[FR Doc. 98–29113 Filed 10–29–98; 8:45 am]
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## SOCIAL SECURITY ADMINISTRATION

### Testing Modifications to the Disability Determination Procedures; Disability Determination Services Full Process Model with Rationale Summary

**AGENCY:** Social Security Administration.

**ACTION:** Notice of the additional test sites and the duration of testing involving modifications to the disability determination procedures.

**SUMMARY:** The Social Security Administration (SSA) is announcing the locations of additional tests that it will conduct under the current rules codified at 20 CFR 404.906, 404.943, 404.966, 416.1406, 416.1443, and 416.1466. Those rules provide the authority to test modifications, either individually or in any combination, to the disability determination procedures that we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and claims for supplemental security income (SSI) payments based on disability under title XVI of the Act. This notice announces the test sites and duration of tests involving a combination of modifications to the disability process. The additional testing will focus on certain SSA requirements for preparing a rationale for the adjudicator's disability determination to see if the modifications have any effect on how these requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Harry Pippin, Disability Models Team Leader, Office of Disability, Disability Process Redesign Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, 410–965–9203.

**SUPPLEMENTARY INFORMATION:** In April, 1997, SSA began testing several modifications to its disability determination procedures. These modifications have been described in a **Federal Register** notice published on April 4, 1997 (62 FR 16210) and final rules published on September 23, 1997 (62 FR 49598). Those modifications were: the use of a single decisionmaker who may make the disability determination without requiring the signature of a medical consultant; the conducting of a predecision interview in which a claimant, for whom SSA does not have sufficient information to make a fully favorable determination or for whom the evidence would require an initial determination denying the claim, can present additional information to the decisionmaker before an initial determination is made; the elimination of the reconsideration step in the administrative review process; the use of an adjudication officer who will conduct prehearing procedures and, if appropriate, will issue a decision wholly favorable to the claimant; and the elimination of the Appeals Council step in the administrative appeals process.

Selection of cases for these tests in eleven state sites began in April 1997 and ended in January 1998. Adjudication of cases following the modified process continues.

We are now announcing the beginning of additional testing of a process that incorporates the above modifications, with the exception of the elimination of the Appeals Council step in the administrative appeals process. This testing will focus on certain requirements, as set out in SSA's rules and regulations, for preparing a rationale for the adjudicator's disability determination to see if the integrated model procedures have any effect on how these requirements are met. Some sites will test all of the modifications as described above, except the elimination of the Appeals Council review step; in other sites, only certain of the modifications will be tested. The test will take place at the following locations:

- Disability Determination Service Administration, Arizona Department of Economic Security, Suite 105, 3655 East Second Street, Tucson, AZ 85716;
- Disability Adjudication Section, Division of Rehabilitation, Clark Harrison Building, 330 West Ponce de Leon Avenue, Decatur, GA 30030;
- Disability Determination Service, Department of Vocational Rehabilitation, Central Avenue, Building 1313, Tiyan, Guam 96913
- Social Security Disability Determinations Services, Minnesota Department of Economic Security, Suite 300 Metro Square Building, 121 East Seventh Place, St. Paul, MN 55101;
- Section of Disability Determinations, Missouri Department of Vocational Rehabilitation, 2530 I South Campbell Street, Springfield, MO 65807;
- Office of Disability Determinations, New York State Department of Social Services, 99 Washington Avenue, Room 1239, Albany, NY 12260; and
- Disability Determination Services, Vocational Rehabilitation Division, Ground Floor, 500 Summer Street, NE, Salem, OR 97310.

Selection of cases for testing will begin on or about October 29, 1998, and is expected not to continue beyond December 31, 1999. If the Agency decides to continue case selection beyond this date, another notice will be published in the **Federal Register** to inform the public regarding continuation of the test.

Dated: October 6, 1998.

**Susan M. Daniels, Ph.D.,**

*Deputy Commissioner for Disability and Income Security Programs.*

[FR Doc. 98–29261 Filed 10–29–98; 8:45 am]
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## SOCIAL SECURITY ADMINISTRATION

### Social Security Acquiescence Ruling

### 98-5(8)

### State of Minnesota v. Apfel; Coverage for Employees Under a Federal-State Section 218 Agreement or Modification and Application of the Student Services Exclusion From Coverage to Services Performed by Medical Residents—Title II 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 98-5(8).

**EFFECTIVE DATE:** October 30, 1998.

**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 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, at all levels of administrative adjudication within the Eighth Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after October 30, 1998. If we made a determination or decision between July 6, 1998, the date of the Court of Appeals' decision, and October 30, 1998 the effective date of

this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling 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; 96.003 - Special Benefits for Persons Aged 72 and Over; 96.004 Social Security -Survivors Insurance.)

Dated: October 9, 1998.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

**Acquiescence Ruling 98-5(8)**

*State of Minnesota* v. *Apfel,* 151 F.3d 742 (8th Cir. 1998)—Coverage for Employees Under a Federal-State Section 218 Agreement or Modification and Application of the Student Services Exclusion From Coverage to Services Performed by Medical Residents—Title II of the Social Security Act.

*Issue:* Whether, in determining coverage of services performed by State and local government employees under the provisions of a Federal-State agreement or modification under section 218 of the Social Security Act (the Act), the Social Security Administration (SSA) must consider the original intent and understanding of the parties to the agreement as controlling unless the agreement and modification is altered or amended by statutory law. Whether the student services exclusion from Social Security coverage under section 210(a)(10) of the Act can apply to services performed by medical students and whether, in applying the exclusion, SSA must make a case by case examination of the medical residents' relationship with the employer school, college or university.

*Statute/Regulation/Ruling Citation:* Sections 210(a)(10) and 218 of the Social Security Act (42 U.S.C. 410 (a) (10) and 418), 20 CFR 404.1028(c), 404.1209, 404.1210, 404.1214, 404.1215. 404.1216, Social Security Ruling 78-3.

*Circuit:* Eighth (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota).

*State of Minnesota* v. *Apfel,* 151 F.3d 742 (8th Cir. 1998).

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

*Description of Case:* In 1950, Congress enacted section 218 of the Act which allows States to enter into agreements with SSA (section 218 agreements) to obtain Social Security coverage for State and local government employees. In accordance with the provisions of section 218, a State designates coverage groups for Social Security coverage by choosing to cover nonretirement system groups of employees of the State or political subdivision of the State or retirement system groups, or both. Under section 218(c)(6), certain services are required to be mandatorily excluded from coverage. In addition, there are specific, limited optional exclusions under section 218(c) that the State may elect to take to exclude certain services from coverage.

In 1955, the State of Minnesota and SSA executed a section 218 agreement for Social Security coverage. The agreement initially applied to a few coverage groups but the State subsequently executed a modification in 1958 to extend coverage to services performed by individuals as employees of the University of Minnesota. The modification excluded ''any service performed by a student'' pursuant to the optional exclusion provided by section 218(c)(5) of the Act. The University did not withhold Social Security contributions from the annual stipends paid to medical residents at its teaching hospital. It also did not pay the employer's share of the contributions. This practice continued for more than 30 years.

On September 13, 1990, SSA issued a formal notice of assessment holding the State liable for unpaid contributions totaling nearly $8 million based on stipends paid to medical residents during 1985 and 1986.[1] The State requested administrative review and on January 11, 1994, SSA's Deputy Commissioner for Programs affirmed the assessment. The State of Minnesota then sought judicial review. The district court granted the State's motion for summary judgment and overturned the assessment. The district court held that:

(1) the medical residents were not ''employees'' of the University within the meaning of the 1958 modification; and

(2) even if they were employees, they were excluded from coverage based upon the modification's student exclusion. SSA appealed this decision to the United States Court of Appeals for the Eighth Circuit.

The United States Court of Appeals for the Eighth Circuit affirmed the district court's alternative holdings and further stated that the regulatory approach set forth in 20 CFR 404.1028(c) prevents SSA from summarily concluding that medical residents never qualify for the student services exclusion without a case by case examination of the nature of the medical residents' relationship with their employer.

*Holding:* After considering the Supreme Court's decision in *Bowen* v. *Public Agencies Opposed to Social Security Entrapment,* 477 U.S. 41 (1986), the Eighth Circuit found that the Federal-State section 218 agreement for coverage and the 1958 modification were ''contractual arrangement[s].'' Accordingly, the court quoted from the district court's decision and held that ''the meaning of section [2]18 agreements cannot be altered 'through ruling by the the [sic] SSA or through subsequent case law developments regarding the employment status of medical residents.''' The court also held that ''[t]he power to alter the terms of section [2]18 agreements lies exclusively with Congress'' and that because Congress did not change ''the meaning of the State's 1958 modification, the parties' [original] intent is controlling.'' The court agreed with the district court that medical residents were not employees of the University under the terms of the 1958 modification and therefore were not covered for Social Security purposes by that modification.

The Eighth Circuit also held that the general student services exclusion in section 210(a)(10) of the Act applied to medical residents participating in the University's medical residency program because ''[t]he bright-line rule of SSR 78-3 is inconsistent with the approach set forth at 20 C.F.R. § 404.1028(c), which contemplates a case-by-case examination to determine if an individual's relationship with a school is primarily for educational purposes or primarily to earn a living.''

The circuit court focused on the nature of the medical residents' relationship with the University, and

[1] Under the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, the Internal Revenue Service determines liability for Social Security taxes pursuant to a section 218 Federal-State agreement for coverage and its modifications for wages paid after December 31, 1986.

observed the undisputed facts that the medical residents were enrolled in the University, paid tuition and were registered for approximately 15 credit hours per semester. The court concluded that the primary purpose for the residents' participation in the program was to pursue a course of study rather than to earn a living.

*Statement as to How State of Minnesota Differs From SSA Rules*

A section 218 agreement establishes Social Security coverage for State and local government employees, and the terms of the section 218 agreement between SSA and the State are governed by the provisions of section 218 of the Act. Under SSA's regulations implementing section 218 (20 CFR 404.1214 and 404.1215), the written agreement and subsequent modifications to that agreement establish the continuing relationship between SSA and the State. SSA's regulations (20 CFR 404.1215) provide that a State may modify in writing its section 218 agreement to include additional coverage groups consistent with the provisions of section 218. Generally, SSA does not consider the original intent of the parties to the section 218 agreement and its modifications, by itself, to be controlling. The error modification procedure at 20 CFR 404.1216, however, provides that a section 218 agreement or modification may be modified to correct an error upon submittal of evidence establishing that an error actually occurred. Under this procedure, SSA may consider evidence such as minutes of meetings or statements by appropriate officials to establish the intent of the parties at the time Social Security coverage was requested, and SSA also considers whether the State's wage reporting practices were consistent with its intent.[2]

In construing a modification which was ambiguous as to whether medical residents were considered to be employees for purposes of that modification, the Eighth Circuit concluded that the original intent and understanding of the parties executing the section 218 agreement for coverage and its subsequent modifications is controlling for establishing coverage for State and local employees unless the original intent or understanding was contrary to the provisions of section 218, or unless the agreement is altered or amended by statutory law.

[2] State and Local Coverage Handbook for the Social Security Administration and State Social Security Administrators, section 530.

Section 210(a)(10) of the Act provides for a general exclusion from Social Security coverage for services performed for a school, college or university by a student who is enrolled and regularly attending classes there. Section 218(c)(5) provides States with the option of excluding such services by students. If the exclusion is not taken, services performed by students are covered even though they would be excluded pursuant to section 210(a)(10) if performed for a private school, college or university. Under SSA's regulations implementing section 210 (20 CFR 404.1028(c)), the determination of whether an individual is a student depends on the relationship with his or her employer and whether the focus of that relationship is pursuing a livelihood or pursuing a course of study. SSR 78-3 provides that resident physicians are not ''students'' for purposes of the student services exclusion under section 210(a)(10) of the Act. Under SSA rules, the services performed by medical residents do not qualify for the student exclusion.

The Eighth Circuit concluded that SSR 78-3 is inconsistent with SSA's student services exclusion regulation (20 CFR 404.1028) which requires a case by case examination to determine if an individual's relationship with the employer meets the requirements for that exclusion to apply.

*Explanation of How SSA Will Apply The State of Minnesota Decision Within The Circuit*

This Ruling applies to Federal-State agreements for coverage and subsequent modifications under section 218 of the Act involving Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota or South Dakota. It also applies to services performed by medical residents for a school, college or university located in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota or South Dakota.

In establishing coverage for State and local employees under an ambiguous provision of a section 218 agreement or a modification to that agreement, unless the original intent or understanding of the parties was contrary to the provisions of section 218, SSA must consider that intent and understanding controlling unless the agreement and modification is altered or amended by law. SSA may consider the terms of the agreement or modification in determining the intent and understanding of the parties.

In applying the student services exclusion from Social Security coverage under section 210(a)(10) of the Act and under 20 CFR 404.1028(c), SSA must consider whether medical residents who are paid stipends qualify for the exclusion. When applying the student services exclusion to medical residents, SSA must make a case by case examination of the relationship of the residents with the employer school, college or university to determine whether the residents meet the statutory criteria of being enrolled and regularly attending classes and whether they meet the regulatory criteria. In evaluating the relationship, SSA will consider all relevant facts and circumstances.

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## SOCIAL SECURITY ADMINISTRATION

### Office of the Commissioner; 1999 Cost-of-Living Increase and Other Determinations

**AGENCY:** Social Security Administration.
**ACTION:** Notice.

**SUMMARY:** The Commissioner has determined—

(1) A 1.3 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 1998;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 1999 to $500 for an eligible individual, $751 for an eligible individual with an eligible spouse, and $250 for an essential person;

(3) The national average wage index for 1997 to be $27,426.00;

(4) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $72,600 for remuneration paid in 1999 and self-employment income earned in taxable years beginning in 1999;

(5) For beneficiaries under age 65, the monthly exempt amount under the Social Security retirement earnings test for taxable years ending in calendar year 1999 to be $800;

(6) The dollar amounts (''bend points'') used in the benefit formula for workers who become eligible for benefits in 1999 to be $505 and $3,043;

(7) The dollar amounts (''bend points'') used in the formula for computing maximum family benefits for workers who become eligible for benefits in 1999 to be $645, $931, and $1,214;

(8) The amount of earnings a person must have to be credited with a quarter of coverage in 1999 to be $740;

(9) The ''old-law'' contribution and benefit base to be $53,700 for 1999;

(10) The monthly amount of substantial gainful activity applicable to