

the medical-vocational rules are applicable." We further advised that since we had received no significant data or other evidence to indicate that the unskilled occupational base as described in the text of these rules had changed substantially, they did not need to be restructured on this basis. The purpose of the present notice is to provide the public with an update concerning the current validity of these rules.

When the medical-vocational rules were published, the third edition of the Dictionary of Occupational Titles (DOT) and its companion volumes were the chief occupational reference sources of the disability program. These sources identified, at the various functional levels, the unskilled occupations which comprise the administratively noticed occupational base for decisions made under the medical-vocational rules. Subsequently, the fourth edition of the DOT (1977-81) and its companion volumes and supplements (1982 and 1986) have replaced the third edition.

As reported in the notice we published on December 20, 1988, when we analyzed the fourth edition of the DOT in detail and compared it with the third edition, we found that while the numbers of individually identifiable occupations showed some variance, the range of work (of which the medical-vocational rules take administrative notice) continued to represent more occupations than would be required to represent significant numbers. A revised version of the fourth edition of the DOT was subsequently issued in September of 1991. A similar analysis of the revised fourth edition and the available data for the upcoming companion volume, *Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles*, again shows that the range of work of which the medical-vocational rules take administrative notice continues to represent more occupations than would be required to represent significant numbers.

During the period since our last notice, we have received no significant data or other evidence to indicate that there were any unforeseen effects of the medical-vocational rules or that the unskilled occupational base as described in the text of these rules has changed substantially. Therefore, we have no reason to propose any changes to the rules at this time. However, it will continue to be our policy to monitor the use of these rules and to analyze occupational data as they become available.

We had planned to publish a notice of the performance and validity of these

rules biennially. Following this schedule would have resulted in the publication of a notice in December 1990. However, we deferred publication of the notice until this time so that we could review the revised edition of the DOT that was issued September 1991 and determine if any changes in the data reflected in that publication would necessitate any changes in the medical-vocational rules. We will continue to inform the public of the results of our reviews and the continuing validity of these rules.

(Catalog Federal Domestic Assistance: Program Nos. 93.802, Social Security Disability Insurance; and 93.807, Supplemental Security Income)

Dated: September 1, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 92-22475 Filed 9-16-92; 8:45 am]

BILLING CODE 4190-29-M

Settlement Agreement—Stieberger, et al. v. Sullivan, et al. 84 Civ. 1302 (LBS) S.D.N.Y.

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Commissioner of Social Security (the Commissioner) gives notice of the settlement agreement in *Stieberger*.

FOR FURTHER INFORMATION CONTACT: Gaye Wallace, Litigation Staff, Social Security Administration, 3-K-26 Operations Building, 6401 Security Boulevard Baltimore, MD 21235, (410) 965-1770.

SUPPLEMENTARY INFORMATION: Pursuant to the settlement agreement approved June 18, 1992, by the United States District Court for the Southern District of New York in the case of *Stieberger, et al. v. et al. 84 Civ. 1302 (LBS)*, the Commissioner hereby publishes this instruction to all persons who decide Social Security Act disability benefit claims of New York State residents or who review such decisions. This instruction is entitled "Application of Second Circuit Decisions to Social Security Act Disability Benefit Claims of New York Residents" and is referred to in the settlement agreement as Attachment 1.

Dated: September 10, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Attachment 1—Application of Second Circuit Decisions to Social Security Act Disability Benefit Claims of New York Residents

A. General Rule

Effective immediately, all persons who decide Social Security Act disability benefit claims of New York State residents or who review such decisions shall follow and apply the holdings of the United States Court of Appeals for the Second Circuit, except when written instructions to the contrary are issued pursuant to paragraphs D and E. This instruction applies to all Second Circuit disability decisions except those that are expressly designated not for publication.

B. How to Apply Holdings

Holdings of the Second Circuit Court of Appeals must be applied at all levels of administrative review to all claims for title II and title XVI disability benefits filed by New York State residents, unless written instructions to the contrary are issued pursuant to paragraphs D and E. You must apply those holdings in good faith and to the best of your ability and understanding whether or not you view them as correct or sound.

In general, a holding in a decision is a legal principle that is the basis of the court's decision on any issue in the case. There may be more than one holding in a decision. A holding must be applied whenever the legal principles is relevant.

Not all of the discussion in a decision is a holding. For example, the factual discussion in a decision is not a holding although it can help you understand the holding by placing it in context. Also, in their decisions courts may make observations or other remarks that are helpful in understanding the court's reasoning. You are required to apply the holdings, not those observations or other comments of the court.

Of course, you should continue to make sure that the decision whether a claimant is disabled is an individualized decision based on the evidence regarding that claimant.

C. Availability of Decisions and Instructions

To help ensure that decisionmakers and reviewers of decisions apply Second Circuit holdings, SSA will do the following:

1. SSA will provide each office of decisionmakers and reviewers of decisions with a copy of the settlement approved by the Court in *Stieberger v.*

Sullivan.

2. SSA will provide all decisionmakers and reviewers of decisions with a Manual of Second Circuit disability decisions ("Manual")—containing excerpts of the principal holdings of the Second Circuit issued before June 18, 1992, the date that the settlement in *Stieberger* was approved by the Court.

3. SSA will provide each office of decisionmakers and reviewers of decisions with a copy of each Second Circuit disability decision issued after June 17, 1992, promptly after the decision is issued by the Court. Each such office shall maintain a volume containing copies of these decisions. This volume shall be readily accessible to decisionmakers and reviewers of decisions.

4. SSA will issue instructions to ODD decisionmakers and reviewers of decisions about applying Second Circuit decisions rendered after June 17, 1992. These instructions must be added to the Manual as supplements. SSA may issue instructions to OHA adjudicators.

You should familiarize yourself with the Manual, with SSA's instructions on Second Circuit holdings, and with Second Circuit decisions as they are issued.

While SSA will take the steps described above to help you apply Second Circuit holdings, you must apply the holdings even in the absence of an instruction, and even if they are not included in the Manual.

Example: You have become aware of a Second Circuit disability decision (for example, a claimant draws it to your attention or you receive notification of it from SSA), but you have not yet received an instruction from SSA on how to apply the decision and it is not in the Manual. You must apply the holding(s) of that decision to all claims where it is relevant.

D. Instructions Regarding when Decisions Become Effective

1. You must apply the holdings in a decision once the decision becomes effective. A decision of the Second Circuit generally becomes effective 20 days after the decision is issued by the Court, unless a specific written instruction is issued that requires the decision to be applied earlier or later. If you have not received instructions about a particular Second Circuit decision issued after the date of this instruction, consult with your supervisor for further guidance about whether the decision has become effective. (If you are an administrative law judge, you may inquire with the Regional Office concerning the status of the decision.)

2. As long as a Second Circuit decision is pending further court review, SSA may instruct decisionmakers and reviewers of decisions not to apply some or all holdings stated in that Second Circuit decision. In such instances SSA will issue specific instructions explaining which holdings are not to be applied and identifying the issues addressed by those holdings. When such instructions are issued, decisionmaking and reviewing offices will maintain a list of disability claims decisions that may be affected because the Second Circuit holding is not being applied.

Any notice sent to claimants on the list, denying benefits in whole or in part, will include the following language:

If you do not agree with this decision, you can appeal. You must ask for an appeal within 60 days.

You should know that we decided your claim without applying all of what the court said about the law in _____ is a recent court ruling that we do not consider final because it may be reviewed further by the courts. If it becomes final, we may contact you again.

If you disagree with our decision in your case, do not wait for us to contact you. You should appeal within 60 days of the date you receive this notice. If you do not appeal within 60 days, you may lose benefits.

3. When no further judicial review of a Second Circuit decision will occur, SSA will promptly rescind any instructions issued under this paragraph D, and will advise decisionmakers and reviewers of decisions about the final decision in the case. SSA will also explain what action is to be taken, including any reopenings, with respect to claimants whose cases may have been affected by the instruction not to apply the Second Circuit decision pending further court review.

E. Issuance and Rescission of Acquiescence Rulings

This instruction on application of Second Circuit decisions to disability benefit claims does not prevent SSA from issuing or rescinding acquiescence rulings, or relitigating issues under 20 C.F.R. 404.985 and 416.1485.

F. Questions Concerning this Instruction and Second Circuit Decisions

This instruction is issued pursuant to the settlement agreement in *Stieberger v. Sullivan*, 84 Civ. 1302 (S.D.N.Y.). A copy of the complete agreement is available in your office. Any questions about applying Second Circuit decisions that you cannot resolve yourself may be directed to your supervisors and, if more guidance is needed, through supervisory channels to the Litigation Staff in SSA

Central Office in Baltimore, Maryland. In addition, a team of SSA personnel will visit the New York ODD one month after you receive this instruction and quarterly thereafter for 3 years to discuss any questions decisionmakers and reviewers of decisions have about applying Second Circuit disability decisions.

G. Binding Effect of This Instruction

This instruction is binding on all personnel, including state employees, ALJs, Appeals Council Administrative Appeals Judges, quality assurance staff, and all other personnel who process, render decisions on, or review claims of New York residents for disability benefits under the Social Security Act.

Because this instruction arises out of a lawsuit, it does not apply to claims of any persons who do not reside in the State of New York. However, this limitation does not lessen the extent to which court decisions are to be applied to claims of persons who reside in any other state. This limitation also should not be deemed to suggest that such decisions are not given or should not be given proper consideration in any other state.

[FR Doc. 92-22395 Filed 9-16-92; 8:45 am]

BILLING CODE 4190-29-M

Social Security Acquiescence Ruling 92-6(10)—Walker v. Secretary of Health and Human Services, 943 F.2d 1257 (10th Cir. 1991)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 404.985(b), 416.1485(b) and 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 92-6(10)

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Darlynda Bogle, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-4237.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security

Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to cases at the disability hearing/reconsideration, Administrative Law Judge and Appeals Council levels within the Tenth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after September 17, 1992. If we made a determination or decision on your application for benefits between September 5, 1991, the date of the Court of Appeals' decision, and September 17, 1992, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the *Federal Register* to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the *Federal Register* stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

Dated: July 9, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Acquiescence Ruling 92-6(10)

Walker v. Secretary of Health and Human Services, 943 F.2d 1257 (10th Cir. 1991)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act.

Issue: Does a person's return to substantial gainful activity (SGA) within

12 months of the onset date of his or her disability, and prior to an award of benefits, preclude an award of benefits and entitlement to a trial work period?

Statute/Regulation/Ruling Citation: Sections 222(c), 223, and 1614(a)(3) and (4) of the Social Security Act (42 U.S.C. §§ 422(c), 423, and 1382c(a)(3) and (4)); 20 CFR §§ 404.1505, 404.1520(b), 404.1592, 416.905, 416.920(b), 416.992; SSR 82-52

Circuit: Tenth (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming).

Walker v. Secretary of Health and Human Services, 943 F.2d 1257 (10th Cir. 1991).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge hearing and Appeals Council).

Description of Case: Billy Walker applied for disability insurance benefits and supplemental security income (SSI) on October 2, 1987, alleging disability due to degenerative disc disease and ulcers. His claim was denied initially and upon reconsideration. Mr. Walker then requested a hearing before an Administrative Law Judge (ALJ). While he was awaiting his hearing, Mr. Walker returned, in April 1988, to his work as a truck driver. He was still performing this job at the time of his hearing in September 1988.

The ALJ, in determining that Mr. Walker was not disabled, denied benefits at step one of the five-step sequential evaluation process. Specifically, the ALJ found that Mr. Walker had engaged in substantial gainful activity since April 1988, within twelve months of the date he claimed disability, by virtue of his work as a truck driver. The Appeals Council denied Mr. Walker's request for review and the U.S. District Court for the District of New Mexico affirmed the ALJ's decision.

On his appeal to the U.S. Court of Appeals for the Tenth Circuit, Mr. Walker argued that, despite his return to work in April 1988, he was still disabled as defined by the Social Security Act ("the Act"). He maintained that his work as a truck driver constituted a trial work period, which the ALJ should not have considered in determining his eligibility for benefits.

Holding: In vacating the district court's judgment and remanding the case to the Secretary, the U.S. Court of Appeals for the Tenth Circuit held that:

"... a fair reading of the Act indicates that an individual who suffers from an impairment that has lasted, or is expected to last, twelve months is entitled to disability

insurance benefits, as well as a trial work period, after waiting five months.¹

In reaching this conclusion, the court relied upon the Seventh Circuit's reasoning and decision in *McDonald v. Bowen*, 818 F.2d 559 (7th Cir. 1987), which held that a person could return to work after the five-month waiting period, yet before an award of benefits, and still be eligible for an award, since the return to work represents a trial work period and is not evidence of the person's work capabilities.²

The court directed the Secretary, on remand, to determine whether Mr. Walker was disabled for five consecutive months before he began work in April 1988, and, if so, to assess whether such work constituted a trial work period.

Statement As To How Walker Differs From Social Security Policy

Social Security Ruling (SSR) 82-52 contains a clear statement of Social Security policy on this subject.³ The pertinent provision is as follows:

When the [individual's] return to work demonstrating ability to engage in SGA occurs before approval of the award and prior to the lapse of the 12-month period after onset, the claim must be denied. When an individual returns to SGA during the waiting period and such work continues, the claim for benefits must be denied if the award has not been approved. If the award was previously approved, the claim must be reopened and revised to a denial.

The holding in *Walker* is inconsistent with this policy in that it directs the Secretary, on remand, to grant Mr. Walker a trial work period provided only that he establishes a consecutive five-month period of disability prior to his return to work in April 1988. This raises the possibility that Mr. Walker may receive a benefit award and a trial work period even if he returned to work within 12 months of the onset of his

¹ The Act provides that "[a] period of trial work . . . shall begin with the month in which [the individual] becomes entitled to disability insurance benefits." 42 U.S.C. 422(c)(3). A trial work period ends with the ninth month in any period of 60 consecutive months in which the individual renders services (although the nine months need not be consecutive), or, if earlier, with the month in which disability ceases. 42 U.S.C. § 422(c)(4)(A), (B).

² Under the Act, "any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period." 42 U.S.C. § 422(c)(2).

³ The Social Security Administration has since issued SSR 91-7c, which supersedes SSR 82-52 only to the extent that SSR 82-52 discusses the former procedures used to determine disability in children. The issue in this AR does not relate to those former procedures and the cited policy statement remains in effect.

disability and before an award of benefits could be made.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only to cases in which the claimant resides in Colorado, Kansas, New Mexico, Oklahoma, Utah or Wyoming at the time of the determination or decision at any administrative level, *i.e.*, initial, reconsideration, Administrative Law Judge hearing or Appeals Council review.

A claim for title II disability insurance benefits, widow(er)'s insurance benefits based on disability, or child's insurance benefits based on disability in which the claimant returns to work within 12 months of the established onset date should be allowed and the claimant granted a trial work period if the following conditions are met:

- The claimant establishes that, at the time he/she returned to work and thereafter, the impairment was still expected to last for at least 12 consecutive months from the date of onset;
- The person returns to work after any necessary waiting period after the established onset date (but within the 12-month period following such onset date); and
- The return to work demonstrating ability to engage in substantial gainful activity occurs either before or after approval of the award.

A claim for title XVI benefits based on disability in which the claimant returns to work within 12 months of the established onset date should be allowed and the claimant granted section 1619 status ⁴ if the following conditions are met:

- The claimant establishes that, at the time he/she returned to work and

thereafter, the impairment was still expected to last at least 12 consecutive months from the date of onset;

- The person returns to work in a month subsequent to the month of established onset (but within the 12-month period following such onset date); and
- The return to work demonstrating ability to engage in substantial gainful activity occurs either before or after approval of the award.

EFFECTIVE DATE: September 17, 1992.

[FR Doc. 92-22534 Filed 9-16-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-92-3502]

Office of Administration; Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals

for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 8, 1992.

John T. Murphy,
Director, Information Resources Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Operating Budget and Supporting Schedules.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: This schedule will ensure that Public Housing Authorities (PHAs) follow sound financial practices and that Federal Funds are used for eligible expenditures. PHAs will use the form as a financial summary and analysis of immediate and long-term operating programs and plans to provide control over operations and achieve objectives.

Form Number: HUD-52564, 52566, 52567, 52571 and 52573.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-52564	3,780		1		116.5		440,370
HUD-52566	3,780		1		1.0		3,780
HUD-52567	3,780		1		.75		2,835
HUD-52571	3,780		1		1.0		3,780

⁴ Pursuant to statutory amendments made by Public Law 99-643, effective July 1, 1987, the trial work provisions are no longer applicable to title XVI disability claims. Beginning July 1, 1987, a disabled individual, who was eligible to receive "regular" SSI benefits (section 1611) for a month and subsequently has earnings ordinarily considered to represent substantial gainful activity, will move directly to section 1619 status rather than be accorded a trial work period. This Ruling extends to such individuals, *i.e.*, claimants for title XVI benefits based on disability should be allowed and granted section 1619 status if the return to work is on or after July 1, 1987, and the same conditions are met.