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July 27, 2022

The [REDACTED]
Administrative Law Judge
Office of Hearings Operations
550 Government Street, Suite 200
Mobile, AL 36602-2010

Re: [REDACTED]

Dear Judge [REDACTED]:

On July 21, 2022, I received your proffer letter of July 20, 2022, via encrypted e-mail with a copy of the electronic nonmedical file.

I do not believe the Fairhope Field Office (FO) took proper action in accordance with POMS RS 01802.334 and RS 01802.344. The e-mail from the Fairhope FO in Exh. 39D shows it relied on its interpretation that because [REDACTED] did not file tax returns or amend those returns to reflect that she has self-employment income (SEI) and paid taxes on that SEI, she lacks the necessary quarters of coverage (QCs) to have insured status. It indicated that she had only 3 years, 3 months, and 15 days to correct the years of earnings with SSA.

That is a misapplication of the POMS. [REDACTED] has been seeking to amend her tax returns to divide the earnings reflected on her husband's earnings record between him and her on a 50-50 basis. (*See* Exh. 40D, including p. 2.) But that is not necessary under RS 01802.334, RS 01802.344, and SSR 84-11. According to those two POMS provisions and ruling, once there is a husband and wife business arrangement, even if all earnings for self-employment are reported by only one spouse, there can be a finding of a partnership for Social Security purposes. That is what existed with [REDACTED] and [REDACTED]. It is then incumbent upon SSA to follow the instructions in RS 01802.334 and allocate the earnings equally between Mr. and Mrs. [REDACTED] (*see* RS 01802.344).

[REDACTED]
July 27, 2022

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There is no requirement that tax returns have to be amended unless there were unreported earnings by [REDACTED], the original reporter. RS 01802.344 B.3. All of the earnings were reported. What is required is that SSA allocate the earnings for unbarred years and divide them equally, as there was no partnership agreement to the contrary. RS 01802.344 B.1. *See also* RS 01802.360.

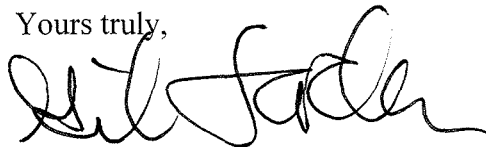
As noted by the Fairhope FO, [REDACTED] did indicate that [REDACTED] performed 50% of the work from 2014 to 2019. (Exh. 42D.) [REDACTED] signed a Statement of Claimant or Other Person (SSA-795) to this effect. (Exh. 49D.) It confirms there was a partnership as contemplated by RS 01802.334, RS 01802.344, and SSR 84-11. [REDACTED] signed another Statement of Claimant or Other Person (SSA-795). (Exh. 50D.) It reiterates with more specificity they had asserted and what the Fairhope FO said was lacking regarding the years before 2014. It is the contention of both [REDACTED] that they each provided equal labor and contribution to the business. It was a husband-wife business that was a bona fide partnership. The earnings should be allocated equally going back to at least 2005.

[REDACTED], the longtime tax preparer for the [REDACTED], provided a letter dated July 25, 2022. (Exh. 48D.) He acknowledged his error in not preparing tax returns in the same manner as he did in 2005-2007, when those returns reflected an equal division of the income. His letter contains the same grid in Exh. 40D, p. 2, which he originally prepared.

SSA has access to [REDACTED] earnings record. Copies of [REDACTED] tax returns are in Exh. 7D. SSA should review those tax returns, reallocate those earnings equally between Mr. and [REDACTED], and then determine the insured status of [REDACTED].

Please issue a decision with instructions to the Fairhope FO to take additional action in compliance with these two POMS provisions and SSR 84-11. Thank you for your consideration.

Yours truly,



Gilbert B. Laden

GBL/blt

cc: [REDACTED]

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September 29, 2022

VIA FAX (833-968-1656)

The [REDACTED]
Administrative Law Judge
Office of Hearings Operations
550 Government Street, Suite 200
Mobile, AL 36602-2010

Re: [REDACTED]
[REDACTED] [REDACTED]

Dear Judge [REDACTED]:

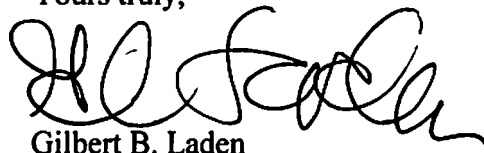
On September 23, 2022, I received your proffer letter of September 21, 2022. It appears that the Fairhope Field Office (FO) agreed with the arguments I made in my response of July 27 to your earlier proffer.

More specifically, the FO stated a partnership determination can be rendered by you and that SSA should be able to split the earnings between [REDACTED] and her husband. While the FO did not explicitly say so, that should result in insured status for [REDACTED]. This would then allow SSA to proceed with evaluation of her DIB claim.

My July 27 response in Exh. 51D provides more detail, which may be useful toward a favorable decision with a remand to the FO to take appropriate action toward acknowledging a bona fide spousal partnership, causing the earnings attributed to [REDACTED] to be reallocated equally between both spouses, recomputation of her insured status, and proceeding with evaluation of her DIB claim.

If you need anything further, please let me know.

Yours truly,



Gilbert B. Laden

GBL/el

cc: [REDACTED]

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February 9, 2023

The Honorable [REDACTED]
Administrative Law Judge
Office of Hearings Operations
550 Government Street, Suite 200
Mobile, AL 36602-2010

Re: [REDACTED]

Dear Judge [REDACTED]:

I am responding to the proffer of Exh. 55D, which is a Report of Contact with the Field Office (FO) dated January 31, 2023. I want to address that exhibit, but I also want to make you aware of additional documents I submitted to the file. These include Earnings Record Information dated October 27, 2022, which was sent by SSA to [REDACTED], [REDACTED] husband (Exh. 57D) and Earnings Records Information dated February 1, 2023, which was sent by SSA to [REDACTED] (Exh. 58D). [REDACTED] authorized me to submit his document to the file.

As to the report of contact from the Fairhope FO, [REDACTED] stated she transferred the earnings from [REDACTED] record to [REDACTED], except for the year of 2015. She said, "NH is not insured – DFI 10/1/2019 and DLI 12/31/23."

That statement seems to be incongruous. If her DLI is December 31, 2023, and her AOD is June 12, 2020, then she would have insured status for a period of disability, commencing with June 12, 2020. At this point, that would be an unadjudicated period.

Without examining [REDACTED]'s computations, I do not know if she allocated one-half of the earnings attributed to [REDACTED] going back to 2005, in accordance with POMS RS 01802.334 and RS 01802.344 and SSR 84-11, as I discussed more fully in my two previous response to proffer letters, dated July 27, 2022 (Exh. 51D) and September 29, 2022 (Exh. 54D). In the second

response, I mentioned that the Fairhope FO agreed with my assessment indicated in my first response. (See Exh. 52D, which is a report of contact with FO dated September 20, 2022.)

In Exh. 52D, [REDACTED] stated:

After reviewing the proofs submitted by Gil Laden and the POMS references listed in his letter, it appears a partnership determination can be rendered by the ALJ since the husband and wife are alleging that they had a valid business partnership. SSA should be able to split the income between the two records, however, as a result of correcting [REDACTED] earnings record and removing earnings from [REDACTED] earnings record, we will have to recompute [REDACTED] benefit.

Thus, if the attribution of those earnings were done in compliance with the POMS and, presumably, in accordance with SSR 84-11, then the previously filed tax returns did not need to be amended. As argued in the July 27, 2022, response to proffer (Exh.51D), that is precisely what POMS RS 01802.334 and RS 01802.344 state as well as does SSR 84-11. Therefore, [REDACTED] erred in not transferring earnings for the year 2015. Because there was no need to have filed an amended tax return, then [REDACTED] reliance on the information from the IRS that the amended tax return was not done within the legal period to have charged and collected taxes was erroneous. That is underscored by the fact that she correctly transferred earnings for other years even though the earlier tax returns for those years were not amended and no additional taxes were charged and collected. Again, the referenced POMS sections and SSR 82-41 control.

Exh. 48D contains a letter from [REDACTED] dated July 25, 2022. I alluded to this exhibit in my first response to proffer. [REDACTED] has been the longtime tax preparer for [REDACTED]. He set forth the year-by-year earnings amount for the tax returns he prepared for the [REDACTED], with 100% being attributed to [REDACTED] in most years.

Exh. 49D is a statement from [REDACTED], who provided similar earnings information that squares with what [REDACTED] stated. After reviewing this earnings information, it would appear that after one-half would be attributed to [REDACTED], she would have sufficient quarters of coverage to be both fully insured and disability insured.

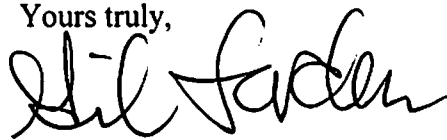
The Earnings Record Information, dated October 27, 2022, sent to [REDACTED] by SSA (Exh. 57D), appears to reflect an approximately equal division of the earnings in question, at least through 2016. However, the Earnings Record Information, dated February 1, 2023 (Exh. 58D), sent to [REDACTED] by SSA does not show the attribution of earnings to [REDACTED] earnings record for all the pertinent years except 2014 and 2016. It seems to rely solely on the amended tax returns. In short, it did not follow the POMS and SSR 82-41 for the years before 2014 and for 2015 and after 2016.

The Honorable [REDACTED]
February 9, 2023
Page 3

I respectfully request that the Fairhope FO be instructed to clarify [REDACTED]'s statement that [REDACTED], the number holder (NH), was not insured in spite of the DFI and DLI it found. Further, I request that the FO confirm that it did attribute one-half of [REDACTED] earnings dating back to 2005 through 2019, including 2015 but excepting 2005-2007, but if it did not, to make the correct adjustments in further compliance as it agreed to do on September 20, 2022.

Thank you for your consideration.

Yours truly,



Gilbert B. Laden

GBL/blt

cc: [REDACTED]

SOCIAL SECURITY ADMINISTRATION
Office of Hearings Operations

DECISION

IN THE CASE OF

CLAIM FOR

████████████████████

Period of Disability and Disability Insurance
Benefits

.....
(Claimant)

.....
(Wage Earner)

JURISDICTION AND PROCEDURAL HISTORY

The claimant filed a Title II application for a period of disability and disability insurance benefits on June 8, 2020 alleging disability beginning June 1, 2020 (Exhibit 1D). The claim was denied initially on October 6, 2020 (Exhibit 31D) and on reconsideration on November 20, 2020 (Exhibit 35D). The Social Security Administration found that the claimant had not worked long enough to earn sufficient work credits to qualify for benefits. The Social Security Administration did not make a determination as to whether the claimant met the disability requirements of the Social Security Act. Thereafter, the claimant filed a written request for hearing in February 2021 (Exhibit 34D). Although the request for hearing was not timely, the undersigned finds good cause for the late filing (Exhibit 33D). On April 7, 2022, the undersigned held a telephone hearing (20 CFR 404.936(c) / 416.1436(c)) due to the extraordinary circumstance presented by the Coronavirus Disease 2019 (COVID-19) Pandemic. All participants attended the hearing by telephone. The claimant is represented by Gilbert B. Laden, an attorney.

ISSUES

The issue is whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met as of the June 1, 2020 alleged onset date.

APPLICABLE LAW

In order to be eligible for Social Security disability benefits, an individual must meet the insured status requirements of sections 216(i) and 223 of the Social Security Act as of the alleged onset date in addition to the medical requirements of disability.

The insured status requirements are met if an individual has earned sufficient quarters of coverage. An individual earns Social Security credits (quarters of coverage) by working and paying Social Security taxes. Social Security credits are based on an individual's earnings. An individual can earn up to a maximum of 4 credits per year and generally needs at least 20 credits in the 10 years immediately before their disability began to be eligible for disability benefits.

See Next Page

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The claimant and her spouse own a landscape maintenance business, [REDACTED] (Exhibit 7D). The claimant and her spouse did not have a written partnership agreement; however, they allege working as partners in a qualified joint venture with each earning 50% of the income of the business (Exhibits 4D, 49D, 50D). The claimant's tax returns, which were filed jointly with her spouse, credited 100% of the business income to the claimant's spouse from 2008 to 2019 instead of crediting 50% of the income to the claimant and 50% to her spouse (Exhibits 7D, 48D). As a result, the claimant did not have any documented earnings for Social Security purposes from 2008 to 2017 (Exhibits 8D, 9D) and she therefore did not earn quarters of coverage for those years. The Social Security Administration thus found that the claimant did not have sufficient quarters of coverage to be eligible for benefits. Based on her earnings record, the Social Security Administration found that the claimant last met the insured status requirements as of December 31, 2012 (Exhibit 6D), before the alleged onset date.

The claimant and her spouse have amended their tax returns to reflect the claimant's contribution to the business, attributing 50% of the business income to the claimant (Exhibit 48D). The claimant also provided copies of checks sent to the Internal Revenue Service for payment of self-employment taxes (Exhibits 37D, 40D). The undersigned finds that the claimant and her spouse formed a valid business partnership for Social Security purposes and that because there was no partnership agreement, the earnings from the business for unbarred years should be allocated equally between the claimant and her spouse. Based on her updated earnings, the undersigned finds that the claimant first met the insured status requirement on October 1, 2019 and that her date last insured is December 31, 2023 (Exhibit 55D). The claimant therefore met the insured status requirements on the alleged onset date.

DECISION

The undersigned finds that the claimant's date last insured is December 31, 2023 and that she met the insured status requirements of the Social Security Act on the alleged disability onset date. The undersigned requests that a decision be made as to whether the claimant meets the medical requirements to be eligible for disability benefits.

[REDACTED]
[REDACTED]

March 1, 2023

Date

Social Security Administration
Retirement, Survivors and Disability Insurance
Notice of Award

Southeastern Program Service Center
1200 Rev. Abraham Woods, Jr. Blvd.
Birmingham, AL 35285-0001
Date: June 4, 2023
BNC#: [REDACTED]

05024506W002619*
0001884

[REDACTED]

You are entitled to monthly disability benefits beginning November 2020.

The Date You Became Disabled

We found that you became disabled under our rules on June 1, 2020.

To qualify for disability benefits, you must be disabled for five full calendar months in a row. The first month you are entitled to benefits is November 2020.

What We Will Pay And When

We pay Social Security benefits for a given month in the next month. For example, Social Security benefits for March are paid in April.

- You will receive [REDACTED] around June 5, 2023.
- This is the money you are due for November 2020 through May 2023.
- Your next payment of [REDACTED] which is for June 2023, will be received on or about the third Wednesday of July 2023.
- After that you will receive [REDACTED] on or about the third Wednesday of each month.
- These and any future payments will go to the financial institution you selected. Please let us know if you change your mailing address, so we can send you letters directly.
- Later in this letter, we will show you how we figured these amounts.



Others Who May Be Eligible For Benefits

Your child may now be eligible for benefits on your record. You named the following child when you applied for benefits:

See Next Page

If you have not filed an application for benefits for the child, please contact us.

Your Benefits

The following chart shows your benefit amount(s) before any deductions or rounding. The amount you actually receive(s) may differ from your full benefit amount. When we figure how much to pay you, we must deduct certain amounts, such as Medicare premiums. We must also round down to the nearest dollar.

Beginning Date	Benefit Amount	Reason
November 2020		Entitlement began
December 2020		Cost-of-living adjustment
December 2021		Cost-of-living adjustment
December 2022		Cost-of-living adjustment

Information About Medicare

Your Medicare Part A (hospital insurance) starts November 2022 and Part B (medical insurance) starts June 2023.

If you want these benefits earlier, you can choose medical insurance benefits beginning November 2022. To start benefits earlier, within 60 days after the date of this notice, you must tell us in writing that you want medical insurance benefits beginning November 2022. In addition, you must:

- pay us [redacted] (this covers premiums due from November 2022 through May 2023); or
- tell us we can withhold this amount from the check.

If you want benefits beginning November 2022 but find it hard to pay the premium amount in a lump sum, ask us about other ways to pay the money.

You will get a Medicare card within 2 weeks. You should show this card when you need medical care. To learn more about what Medicare covers, visit Medicare.gov. If you have questions about your Medicare coverage, call 1-800-MEDICARE (1-800-633-4227).

IMPORTANT: A Medicare law requires some higher income persons to pay higher premiums. The law applies to premiums for Medicare Part B (Medical Insurance), prescription drug coverage, and Medicare Part B Immunosuppressive Drug coverage. The law generally affects individuals with incomes higher than \$97,000 and couples with incomes higher than \$194,000. We will contact the Internal Revenue Service to get information about your income. If we decide that you have to pay higher premiums, we will send a letter explaining our decision. The higher amount will be effective June 2023. For more information, please visit www.ssa.gov on the Internet or call us toll-free at 1-800-772-1213 (TTY 1-800-325-0778).

If you do not want medical insurance, please complete the enclosed card and return it to us in the envelope we have provided. You will need to do this by the date shown on the card. If you decide you do not want the insurance, we will return any premiums that you have paid.

Medicare Prescription Drug Plan Enrollment

Now that you are eligible for Medicare, you can enroll in a Medicare prescription drug plan (Part D).

To learn more about the Medicare prescription drug plans and when you can enroll, visit www.medicare.gov or call 1-800-MEDICARE (1-800-633-4227; TTY 1-877-486-2048). Medicare also can tell you about agencies in your area that can help you choose your prescription drug coverage.

If you have limited income and resources, we encourage you to apply for the extra help that is available to assist with Medicare prescription drug costs. The extra help can pay the monthly premiums, annual deductibles and prescription co-payments. To learn more or apply, please contact us.

Information About Representatives Fees

We have approved the fee agreement between you and your representative.

Your past-due benefits are [REDACTED] for November 2020 through April 2023. Under the fee agreement, the representative cannot charge you more than [REDACTED] for his or her work. The amount of the fee does not include any out-of-pocket expenses (for example, costs to get copies of doctors' or hospitals' reports). This is a matter between you and the representative.

How To Ask Us To Review The Determination On The Fee Amount

You, your representative or the person who decided your case can ask us to review the amount of the fee we say your representative can charge.

If you think the amount of the fee is too high, write us within 15 days from the day you get this letter. Tell us that you disagree with the amount of the fee and give your reasons. Send your request to this address:

Southeastern Program Service Center
1200 Rev. Abraham Woods, Jr. Blvd
Birmingham, Alabama 35285-0001

Your representative also has 15 days to write us if he or she thinks the amount of the fee is too low.

If we do not hear from you or your representative, we will assume you both agree with the amount of the fee shown.



Information About Past-Due Benefits Withheld To Pay A Representative

Based on the law, we must withhold part of past-due benefits to pay an appointed representative. We cannot withhold more than 25 percent of past-due benefits to pay an authorized fee. We withheld [REDACTED] from your past-due benefits to pay the representative.

We are paying the representative from the benefits we withheld. Therefore, we must collect a service charge from him or her. The service charge is 6.3 percent of the fee amount we pay, but not more than \$113, which is the most we can collect in each case under the law. We will subtract the service charge from the amount payable to the representative.

The representative cannot ask you to pay for the service charge. If the representative disagrees with the amount of the service charge, he or she must write to the address shown at the top of this letter. The representative must tell us why he or she disagrees within 15 days from the day he or she gets this letter.

Other Social Security Benefits

This benefit is the only benefit you can receive from us at this time. In the future, if you think you might qualify for another benefit from us, you will need to apply again.

Your Responsibilities

We based our decision on information you gave us. If this information changes, it could affect your benefits. For this reason, it is important that you report changes to us right away.

We have enclosed a pamphlet, "What You Need To Know When You Get Social Security Disability Benefits." It tells you what you must report and how to report. Please be sure to read the parts of the pamphlet that tell you what to do if you go to work or your health improves.

A vocational rehabilitation or employment services provider may contact you to help you in going to work. The provider may be from a State agency or work under contract with Social Security.

If you go to work, we have special rules that let us continue your cash payments and health care coverage. To learn more about how work and earnings affect disability benefits please contact us. You can also visit our website at www.ssa.gov/pubs to find the following publications with additional information:

- Social Security - Working While Disabled...How We Can Help (SSA Publication No. 05-10095).
- Social Security - If You Are Blind--How We Can Help (SSA Publication No. 05-10052).

Your Benefits May Be Taxed

You may have to pay taxes on the benefits you get from us. Part of your Social Security benefits may be taxed if:

- you are single and your total income is more than \$25,000 or
- you are married and you and your spouse have total income of more than \$32,000.

You can decide if you want to have federal taxes withheld from your benefits. If you want taxes withheld, you need to complete and return a Form W-4V, Voluntary Withholding Request. You can get Form W-4V from the Internal Revenue Service by calling 1-800-829-3676. You can also get this form at www.socialsecurity.gov/planners/taxes.htm on our website. After you complete and sign the form, return it to your local Social Security office by mail or in person.

You can find more information on paying taxes in the enclosed pamphlet, "What You Need To Know When You Get Social Security Disability Benefits".

Other Information

We are sending a copy of this notice to [REDACTED]

Do You Disagree With The Decision?

If you do not agree with this decision, you have the right to appeal. We will review your case and look at any new facts you have. A person who did not make the first decision will decide your case. We will review the parts of the decision that you think are wrong and correct any mistakes. We will make a decision that may or may not be in your favor.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you receive this letter. We assume you received this letter 5 days after the date on it unless you show us that you did not receive it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- You must ask for an appeal in writing. Please use our "Request for Reconsideration" form, SSA-561-U2. You may go to our website at www.ssa.gov/forms/ to locate the form. You can also contact us to request the form, or if you need help filling out the form.

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

Need more help?

1. Visit www.ssa.gov for fast, simple, and secure online service.
2. Call us at 1-800-772-1213, weekdays from 8:00 am to 7:00 pm. If you



are deaf or hard of hearing, call TTY 1-800-325-0778. Please mention this letter when you call.

3. You may also call your local office at 1-866-837-5964.

SOCIAL SECURITY
101 COURTHOUSE DR
FAIRHOPE AL 36532

How are we doing? Go to www.ssa.gov/feedback to tell us.

Social Security Administration

