



## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2012-0058]

Rescission of Social Security Acquiescence Ruling 05-1(9)

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling 05-1(9)—

Gillett-Netting v. Barnhart, 371 F.3d 593 (9th Cir. 2004).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e)(1) and 416.1485(e)(1), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling (AR) 05-1(9).

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Karen Aviles, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-3457, or TTY 410-966-5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION

An AR 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 the case or is unsuccessful on further review. As provided by 20 CFR 404.985(e)(1) and 416.1485(e)(1), we may rescind an AR as obsolete and apply our interpretation of the Act or regulations if the Supreme Court overrules or limits a circuit court holding that was the basis of an AR.

On September 22, 2005, we issued AR 05-1(9) to reflect the holding of the United States Court of Appeals for the Ninth Circuit in Gillett-Netting v. Barnhart, 371 F.3d 593 (9th Cir. 2004), reh'g denied (9th Cir. Dec. 14, 2004) (70 FR 55656). The Ninth Circuit held that an undisputed biological child of an insured individual who was conceived by artificial means after the insured's death is the insured's "child" for purposes of sections 202(d)(1) and 212(e)(1) of the Act. The Ninth Circuit rejected our longstanding interpretation of section 216(h) of the Act, as set forth in the regulations, that state intestacy law determines the child-parent relationship.

On January 4, 2011, in Capato v. Commissioner of Social Security, 631 F.3d 626 (3d Cir. 2011), the United States Court of Appeals for the Third Circuit followed the decision in Gillett-Netting and held that under sections 202(d)(1) and 216(e)(1) of the Act, a posthumously-conceived applicant can satisfy the Act child-parent relationship requirement by demonstrating that he or she is the undisputed biological child of the deceased insured individual. Similar to the Ninth Circuit, the Third Circuit found that section 216(h) requirement to apply state intestacy law is triggered only in cases where parentage is disputed.

The Government sought review of the Third Circuit’s decision in the Supreme Court of the United States, and on May 21, 2012, the Supreme Court reversed the Third Circuit’s decision. The Supreme Court upheld our interpretation of section 216(h) of the Act, under which we apply state intestacy law when we determine a child-parent relationship under sections 202(d)(1) and 216(e)(1) of the Act. Astrue v. Capato, \_\_ U.S. \_\_, 132 S. Ct. 2021 (2012).

The Supreme Court stated that, “The SSA’s interpretation of the relevant provisions, adhered to without deviation for many decades, is at least reasonable; the agency’s reading is therefore entitled to this Court’s deference under Chevron. . . . Chevron deference is appropriate ‘when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority.’ . . . Here, as already noted, the SSA’s longstanding interpretation is set forth in regulations published after notice-and-comment rulemaking.” 132 S. Ct. at 2033-2034 (citations omitted).

Because , in Capato, the Supreme Court rejected the holding in Gillett-Netting by upholding our policy of applying state intestacy law in all child-parent determinations, we are rescinding AR 05-1(9), in accordance with 20 C.F.R 404.985(e)(1), 416.1485(e)(1).

(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)

Dated: November 5, 2012

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Michael J. Astrue,  
Commissioner of Social Security.

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