

substantiate the merit of same and the gravamen of the appeal at bar is amenable for review in the wake of a final decision.

Accordingly, the court HEREBY GRANTS Appellees' Motion to Dismiss Appeal.

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FSM SUPREME COURT TRIAL DIVISION

JEANIVE NETH, a minor through BURDENCIO ANDREAS, next of kin,)	CIVIL ACTION NO. 2013-006
)	
Plaintiff,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Hearing: July 22, 2015
Decided: May 18, 2016

APPEARANCES:

For the Plaintiff: Salomon M. Saimon, Esq.
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HEADNOTES

Social Security

Social Security regulations allow wage earners to adopt after their 55th birthday under extremely limited circumstances. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 365 n.1 (Pon. 2016).

Civil Procedure – Summary Judgment – Grounds

Under FSM Civil Rule 56, a motion for summary judgment will be granted if the pleadings,

depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

Civil Procedure – Summary Judgment – Procedure

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

Administrative Law – Judicial Review; Social Security

Any person aggrieved by a final order of the Social Security Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition must be served on the Board, by service on its secretary or other designated agent, and thereupon the Board must certify and file in court a copy of the record upon which the order was entered. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

Administrative Law – Judicial Review; Social Security

The Social Security Board's findings as to the facts, if supported by competent, material, and substantial evidence, is conclusive. If either party applies to the court for leave to adduce additional material evidence and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives, and that such evidence is competent, material, and substantial, the court may order the Board to take additional evidence to be adduced in the hearing in such manner and upon such conditions as the court considers proper. The Board may modify its findings and order after receipt of further evidence together with any modified or new findings or order. The court's judgment on the record shall be final, subject to review by the Supreme Court appellate division on any aggrieved party's petition, including the Board's, within 60 days from judgment. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366, 372 (Pon. 2016).

Administrative Law – Judicial Review; Social Security

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise and it applies to Social Security Administration appeals because no part of the Social Security Act provides otherwise. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

Administrative Law – Judicial Review; Social Security – Claims and Benefits

A Social Security benefit is any retirement (old age), disability, dependent's, survivor's, or other insurance benefit prescribed in the Act. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 n.2 (Pon. 2016).

Social Security

In a matter of first impression, the court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016).

Social Security – Claims and Benefits

Social Security benefits are not vested in a property sense, in that they are subject to defeasance

by act of Congress so long as that action is not arbitrary. Changing economic conditions may require that the program be modified. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016).

Social Security – Claims and Benefits

The current Social Security scheme does not automatically disburse benefits to a dependent of a wage earner who has been contributing to Social Security once a claim is made. A claimant becomes "entitled" to benefits once he or she has applied and has provided convincing evidence of entitlement. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016).

Social Security – Claims and Benefits

Because a claimant must go through the process of applying for benefits and meet certain requirements to be deemed eligible, Social Security benefits are not a property right. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016).

Social Security – Claims and Benefits

The FSM Social Security program's purpose is to provide a means whereby employees may be ensured a measure of financial security in their old age and be given an opportunity for leisure without hardship and complete loss of income, and, further, to provide survivors' insurance for wage earners and their dependents. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Domestic Relations – Adoption; Social Security – Claims and Benefits

A valid claim for Social Security benefits as an adopted child requires proof of adoption and of dependency of the adopted child on the wage earner. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Domestic Relations – Adoption; Social Security – Claims and Benefits

Changed circumstances may require the adopted child to move away and to no longer be dependent on the adopted parent. In these situations, the child no longer depends on the wage earner for support, and the child would fall outside of Social Security's statutory scheme. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Administrative Law – Rules and Regulations; Social Security

Regulations may be promulgated to assure efficiency, accuracy, and proficiency in carrying out the objectives of Title 53. These regulations also provide restrictions to prevent abuse and to regulate violations in order to protect the Social Security system. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Administrative Law – Rules and Regulations; Social Security – Claims and Benefits

Since, if benefits are distributed by virtue of only an adoption decree, not only will this affect the financial stability and well-being of the Social Security program, Social Security would be vulnerable to abuse, exploitation, and misconduct. Therefore, the Social Security regulations that limit when benefits can be paid to adoptees are not *ultra vires*. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Social Security

FSM Social Security's statutory scheme is not unconstitutional. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 369 (Pon. 2016).

Administrative Law – Judicial Review; Social Security

Parties who appeal decisions of the Social Security Board may enter additional evidence for the court's consideration. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370 (Pon. 2016).

Social Security – Claims and Benefits

A claimant who alleges that he has a child in his care who is living with him must provide the Social Security Administration with a signed statement to that effect when applying for benefits. If the child is under 16 or mentally incompetent, Social Security will need no more information, unless it doubts the truth of the statement. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370 (Pon. 2016).

Domestic Relations – Adoption; Social Security – Claims and Benefits

Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof. Actual dependency upon the adoptive parent is a prerequisite for an adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370-71 (Pon. 2016).

Social Security

The Social Security Administrator is responsible for the general administration of the Social Security System, and has a wide range of discretion as part of his or her administrative powers. Decisions made pursuant to the Administrator's discretionary power are also subject to the Social Security Board's review. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 371-72 (Pon. 2016).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

The defendant, Federated States of Micronesia Social Security Administration (herein "FSMSSA") filed a Motion for Summary Judgment in this matter on April 15, 2015. On June 5, 2015, the plaintiff, Jeanive Neth, a minor through Burdencio Andreas, next of kin (herein "Neth") filed an Opposition to Motion for Summary Judgment. The FSMSSA entered a Reply Supporting Motion for Summary Judgment on June 15, 2015.

A hearing on the pending motions was held on July 22, 2015. Steven V. Finnen, Esq., appeared on behalf of the FSMSSA, and Salomon M. Saimon, Esq., through the Micronesian Legal Services Corporation, appeared on behalf of Neth. After considering the arguments presented during the hearing and the evidence on the record, the court grants the defendant's summary judgment motion.

II. FACTS

Jeanive Neth was born on June 25, 1997 to Priska Neth and Burdencio Andreas. Atti Neth, father of Priska Neth the grandfather of the Jeanive Neth, was born on December 3, 1935 and was a wage earner and contributor to the FSMSSA. A decree confirming the customary adoption of Jeanive Neth by Atti Neth was issued on January 16, 2006 by the Pohnpei Supreme Court when Atti Neth was 70 years old.¹ Atti Neth died on July 10, 2009.

A claim for Social Security benefits was filed by Burdencio Andreas, the natural father of Jeanive Neth, on September 17, 2009. A notice from FSMSSA Administrator Alexander Narruhn to Andreas

¹ The FSMSSA regulations, as amended in 2012, allows for adoption by wage earners after their 55th birthday, subject to "extremely limited circumstances" pursuant to §100.26.

denying the claim was issued on December 18, 2009. The denial was appealed to the FSMSSA Board (herein "the Board"), which upheld the denial on January 15, 2013. The Summons and Complaint was filed on March 11, 2013. After the disposition of several issues in this matter, the FSMSSA filed a Motion for Summary Judgment on April 15, 2015.

III. STANDARD OF REVIEW

Under FSM Civil Rule 56, a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FSM Civ. R. 56(c); Kyowa Shipping Co. v. Wade, 7 FSM Intrm. 93, 95 (Pon. 1995); Kihara Real Estate, Inc. v. Estate of Nanpei, 6 FSM Intrm. 48, 52 (Pon. 1993).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Urban v. Salvador, 7 FSM Intrm. 29, 31 (Pon. 1995); Kyowa Shipping Co. v. Wade, at 95; FSM v. Ponape Builders Constr., Inc., 2 FSM Intrm. 48, 52 (Pon. 1985).

Any person aggrieved by a final order of the Board may obtain a review of the order in the Trial Division of the Supreme Court of the Federated States of Micronesia by filing in Court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be served on the Board, by service on its secretary or other designated agent, and thereupon the Board shall certify and file in Court a copy of the record upon which the order was entered. The findings of the Board as to the facts, if supported by competent, material, and substantial evidence, shall be conclusive. If either party applies to the Court for leave to adduce additional material evidence and shows to the satisfaction of the Court that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives, and that such evidence is competent, material, and substantial, the Court may order the additional evidence to be taken by the Board and to be adduced upon the hearing in such manner and upon such conditions as the Court considers proper. The Board may modify its findings and order after receipt of further evidence together with any modified or new findings or order. The judgment of the Court upon the record shall be final, subject to review by the Appellate Division of the Supreme Court upon petition of any aggrieved party, including the Board, within 60 days from judgment. 53 F.S.M.C. 708.

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise and it applies to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Alokoa v. FSM Social Sec. Admin., 16 FSM Intrm. 271, 276 (Kos. 2009).

IV. DISCUSSION

Social Security Benefits

The first issue presented for the court's consideration is to analyze the characteristics of FSM

Social Security benefits.² The FSMSSA argues that Social Security benefits are not a property right and that Congress may change laws concerning eligibility for and the amount of benefits to be received. Def.'s Mot. for Summ. J. at 9-10.

Because this issue may be a matter of first impression, the court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 157, 160 (Pon. 1989); Federated Shipping Co. v. Ponape Transfer & Storage, 4 FSM Intrm. 3, 9 (Pon. 1989); Semens v. Continental Air Lines, 2 FSM Intrm. 131, 137 (Pon. 1985).

Social Security benefits are not vested in a property sense, in that they are subject to defeasance by act of Congress so long as that action is not arbitrary. Changing economic conditions may require that the program be modified, and engraving on the system a concept of accrued property rights would deprive it of the flexibility needed to adjust to ever-changing conditions. . . . Similarly, an expectation interest in public benefits does not confer a contractual right to receive the expected amounts.

70A AM. JUR. 2D *Social Security and Medicare* § 15 (1987). See also Bowen v. Public Agencies Opposed to Social Secur. Entrapment, 477 U.S. 41, 106 S. Ct. 2390, 91 L. Ed 2d 35 (1986); Flemming v. Nestor, 363 U.S. 603, 80 S. Ct. 1367, 4 L. Ed. 2d 1435 (1960); Richardson v. Belcher, 404 U.S. 78, 92 S. Ct. 254, 30 L. Ed. 2d 231 (1971).

Here, the current FSMSSA scheme does not automatically disburse benefits to a dependent of a wage earner who has been contributing to the FSMSSA once a claim is made. A claimant becomes "entitled" to benefits once he/she has applied and has provided convincing evidence of entitlement.³ The regulations also lay out the requirements that a person must fulfill before they are eligible to receive benefits, which is discussed *infra*.

Accordingly, the court finds that because a claimant must go through the process of applying for benefits and meet certain requirements to be deemed eligible, Social Security benefits under the FSMSSA are not a property right.

FSMSSA Regulations as Ultra Vires

In Neth's opposition to the FSMSSA's summary judgment motion she argues dependency exists by virtue of the issuance of an adoption decree by the Pohnpei State Supreme Court because all duties and obligations of the natural parents are transferred to the adopting parents once the decree is finalized, pursuant to 51 Pon. C. §5-105.⁴ Pl.'s Opp'n to Def.'s Mot. for Summ. J. at 5. Neth further

² "Benefit" is defined under § 100.2 of the FSMSSA regulations, as amended in 2012, as "any retirement (old age), disability, dependent's, survivor's or other insurance benefit prescribed in the Act, as may from time to time be amended."

³ § 100.2 of the FSMSSA regulations, as amended in 2012, states "Entitled means that a person has applied and has provided convincing evidence of his or her entitlement to benefits."

⁴ § 5-105. Effect of decree. After a decree of adoption has become absolute, the child adopted and the adopting parents shall hold towards each other the legal relation of parent and child and have all the rights and be subject to all the duties of that relationship. The natural parents of the adopted child are, from the time of adoption, relieved of all parental duties toward the child and all responsibilities for the child so adopted, and

argues that the regulations, as adopted by the FSMSSA, are *ultra vires* because the decree of adoption itself satisfies the dependency requirement, and that the regulations exceed the scope of the Social Security statute under Title 53. *Id.* at 6.

The FSM social security program's purpose is to provide a means whereby employees may be ensured a measure of financial security in their old age and be given an opportunity for leisure without hardship and complete loss of income, and, further, to provide survivors' insurance for wage earners and their dependents. 53 F.S.M.C. 602; FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 141 (Pon. 1995).

In the present matter, the FSMSSA does not deny the fact that a lawful adoption exists under 51 Pon. C. § 5-105, however, it argues that the mission of the FSMSSA is to provide benefits to those children who lose their support through the death of the wage earner, not simply anyone who has been adopted. Def.'s Reply Supporting Mot. for Summ. J. at 5.

As required under applicable case law and the FSMSSA regulations, and as discussed *infra*, a valid claim for benefits as an adopted child requires proof of adoption and dependency of the adopted child on the wage earner. In the FSM, there are different circumstances where an adoption may occur. Some instances where adoptions take place, *inter alia*, are because of the death of a natural parent, the inability of the natural parent to provide for the child, or for education and other purposes.

Changed circumstances may require the adopted child to move away and to no longer be dependent on the adopted parent. In these situations, the child no longer depends on the wage earner for support, and the child would fall outside of the statutory scheme of the FSMSSA.

The court recognizes that regulations may be promulgated to assure efficiency, accuracy, and proficiency in carrying out the objectives of Title 53. 53 F.S.M.C. 703. These regulations also provide restrictions to prevent abuse and to regulate violations in order to protect the Social Security system.

The FSM Congress has the authority to amend the statutory law under Title 53 when changes need to be made in the interest of the FSMSSA. The 14th FSM Congress stated: "The Social Security Administrator has indicated that at present a large number of adoptions are taking place simply in order to obtain eligibility for surviving child benefits. Your Committee agrees the current provisions may be open to abuse." SCREP No. 14-113, 14th Cong., 5th Reg. Sess. (2006).

The court acknowledges that if benefits are distributed by virtue of only an adoption decree, not only will this affect the financial stability and well-being of the Social Security program, the FSMSSA would be vulnerable to abuse, exploitation, and misconduct. Therefore, the court finds that the regulations, as they pertain to this litigation, are not *ultra vires*.

The constitutionality of the FSMSSA was also raised by the plaintiff during the hearing on July 22, 2015. The court ruled on this issue in FSM Social Security Administration v. Weilbacher, 7 FSM R. 137 (Pon. 1995). In Weilbacher, the court held

have no right over it. A child adopted under this chapter shall have the same rights of inheritance as a person adopted in accordance with recognized custom at the place where the land is situated in the case of real estate, and at the place where the decedent was a resident at the time of his death in the case of personal property. Where there is no recognized custom as to rights of inheritance of adopted children, a child adopted under this chapter shall inherit from his adopting parents the same as if he were the natural child of the adopting parents, and he may also inherit from his natural parents and kindred the same as if no adoption has taken place.

Title 53 of the FSM Code, which created the FSMSSA, is patterned after many United States statutes that create administrative agencies with the power to conduct investigations for the United States Government. Despite numerous challenges to the constitutionality of administrative agencies similar to the FSMSSA in the United States, the United States federal courts have upheld the constitutionality of statutory schemes that are virtually identical to that of the FSMSSA. The United States courts have ruled that administrative agencies, where authorized by statute, may perform many different investigatory functions, among them the auditing of books and records, the issuance of subpoenas requiring the disclosure of information relevant to the agency's functions, and requiring the sworn testimony of witnesses.

Id. at 141 (citing Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 66 S. Ct. 494, 90 L. Ed. 614 (1946)).

Based on the holding in *Weilbacher*, the statutory scheme of the FSMSSA is not unconstitutional. Further, the exercise of the FSMSSA's investigatory functions, which would include the request for evidence of dependency in the current matter, is lawful as long as it is authorized by law.

Requirements for Benefits

In summary, Neth's Complaint claims that the Board ignored sufficient evidence that showed that the adopted child was dependent on the wage earner, thus Neth is eligible for Social Security benefits. Pl.'s Compl. at 3. In its Motion for Summary Judgment, the FSMSSA argues that Neth did not provide sufficient proof to show that there was dependency, therefore the requirements as set forth in 53 F.S.M.C. 803(1) and §100.22 of the FSMSSA regulations were not met.

A surviving child of a wage earner is eligible for benefits under 53 F.S. M.C. 803(1), which states

Every surviving child who:

(a) was dependent upon an individual who died fully insured or currently insured;
and

(b) has filed a complete application with the Social Security Administrator for survivor's insurance;

shall be entitled to a surviving child's insurance benefit, subject to the earnings test as defined in this subtitle.

Further, § 100.22 (3) of the FSMSSA regulations covers the required evidence to show dependency. This section states

A child shall be deemed dependent upon his proven natural parent or adoptive parent unless such parent was not living in the same household with or contributing to the support of such child.

(a) *When evidence of a child's dependency is needed.* If you or someone on your behalf apply for child's benefits, we may request evidence that the child was the insured person's dependent at a specific time – usually the time you applied or the time the insured died or became disabled. What evidence we request depends upon how you claim to be related to the insured person.

(b) *Preferred Evidence* – at least two types of preferred evidence shall be required.

(1) Evidence that the insured person and child were or are living together in one household;

(2) Evidence that the insured person was/is contributing to the support of the child;

(3) the child is listed as a child beneficiary on the insured person's life insurance policy, if the insured person has or had insured his life;

(4) Official school records showing the insured person as provider for the child;
or

(5) At the discretion of the FSMSSA Administrator, any other documents or evidence that will prove dependency of the child on the insured person.

A record of the Board's findings was submitted into evidence. Def.'s Mot. for Summ. J. at 35-36. The record states

As for the evidence of dependency, the claimant only submitted a xerox copy of a page from the Pehleng community record book and two affidavits from the local title holders from their area attesting to the adoption. The page from the record book lists the child under the wage earner. However, as this is not an official census record, its validity as evidence of dependency holds less weight.

The Board instructed the claimant to submit two documents to prove economic dependency.

As of November 7, 2012, the claimant has not submitted the requested documents.

Here, Neth was advised on August 23, 2012 to provide evidence of dependency, and as of November 7, 2012, no evidence was provided. 53 F.S.M.C. 708 allows parties who appeal decisions of the Board to enter additional evidence for the court's consideration, however, no proof has been submitted as part of this litigation. Although the page from the Pehleng community record book was presented, the document attests to the adoption, not dependency, and §100.22 (3) allows for the submission of further proof to show dependency, which was not provided by Neth.

A claimant who alleges that he has a child in his care who is living with him must provide the Social Security Administration with a signed statement to that effect when applying for benefits. If the child is under 16 or mentally incompetent, the SSA will need no more information, unless it doubts the truth of the statement. In that case, it may ask the claimant for a statement about his exercise of parental control and responsibility. If it still has doubts about the in care status of the child, it may ask for a statement from some other member of the household or a person who is familiar with the circumstances. 70A AM. JUR. 2D *Social Security and Medicare* § 676 (1987).

The FSMSSA is given the regulatory authority to request additional proof of dependency and the

claimant is required to submit such proof pursuant to § 100.5⁵ Actual dependency upon the adoptive parent is a prerequisite for the adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Alokoa, 16 FSM Intrm. at 276 n.2.

Therefore, the court finds that the Board's dismissal of Neth's claim based on a lack of evidence of dependency was not erroneous because of the failure to provide evidence, and the actions of the Board are supported by §100.6 of the FSMSSA regulations.⁶

Other Claims

In her opposition to FSMSSA's summary judgment motion, Neth makes additional arguments regarding the authority of the FSMSSA's Administrator, and the consideration of this matter by this court as a *trial de novo*.

The Administrator of the FSMSSA is statutorily created pursuant to 53 F.S.M.C. 702. This section states, in part,

The Board shall appoint a Social Security Administrator who shall have *responsibility for the general administration of the Social Security System*, and who shall have the power to employ and to delegate duties to such employees of the Social Security Administration as deemed feasible and desirable to carry out the provisions of this subtitle.

53 F.S.M.C. 702 (emphasis added).

The Administrator is given a wide range of discretion as part of his or her administrative powers.⁷

⁵ FSMSSA Regulations §100.5 Responsibility for giving evidence

When evidence is needed to prove your entitlement to receive or to continue to receive benefits, you will be responsible for obtaining and providing the evidence to us. Upon your request, we will advise you as to what kinds of evidence would be convincing, and we will consider any relevant evidence you give us. Evidence given to us will be kept confidential and not disclosed to anyone but you except as provided in 53 F.S.M.C. 704. You should be aware that 53 F.S.M.C. 605 provides criminal penalties for knowingly misrepresenting the facts or for making false statements to obtain social security benefits for yourself or someone else.

⁶ §100.6 Failure to provide requested evidence.

Generally, you will be asked to provide us by a certain date specific kinds of evidence to prove you are entitled to benefits. If we do not receive the evidence by that date, we may decide to close your claim at the time. If you are already receiving benefits, you may be asked to provide us by a certain date evidence needed to determine whether you continue to be entitled to benefits or whether your benefits should be terminated or reduced. If you do not provide us the requested evidence by the date given, we may decide that you are no longer entitled to benefits or that your benefits should be terminated or reduced. You may let us know if you are unable to provide us the requested evidence within the specified time, explain why there will be a delay and request additional time. If this delay is due to illness, inability to receive timely evidence you have requested from another source, or a similar circumstance, you will be given additional time to provide us the evidence.

⁷ For example, under the FSMSSA regulations as amended in 2012, the Administrator may consider other documents that may prove dependency under 100.22, he/she may also consider other documents to

Decisions made pursuant to the Administrator's discretionary power are also subject to the review of the Board. In addition to this discretionary authority, the regulations detail different criteria that the Administrator may follow in forming a decision. No evidence has been produced in this matter that suggests that the Administrator had abused his discretion in the denial of benefits in this case.

Finally, the plaintiff argues that "special cause" may exist for the present matter to be heard *de novo*. Pl.'s Opp'n to Def.'s Mot. for Summ. J. at 6. However, in Clarence v. FSM Social Sec. Admin., 12 FSM Intrm. 635 (Kos. 2004) the court held that an appeal from a Social Security Board decision will be determined on the record below and not on a trial *de novo* because, under 53 F.S.M.C. 708, the Board must certify and file in court a copy of the record. The Board's findings as to the facts, if supported by competent, material, and substantial evidence, will be conclusive. If either party applies for leave to adduce additional material evidence, and shows to the court's satisfaction

that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives, and that such evidence is competent, material, and substantial, the court may order the additional evidence to be taken by the Board and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper.

Id. at 636.

Accordingly, this matter is determined based on the record of the administrative hearing, other documents as submitted by the parties, and the oral arguments as presented before the court, therefore a *de novo* trial is unwarranted.

V. CONCLUSION

The court finds that there are no triable issues in this matter. The defendant's Motion for Summary Judgment is HEREBY GRANTED, and the plaintiff's Complaint is HEREBY DISMISSED. The Clerk shall enter judgment in favor of the defendant.

* * * *

prove customary adoption pursuant to 100.25 (3), as well as the discretion to find "extremely limited circumstances" to authorize adoptions after the wage earner's 55th birthday under § 100.26.