The Office of the Secretary at (202) 942–7070.

Dated: September 6, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–23339 Filed 9–7–00; 11:22 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 00-4(2)]

Curry v. Apfel; Burden of Proving Residual Functional Capacity at Step Five of the Sequential Evaluation Process for Determining Disability—Titles II and XVI 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 00–4(2).

EFFECTIVE DATE: September 11, 2000.

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

SUPPLEMENTARY INFORMATION: 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 to claims at all levels of administrative review within the Second Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after September 11, 2000. If we made a determination or decision on your application for benefits between April 7, 2000, the date of the Court of Appeals' decision, and September 11, 2000, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior determination or decision in your claim.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify claims that were pending before us within the circuit that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior determination or decision on his or her claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2).

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) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(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; 96.006—Supplemental Security Income)

Dated: August 24, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 00-4(2)

Curry v. *Apfel*, 209 F.3d 117 (2d Cir. 2000)—Burden of Proving Residual Functional Capacity at Step Five of the Sequential Evaluation Process for Determining Disability—Titles II and XVI of the Social Security Act.[1]

Issue: Whether we have the burden of proving residual functional capacity (RFC) at step five of the sequential evaluation process for determining disability in 20 CFR 404.1520 and 416.920.

Statute/Regulation/Ruling Citation: Sections 205(a), 223(d)(2)(A), 223(d)(5), 702(a)(5), 1614(a)(3)(B), 1614(a)(3)(H) and 1631(d)(1) of the Social Security Act (42 U.S.C. 405(a), 423(d)(2)(A), 423(d)(5), 902(a)(5), 1382c(a)(3)(B), 1382c(a)(3)(H) and 1383(d)(1)) and; 20 CFR 404.1512, 404.1520, 404.1527, 404.1545, 404.1546, 416.912, 416.920, 416.927, 416.945, 416.946, Social Security Rulings 96-5p and 96-8p.

Circuit: Second (Connecticut, New York and Vermont).

Curry v. *Apfel*, 209 F.3d 117 (2d Cir. 2000).

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

Description of Case: Cordie Curry injured his back and right knee on September 30, 1987, when he jumped or fell from a ladder to avoid hot water flowing from a pipe. Mr. Curry was referred to an orthopedic surgeon for lower back pain, and received physical therapy from January 14, 1988, through June 28, 1988. The orthopedic surgeon performed surgery on Mr. Curry's knee on July 13, 1988, and diagnosed an internal derangement. In February and March 1995, Mr. Curry again saw the orthopedic surgeon, who diagnosed osteoarthritis in both knees and completed a ''medical assessment'' form.[2] This treating physician concluded that Mr. Curry could sit for 2 hours continuously, stand for 30 minutes at a time and walk for 15 minutes at a time. In his physician's opinion, during the course of an 8-hour day, Mr. Curry could sit for no more than 2-3 hours, stand for a total of 1 hour and walk a total of 30 minutes. The treating physician also provided an opinion that Mr. Curry could occasionally lift up to 20 pounds and occasionally carry up to 10 pounds.[3]

On September 28, 1993, Mr. Curry filed an application for disability benefits claiming an inability to work since October 9, 1990. In connection with this application, Mr. Curry was examined on January 24, 1994, by a consulting physician who reported that an X-ray of the knee showed mild

[1] Although *Curry* was a title II case, similar principles also apply to title XVI. Therefore, this Ruling applies to both title II and title XVI disability claims.

[2] We deleted the term ''medical assessment'' from 20 CFR 404.1513 and 416.913 on August 1, 1991, and replaced it with the terms ''statement about what you can still do despite your impairment(s)'' and ''medical source statement.'' *See* 56 FR 36932.

[3] In a second ''medical assessment'' form, another treating physician, Dr. Hussapibis, concurred with Dr. Hobeika's opinion.

degenerative joint disease. The consulting physician concluded that Mr. Curry had ''moderate'' impairment of lifting and carrying activities, and ''mild'' impairment in standing and walking, pushing and pulling, and sitting.

After a hearing, an ALJ decided that Mr. Curry was not disabled based on a finding that he retained the RFC to perform the exertional requirements of at least sedentary work. The ALJ found that Mr. Curry's impairments prevented him from performing his past relevant work, but that ''the record [did] not establish that [he was] unable to sit for prolonged periods of time, lift and carry ten pounds and perform the minimal standing and walking required for sedentary work activity.''

After the Appeals Council denied Mr. Curry's request for review, he sought judicial review. The district court held that our final decision was supported by substantial evidence. On appeal to the United States Court of Appeals for the Second Circuit, the court reversed and remanded the case for calculation of disability benefits.

Holding: The Second Circuit held that we have the burden of proving at step five of the sequential evaluation process that the claimant has the RFC to perform other work which exists in the national economy. The court found that, in this case, the ALJ's conclusions about RFC evidenced a disregard for this procedure.

Statement as to How Curry Differs From SSA's Interpretation of the Regulations

Under sections 205(a), 223(d)(5), 1614(a)(3) and 1631(d)(1) of the Act, and 20 CFR 404.1512 and 416.912 of our regulations, the claimant generally bears the burden of proving disability by furnishing medical and other evidence we can use to reach conclusions about his or her impairment(s), and its effect on his or her ability to work on a sustained basis. Our responsibility is to make every reasonable effort to develop a claimant's complete medical history including to arrange for consultative examinations, if necessary.

There is a shift in the burden of proof, ''only if the sequential evaluation process proceeds to the fifth step * * * . It is not unreasonable to require the claimant, who is in a better position to provide information about his own medical condition, to do so.'' *Bowen* v. *Yuckert*, 482 U.S. 137, 146 n5 (1987). However, once a claimant establishes that he or she is unable to do past relevant work, it would be unreasonable to further require him or her to produce vocational evidence showing that there are no jobs in the national economy that a person with his or her RFC can perform. Accordingly, the only burden shift that occurs at step five is that we are required to prove that there is other work that the claimant can perform, given his or her RFC.

Therefore, under our interpretation of our regulations, we do not have the burden at step five (or step four) to prove what the claimant's RFC is. We assess RFC one time, after concluding that a claimant's impairment(s) is ''severe'' but does not meet or equal a listing in the Listing of Impairments in appendix 1 of subpart P of 20 CFR part 404. Although we use this assessment at steps four and five of the sequential evaluation process, we make the assessment at a step in the process at which the claimant is responsible for proving disability.

The Second Circuit has expanded our burden of proof at step five beyond the issue of work which exists in significant numbers to the assessment of RFC. The Second Circuit held that, in determining disability at step five, we have the burden of proving that a claimant retains the RFC to perform other work.

Explanation of How SSA Will Apply The Curry Decision Within the Circuit

This Ruling applies only to claims in which the claimant resides in Connecticut, New York, or Vermont at the time of the determination or decision at any level of administrative review; i.e., initial, reconsideration, ALJ hearing, or Appeals Council review.

In making a disability determination or decision at step five of the sequential evaluation process, we have the burden of proving with sufficient evidence that a claimant can perform the requirements of other work. To meet this burden, we will assess RFC by evaluating all of the relevant evidence in the case record about a claimant's impairment(s) according to our rules for assessing RFC, and will in our determinations and decisions or in the case record certify that there is sufficient evidence to support our findings regarding RFC at step five, and refer to the relevant evidence or the explanation (e.g., the RFC assessment form) in which the relevant evidence is cited.

We will apply this Social Security Acquiescence Ruling to current and reopened claims governed by the court-approved settlement in *Stieberger* v. *Sullivan*, 801 F. Supp. 1079 (S.D.N.Y. 1992), but not to the extent it is inconsistent with that settlement.

We intend to clarify our regulations regarding a claimant's burden to provide evidence of RFC, and we may rescind this Ruling once we have made the clarification.

[FR Doc. 00–23217 Filed 9–8–00; 8:45 am]

BILLING CODE 4191–02–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7821]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0628 and 2115–0015

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise Navigation Safety Equipment and Emergency Instructions for Certain Towing Vessels, and Shipping Articles. Before submitting the ICRs to OMB, the Coast Guard is requesting comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before November 13, 2000.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG 2000–7821], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The DMS maintains the public docket for this request. Comments will become part of this docket and will be available for inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy