

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF

DISPUTE OF

████████████████████

(Claimant)

Overpayment

████████████████████

(Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

The claimant is an individual who has received supplemental security income benefits since approximately 2005. On February 10, 2015, the Social Security Administration (SSA) determined that the claimant had been overpaid supplemental security income benefits after being alerted that the claimant reported "in-prize" earnings in her 2012 and 2013 income tax returns (Ex. 2, 3 and 4). The claimant subsequently clarified that these amounts were not related to "in-prize" earnings, but were rather an elder stipend that she had received due to her age and to being an enrolled member of the Pueblo of Pojoaque (the Pueblo) (Ex. 5, 6 and 22). SSA subsequently determined that due to the Tribal General Welfare Exclusion Act of 2014 (the Tribal Act), signed into law on September 26, 2014, the stipend the claimant received from the Pueblo through its Supplemental Elder Support Program (Program) was excluded from income and thus should not have been a factor in determining her supplemental security income benefits and that her overpayment was limited to the stipends that she received before the Tribal Act was signed (Ex. 1, 7 and 12). On March 25, 2015, SSA issued a notice informing the claimant that she had been overpaid supplemental security income benefits in the amount of \$5,853.00 for the period of time of January 1, 2013 to September 1, 2014 (Ex. 9, 10 and 15).

On April 23, 2015, the claimant filed a request for reconsideration, disputing the facts and the amount of the overpayment, arguing that the language of the Tribal Act indicates that it should be applied retroactively 3 years from the date it was signed. The claimant's reconsideration request was denied on May 4, 2015 (Ex. 13). Thereafter, the claimant filed a written request for hearing on September 9, 2015, after her first request for hearing, filed on June 30, 2015, was lost (20 CFR 416.1429 *et seq.*). The claimant argues that she does not have an overpayment as the Tribal Act, when read in connection with the Internal Revenue Code it amends and references, should be applied 2 or 3 years retroactively and that reading it in such a context would result in none of the Program stipends the claimant received being included as income that would affect her Social Security benefits (Ex. 8, 12, 14 and 22).

The claimant appeared and testified at a hearing held on March 22, 2016, in Santa Fe, New Mexico. The claimant is represented by Carrie A. Frias, an attorney. Ms. Frias has waived her right to fees in this matter (Ex. 11).

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During the hearing, Exhibits 1 through 23 were admitted into evidence without objection.

ISSUES

The issue is whether the claimant has been overpaid benefits under section 1631(b)(1)(A) of the Social Security Act (Act). An overpayment includes a payment of more than the amount due for any period administered by the SSA (20 CFR 416.537(a)). Specifically, the issue of overpayment in this case is whether the Tribal Act exclusion of Program benefits should be applied to retroactively three years before its signing date of September 26, 2014.

After careful consideration of all the evidence, I find that the claimant was not overpaid.

APPLICABLE LAW

Under the authority of Title XVI of the Social Security Act, where the claimant has been overpaid benefits, the Social Security Administration will seek adjustment or recovery of benefits (20 CFR 416.535, 416.560, and 416.570). I must consider all available evidence related to the overpayment (20 CFR 416.582).

The Tribal Act amends the Internal Revenue Code to exclude from gross income, for income tax purposes, the value of an Indian general welfare benefit and was signed into law on September 26, 2014 (Pub. L. No. 113-168, 128 Stat.1883 (Sept. 26, 2014)). The Tribal Act defines "Indian general welfare benefit" as any payment made or services provided to or on behalf of a member of an Indian tribe under an Indian tribal government program if: (1) such program is administered under specified guidelines and does not discriminate in favor of members of the governing body of the Indian tribe; and (2) the program benefits are available to any tribal member, are for the promotion of general welfare, are not lavish or extravagant and are not compensation for services. The Tribal Act states that the amendments made by the act apply to taxable years for which the period of limitation on refund or credit under section 6511 of the Internal Revenue Code of 1986 has not expired.

26 U.S.C. § 6511(a) states that the period of limitation on filing a claim for credit or refund of an overpayment of any tax imposed by the title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, I make the following findings:

- 1. The claimant was eligible for benefits in the amount of \$5,853.00 during the period January 1, 2013 to September 1, 2014, (20 CFR 416.537(a)).**

The claimant alleges that she is an enrolled member of the Pueblo and that the Pueblo is a federal recognized Indian Tribe (Ex. 22). She further alleges that as an elder member of the Pueblo, she

receives a monthly benefit payment through its Program, the purpose of which is to provide social services benefits to help offset the costs of home healthcare, medical care and other living expenses (Ex. 22). The evidence of record indicates that the claimant received benefits from the Program from January 2013 through the present (Ex. 2, 7 and testimony). She testified that she currently receives [REDACTED]. The claimant filed income tax returns for 2013 and 2014 reporting the Program stipends as income as the Pueblo had issued her two Form 1099s showing the amounts that she had received from the Program. As noted above, while these earnings were initially treated as "in-prize" earnings by SSA, the claimant and the Pueblo later clarified that they were Program benefits.

The claimant argues that the monthly Program stipend she receives should be excluded income in accordance with the Tribal Act as she receives them pursuant to a program of the Pueblo and that the guidelines for the Program do not discriminate in favor of any Pueblo member (Ex. 22). She further argues that the Program benefits are available to any Pueblo member over the age of 60, are relatively modest in amount, the amount does not vary and is not in exchange for any service she provided (Ex. 2 and 22). The SSA field office acknowledged that the Program benefits that the claimant received after the Tribal Act was signed on September 26, 2014 are excluded income, but found that the Tribal Act did not apply to the monthly stipends that the claimant received prior to the date the Tribal Act was signed. Applying the Tribal Act from September 2014 forward resulted in the claimant having an overpayment of \$5,853, due to the Program benefits she received from January 1, 2013 to September 1, 2014 not being considered excluded income.

After reviewing the Tribal Act and the evidence of record, I agree that the Program benefits the claimant receives are administered under specified guidelines that do not discriminate in favor of members of the governing body of the Indian tribe and that the Program benefits are available to any tribal member, are for the promotion of general welfare, are not lavish or extravagant, and are not compensation for services. Thus, the claimant's Program benefits meet the requirements of the Tribal Act and should be treated as excluded income.

Regarding the claimant's argument that the Tribal Act applies retroactively for three years prior to its September 26, 2014 signing date, the Tribal Act references 26 U.S.C. § 6511(a) regarding its retroactive application. 26 U.S.C. § 6511(a) states that the period of limitation on filing claim for credit or refund of an overpayment of any tax imposed by the title must be done within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of the periods expires later. By specifically including the reference to 26 U.S. Code § 6511(a) in the Tribal Act, its drafters appear to have intended there to be a retroactive period of application of the act and that the period of retroactive application was up to 3 years.

The court in *United States v. Chairman Colley Bille* (11th Cir. Ct. of App. 2015 at 3) – when addressing whether the Miccosukee Tribe of Indians of Florida was required to provide certain financial documents to the Internal Revenue Service (IRS) – noted that the Tribal Act codified the IRS's "existing practice of treating tribal general welfare payments to tribal members as non-taxable income." The *Chairman Colley Billie* court also found that the Tribal Act was "made applicable to taxable periods for which the period of limitations has not expired[.]" which

included in the matter before them financial documents from 2012. This language suggests that the court believed that the Tribal Act was to be applied retroactive from its signing date through at least 2012.

Applying the Tribal Act three years retroactively in this matter results in the claimant's Program stipend from 2012 and 2013 being treated as excluded income. If the claimant's 2012 and 2013 Program stipends were excluded income, then her supplemental security income was not incorrectly calculated in those years, she was not overpaid supplemental security income in those years and no overpayment exists.

Accordingly, based on the evidence of record, I find that in this matter, the Tribal Act should be retroactively applied three years from its signing date of September 26, 2014. Due to this retroactive application, the claimant's supplemental security income was not miscalculated from January 1, 2013 to September 1, 2014 and she did not have an overpayment of \$5,853.

2. The claimant is not liable for \$5,853.00 during the period January 1, 2013 to September 1, 2014 (20 CFR 416.535(a), 416.560, and 416.570).

DECISION

Based on the hearing request regarding the overpayment, the claimant is not liable for the amount of \$5,853.00 pursuant to section 1631(b)(1)(A) of the Social Security Act and the Tribal General Welfare Exclusion Act of 2014 (Pub. L. No. 113-168, 128 Stat.1883 (Sept. 26, 2014)).

The component of the Social Security Administration responsible for administration of the overpayment, will advise the claimant regarding any adjustment of benefits or underpayments associated with the overpayment.

/s/ James A. Burke

James A. Burke
Administrative Law Judge

April 25, 2016

Date