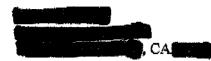
Refer To:

Office of Hearings and Appeals 606 South Olive Street, Suite 1200 Los Angeles, California 90014

Date: DEC 1 2 2002

CASE"1 Date: 1 南かサー2002年



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.

If You Disagree With The Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How to File an Appeal

To file an appeal, you or your representative, if you choose to appoint one, 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.

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Time to File an Appeal

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See Next Page

2/8

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.

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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.

Your Right to Representation

You may appoint an attorney or other qualified person to represent you in any appeal you may file with the Appeals Council. Your local Social Security office has a list of groups that can help you find an attorney.

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New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with my decision and you file a new application instead of appealing, you might lose some benefits, or not qualify for any benefits. My decision could also be used to deny a new application for insurance benefits, if the facts and issues are the same. So, if you disagree with this decision, you should file an appeal within 60 days.

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 (818)570-9854. Its address is Social Security Office, 200 S. Garfield, Alhambra CA 91801.

SÁMUEL W. WARNER
Administrative Law Judge

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Page 2 of 5



Section 202(a) of the Social Security Act provides that retirement benefits are payable to a individual if they are fully insured, they are at least age 62, and they have filed an application for a monthly retirement insurance benefit.

Section 214(a) of the Act provides that an individual is "fully insured" if he has at least one quarter of coverage for each calendar year elapsing after 1950 and before the year in which he attains age 62, or the year of his death, whichever occurred first.

Section 205(c)(3) of the Act provides that an individual's earnings record shall constitute evidence as to his earnings and an absence of an entry in such record as to wages alleged to have been paid to such individual for the period in question and may be overcome only by convincing evidence to establish that wages were actually paid.

Section 210(j) of the Social Security Act provides that the term "employed" means any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of employee. Generally such a relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services not only as to the results to be accomplished by the work but also as to the details and means by which that result is accomplished.

Section 211(a) of the Social Security Act provides that for an individual to have self-employment coverage under Social Security, the individual must be engaged in a trade or business and have net earnings from self-employment income.

Section 211 (c) of Act provides that the term "trade or business" shall have the same meaning as when used in sec. 162 of the Internal Revenue Code (IRC). Although the IRC does not define the term "trade or business", certain criteria have been set forth in court decisions and IRS rulings for determining whether a trade or business exists. In determining the existence of a trade or business, the good faith intention of making a profit or producing income, continuity of operations, repetition of transactions or activities, regular occupation, and holding out to others as being engaged in the selling of goods or services are considered.

Section 211(g) of the Social Security Act provides that a self-employed individual must have earned a minimum of \$400 in net self-employment earnings for any year after 1950.

Section 213(a) of the Social Security Act defines the term "quarter of coverage" as a period of three calendar months in which an individual has been credited with \$670 in 1997, \$700 in 1998, and \$740 in 1999 or more in self employment income.

EVALUATION OF THE EVIDENCE

The claimant attained age 62 on June 15, 1990, the first moment of the day preceding the

Page 3 of 5

anniversary of her birth (20 CFR 404.2(c)(4)). The record shows that the claimant needs 39 quarter of coverage to be fully insured and to qualify for monthly benefits. The record indicates that the claimant has 27 quarters of coverage as her earnings from self employment for 1997, 1998 and 1999 were found to be not income from a trade or business and not considered self-employment (Exhibit 9). The record indicates that the self-employed earnings for the period of 1997, 1998, and 1999 were subsequently removed from the claimant's earnings record (Exhibits 9, p. 5; 11).

The record indicates that the claimant reported that she was self-employed as a babysitter. She has been babysitting for more than ten years. She started babysitting to supplement her income. She stated that she obtained business by word of mouth. She testified at the hearing that she took care of her son's children off and on from 1980's through 1997 and her daughter's son from 1997 through 2000. She took care of other children prior to 1997. She is now retired from babysitting (Exhibit 6, p. 5).

The claimant submitted tax returns for 1997, 1998, and 1999 (Exhibit 2). The tax returns indicate that the claimant paid Social Security taxes as a self-employed babysitter and that she earned \$5,645.81 in 1997, \$7,842.90 in 1998, and \$2,7169.33 in 1999. The claimant submitted a statement from her next door neighbor indicating that her neighbor was aware that the claimant was babysitting in her home, people were seen bringing their children to the claimant's home and that they chatted occasionally when the claimant was outdoors with the children (Exhibit 5). Tax returns for 1998 and 1999 indicating that the claimant was providing child care services for were submitted at the reconsideration level (Exhibit 7).

Social Security Ruling 61-27 indicates that when an individual performs child care services in her own home and receives no direction from the child's parent, except when special medicine has be to be given, and where there is no evidence showing a right to control or direct such individual in the performance of such services, the individual is not an employee with regard to such services, but is engaged in a trade or business.

Based on a thorough review of the evidence of record, the Administrative Law Judge finds that the claimant was engaged in a trade-or business as a babysitter. The record indicates that the claimant performed babysitting services in her home with no direction from the parent except when the children were ill. She stated that the services provided were based on the child's needs. The claimant stated that the children were brought to her home in morning and picked up in the evening. The parents would advise her if the child was sick or would require special attention (Exhibit 6). She was not under the control or direction of the parent while performing daily babysitting services, therefore, she is not considered an employee. The record shows that the claimant performed babysitting services more than ten years and that it was her regular occupation. She performed babysitting services for pay and profit to supplement her income. She obtained business by word of mouth.

The Administrative Law Judge finds that the claimant was engaged in a trade or business as a babysitter and that the income for the period of 1997, 1998, and 1999 are includible in computing her earnings from self-employment. The Administrative Law Judge further finds that self-employment earnings for the period of 1997, 1998, and 1999 should be restored and credited

6/8

Page 4 of 5

to the claimant's earnings record. The record shows that the claimant earned a minimum of \$400 in net self-employment earnings in 1997, 1998, and 1999. She is credited with four quarters of coverage for 1997, 1998, 1999 due to self employment income as a babysitter. With the restored earnings from self-employment and quarters of coverage, the claimant is fully insured as she has 39 of the 39 required quarters of coverage. Since the claimant is fully insured, she is entitled to retirement insurance benefits under section 202(a) of the Social Security Act, as amended.

FINDINGS

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

- The claimant filed an application for retirement insurance benefits on may 8, 2000.
- 2. The claimant requires 39 quarters of coverage for fully insured status.
- 3. The claimant was engaged in a trade or business as a babysitter in 1997, 1998, and 1999.
- 4. The self-employment earnings for the period of 1997, 1998, and 1999 are to be restored and credited to the claimant's earnings record.
- 5. The claimant is fully insured as she has 39 of the 39 required quarters of coverage.
- 6. The claimant is fully insured and is entitled to retirement insurance benefits under section 202(a) of the Social Security Act, as amended.

<u>DECISION</u>

It is the decision of the Administrative Law Judge that based on the application filed on May 8, 2000, the claimant is fully insured and is entitled to retirement insurance benefits under section 202(a) of the Social Security Act, as amended.

SAMUEL W. WARNER
Administrative Law Judge

DEC. 1 2 2002

Date

#7/8

Office of Disability Adjudication and Review 16th Floor 301 Howard Street San Francisco, CA 94105

CASE # 2 Date: 28 WAR 1 - 2006 = 7

San Francisco, CA 94116

NOTICE OF DECISION - FULLY FAVORABLE

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This Decision is Fully Favorable To You

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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.

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If No Appeal and No Appeals Council Review

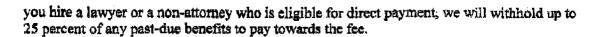
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Your Right To Representation In An Appeal

You may have a lawyer or other person help you in any appeal you file with the Appeals Council. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with an appeal.

If you get someone to help you with an appeal, you or that person should let the Appeals Council know. If you hire someone, we must approve the fee before he can collect it. And if





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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 (415)556-4043. Its address is Social Security, 1098 Valencia St, San Francisco, CA 94110.

Benjamin F. Parks Administrative Law Judge

cc:

Apr-07-2008 09:57am

San Francisco, CA 94122

SOCIAL SECURITY ADMINISTRATION Office of Disability Adjudication and Review

DECISION

AT THE CASE OF	<u>CLAIM FOR</u>
(Claimant)	Retirement Insurance Benefits
(Wage Earner)	(Social Security Number)

This case is before the Administrative Law Judge on a request for hearing. The Administrative Law Judge has carefully considered all the documents identified in the record as exhibits the testimony at the hearing, and the arguments presented prior to the rendering of this decision,

PROCEDURAL HISTORY

The claimant filed an application for retirement insurance benefits on April 4, 2007. The claim was denied on April 21, 2007 because she lacked 40 quarters of covered earnings. Claimant untimely filed her request for an Administrative Law Judge hearing on July 2, 2007. Because the claimant's English is limited the undersigned finds "good cause" for the late filing (Exhibit 9F/1). A hearing was conducted by the undersigned in San Francisco, California on December 5, 2007 at which time claimant appeared but did not testify. She was represented by her son, Phillip Law, a nonattorney. Also present in the hearing room was claimant's daughter, Kathy Law, who testified briefly.

ISSUES

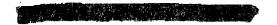
The general issue is whether the claimant is entitled to retirement insurance benefits under Section 202(a) of the Social Security Act, as amended.

The specific issue is whether the claimant has sufficient quarters of coverage to be fully insured under Section 214(a) of the Social Security Act, as amended.

The evidence shows that the claimant does have sufficient quarters of coverage to be fully insured, therefore, she is entitled to retirement insurance benefits under Section 202(a) of the Social Security Act, as amended.

LAW AND REGULATIONS

Section 202(a) of the Social Security Act provides that retirement benefits are payable to an individual if they are fully insured, they are at least age 62, and they have filed an application for a monthly retirement insurance benefit.



Page 2 of 4

Section 214(a) of the Act provides that an individual is "fully insured" if he has at least one quarter of coverage for each calendar year elapsing after 1950 and before the year in which he attains age 62, or the year of his death, whichever occurred first.

Section 205(c)(3) of the Act provides that an individual's earnings records shall constitute evidence as to his earnings and an absence of an entry in such record as to wages alleged to have been paid to such individual for the period in question may be overcome only by convincing evidence to establish that wages were actually paid.

Section 210(j) of the Social Security Act provides that the term "employed" means any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of employee. Generally such a relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services not only as to the results to be accomplished by the work but also as to the details and means by which that result is accomplished.

Section 211(a) of the Social Security Act provides that for an individual to have self-employment coverage under Social Security, the individual must be engaged in a trade or business and have net earnings from self-employment income.

Section 211(c) of the Act provides that the term "trade or business" shall have the same meaning as when used in section 162 of the Internal Revenue Code (IRC). Although he IRC does not define the term "trade or business," certain criteria have been set forth in court decisions and IRS rulings for determining whether a trade or business exists. In determining the existence of a trade or business, the good faith intention of making a profit or producing income, continuity of operations, repetition of transactions or activities, regular occupation, and holding out to others as being engaged in selling of goods or services are considered.

Section 211(g) of the Social Security Act defines the term "quarter of coverage" as a period of three calendar months in which an individual has been credited with \$870 in 2002, \$890 in 2003, \$900 in 2004, \$920 in 2005, \$970 in 2006 and \$1,000 in 2007 or more in self employment income.

EVALUATION OF THE EVIDENCE

The claimant, and the state of the state of

Mr. Law testified that his brother was advised by Social Security personnel in 1999 that if Ms. Chow carned the appropriate quarters of coverage by babysitting and paid the self employment tax that she would be covered for Social Security. In 1999 Ms. Chow advertised in a Chinese language newspaper, Sing Tao, for providing child care services as well as spreading the news

Page 3 of 4



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by word of mouth. When her first grandson was born in 1999 she and her husband began providing these services, as well as for three children born later. Mr. Law testified that he and his wife dropped the children off at 7:00 a.m. and picked them up at 7:00 p.m. and did not provide direct supervision for how his parents performed their duties in childcare. When Ms. Chow went to the Social Security office to file for retirement insurance benefits she was told that the babysitting for her grandchildren was not covered, and those quarters of coverage were deleted from her records. This accounts for a lack of coverage on the earnings record in Exhibit

The attached federal income tax forms Schedule C-EZ show that Ms. Chow reported self employment earnings from "housecleaning: service" from 1998 through 2002. The nature of her work in 1997 is unknown. There is thus a discrepancy between Mr. Law's testimony that his mother, the claimant, worked as a self employed babysitter of her grandchildren from 1999 through 2006. Claimant earned the credits posted to her earnings record from 1997-2002. Claimant's tax records from 2003-2006 show that she was self employed as a babysitter for those years (Exhibit 5B/1-8). Her earnings were slightly higher than those from housecleaning (\$3360) and were \$5000 each year, the amount available under federal law for dependent care. Mr. Law has submitted records from the Flexible Spending Account of Kathy Law showing disbursement in 2006 of \$3461.40 on an annual election of \$4999.80 (Exhibit 4F/2). There is a form for the FSA showing claimant's signature as the dependent care provider, but it is undated (Exhibit 5B19). Pay stubs from Kathy Law's employer from 2003 and 2004 show that \$4999.80 per year was withheld for dependent care (Exhibit 4B/4).

Social Security Ruling 61-27 indicates that when an individual performs child care services in her own home and receives no direction from the child's parent, except when special medicine has to be given, and where there is no evidence showing a right to control or direct such individual in the performance of such services, the individual is not an employee with regard to such services, but is engaged in a trade or business.

In the instant case there is a discrepancy between Mr. Law's testimony (on behalf of his mother due to limited English) and the records which show that she reported earnings as a housecleaner from 1998 through 2002. Mr. Law testified to a call to the Social Security office in 1999 and based on that information care of his son, born in 1999, as well as other grandchildren through 2006. The Social Security Administration accepted those records, but Mr. Law offers no explanation for this discrepancy. The claimant's signature on the FSA provider form is undated. Had Ms. Chow not continued to file federal tax returns and presented evidence of a Flexible Spending Account for a family member the undersigned would have significant concerns about the veracity of this testimony. This case is not identical to that cited by Mr. Law at the hearing in that regard.

However, based on a review of all the evidence the undersigned is persuaded that for the period from 2003 through 2006 that claimant was engaged in a trade or business as a babysitter. This is derived in part from evidence of the dependent care account of Kathy Law in 2003, 2004 and 2006. As a child care provider Ms. Chow performed those services in her home with no direction from the parents for a period of approximately 12 hours per day, with the assistance of her husband.





The undersigned finds that the claimant's earnings as a self employed babysitter for the years 2003 through 2006 are includible in computing her earnings from self-employment. The undersigned further finds that the self-employment earnings for the period from 2003 through 2006 should be restored and credited to the claimant's earnings record. The records show that the claimant earned a minimum of \$5000 in net self employment earnings in 2003, 2004, and 2006 and presumes based on the evidence that the same was earned in 2005. She is credited with four quarters of coverage for each year with self employment income as a babysitter. With the restored earnings from self-employment and quarters of coverage the claimant is fully insured, and she is entitled to retirement insurance benefits under section 202(a) of the Social Security Act, as amended.

FINDINGS

- 1. The claimant filed an application for retirement insurance benefits on April 7, 2007.
- The claimant requires 40 quarters of coverage for fully insured status.
- 3. The claimant was engaged in a trade or business as a babysitter in 2003, 2004, 2005 and 2006.
- 4. The self employment earnings for the period 2003, 2004, 2005, 2006 are to be restored and credited to the claimant's earnings record.
- 5. The claimant is fully insured as she has at least 40 of the 40 required quarters of coverage.
- 6. The claimant is fully insured and is entitled to retirement insurance benefits under section 202(a) of the Social Security Act, as amended.

DECISION

It is the decision of the Administrative Law Judge that based on the application filed on April 7, 2007 the claimant is fully insured and is entitled to retirement insurance benefits under section 202(a) of the Social Security Act, as amended.

Benjarim F. Parks
Administrative Law Judge

E A MAR 2009

Date