

AR 92-5(9), 1992 WL 248902 (S.S.A.)

**\*1 Acquiescence Ruling**

Meaning of the Term "Against Equity and Good Conscience" in the Rules for Waiver of Recovery of an Overpayment-Titles II and XVI of the Social Security Act; Title IV of the Federal Mine Safety and Health Act of 1977.<sup>[FN1]</sup>

AR 92-5(9)

June 22, 1992

Quinlivan v. Sullivan, 916 F.2d 524 (9th Cir.1990)

ISSUE: Whether the Secretary may find that recovery of an overpayment is "against equity and good conscience" only under the specific circumstances set forth in the regulations.

STATUTE/REGULATION/RULING CITATION: Sections 204(b) and 1631(b)(1)(B) of the Social Security Act (42 U.S.C. 404(b) and 1383(b)(1)(B)), 20 CFR 404.506, 404.509, 410.561a, 410.561d, 416.550, and 416.554; Section 413(b) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 923(b)).

CIRCUIT:

Ninth (Alaska, Arizona, California, Guam, Hawaii (including American Samoa), Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington)

Quinlivan v. Sullivan, 916 F.2d 524 (9th Cir.1990)

APPLICABILITY OF RULING: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, administrative law judge hearing and Appeals Council).

DESCRIPTION OF CASE: The plaintiff, Mr. Quinlivan, was incarcerated from 1963 to 1985 for a felony conviction. He received disability insurance benefits while in prison.

In 1980, the Social Security Act was amended to prohibit payment of disability benefits to certain incarcerated felons, Mr. Quinlivan continued to be paid benefits from 1980 to 1982, resulting in erroneous payments. He was unaware of the change in the law and was without fault in receiving these payments.

After receiving a booklet from the Social Security Administration (SSA) in early 1982, Mr. Quinlivan wrote a letter to SSA informing it of his situation. SSA then sent him a notice stating that he had been overpaid for two years and requested repayment. He requested reconsideration and a waiver of recovery of the **overpayment**. Apparently this request was not processed and another notice of **overpayment** was sent in 1984. The plaintiff again sought waiver of recovery of the **overpayment**. A personal conference with an SSA representative was held in 1984, but no decision was issued at that time.

Mr. Quinlivan was released from prison in 1985. He spent his accumulated savings, including the **overpayment**. In 1987, SSA denied his request for reconsideration and Mr. Quinlivan thereafter requested a hearing. In 1988, an Administrative Law Judge denied

Ruling applies only to cases involving claimants who reside in Alaska, Arizona, California, Guam, Hawaii (including American Samoa), Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, or Washington at the time of the determination or decision at the initial, reconsideration, Administrative Law Judge or Appeals Council levels.

If it is determined that a claimant is "without fault" in causing or accepting an **overpayment**, it may need to be determined whether adjustment or recovery of the **overpayment** would be "against equity and good conscience." In determining whether recovery of an **overpayment** would be "against equity and good conscience," the adjudicator will not limit his or her inquiry to the three specific circumstances set forth in the regulations. The decision must take into account all of the facts and circumstances of the case and be based on a broad concept of fairness. Factors such as, but not limited to, the nature of the claimant's impairment, the amount and steadiness of the claimant's income, and the claimant's assets and material resources should all be considered in the decision as to whether recovery of an overpayment should be waived on the basis that recovery would be "against equity and good conscience."

FN1 Although Quinlivan was a title II case, the phrase "against equity and good conscience" is similarly defined in regulations governing the title XVI Supplemental Security Income program and in the Secretary's regulations concerning benefits under the Federal Mine Safety and Health Act of 1977. Therefore, this Ruling extends to title II and title XVI claims under the Social Security Act and to claims for Black Lung benefits.

Social Security Administration  
Department of Health and Human Services

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