



SOCIAL SECURITY ADMINISTRATION

Refer To: [REDACTED]

Office of Hearings and Appeals
Plaza of the Rockies – South Tower
121 South Tejon Street, Suite 701
Colorado Springs, CO 80903-2216
Phone: (719) 634-5368

Date: DEC - 1 2004

[REDACTED]
Fountain, CO 80817

NOTICE OF DECISION – FULLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

This Decision is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

The Appeals Council May Review The Decision On Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

If You Disagree With The Decision

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative must request the Appeals Council to review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the Appeals Council, Office of Hearings and Appeals, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any appeal you file.

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Time To File An Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time To Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider **with** your request for review.

How An Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It **will** review your case if one of the reasons for review listed in our regulations exists. Section 404.970 and 416.1470 of the regulation list these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

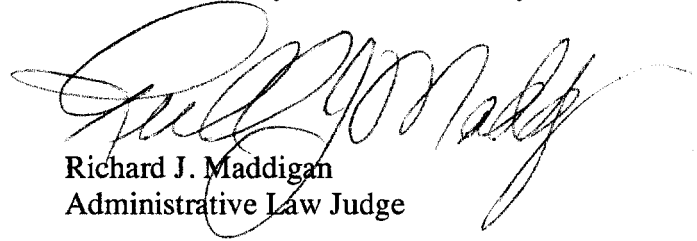
If No Appeal And No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

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If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (719)574-9279. Its address is Social Security, 1049 N Academy Boulevard, Colorado Springs, CO 80909.



Richard J. Maddigan
Administrative Law Judge

cc: Patrick C. H. Spencer, II, Esquire
830 Tenderfoot Road
#320
Colorado Springs, CO 80906

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**SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals**

**DECISION
PURSUANT TO UNITED STATES DISTRICT COURT REMAND**

IN THE CASE OF

██████████

(Claimant)

(Wage Earner)

CLAIM FOR

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

██████████
(Social Security Number)

PROCEDURAL HISTORY

The claimant, ██████████ protectively filed applications for a period of disability, disability insurance benefits, and supplemental security income based on disability on September 10, 1998, alleging that she had been disabled since July 27, 1998. However, these claims were denied administratively and, pursuant to the claimant's request, filed timely on May 3, 1999, a hearing was held before Administrative Law Judge Antoinette Martinez on October 19, 1999, in Colorado Springs, Colorado. The claimant personally appeared and testified, represented by Kathleen W. Robinson, Attorney at Law. Thereafter, Judge Martinez issued her decision, on May 22, 2000, finding that the claimant was not disabled and, therefore, not entitled to a period of disability and disability insurance benefits or eligible for supplemental security income (Exhibit 3A). The claimant, through her representative, appealed Judge Martinez' decision but the Appeals Council notified the claimant, on April 11, 2003, that they found no basis to review the decision (Exhibit 8B). The claimant's attorney then appealed the claimant's case to the United States District Court for the District of Colorado (Denver). This matter is now appropriately before the undersigned Administrative Law Judge for further proceedings pursuant to the Appeals Council's Order of Remand dated December 3, 2003, following sentence four judgment and remand from the United States District Court (Civil Action No. ██████████) (Exhibit 4A).

In the interim, the claimant protectively filled subsequent applications for a period of disability and disability insurance benefits and supplemental security income based on disability on May 1, 2003, alleging disability since May 1, 2003 (the month subsequent to the month that the Appeals Council denied the claimant's request for review of the prior Administrative Law Judge decision). These claims were denied administratively and the claimant filed a request for hearing timely on December 10, 2003.

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The claimant has two appeals pending, the Appeals Council Remand Order of December 3, 2003, and the request for hearing filed on December 10, 2003. Since the issues to be considered in the appeals are the same, the undersigned Administrative Law Judge has consolidated these appeals under the provisions of Section 404.952 of Regulations No. 4 and Section 416.1452 of Regulations No. 16.

After due notice, a hearing was convened on October 14, 2004, in Colorado Springs, Colorado, before the undersigned Administrative Law Judge. The claimant appeared, represented by Patrick C. H. Spencer, II, Esquire, Attorney at Law. Also present, at the request of the undersigned, was Martin Rauer, a Vocational Expert (Exhibit 12B). As the hearing ensued, the proceedings were hindered by tape recording equipment failure. Nevertheless, having reviewed the documentary evidence, the undersigned concluded that a wholly favorable decision could be issued without the necessity of postponing the hearing.

ISSUES

The general issues are whether the claimant is entitled to a period of disability and disability insurance benefits under Sections 216(i) and 223, respectively, of the Social Security Act, as amended; and whether the claimant is disabled under Section 1614(a)(3)(A) of the Social Security Act. The specific issues are whether the claimant was under a "disability" and, if so, when such disability commenced and its duration. Sections 223 and 1614 of the Social Security Act define disability as the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that has lasted or is expected to last for a continuous period of not less than 12 months or which may be expected to result in death. Pursuant to the provisions of the Act, the Commissioner of the Social Security Administration has established Regulations No. 4 and No. 16, which provide sequential steps for evaluating disability whereby current work activity, severity and duration of impairment, ability to perform past work, and vocational factors are considered in that order (20 CFR §§ 404.1520(a) and 416.920(a)).

An additional issue is whether the claimant met the disability insured status requirements of the Act for the purpose of entitlement to a period of disability and disability insurance benefits. The evidence establishes that the claimant met these requirements on July 27, 1998, the date she alleges that she became unable to work and she last met them on March 31, 2003.

EVALUATION OF THE EVIDENCE

The first step of the sequential disability evaluation process requires a determination of whether the claimant is engaging in substantial gainful activity. The claimant is a 58-year-old individual with a high school education. There are no indications that she has engaged in any substantial gainful activity since July 27, 1998 (20 CFR §§ 404.1574 and 416.974).

It is next necessary to establish whether the claimant has a "severe" impairment or combination of impairments. Social Security Ruling 96-3p stipulates that this requires an assessment of the functionally limiting effects of the impairment or combination of impairments on an individual's ability to do basic work-related activities.

The medical evidence reflects that the claimant has a seizure disorder; peripheral vascular disease; and progressive hand tremors. Since these medically determinable impairments cause more than minimal functional limitations, they are considered to be severe.

The medical evidence also reflects that the claimant has been diagnosed with a personality disorder. Regarding this impairment, the State agency physician opined that the claimant retains the capacity to sustain substantial gainful activity and meet the mental demands of "at least" unskilled work. In terms of the "Part B" criteria of Listing 12.08, the State agency physician found that, based on the medical evidence and on the claimant's prior written reports, the claimant has moderate restriction of activities of daily living but that this is due to her physical condition rather than psychologically based symptoms. The State agency physician noted that the claimant has a limited social sphere but generally gets along with others. Consequently, the State agency physician found that the claimant has no more than slight difficulties in maintaining social functioning. The State agency physician also found that the claimant has mild-to-moderate difficulties in maintaining concentration, persistence, or pace, secondary to the personality disorder. However, as with the claimant's activities of daily living, it appears, from the documentation, that the claimant's difficulties in this area are due more to her physical problems than to any psychologically based symptoms. The State agency physician's (admittedly questionable) finding, that the claimant has had one or two episodes of deterioration or decompensation in work or work-like settings is not supported by the medical evidence of record. Consequently, the undersigned finds that the opinion of the State agency physician, regarding the severity of the claimant's personality disorder, is not well supported by or consistent with the record as a whole. Therefore, the Administrative Law Judge has given no weight to the State agency physician's opinion. Moreover, the State agency physician's opinion that the claimant could do "at least" unskilled work is vague as well as contrary to the Social Security Administration's Process Unification initiative of 1996 (see Social Security Rulings 96-1p through 96-9p). In short, the Administrative Law Judge finds no basis to find that the claimant is limited to work of an unskilled nature secondary to a personality disorder; or that she has significant vocationally relevant functional limitations due to this medically determinable mental impairment (Exhibit 1F, pages 9-22; and SSR 96-6p).

Step three in the sequential evaluation process requires that we compare the claimant's impairments to the listed impairments described in Appendix 1 of Subpart P of Social Security Regulations No. 4. Having done this, the undersigned finds that the claimant does not have an impairment or combination of impairments which meets the criteria of any of the listed impairments because the necessary clinical, laboratory, and/or radiographic findings have not been established. The undersigned has specifically considered Sections 4.00 ff., and 11.00 ff., concerning cardiovascular system disorders, and neurological disorders, respectively.

Since the claimant does not have an impairment or combination of impairments of Listing-level severity, the Administrative Law Judge must next determine the claimant's residual functional capacity (RFC). Pursuant to Social Security Ruling 96-8p, this is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis. A "regular and continuing basis" means eight hours a day, for five days a week, or an equivalent work schedule. In this regard, the undersigned finds that the claimant's statements concerning her impairments and their impact on her ability to work are credible in light of her description of her activities, the degree of medical treatment required, her efforts to achieve relief of symptoms, the reports of the treating and examining practitioners, and the findings made on examination (SSR 96-7p).

In January 1999, Dr. [REDACTED], a treating source, examined the claimant and was impressed with probable seizure disorder, currently controlled (Exhibit 7F, page 45). Dr. [REDACTED] reported that the claimant was limited to lifting no more than 20 pounds at a time and frequently lifting up to 10

pounds; occasionally climbing; and was precluded from work with fine or dexterous requirements (id., pages 40 and 41).

On July 6, 1999, Dr. [REDACTED] a treating source, noted that the claimant's condition was worsening but she had not had any seizures for 10½ months. Dr. [REDACTED] opined that the claimant was unable to work due to increasing hand tremors. Although the outcome is the same, the undersigned notes that the finding of disability is an issue that is reserved to the Commissioner (SSR 96-5p). Nevertheless, Dr. [REDACTED]'s opinion is consistent with Dr. Ausman's opinion regarding the claimant's use of her hands (Exhibit 8F).

The claimant underwent a functional capacity evaluation in September 1999, which indicated that the claimant was not capable of performing the full range of sedentary work based on grip strength testing. The claimant's overall deconditioning also was noted (Exhibit 6F, pages 6-8).

In November 2003, Michael Iannotti, M.D., performed a consultative examination and noted the significant diagnoses of peripheral vascular disease; facial cancer, status post radiation treatment; and history of radical neck dissection resulting in strokes. Dr. Iannotti assessed the claimant as able to stand and/or walk less than one hour during an eight-hour workday; to sit six or more hours per day; to lift 10 pounds frequently and 20 pounds occasionally; and to occasionally grasp and finger. Dr. Iannotti indicated that the claimant will need a wheelchair in the near future but now can use a cane. Dr. Iannotti doubted that the claimant would be able to participate in vocational rehabilitation. Dr. Iannotti's opinion is well supported by the objective medical findings and reinforces Dr. [REDACTED]'s earlier opinion. Consequently, the Administrative Law Judge has accorded considerable weight to Dr. Iannotti's opinion (Exhibit 11F).

In connection with the claimant's applications protectively filed in May 2003, the State agency physician found that the claimant has the residual functional capacity to meet the physical exertional and nonexertional requirements of sedentary work. Specifically, the State agency physician assessed the claimant as able to lift and/or carry up to 20 pounds occasionally and 10 pounds frequently; to stand and/or walk at least two hours during an eight-hour workday, with frequent postural shifts; to sit about six hours per day, with frequent postural shifts; and occasional climbing. The State agency physician's opinion is not consistent with the treating and examining source opinion in that the State agency physician did not find any limitations on the use of the claimant's hands. Nevertheless, by indicating a limitation of occasional standing and/or walking, the State agency physician did agree that the claimant is limited to no more than sedentary work. Therefore, the undersigned has given some weight to the opinion of the State agency physician (Exhibit 12F and SSR 96-6p).

Based on the evidence in its entirety, and giving greatest weight to the opinion of Dr. Iannotti, which is consistent with the treating source opinions, the undersigned finds that the claimant has the residual functional capacity to perform no more than sedentary work, with no more than occasional handling and fingering. Sedentary work normally involves lifting no more than 10 pounds at a time, standing and walking occasionally, and sitting the remainder of the time (20 CFR §§ 404.1567(a) and 416.967(a)).

Having determined the claimant's residual functional capacity, the last two steps of the sequential disability evaluation process are determining whether she can perform any of her past relevant work and, if not, whether other jobs she could do exist in significant numbers in the economy. The claimant's past relevant work was primarily as an administrative clerk. The undersigned finds that the claimant is precluded from the performance of this work due to the limits on handling and fingering.

The claimant also has worked in the fast food industry. The undersigned finds that she is precluded from this type of work because it customarily requires more than sedentary exertion.

Since the claimant has established that her impairments prevent her from performing her past relevant work, the burden shifts to the Commissioner to show that there are other jobs existing in significant numbers in the national economy, which the claimant could perform consistent with her medically determinable impairment, functional limitations, age, education and work experience. Such a determination must be made in light of the Medical-Vocational Guidelines of Appendix 2 of Subpart P of Regulations No. 4, which are a set of rules which direct a conclusion of either "disabled" or "not disabled" depending upon the aforementioned vocational factors.

As of July 27, 1998, the claimant was 52 years old, and was considered to be a person closely approaching advanced age. Since her attainment of age 55 on January 3, 2001, she has been considered to be a person of advanced age. She has a high school education. She does not have any acquired work skills which are readily transferable to other work within her residual functional capacity (20 CFR §§ 404.1563, 404.1564, 404.1568, 416.963, 416.964, and 416.968).

Considering the foregoing, the undersigned finds that the claimant's vocational profile coincides with Medical-Vocational Rules 201.14 and 201.06, which direct the conclusion that, considering her age, education, residual functional capacity, and work history, she is disabled. Accordingly, the Administrative Law Judge concludes that the claimant has been under a disability as defined in the Social Security Act and Regulations since July 27, 1998 (20 CFR §§ 404.1520(f) and 416.920(f)).

FINDINGS

After careful consideration of the entire record, the Administrative Law Judge makes the following findings:

1. The claimant met the disability insured status requirements of the Act on July 27, 1998, the date she alleges that she became unable to work and she last met them on March 31, 2003.
2. The claimant has not engaged in substantial gainful activity since July 27, 1998.
3. The medical evidence establishes that the claimant has a seizure disorder, peripheral vascular disease, and progressive hand tremors; which constitute severe impairments; but that she does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4.
4. The claimant's assertions concerning her impairments and their impact on her ability to work are credible in light of her description of her activities, the degree of medical treatment required, her efforts to achieve relief of symptoms, the reports of the treating and examining practitioners, and the findings made on examination (20 CFR §§ 422.406, 404.1529, and 416.929; and SSR 96-7p).
5. The claimant has the residual functional capacity to perform no more than sedentary exertional work, with no more than occasional handling and fingering (20 CFR §§ 404.1545 and 416.945).

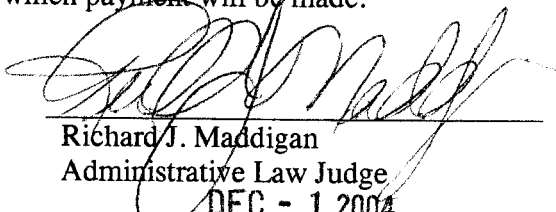
6. The claimant is unable to perform her past relevant work.
7. As of July 27, 1998, the claimant was 52 years old, and was considered to be a person closely approaching advanced age. Since her attainment of age 55 on January 3, 2001, she has been considered to be a person of advanced age (20 CFR §§ 404.1563 and 416.963).
8. The claimant has a high school education (20 CFR §§ 404.1564 and 416.964).
9. The claimant does not have any acquired work skills which are readily transferable to other work within her residual functional capacity (20 CFR §§ 404.1568 and 416.968).
10. Section 404.1569 of Regulations No. 4, Section 416.969 of Regulations No. 16, and Rules 201.14 and 201.06, Table No. 1 of Appendix 2, Subpart P, Regulations No. 4, direct the conclusion that, considering the claimant's residual functional capacity, age, education, and work experience, she is disabled.
11. The claimant has been under a disability as defined in the Social Security Act and Regulations since July 27, 1998 (20 CFR §§ 404.1520(f) and 416.920(f)).

DECISION

It is the decision of the Administrative Law Judge that, based on the Title II application protectively filed on September 10, 1998, the claimant is entitled to a period of disability commencing July 27, 1998 and to disability insurance benefits under Sections 216(i) and 223, respectively, of the Social Security Act.

It is the further decision of the Administrative Law Judge that, based on the application for supplemental security income protectively filed on September 10, 1998, the claimant was "disabled" as defined in Section 1614(a)(3)(A) of the Social Security Act beginning July 27, 1998, and that her disability has continued at least through the date of this decision.

The component of the Social Security Administration responsible for authorizing supplemental security income payments will advise the claimant regarding the nondisability requirements for these payments and, if eligible, the amount and the month(s) for which payment will be made.


Richard J. Maddigan
Administrative Law Judge
DEC - 1 2004
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

Civil Action No. [REDACTED]
[REDACTED]

OCT - 1 2003

GREGORY C. LAMPHAM
CLERK

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of Social Security,

Defendant.

ORDER


Kane, J.

This matter is before the Court on Defendant's Unopposed Motion to Remand, filed September 29, 2003. This Court having reviewed the file and considered the motion, it is hereby

ORDERED that the motion is **GRANTED**. This civil action is remanded to Defendant for additional administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

Dated this 30 day of September, 2003.

BY THE COURT:



JOHN L. KANE, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
GREGORY C. LANGHAM, CLERK
Alfred A. Arraj United States Courthouse
901 19th Street - Room A-105
Denver, CO 80294
(303) 844-3433

Date: **September 30, 2003**

Case No. **Civil Action No.** [REDACTED]

The undersigned hereby certifies that on the above date a true and correct copy of the preceding **ORDER** signed by Judge John L. Kane on **September 30, 2003** was mailed to the following:


Kurt J. Bohn
Assistant United States Attorney

Teresa H. Abbott, Special Assistant U.S. Attorney
District of Colorado
Office of the General Counsel
Region VIII
Social Security Administration
1961 Stout Street #120
Denver, CO 80294

Patrick C.H. Spencer, II, Esq.
Spencer & Spencer, PC
830 Tenderfoot Hill Road, #320
Colorado Springs, CO 80906

^{D. Weber}
~~September~~ , 2003

GREGORY C. LANGHAM, CLERK



Deputy Clerk

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FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO

2003 SEP 29 PM 1:43

GREGORY G. LANGHAM
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. [REDACTED]

BY _____ DEP. CLK

[REDACTED]
Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of Social Security,

Defendant.

DEFENDANT'S UNOPPOSED MOTION TO REMAND

Defendant, the Commissioner of Social Security, by her attorney, the undersigned Special Assistant United States Attorney for the District of Colorado, respectfully moves this Court, pursuant to sentence four of 42 U.S.C. § 405(g), for an order remanding this case to the agency for further proceedings. As grounds for this motion, Defendant states:

1. Under sentence four of 42 U.S.C. § 405(g), the Court has the power "to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying or reversing the decision of the Commissioner, with or without remanding the cause for a rehearing." See Shalala v. Schaefer, 509 U.S. 292 (1993).

2. Upon further review of the transcript, counsel for the Commissioner had concerns about the defensibility of the of the case and asked the Social Security Administration's Appeals Council to reconsider the final administrative decision and agree to a remand of the case for further administrative proceedings.

3. The Appeals Council has further reviewed this case and determined that a remand for further proceedings is appropriate. If the Court grants this motion, the Appeals Council will remand the matter to an administrative law judge (ALJ) for further administrative proceedings to further evaluate all medical source opinions and provide specific rationale for the weight

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accorded each opinion; reassess the Plaintiff's physical and mental residual functional capacity in light of reevaluation of the medical evidence and provide a function-by-function analysis of her limitations; and conduct another evidentiary hearing and receive vocational testimony regarding the availability of jobs within Plaintiff's residual functional capacity.

4. Pursuant to D.C.COLO.LCivR. 7.1(A), Plaintiff, by and through her counsel of record, Patrick C.H. Spencer, II, Esq., has been contacted regarding this motion and does not object to remand.


DATED this 29th day of September, 2003.

Respectfully submitted,

JOHN W. SUTHERS
United States Attorney

KURT J. BOHN
Assistant United States Attorney
1225 Seventeenth Street, Suite 700
Drawer 3608
Denver, CO 80202
Telephone: (303) 454-0100

By


TERESA H. ABBOTT
Special Assistant U.S. Attorney
District of Colorado
Office of the General Counsel, Region VIII
Social Security Administration
1961 Stout Street, Suite 120
Denver, CO 80294
(303) 844-0815

CERTIFICATE OF MAILING

The undersigned hereby certifies that on this 29th day of Sept. 2003, a true and correct copy of **DEFENDANT'S UNOPPOSED MOTION TO REMAND** was mailed, postage prepaid, to Plaintiff's attorney:

Patrick C.H. Spencer, II, Esq.
Spencer and Spencer, P.C.
830 Tenderfoot Hill Road, Suite 320
Colorado Springs, CO 80906

Beth Salobreen
Office of the General Counsel
Social Security Administration

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