

APR-11-2015 16:44 CSI From:

#336 P.001/001

13:59

04/08/2015

P.002

6175659359

Form Approved OMB No. 0960-0622 ㅂ챯 ATTORNEY (Do not write in this space) CENTRAL PROCESSING SITE (SVB) 2 [] <u>№</u> SOCIAL SECURITY OFFICE ADDRESS NOTE: Take or mail the completed original to your local Social Security office, the Veterans Affairs Regional Office in Manila or any U.S. Foreign Service post and keep a copy for your records. SSA should not have attempted to recover this overpayment. Also, the amount of the everpayment is incorrect. previously attempted to file a request for reconsideration at the Gardner, MA office on Dec. 12 and again on 22. Both times the office refused to accept it. DISTRICT OFFICE RECONSIDERATION ZIP CODE SUPPLEMENTAL SECURITY INCOME OR SPECIAL VETERANS BENEFITS RECONSIDERATION ONLY (See the three ways to appeal in the Hew To Ascell You Suptemental Security Income (SSI) or Special Access Benefit (SYS) Decision in want to appeal your decision about my claim for Supplemental Security Income (SSI) or Special Veterans Benefits (SVB).

I've read about the three ways to appeal. I've checked the box below." DATE 낊 NAME OF CLAIMANT'S REPRESENTATIVE

NON-ATTORNEY ENTER ADDRESSES FOR THE CLAIMANT AND THE REPRESENTATIVE STATE TELEPHONE NUMBER (Include erea code) I do not agree with the determination made on the above claim and request reconsideration. My reasons are: X Formal Conference NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON (If different from claimant.) TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION 70€ 710 SUPPLEMENTAL SECURITY INCOME (SS) OR SPECIAL VETERANS BENEFITS (SVB) CLAIM NUMBER PROGRAM SERVICE CENTER RETIREMENT AND SURVIVORS RECONSIDERATIONS ONLY (CHECK ONE) REFER TO (GN 03102.125) SPOUSE'S SOCIAL SECURITY NUMBER (Complete ONLY in SSI cases) 2. CLAIMANT INSISTS ON FILING (If "NO", attach claimant's explanation for delay and attach any pertinent letter, material, or information in Social Security office.) ON OF THE MAILING ADDRESS O OEO, BALTIMORE REQUIRED DEVELOPMENT PENDING, WILL FORWARD OR ADVISE STATUS WITHIN 30 DAYS COO BALTIMORE Informal Conference REQUEST FOR RECONSIDERATION CLAIM FOR (Specify type, e.g., retirement, disability, hospital medical, SSI, SVB, etc.) 듡 <u>9</u> (GN 03102.300) 91/31/10 SIP CODE DATE □ YES CLAIMANT CLAIM NUMBER (If different from SSN) DISABILITY DETERMINATION SERVICES (ROUTE WITH DISABILITY FOLDER) Due K. charlen Case Review □ NO FURTHER DEVELOPMENT REQUIRED ☐ REQUIRED DEVELOPMENT ATTACHED SPOUSE'S NAME (Complete ONLY in SSI cases) COO, BALTIMORE STATE TELEPHONE NUMBER (Include area code) 3. IS THIS REQUEST FILED TIMELY? 1. HAS INITIAL DETERMINATION BEEN MADE? Kelley Sue Richardson-Wright CLAIMANT SIGNATURE, OPTIONAL SOCIAL SECURITY ADMINISTRATION See list of Initial determinations Kena Richardson-Wright NAME OF CLAIMAN (CHECK ONE) CLAIMANT SSN Kelley MAJLING ADDR ROUTING Atbol

Form SSA-661-U2 (04-2013) of (04-2013) Prior Edition May Be Used Until Exhausted

Claims Folder

EXHIBIT E

Social Security Administration **Supplemental Security Income**

Overpayment Information

SOCIAL SECURITY
354 MAIN ST STE 2
GARDNER, MA 01440-3841
Date: April 30, 2015
Claim Number:
RT1

KENA RICHARDSON-WRI FOR KELLEY RICHARDSON-WRIGH

Dear KENA RICHARDSON-WRI

We are writing to tell you that we are waiving the collection of your Supplemental Security Income overpayment of \$4,129.88. This means you will not have to pay this money back.

The Reason For Our Decision

For us to waive the collection of your overpayment, two things have to be true.

• It was not your fault that you got too much Supplemental Security Income.

AND

• Paying us back would mean you cannot pay your bills for food, clothing , housing, medical care, or other necessary expenses, or it would be unfair for some other reason.

Based on the facts we have, we found that both of these are true about you. Therefore, you will not have to pay us back.

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- You have to ask for an appeal in writing. We will ask you to sign a form SSA-561-U2, called "Request for Reconsideration." Contact one of our offices if you want help.

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SOCIAL SECURITY 354 MAIN ST STE 2 GARDNER, MA 01440-3841

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

Social Security Administration