SOCIAL SECURITY
RULINGS

On Federal Old-Age, Survivors, Disability, Health Insurance, Supplemental Security Income, and Black Lung Benefits

CUMULATIVE BULLETIN 1975

SSR 75–1 TO SSR 75–35

SOCIAL SECURITY

RULINGS

On Federal Old-Age, Survivors, Disability, Health Insurance, Supplemental Security Income, and Black Lung Benefits

CUMULATIVE BULLETIN 1975

SSR 75–1 TO SSR 75–35

Social Security Administration
Office of Program Policy and Planning
OPR Pub. No. 002 (4-76)

PREFACE

The Cumulative Bulletin of Social Security Rulings is published annually under the authority of the Commissioner of Social Security for the purpose of making available to the public, official rulings relating to the Federal old-age, survivors, disability, health insurance, supplemental security income, and miner's benefit programs.

It is the policy of the Social Security Administration to publish rulings of general interest in order to promote understanding of the provisions and administration of titles II, XVI, and XVIII of the Social Security Act, title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, and related laws. In publishing these rulings, care has been taken to avoid the disclosure of confidential information, and of the identity of the parties or other persons involved, unless already a matter of public record, as in court cases.

The rulings contain precedential case decisions, statements of policy and interpretations of the law and regulations. A ruling would not be applicable to other cases where the facts are not substantially the same as those stated in the ruling. In applying these rulings, the effect of subsequent legislation, regulations, court decisions, and rulings must also be considered. The rulings as published may be modified or superseded by subsequent rulings.

Citation of Social Security Ruling may be made by reference to the ruling number and the Cumulative Bulletin and page where reported. For example, Social Security Ruling No. 4c for 1975 should be cited as "SSR 75–4c, C.B. 1975, p. 1."

This Cumulative Bulletin reproduces in full Part I of all quarterly issues of the "Social Security Rulings" published in 1975. It contains precedential case decisions relating to the provisions of titles II and XVIII of the Act, title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, and policies and interpretations which may affect the rights of claimants under these titles. Cases decided in the Federal courts upon appeal from the decision of the Secretary are identified by a suffix "c" after the ruling number. Case decided by the Appeals Council of the Bureau of Hearings and Appeals, representing the final decision of the Secretary, are identified by a suffix "a" after the ruling number.

All references herein to sections of law relate to sections of the Social Security Act, as amended, unless otherwise specifically designated.

All references herein to regulations, unless otherwise specified, relate to those regulations of the Social Security Administration which are published in the Code of Federal Regulations under Title 20—Chapter III—Part 404 (Federal Old-Age, Survivors, and Disability Insurance), Part 405 (Federal Health Insurance for the Aged), and Part 410 (Federal Black Lung Benefits), and Part 416 (Supplemental Security Income). For example, 20 CFR 404.312 refers to section 404.312, Part 404, Chapter III of Title 20 of the Code. New and amended regulations are printed initially in the Federal Register.

"Social Security Rulings" was published quarterly from 1960 through October 1967, bimonthly from the January 1968 through November 1974 issues, publication is again quarterly beginning January 1975. The subscription price is $11.45 a year ($2.90 additional for foreign mailing). The price per copy is $2.90.

Cumulative Bulletins containing all the rulings issued during 1960 through 1974 are available by individual purchase. The prices are:

Cumulative Bulletin 1960–61	$ .55
Cumulative Bulletin 1962	.35
Cumulative Bulletin 1963	.45
Cumulative Bulletin 1964	.55
Cumulative Bulletin 1965	.60
Cumulative Bulletin 1966	.50
Cumulative Bulletin 1967	.55
Cumulative Bulletin 1968	1.00
Cumulative Bulletin 1969	1.00
Cumulative Bulletin 1970	1.00
Cumulative Bulletin 1971	.70
Cumulative Bulletin 1972	1.85
Cumulative Bulletin 1973	1.70
Cumulative Bulletin 1974	1.55

The Social Security Act and related laws are printed in the "Compilation of the Social Security Laws." The 1973 edition is available for purchase in two volumes. Volume I contains the Social Security Act as amended through December 31, 1972, title IV of the Federal Coal Mine Health and Safety Act, as amended in May 1972, and pertinent provisions of the Internal Revenue Code of 1954. Volume II contains sections of amending acts affecting the Social Security Act, provisions of the Act which have been repealed and provisions of related enactments through December 31, 1972. These volumes may be purchased together or separately, at $3.45 for Volume I and $3.20 for Volume II. The Social Security Act is also contained in title 42 of the United States Code, section 301 et seq; title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended (miner's black lung benefits) is contained in title 30 of the United States Code, sections 901 et seq.

Title 20 of the Code of Federal Regulations, revised as of April 1, 1975, consists of two volumes which can be purchased together or separately. Volume I sells for $2.45, Volume II, containing Chapter III, sells for $9.70. New and amended regulations are printed initially in the Federal Register. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound.

The Social Security Handbook, fifth edition, reflects the provisions of the Social Security Act as amended through December 31, 1973, the regulations issued thereunder, and precedential case decisions (rulings), relating to the

retirement, survivors, disability, health insurance, black lung benefits, and supplementary security income programs. It also includes brief descriptions of related programs. The Handbook is intended for the use of people who want a detailed explanation of these programs, how they operate, who is entitled to benefits and how such benefits may be obtained. The Handbook may be obtained for $4.30.

These publications, including materials now being prepared or planned, when published, may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. A check or money order covering the cost of the publication, when listed, should accompany the order for the publication.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price:
Stock Number

TABLE OF CONTENTS

OLD-AGE AND SURVIVORS BENEFITS

Page

Child's Insurance Benefits
Bar to entitlement of illegitimate child born subsequent to onset of wage earner's disability—constitutionality ---- 4
Requirement for Entitlement—Marriage
Status at time of filing of application ---- 9
Widow's Insurance Benefits
Effect of conviction of felonious and intentional homicide on entitlement to benefits ---- 10
Widower's Insurance Benefits
Entitlement to benefits—unconstitutionality based upon deprivation of due process ---- 15
Mother's Insurance Benefits
Relationship—constitutionality of nine-month duration of marriage requirement ---- 24
Parent's Insurance Benefits
One-half support ---- 42

CONDITIONS FOR ENTITLEMENT TO BENEFITS (GENERAL)

Proof of age—evaluation of evidence ---- 45
Proof of age—evaluation of conflicting evidence ---- 47
Termination of Subsequent Marriage
Purported foreign divorce—
Choice of Law—domicile ---- 54

SELF-EMPLOYMENT

Net Earnings from Self-Employment
Exclusion of rental property income—computation of net earnings from self-employment ---- 67
Exclusion from Net Earnings
Royalties from patent or copyright in or after year beneficiary attained age 65—work deductions ---- 72

EMPLOYMENT

Wages—Deferred Compensation
When wages are paid—point at which social security contribution liability attaches to deferred compensation ---- 56
Employer-Employee Relationship
Services as manufacturer's representative ---- 60

NONPAYMENT OF BENEFITS

Alien beneficiaries cutside the United States ---------- 74
Nonpayment due to deportation ---------- 78

ADMINISTRATIVE

Reopening of Determination
Error on the face of the evidence ---------- 80

STATE AND LOCAL COVERAGE

Commissioner's Ruling on State's Request for Review
South Carolina—interest assessment for failure to make timely payment of contributions due ---------- 83

DISABILITY

Applications
Validity of application filed on behalf of a deceased disability beneficiary ---------- 86
Miner's Black Lung Benefits
Evaluation of chest roentgenographic (X-ray) evidence ---------- 88
Effect of black lung "maintenance of effort" provision—reduction of State workmen's compensation due to receipt of periodic disability insurance benefits ---------- 90
Definition of a "coal miner"—work performed not directly associated with preparation or extraction of coal ---------- 93
Benefits to widow of a miner ---------- 96

HEALTH INSURANCE BENEFITS

Hospital Insurance Benefits
Chronic renal disease—use of deemed wages to establish fully insured status—effect of benefit from other Federal agency on entitlement ---------- 98
Inpatient hospital services—level of care—weight of physician's opinions ----- 100
Provider of Services
Nonrenewal of provider agreement ---------- 103
Transfer of ownership—revaluation of assets to include "goodwill" in computing depreciation and return on equity capital ---------- 107
Judicial Review
Determination—Appeals—Entitlement ---------- 110
Reopening of an intermediary's determination on the amount of program reimbursement and a decision of an intermediary provider hearing -------- 113
Intermediary's instructions to provider ---------- 115
Supplementary Medical Insurance Benefits
Initial enrollment period—correction in date of entitlement ---------- 120

SUPPLEMENTAL SECURITY INCOME

Eligibility for Medicaid—Texas ---------- **123**
Excess income—deeming ---------- **125**
Living arrangements—deeming of income from ineligible spouse ---------- **126**
Resources—definition—Iowa State law ---------- **129**
Disposition of underpayment ---------- **130**

TABLE OF CONTENTS

OLD-AGE AND SURVIVORS BENEFITS

Page

Child's Insurance Benefits
Bar to entitlement of illegitimate child born subsequent to onset of wage earner's disability—constitutionality ---- 4
Requirement for Entitlement—Marriage
Status at time of filing of application ---- 9
Widow's Insurance Benefits
Effect of conviction of felonious and intentional homicide on entitlement to benefits ---- 10
Widower's Insurance Benefits
Entitlement to benefits—unconstitutionality based upon deprivation of due process ---- 15
Mother's Insurance Benefits
Relationship—constitutionality of nine-month duration of marriage requirement ---- 24
Parent's Insurance Benefits
One-half support ---- 42

CONDITIONS FOR ENTITLEMENT TO BENEFITS (GENERAL)

Proof of age—evaluation of evidence ---- 45
Proof of age—evaluation of conflicting evidence ---- 47
Termination of Subsequent Marriage
Purported foreign divorce—
Choice of Law—domicile ---- 54

SELF-EMPLOYMENT

Net Earnings from Self-Employment
Exclusion of rental property income—computation of net earnings from self-employment ---- 67
Exclusion from Net Earnings
Royalties from patent or copyright in or after year beneficiary attained age 65—work deductions ---- 72

EMPLOYMENT

Wages—Deferred Compensation
When wages are paid—point at which social security contribution liability attaches to deferred compensation ---- 56
Employer-Employee Relationship
Services as manufacturer's representative ---- 60

NONPAYMENT OF BENEFITS

Alien beneficiaries cutside the United States ---------- 74
Nonpayment due to deportation ---------- 78

ADMINISTRATIVE

Reopening of Determination
Error on the face of the evidence ---------- 80

STATE AND LOCAL COVERAGE

Commissioner's Ruling on State's Request for Review
South Carolina—interest assessment for failure to make timely payment of contributions due ---------- 83

DISABILITY

Applications
Validity of application filed on behalf of a deceased disability beneficiary ---------- 86
Miner's Black Lung Benefits
Evaluation of chest roentgenographic (X-ray) evidence ---------- 88
Effect of black lung "maintenance of effort" provision—reduction of State workmen's compensation due to receipt of periodic disability insurance benefits ---------- 90
Definition of a "coal miner"—work performed not directly associated with preparation or extraction of coal ---------- 93
Benefits to widow of a miner ---------- 96

HEALTH INSURANCE BENEFITS

Hospital Insurance Benefits
Chronic renal disease—use of deemed wages to establish fully insured status—effect of benefit from other Federal agency on entitlement ---------- 98
Inpatient hospital services—level of care—weight of physician's opinions ----- 100
Provider of Services
Nonrenewal of provider agreement ---------- 103
Transfer of ownership—revaluation of assets to include "goodwill" in computing depreciation and return on equity capital ---------- 107
Judicial Review
Determination—Appeals—Entitlement ---------- 110
Reopening of an intermediary's determination on the amount of program reimbursement and a decision of an intermediary provider hearing -------- 113
Intermediary's instructions to provider ---------- 115
Supplementary Medical Insurance Benefits
Initial enrollment period—correction in date of entitlement ---------- 120

SUPPLEMENTAL SECURITY INCOME

Eligibility for Medicaid—Texas ---------- 123
Excess income—deeming ---------- 125
Living arrangements—deeming of income from ineligible spouse ---------- 126
Resources—definition—Iowa State law ---------- 129
Disposition of underpayment ---------- 130

OLD-AGE AND SURVIVORS BENEFITS

	Page
Child's Insurance Benefits	
Bar to entitlement of illegitimate child born subsequent to onset of wage earner's disability—constitutionality	4
Requirement for entitlement—marriage status at time of filing of application	9
Widow's Insurance Benefits	
Effect of conviction of felonious and intentional homicide on entitlement to benefits	10
Widower's Insurance Benefits	
Entitlement to benefits—unconstitutionality based upon deprivation of due process	15
Mother's Insurance Benefits	
Relationship—constitutionality of nine-month duration of marriage requirement	24
Parent's Insurance Benefits	
One-half support	42

Child's Insurance Benefits

SECTION 216(h)(3)(B) (42 U.S.C. 416(h)(3)(B))—CHILD'S INSURANCE BENEFITS—BAR TO ENTITLEMENT OF ILLEGITIMATE CHILD BORN SUBSEQUENT TO ONSET OF WAGE EARNER'S DISABILITY—CONSTITUTIONALITY

20 CFR 404.1101 and 404.1109 SSR 75-4c

Jimenez et al v. *Weinberger*, 417 U.S. 628(1974)

Where illegitimate child who cannot qualify as child pursuant to applicable State intestacy law (Section 216(h)(2)(A) of the Act) but can qualify pursuant to Section 216(h)(3)(B) as child of individual entitled to disability insurance benefits if such individual is shown to have lived with or contributed to the child's support at the time such individual's period of disability began, *held* Section 216(h)(3)(B) is declared unconstitutional insofar as the time reference contained therein which refers to wage earner's entitlement to disability insurance benefits. Such provision violates the Equal Protection Clause by discriminating regarding status of birth where classification is justified by no legitimate state interest, compelling or otherwise. Within the class composed of illegitimate children, the subclasses are, according to the court, after-born illegitimate children deemed by the Act dependent upon the wage earner and after-born illegitimate children who must establish actual dependency at the time specified in Section 202(d)(1)(C). The statutory bar to conclusively deny to the latter subclass benefits presumptively available to the former subclass denies the latter equal protection of the law guaranteed by the due process provisions of the Fifth Amendment. Further, such bar is not reasonably related to the legitimate governmental interest of prevention of spurious claims.

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

A three-judge District Court in the Northern District of Illinois upheld the constitutionality of a provision of the Social Security Act which provides that certain illegitimate children, who cannot qualify for benefits under any other provision of the Act, may obtain benefits if, but only if, the disabled wage earner parent is shown to have contributed to the child's support or to have lived with him prior to the parent's disability.[1] The District Court held that the statute's classification is rationally related to the legitimate governmental interest in avoiding spurious claims. *Jimenez* v. *Richardson*, 353 F. Supp. 1356, 1361 (ND Ill. 1973). We noted probable jurisdiction. 414 U.S. 1061

The relevant facts are not in dispute. Ramon Jimenez, a wage earner covered under the Social Security Act, became disabled in April 1963, and became entitled to disability benefits in October 1963. Some years prior to that time, the claimant separated from his wife and began living with Elizabeth Hernandez, whom he never married. Three children were born to them, Magdalena, born August 13, 1963, Eugenio, born January 18, 1965, and Alicia, born February 24, 1968. These children have lived in Illinois with claimant all their lives; he has formally acknowledged them to be his children, has supported and cared for them since their birth, and has been their sole caretaker since their mother left the household late in 1968. Since the parents never married, appellants are classified as illegitimate under Illinois law and are unable to inherit from their father because they are nonlegitimated illegitimate children. Ill. Ann. Stat., c. 4, § 12.

On August 21, 1968, Ramon Jimenez, as the father, filed an application for child's insurance benefits on behalf of these three children. Magdalena was found to be entitled to child's insurance benefits under the statute because she had been conceived before Jimenez became disabled and no issue is presented with respect to her entitlement to benefits. The claims of Eugenio and Alicia were denied, however, on the grounds that they did not meet the requirements of 42 U.S.C. § 416(h)(3), since neither child's paternity had been acknowledged or affirmed through evidence of domicile and support before the onset of their father's disability.[2] In all other respects Eugenio and Alicia are eligible to receive child's insurance benefits and their applications were denied solely because they are proscribed illegitimate children born after the onset of the father's disability.

Appellants urge that the contested Social Security provision is based upon the so-called "suspect classification" of illegitimacy. Like race and national origin, they argue, illegitimacy is a characteristic determined

---

[1] 42 U.S.C * 416(h)(3).

[2] The contested Social Security scheme provides, in essence, that legitimate or legitimated children (42 U.S.C. § 402(d)(3)), illegitimate children who can inherit their parent's personal property under the intestacy laws of the State of the insured's domicile (42 U.S.C. § 416(h)(2)(A)), and those children who cannot inherit only because their parents' ceremonial marriage was invalid for nonobious defects (42 U.S.C. § 416(h)(B)), are entitled to receive benefits without any further showing of parental support. However, illegitimate children such as Eugenio and Alicia who were born after their father became entitled to disability or death insurance benefits, and who do not fall into one of the foregoing categories, are not entitled to receive any benefits. 42 U.S.C. § 416(h)(3).

solely by the accident of birth, it is a condition beyond the control of the children, and it is a status that subjects the children to a stigma of inferiority and a badge or opprobrium. We need not reach appellants' argument, however, because in the context of this case it is enough that we note, as we did in *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, that

> "The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liasons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrong-doing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as an unjust—way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where the classification is justified by no legitimate state interest, compelling or otherwise." 406 U.S., at 175 176.

Conversely, the Secretary urges us to uphold this statutory scheme on the ground that the case is controlled by the Court's recent ruling *Dandridge* v. *Williams*, 397 U.S. 471, where we noted that:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' *Metropolis Theatre Co.* v. *City of Chicago*, 228 U.S. 61, 69–70. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' *McGowan* v. *Maryland*, 366 U. S. 420, 426." 397 U. S., at 485.

However, *Dandridge* involved an equal protection attack upon Maryland's Aid to Families with Dependent Children program which provided aid in accordance with the family's standard of need, but limited the maximum grant to $250 per family, regardless of size, thereby reducing the per capita allowance for children of large families. We noted that the AFDC welfare program is a "scheme of cooperative federalism" and that the "starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds." 397 U.S., at 478. This special deference to Maryland's statutory approach was necessary because, "[g]iven Maryland's finite resources, its choice is either to support some families adequately and others less adequately, or not to give sufficient support to any family." 397 U.S. at 479. Here, by contrast, there is no evidence supporting the contention that to allow illegitimates in the classification of appellants to receive benefits would significantly impair the federal Social Security trust fund and necessitate a reduction in the scope of persons benefited by the Act. On the contrary, the Secretary has persistently maintained that the purpose of the contested statutory scheme is to provide support for dependents of a wage earner who has lost his earning power, and that the

provisions excluding some after-born illegitimates from recovery are designed only to prevent spurious claims and ensure that only those actually entitled to benefit receive payments. Accepting this view of the relevant provisions of the Act, we cannot conclude that the purpose of the statutory exclusion of some after-born illegitimates is to achieve a necessary allocation of finite resources and, to that extent, *Dandridge* is distinguishable and not controlling.

As we have noted, the primary purpose of the contested Social Security scheme is to provide support for dependents of a disabled wage earner.[3] The Secretary maintains that the Act denies benefits to after-born illegitimates who cannot inherit or whose illegitimacy is not solely because of a formal, nonobvious defect in their parents' wedding ceremony, or who are not legitimated, because it is "likely" that these illegitimates, as a class, will not possess the requisite economic dependency on the wage earner which would entitle them to recovery under the Act and because eligibility for such benefits to those illegitimates would open the door to spurious claims. Under this view the Act's purpose would be to replace only that support enjoyed prior to the onset of disability, no child would be eligible to receive benefits unless the child had experienced actual support from the wage earner prior to the disability, and no child born after the onset of the wage earner's disability would be allowed to recover. We do not read the statute as supporting that view of its purpose. Under the statute it is clear that illegitimate children born after the wage earner becomes disabled qualify for benefits if state law permits them to inherit from the wage earner, § 416 (h) (2) (A), or if their illegitimacy results solely from formal, nonobvious defects in their parents' ceremonial marriage, § 416 (h) (2) (B); or if the child is legitimated in accordance with state law, § 402(d) (3) (A). Similarly, legitimate children born after their wage-earning parent has become disabled and legitimate children born before the onset of disability are entitled to benefits regardless of whether they were living with or being supported by the disabled parent at the onset of the disability, § 402 (d) (1) and (3).

In each of the examples just mentioned, the child is by statute "deemed dependent" upon the parent by virtue of his or her status and no dependency or paternity need be shown for the child to qualify for benefits. However, nonlegitimated illegitimates in appellants' position, who cannot inherit under state law and whose illegitimacy does not derive solely from a defect in their parents' wedding ceremony, are denied a parallel right to the dependency presumption under the Act. Their dilemma is compounded by the fact that the statute denies them any opportunity to prove dependency in order to establish their claim to

---

[3]See House-Senate Conference Comm Rep. on 1965 Amendments to Social Security Act, 111 Cong. Record 18387 (July 27, 1965); Report on the Advisory Council on Social Security, The Status of the Social Security Program and Recommendations for its Improvement, 67 (Washington, D.C. 1965).

support and, hence, their right to eligibility. § 416 (h) (3) (B). The Secretary maintains that this absolute bar to disability benefits is necessary to prevent spurious claims because "To the unscrupulous person, all that prevents him from realizing gain is the mere formality of a spurious acknowledgement of paternity or a collusive paternity suit with the mother of an illegitimate child who is herself desirous or in need of the additional cash." *Jimenez* v. *Richardson*, 353 F. Supp. 1356, 1361 (ND Ill. 1973).

From what has been outlined it emerges that after-born illegitimate children are divided into two sub-classifications under this statute. One sub-class is made up of those (a) who can inherit under state intestacy laws, or (b) who are legitimated under state law, or (c) who are illegitimate only because of some formal defect in their parents' ceremonial marriage. These children are deemed entitled to receive benefits under the Act without any showing that they are in fact dependent upon their disabled parent. The second subclassification of after-born illegitimate children includes those who are conclusively denied benefits because they do not fall within one of the foregoing categories and are not entitled to receive insurance benefits under any other provision of the Act.

We recognize that the prevention of spurious claims is a legitimate governmental interest and that, dependency of illegitimates in appellants' subclass as defined under the federal statute, has not been legally established even though, as here, paternity has been acknowledged. As we have noted, the Secretary maintains that the possibility that evidence of parentage or support may be fabricated is greater when the child is not born until after the wage earner has become entitled to benefits. It does not follow, however, that the blanket and conclusive exclusion of appellants' subclass of illegitimates is reasonably related to the prevention of spurious claims. Assuming that the appellants are in fact dependent on the claimant, it would not serve the purposes of the Act to conclusively deny them an opportunity to establish their dependency and their right to insurance benefits, and it would discriminate between the two subclasses of after-born illegitimate without any basis for the distinction since the potential for spurious claims is exactly the same as to both subclasses.

The Secretary does not contend that it is necessarily or universally true that all illegitimates in appellants' subclass would be unable to establish their dependency and eligibility under the Act if the statute gave them an opportunity to do so. Nor does he suggest a basis for the assumption that all illegitimates who are statutorily deemed entitled to benefits under the Act are in fact dependent upon their disabled parent. Indeed, as we have noted, those illegitimates statutorily deemed dependent are entitled to benefits regardless of whether they were living in, or had over ever lived in, a dependent family setting with their disabled parent. Even if children might rationally be classified on the basis of whether they are dependent upon their disabled parent, the Act's definition of these two subclasses of illegitimates is "overinclusive" in that it benefits some children who are

legitimated, or entitled to inherit, or illegitimate solely because of a defect in the marriage of their parents, but who are not dependent on their disabled parent. Conversely, the Act is "under-inclusive" in that it conclusively excludes some illegitimates in appellants' subclass who are, in fact, dependent upon their disabled parent. Thus, for all that is shown in this record, the two subclasses of illegitimates stand on equal footing, and the potential for spurious claims is the same as to both; hence to conclusively deny one subclass benefits presumptively available to the other denies the former the equal protection of the law guaranteed by the due process provisions of the Fifth Amendment. *Schneider* v. *Rusk*, 377 U.S. 163, 168; *Bolling* v. *Sharpe*, 347 U. S. 497, 499.

In the District Court the Secretary, relying on the validity of the statutory exclusion, did not undertake to challenge the assertion that appellants are the children of the claimant, that they lived with the claimant all their lives, that he has formally acknowledged them to be his children, and that he has supported and cared for them since their birth. Accordingly the case is remanded to provide appellants an opportunity, consistent with this opinion, to establish their claim to eligibility as "children" of the claimant under the Social Security Act.

Mr. Justice Rehnquist, dissenting.

SECTION 202(d)(1)(B) (42 U.S.C. 402(d)(1)(B))—CHILD'S INSURANCE BENEFITS—REQUIREMENT FOR ENTITLEMENT—MARRIAGE STATUS AT TIME OF FILING OF APPLICATION

20 CFR 404.320(a)(3) and 404.607(a) SSR 75–23

> For purposes of determining initial entitlement of a claimant who had married 2 months before applying for child's insurance benefits as a disabled child, *held*, claimant's application should have the same effect as though it had been filed in the earliest month in which she would have been entitled during the 12-month period immediately preceding the filing of the application.

A question has been raised in the case where an applicant for child's insurance benefits was married 2 months prior to filing her application. She was still married at the time of filing. Her claim was denied on the basis of that provision of Section 202(d)(1)(B) of the Social Security Act which requires that, at the time of filing an application for child's insurance benefits, the claimant must be unmarried.

Even though a claimant no longer meets all of the conditions for entitlement to a monthly benefit at the time of filing an application, entitlement can be established for any month in the retroactive life of the application in which all of the requirements were met. As here pertinent, Section 202(j)(1) of the Social Security Act provides:

> An individual who would have been entitled to a benefit under subsection . . . (d) [202(d)]. . . . for any month after August 1950 had he filed application therefor prior to the end of such month shall be entitled to such benefit for such month if he