(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

Ι

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."

Π

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 * * *

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(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.

¹The 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."

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