

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

CONSTANCE A. BLANCHARD,)
)
 Plaintiff)
)
 v.)
)
 JO ANNE B. BARNHART,)
 Commissioner of Social Security,)
)
 Defendant)

Docket No. 04-21-B-W

REPORT AND RECOMMENDED DECISION¹

The plaintiff in this Supplemental Security Income (“SSI”) appeal challenges the commissioner’s interpretation of the regulations governing deemed income. Finding that the facts of this case are indistinguishable from those of a case on which I issued a recommended decision over ten years ago, I recommend that the commissioner’s decision be vacated and the case remanded.

The plaintiff, who was then receiving SSI benefits, married Leigh Blanchard in 1996 and moved into the house in which he resided. Record at 31-32. After the marriage, the commissioner reduced the plaintiff’s monthly benefit on the grounds that she was receiving in-kind support and maintenance from a trust established for her husband’s benefit before the marriage. *Id.* at 31-32, 47. The commissioner denied

¹ This action is properly brought under 42 U.S.C. § 1383(c)(3). The commissioner has admitted that the plaintiff has exhausted her administrative remedies. The case is presented as a request for judicial review by this court pursuant to Local Rule 16.3(a)(2)(A), which requires the plaintiff to file an itemized statement of the specific errors upon which she seeks reversal of the commissioner’s decision and to complete and file a fact sheet available at the Clerk’s Office. Oral argument was held before me on October 20, 2004, pursuant to Local Rule 16.3(a)(2)(C) requiring the parties to set forth at oral argument their respective positions with citations to relevant statutes, regulations, case authority and page (*continued on next page*)

the plaintiff's request for reconsideration of this decision, *id.* at 47-50, and, after administrative delays that do not reflect well on the commissioner, *id.* at 56-69, a hearing was held before an administrative law judge. The administrative law judge ruled in favor of the plaintiff. *Id.* at 13-17. The Appeals Council reviewed this decision on its own motion, *id.* at 5, and reversed the decision of the administrative law judge, *id.* at 9. That decision is the final determination of the commissioner. 20 C.F.R. § 416.1481.

The plaintiff's husband is the beneficiary of a trust established by his father's will. Record at 109-13. The father died in 1990. *Id.* at 30. The trust owns the house in which the plaintiff and her husband live, and income from the trust is used by the trustee to pay costs associated with the occupancy of the house such as electric and water bills, insurance and repair costs. *Id.* at 6, 31. The plaintiff's husband does not receive any income directly from the trust. *Id.* at 14. The Appeals Council held that the trust's payments "constitute chargeable unearned income, in the form of in-kind support and maintenance, to both Leigh and the claimant" that should be divided equally between them, that the husband's share does not constitute income subject to the spouse-to-spouse deeming process and that the plaintiff's share may thus be used to offset the amount of SSI payments that would otherwise be due to her. *Id.* at 6-7.

The Appeals Council cited sections SI 00835.020.B.17 and SI 00835.020.B.18 of the Program Operations Manual System ("POMS") in reaching its decision. *Id.* at 7. SI 00835.020 "mirrors 20 C.F.R. § 416.1148(b)," and has been before this court before. In *Campbell v. Shalala*, 1994 WL 163719 (D. Me. 1994), *aff'd* by order dated April 6, 1994 (Docket No. 10; Brody, J.), I recommended that the decision of the Secretary of Health and Human Services, who then occupied the legal position with respect to claims for Social Security benefits that is held by the commissioner today, to offset as in-kind income

references to the administrative record.

under this regulation the value of housing provided rent-free to the minor claimant's father be overturned. 1994 WL 163719 at *4. I see no reason to treat this case differently.

In *Campbell*, the claimant was a severely disabled nine year-old who received SSI benefits. *Id.* at *1. She lived with her father in a house owned by her uncle and grandmother, who in turn lived in other states. *Id.* Her father maintained the house and paid the property taxes but otherwise lived in the house rent-free. *Id.* The arrangement "would have existed irrespective of whether [the claimant] was with him because his mother just wanted someone to take care of the house and property." *Id.* The administrative law judge in that case found that the claimant's benefits were subject to a reduction because she received rent-free shelter from her grandmother. *Id.* After reviewing the relevant regulations, 20 C.F.R. §§ 416.1102, 416.1130, 416.1148, 416.1160, 416.1161 and 416.1165, as well as the cited sections of POMS, I concluded that, given the father's arrangement with the owner of the property and his legal obligation to support the claimant, any shelter provided to her came from her father, not from her grandmother and uncle. *Id.* at *2-*3. Because the regulations direct that support that comes from a person living within the same household as the claimant, whose income is deemed to the SSI recipient, does not count as in-kind support for purposes of determining the amount of benefits payable, I concluded that the secretary's decision to do otherwise must be vacated. *Id.* at *4.

In this case, Leigh Blanchard, the only beneficiary of his father's trust, has the same legal obligation to support the claimant, his spouse. 19-A M.R.S.A. § 1504. The regulations at issue apply equally to a child or a spouse. They do not appear to have changed in any respect material to this case since 1994. I also find nothing in the additional regulations cited by the Appeals Council, 20 C.F.R. §§ 416.1110, 416.1123(b), 416.1140, and 416.1169, Record at 6, that supports a different result. Accordingly, the same conclusion is required.

For the foregoing reasons, I recommend that the commissioner's decision be **VACATED** and the case remanded for further proceedings consistent with this opinion.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 25th day of October, 2004.

/s/ David M. Cohen
David M. Cohen
United States Magistrate Judge

Plaintiff

CONSTANCE A BLANCHARD

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