Language Access Issue Spotting Hypo

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Part 1:

Joel is a new client who is sitting in your office. Joel is a Spanish-speaking single father of three minor children, ages 16, 10, and 8. Ellie is 8 and has a disability. She receives Supplemental Security Income (SSI) from the Social Security Administration.

The eligibility rules for SSI child benefits only allow the child’s parent to have a maximum of $3000 in assets. SSA excludes one car, but if the family has a second car it counts towards the asset limit.

When Ellie started getting benefits SSA sent Joel a 12-page letter stating Ellie’s benefit amount on page 1 and a bunch of boilerplate language on pages 2-12. On page 10 it said that there is a $3000 asset limit, and one car is excluded. The letter was only in English. No one at SSA explained this rule to Joel in Spanish when he went to the SSA office to sign up for Ellie’s benefits. He was only told he needs to report changes to his income.

Six months after Ellie started receiving SSA Joel’s father gifted him a second car so that his 16-year-old daughter could drive herself to and from school. The car was transferred into Joel’s name. Joel did not report the second car to SSA because he did not know this was something that could impact Ellie’s SSI benefits and needed to be reported.

Three years year later, when Joel completed the first recertification for Ellie’s SSI benefits, he told SSA about his two cars. A month later he received a notice in the mail stating Ellie had been ineligible for benefits for the last two and a half years because her parent had over $3000 in assets. It also said Joel needs to pay back $27,000 to SSA and that Ellie will no longer be receiving benefits. There is no way Joel can afford to pay this money back.

SSA can waive an overpayment such as Joel’s if the overpaid individual shows they were without fault in causing the overpayment and cannot afford to pay the overpayment. What are Joel’s best arguments that he was without fault in causing the overpayment?

Part 2:

You decide Joel has a good argument for a waiver and agree to represent him. You submit the waiver and a conference with a SSA representative is scheduled in person at the SSA offices. Three weeks prior to the conference you send a letter to SSA stating that Joel only speaks Spanish and will require a Spanish interpreter for the conference. You also leave the representative a voicemail stating that an interpreter will be needed for the conference.

You and Joel go to the conference at the SSA office. You learn that SSA did not arrange for an in-person Spanish interpreter. The representative you are meeting with tells you that she will call a Spanish interpreter on Language Line and use a phone interpreter for the meeting.

The representative leads you to the area where the conference will take place. The representative sits behind a desk, and there is a plexiglass window between the representative, and you and Joel. You are in an open area of the SSA office. There is one phone on the representative’s desk. Since you are not in a private room, you cannot use the speaker phone.

The representative calls the interpreter from their phone and says that we can pass the phone between the three of us as we talk if anything needs interpreted. You point out that this is not sufficient – the interpreter will not be able to hear everything that is said, and Joel will not be able to have everything interpreted to him. Joel will not be able to fully participate in the conference. The representative says the interpreter can just interpret questions that she or you have for Joel, and Joel’s answers. You ask the representative if you can move the conference into a closed room and use speaker phone, but they say there are no rooms available for that purpose. With no other choice, you proceed with the conference.

Joel is not able to follow what is going on, and the interpreter can only hear half of the conversation between you and the representative. You express your frustration that Joel is unable to fully participate in the conference several times, but the representative dismisses your concerns and powers through the conversation.

You return to your office frustrated by how the conference occurred and do not think SSA should get away with how they treated Joel. Does Joel have any viable legal issues? What are his options to address them?