

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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|-----------------------------|---|--------------------------------|
| STEPHANIE LYNN STEIGERWALD, |) | CASE NO.: 1:17-CV-1516 |
| |) | |
| <i>Plaintiff,</i> |) | JUDGE JAMES S. GWIN |
| |) | |
| v. |) | |
| |) | |
| NANCY A. BERRYHILL, ACTING |) | RESPONSE TO PLAINTIFF’S |
| COMMISSIONER OF SOCIAL |) | MARCH 27, 2019 NOTICE |
| SECURITY, |) | |
| |) | |
| <i>Defendants.</i> |) | |

On March 27, 2019, Plaintiff filed a document titled “Notice Regarding Subtraction Recalculation,” which was neither solicited by this Court nor asked the Court for any relief. Plaintiff filed her Notice only hours after defense counsel agreed, in response to demands by class counsel for ad-hoc updates on the agency’s progress, to “follow[] up with the agency” and provide “further information from them soon.” (*See* Pl.’s Notice, ECF No. 100-1, Exh. A.)¹ The sole purpose of Plaintiff’s filing appears to be to criticize Defendant by noting that that, as of the date of the filing, only seven windfall-offset recalculations had been completed. In rushing to the Court, class counsel has short-circuited any meaningful meet-and-confer process.

On April 1, 2019, the Court granted, in part, Defendant’s 59(e) motion, giving SSA eight months to complete the recalculations without requiring status updates. (Order, ECF No. 101,

¹ To be clear, an anomaly present in this case has led to issues over the past month in which class counsel have received communications about class members on issues unrelated to this case. Defense counsel not only promptly worked with the agency to determine the cause of these communications, but also encouraged class counsel to continue bringing such matters to our attention for prompt resolution. In any event, these anomalies have nothing to do with the substance of the relief that the Court has entered.

PageID # 1378.) Nonetheless, in response to Plaintiff's filing, Defendant will clarify the record regarding SSA's progress in completing the recalculations and complying with this Court's Orders.

1. Defendant Has Encountered Unforeseen Difficulties.

SSA has made completion of the class-member workload a top agency priority and worked diligently during the pendency of this litigation to develop and execute a plan for expeditiously making class members whole. (*See* Declaration of Janet Walker, ECF No. 96-2, PageID # 1233.) As expected, SSA commenced the recalculations and issued the first underpayments in February 2019. (*See* Response Declaration of Janet Walker, hereinafter "Walker Resp.," attached as Ex. A, ¶ 3.) By February 22, 2019, the agency had started processing approximately 21,000 cases, and by March 1, 2019, the agency had begun processing approximately 37,000 cases. (*Id.*)

Defendant's Rule 59(e) motion and accompanying declaration described, in detail, the extensive procedures that SSA would need to implement in order to comply with the Court's January 25, 2019 order and conduct windfall-offset recalculations accurately. Despite SSA's extensive preparations, additional complications have been discovered that required changes to the anticipated procedures. A preliminary quality review process (which, as Ms. Walker attested, *see* Walker Decl., ECF No. 96-2, ¶ 20, PageID # 1240; Walker Reply Decl., ECF No. 99-1, ¶ 5, PageID # 1331, is critical to ensure the accuracy of the recalculations) revealed an unacceptable error rate of 34.5%. (*See* Walker Resp. ¶ 4.) This necessitated revisiting procedures and re-processing cases so the underlying errors could be fixed. (*Id.* at ¶ 8.)

The agency took immediate steps to identify the cause of the 34.5% error rate. It has determined that these errors occur in three main categories, each of which affects past-due benefits and representatives' fees. In some records, awards to other individuals, such as children, who received benefits on the class member's record and also involved attorneys' fees for the covered

windfall-offset period, were not accounted for. (*Id.* at ¶ 4.) Other times a supplemental medical-insurance premium was not considered. (*Id.*) In still other instances, benefits paid on another individual's record were not accounted for. (*Id.*) These issues underscore the incredibly complex nature of these recalculations. Furthermore, the agency's *detection* of these errors *before* incorrectly calculated underpayments issued illustrates the critical need for quality-review procedures. (*See* Walker Reply Decl., ECF No. 99-1, ¶ 5, PageID # 1331.)

SSA acted swiftly to correct these errors. First, the agency clarified and updated its instructions for performing class recalculations and updated the tracking tool to include a comprehensive quality-review checklist. (*Id.* at ¶¶ 6-7.) Second, SSA sent all cases where any underpayment had not issued back to technicians to be re-processed using the updated instructions, tracking tool, and quality checklist. (*Id.* at ¶ 8.) Third, personnel within the Office of Quality Review (OQR) will review 100 percent of the cases at key steps in the process for at least ten weeks, to ensure that these remedial measures have been effective. (*Id.* at ¶ 9.) SSA will re-evaluate the need for 100-percent quality review during that ten weeks. (*Id.*)

2. SSA Is Making Progress in Computing Windfall-Offset Recalculations.

As of April 1, 2019, SSA had completed Part 1 of the recalculation process for over 11,000 cases. (*See id.* at ¶ 10; Walker Decl., ECF No. 96-2, ¶¶ 15-20, PageID # 1239-1240 (describing Part 1.)) In accordance with the procedures set forth above, each of those cases are being reviewed by staff in the Office of Quality Review, after which time they will be returned to a technician for correction if errors are found, or move forward to Part 2 of the windfall offset recalculation. The cases will again be reviewed for accuracy after Part 2. (*See* Walker Resp. ¶ 9; Walker Decl., ECF No. 96-2, ¶¶ 21-29, PageID # 1240-1242 (describing Part 2.)) Because the error rate was, fortunately, discovered before many underpayments had been released, SSA has issued underpayments in sixteen

cases to date.² (Walker Resp. ¶ 3.) Additional underpayments will be issued as cases are processed using the revised procedures and quality review enhancements.

SSA will continue to perform the recalculations on a rolling basis and anticipates that the changes made will increase the accuracy of the underpayments. (*Id.* at ¶ 11.)

3. SSA Is Amenable to the Court Requiring Status Reports.

As these facts make clear, conducting windfall-offset recalculations is a complicated process to begin with. Those complexities are compounded by the scale of the task at hand and the necessity to ensure accuracy for the SSA recipients that class counsel represents.

Class counsel have repeatedly insisted that the agency provide an on-demand, running tally of recalculations completed to date, including name, address, date of completion, and the amounts both of any underpayment due and withholding for attorneys' fees. As a threshold matter, defense counsel have already confirmed that class counsel will receive letters from the agency that include this information as underpayments are issued to class members. In the event the Court believes that regular status reports should be filed, SSA requests that such reports could be filed at regular intervals on the public docket. Class counsel's ad-hoc demands for emailed information are inefficient and distract agency resources from the complicated tasks necessary to complete class member recalculations as expeditiously as possible.

² In email exchanges class counsel have questioned why the dates on the letter relating to seven of these recalculations all reflect March 2019, not February. Pursuant to POMS NL 00601.010.B, a notice is dated with the date it is expected to leave the mailroom, not the date it is prepared.

Respectfully submitted,

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NORTHERN DISTRICT OF OHIO

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(f)

Pursuant to 28 U.S.C. § 1746, undersigned declares under penalty of perjury that this
Response is 4 pages in length and is within the page limitation for standard track cases.

/s/Erin E. Brizius
Erin E. Brizius
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2019, the foregoing *Response* was filed electronically.
Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.
Parties may access this filing through the Court's system.

/s/Erin E. Brizius
Erin E. Brizius
Assistant U.S. Attorney

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| |) | MAGISTRATE JUDGE DAVID RUIZ |
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| NANCY A. BERRYHILL, ACTING |) | |
| COMMISSIONER OF SOCIAL |) | |
| |) | |
| Defendants. |) | |

DECLARATION OF JANET WALKER

I, Janet Walker, pursuant to 28 U.S.C. § 1746, do hereby make the following declaration.

Introduction

1. I am the Associate Commissioner of the Office of Public Service and Operations Support, which is a component of the Office of Operations of the Social Security Administration (“SSA” or “the agency”). I have been employed in this position since August 8, 2016. I have been employed by SSA since January 6, 1986.
2. As described in my February 21, 2019 and March 13, 2019 Declarations, calculating the windfall offset is a complex process involving technical expertise. Proper and thorough development is essential to ensure each class member’s windfall offset calculation is completed accurately and the correct amount of underpayment, when due, is provided to the class member. Since the agency has commenced the process set forth in my February 21, 2019 Declaration, we have learned more specifics about the difficulties presented by these cases and have taken steps to mitigate errors that have arisen. To this end, we have expanded the scope of the quality reviews in Part 1 and 2 of the windfall offset recalculation. *See* Feb. 21 Decl. ¶¶ 20, 29.



3. The agency began working on class members' windfall offset recalculations in February 2019. By February 22, 2019, the agency had started processing approximately 21,000 cases, and by March 1, 2019, the agency had begun processing approximately 37,000 cases. The agency paid underpayments and released notices to inform class members and counsel of payments for seven cases in February and early March and for an additional nine cases the week of March 25, 2019.
4. Starting on February 25, 2019, the Office of Quality Review (OQR) reviewed cases for accuracy in Part 1 of processing. *See* Feb. 21 Decl. ¶ 20. The preliminary quality review of 58 cases found 65.5 percent accuracy. OQR identified errors that caused the past due benefit amounts and representative fees paid to the prior attorney to be incorrect. These errors fell into three main categories:
 - Technicians had not accounted for other people, such as children, who received benefits on the class member's record and who also had attorney fees during the covered windfall offset period;
 - Technicians had not considered supplemental medical insurance premiums in the initial calculation, which decreased the amount of benefits actually paid to the class member; and
 - Technicians had not accounted for benefits paid to the class member on another number holder's record, which could mean the class member's Title XVI payment should have been adjusted to account for the class member receiving benefits on an additional record, beyond the individual's own Title II and Title XVI records.
5. The preliminary OQR review demonstrated how crucial correct review of the Title II record is to ensure an accurate recalculation.

6. Based on to the results of the preliminary OQR review, the agency refined its instructions for Part 1 and Part 2 in an effort to reduce the error rate. Operations and OQR communicated the quality review findings to technicians and provided clarifications to the case processing instructions.
7. The agency also updated the case tracking tool to include a comprehensive quality checklist and a standardized form for quality review feedback to be relayed to the technician, which will provide for a more streamlined review process.
8. With a better understanding of the types of Part 1 errors that could result in incorrect windfall offset recalculations, and with updated procedures to mitigate those errors, the agency sent all of the approximately 37,000 cases that did not have an underpayment released to processing centers to begin the process again from Part 1, using the updated instructions, updated tool, and quality checklist.
9. The week of March 25, 2019, the agency began a quality review of 100% of cases after Part 1 and Part 2 for ten weeks to ensure that the agency is correctly processing the windfall offset recalculations. The agency will reevaluate the necessity of continuing the 100% quality review weekly during those ten weeks.
10. As of April 1, 2019, Operations has completed Part 1 for over 11,000 cases, and OQR is in the process of reviewing those cases. As OQR completes each review, it will either return the case to the processing center for correction or send the case on to Part 2 of case processing.
11. The agency continues to perform the recalculations on a rolling basis. The agency anticipates that the improvements made to the process will increase the accuracy of the class members' underpayments.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2 day of April, 2019.

A handwritten signature in cursive script that reads "Janet Walker". The signature is written in black ink and is positioned below the date line.