

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

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| TROY L. HILL (deceased), |) | |
| |) | |
| Plaintiff, |) | Civil Action No. 7:05cv166 |
| |) | |
| v. |) | |
| |) | By: Hon. Michael F. Urbanski |
| JO ANNE B. BARNHART, |) | United States Magistrate Judge |
| Commissioner of Social Security, |) | |
| |) | |
| Defendant. |) | |
| |) | |

MEMORANDUM OPINION AND ORDER

This matter is before the court on defendant’s motion to dismiss this case as moot. Plaintiff Troy L. Hill filed an application for Supplemental Security Income (“SSI”) on January 3, 2003. The claim was denied initially and upon reconsideration. After two administrative hearings, the administrative law judge (“ALJ”) issued a decision on November 9, 2004 in which she found plaintiff ineligible for SSI benefits. The ALJ concluded that in the absence of alcohol or drug abuse, plaintiff retained the capacity for work that exists in significant numbers in the national economy, and therefore he was not considered under a disability as defined in the Social Security Act. The ALJ’s decision became final for the purposes of judicial review under 42 U.S.C. § 405(g) when the Appeals Council denied plaintiff’s request for review on February 14, 2005. Plaintiff then filed this action challenging the Commissioner’s decision.

Plaintiff died on February 13, 2006, while this action was still pending. At oral argument held March 29, 2006, defendant raised concerns about the deceased plaintiff’s eligibility for SSI benefits, considering the fact that he has no surviving spouse. Following the hearing, defendant filed a motion to dismiss as moot.

In her motion, Commissioner argues plaintiff is ineligible for benefits under 20 C.F.R. § 416.542(b)(1), which provides that unpaid SSI due to a decedent may only be paid to the surviving eligible spouse of the decedent. The regulations further state that no benefits may be paid to the estate of any recipient, the estate of the surviving spouse, or to any other survivor. 20 C.F.R. § 416.542(b)(4). As plaintiff died with no eligible surviving spouse, defendant argues plaintiff is ineligible for SSI benefits under the regulations. In his response to defendant's motion to dismiss, plaintiff did not object to defendant's motion, and agreed the claim is now moot under 20 C.F.R. § 416.542(b)(4).

As the regulations clearly state that SSI benefits may not be paid to a decedent's estate or any survivor other than a surviving spouse, and as plaintiff has died leaving no eligible surviving spouse, plaintiff's death renders this case moot. Therefore, defendant's motion to dismiss is **GRANTED** and this case is stricken from the active docket of the court.

The Clerk of the Court hereby is directed to send a certified copy of this Memorandum Opinion and Order to all counsel of record.

ENTER: This 6th day of April, 2006.

/s/ Michael F. Urbanski
United States Magistrate Judge