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February 21, 2012

VIA CERTIFIED MAIL
SOCIAL SECURITY
8000 SOUTHPARK LN
LITTLETON, CO 80120

Re: Request for Reconsideration Regarding Supplemental Security Income Eligibility

Claimant: Kevin William Williams
[REDACTED]

This letter is sent with my Request for Reconsideration, Form SSA-561-U2. As explained in this letter, I remain eligible for SSI under Section 1619(b) of the Social Security Act, even though I am ineligible for cash payments. On February 16, 2012, employees at my local Social Security Administration ("SSA") office took a contrary position. They told me and my county Human Services caseworker that because my SSI payments stopped, I am ineligible for SSI. If I am ineligible for SSI, I am also ineligible for Medicaid, which I need. I am appealing this decision. I remain eligible for SSI under 1619(b), and SSA is wrong. I have not yet received a written termination of eligibility from SSA. The facts and applicable law are set forth in this letter.

I. Facts:

I am disabled. In 1986, at the age of 19, as a result of a diving accident, I incurred a cervical neck injury, resulting in C-5/C-6 quadriplegia and permanent paralysis in my lower limbs and limited use of my hands and arms. Because of my quadriplegia, I require significant medical services and equipment, which include but are not limited to: the use of a motorized wheelchair for mobility, a specialized seating system to avoid pressure sores, catheterization, numerous medical supplies, daily home health attendant care for health maintenance, personal care and homemaking assistance. After my injury in 1986, I applied for and obtained Social Security Disability Income ("SSDI") and Supplemental Security Income ("SSI") benefits. Despite my disability and extensive medical needs, I graduated from the University of Colorado at Denver in 1993 with honors. I also graduated from the University of Denver College of Law in 1996, ranked sixth in my class. I took and passed the Colorado bar exam in 1996 and was sworn in as a member of the Colorado bar in 1997. I

remain an attorney in good standing.

I have been working since 2000 under the SSA's 1619(b) provision. I am employed as an attorney with the Colorado Cross-Disability Coalition ("CCDC"). My title is Legal Program Director.

I am still disabled, and my disability has not improved. I do not have sufficient earnings to replace SSI cash benefits, Medicaid benefits, and publicly-funded personal or attendant care that would be lost due to my earnings.¹ Without Medicaid for medical care and attendant care, I would be unable to work at all. I remain disabled and need daily attendant care. I currently use the Medicaid-funded Colorado Consumer Directed Attendant Support Services ("CDASS") program for attendant care.

For some of the twelve years since I began working, Arapahoe County Human Services ("ACHS") has requested information regarding my continuing Medicaid eligibility. Each time I received a request, I provided all of the responsive documentation, and each year my county office approved continuing Medicaid eligibility. There has never been any question that I am disabled or that I met the requirements for 1619(b) Medicaid eligibility until now. In the past several years, including in January of 2012, my ACHS caseworker, Mary Deana Conrad, has approved continuing Medicaid eligibility based on 1619(b).²

Also, in the past, I have received requests from Social Security Administration ("SSA") for information regarding my continuing eligibility. I provided responsive information. I have never received any information from the SSA saying that I am not eligible for SSI or that my eligibility was going to be or has been terminated. I have also never received an award letter or confirmation letter that I remain eligible. It is my understanding that continuing Medicaid benefits under 1619(b) are automatic and, unfortunately, that SSA does not issue a confirmation of 1619(b) eligibility.³

¹ See Legal Arguments below and POMS SI 02302.010.C.1e.

² I have had several contradictory letters now from ACHS regarding whether I do or do not have continuing Medicaid benefits. That issue is now under appeal in the Office of Administrative Courts in Denver.

³ Minutes from the October 4, 2011 meeting of the "1619(b) Program in Colorado," attended by SSA employees Greg Roy, Rose Medina, Rose Fortune, and Carolyn Spencer. The minutes reflect Ms. Spencer confirmed that 1619(b) recipients do not receive letters confirming eligibility because eligibility is "automatic."

On February 15, 2012, I received a voice mail message from my ACHS caseworker's supervisor, Amelia Groves, saying the county has "no record of [my] 1619(b) eligibility." She requested that I fax my "award letter or whatever documentation I have" saying I am eligible. She said, "When we pull you up in the SDX system, it is not flagging you as 1619(b) eligible." As Ms. Groves instructed me to do, the next morning I called the national Social Security Office to request documentation of my eligibility. The person with whom I spoke said she was unfamiliar with 1619(b). I was told to contact my local Social Security office.

I called the Arapahoe County Social Security ("ACSS") Office. I spoke with Leigh. Leigh informed me that the computer system showed my SSI was "terminated" in 2005. I requested to speak to a supervisor who was familiar with 1619(b). Later in the day, a supervisor named Miranda called me back. Miranda professed knowledge of 1619(b), but she too said that my SSI was "terminated" in 2005. I requested an appointment to demonstrate that I have been and remain eligible under 1619(b). Miranda told me an appointment would do no good. She told me to reapply for SSI. I asked Miranda to send me a letter she said I received telling me my SSI had been "terminated." She has not yet sent that letter.

Later on February 16, CCDC Executive Director Julie Reiskin and I called Rose Fortune, SSA Public Affairs Specialist and Work Incentives Coordinator and the Colorado and Wyoming Area Work Incentives Coordinator. Ms. Fortune found a November 9, 2004 letter from SSA to me and faxed it to me. I do not know if this was the letter to which Miranda in my SSA office was referring. Ms. Fortune told us she would look into the matter further.

In reviewing my file (which spans twelve years), it appears SSA sent a letter to me on August 31, 2004 informing me that my "disability payments" were stopped, and that I was "no longer eligible for payments" as of September 2004. This letter was inaccurate. My actual cash payments stopped earlier as a result of my wages and 1619(b) eligibility. In fact, I believe my payments actually stopped in or about 2001. I have a "Notice of Planned Action" dated January 15, 2001, stating, "We will stop your payments . . . beginning February 2001."

On October 13, 2004, SSA sent me a letter requesting that I complete a Statement for Determining Continuing Eligibility for Supplemental Security Income payment. I did so. My records show it was received by SSA on October 28, 2004.

It appears that on November 9, 2004, SSA sent a letter titled "Important Information" saying I was "not eligible to receive Supplemental Security payments" for certain months in

2003 and 2004. I dispute the reasoning and factual content of that letter,⁴ however, there was no need to appeal the letter, because the result was that SSI payments would be stopped for the months in question. I did not dispute that my "payments" should have stopped. They had already been stopped years before. I never received SSI payments in the referenced months.

The letter also incorrectly states: "You had monthly income which must be considered in figuring your eligibility as follows: Your wages of \$4,166.67 for January 2004 and \$4,166.67 for March 2004 through April 2004." Because of 1619(b), my wages should not have been considered, but, again, there was no need for me to appeal, because the decision reached was, "Because of your income, you were not eligible to receive Supplemental Security Income payments for January 2004 and for March 2004 through April 2004." I do not dispute this. As explained below, 1619(b) requires this.

In addition, the 2004 letter correctly states that I can keep my Medicaid if I "continue to be disabled" and I "can't pay [my] medical bills without Medicaid." The letter did not require further action. I have remained 1619(b) eligible for Medicaid for the reasons stated in the letter: I "continue to be disabled" and I "can't pay [my] medical bills without Medicaid." This has been true since the year 2000. This letter did not "terminate" my SSI eligibility. It simply informed me that I will not receive SSI payments.

Later in the day on February 16, I received the following message from Amelia Groves at ACHS:

Hi Mr. Williams, this is Amelia Groves at Arapahoe County Human Services. I was returning your call from last night. Just to give you an update, I spoke with Dan Collins who is over in the Littleton Social Security office and asked him if he could verify your 1619(b) status for us. He told me that your 1619(b) status actually terminated in May of 2005, and that if you were interested in pursuing that benefit you would have to reapply, so, at this point, well, I'd like to talk to you and see . . . I mean, of course, there might be a glitch with Social Security, so you know I don't want to make any assumptions until I've had a chance to talk to you, so if you could give me a call back. I'm at (303) 738-8084. Have a good day.

I have never received a formal notice regarding termination of my SSI eligibility. Nevertheless, to prevent SSA from declaring further that I am not eligible for SSI, I am

⁴ I do not believe I was over the resource limit for the three months in question.

appealing the incorrect decision made by my local SSA office that I was “terminated” from SSI eligibility in 2005. I request a hearing if my SSI eligibility has been terminated. It is quite possible my local SSA office is just wrong, but I cannot risk the consequences. If my eligibility for SSI has been terminated, I request reinstatement and a determination of eligibility dating back to the date of termination. I request continuing SSI eligibility. I am not seeking, nor have I sought, SSI “payments” as I am not entitled to those under 1619(b). I am, however, entitled to continuing SSI “eligibility” because I meet all of the conditions of 1619(b).

II. Legal Argument:

A. I am eligible for SSI regardless of whether I receive cash payments under 1619(b).

Section 1619(b) provides continuing Medicaid coverage for individuals who:

- Have been eligible for an SSI cash payment for at least 1 month;
- Still meet the disability requirement; and
- Still meet all other non-disability SSI requirements; and
- Need Medicaid benefits to continue to work; and
- Have gross earnings that are insufficient to replace SSI, Medicaid and publicly funded attendant care services.

The 1619(b) program is explained in numerous easy-to-access places, including SSA Procedural Operating Manuals (“POMS”) and multiple places on SSA’s website. For example, descriptions of 1619(b) can be found:

- In the statute itself;⁵
- Disability Research in the Office of Program Development & Research, “Continued Medicaid Eligibility (Section 1619(B))”;⁶
- 2012 Red Book, A SUMMARY GUIDE TO EMPLOYMENT SUPPORTS FOR PERSONS WITH DISABILITIES UNDER THE SOCIAL SECURITY DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS, “Medicaid

⁵ 42 U.S.C. 1382h(a)(1).

⁶ <http://www.ssa.gov/disabilityresearch/wi/1619b.htm>

While Working — Section 1619(b) (SSI eligible)⁷

The POMS are very instructive. See POMS SI 02302.010 1619 Policy Principles.⁸ Under 1619(b), cash benefits terminate, but SSI eligibility does not. “1619(b) is a stop payment status and not a suspension status (SI 02301.201B.2.)”⁹ The referenced POMS Section states: “A stop payment is an interruption in payment. It is not a loss of eligibility A stop payment only happens when . . . [a] recipient is section 1619(b) eligible and due no payment” (Emphasis added.)¹⁰

For these reasons, even though I am not entitled to and do not seek an SSI cash payment, I have been and remain eligible for SSI pursuant to 1619(b). Such payments were stopped appropriately, and there was no reason to contest stopping of payments.

My SSA office needs to stop telling ACHS I am not eligible for SSI.

B. Terminating my SSI eligibility without notice and an opportunity for a hearing violates my right to due process of law.

When SSI benefits are discontinued, procedural due process is required.¹¹ “Only a pre-termination evidentiary hearing provides the recipient with procedural due process.”¹² “[T]he pre-termination hearing has one function only: to produce an initial determination of the validity of the welfare department’s grounds for discontinuance of payments in order to protect a recipient against an erroneous termination of his benefits.”¹³ I have never been provided with an opportunity for a hearing to contest SSA’s erroneous decision, yet my local

⁷ <http://www.ssa.gov/redbook/eng/ssi-only-employment-supports.htm#8>

⁸ <https://secure.ssa.gov/poms.nsf/lnx/0502302010> (SECTION C: POLICY - 1619(b) – MEDICAID WHILE WORKING)

⁹ POMS SI 02302.010.C.1.3.a.

¹⁰ POMS SI 02301.201B.2.

¹¹ *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970); *Ryan v. Shea*, 394 F. Supp. 894, 901 (D. Colo. 1974) *aff’d*, 525 F.2d 268 (10th Cir. 1975).

¹² *Goldberg*, at 264.

¹³ *Id.* at 267.

SSA office will likely cause ACHS to discontinue my Medicaid eligibility. According to the United States Supreme Court,

[A Medicaid] recipient [must] have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. These rights are important in cases such as those before us, where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases.¹⁴

In this case, SSA sent letters to me in 2004 indicating that “payments” were being stopped. This is hardly notice that my SSI eligibility was being terminated. In addition, there is no reason provided in these letters for discontinuing SSI eligibility. These letters cannot be deemed to comply with the requisites of procedural due process. See *Ryan*, 394 F. Supp. at 901 (D. Colo. 1974) (permanent injunction issued preventing terminating Supplemental Security Income recipients’ benefits without adequate prior notice and an opportunity for a hearing). The *Ryan* case actually addressed whether a hearing was required prior to termination of cash payments; however, the holding must apply with equal force to the termination of SSI eligibility. 1619(b) was designed for the precise purpose of allowing an individual who cannot work without Medicaid to continue on SSI to keep Medicaid even though they do not receive a cash benefit.

SSA has misapplied the rules governing 1619(b) SSI eligibility. SSA has failed to implement or follow 1619(b). The distinction between “eligibility” and “payments” is critical to the 1619(b) program’s purpose. The possible result – complete loss of my medical benefits essential for my survival – would be devastating. For example, I cannot get out of bed in the morning without the assistance of an attendant. I cannot earn enough income to afford that attendant care, and motorized wheelchairs, bathing equipment, all of my medical supplies, etc.

As explained above, I request that SSA determine that I have been continuously eligible for SSI under 1619(b) and that my SSI eligibility was never terminated. At a minimum, I am entitled to continuing benefits until I am afforded a proper notice, detailing the reason for my SSI eligibility termination and an opportunity for a hearing to demonstrate that I have been and remain eligible.

¹⁴ *Id.* at 267-68.

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I request that you schedule a formal hearing as soon as possible and continue my SSI eligibility pending further determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin W. Williams". The signature is written in a cursive style with a long horizontal stroke at the end.

Kevin W. Williams

Encl.