SOCIAL SECURITY

MEMORANDUM

Date: August 9, 2010 Refer To: 10-1258

To: All Administrative Law Judges

From: Frank A. Cristaudo */s/*
Chief Administrative Law Judge

Subject: Receipt of Unemployment Insurance Benefits by Claimant Applying for Disability Benefits – REMINDER

This is a reminder of the policy concerning receipt of unemployment insurance benefits. Receipt of unemployment benefits does not preclude the receipt of Social Security disability benefits. The receipt of unemployment benefits is only one of many factors that must be considered in determining whether the claimant is disabled. *See* 20 CFR 404.1512(b) and 416.912(b).

In considering claims of individuals who have applied for unemployment benefits, Administrative Law Judges (ALJs) should be mindful of the principles discussed in Social Security Ruling 00-1c, which incorporates *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795 (1999). In that case, the Supreme Court held, in a unanimous decision, that a claim for Social Security disability benefits is often consistent with a claim for relief under the Americans with Disabilities Act (ADA) even though there must be an ability to work in order to obtain relief under the ADA. The Court noted that, under the presumptions embodied in our five-step sequential evaluation process, a person can qualify for Social Security disability benefits even though he or she remains capable of performing some work. Similar logic applies to applications for unemployment benefits.

In addition, it is often uncertain whether we will find a person who applies for unemployment benefits ultimately to be disabled under our rules, and our decisionmaking process can be quite lengthy. Therefore, it is SSA's position that individuals need not choose between applying for unemployment insurance and Social Security disability benefits.

However, application for unemployment benefits is evidence that the ALJ must consider together with all of the medical and other evidence. Often, the underlying circumstances will be of greater relevance than the mere application for and receipt of the benefits. For instance, the fact that a person has, during his or her alleged period of disability, sought employment at jobs with physical demands in excess of the person's alleged limitations would be a relevant factor that an ALJ should take into account, particularly if the ALJ inquired about an explanation for this apparent inconsistency.

Accordingly, ALJs should look at the totality of the circumstances in determining the significance of the application for unemployment benefits and related efforts to obtain employment.

cc: Regional Chief Administrative Law Judges
Regional Office Management Teams