

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

L.N.P., *on his own behalf and on behalf of his
dependent children P.D.P. and L.D.P.
and on behalf of all others similarly situated,*

Plaintiff,

v.

FRANK BISIGNANO,
Commissioner of Social Security Administration,
et al.,

Defendants.

Case No. 1:24cv1196 (MSN/IDD)

**DEFENDANTS’ MEMORANDUM IN SUPPORT
OF THEIR MOTION FOR SUMMARY JUDGMENT AND
IN OPPOSITION TO PLAINTIFF’S MOTION TO ENTER FINAL JUDGMENT**

Defendants Frank Bisignano, Commissioner of Social Security, and the Social Security Administration (collectively, “SSA”), hereby submit this Memorandum in Support of Their Motion for Summary Judgment and in Opposition to Plaintiff’s Motion to Enter Final Judgment (Dkt. 137 and 138) (“Motion”).

INTRODUCTION AND BACKGROUND

Plaintiff L.N.P. asserts that SSA’s calculation of his children’s auxiliary benefits—which SSA reduced so as not to exceed Plaintiff’s “family maximum benefit”—is erroneous. In calculating auxiliary benefits, SSA deducts a retiree’s primary insurance amount (“PIA”) from the “family maximum benefit.” Plaintiff asserts that SSA should instead deduct the smaller retirement insurance benefit (“RIB”) that he actually receives as an early retiree. On February 14, 2025, the Court denied SSA’s motion to dismiss (Dkt. 49). In doing so, the Court concluded that SSA had

been misinterpreting Section 203 of the Social Security Act (the “Act”), codified at 42 U.S.C. § 403, by reducing child auxiliary benefits using the PIA instead of the RIB. *Id.* at 10.

Because the Court had resolved the merits of Plaintiff’s claims, the parties discussed the possibility of stipulating to entry of judgment to conclude the district court proceedings expeditiously and obtain a final resolution from the Fourth Circuit.¹ However, the parties were unable to agree on the terms of such a judgment. SSA cannot agree to many of Plaintiff’s proposed terms, and Plaintiff’s proposal fails to include provisions SSA deems essential. Plaintiff then filed his motion requesting that the Court enter his proposed judgment (Dkt. 137). SSA interprets Plaintiff’s motion as seeking summary judgment on the terms of Plaintiff’s proposed judgment. For the reasons set forth in Defendants’ motion to dismiss (Dkt. 28, 29, 36), however, Defendants maintain that judgment should be entered in their favor. But should the Court enter judgment against the agency, SSA requests a stay of enforcement pending the resolution of any and all appeals.

ARGUMENT

I. SUMMARY JUDGMENT SHOULD BE ENTERED IN THE AGENCY’S FAVOR

A court may grant summary judgment where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The party seeking summary judgment “bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the [record] which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal quotations omitted). After the movant meets its burden, the

¹ SSA wishes to appeal the Court’s finding that its methodology for reducing auxiliary benefits to avoid exceeding the family maximum violates the Social Security Act. Plaintiff wishes to appeal the scope of the class the Court certified.

nonmoving party must “come forward with specific facts showing that there is a genuine issue for trial.” *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (cleaned up). Only disputes of material fact that might affect the outcome of the case properly prevent the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

In determining whether there is a genuine issue for trial, a court must draw all justifiable inferences in the non-moving party’s favor. *Anderson*, 477 U.S. at 255. However, “permissible inferences must still be within the range of reasonable probability.” *Lovelace v. Sherwin-Williams Co.*, 681 F.2d 230, 241 (4th Cir. 1982) (cleaned up). A court must “withdraw the case from the [factfinder] when the necessary inference is so tenuous that it rests merely upon speculation and conjecture.” *Id.* Summary judgment is therefore warranted when any decision in favor of the non-moving party “would necessarily be based on speculation and conjecture.” *Myrick v. Prime Ins. Syndicate, Inc.*, 395 F.3d 485, 489 (4th Cir. 2005).

Defendants recognize that the Court has already resolved the sole legal issue in this case against them by holding that SSA has been incorrectly calculating the children’s auxiliary benefit, and also acknowledge that there are no disputed material facts that would necessitate a trial. Defendants nevertheless maintain that entry of judgment in their favor is appropriate. For the reasons set forth in their motion to dismiss (Dkt. 28, 29, 36), SSA’s use of the PIA, and not the RIB, in the family maximum formula is consistent with Section 203 of the Social Security Act. Under the early retirement provision, the Act directs that benefits be reduced when an individual elects to receive benefits prior to “retirement age.” 42 U.S.C. § 402(q)(1). Further, “this subsection [i.e., the early retirement reduction] shall be applied *after* reduction under section 203(a)” due to the family maximum. 42 U.S.C. § 402(q)(8) (emphasis added). As such, the Act directs the formula SSA uses to determine the family maximum. Defendants hereby incorporate those arguments into

this brief to preserve them for appellate review. *See also infra* Part III.A (discussing likelihood of success on appeal). Because SSA has properly calculated the children’s auxiliary benefit, summary judgment should be granted to the agency.

II. IN THE ALTERNATIVE, THE COURT SHOULD REJECT PLAINTIFF’S PROPOSED JUDGMENT.

Even if the Court does not enter summary judgment in the agency’s favor, the Court should decline to enter Plaintiff’s proposed judgment, because it suffers from a host of defects. First, SSA denies that Plaintiff is entitled to prospective injunctive relief. Second, the Court has already concluded that time-barred claims are not included in the class, yet Plaintiff’s proposed judgment requires payment of such claims. Third, the proposed judgment retains the Court’s jurisdiction over the matter after judgment is entered, while also unreasonably limiting the time in which the agency must recalculate benefits and issue retroactive payments to class members. Fourth, the proposed judgment does not stay execution of the judgment pending both parties’ appeal, despite the significant operational and financial burden on the agency and taxpayers. And finally, the proposed judgment prematurely orders the agency to pay Plaintiff’s attorneys fees under 42 U.S.C. § 406(b). For all these reasons, the Court should decline to enter Plaintiff’s proposed judgment.

A. Plaintiff and the Class are not Entitled to Prospective Relief

Plaintiff seeks to impose prospective injunctive relief “to ensure that Class Members receive the proper benefit payments to which they are entitled going forward after entry of judgment.” Pl.’s Br. (Dkt. 138) at 7-8. But Plaintiff fails to address his entitlement to this “drastic and extraordinary remedy” that courts should use only “sparingly.” *Wudi Industrial Co. v. Wong*, 70 F.4th 183, 190 (4th Cir. 2023). It “requires the enjoined party to perform enumerated steps under threat of . . . contempt.” *Id.* (quotation omitted). A party seeking permanent injunctive relief

must demonstrate all of the following:

(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

Wong, 740 F.4th at 190 (citing *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006)). Plaintiff, whose injuries are in no way irreparable, has not articulated the necessary factors here, much less made a showing to satisfy them. Furthermore, forcing SSA to change its calculation for the class going forward presents the same kind of logistical problems that will arise should the execution of the judgment not be stayed pending appeal. *See* Section III, *infra*. Accordingly, this prospective relief should not be part of any final judgment in this case.

B. Plaintiff’s Proposed Judgment Improperly Compensates Class Members for Lapsed Claims.

As SSA explained in its motion opposing class certification and supplemental brief opposing class certification (Dkts. 27, 66), the Social Security Act, as part of its waiver of sovereign immunity, sets strict time limits on judicial review:

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a part . . . irrespective of the amount in controversy, *may obtain a review of such decision by a civil action commenced within sixty days* after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow.

42 U.S.C. § 405(g) (emphasis added). “Thus, a plaintiff has a sixty-day period after the Commissioner mails a copy of his final decision to the plaintiff or such further time as the Commissioner . . . may allow to file her action with this Court.” *King o/b/o J.Z.K. v. Kijakazi*, 2022 WL 3021130, at *1 (E.D. Va. July 29, 2022) (quotation omitted). This 60-day period promulgated by Congress “constitutes a period of limitations.” *Bowen v. City of New York*, 476 U.S. 467, 478 (1986). This Court acknowledged this limitations period when it declined to certify a class dating

back to 1979, as Plaintiff had proposed:

Plaintiff's proposed forty-five year class period (stretching back to January 1, 1979) poses several insurmountable hurdles, most notably that many of the purported class members will not satisfy the statute of limitations applicable to Social Security claims. Under the Social Security Act, a claimant who wishes to seek judicial review of a final decision of the Commissioner must commence that action within *sixty days* after the mailing of a notice of the decision. *See* 42 U.S.C.A. § 405(g)

Order (Dkt. 72) at 3 (internal footnote omitted) (emphasis in original). The Court therefore certified a class period beginning on May 10, 2024, 60 days before Plaintiff filed his complaint. *Id.*; *see also* Dkt. 1.

Plaintiff's proposed judgment requires SSA to recalculate benefits for each class member beginning the first month each class member received a child's insurance benefit payment. *See* Pl.'s Proposed Final Judgment (Dkt. 138-1) ¶ 2. There is a fundamental problem with this request. Many individuals who received auxiliary child's benefits as of May 10, 2024, received determinations or decisions awarding those benefits more than 60 days earlier. As this Court has already recognized, Section 405(g) contains a 60-day limitations period during which a beneficiary may obtain review of a determination or decision awarding benefits.² So not all members of the class as currently defined are entitled to relief.

To illustrate, Plaintiff's children have exhausted their administrative remedies, received a final agency decision, and sought judicial review within 60 days, as required by Social Security

² Under the Social Security Act, a claimant who wishes to challenge an agency determination or decision must first timely exhaust administrative remedies before the agency, and, if still dissatisfied after obtaining a final decision of the Commissioner, file suit for judicial review within 60 days of receiving notice of the Commissioner's final decision. *See* 42 U.S.C. § 405(g); 20 C.F.R. §§ 404.900(a), 404.981. Administrative actions are "initial determinations" subject to administrative and judicial review, include determinations as to the amount of benefits. 20 C.F.R. § 404.902(c). Generally, if a claimant is dissatisfied with a determination or decision made in the administrative review process but does not request further review within the stated time period, the claimant/beneficiary loses the right to further review and that determination or decision becomes final. *See* 20 C.F.R. §§ 404.900(a), 404.902, 404.905, 404.987(a).

law. *See* 42 U.S.C. § 405(g), (h); 20 C.F.R. §§ 404.900, 404.981. Should Plaintiff's children prevail with a favorable court decision, past due benefits would be recalculated for the period of entitlement covered by their 2019 application for benefits. However, this is not the case for all class members. Under the class definition as written, some class members *receiving a benefit* during the relevant period of May 10, 2024, to May 30, 2025, received their initial determination or decision regarding their monthly child's insurance benefit amount, which would have included appeal rights, prior to May 10, 2024. Unlike Plaintiff, these beneficiaries chose not to timely exercise their appeal rights. *See* 20 C.F.R. § 404.900(a). Their un-appealed determinations as to the monthly benefit amount are final, binding, and time-barred. *See* 20 C.F.R. §§ 404.902, 404.905, 404.987(a). As addressed in prior briefing on the issue of the relevant class period, courts properly exclude such final and time-barred claims from class relief (often referred to as lapsed claims) in the absence of a basis for equitable tolling, which this Court has found does not apply here. *See e.g., Medellin v. Shalala*, 23 F.3d 199 (8th Cir. 1994); *Marcus v. Sullivan*, 926 F.2d 604 (7th Cir. 1991); *Johnson v. Sullivan*, 922 F.2d 346 (7th Cir. 1990). Any judgment should reflect the Court's finding that those with lapsed claims—those whose failure to appeal meant the decision on their benefit amount became final and binding prior to the start of the class period on May 10, 2024—are not entitled to relief.

Plaintiff conflates the general issue of underpayment with the threshold issue of timely challenging a determination of benefits under the Social Security Act. As the Court has already recognized, the Social Security Act contains a 60-day limitations period for contesting SSA's determination of benefits. Accordingly, any judgment should exclude those with lapsed claims, as relief is not available for claims that were not timely challenged.

C. This Court Should Not Retain Jurisdiction After Entry of Judgment.

Under Plaintiff's proposed judgment, the Court would retain jurisdiction over this matter while SSA recalculates benefits for the class members. Plaintiff's request for relief is premature. Plaintiff has not shown that the circumstances of this case, which do not involve a consent decree or settlement agreement, require that the court retain jurisdiction or that bi-monthly status reports are warranted. *See* Pl.'s Br. at 20. This is an action for judicial review under section 205(g) of the Social Security Act, 42 U.S.C. § 405(g). "In reviewing final agency decisions on Social Security benefits, the exclusive methods by which district courts may remand to the [Commissioner] are set forth in sentence four and sentence six of [42 U.S.C.] § 405(g)." *Shalala v. Schaefer*, 509 U.S. 292, 296 (1993); *see also Daley v. Comm'r of Soc. Sec.*, 741 Fed. App'x. 963, 963-964 (4th Cir. 2018). "There are significant and material differences between the two foregoing types of district court remands." *Daley*, 741 Fed. App'x. at 964. "[A] sentence four remand constitutes a decision on the merits of the Commissioner's denial of benefits, but a sentence six remand does not assess the merits." *Id.* (citing *Melkonyan v. Sullivan*, 501 U.S. 89, 100 (1991)). A sentence four remand constitutes a final decision that is appealable, but a sentence six remand is generally not. *Id.* Unlike a sentence six remand, a sentence four remand order terminates the civil action seeking judicial review of the Commissioner's final decision and the district court does not retain jurisdiction. *Schaefer*, 509 U.S. at 299-300. Thus, per section 405(g), district courts do not retain jurisdiction in sentence four remand cases.

Plaintiff seeks a remand for further administrative proceedings to require the agency to issue new determinations of the monthly benefit amounts and any past due benefits owed to the class under Plaintiff's proposed family maximum formula using the reduced RIB. This type of remand is an appealable decision on the merits of the Commissioner's denial of benefits and thus

falls under sentence four of 42 U.S.C. § 405(g).³ *Daley v.*, 741 Fed. App'x. at 963-64; *see also Robert P. v. Comm'r of Soc. Sec.*, 2025 WL 963317, at *5-6 (D. Idaho Mar. 30, 2025) (reversing and remanding the case pursuant to sentence four to determine whether the plaintiff was paid during certain months and whether there was any underpayment); *Stark v. Colvin*, 2013 WL 5500100, at *1-2 (E.D. Mo. Oct. 3, 2013) (reversing and remanding the case per sentence four to apply the correct computation of the workers compensation offset to determine the correct amount of his overpayment or underpayment); *Scott v. Astrue*, 2009 WL 1789239, at *7 (W.D. Tex. June 23, 2009) (reversing and remanding the case per sentence four to recalculate the monthly benefits consistent with the court's opinion).

Should the Court ultimately enter (and the Fourth Circuit affirm) judgment in Plaintiff's favor, further administrative proceedings will be required for SSA to recalculate monthly benefit amounts and to issue past-due benefits to class members. Class members who believe the agency incorrectly recalculated their benefits in light of the Court's order may appeal that determination administratively, as they would any other benefits determination. And should they remain dissatisfied, they could file a new complaint under 42 U.S.C. § 405(g) with the district court, seeking review of the Commissioner's benefits determination.

Plaintiff offers no reason to depart from this typical process established for challenging benefits determinations, other than Plaintiff's view that the Court must "monitor the agency's compliance" in light of errors SSA made when identifying class members. Pl.'s Br. at 24. This is a red herring. The identification of beneficiaries who meet the class definition involved the

³ A sentence six remand "may be ordered in only two situations: where the Secretary requests a remand before answering the complaint, or where new, material evidence is adduced that was for good cause not presented before the agency." *Schaefer*, 509 U.S. at 297 n. 2. Such situations are not present here.

screening of hundreds of thousands of records and has proven to be a complex and difficult endeavor. As SSA explained in opposing class certification (Dkt. 66), the agency's technology systems are simply not structured for easy query of potentially qualifying beneficiaries. Because auxiliary benefits are dependent on a parent's earnings and retirement age, both the child's and parent's data had to be examined. Further complicating matters, in some cases the amount or type of benefits a child received changed over time, meaning that a child might not have met the class criteria at one point within the class period, but met it at another.⁴

At all times SSA has acted in good faith. Although SSA anticipated certain difficulties in extracting the relevant data, many of the intricacies its technicians later encountered were not apparent when SSA initially developed its methodology for identifying qualifying beneficiaries. This is an entirely different issue from recalculation of benefits for known beneficiaries. Plaintiff merely speculates that because SSA erred in the unprecedented task of identifying class members in a manner its databases are not designed to query, SSA will also err in recalculating benefits for these beneficiaries. Aside from this speculative assertion, this Court need not retain jurisdiction to provide class members with protections against agency error; as explained above, class members may appeal their eventual benefits determinations administratively and seek judicial review under 42 U.S.C. § 405(g).

D. The Agency Will Require More Than 12 Months To Recalculate And Pay Benefits To The Class.

Plaintiff's proposed judgment requires the agency to recalculate the benefits of every class

⁴ As noted above, the class as currently defined includes some members with time-barred claims who are not entitled to relief. Given this fact—as well as the changes in the kind and amount of benefits some auxiliary children received over the life of the class and post-entitlement changes requiring suspension and nonpayment of benefits—a class defined by reference to receipt of a determination with the notice of award of auxiliary benefits between May 10, 2024 and May 30, 2025 would be a more consistent means to identify members who would be entitled to relief.

member within 12 months of the entry of judgment. *See* Pl.’s Proposed Judgment ¶ 2. Plaintiff predicates his assessment on SSA’s adoption of technology pursuant to the Social Security Fairness Act and the deposition testimony of Michael Gallagher, the senior management advisor who led the agency’s efforts to identify class members. *See* Pl.’s Br. at 14-15. Neither provides any definitive guidance on how long recalculating benefits may take. In fact, the testimony Plaintiff cites pertains to how long it might take to *write code* to do the recalculations, not to evaluate each class member’s record and actually *perform* the calculations. *See id.* at 14 n.12.

Plaintiff is vastly oversimplifying the issue of proper relief in the context of the family maximum rules.⁵ Plaintiff underestimates the difficulty of reevaluating the status and potentially the benefits of approximately 200,000 individuals. Plaintiff’s assertion that each and every identified class member is “indisputably . . . entitled to benefits” is simply incorrect. Pl.’s Br. at 15. After remand, a technician will have to review the record of each individual identified in the class list(s) produced by the agency for notice purposes, to verify class membership. This includes verifying that the child received at least one qualifying payment during the class period and met the other criteria of the class definition. The technician would then have to recalculate the child’s benefits for all applicable months, if warranted. Performing these calculations is thus not a matter of plugging each class member’s parent’s benefit and family maximum into a new formula, as Plaintiff suggests. Relatedly, a putative class member whom the agency determines not to be a class member entitled to relief could administratively appeal the adverse determination.

⁵ “The rules for calculating the family maximum benefits are complicated. In some particularly complex cases, it is difficult to properly implement the family maximum, which can result in over- or underpayments.” Kathleen Romig and Dave Shoffner, *Understanding the Social Security Family Maximum*, Social Security Bulletin, Vol. 75, No. 3 (Aug. 2015), available at <https://www.ssa.gov/policy/docs/ssb/v75n3/v75n3p1.html>.

Recalculation of benefits using Plaintiff's formula will also require significant revision of the agency's internal policy documents, such as in the Program Operations Manual System ("POMS"), so that technicians across the agency are aware of what formula and reduction rules to apply. Plaintiff acknowledges that the POMS "provide instructions to SSA employees on how to carry out various calculations, among other things." Compl. ¶ 50. The relevant POMS provision is RS 00615.756 Adjusting Benefits for the Family Maximum (FMAX).⁶ As Plaintiff notes, this provision instructs agency employees to deduct the PIA from the family maximum when reducing benefits under the family maximum. *See* SSA-POMS: RS 00615.756; Compl. ¶¶ 51-52. Additionally, the change in policy and process by which the reduction in benefits is made would require significant resources to retrain staff in both the agency's field offices and processing centers. Staff will also need to be trained to communicate the new reduction methodology to the public. To the extent that some of the calculations could be automated, the new formula would require an update to the agency's systems. Revision of the POMS and ensuring that those responsible for recalculating auxiliary benefits are made aware of the new rules applicable to auxiliary child beneficiaries of early retirees require coordination with multiple agency offices and components.

E. Consideration of Attorneys' Fees Under 42 U.S.C. § 406(b) is Premature

Plaintiff's counsel intend to seek attorney's fees under 42 U.S.C. § 406(b). Plaintiff's counsel is the real party-in-interest in such a motion. SSA has no direct financial stake in the

⁶ Available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0300615756>. Other relevant POMS provisions include SSA-POMS: RS 00615.768 - Adjustment in Simultaneous and Dual Entitlement Cases - 09/22/2004; SSA-POMS: GN 02603.020 - Deduction before Reduction and Facility of Payment - 09/27/2011; SSA-POMS: GN 02603.040 - Events Subject to Deduction before Reduction - 09/15/2025; and SSA-POMS: GN 02603.045 - Deductions Because of Dual Entitlement - 09/15/2025.

outcome of a request for § 406(b) fees; rather, the agency’s Commissioner “plays a part in the fee determination resembling that of a trustee for the claimants.” *Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002). It is for the Court to decide whether attorney’s fees for services provided before the Court under 42 U.S.C. § 406(b) are authorized in the context of this class action litigation and, if so, whether such a request is reasonable under the law. Therefore, if the Court renders a final judgment favorable to Plaintiff resulting in past-due benefits, the agency reserves the right to advise the Court as appropriate regarding counsel’s request for attorney’s fees under 42 U.S.C. § 406(b).

As Plaintiff acknowledges, if he prevails in this litigation, this would be followed by “the timely submission of a fee application, the opportunity for class members to weigh in, and ultimately a hearing.” Pl.’s Br. at 20. It is then that the parties may brief any issues applicable to the fee request. There is no reason for the Court to make decisions about attorney’s fees at this juncture.⁷

III. ANY RELIEF REQUIRING SSA TO RECALCULATE BENEFITS AND ISSUE SUPPLEMENTAL PAYMENTS SHOULD BE STAYED PENDING APPEAL

SSA respectfully requests that enforcement of any judgment in Plaintiff’s favor be stayed pending the agency’s appeal. Recalculation of benefits will be an enormous operational undertaking and require dedication of significant governmental resources. Should the agency prevail on appeal, absent a stay, the agency would be forced to expend even more resources to recover overpayments from class members. This process would involve reducing future benefit

⁷ Plaintiff’s counsel have cited decisions from courts outside of the Fourth Circuit, in which they were awarded fees under 42 U.S.C. § 406(b). Pl.’s Br. at 17-20. These fee awards were made in connection with class action litigation relating to the calculation of attorneys’ fees themselves. However, the same outcome is not required for this case, which involves different plaintiffs, different facts, and different questions of law.

payments, or the issuance of debts and collection actions to recover on those debts. SSA would likely be unable to fully recover the overpayments, resulting in financial loss to taxpayers. Overpayment and collection would cause mass confusion to class members.

This Court has discretion to stay execution of its judgment pending resolution of an appeal. Fed. R. Civ. P. 62; *Scripps-Howard Radio v. FCC*, 316 U.S. 4, 9-10 (1942) (“It has always been held ... that, as part of its traditional equipment for the administration of justice, a federal court can stay the enforcement of a judgment pending the outcome of an appeal.”). In considering an application for a stay, a court balances four factors: (1) whether the movant “has made a strong showing that he is likely to succeed on the merits”; (2) whether the movant “will be irreparably injured absent a stay”; (3) whether issuance of a stay will “substantially injure” other interested parties; and (4) “where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009). A court “need not give these factors equal weight but should consider all of the factors in light of the circumstances surrounding the injunction.” *JTH Tax, LLC v. Shahabuddin*, 2021 WL 8445889, at *2 (E.D. Va. Oct. 8, 2021) (internal citations omitted). Here, all four factors support the issuance of a stay pending appeal.

A. SSA is Likely to Succeed on the Merits of an Appeal.

As set forth in Defendants’ motion to dismiss (Dkt. 28, 29, 36), the agency’s use of the PIA in the family maximum calculations to reduce auxiliary benefits is required by the Social Security Act and regulations and is consistent with Congressional intent. No other court has questioned the Act or the agency’s governing regulations on point.⁸

⁸As Defendants explained in support of their motion to dismiss (Dkt. 29 at 16-18), the First Circuit’s decision in *Parisi ex rel. Cooney v. Chater*, 69 F.3d 614 (1st Cir. 1995), which concerned the narrow case of dual entitlement, did not address the issue of reductions using the PIA under 42 U.S.C. § 403(a) and compels no different outcome here.

While this Court disagreed, this case presents a matter of first impression that could reasonably be decided in the agency's favor. Assessment of the likelihood of success on appeal "does not require the trial court to change its mind or conclude that its determination on the merits was erroneous. Rather, a court must determine whether there is a strong likelihood that the issues presented on appeal *could be rationally resolved* in favor of the party seeking the stay." *United States v. Fourteen Various Firearms*, 897 F. Supp. 271, 273 (E.D. Va. 1995) (internal citations omitted) (emphasis added); *see also MicroStrategy, Inc. v. Bus. Objects, S.A.*, 661 F. Supp. 2d 548, 559 (E.D. Va. 2009) (noting that if a movant were required to show that it is more likely that not that the appeal will succeed, "a stay would be warranted only in the unlikely event a movant could persuade the district judge that his or her decision was probably incorrect. The rule does not impose so onerous a burden on stay movants." (internal citation omitted)). Because the agency has presented strong arguments on a substantial legal question that could result in a successful appeal, the first prong of the stay analysis weights in the agency's favor.

B. SSA and the Public it Serves Will Suffer Substantial and Irreparable Harm in the Absence of a Stay, and a Stay is in the Public Interest.

To recalculate benefits and issue supplemental payments, the agency must divert staff from mission-critical tasks such as processing new claims, hearing appeals of denials, and responding to everyday requests from the public. The agency continues to make progress toward its customer service goals at a time with historically low staffing numbers. *See Social Security Administration Staffing Levels: Data Brief*, Library of Congress.⁹ Although the number of worker-hours necessary to recalculate benefits and issue supplemental payments has not yet been determined, every hour spent on this project is an hour not spent answering the phones, processing claims, conducting an

⁹ Available at: <https://www.congress.gov/crs-product/R48725> (last accessed Feb. 9, 2026).

administrative hearing, or performing other essential functions.

Without a stay pending appeal, the agency would be required to expend significant time and resources recalculating and issuing payments before the appellate court issued its decision. If the agency were then required to revert to its prior calculation method, the time spent on recalculations will have been wasted; an additional expenditure of time and resources would be required to recalculate yet again; and agency technicians responsible for calculating reduced auxiliary benefits will have been subject to fluctuating instructions, risking confusion. After having been instructed to use a new formula that comports with the Court's judgment but that departs from a decades-long practice, they would be instructed to revert to the prior methodology. New instructions would have to be issued to ensure agency-wide compliance, likely including another revision to the applicable POMS.

In addition, the agency would also need to devote additional resources to recover those payments now deemed erroneously disbursed. This process would involve reducing future benefit payments, sending billing notices and, for any unpaid and delinquent debts, initiating collection actions to recover those amounts. *See* Social Security Act § 204(a)(1)(A), (f), 42 U.S.C. § 404(a)(1)(A), (f); 20 C.F.R. § 404.502. The difficulty in fully collecting on overpayments is well known. *See, e.g.*, SSA's Fiscal Year 2025 Agency Financial Report (AFR) (January 15, 2026),¹⁰ p. 202. The administrative cost of recovery is \$0.07 for every \$1 recovered.¹¹ *See* AFR at p. 203. These recovery efforts would impose a significant administrative burden on the agency, requiring

¹⁰ Available at: <https://www.ssa.gov/finance/2025/Full%20FY%202025%20AFR.pdf> (last accessed Feb. 9, 2026).

¹¹ Individuals may seek a waiver of recovery if they request waiver and are not at fault for the overpayment and lack the financial means to repay it, resulting in those funds – which ultimately are taxpayer funds – going uncollected. *See* Social Security Act § 204(b), 42 U.S.C. § 404(b); 20 C.F.R. § 404.506(a).

the expenditure of considerable resources and potentially causing unnecessary complications and confusion to class members and a waste of taxpayer funds.

For the beneficiary, recovering overpayments could be confusing and disruptive, as beneficiaries would receive money (and possibly spend it) only to find out later that they were not entitled to it and must pay it back. Typically, SSA issues payments only when there is clear certainty regarding entitlement. Issuing payments under these uncertain circumstances—particularly involving a legal issue of first impression—is, simply, inadvisable.

Denial of a stay risks the assessment of overpayments for a class thought to number in the six digits. A stay of judgment pending appeal could prevent over 200,000 overpayments—some of which may never be fully recovered—prevent waste of agency resources, avoid unnecessary diversion of resources from critical agency functions, and prevent unnecessary complications and confusion associated with repayment. A stay is thus in the interest of the public—including the agency, the public fisc, and class members who will need to repay overpayments.

C. Issuance of a Stay Will Not Substantially Injure Other Interested Parties.

While denial of a stay pending appeal would be detrimental to SSA, class members, and the public fisc, issuance of a stay would not injure any party. If the agency were to lose on appeal, class members will receive the past-due benefits to which they are entitled. In contrast to overpayments and subsequent debt collection, a delay in the receipt of supplemental payments does not require class members to repay money they may have already spent. Instead, class members will receive what would amount to a bonus—money that was not expected, never promised, and not factored into a family’s budget. Should SSA not prevail on appeal, a stay during the pendency of the appeal would have been an inconvenience, not a significant burden, for class members entitled to supplemental payments. In contrast, should SSA prevail on appeal, a stay

during the pendency of the appeal would serve as a prudent safeguard against overpayments and the expenditure of time and resources needed to recover them. Thus, on balance, all the relevant factors weigh in favor of a stay.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court enter summary judgment in their favor and deny Plaintiff's motion for entry of judgment. In the alternative, if the Court enters final judgment adverse to SSA, Defendants respectfully request that enforcement of the judgment be stayed pending the resolution of any and all appeals.

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Respectfully submitted,

TODD W. BLANCHE
DEPUTY ATTORNEY GENERAL

_____/s/_____
MEGHAN LOFTUS
KIRSTIN K. O'CONNOR
Assistant United States Attorneys
Office of the United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3757/3799
Fax: (703) 299-3983
Email: Meghan.loftus@usdoj.gov
Kirstin.o'connor@usdoj.gov

Counsel for Defendants