

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jun 10, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MATHEW S.,<sup>1</sup>

Plaintiff,

v.

ANDREW M. SAUL, the Commissioner  
of Social Security,

Defendant.

No. 4:20-CV-5044-EFS

**ORDER GRANTING PLAINTIFF'S  
SUMMARY-JUDGMENT MOTION  
AND DENYING DEFENDANT'S  
SUMMARY-JUDGMENT MOTION**

The Court is asked to determine whether the Social Security Administration (SSA) appropriately seeks repayment of disability insurance benefits (DIB) paid to Plaintiff in the amount of \$18,650.00.<sup>2</sup> Plaintiff agrees that he was partially overpaid DIB due to his receipt of time-loss compensation from the State of Washington's workers' compensation program for the period May 2011 to December 2011, but Plaintiff disagrees that his lumpsum permanent partial disability (PPD) award is subject to a federal offset, and, even if offset is required, Plaintiff asks the Court to waive repayment. The Commissioner argues that offset

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<sup>1</sup> To protect the privacy of the social-security Plaintiff, the Court refers to him by first name and last initial or as "Plaintiff." *See* LCivR 5.2(c).

<sup>2</sup> ECF Nos. 25 & 27.

1 is required for both Washington workers' compensation benefits—the time-loss  
2 compensation and the lumpsum PPD award—and, moreover, Plaintiff caused the  
3 overpayment by not disclosing his PPD award. Given the Ninth Circuit's approach  
4 in *Hodge v. Shalala*,<sup>3</sup> which focuses on whether the financial benefit was to  
5 compensate the injured worker for lost earning capacity, the Court determines that  
6 1) Plaintiff's lumpsum PPD award did not compensate Plaintiff for lost earning  
7 capacity, and 2) repayment related to Plaintiff's time-loss compensation is waived.

### 8 **I. Background**

9 Plaintiff injured his low back while working. Plaintiff sought federal DIB  
10 under Title 2, 42 U.S.C. § 401-433. After considering all of Plaintiff's impairments,  
11 the SSA found Plaintiff disabled and awarded him DIB beginning May 2011.<sup>4</sup>

12 As a result of the same workplace injury, a Washington state workers'  
13 compensation claim was also opened. Plaintiff received time-loss compensation  
14 totaling \$11,425.50 for the period May 1, 2011, through December 28, 2011.

15 Plaintiff's workers' compensation claim also involved a separate PPD claim related  
16 to his low back. In 2012, Plaintiff entered into a confidential settlement agreement  
17 relating to his PPD claim, awarding him \$115,000.00, minus State child-support  
18 payments.<sup>5</sup>

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20 <sup>3</sup> 27 F.3d 430, 432-34 (9th Cir. 1994).

21 <sup>4</sup> AR 82-90.

22 <sup>5</sup> AR 59-62.

1           On his Title 2 social security application, Plaintiff notified the SSA that his  
2 lower back injury was related to work and of his State time-loss compensation  
3 claim.<sup>6</sup> Plaintiff did not notify SSA about the confidential PPD settlement award.  
4 The SSA learned of the PPD award from the State. The SSA then notified Plaintiff  
5 that, considering the State worker's compensation time-loss compensation and the  
6 PPD award, the SSA had overpaid him Title 2 benefits. After several revisions to  
7 the claimed overpayment amount, the SSA claims that Plaintiff was overpaid  
8 \$18,650.00.<sup>7</sup> Plaintiff sought relief from this claimed overpayment, highlighting  
9 that the PPD settlement did not address lost wages and it contained a non-  
10 disclosure provision.

11           The ALJ denied relief. The ALJ found, considering both the State time-loss  
12 compensation and the PPD award, that Plaintiff was overpaid \$18,650.00 in DIB.<sup>8</sup>  
13 The ALJ found Plaintiff had not disclosed the workers' compensation payments to  
14 the SSA. The ALJ did not give Plaintiff's allegations controlling weight because  
15 Plaintiff knew or should have known that he was required to report all workers'  
16 compensation payments to the SSA, and he did not make the required report. The  
17 ALJ therefore found Plaintiff's DIB were subject to offset and Plaintiff was at fault  
18 in causing the overpayment because he failed to furnish material information.

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20           <sup>6</sup> ECF No. 26 at 5.

21           <sup>7</sup> AR 167-69.

22           <sup>8</sup> AR 11-19.

1 Plaintiff asks the Court to review the ALJ's decision for legal error and lack  
2 of substantial evidence.

## 3 II. Analysis

### 4 A. Plaintiff's PPD award is not subject to federal offset.

5 The Social Security Act requires that disability insurance benefits (DIB) be  
6 reduced when an individual is also entitled to "periodic benefits on account of his  
7 total or partial disability (whether or not permanent) under a workmen's  
8 compensation law or plan of the United States or a State."<sup>9</sup> The statutory intent for  
9 this offset provision is to prevent duplication of state workers' compensation and  
10 social security disability benefits, as duplication may decrease a disabled worker's  
11 incentive to return to work.<sup>10</sup> Certain benefits, such as medical, legal, or related  
12 expenses in connection with the disability claim or injury, are not subject to the  
13 federal offset provision.<sup>11</sup>

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15 <sup>9</sup> 42 U.S.C. § 424a(a)(2)(A) (cleaned up). *See also* 20 C.F.R. § 404.408; Program  
16 Operations Manual System (POMS) DI 52101.001.

17 <sup>10</sup> *See Richardson v. Belcher*, 404 U.S. 78, 82-83 (1971) (discussing the offset  
18 provision's legislative history and seeking to ensure that the worker did not receive  
19 compensation for his disability in excess of his take-home pay); *Hodge v. Shalala*,  
20 27 F.3d 430, 432 (9th Cir. 1993) ("Congress intended [the offset provision] to  
21 prevent double recovery.").

22 <sup>11</sup> 20 C.F.R. § 404.408(d).

1           In *Hodge v. Shalala*, the Ninth Circuit interpreted the federal offset law as  
2 applying when a State benefit was issued, either as a periodic payment or as a  
3 lumpsum payment, to compensate the recipient for an economic loss of earning  
4 power.<sup>12</sup> At issue in *Hodge* was the Oregon workers’ compensation program. The  
5 Ninth Circuit determined that Oregon’s lumpsum “scheduled” benefit payment  
6 constituted a benefit intending to compensate the injured worker for the economic  
7 loss of earning capacity. Therefore, the Ninth Circuit ruled that the Oregon  
8 “scheduled” payment must be offset from federal disability benefits.<sup>13</sup>

9           Later, in an unpublished opinion, a Ninth Circuit panel analyzed the  
10 relationship between the PPD component of the Washington workers’  
11 compensation law and the federal offset law.<sup>14</sup> In *Sutton*, the panel held that a  
12 Washington PPD payment was *not* a benefit subject to federal disability offset. The  
13 panel reached a different conclusion than that reached in *Hodge* because, as the  
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15 <sup>12</sup> 27 F.3d 430, 432-34 (9th Cir. 1994).

16 <sup>13</sup> *Id.* at 432-34.

17 <sup>14</sup> *Sutton v. Berryhill*, No. 15-35722, 677 Fed. Appx. 341 (9th Cir. 2017)  
18 (unpublished opinion). The Commissioner highlights that the unpublished *Sutton*  
19 decision is not binding. ECF No. 27 at 3-4. However, *Sutton* may still be cited for  
20 its persuasive value. LCivR 7(g)(2). Because this case involves the interpretation of  
21 the same Washington law as discussed in *Sutton*, the Court finds *Sutton*  
22 persuasive.  
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1 panel emphasized, a Washington PPD payment is not intended to cover the  
2 recipient's lost earning capacity. In reaching this ruling, the panel highlighted:

- 3 • Washington case law has recognized that Washington's PPD  
4 payments compensate for loss of bodily function, regardless of  
5 whether that loss of bodily function has an effect on the recipient's  
6 wage-earning capacity.
- 7 • the statutory purpose for PPD payments does not include considering  
8 wage earning power.
- 9 • a Washington regulation provides that PPD payments are based  
10 solely on the impaired body part/function without consideration of  
11 economic factors.<sup>15</sup>

12 Here, the ALJ decided that Plaintiff's federal DIB were to be offset by his  
13 PPD award. In making this finding, the ALJ simply labeled Plaintiff's PPD award  
14 as a "lump sum workers' compensation payment of \$115,000," without analyzing  
15 whether PPD payments in Washington are subject to federal offset.<sup>16</sup>

16 As articulated in *Sutton*, Washington PPD payments are calculated based on  
17 a body part's loss of existence or function, regardless of the impact on earning  
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19 <sup>15</sup> *Sutton*, 677 Fed. Appx. at 342 (citing *Willoughby v. Dep't of Labor & Indus. of the*  
20 *State of Wash.*, 147 Wn.2d 725, 736 (9th Cir. 2002) (abrogated on other grounds),  
21 and *McIndoe v. Dep't of Labor & Indus.*, 144 Wn.2d 252, 261-62 (2001)).

22 <sup>16</sup> AR 16.

1 capacity. Accordingly, the PPD payment at issue here did not compensate Plaintiff  
2 for wage loss. Moreover, the settlement agreement terms are consistent with  
3 Washington’s PPD purpose, regulations, and case law. The settlement agreement  
4 stated that Plaintiff’s pay, salary, and other compensation had already been earned  
5 or awarded. Plaintiff’s PPD award was not a duplicative wage-compensation  
6 benefit. Plaintiff’s social security disability benefits are not to be offset by the PPD  
7 award.

8 **B. The time-loss overpayment need not be repaid.**

9 Plaintiff agrees that the \$11,425.50 he received as time-loss compensation  
10 from the State for the period of May 1, 2011 through December 28, 2011, is subject  
11 to federal offset. But Plaintiff asks that repayment be waived because he was  
12 clearly not at fault for the SSA’s overpayment of DIB.

13 Recovery of an overpayment may be waived if the beneficiary of the  
14 overpayment is 1) without fault in causing the overpayment, and 2) recovery or  
15 adjustment of the overpayment defeats the purpose of Title 2 or is against equity  
16 and good conscience.<sup>17</sup> A beneficiary is “at fault” when he caused or helped cause  
17 the overpayment.<sup>18</sup> The fault depends on the degree of care the beneficiary took in  
18 ensuring an overpayment would not be assessed.<sup>19</sup> Recovery defeats Title 2’s

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20 <sup>17</sup> POMS GN 02201.019.

21 <sup>18</sup> POMS GN 02250.005.

22 <sup>19</sup> POMS GN 02250.005.

1 purpose when the beneficiary's ordinary and necessary expenses meet or exceed his  
2 income.<sup>20</sup>

3 Although the ALJ found that Plaintiff was at fault for not disclosing the  
4 settlement agreement's PPD award,<sup>21</sup> the ALJ did not mention that Plaintiff did  
5 disclose on his social security application that he had "been on time-loss with an  
6 open L&I claim up until December 31, 2011."<sup>22</sup> Accordingly, the ALJ's finding that  
7 Plaintiff was at fault because he failed to disclose State benefits does not apply to  
8 the disclosed time-loss compensation. Given Plaintiff's disclosure of his time-loss  
9 compensation, Plaintiff was not at fault for the overpayment of DIB due to time-  
10 loss compensation from the State.

11 The ALJ did not reach the question of whether Plaintiff's repayment of his  
12 time-loss compensation will defeat Title 2's purpose. The record need not be further  
13 developed in this regard. Plaintiff's wife testified at the hearing as to Plaintiff's  
14 family's financial situation. Their living expenses exceed the family's income. For  
15 that reason, repayment of DIB due to the \$11,425.50 time-loss compensation will  
16 defeat Title 2's purpose. Therefore, Plaintiff's repayment of DIB is waived.

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20 <sup>20</sup> POMS GN 02250.100.

21 <sup>21</sup> AR 16-17.

22 <sup>22</sup> ECF No. 26 at 5 (cleaned up).



1 **C. Remand**

2 This matter is reversed and remanded. Repayment of the PPD award is not  
3 required, and repayment of the time-loss compensation is waived.

4 **III. Conclusion**

5 Accordingly, **IT IS HEREBY ORDERED:**

- 6 1. Plaintiff's Motion for Summary Judgment, **ECF No. 25**, is  
7 **GRANTED.**
- 8 2. The Commissioner's Motion for Summary Judgment, **ECF No. 27**, is  
9 **DENIED.**
- 10 3. The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff  
11 **REVERSING** and **REMANDING** the matter to the Commissioner of  
12 Social Security. **Plaintiff is not required to repay social security**  
13 **benefits.**
- 14 4. The case shall be **CLOSED.**

15 **IT IS SO ORDERED.** The Clerk's Office is directed to file this Order and  
16 provide copies to all counsel.

17 **DATED** this 10<sup>th</sup> day of June 2021.

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20 EDWARD F. SHEA  
21 Senior United States District Judge