

individual while a project participant and before October 1, 2003, may be deposited in the account, not to be commingled with any other monies, with deposits limited to 50 percent of gross earnings, not to exceed \$8,000 per year. A 24-month spend-down period, during which the resource exclusion will continue to apply, will begin October 1, 2003 or, if earlier, when the individual's participation in the project ends.

#### 4. "Medical CDRs"—Suspend for Certain Participants

We are waiving the requirements for SSA to conduct medical CDRs under sections 1619(a)(2) and 1631(j)(2) of the Act, and 20 CFR 416.990, to the extent necessary to preclude the initiation of medical CDRs under these provisions for project participants who are SSI-only recipients with MIP or MINE diaries.

**Authority:** Section 1110(b) of the Social Security Act.

(Catalog of Federal Domestic Assistance Program No. 96.006—Supplemental Security Income)

Dated: January 18, 2001.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

[FR Doc. 01-2226 Filed 1-24-01; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

### [Social Security Acquiescence Ruling 01-1(3)]

#### **Sykes v. Apfel; Using the Grid Rules as a Framework for Decisionmaking When an Individual's Occupational Base is Eroded by a Nonexertional Limitation—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 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 01-1(3).

**EFFECTIVE DATE:** January 25, 2001.

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

**SUPPLEMENTARY INFORMATION:** We are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(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 review within the Third Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after January 25, 2001. If we made a determination or decision on your application for benefits between September 18, 2000, the date of the Court of Appeals' decision, and January 25, 2001, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior determination or decision in your claim.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior determination or decision on his or her claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2), discussed above.

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, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Dated: January 9, 2001.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

### **Acquiescence Ruling 01-1(3)**

*Sykes v. Apfel*, 228 F.3d 259 (3d Cir. 2000)—Using the Grid Rules<sup>1</sup> as a Framework for Decisionmaking When an Individual's Occupational Base is Eroded by a Nonexertional Limitation—Titles II and XVI of the Social Security Act.<sup>2</sup>

**Issue:** Whether we may apply the Medical-Vocational Guidelines (grid rules) as a framework to deny disability benefits at step 5 of the sequential evaluation process when a claimant has a nonexertional limitation(s) without either:

- (1) taking or producing vocational evidence, such as testimony from a vocational expert, reference to the *Dictionary of Occupational Titles* (DOT)<sup>3</sup> or other similar evidence; or
- (2) providing notice of our intention to take official notice of the fact that the particular nonexertional limitation(s) does not significantly erode the occupational job base.

**Statute/Regulation/Ruling Citation:** Sections 205(b), 223(d)(2)(A), 1614(a)(3)(B) and 1631(c)(1)(A) of the Social Security Act (42 U.S.C. 405(b), 423(d)(2)(A), 1382c(a)(3)(B)) and 1383(c)(1)(A); 20 CFR 404.1520(f)(1), 404.1566, 404.1569, 404.1569a, 416.920(f)(1), 416.966, 416.969 and 416.969a; 20 CFR Part 404, Subpart P,

<sup>1</sup> At step 5 of the sequential evaluation process we use the medical-vocational rules that are set out in appendix 2 of subpart P of part 404. In general, the rules in appendix 2 take administrative notice of the existence of numerous, unskilled occupations at exertional levels defined in the regulations, such as "sedentary," "light," and "medium." Based upon a consideration of an individual's residual functional capacity, age, education, and work experience, the rules either direct a conclusion as to whether an individual is disabled at step 5 of the sequential evaluation process or provide a framework to guide our decision at this step. See 20 CFR 404.1569a and 416.969a and our preamble to final rules published at 65 FR 17994 (April 6, 2000).

<sup>2</sup> Although *Sykes* was a title II case, the same principles apply to title XVI. Therefore, this Ruling applies to both title II and title XVI disability claims.

<sup>3</sup> Employment and Training Administration, U.S. Department of Labor, *Dictionary of Occupational Titles* (Fourth Edition, Revised 1991) and its companion publication, *Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles*, (1993).

Appendix 2, section 200.00(e); Social Security Rulings 83-10, 83-12, 83-14, 85-15 and 96-9p.

*Circuit:* Third (Delaware, New Jersey, Pennsylvania, and the Virgin Islands).

*Sykes v. Apfel*, 228 F.3d 259 (3d Cir. 2000).

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

*Description of Case:* Clifton Sykes filed an application for disability insurance benefits after suffering several job-related injuries. After his claim was denied at both the initial and reconsideration levels of the administrative review process, he requested a hearing before an ALJ. The ALJ found that Mr. Sykes had several "severe" impairments and that, because of these impairments, he was unable to do his past relevant work. At least one of these impairments, blindness in the left eye, resulted in a nonexertional limitation. The other severe impairments included the residual effects of a torn rotator cuff, angina and obstructive pulmonary disease. Applying the grid rules in 20 CFR Part 404, Subpart P, Appendix 2 as a framework for decisionmaking without referring to a vocational expert or other evidence, the ALJ concluded that Mr. Sykes was not disabled because he could perform other work existing in the national economy. The ALJ's conclusion was based on his findings that Mr. Sykes had the exertional capability to perform "light" work and that the exclusion of jobs requiring binocular vision did not significantly compromise the "broad base of light work" established under the grid rules.

After the Appeals Council denied Mr. Sykes' request for review of the ALJ's decision, he sought judicial review. Mr. Sykes argued, among other things, that the ALJ erred in relying exclusively on the grid rules to determine whether there were jobs in the national economy that he could perform when his impairments resulted in both exertional and nonexertional limitations. The district court affirmed the ALJ's decision finding that it was supported by substantial evidence. On appeal to the United States Court of Appeals for the Third Circuit, the court reversed the judgment of the district court and remanded the case to us for further proceedings consistent with its decision.

*Holding:* After considering the Supreme Court's decision in *Heckler v. Campbell*, 461 U.S. 458 (1983), the court concluded that our "interpretation of 20

CFR Part 404, Subpart P, Appendix 2 section 200.00(e)(2) does not comport with the Social Security Act \* \* \* ." In view of the ALJ's finding that the claimant had a severe nonexertional impairment, the court stated that we cannot establish the existence of other "jobs in the national economy that Sykes can perform by relying on the grids alone, even if [we use] the grids only as a framework instead of to direct a finding of no disability." The court further stated that, "in the absence of a rulemaking establishing the fact of an undiminished occupational base, the Commissioner cannot determine that a claimant's nonexertional impairments do not significantly erode his occupational base under the medical-vocational guidelines [alone]."

The Third Circuit also addressed "the question [of] what additional evidence the Commissioner must present to meet the burden of establishing that there are jobs in the national economy that a claimant with exertional and nonexertional impairments can perform." The court held that the "sort of evidence the Commissioner must present to meet his burden of proof \* \* \* when a claimant has exertional and nonexertional impairments \* \* \* [is] the testimony of a vocational expert or other similar evidence, such as a learned treatise."

As an alternative to producing additional vocational evidence, the court held that we could rely on official administrative notice to establish that a particular nonexertional limitation does not significantly erode a claimant's occupational job base. The court stated that, "official [administrative] notice \* \* \* allows an administrative agency to take notice of technical or scientific facts that are within the agency's area of expertise," in addition to commonly acknowledged facts. Under this alternative, we "would have had to provide Sykes with notice of [our] intent to [take administrative] notice [of the] fact [that the occupational base is not significantly eroded by the nonexertional limitation] and, if Sykes raised a substantial objection, an opportunity to respond \* \* \* ."

The court stated that it was not deciding the issue of "whether Social Security Rulings can serve the same function as the rulemaking upheld in *Campbell*." The court further stated that it need not resolve the issue of whether "the Commissioner can properly refer to a ruling for guidance as to when nonexertional limitations may significantly compromise the range of work that an individual can perform."

#### *Statement As To How Sykes Differs From SSA's Interpretation*

At step 5 of the sequential evaluation process (or the last step in the sequential evaluation process in continuing disability review claims), we consider the vocational factors of age, education and work experience in conjunction with a claimant's residual functional capacity to determine whether the claimant can do other jobs that exist in significant numbers in the national economy. Section 200.00(e)(2) of 20 CFR Part 404, Subpart P, Appendix 2 provides that, when an individual has an impairment(s) "resulting in both strength [exertional] limitations and [nonstrength] nonexertional limitations," we use the grid rules first to determine whether a finding of disabled is possible based on strength limitations alone. If not, we use the same grid rules reflecting the individual's maximum residual strength capabilities, age, education, and work experience as a framework for consideration of how much the individual's nonexertional limitations further erode the occupational job base. As stated in 20 CFR 404.1569a and 416.969a, the grid rules "provide a framework to guide our decision" in this situation.

SSR 83-14, *Capability to do Other Work—The Medical Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments*, provides that we use the grid rules to determine how the totality of an individual's limitations or restrictions reduces the occupational base of administratively noticed unskilled jobs when a claimant cannot be found disabled based on exertional limitations alone. In those claims where a person comes very close to meeting the criteria of a grid rule directing a finding of not disabled because it is clear that the additional nonexertional limitation(s) has very little effect on the exertional occupational base, we may rely on the framework of the grid rules to support a finding that the person is not disabled without consulting a vocational expert or other vocational resource. On the other hand, an additional nonexertional limitation may substantially reduce a range of work to the extent that an individual is very close to meeting a grid rule which directs a conclusion of disabled. Particular nonexertional limitation(s) may significantly erode or may have very little effect on the occupational base of jobs an individual can perform.

SSRs 96-9 and 83-14 include examples of nonexertional limitation(s)

and provide adjudicative guidance on their effects on an individual's occupational job base. Some of the nonexertional limitations described in the SSRs do significantly reduce an individual's occupational job base and would result in a finding of disability. Other nonexertional limitations described in the SSRs do not significantly reduce an individual's occupational job base and would not ordinarily result in a finding of disability if the person's exertional limitations (or "capabilities") would result in a finding of not disabled under the grid rules. Regardless of whether the result is a finding of disability or no disability, we rely on our regulations and the SSRs to provide adjudicative guidance on the effects of particular nonexertional limitations on an individual's occupational job base.

Under our interpretation of 20 CFR 404.1569a, 416.969a and section 200.00(e) of Appendix 2 to Subpart P of Part 404, and of SSR 83-14, we are not required to consult a vocational expert or other vocational resource in all instances in which we decide whether an individual who has a nonexertional limitation(s) is or is not disabled. For instance, we are not always required to consult a vocational expert or other vocational resource to help us determine whether a nonexertional limitation significantly erodes a claimant's occupational base when adjudicative guidance on the effect of the limitation is provided in an SSR.

The Third Circuit concluded that, under *Campbell*, we cannot rely on the framework of our grid rules to deny a claim when a claimant has a nonexertional impairment(s) "without either taking additional vocational evidence \* \* \* or providing notice to the claimant of [our] intention to take official notice of this fact [that the claimant's nonexertional impairment(s) do not significantly erode his or her occupational base] (and providing the claimant with an opportunity to counter the conclusion)." The court held that we cannot establish the existence of other jobs in the national economy that a claimant with a nonexertional limitation "can perform by relying on the grids alone, even if [we] use the grids as a framework instead of to direct a finding of no disability."

*Explanation of How SSA Will Apply the Sykes Decision Within the Circuit*

This Ruling applies only to claims in which the claimant resides in Delaware, New Jersey, Pennsylvania or the Virgin Islands at the time of the determination or decision at any level of the administrative review process; i.e.,

initial, reconsideration, ALJ hearing or Appeals Council review.

In making a disability determination or decision at step 5 of the sequential evaluation process (or the last step in the sequential evaluation process in continuing disability review claims), we cannot use the grid rules exclusively as a framework for decisionmaking when an individual has a nonexertional limitation(s). Before denying disability benefits at step five when a claimant has a nonexertional limitation(s), we must:

- (1) take or produce vocational evidence such as from a vocational expert, the DOT or other similar evidence (such as a learned treatise); or
- (2) provide notice that we intend to take or are taking administrative notice of the fact that the particular nonexertional limitation(s) does not significantly erode the occupational job base, and allow the claimant the opportunity to respond before we deny the claim.

This Ruling does not apply to claims where we rely on an SSR that includes a statement explaining how the particular nonexertional limitation(s) under consideration in the claim being adjudicated affects a claimant's occupational job base. When we rely on such an SSR to support our finding that jobs exist in the national economy that the claimant can do, we will include a citation to the SSR in our determination or decision.

We are considering revising our rules regarding our use of the grid rules as a framework for decisionmaking and may rescind this Ruling once we have made the revision.

[FR Doc. 01-2274 Filed 1-24-01; 8:45 am]

**BILLING CODE 4191-02-F**

## DEPARTMENT OF STATE

### Bureau of Educational and Cultural Affairs

#### [Public Notice 3556]

#### Business Management Curriculum Development and Faculty Training in Albania

**ACTION:** Request for Grant Proposals (RFGP).

**SUMMARY:** The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award to develop and strengthen university-level business management education in Albania. The project will support the development of instructional materials and faculty training in business with

emphasis on business management, business law and ethics, corporate governance, accounting, organizational management, finance, banking, and alternative conflict resolution in business. Accredited post-secondary institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals that address these objectives. The means for achieving these objectives may include mentoring, case study development, teaching, consultation, research, distance education, internship training and professional outreach to public and private sector managers and entrepreneurs.

#### Overview and Project Objectives

The project is designed to support business management education at one or more post-secondary educational institutions in Albania and to address current issues affecting Albania's transition to a market economy, including the ethical dimensions of business practices and the factors that will encourage the development of a more favorable investment climate. The U.S. applicant should describe how it will work cooperatively with one or more post-secondary institutions in Albania. Applicants are encouraged to develop creative strategies to pursue these objectives.

Bureau policy stipulates that awards to organizations with less than four years experience in conducting international exchanges are limited to \$60,000. The Bureau anticipates awarding one or two grants for a total amount not to exceed \$188,300. Funds will be awarded for a period up to three years to assist with the costs of exchanges, educational materials, and to increase library holdings and improve Internet connections. Up to 25% of the grant total may be used to assist with the costs of project administration. Indirect administrative costs are not eligible for Bureau funding under this competition, but may be presented as part of the U.S. institution's contribution.

The project should pursue its objectives through a strategy that coordinates the participation of junior and senior faculty, administrators, or graduate students for any appropriate combination of teaching, research, mentoring, internships, and outreach, for exchange visits ranging from one week to an academic year. Visits of one semester or longer for participants from Albania are strongly encouraged, especially for junior members of the Albanian faculty. Program activities should be tied to the goals and objectives of the project. The strategy