



Community Legal Aid

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May 16, 2017

The Honorable Michael P. Breton, Administrative Law Judge
Social Security Administration
Office of Disability Adjudication and Review
1441 Main Street, Suite 450
Springfield, MA 01103-9951

Re: Request for an Expedited On the Record Decision by an Administrative Law Judge
Claimant: [REDACTED]
SSN: [REDACTED]

Dear Judge Breton:

This letter is to follow up on behalf of my client, [REDACTED] with respect to her request for a hearing by an Administrative Law Judge, which has been scheduled to be heard before you on July 17, 2017. I am writing to provide an overview of [REDACTED] case and to explain why [REDACTED] should be found eligible for benefits for December 2015 and onward. Given that [REDACTED] is not currently receiving benefits, we request an expedited on the record decision.

Factual Background

[REDACTED] is a sixty-one (61) years old Massachusetts resident who is originally from the Dominican Republic. [REDACTED] is disabled from shoulder and back pain (including a history of slipped disks), depression, high blood pressure, and diabetes. She previously suffered a head wound which has caused lasting memory problems. She lives in Worcester with her disabled adult son and has no income of her own. Instead, she relies on Supplemental Nutrition Assistance Program benefits and help from her church to meet her basic needs. She is on the waiting list for public housing. [REDACTED] recently faced a proposed termination of her electricity, which was averted only because her pastor made a payment towards her utility arrears.

Before moving to Massachusetts, [REDACTED] lived in Caguas, Puerto Rico with her then-

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██████████ husband, ██████████ (“██████████”¹ During their marriage, ██████████ suffered domestic violence at the hands of ██████████. She later received domestic violence services, including social work services and counseling, from the Aid and Intervention Project for Victims of Domestic Violence.² ██████████ relocated to Massachusetts and has no remaining contact with ██████████. Currently, she does not know where he lives. Due to the violence she experienced, as well as the threats that ██████████ made against ██████████ and her children (including threats of murder), ██████████ remains terrified of ██████████ and is too afraid to revisit Caguas.

██████████ and ██████████ divorced in 2009.³ According to the divorce judgment, “the parties acquired assets and debts, which should be administered according to the legal provisions referring to community property, until they are settled.”⁴ At the time of the divorce, ██████████ still co-owned a house in Caguas, Puerto Rico with ██████████. They had purchased it in 2000 for \$45,000.00, with financial assistance from relatives.⁵

On behalf of ██████████ I consulted with Attorney Iván A. Ramos of Ramos and Soler, a law firm in Puerto Rico, to explore whether and how ██████████ share of the property could be sold without ██████████ involvement. According to Attorney Ramos, in order to do so, ██████████ would need to petition the court at Caguas, Puerto Rico to request that the court order a public auction of the property.⁶ As ██████████ whereabouts are presently unknown, he would need to be summoned by an edict ordered by the court to be published in the newspaper.⁷ Lengthy legal proceedings would be required, as outlined in Mr. Ramos’ letter (enclosed as Exhibit A); those proceedings could take at least a year and a half to two years to be fully completed, and would cost at least \$5000-\$6000, plus additional notary and Internal Revenue expenses.⁸ Despite the steps required to sell the house without the permission of ██████████ ██████████ placed a listing for the house in *La Semana*, the Caguas newspaper, in an attempt to sell the house.⁹ She did not receive any inquiries from potential buyers in response to the listing.

Procedural Background

On or about December 31, 2015, ██████████ applied for Supplemental Security Income (“SSI”).¹⁰ On or about March 21, 2016, ██████████ received a Notice of Disapproved Claim, informing her that she was not eligible for SSI because of “resources that are over the limit.”¹¹ Specifically referenced was real estate valued at \$15,000.00.¹² ██████████ filed a Request for

¹ Social Security Administration Exhibit 4: Application Summary for Supplemental Security Income, February 19, 2013, pages 2, 3; Social Security Administration Exhibit 3: Divorce Decree, February 12, 2013.

² Social Security Administration Exhibit 5: AIP for Victims of Domestic Violence, September 2, 2015.

³ Social Security Administration Exhibit 3: Divorce Decree, February 12, 2013.

⁴ *Id.*

⁵ See Social Security Administration Exhibit 1, Deed #12, April 13, 2000.

⁶ Exhibit A: Letter from Iván A. Ramos, Ramos and Soler, October 11, 2016.

⁷ *Id.*

⁸ *Id.*

⁹ Social Security Administration Exhibit 6: Newspaper Advertisement dated 3/16/2016.

¹⁰ See Social Security Administration Exhibit 7: Notice of Disapproved Claim, March 21, 2016 (referencing application filed on December 31, 2015).

¹¹ *Id.* at page 1.

¹² *Id.* at page 6.

Reconsideration and an unfavorable decision for that Reconsideration was issued on August 20, 2016.¹³ As reason therefor, the notice stated that the Social Security Administration (“SSA”) found that [REDACTED] was part owner of a property in Puerto Rico, valued at \$45,000.00.¹⁴ On or about September 29, 2016 [REDACTED] submitted a Request for Hearing by an Administrative Law Judge.¹⁵ At issue before the Office of Disability Adjudication and Review is whether [REDACTED] has resources in excess of the \$2,000 limit for an individual on SSI.

Argument

PROPERTY SHOULD BE EXCLUDED FROM THE CALCULATION OF HER AVAILABLE RESOURCES BECAUSE IT CANNOT BE LIQUIDATED WITHOUT LITIGATION

Under Title 20 of the Code of Federal Regulations, “resources” for the purposes of SSI “means cash or other liquid assets or any real or personal property that an individual . . . owns and could convert to cash to be used for . . . her support and maintenance.” 20 C.F.R. § 416.1201. Following the definition of “resources,” 20 C.F.R. 416.1201 clarifies in subsection (1) that, if “the individual has the right, authority or power to liquidate the property or . . . her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual. . . .” 42 U.S.C. § 1382b(b)(2) further explains that “the Commissioner of Social Security shall not require the disposition of real property for so long as it cannot be sold because . . . its sale is barred by a legal impediment.” Social Security’s Program Operations Manual System notes that jointly-owned property is not a resource when “there is a legal bar to the sale of property” or “if a co-owner legally blocks [its] sale.” Program Operations Manual System, Social Security Administration, SI 01120.010(C)(2) (last effective September 26, 2014). The Social Security Administration does not “require an individual to undertake litigation” in order to sell property; rather, the “property is not a resource under such circumstances in a month if a legal bar exists as of the first moment of that month.” *Id.*

The “underlying purpose behind [the Social Security Administration’s] statutory and regulatory scheme is to ensure that, when determining an individual’s SSI eligibility, any assets and other funds readily available to that person for support and maintenance should be applied towards those purposes before the state must intervene to provide minimal financial support to that person.” *Miranda v. Barnhart*, No. Civ.A. SA-00-CA-1195nn., 2002 WL 1492202, at *4 (W.D. Tex. 2002).

In the instant case, [REDACTED] share of the house in Puerto Rico cannot be readily converted to cash to be used for her own support and maintenance. As described above, [REDACTED] the co-owner of the house, is unreachable. Thus, as determined by Attorney Ramos, [REDACTED] only option to liquidate her portion of the property would be to file a lawsuit that would be both time consuming and expensive. Given that SSA may not require [REDACTED] to take legal

¹³ Social Security Administration Exhibit 7: Request for Reconsideration, May 16, 2016; Social Security Administration Exhibit 11: Notice of Reconsideration, August 20, 2016.

¹⁴ Social Security Administration Exhibit 11: Notice of Reconsideration, August 20, 2016 at page 1.

¹⁵ Social Security Administration Exhibit 12: Request for Hearing by Administrative Law Judge, September 29, 2016.

action to divest herself of the property under 42 U.S.C. § 1382b(b)(2), the property should not be considered a resource of [REDACTED] as per 20 C.F.R. 415.1201. *Accord* Program Operations Manual System, Social Security Administration, SI 01120.010(C)(2) (last effective September 26, 2014). Therefore, the property should be excluded from any calculation of [REDACTED] resources done for the purposes of determining her eligibility for SSI. As [REDACTED] has no remaining countable resources in her name, her application for SSI must be approved.¹⁶

Conclusion

In light of the foregoing, we ask that you consider [REDACTED] for a fully favorable on the record decision that holds that [REDACTED] is eligible for Supplemental Security Income benefits for December 2015 on. In the alternative, should a hearing be necessary, [REDACTED] will require a Spanish interpreter. Thank you for your consideration of [REDACTED] appeal.

Please do not hesitate to contact me at 508-425-2816 should additional information be necessary to act on [REDACTED] appeal request.

Very truly yours,

Rachel Shannon Brown
Staff Attorney

¹⁶ As a side note, one must acknowledge the Social Security Administration's failure to assist [REDACTED] with obtaining evidence related to her alleged resources. The Social Security Administration "must offer assistance to claimants/recipients and interested third parties in obtaining information /evidence needed to determine the claimant's eligibility and/or payment amount. That offer should be made during the initial contact with the individual and all subsequent contacts that involve requests for additional information/evidence." Program Operations Manual System, Social Security Administration, SI 00601.100 (last effective April 13, 2017). Furthermore, "[v]ictims of domestic abuse may require additional assistance in obtaining information or evidence due to the specific circumstances of their situations. Assistance obtaining evidence may be particularly necessary when a victim of domestic abuse has fled the abusive situation, but maintains income or resource associations with the abuser." *Id.* In the instant case, it does not appear that the Social Security Administration has made any offers of assistance to help [REDACTED] obtain additional information about the house that she co-owns with her abusive ex-spouse.