

SOCIAL SECURITY ADMINISTRATION**Rescission of Social Security Acquiescence Ruling 97-2(9)**

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling 97-2(9)—*Gamble v. Chater*, 68 F.3d. 319 (9th Cir. 1995).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e) and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 97-2(9).

EFFECTIVE DATE: This notice of rescission is effective February 19, 2002.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: 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 the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), we may rescind a Social Security Acquiescence Ruling as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On January 13, 1997, we published Acquiescence Ruling (AR) 97-2(9) (62

FR 1791) to reflect the holding in *Gamble v. Chater*, 68 F.3d 319 (9th Cir. 1995). In *Gamble*, the United States Court of Appeals for the Ninth Circuit held that a claimant whose leg was amputated at or above the tarsal region satisfied current Listing 1.10C if he or she "is unable to use any prosthesis that is reasonably available to him." The court concluded that a claimant who cannot afford a prosthesis, even if he could use one, does not have, as a practical matter, a prosthesis reasonably available to him or her.

The AR applies to cases in which the claimant resides in Alaska, Arizona, California, Guam, Hawaii, (including American Samoa), Idaho, Montana, Nevada, Northern Mariana Islands, Oregon and Washington at time of the determination or decision at any level of administrative review.

In this issue of the **Federal Register**, we are publishing final rules that, among other things, replace current Listing 1.10C with a final Listing 1.05B and added section 1.00J of the introductory text. Listing 1.05B in the final rules requires that an individual with an amputation of one or both lower extremities at or above the tarsal region have stump complications that result in the medical inability to use a prosthetic device to ambulate effectively, as defined in section 1.00B2b of the musculoskeletal system listings, which have lasted or are expected to last for at least 12 months. Consequently, the final rules clarify that the inability to use a prosthetic device to ambulate effectively refers to a "medical" inability to use a prosthetic device as a result of stump complications. The inability to afford a

prosthetic device does not represent a "medical" inability to use a prosthetic device to ambulate effectively.

We also clarify in section 1.00J3 of the final rules that, in amputation involving a lower extremity or extremities, it is unnecessary to evaluate the individual's ability to walk without the prosthesis in place. As we explain the preamble to the final rules, this is because we recognize that individuals with the type of lower extremity amputation described in final listings 1.05B will have an inability to ambulate effectively, as defined in section 1.00B2b, when they are not using a prosthesis. This would be true whether they do not use a prosthesis because they cannot afford one, because a prosthesis has not been prescribed for them, or for other reasons.

Accordingly, since the rule that was the subject of the *Gamble* AR has now been revised, we are rescinding AR 97-2(9) concurrently with the effective date of the final rules. The final rules and this notice of rescission restore uniformity to our nationwide system of rules, in accordance with our commitment to the goal of administering our programs through uniform national standards.

(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; 96.006—Supplemental Security Income)
Dated: July 5, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

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