above the tarsal region) and cannot afford the cost of a prosthesis has an impairment that meets the requirements of Regulations 20 CFR Part 404, Subpart P, Appendix 1, section 1.10C.

Statute/Regulation/Ruling Citation: Sections 223(d)(1) and 1614(a)(3) of the Social Security Act (42 U.S.C. 423(d)(1) and 1382c(a)(3)); 20 CFR 404.1530, 416.930; 20 CFR Part 404, Subpart P, Appendix 1, section 1.10C; Social Security Ruling (SSR) 82-59.

Circuit: Ninth (Alaska, Arizona, California, Guam, Hawaii (including American Samoa), Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington).

Gamble v. *Chater*, 68 F.3d 319 (9th Cir. 1995).

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

Description of Case: The plaintiff, David Gamble, had his right leg amputated below the knee in July 1988. Although he was able to use a prosthesis, physicians expected that shrinkage of the stump over the next two years might require changes in the prosthesis. In late 1989, the skin on the stump began to break down. By October 1991, the prosthesis did not fit properly and could not be satisfactorily adjusted. Because Mr. Gamble did not have and could not obtain $3,477.80, the cost of a replacement prosthesis, his treating physician concluded that nothing more could be done and limited him to walking with a crutch.

Mr. Gamble applied for Supplemental Security Income benefits based on disability in April 1991 and Social Security disability insurance benefits in May 1991. Following denial of his claims at both the initial and reconsideration levels of the administrative review process, the plaintiff requested and received a hearing before an ALJ. In the hearing decision, the ALJ noted that Mr. Gamble could not afford a new prosthesis and found that his condition did not meet or equal Listing 1.10C in the Listing of Impairments contained in 20 CFR Part 404, Subpart P, Appendix 1. The district court upheld SSA's decision. Mr. Gamble appealed this decision to the United States Court of Appeals for the Ninth Circuit.

Holding: The Ninth Circuit reversed the decision of the district court. The Court of Appeals noted that the proper interpretation of Listing 1.10C was an issue of first impression in the Ninth Circuit. After reviewing the principle upheld by other Circuits that ''[d]isability benefits may not be denied because of the claimant's failure to obtain treatment he cannot obtain for lack of funds,'' the Court of Appeals held that the requirement in Listing 1.10C that a claimant be unable to use a prosthesis effectively ''means the inability to use a prosthesis that is reasonably available to the claimant.'' Accordingly, the court also held that ''a person whose leg was amputated at or above the tarsal region satisfies Listing § 1.10 if he is unable to use any prosthesis that is reasonably available to him.''

The court found that an amputee who is unable to reasonably obtain a prosthesis should not be treated differently from any other disabled person who cannot obtain the treatment, therapy or medical device needed to restore the ability to work. In addition, the court found that claimants who could obtain prostheses but who simply choose not to purchase them do not meet the requirements of Listing 1.10C and could be found ''not disabled'' under 20 CFR 404.1530 and 416.930 for failing to follow prescribed treatment without good reason. Accordingly, the court reversed and remanded the case with instructions for an award of benefits because Mr. Gamble could not realistically obtain the prosthesis he needed.

Statement As To How Gamble Differs From Social Security Policy

At issue in *Gamble* is the meaning of the term ''[i]nability to use a prosthesis effectively'' in Listing 1.10C. What constitutes an ''inability to use a prosthesis effectively'' is not defined in SSA's regulations. In Listing 1.10C, ''inability'' means a medical inability, i.e., a claimant cannot effectively use a prosthesis because of medical complications. The intent is to measure medical severity. The availability of prosthetic devices and a claimant's inability to afford a prosthesis are not considered for the purpose of determining disability under the Listing of Impairments.

The *Gamble* court held that a claimant ''whose leg was amputated at or above the tarsal region satisfies Listing § 1.10 if he is unable to use any prosthesis that is reasonably available to him.'' As a practical matter, the court concluded that a claimant who cannot afford a prosthesis, even if he could use one, does not have a prosthesis reasonably available to him and thus, is unable to use a prosthesis.

Explanation of How SSA Will Apply The Gamble Decision Within The Circuit

This Ruling applies only where the claimant resides in Alaska, Arizona, California, Guam, Hawaii (including American Samoa), Idaho, Montana, Nevada, Northern Mariana Islands, Oregon or Washington at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, ALJ hearing or Appeals Council.

A claimant whose lower extremity is amputated at or above the tarsal region and is unable to use any prosthesis that is reasonably available to him will be considered to have satisfied the requirements of Listing 1.10C. When determining the reasonable availability of prosthetic devices, adjudicators must consider evidence of an inability to afford the cost of the prosthesis. Adjudicators must evaluate all such evidence and consider the claimant's economic circumstances in determining whether the claimant can or cannot afford the prosthesis.

[FR Doc. 97–668 Filed 1-10-97; 8:45 am]

BILLING CODE 4190-29-F

[Social Security Acquiescence Ruling 97-1(1)]

Parisi By Cooney v. Chater; Reduction of Benefits Under the Family Maximum In Cases Involving Dual Entitlement—Title II of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 97-1(1).

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

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 (the 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 claims at all levels of administrative adjudication within the First Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after January 13, 1997. If we made a determination or decision on your application for benefits between November 8, 1995, the date of the Court of Appeals decision, and January 13, 1997, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(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). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(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. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance.)

Dated: September 19, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Acquiescence Ruling 97-1(1)

Parisi By Cooney v. *Chater*, 69 F.3d 614 (1st Cir. 1995)—Reduction of Benefits Under the Family Maximum In Cases Involving Dual Entitlement—Title II of the Social Security Act.

Issue: Whether, in determining the amount of benefit reduction under the maximum family benefits provision in section 203(a) of the Social Security Act (the Act) in cases where a beneficiary is entitled to benefits on more than one earnings record, only those monthly benefits payable on the worker's earnings record after application of the simultaneous benefit provisions are included in calculating the total monthly benefits payable on that record.

Statute/Regulation/Ruling Citation: Sections 202(k)(3)(A), 202(r) and 203(a) of the Social Security Act (42 U.S.C. 402(k)(3)(A), 402(r) and 403(a)); 20 CFR 404.304(d), 404.403, 404.404, 404.407(a), 404.623; Social Security Ruling 62-7.

Circuit: First (Maine, New Hampshire, Massachusetts, Rhode Island, Puerto Rico).

Parisi By Cooney v. *Chater*, 69 F.3d 614 (1st Cir. 1995).

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

Description of Case: Anthony Parisi, the worker, became disabled in February 1988. He and Anthony Parisi II, his dependent child and the plaintiff in this case, began receiving Social Security benefits on Anthony Parisi's earnings record. In 1991, Adriana Parisi, the worker's spouse, became entitled to retirement benefits (old-age benefits) based on her own earnings record. Under section 202(r) of the Act, Adriana was deemed also to have applied for and become entitled to wife's benefits based on the worker's earnings record. The Social Security Administration (SSA) determined under section 202(k)(3)(A) of the Act that because the monthly retirement benefits that Adriana was entitled to receive on her own record exceeded the amount of her monthly wife's benefits on Anthony Parisi's earnings record, she could only receive payment for the retirement benefits payable on her own earnings record.

SSA counted the wife's benefits to which Adriana was entitled, but which were not actually paid to her, toward the monthly maximum amount of benefits payable on Anthony Parisi's earnings record under section 203(a) of the Act (the family maximum). Because the total monthly amount of Anthony's disability benefits, the plaintiff's child's benefits, and Adriana's wife's benefits exceeded the monthly family maximum limit, SSA reduced the amount of the plaintiff's and the wife's monthly benefits.

The plaintiff's request for reconsideration of the benefit reduction was denied, and he requested a hearing before an ALJ. The ALJ found that Adriana's wife's benefits should not be counted toward the family maximum. However, the Appeals Council reversed the ALJ's decision and the plaintiff appealed to the district court. The district court found that the family maximum limit on monthly benefits was meant to include only ''effective entitlements'' that result in actual payment of benefits. Because Adriana's entitlement to wife's benefits was only ''conditional'' upon her not being entitled to a greater amount of monthly benefits on her own earnings record, the district court concluded that Adriana's wife's benefits should not be counted toward the family maximum. SSA appealed and the United States Court of Appeals for the First Circuit, while offering somewhat different reasoning, found that the district court correctly reversed the Appeals Council's decision.

Holding: After reviewing the statutory language in sections 203(a) and 202(k)(3)(A) of the Act, the legislative history, SSA's regulations and policy considerations, the Court of Appeals held that ''Adriana's non-payable spousal benefits d[id] not count toward the section [2]03(a) 'family maximum' . . . [because] section [2]03(a) operates to limit the total amount of benefits actually *payable* on a single worker's record, not the amount of entitlements theoretically available.'' The court further held that because Adriana's deemed entitlement to wife's benefits resulted in ''*zero payable* benefits'' under section 202(k)(3)(A) of the Act, none of her benefits should be included in the family maximum computation required under section 203(a).

Without reviewing SSA's definition of ''entitlement,'' the court reasoned that, if SSA was correct in arguing that section 203(a) of the Act places a limit on entitlements, it would be contradictory and impossible to enforce compliance with the family maximum cap by reducing payable benefits. The court held that section 203(a) of the Act requires SSA to consider the actual amount of benefits payable under the relevant benefits provisions (read as a whole), not purely theoretical entitlements, in calculating the total monthly benefits payable on the worker's earnings record. The court noted that its conclusion did not undermine SSA's definition of ''entitlement'' and that Adriana had entitlement, in an abstract way, to wife's benefits under section 202(b)(1) of the Act.[1]

The court also held that the statutory language requires that monthly benefits be reduced under the family maximum only as much ''*as necessary*'' to enforce compliance and that, because the reduction in Parisi's case depended on the calculation of Adriana's wife's benefits, which amounted to zero due to her simultaneous entitlement to a higher benefit on her own earnings record, a reduction was not necessary. Accordingly, the court concluded that

[1] The First Circuit's reasoning differed from the district court's analysis that distinguished between ''effective'' and ''conditional'' entitlements. The court held that this distinction had ''no roots in the statutory language.''

the total amount of benefits payable on the worker's record did not exceed the family maximum and that Anthony's child's benefits should not be reduced.

Statement As To How Parisi Differs From Social Security Policy

Section 203(a) of the Act establishes a limit, derived from the worker's primary insurance amount, on the total monthly benefits to which dependents or survivors may be entitled on the basis of one worker's earnings record (the family maximum). Under SSA's regulations implementing section 203(a) of the Act (20 CFR 404.403 and 404.404), the benefits of each claimant entitled on a worker's earnings record are reduced proportionately so that the total benefits of those entitled on the record in one month do not exceed the family maximum. In calculating total monthly benefits, SSA includes all benefits of the claimants who are entitled on the worker's record without considering whether the benefits are actually due or payable.

The *Parisi* court held that, when computing a reduction under the family maximum pursuant to section 203(a) of the Act, SSA should not include the monthly benefit that would otherwise be payable to the spouse if payment of that spouse's benefit is precluded by section 202(k)(3)(A) of the Act due to the spouse's simultaneous entitlement to a higher benefit on the spouse's own earnings record.

Explanation of How SSA Will Apply The Parisi Decision Within The Circuit

This Ruling applies only to cases involving claimants whose benefits are reduced because of the family maximum and who reside in Maine, New Hampshire, Massachusetts, Rhode Island or Puerto Rico at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, ALJ hearing or Appeals Council.

When the total benefits due or payable for any month on the earnings record of a worker exceed the maximum amount under section 203(a) of the Act (the family maximum applies) and a person entitled on the worker's earnings record is simultaneously entitled to benefits on another earnings record, SSA will consider only the amount of monthly dependent's or survivor's benefits actually due or payable to the simultaneously-entitled person when determining the amount of the benefit reduction because of the family maximum. Adjudicators will continue to apply SSA's other policies for applying and calculating the family maximum reduction.

[FR Doc. 97–667 Filed 1-10-97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Washington National Airport, Washington, DC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Metropolitan Washington Airport Authority (MWAA) for the Washington National Airport (DCA) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for DCA under part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before July 3, 1997.

EFFECTIVE DATE: The effective date of FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 3, 1997. The public comment period ends March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA Eastern Regional Office, Airports Division, AEA–610, Fitzgerald Building, JFK International Airport, Jamaica, NY 11430; (718) 553–3325. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for DCA are in compliance with applicable requirements of Part 150, effective January 3, 1997. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 3, 1997. This notice also announces the availability of this program for public review and comment.

Under Section 103 to Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the way in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The MWAA submitted to the FAA on October 9, 1990, noise exposure maps, description and other documentation which were produced during an airport noise compatibility planning study from 1985 to 1990. The original document was dated August 1990. It was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act. FAA's preliminary review of the Study in accordance with 14 CFR Part 150.31 required changes to the Study.

On March 30, 1994, MWAA submitted its revised Part 150 Noise Compatibility Program (NCP), dated December 1993, to the FAA. The FAA's preliminary review of the revised NCP raised concerns about the use of the 1989 Noise Exposure Map (NEM) as the base case NEM and use of the ''1994 Noise Exposure Map: Improved Fleet Mix and Enhanced Compliance,'' shown in the revised document as Figure V–3, as the ''five-year'' NEM. FAA and Authority staff have discussed this matter and recommend the use of this 1994 NEM as the base case NEM, and the use of the ''All Stage 3 Operations'' NEM, shown in Attachment 1 of the document as Figure 8, for the five-year forecast NEM. These uses of the 1994 NEM and the ''All Stage 3 Operations'' NEM are consistent with the guidelines set forth in 14 CFR Part 150.21 (a) and (a)(1). MWAA has presented an Addendum, dated November 22, 1996,