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,	)	Case No. 1:24cv1196 (MSN/IDD)
v.	)	
FRANK BISIGNANO, Commissioner of Social Security Administration, *et al.*,	)	
Defendants.	)	

DEFENDANTS' REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT AND STAY

Defendants Frank Bisignano, Commissioner of Social Security, and the Social Security Administration (collectively, "SSA" or "Agency"), hereby submit this Reply Memorandum of Law in further support of their Motion for Summary Judgment (Dkts. 145-146) and in response to Plaintiff's Opposition to that motion (Dkt. 155).

ARGUMENT

I. The Agency Is Entitled to Summary Judgment Because It Reduced Benefits in Accordance with the Social Security Act.[1]

SSA properly used Plaintiff's primary insurance amount ("PIA") to reduce the benefits provided to his two minor children. Among other things, the Social Security Act ("Act") requires that family benefits with a sum exceeding the family maximum be reduced *before* any reductions

[1] Defendants acknowledge that the Court has already rejected these merits arguments. Defendants provide the following discussion of the merits in order to respond to Plaintiff's Opposition and preserve the issues for appeal.

are applied on account of an early retirement. 42 U.S.C. § 402(q)(1); *see* Dkt. 146 at 3. The Act explicitly instructs that any reduction for early retirement be applied *after* any reduction made under 42 U.S.C. § 403(a) for exceeding the family maximum. 42 U.S.C. § 402(q)(8). That is precisely why the statute's implementing regulations direct that any reductions because of the family maximum be made before considering "reduction in benefits for age," or the reduced insurance benefit ("RIB"). 20 C.F.R. § 404.402(b)(1)(ii).

In response to the Agency's Motion, Plaintiff attempts to sidestep the statute by asserting that § 402(q) and its implementing regulations "do not apply to children," as children are "not subject to reduction because of age." Dkt. 155 at 9 n. 3.[2] Of course, children do not themselves retire from a lifetime of work, and they are not directly entitled to retirement benefits. But they receive benefits as the auxiliaries of a retired parent, and if the parent retires early, the auxiliaries will receive lower monthly benefits than if the parent had retired at full retirement age. Indeed, the present action would not exist if not for the application of § 402(q) to children's auxiliary benefits. Plaintiff fails to recognize that it is auxiliary beneficiaries such as children who trigger a reduction in benefits due to the family maximum. Hence, the calculation of reductions because of the family maximum under § 403(a) cannot first consider a reduction in benefits for age, or the RIB.

The use of the PIA to reduce auxiliary benefits to prevent exceeding the family maximum is also consistent with the structure of the Act. Neither the Act nor its implementing regulations ever refer to the RIB for the calculation of the family maximum benefit and instead repeatedly use the PIA. *See* Dkt. 36 at 8. Similarly, as the Agency explained, the Act repeatedly refers to the PIA—not the RIB—in determining auxiliary benefits. *Id* at 9-10. All of the statutory provisions

[2] References to page numbers in Plaintiff's brief (Dkt. 155) refer to the page numbers generated by ECF, printed on the top of each page.

work together. Under the family maximum provision, the Act directs that the total monthly benefits to which a wage earner and others entitled on the same record (family members or auxiliaries) "shall . . . be reduced as necessary so as not to exceed" the family maximum benefit amount. 42 U.S.C. § 403(a)(1). The amount of the family maximum benefit itself is to be calculated using an individual's PIA. 42 U.S.C. § 403(a)(1)(A)-(D). 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). And it directs that "this subsection [*i.e.*, the early retirement reduction] shall be applied *after reduction under section 403(a)* . . . ." 42 U.S.C. § 402(q)(8) (emphasis added). As such, the Act directs SSA to use the PIA to determine the family maximum.

Plaintiff's contrary interpretation would turn Congressional intent on its head. The statutory provisions reflect Congress's clear intent that any receipt of benefits by an early retiree be "*reduced* to take account of the longer period of which benefits will be paid" to that retiree. Social Security Amendments of 1961, H.R. 6027, 87th Cong., 1st. Sess. (Apr. 7, 1961) (emphasis added); *see also id.* (explaining the bill would make reduced benefits available at age 62 and noting [t]he effect of this change would be that [individuals] electing to retire at age 62 will receive the same total amount of benefits over the remainder of their lives as they would have received had they waited to retire at age 65."). If SSA were to adjust children's benefits in the manner Plaintiff suggests, it would allow Plaintiff to avoid the consequences of his choice to take advantage of early retirement benefits: Plaintiff's children would receive the benefits that he foreswore in order to retire early. Additionally, because Plaintiff elected to retire early, his children are likely to receive auxiliary benefits for a longer period because they began to receive them at a younger age. Plaintiff proposes a windfall for early retirees with children that the law does not allow. Respectfully, for all of the

reasons discussed herein, and in the Agency's initial Memorandum in Support, the Court should enter summary judgment in favor of SSA.

II. Any Judgment Adverse to the Agency Should Be Stayed Pending Appeal.

While the Agency maintains that it is entitled to judgment in its favor as a matter of law, should the Court enter judgment adverse to the Agency, a stay of that judgment pending appeal is necessary to protect taxpayer funds. *See* Dkt. 146 at 13-18. Plaintiff challenges SSA's request for a stay pending appeal as premature. Dkt. 155 at 24. This is not the case. To be clear, SSA is not asking the Court to enter a stay *prior* to entry of judgment, but rather *upon* entry of judgment (should that judgment be adverse to SSA) so that the status quo may be maintained pending any timely-filed appeal.

A. The Agency has a reasonable likelihood of success on appeal.

The Agency has a reasonable likelihood of success on appeal. *See* Dkt. 146 at 14-15. No appellate court, including the Fourth Circuit, has held that the Act requires the Agency to use an early retiree's RIB rather than the retiree's PIA in the calculations to reduce a child's auxiliary benefits under the family maximum. Certainly, Plaintiff cites none. Plaintiff argues that SSA is unlikely to succeed on the merits based on his differing view of the statutory interpretation question. Dkt. 155 at 26. Plaintiff further suggests that SSA's position would only be meritorious if another circuit has endorsed it.[3] *Id.* To the contrary, the Act's discussions of auxiliary benefits repeatedly refer to the PIA, not the RIB, and explicitly instruct that any reduction for early retirement be applied after any reduction made under 42 U.S.C. § 403(a) for exceeding the family

[3] While Plaintiff believes that the First Circuit's decision in *Parisi by Cooney v. Chater*, 69 F.3d 614 (1st Cir. 1995) is such a decision, Defendants maintain that the case is distinguishable. *See, e.g.*, Defs.' Br. Mot. to Dismiss (Dkt. 29) at 6-8, 13-14.

maximum. 42 U.S.C. § 402(q)(8). That aligns with Congress's intent that early retirees receive a lower benefit.

In short, the Agency meets the standard for its likelihood of success on appeal because it has demonstrated a "a strong likelihood that the issues 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).

B. The public and Agency would incur significant harm without a stay.

Implementation of an order directing the recalculation of benefits according to Plaintiff's proposed formula would be a vast undertaking. The Agency's Operations and Policy components would need to coordinate to issue new instructions to technicians, who would have to be trained on the new procedures. This could include issuing a new or revised provision in the Agency's Program Operations Manual System. Technicians would need to review each class member's records, first to confirm membership in the class and then to recalculate benefits. This may well require a manual review of each beneficiary's record.

Plaintiff disputes this, claiming the process can be automated in a matter of 20 to 40 hours. In support of this argument, Plaintiff relies on deposition testimony from Michael Gallagher, an agency program analyst. Dkt. 155 at 21. But Mr. Gallagher was describing only his best estimate about the time to write and test code that, as he understood it, would produce the calculations:

> Q. Okay. And then going back a minute to we were talking about how to calculate or code – write code in order to calculate the refund amount, do you have any idea of how long it would take you to write such a code?
>
> A. I wouldn't speculate on that. Like I said, we could run into complexities for payment history on some of these because of the excluding the 2 – to 3,000, however many it is, I don't know. I would say maybe, including validation, review, sample, 20 to 40 hours.

> Q. That's the time to write the code?
>
> A. To write it, execute it, produce a sample, look at aberrant findings, things that don't appear to add up, if you will.

Gallagher Dep. 84:18-85:10. His testimony does not mean, as Plaintiff posits, that "after the code is written, the calculations can be performed by the push of a button." *See* Dkt. 155 at 21. Importantly, manual review may well be necessary, too, because, among other reasons, child beneficiaries may not have had their benefits reduced for the entirety of the class period, let alone the period during which they have received auxiliary retirement benefits. *See generally* Declaration of Joseph Cafaro (Ex. A). The necessary expenditure of resources would impair the Agency's ability to provide other services to the public. Time spent analyzing these records and recalculating benefits is time technicians would otherwise spend on other retirement and disability claims.

Other work is needed as well. Plaintiff attempts to refute SSA's assertion that it will be necessary to verify class membership for each individual identified in the class lists, citing an interrogatory response dated July 21, 2025. Dkt. 155 at 21-22. But additional issues with class identification became apparent after that response was provided. The Agency subsequently revised its code to remove various exclusionary filters that turned out to be unreliable.[4] In doing so, in an abundance of caution, and in an effort to avoid the possibility of an underinclusive list, the agency interpreted ambiguous results in favor of potential class membership. *See, e.g.* Dkt. 134-1 (January 1, 2026, letter from Defendants to Plaintiff explaining how SSA addressed the inadvertent

[4] Plaintiff, noting that the Agency needed to supplement the class list, argues, "If SSA was dissatisfied with the class definition, it should have complained before Plaintiffs mailed close to 200,000 notices to the class members the agency identified." Dkt. 155 at 12, n. 5. This vastly oversimplifies the complexities the Agency encountered when developing code to identify class members. In its investigations leading up to the supplement provided in December 2025, the Agency identified problems filtering for elements of the class definition unrelated to the timing of payments. *See, e.g.* Dkt. 134-1.

exclusion of certain children from the class list and explaining that "[r]emoving as exclusionary factors the reduction factor as all termination codes other than death reflects an overinclusive approach intended to avoid potential unforeseen issues"). And while Plaintiff's alternative proposal, Dkt. 155 at 22—performing calculations without releasing payments—is preferable over requiring payment of benefits pending appeal, Plaintiff mistakenly minimizes the expenditure and diversion of resources needed to perform the recalculations. At a time of a reduced federal workforce, the hardship from such a diversion is very real and will hurt other SSA claimants whose claims would otherwise be processed.

Plaintiff also improperly minimizes SSA's concerns that issuing payments during the pendency of an appeal could result in overpayments, positing that the Agency "undeniably has the means to recover any overpayments." Dkt. 155 at 28. Notwithstanding SSA's authority to do so, in practice, recovery of overpayments is very difficult. *See, e.g.*, Social Sec. Admin., AGENCY FINANCIAL REPORT FISCAL YEAR 2025 202 (Jan. 15, 2026)[5] ("AFR"). The administrative cost of recovery is $0.07 for every $1 recovered. *See id.* at 203. A longitudinal study highlighted the persistent difficulties: for example, nearly half of all the overpayment debt identified in 2004 was either waived, canceled, or outstanding 10 years later. Hoffman, *et al.*, *Work Overpayments Among New Social Security Disability Insurance Beneficiaries*, 84 SOCIAL SEC. BULLETIN 1 (Feb. 2024)[6] (citing Social Sec. Admin, Office of the Inspector General, AUDIT REPORT: OVERPAYMENTS IN THE SOCIAL SEC. ADMIN.'S DISABILITY PROGRAMS–A 10-YEAR STUDY 6 (June 2015); *see also* AFR at 202-03.

[5] Available at https://www.ssa.gov/finance/2025/Full%20FY%202025%20AFR.pdf.

[6] Available at https://www.ssa.gov/policy/docs/ssb/v84n1/v84n1p49.html.

Plaintiff's proposal of rolling recalculations, starting with the youngest class members, would not resolve the difficulties inherent in overpayments. Plaintiff posits that, for the youngest class members, the agency would have "many years and opportunities to deduct, or entirely withhold, benefits to recoup overpayments in the event of a reversal on appeal." Dkt. 155 at 28. This overlooks the significant administrative cost of recovering overpayments and difficulties in recovering them.

C. Class members would not be irreparably injured by a stay.

Lastly, Plaintiff opposes a stay by arguing that its entry would injure class members. Plaintiff invokes the time value of money and alludes to class members' missed investment opportunities. *Id.* at 30-31. These harms are hypothetical. Plaintiff offers no support for the notion that class members could have reasonably expected the additional money they would have received if RIB was used instead of PIA in reducing auxiliary benefits, or that they acted to their detriment in reliance on such money.[7] Plaintiff has not shown that either his children or any other class member relied on the greater hypothetical payment LNP asserts they are due, nor could they reasonably have done so. Further, Plaintiff has not shown that waiting the duration of an appeal to receive benefits (should he prevail on appeal) would cause him any meaningful harm. Any hypothetical financial harm resulting from a temporary stay pending resolution of an appeal is clearly outweighed by the known strain on public resources, discussed above, that warrant the issuance of a stay of any judgment adverse to SSA in this case.

CONCLUSION

For the foregoing reasons, as well as the reasons in Defendants' opening brief supporting

[7] By contrast, it is reasonable to expect that a beneficiary would spend retirement payments issued to them, such that the money would no longer be available to pay back an assessment charged in the future. *See* Dkt. 146 at 17.

summary judgment, Defendants respectfully request that this Court enter summary judgment on their behalf. 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.

Dated: March 6, 2026

Respectfully submitted,

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