the policy position in IRS Revenue Ruling 79–207.

Policy Interpretation: To determine whether certain transactions involving in-kind transfers for agricultural labor are wages within the meaning of section 209(a) of the Act, and thus creditable as wages for Social Security benefit purposes, SSA will consider the following:

1. Does an employer-employee relationship exist? Only noncash payments to an employee qualify for the section 209(a)(7)(A) exception. In-kind payments received by a self-employed individual engaged in farming are not subject to this exception and may be considered in determining self-employment income which is credited for Social Security coverage purposes. Section 210(j)(2) of the Act defines ''employee'' as ''any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.'' SSA's rules for evaluating whether an individual is a common-law employee are found in 20 CFR 404.1007.

When a farmer's spouse (or child 18 or older) performs agricultural labor for the farmer, the individual may be an employee. Generally, an employer-employee relationship exists when the person for whom the labor is performed has the right to control and direct the person who performs the services. Special coverage rules with respect to farm crew leaders, foreign agricultural workers, and sharefarmers are found in 20 CFR 404.1010, 404.1016, 404.1017, 404.1068(c), and 404.1074.

2. Is the in-kind transfer, in economic reality, equivalent to a payment in cash? Although section 209(a)(7)(A) of the Act excludes from the definition of covered wages remuneration paid in any medium other than cash for agricultural labor, if a bona fide transfer of the noncash medium from the employer to the employee has not occurred and the transaction is, in economic reality, equivalent to a payment in cash, the wage exclusion will not apply.

In determining whether a transaction involving a noncash medium is, in economic reality, a payment in cash, SSA will consider the extent to which the employee exercised dominion and control over the noncash item. Many factors may be relevant including, among other things: (1) Whether the employer has transferred a readily identifiable portion of an item; (2) whether there is documentation of the transfer; (3) the length of time between the employee's receipt and sale of the item; (4) whether the employee negotiates the subsequent sale of the item; (5) whether the risk of gain or loss shifted to the employee; and (6) whether the employee bears the costs incident to ownership of the item, for example, storage, feeding, or maintenance costs.

Example 1: A farm operator agrees to give an employee 30 head of cattle for services performed on the farm. The farm operator sells 100 head of cattle to a commodity purchaser. The commodity purchaser gives the farm operator a check for 70 head of cattle and the employee a check for 30 head of cattle. These facts indicate that the cash proceeds from the sale are wages because the employee did not exercise dominion and control over the cattle.

Example 2: A farm operator pays an employee $50 a month plus 10 head of cattle per month for services performed on the farm. The employee pays the farm operator rent to maintain the cattle on the farm property in an area separate from the farm operator's livestock. The employee assumes the costs of feeding, maintaining, and transferring the cattle to the market for sale. The employee is paid directly by the commodity purchaser for the cattle. These facts indicate that the commodity payments are not wages because the employee exercises dominion and control over the cattle subsequent to receipt and bears the costs incident to ownership of the cattle.

Example 3: An employment agreement provides that a farmer will compensate his wife in cash wages of $100 per month and transfer 100 head of cattle each year. The wife's cattle are raised and maintained with the husband's cattle. Under the employment agreement, the farmer delivers the cattle to a market location agreed upon by the wife and at the market transfers ownership to the wife. The wife's cattle were not distinguishable or readily identifiable from the other cattle taken to market. The wife receives a check directly from the market for the cattle. Since the sale of the cattle occurs almost simultaneously with their delivery to the wife, these facts indicate that the in-kind transfer is, in substance, equivalent to a cash payment and therefore wages for Social Security purposes.

Documentation: Evidence documenting the existence of an employment relationship, the terms of the agreement, and the transfer of commodities should be obtained. There is a presumption that an individual's earnings record as maintained by SSA is correct as posted. SSA determines whether the evidence is sufficient to overcome that presumption of correctness.

Effective Date: This policy is effective upon publication of this Ruling in the **Federal Register**.

Cross-References: Program Operations Manual System, Part 3, Chapter 021, Subchapter 01; and Chapter 014, Subchapter 02, Section RS 01402.020.

[FR Doc. 95–19365 Filed 8–4–95; 8:45 am]

BILLING CODE 4190–29–P

[Social Security Ruling SSR 95–4c]

Supplemental Security Income—Termination of Benefits Due to Excess Resources

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 95–4c. This Ruling is based on a decision by the U.S. Court of Appeals for the Third Circuit in *Chalmers* v. *Shalala,* 23 F.3d 752 (3rd Cir. 1994), which upheld the Secretary's decision and found that the claimant's equitable interest in real property was a countable resource as set out in the Social Security regulations. Despite her mental impairment, the Court of Appeals found that the claimant had the power to liquidate her equitable interest and apply the proceeds toward her support. Consequently, because her equitable interest in the real property was valued above the resources limit set by the supplemental security income program, the claimant's benefits were properly terminated.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program 96.006 Supplemental Security Income)

Dated: July 27, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Sections 1611(a)(3)(B) and 1613 of the Social Security Act (42 U.S.C. 1382(a)(3)(B) and 1382b) Supplemental Security Income—Termination of Benefits Due to Excess Resources

Chalmers v. Shalala, 23 F.3d 752 (3rd Cir. 1994)

20 CFR 416.1201(a)–(c)

The claimant had been receiving supplemental security income (SSI) benefits based on disability because of schizophrenia since April 1978. In September 1980, she jointly inherited property with her siblings and subsequently formed a partnership with them to manage the property, valued above the countable resources limit allowed by the SSI program.

In November 1989, the Secretary of Health and Human Services notified the claimant that her SSI benefits were being terminated because she owned countable resources in excess of the $2,000 limit applicable to an individual.

The claimant requested a hearing and the administrative law judge (ALJ) found that the claimant's interest in the property was not a resource because she was not its sole owner and, therefore, could not convert the property to cash for her own support and maintenance. However, the ALJ held that the claimant's interest in the partnership was a resource because she had the power to dispose of her interest in the partnership and apply the proceeds toward her support. On review, the Appeals Council concluded that the claimant ''has not shown that the power to partition is forfeited based on the mental capacity to exercise the right to partition. Therefore, the claimant's share of the land or partnership is countable.''

The claimant filed a civil action challenging the Secretary's termination of benefits. The district court, without reaching the question of whether Chalmers' equitable interest in the property was a resource, held that her interest in the partnership was a resource under the Secretary's regulations because she had the legal right to liquidate it. On appeal, the U.S. Court of Appeals for the Third Circuit, agreeing with the Secretary, held that the regulatory requirement contained in 20 CFR 416.1201(a) that an individual have the ''power'' to liquidate property in order for it to be considered a resource, means the legal authority to do so. Thus, the claimant's alleged mental impairment that purportedly would result in a lack of actual power to make decisions regarding the liquidation of the property she owned was irrelevant to the determination whether that property was her resource. Further, because the claimant could dissolve the partnership and regain her equitable interest in the real property, which could thereafter be liquidated and applied to her support, her interest in the real property was a resource.

Sloviter, Chief Judge

I

This is an appeal from an order of the district court affirming a decision of the Secretary of Health and Human Services to terminate the Supplemental Security Income (SSI) benefits that appellant Fannie Chalmers had been receiving since April, 1978. Because Chalmers is schizophrenic, she has been unable to care for herself and lives with her sister. In September, 1980, Chalmers's father died intestate, and she and her three siblings jointly inherited four houses on contiguous parcels of land in Eden, North Carolina, appraised at $47,000, which were encumbered by a lien in the amount of $23,000.[1] They also inherited a 7.5 acre parcel of unimproved land in a different county in North Carolina worth $3,000.

Chalmers's three siblings desire to keep the Eden properties because they wish to retire there ultimately. Chalmers's brief contends that because of her illness it is impossible to ascribe to her any intentions with respect to the property. At the suggestion of their North Carolina counsel, Chalmers and her siblings formed a partnership, C & P Land Company, to manage the properties and pay the mortgage from the rents collected. In order not to trigger the outstanding debt, they did not change the title to the properties which is in the name of Chalmers's father.

Each of the four siblings, including Chalmers, signed an agreement conveying his or her one-quarter equitable interest in the properties to the partnership in return for a legal interest in the partnership. The agreement provides that all four partners will share equally in the profits and losses and, significant for the issue on appeal, that the partnership may be dissolved at any time by any of the partners, which shall result in the liquidation of the partnership.

C & P Land Company depreciates the rental properties for income tax purposes, and, pursuant to the partnership agreement, these deductions are allocated to each partner. A 1981 letter from the attorney to Chalmers's sister states: ''I doubt * * * that you will receive much as income from the property. The major advantage to you will be the depreciation for tax purposes. The property is a tax shelter for you.''

[1] The Administrative Law Judge and the Appeals Council refer to the value as $49,000. The difference is not significant for our purpose. The estate also contained personal property but it was ''of nominal value.''

II

Subchapter[2] XVI of the Social Security Act provides for payments to disabled persons of limited income and resources, subject to certain eligibility requirements. *Cannuni* v. *Schweiker*, 740 F.2d 260, 263 (3d Cir.1984) (citing 42 U.S.C. § 1382b(a)). The limit applicable to Chalmers's resources is $2,000. 42 U.S.C. § 1382(a)(3)(B) (1988). The statute does not define ''resources,'' but the Secretary has promulgated regulations providing that:

(a) Resources; defined. For purposes of this subpart L, resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance.

(1) If the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse).

* * * * *

(b) Liquid resources. Liquid resources are cash or other property which can be converted to cash within 20 days * * *

(c) Nonliquid resources. (1) Nonliquid resources are property which is not cash and which cannot be converted to cash within 20 days. * * * Examples of resources that are ordinarily nonliquid are * * * buildings and land.

20 C.F.R. 416.1201(a)–(c) (1993) (emphasis added).

Chalmers was notified by the Secretary in November 1989 that her SSI benefits were being terminated because she owned resources in excess of the limit of $2,000, i.e, the property she had inherited from her father. Chalmers requested a hearing and the matter came before an administrative law judge (ALJ). The ALJ found that Chalmers's interest in the property was not a resource because she was not its sole owner and therefore could not convert the property to cash for her own support and maintenance. However, the ALJ held that Chalmers's interest in the C & P partnership was a resource because she had the power to dispose of her interest in the partnership. On review, the Appeals Council concluded that Chalmers ''has not shown that the power to partition is forfeited based on the mental capacity to exercise the right to partition. Therefore the claimant's share of the land or partnership is countable.''

[2] The court is referring to Title XVI of the Social Security Act. [Ed. Note.]

Chalmers filed an action in district court for review of the Secretary's decision. The court held that Chalmers's interest in the C & P partnership was a resource under the regulations because she had the legal right to liquidate it. The district court did not reach the question whether Chalmer's equitable interest in the property was a resource, although it said that ''it would appear that [it], too, is a 'nonliquid resource' under the Secretary's regulation.'' *Chalmers* v. *Sullivan,* 818 F.Supp. 98, 102–103 (D.N.J.1993). Chalmers appeals.

We accord considerable deference to the Secretary's interpretation of the SSI statute and its regulations. *Beatty* v. *Schweiker,* 678 F.2d 359, 360 (3d Cir.1982). ''Indeed, we will uphold the Secretary's interpretation of the regulations 'unless it is plainly erroneous or inconsistent with the regulation[s].' '' Id. (quoting *Bowles* v. *Seminole Rock & Sand Co.,* 325 U.S. 410, 414, 65 S.Ct. 1215, 1217, 89 L.Ed. 1700 (1945)).

Chalmers concedes on appeal, as indeed she must under the facts, that: ''She had the right to terminate the partnership, C & P Land Company. She could have legally sold or otherwise conveyed her ¼ interest in the real estate, subject to the rights of her siblings, as cotenants. She even had the legal right to bring an action to partition the property as suggested by the Social Security Appeals Council.''

She argues, however, that although she has the ''right'' to liquidate her interests, her disability renders her without the requisite ''power'' to do so. This argument misconstrues the meaning of the word ''power'' as used in the regulations. It means not only ''a mental or physical ability or aptitude,'' as Chalmers argues, but also ''legal authority,'' as the Secretary implicitly uses the word. See Webster's Third New International Dictionary 1778–79 (1964). We do not believe that the word ''power'' was used in the regulations as limited to ''mental or physical ability.'' Moreover, it is likely that many disabled individuals receiving SSI benefits lack the mental or physical ability to manage their own resources, and such an interpretation would render the provision meaningless. Thus, we cannot say that the Secretary's interpretation of ''power'' as ''legal authority'' is plainly erroneous, for it is indeed the more sensible construction.

Chalmers argues further that we should interpret the regulatory language ''right, authority or power'' in the conjunctive instead of the disjunctive. We see no basis to construe the disjunctive ''or'' in any way other than its plain meaning, see *Herron* v. *Heckler,* 576 F.Supp. 218, 222–23 n.–2 (N.D.Cal.1983) (declining to construe ''and'' as ''or'' in other SSI regulations), which is the construction adopted by HHS. The cases relied upon by appellant's counsel are simply inapposite.[3]

We turn next to the question whether Chalmers's interest in the property is a resource for SSI purposes. The principal definition section of the regulation explicitly states that ''resources means * * * real * * * property.'' 20 C.F.R. § 416.1201(a) (1993). Similarly, 20 C.F.R. 416.1201(a)(1) also refers to property, providing that ''[i]f the individual has the right, authority or power to liquidate the property, or his share of the property,'' it is defined as a resource. Chalmers concedes that she can sell ''her ¼ interest in the real estate'' and can also ''bring an action to partition the property.'' We therefore conclude that the fact that Chalmers had the legal right to liquidate her interest in the inherited property qualifies it as a resource under the Secretary's regulations.[4]

In essence Chalmers argues that it is not ''sensible'' or ''advantageous'' to partition the property because lawyer's fees and costs will consume its net worth. Although that is not an unreasonable position, it is not one that finds support in the regulation. Thus, we are not free to read into the statute or the regulation a requirement that is not there.

Our conclusion is buttressed by legislative history regarding the definition of resources. The House Report to the Social Security Act provides that:

> Property not used in the operations of a trade or business and which does not provide a reasonable return should clearly be included as resources. Assets such as buildings or land not used as the individual's abode (which is excluded as described above) which are not readily convertible to cash must be disposed of within a time limit prescribed by the Secretary of Health, Education, and Welfare.

H.R.Rep. No. 231, 92nd Cong., 2d Sess., reprinted in 1972 U.S.C.C.A.N. 4989, 5140. We find this history dispositive. The property at issue is not used in the operations of a trade or business or as the individual's abode, and it does not provide a reasonable return. On the contrary, its ''major advantage'' is ''as a tax shelter.'' Congress clearly intended that such ''buildings and land'' ''must be disposed of'' ''if they were not readily convertible to cash.''

Although we are sympathetic to Chalmers's disability, the record does not establish unequivocally that she cannot effectuate her legal rights. An affidavit filed by her psychiatrist states that it would be ''impossible for Ms. Chalmers to retain one attorney and participate in and discuss legal matters,'' but it is also a matter of record that Chalmers has been represented by an attorney at each stage of these proceedings and that she signed the partnership agreement to form the C & P Land Company.

Finally, Chalmers's reliance on *Cannuni* v. *Schweiker,* 740 F.2d at 264 (3d Cir.1984), is misplaced. In *Cannuni,* we were asked whether a multiple-party bank account and certificates of deposit were resources sufficient to disqualify a disabled son for SSI benefits. Because we determined that the claimant did not have the legal right to withdraw the funds for his own support, we held that the property could not be considered resources for SSI purposes. Unlike the claimant in *Cannuni,* Chalmers has the right to liquidate her interest in order to apply the proceeds toward her support. While we recognize the difficulty she may have in exercising her rights, we cannot accept her argument that she need not do so because ''there are many situations in which the exercise of all of one's legal rights is not the most sensible and advantageous course.'' For all of the foregoing reasons, the order of the district court will be affirmed.

[FR Doc. 95–19366 Filed 8–4–95; 8:45 am]
BILLING CODE 4190–29–P

[3] For example, in *De Sylva* v. *Ballentine,* 351 U.S. 570, 573–74, 76 S.Ct. 974, 976, 100 L.Ed. 1415 (1956), the Court read the ''or'' in the conjunctive, but the statute in question, the 1909 Copyright Act, was ''hardly unambiguous'' and the legislative history of the statute suggested that the use of ''or'' may have been a matter of ''careless usage.''

[4] Also, the definition of nonliquid resources explicitly refers to ''property'' and, as the district court noted, offers ''buildings and land'' as examples of such resources. 20 C.F.R. § 416.1201(c) (1993). See *Chalmers,* 818 F.Supp. at 102.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–95–012]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Advisory Committee will meet to discuss various navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.