

his stepfather until July 31, 1991, when Raul voluntarily began inpatient psychiatric treatments on a weekly basis from Monday afternoon through Friday morning. During the weekends he lived at the Florez apartment.

Mr. Florez filed an application, on behalf of Raul, for SSI based on disability on March 24, 1992. The Social Security Administration (SSA) determined that Raul satisfied the disability requirements of the Social Security Act (the Act) retroactive to August 1, 1989, based on an earlier application. SSA also determined that Raul was not eligible for any payments for the 16-month period between August 1989 and December 1990 because Mr. Florez' income was too high. Mr. Florez requested reconsideration of the benefit amount, which was denied on the grounds that his income as a stepparent was deemable to Raul. The plaintiff requested and received a hearing before an ALJ who found that SSA had correctly calculated the SSI benefits. After the Appeals Council denied the claimant's request for review, he sought judicial review but the district court affirmed SSA's application of the regulations providing for deeming a stepparent's income. Mr. Florez appealed this decision to the United States Court of Appeals for the Second Circuit.

Holding: The Second Circuit reversed in part the judgment of the district court and remanded the case with instructions to recalculate Raul's SSI benefits excluding the income earned by his stepfather. After reviewing SSA's regulations governing deeming of income and defining who is the spouse of a natural or adoptive parent, the court held that 20 CFR 416.1101 creates a two-part test for determining whether a spouse, who lives with a child eligible for SSI, is an ineligible parent for deeming purposes under 20 CFR 416.1160:

- (1) the spouse must live with the natural or adoptive parent; and
- (2) the relationship must be as husband or wife, as further defined in 20 CFR 416.1806.

Under the Second Circuit's construction of this regulation, it found that Mr. Florez's marriage to Raul's mother ended, for all intents and purposes, when she abandoned the family home. Although the court recognized SSA's concern about holding a natural parent financially responsible for contributing to the care of a child eligible for SSI, the court believed that SSA should not discourage a stepparent from voluntarily accepting such financial responsibility, when the natural parent has abandoned the child,

by reducing the stepchild's SSI benefits. The court concluded that the plain language of the regulations (20 CFR 416.1101 and 416.1806), supported by the legislative history of the Act, required SSA to exclude a stepparent's income from the calculations used to determine the amount of a child's SSI benefits when the natural parent no longer lives in the family home.

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

Section 1614(f) of the Act, as implemented by the regulations, provides that, when determining SSI eligibility and the benefit amount of a child under age 18, the child's income shall be deemed to include the income of a parent (or the spouse of such parent) who is ineligible for SSI benefits and is living in the same household as the child. Under SSA's regulations, 20 CFR 416.1160 defines an ineligible parent as "a natural or adoptive parent, or the spouse (as defined in §416.1101) of a natural or adoptive parent, who lives with [the child] and is not eligible for SSI benefits." Spouse is defined in 20 CFR 416.1101 as "someone who lives with another person as that person's husband or wife. (See §416.1806)" Under 20 CFR 416.1806(a)(1), SSA considers someone to be a person's spouse for SSI purposes if they are legally married under State law.

SSA considers 20 CFR 416.1806 to be the controlling regulation for determining who is a person's spouse for SSI purposes and for deeming of income. Accordingly, SSA deems the income of a stepparent to a child eligible for SSI benefits living in the same household when the stepparent is legally married under State law to that child's natural or adoptive parent, even if the natural or adoptive parent is not living in the same household.

The Second Circuit held that 20 CFR 416.1101 is the controlling regulation for the purpose of determining who is a person's spouse under the deeming regulations. The court concluded that, under the two-part test created by this regulation, a stepparent is not an ineligible spouse and deeming of income does not apply when the natural parent no longer lives in the family home.

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

This Ruling applies only where the SSI claimant is an eligible child who resides in Connecticut, New York or Vermont at the time of the determination (including all post-eligibility determinations) or decision at any administrative level of review, i.e.,

initial, reconsideration, ALJ hearing or Appeals Council.

When deeming income from an ineligible parent who is a stepparent to reduce a child's SSI benefit, adjudicators must exclude the income of the stepparent from the deeming calculation if the natural or adoptive parent is not living in the same household with that child and stepparent. Adjudicators will continue to apply SSA's other rules for applying and calculating deeming of income, including the rules regarding temporary absences.

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TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published 26 January 1999 (Docket No. 991804).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m. (EST), Wednesday, January 27, 1999.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Chattanooga Office Complex, 110 Market Street, Chattanooga, Tennessee.

CHANGES IN THE MEETING: Each member of the TVA Board of Directors has approved the addition of the following items to be previously announced agenda:

Agenda Items: F—Unclassified

F1. Authority to license TVA intellectual property.

F2. Participation in capital funding entities.

CONTACT PERSON FOR MORE INFORMATION: Please call TVA Media Relations at (423) 632-6000, Knoxville, Tennessee. Information is also available through TVA's Washington Office at (202) 898-2999.

Edward S. Christenbury,

General Counsel and Secretary to the Board.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending January 22, 1999

The following Agreements were filed with the Department of Transportation