

**SOCIAL SECURITY ADMINISTRATION**  
**Office of Hearings Operations**

**DECISION**

**IN THE CASE OF**

**DISPUTE OF**

\_\_\_\_\_  
(Claimant)

\_\_\_\_\_  
Eligibility

\_\_\_\_\_  
(Social Security Number)

**JURISDICTION AND PROCEDURAL HISTORY**

The claimant is an individual who began receiving Supplemental Security Income (SSI) benefits beginning November 2007. Exhibit 2D. On January 9, 2019, the Social Security Administration issued the claimant a notice stating that she was ineligible for SSI benefits from December 2017 through February 2020 due to receiving an inheritance and then transferring that resource at less than fair market value. Exhibit 9D/1.

On January 28, 2019, the claimant filed a request for reconsideration, disputing the determination of ineligibility of benefits. Exhibit 12D. Upon reconsideration dated April 4, 2019, the agency affirmed its initial determination. Exhibit 15D. Thereafter, the claimant filed a written request for hearing on April 22, 2019 (20 CFR 416.1429 *et seq*). Exhibit 17D.

The claimant appeared and testified at a hearing held on December 12, 2019, in San Diego, CA. The claimant is represented by Vicki L. Vaughan, an attorney.

**ISSUE**

The issue is whether the claimant received income within the meaning of section 1612 of the Social Security Act (Act), or resources under section 1613 of the Act, that would result in a reduction of, or ineligibility for SSI benefits under section 1611 of the Act.

After careful consideration of all the evidence of record, the undersigned concludes that the claimant's resources does not cause a reduction of, or ineligibility for, SSI benefits from January 2018 through February 2020.

**APPLICABLE LAW**

An individual is eligible for SSI benefits if he or she is an aged, blind, or disabled person who meets certain residency and citizenship requirements, and who has limited income and resources (20 CFR 416.202, 416.1100, 416.1205). If you live with your spouse, or are a child living with your parents, or someone living with an essential person or sponsor, we deem to you the income and resources of your spouse, parent, or essential person/sponsor.

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If your countable income and/or resources do not exceed the applicable limits, they have no effect on your eligibility for SSI (20 CFR 416.202). However, the amount of your countable income reduces the amount of your SSI benefits (20 CFR 416.1100). We generally do not count the first \$20 of income received in a month (20 CFR 416.1112, 416.1124). We also do not count the first \$65 of earnings and one-half of earnings over \$65 received in a month (20 CFR 416.1112). There is a dollar for dollar reduction for monthly countable unearned income (20 CFR 416.1123). If countable resources exceed the limits, you are not eligible for any payment (20 CFR 416.202, 416.1100, 416.1205).

Income is defined as any item an individual receives in cash or in-kind that can be used to meet his or her needs for food or shelter (20 CFR 416.1102). There are different types of income, earned and unearned, and we have rules for counting each. Earned income consists of wages; net earnings from self-employment; refunds of Federal income taxes and advance payments by employers made in accordance with the earned income credit provisions of the Internal Revenue Code; payments for services performed in a sheltered workshop or work activities center; and certain royalties and honoraria (20 CFR 416.1110 through 416.1112). Types of unearned income include in-kind support and maintenance; annuities, pensions, and other periodic payments; alimony and support payments; dividends, interest, and certain royalties; rents; and death benefits (20 CFR 416.1104, and 416.1120 through 416.1124). Certain types of income, both earned and unearned, are not counted in our calculation of total income (20 CFR 416.1112 and 416.1124). However, in some situations we must consider the income of certain people with whom you live as available to you, and part of your income (20 CFR 416.1104 and 416.1160 *et seq.*)

Generally, the more income you have the less your benefit will be (20 CFR 416.1100). The amount of your monthly SSI payment will be computed by reducing the benefit rate by the amount of countable income (20 CFR 416.420). In evaluating your SSI eligibility and benefit amount, we count income on a monthly basis (20 CFR 416.1100, 416.1111, and 416.1123).

Resources are cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance, with the exception of the exclusions outlined in 20 CFR, Part 416, Subpart L. Resources may include items such as stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies, financial institution accounts, and similar items (20 CFR 416.1201). However, certain types of items are not counted as resources, including the home, if it is your primary residence (20 CFR 416.1212); household goods and personal effects (20 CFR 416.1216); and an automobile, if used for transportation (20 CFR 416.1218), among other exclusions (*See, generally, 20 CFR, Part 416, Subpart L.*)

As of January 1, 1989, the statutory limit for resources is \$2,000 for an individual, and \$3,000 for an individual with an eligible spouse (20 CFR 416.1205). Resource eligibility is a determination made as of the first moment of each calendar month and is applicable for the entire month. Subsequent changes have no effect until the following month's resources determination. Thus, resources eligibility (or ineligibility) exists for an entire month at a time (20 CFR 416.1207).

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- 1. The claimant became eligible to receive SSI benefits beginning November 7, 2007 (Exhibit 2D/2).**
- 2. During the period of eligibility, the claimant had countable resources.**
- 3. During the period of January 2018 through February 2020, the claimant's resources did not make her ineligible for SSI benefits (20 CFR 416.202, 416.1100, and 416.1205).**

On January 9, 2019, the Social Security Administration notified the claimant that she was not eligible for SSI benefits for the period of December 2017 through February 2020 due to receiving an inheritance and then transferring that resource at less than market value. Exhibit 9D/1. The claimant received a pension in the amount of \$47,544.00 (Exhibit 5D/5) and the agency notified the claimant that the pension made her ineligible for SSI benefits due to excess income for the month of December 2017. Exhibit 9D/1. The agency further notified the claimant that during the same month (December 2017), the claimant transferred resources of \$22,633.30 in cash to her Special Needs Trust Foundation (SNTF) Pooled Trust. Id.

The agency explained that while the trust is not countable as a resource, a transfer of resources to a trust for an individual age 65 or over might result in a transfer penalty. The agency stated that an exception for a period of ineligibility for transfers of resources to a trust only applies if the individual is under the age of 65. The agency stated that in December 2017, the claimant was over the age of 65, and she did not meet any other exceptions to the ineligibility period for transferring a resource at less than fair market value. The agency determined that based on the amount and date of money received and then transferred to the trust in the amount of \$22,633.30, the claimant was not eligible for SSI from December 2017 through February 2020. Exhibit 9D/1-2.

In a Notice of Reconsideration dated April 4, 2019, the agency affirmed its prior determination of ineligibility but indicated a different ineligibility period from January 2018 through February 2020. The agency stated that the claimant gave away a retirement fund or sold it for less than it was worth in December 2017, thus causing the special needs trust to be a countable resource. Exhibit 15D/1. The agency stated that a person who gives away a resource or sells it for less than it is worth might be ineligible for SSI for up to 36 months. Id.

Upon appeal, the claimant asserted that the placement of her retirement funds into a special needs trust was not a transfer for less than it is worth. The claimant indicated that the funds were to be used for purchases of goods and services for her benefit only; therefore, they have the exact same value as prior to putting them into the trust. Exhibit 17D.

The claimant has argued that she transferred the pension balance of \$22,633.30 into the Sarah Parvane Albright Special Needs Trust with the Special Needs Trust Foundation of San Diego. Exhibit 5D/3. She asserts that the trust meets all of the requirements of a Pooled Special Needs Trust under 42 U.S.C. 1396p(d)(4)(C). For example, the Special Needs Trust Foundation of San

Diego is a not for profit association, which established and manages the trust; the account is established solely for the benefit of the claimant; and the appropriate payback provisions are provided in the trust. Id.

The documentary evidence the claimant submitted included a copy of a Du Pont retirement plan payment dated November 30, 2017, to the payee Sarah Albright in the amount of \$47,544.00. Exhibit 5D/5. The claimant submitted a Wells Fargo Bank check No. 1389 from Sarah Albright dated December 21, 2017, with a pay to the order of "Sarah Albright Special Need Trust" in the amount of \$22,633.30. Exhibit 4D/2. A submitted copy of a bank statement indicated that the check amount was withdrawn from the claimant's Wells Fargo bank account on January 10, 2018. Exhibit 4D/4. The claimant has also submitted the relevant pooled special needs trust joinder agreement signed and dated October 18, 2017, by the beneficiary and November 17, 2017, by the trustee. Exhibit 30D/8.

On January 31, 2018, the claimant's representative sent the Social Security Administration field office in Oceanside, California, a certified mail reporting of a one-month spend down on behalf of the claimant for the month of December 2017. Exhibit 5D/2. The notice indicated that the claimant received \$47,544.00 from a pension that was dispersed in December 2017 and she spent down the funds by purchasing an automobile and automobile insurance. In addition, the reporting indicated a balance of \$22,633.30, which was deposited into a Pooled Special Needs Trust as authorized under 42 U.S.C. 1396p(d)(4)(C). Id.

In a letter dated May 22, 2018, from the Special Needs Trust Foundation of San Diego, the not for profit organization verified that they received a check on December 27, 2017, payable to the Sarah Albright Special Needs Trust in the amount of \$22,633.30. Exhibit 8D/2. A bank account for the Trust was established and the check was deposited into the account on January 10, 2018. Id. The organization provided documentary evidence of the check and bank statement verifying the deposit. Exhibit 8D/3.

Upon reviewing the applicable law, the Social Security Act at Section 1917 (d)(4)(A) and (C) (42 USC Section 1396p(d)(4)(A) and (C)) provides for two exceptions to the general rule of counting trusts as income and resources.

The first exception under Section 1917 (d)(4)(A) applies for trusts created for an individual under the age of 65 and disabled. The claimant was age 68 when the trust was created and this section would therefore result in the trust being counted as income and resources since the claimant does not qualify under this provision. The undersigned notes that the agency discussion of its rationale in an internal case analysis focused on this exception, providing that since the claimant was not under the age of 65; her trust was a countable resource. Exhibit 24F/5-7.

However, the agency did not adequately evaluate the other exception under Section 1917 and agency policy SI 01150.121-.125. Exhibit 24F/5-7. The second exception under 1917(d)(4)(C) indicates that "pooled trusts" are not considered a resource if the trust contains the assets of an individual who is disabled and meets the following conditions: (i) The trust is established and managed by a nonprofit association; (ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these

accounts; (iii) Accounts in the trust are established solely for the benefit of individuals who are disabled . . . by such individuals; and (iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained in the trust by the trust, the trust pays the State from such remaining amounts of medical assistance.

Upon careful review of the documentary evidence in the record, including the claimant's trust agreement with the Special Needs Trust Foundation of San Diego (Exhibit 30D), the undersigned is satisfied that all of the statutory requirements of Section 1917(d)(4)(C) described above have been met. The applicable legal provision does not provide for an age limit of being under the age of 65, so this is not a valid basis for exclusion contrary to the agency provided rationale. The undersigned concurs with the claimant's argument that the trust at issue is managed by a non-profit association; a separate account is maintained for each beneficiary; the trust was established by the claimant, solely for the benefit of the claimant, who is disabled; and the required Medi-Cal pay-back language is included in the special needs trust. Exhibits 27D/4, 29D/5, 30D. Therefore, the undersigned finds that the claimant was within the law when she established her pooled special needs trust at the age of 68.

Upon careful reviewing of the record and the applicable law, the undersigned further finds that the claimant's transferred pension funds satisfied the requirements for a pooled special needs trust and qualified her for an exception as a countable resource under section 1917(D)(4)(C). The undersigned also concurs with the claimant's argument that the placement of her retirement funds into a valid special needs trust was not a transfer for less than fair market value and that the agency improperly imposed a transfer penalty. Exhibit 29D/5. The basis for the agency's transfer penalty determination was that the claimant gave away a retirement fund or sold it for less than it was worth in December 2017. Exhibit 15D/1. The agency stated that a person who gives away a resource or sells it for less than it is worth might be ineligible for SSI for up to 36 months. *Id.* However, the agency provided no proof or evidence that the claimant gave away a resource or sold it for less than it was worth, and they provided no rationale for how they came to such a conclusion. *Id.* The claimant has indicated that the special needs trust funds were to be used for purchases of goods and services for her benefit only and; therefore, they have the exact same value as prior to putting them into the trust. Exhibit 17D.

The undersigned finds that the documentary evidence in the record supports the claimant's position. The undersigned concurs with the claimant's arguments in the representative brief on this issue that the agency improperly imposed a transfer penalty. Exhibit 29D/5-15. The funding of the special needs trust did not constitute a disposition of assets for less than fair market value. The claimant has retained beneficial ownership of the assets for her benefit only via the pooled special needs trust she created. The claimant has received fair market value for the placement of the funds into her special needs trust, as the value of the assets remained unchanged as indicated in the bank account records. In addition, the claimant will have received valuable consideration for the placement of funds into her special needs trust within her life expectancy and the submitted balance sheets support as much. Exhibit 29D/50-52. The record clearly demonstrates that the claimant transferred the remaining balance of her pension funds after purchase of an automobile and insurance into a valid pooled special needs trust that is for her benefit only. The pooled special needs trust satisfied the statutory requirements and qualified as an exception under the law. Moreover, the undersigned finds no evidence that the pension transfer into the

pooled special needs trust was at less than fair market value causing it to be a countable resource. Accordingly, the undersigned reverses the agency determination of an imposed transfer penalty of a period of SSI ineligibility.

The claimant's resources during her period of eligibility did not affect her SSI benefits from January 2018 through February 2020 (20 CFR 416.410, 416.412, and 416.1205). Accordingly, the agency shall reinstate the claimant's SSI benefits retroactively to the appropriate date(s) of ineligibility with no overpayment due.

**DECISION**

Based on the hearing request regarding the determination that the claimant had resources that effect the eligibility for or amount of SSI benefits, the undersigned finds that the claimant's resources did not subject her SSI benefits to a reduction from January 2018 through February 2020, pursuant to section 1611 of the Social Security Act.

*/s/ Andrew Verne*

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Andrew Verne  
Administrative Law Judge

June 16, 2021

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Date