

**SOCIAL SECURITY ADMINISTRATION****Rescission of Social Security Acquiescence Ruling 93-2(2); Conley v. Bowen**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of rescission of Social Security Acquiescence Ruling 93-2(2)—*Conley v. Bowen*, 859 F.2d 261 (2d Cir. 1988).

**SUMMARY:** In accordance with 20 CFR 404.985(e) and 402.35(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 93-2(2).

**EFFECTIVE DATE:** August 10, 2000.

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

**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As provided by 20 CFR 404.985(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence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 May 17, 1993, we published Acquiescence Ruling 93-2(2) to reflect the holding in *Conley v. Bowen*, 859 F.2d 261 (2d Cir. 1988), that 20 CFR 404.1592a does not apply to work activity performed by a disabled individual after a reentitlement period when determining whether that individual has engaged in substantial gainful activity. The court held that SSA must evaluate such work activity under 20 CFR 404.1571 through 404.1576, and consider an average of work and earnings performed over a period of months rather than work and earnings performed in a single month.

Concurrent with the rescission of this Ruling, we are publishing our final rules amending section 404.1592a of Social Security Regulations No. 4 (20 CFR 404.1592a). These amendments will clarify that earnings averaging does apply to work and earnings performed during and after a reentitlement period when determining whether an individual's disability has ceased because of the performance of substantial gainful activity. However,

we have also clarified this regulation to explain that, after an individual's disability has already been determined to have ceased, earnings averaging does not apply when determining whether an individual has engaged in substantial gainful activity for any month during or after a reentitlement period because of the performance of substantial gainful activity for purposes of determining whether benefits shall be paid for that month.

Because the changes in the regulations address the Conley court's concerns and explain specifically when the rules for averaging work and earnings over a period of months apply, we are rescinding Acquiescence Ruling 93-2(2). The final rules and this 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 as discussed in the preamble to the 1998 acquiescence regulations, 63 FR 24927 (May 6, 1998).

(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; 96.005 Social Benefits for Disabled Coal Miners)

Dated: March 17, 2000.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

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**SOCIAL SECURITY ADMINISTRATION****Rescission of Social Security Acquiescence Ruling 87-4(8); Iamarino v. Heckler**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of rescission of Social Security Acquiescence Ruling 87-4(8)—*Iamarino v. Heckler*, 795 F.2d 59 (8th Cir. 1986).

**SUMMARY:** In accordance with 20 CFR 404.985(e), 416.1485(e) and 402.35(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 87-4(8).

**EFFECTIVE DATE:** August 10, 2000.

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

**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), a Social Security Acquiescence Ruling may be rescinded 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 August 31, 1987, we issued Acquiescence Ruling 87-4(8) to reflect the holding in *Iamarino v. Heckler*, 795 F.2d 59 (8th Cir. 1986), that 20 CFR 404.1574 and 416.974 provide a "middle ground," where no positive or negative presumption of substantial gainful activity applies, for evaluating sheltered workshop earnings at the first step of the sequential evaluation process for determining disability. The court noted that because SSA's regulations for evaluating earnings from competitive employment (i.e., nonsheltered workshop earnings) provided a "middle ground" where no presumption applies, between the upper and lower earnings limits specified in the regulations, the same regulations must also provide a "middle ground" where no presumption applies for sheltered workshop earnings. Accordingly, the court found that sheltered workshop earnings that exceed the upper substantial gainful activity threshold amount in these regulations fall in a "middle ground" where no presumption applies that an individual is engaging in substantial gainful activity.

Concurrent with the rescission of this Ruling, we are publishing our final rules amending sections 404.1574 and 416.974 of Social Security Regulations Nos. 4 and 16 (20 CFR 404.1574 and 416.974) to clarify that the "middle ground" where no positive or negative presumption of substantial gainful activity applies because it lies below the upper threshold amount for substantial gainful activity in paragraphs 404.1574(b)(2) and 416.974(b)(2), and above the lower threshold amount in paragraphs 404.1574(b)(3) and 416.974(b)(2), relates only to earnings from competitive employment. We also have clarified these regulations to provide that sheltered workshop earnings that do not exceed the upper threshold amount listed in paragraphs 404.1574(b)(2) and 416.974(b)(2), are presumed not to be substantial gainful activity even when the earnings fall within the "middle ground" range for individuals engaged in competitive employment.