III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b) (3) (F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that Philadep's proposal relating to its family of accounts risk monitoring procedures are consistent with Philadep's obligations under Section 17A(b) (3) (F) because the proposed rule change will establish an automated risk review system to ensure that risk management controls are properly applied to transactions in omnibus accounts. Additionally, the Commission believes the proposal is consistent with Philadep's obligations under Section 17A(b) (3) (F) to promote the prompt and accurate clearance and settlement of securities transactions because the proposed rule change will automate a risk review procedure which is currently performed manually, therefore, improving the efficiency of Philadep's SDFS system.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because the proposed rule change will allow Philadep to immediately implement the family of account risk monitoring procedures. The Commission believes that the automation of Philadep's manual risk review procedures for omnibus accounts will reduce the risk of human error and will increase the efficiency of Philadep's SDFS system with respect to omnibus accounts.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR–Philadep–96–22 and should be submitted by February 3, 1997.

It is therefore ordered, pursuant to Section 19(b) (2) of the Act, that the proposed rule change (File No. SR–Philadep–96–22) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–689 Filed 1–10–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78q-1(b) (3) (F).

[6] The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval. Telephone conversation between John Rudolph, Board of Governors of the Federal Reserve System, and Chris Concannon, Staff Attorney, Division of Market Regulation, Commission (January 3, 1997).

[7] 17 CFR 200.30–3(a) (12).

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 97-2(9)]

Gamble v. Chater; Amputation of a Lower Extremity—When the Inability to Afford the Cost of a Prosthesis Meets the Requirements of Section 1.10C of the Listing of Impairments—Titles II and XVI 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 97-2(9).

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 Ninth 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 October 12, 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) 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) and 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) and 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 Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: October 15, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Acquiescence Ruling 97-2(9)

Gamble v. *Chater*, 68 F.3d 319 (9th Cir. 1995)—Amputation of a Lower Extremity—When the Inability to Afford the Cost of a Prosthesis Meets the Requirements of Section 1.10C of the Listing of Impairments—Titles II and XVI of the Social Security Act.

Issue: Whether a claimant for disability insurance benefits or for Supplemental Security Income benefits based on disability who has an amputation of a lower extremity (at or

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