

from absent Wheel participants. Therefore, the Commission believes that granting accelerated approval of the proposed rule change, as amended, is consistent with Sections 6 and 19(b)(2) of the Act.<sup>21</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change (SR-Phlx-97-21), including Amendment Nos. 1 and 2, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-20412 Filed 8-1-97; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 97-3(11)]

**Daniels on Behalf of Daniels v. Sullivan; Application of a State's Intestacy Law Requirement That Paternity be Established During the Lifetime of the Father**

**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 97-3(11).

**EFFECTIVE DATE:** August 4, 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 Eleventh Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after August 4, 1997. If we made a determination or decision on your application for benefits between December 30, 1992, the date of the Court of Appeals decision, and August 4, 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 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.)

Dated: December 20, 1995.

**Shirley S. Chater,**

*Commissioner of Social Security.*

**Editorial note:** This document was received at the Office of the Federal Register July 28, 1997.

### Acquiescence Ruling 97-3(11)

*Daniels on Behalf of Daniels v. Sullivan*, 979 F.2d 1516 (11th Cir. 1992)—Application of a State's Intestacy Law Requirement that Paternity be Established During the Lifetime of the Father—Title II of the Social Security Act.

**Issue:** Whether, in determining a child's status under section 216(h)(2)(A) of the Social Security Act (the Act), the Social Security Administration (SSA),<sup>1</sup> in applying the requirement imposed by a State's law of intestate succession that an illegitimate child establish paternity during the lifetime of the father, created an insurmountable barrier that violated

the constitutional right to equal protection of the law.

**Statute/Regulation/Ruling Citation:** Sections 202(d) and 216(h)(2)(A) of the Social Security Act (42 U.S.C. 402(d) and 416(h)(2)(A)); 20 CFR 404.354(b).

**Circuit:** Eleventh (Alabama, Florida, Georgia)

*Daniels on Behalf of Daniels v.*

Sullivan, 979 F.2d 1516 (11th Cir. 1992).

**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:** On April 11, 1985, Cassandra Daniels, who was 14 years old, gave birth to a son, Adonis Daniels. Daniels claimed that Kirby Marshall was Adonis' father even though Daniels and Marshall never married or lived together, and a father's name was not listed on the child's birth certificate. Although Marshall did not provide support for Adonis, both Daniels' mother and Marshall's mother stated that he was the father. Marshall died in an automobile accident on September 12, 1987.

In November 1987 Daniels filed an application, on behalf of Adonis, for child's benefits on Marshall's earnings record but the claim was denied, both initially and upon reconsideration, because the child did not satisfy any of the statutory entitlement requirements. After a hearing, an ALJ found that Adonis was not Marshall's "child" under section 216(h)(3) of the Act because the deceased wage earner was not living with or contributing to the support of Adonis at the time of his death. The ALJ also found that Adonis was not entitled under the other definitions of child in section 216(h), including the definition incorporated by reference from the Georgia law of intestate succession.<sup>2</sup> However, the ALJ stated that Adonis appeared to be the child of the worker. The Appeals Council denied Daniels' request for review of the ALJ's decision.

The plaintiff sought judicial review alleging that SSA's application of the Georgia statutory scheme for intestate succession was unconstitutional because it denied her child equal protection of law. The district court affirmed SSA's findings and rejected the

<sup>1</sup> Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, effective March 31, 1995, SSA became an independent agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security programs under title II of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

<sup>2</sup> At the pertinent time, Georgia law provided that a child born out of wedlock may inherit from or through his father or any paternal kin only if the criteria specified in the statute are satisfied "during the lifetime of the father and after conception of the child." A 1991 amendment, not applicable in this case, expanded the time frame for establishing paternity to include the period when proceedings on the father's estate are pending.

<sup>21</sup> 15 U.S.C. 78f and 78s(b)(2).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

constitutional challenge. Daniels appealed and the United States Court of Appeals for the Eleventh Circuit reversed the judgment of the district court on the grounds that, as applied to the particular facts of the case, SSA's use of Georgia intestacy law was unconstitutional.

**Holding:** After carefully considering the principles stated in the leading cases addressing the constitutionality of similar State statutes, the Court of Appeals held that "as applied to this case, the Social Security Act's incorporation of the Georgia intestacy scheme violates equal protection."<sup>3</sup> Noting that the United States Supreme Court, in *Pickett v. Brown*, had ruled unconstitutional a State statute that imposed a two-year limit on paternity and child support actions on behalf of certain illegitimate children, the *Daniels* court found that the obstacles that prevented a child from establishing paternity during the first two years after birth persisted, at least, into the third year. Accordingly, the court concluded that "where the father died less than two and one-half years after Adonis' birth, the requirement that paternity be established during the lifetime of the father effectively 'impose[d] an unconstitutional insurmountable barrier which denie[d] appellant the equal protection of the laws.'"<sup>4</sup>

The court also noted that Daniels was further impeded in establishing the paternity of her child because of her status as a minor. Although the court did not hold that the Georgia intestacy statute was unconstitutional, it found that SSA's application of that statute to the specific facts of the case when determining Daniels' eligibility for Social Security survivors benefits violated equal protection.

#### *Statement As To How Daniels Differs From Social Security Policy*

In accordance with section 216(h)(2)(A) of the Act, SSA uses State laws to decide whether a claimant is the child of a deceased worker. Under its regulation (20 CFR 404.354(b)) implementing section 216(h)(2)(A), SSA "look[s] to the laws that were in effect at the time the insured worker died in the State where the insured had his or her permanent home." The State laws governing intestate succession (i.e., the laws State courts use to decide whether a claimant could inherit a child's share

of the worker's personal property if the worker had died without leaving a will) are controlling.

The *Daniels* court found that the Act's incorporation of the Georgia intestacy law's requirement that the paternity of an illegitimate child be established during the lifetime of the father was unconstitutional as applied to the facts in Daniels' case, where paternity would have had to be established in less than two and one-half years from the date of the child's birth. Under these circumstances, the court found that the requirement constituted an insurmountable barrier and violated the child's right to equal protection of law.

#### *Explanation of How SSA Will Apply The Daniels Decision Within The Circuit*

This Ruling applies only to cases where the applicant for surviving child's benefits under section 216(h)(2)(A) of the Act resides in Alabama, Florida or Georgia at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, ALJ hearing or Appeals Council.

When adjudicating a claim for surviving child's benefits involving the establishment of inheritance rights under a State's intestacy law, SSA will allow a period of two and one-half years from the date of birth of the applicant for the commencement and resolution of legitimacy proceedings before applying a statutory requirement that requires an illegitimate child to establish paternity during the lifetime of the father. Adjudicators will continue to apply the other provisions of State intestacy law in effect on the date of the worker's death.

[FR Doc. 97-20272 Filed 8-1-97; 8:45am]

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, (DOT).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register**

Notice with a 60-day comment period soliciting comments on OMB Control Number: 2133-0522 was published on May 19, 1997 (FR 62 27290). The **Federal Register** Notice with a 60-day comment period soliciting comments on OMB Control Number: 2133-0517 was published on May 13, 1997 (FR 62 26348).

**DATES:** Comments must be submitted on or before September 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard Weaver, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-2811.

#### SUPPLEMENTARY INFORMATION:

##### Maritime Administration

1. *Title:* Seamen's Claims; Administrative Action and Litigation.

*Type of Request:* Extension of currently approved information collection.

*OMB Control Number:* 2133-0522.

*Form Number:* None.

*Affected Public:* Description of Respondents: Officers or members of a crew (or their surviving dependents or beneficiaries, or by their legal representatives) who suffered death, injury, or illness while employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration (MARAD), or successor.

*Abstract:* Collects information from claimants for death, injury or illness suffered while serving as officers or members of a crew employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration (MARAD), or successor.

*Need and Use of the Information:* The information collected is evaluated by MARAD to determine if the claim is fair and reasonable. If the claim is allowed, it is settled, a release is obtained from the claimant verifying consummation of the settlement, and payment is made to the claimant.

*Annual Estimated Burden:* 750 hours.

2. *Title:* Approval of Underwriters for Marine Hull Insurance.

*Type of Request:* Extension of currently approved information collection.

*OMB Control Number:* 2133-0517.

*Form Number:* None.

*Affected Public:* Foreign underwriters of marine insurance and insurance brokers placing marine hull insurance if less than 50 percent of the placement is made in the American market.

*Abstract:* Concerns approval of marine hull underwriters to insure MARAD program vessels. Foreign applicants will be required to submit

<sup>3</sup> The court considered the following leading cases: *Clark v. Jeter*, 486 U.S. 456 (1988); *Pickett v. Brown*, 462 U.S. 1 (1983); *Mills v. Habluetzel*, 456 U.S. 91 (1982); *Lalli v. Lalli*, 439 U.S. 259 (1978); and *Handley, By and Through Herron v. Schweiker*, 697 F.2d 999 (11th Cir. 1983).

<sup>4</sup> Quoting *Handley*, 697 F.2d at 1003.