

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	Appeals Council to Nancy Hart re Notification of Unfavorable Appeals Council Decision (18 pages)	11/27/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Molly Brostrom
OA/Box Number: 8397

FOLDER TITLE:

Judith Hart

2012-0326-S

kc777

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



SOCIAL SECURITY

Office of the Commissioner

March 14, 1996

MEMORANDUM FOR THE HONORABLE LEON PANETTA

FROM : Shirley S. Chater *Shirley S. Chater*
Commissioner of Social Security

SUBJECT: Social Security Administration's Weekly Report--
March 17-29, 1996--INFORMATION

KEY AGENCY NEWS

- o **Hart v. Chater Resolved:** The parties to Hart v. Chater agreed to drop the case as a result of the Social Security Administration's decision to pay Judith Hart and her mother Social Security benefits. Judith was conceived by artificial means three months after the death of the worker using his sperm which he had set aside in a fertility institute prior to his death from cancer. The daughter and mother alleged in their court action that the denial of child's and mother's benefits was unconstitutional. Following oral argument, the Department of Justice recommended that SSA settle this case due to the significant risk of continued litigation. The Commissioner determined to pay benefits in light of this recommendation. At the same time, she is convening a task force to review the policy issues raised by benefit claims presented by individuals who were conceived under similar conditions to the child in this case.

NOTABLE CONGRESSIONAL ACTIVITY

- o **Hearing on Social Security Advisory Council Report:** On March 25, Senator Alan Simpson, Chairman of the Social Security and Family Policy Subcommittee of the Senate Finance Committee, will hold a hearing on the Social Security Advisory Council Report which has not yet been finalized. Advisory Council Chairman Edward Gramlich, and members Robert Ball and Syl Schieber, as well as the chairs of the Council's two technical panels have been invited to testify.
- o **Social Security Retirement Earnings Test Bill:** A bill that would gradually increase to \$30,000 a year in 2002 the amount that persons aged 65-69 could earn before their Social Security benefits are reduced is expected to go to the floor of the Senate the week of March 18. In addition

OPTIONAL FORM 39 (7-90)

FAX TRANSMITTAL

of pages 3

From

SSA

Phone #

To Molly Brostrom

Dept. Agency

Fax #

Fax #

NSN 7540-01-317-7048 5039-101

GENERAL SERVICES ADMINISTRATION

to the earnings test provision, the bill would prohibit the payment of disability benefits under the Social Security and Supplemental Security Income programs to individuals whose disability is substantially related to drug addictions or alcoholism. The House passed a bill with similar provisions on December 5, 1995.

COMMISSIONER'S SCHEDULE

- o On March 18, Commissioner Chater will be in Anaheim, California to address the American Society on Aging's 42nd annual meeting. The Commissioner will speak on the future of Social Security.
- o On March 20, Commissioner Chater will be in Miami, Florida where she will address the Retired Senior Volunteer Program (RSVP) on the future of Social Security. She will also visit the Little Havana Senior Center.
- o On March 25, Commissioner Chater will be in New York State with Representative John LaFalce. The Commissioner will address the Niagara County Council on Aging and a community forum in Kenmore, New York on the future of Social Security. She will also meet with the Editorial Board of the Buffalo News.
- o On March 28, Commissioner Chater will be in Cleveland, Ohio where she will address the quarterly Lake County Leadership Forum and the City Club of Cleveland on the future of Social Security.

PRESS/MEDIA INQUIRIES

- o **CBS News Segment on Custody Dispute Involving Social Security Benefits:** On March 15, CBS Evening News will air a segment involving a custody dispute over two children receiving Social Security survivor's benefits. The children currently live with their stepmother in London, England, where she has been receiving Social Security checks on their behalf. The children's natural mother lives in the U.S. and is attempting to regain custody. The children had previously been removed from the natural mother's home following allegations of neglect. CBS did not interview anyone from the Social Security Administration for use in the segment. A representative of Social Security in London visited the stepmother and children. The children are in the legal custody of the British Courts with the stepmother rendering personal care until the custody issue is resolved. The stepmother has fully accounted for the expenditure of the Social Security benefits she is receiving for the children.

- o **Social Security to Issue Press Release on Continuing Eligibility Reviews:** SSA plans to issue a Press Release on March 18 announcing that its FY 1997 budget request includes a special request for \$320 million to conduct additional continuing eligibility reviews of people collecting Social Security and Supplemental Security Income disability benefits. SSA plans to spend \$720 million during 1996 and 1997 to review the cases of 1.4 million individuals. The special funding request--specifically for case reviews--would provide for 600,000 additional reviews. Advocacy groups for individuals with disabilities may react negatively to the announcement.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-Feb-1996 10:52am

TO: Molly Brostrom
FROM: Marvin Krislov
 Office of the Counsel

SUBJECT: judith hart matter

now that we've gotten the go ahead, we should probably schedule something with social security to talk. let's discuss game plan.

THE WHITE HOUSE
WASHINGTON

DATE: 1/18/96

TO: Molly Brostrom

FROM: White House Counsel Marvin Krislov
Room 130, OEOB, x6-7903

For review and
comment please

☒ FYI

☐ Appropriate Action

☐ Let's Discuss

☐ Per Our Conversation

☐ Per Your Request

☐ Please Return

☐ Other

1/17/96 DRAFT -- PLEASE REVIEW AND COMMENT
CLOSE HOLD -- FOR REVIEW AND DISCUSSION ONLY
DRAFT -- PRIVILEGED AND ~~CONFIDENTIAL~~

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: (W) DATE: 04/06/12

January , 1996

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN
CAROL RASCO

RE: Judith Hart case -- Social Security Administration

You have requested an update on the claim for Social Security benefits filed by Judith Hart, a child conceived after her father's death through the use of frozen sperm. This memo summarizes the status of her case and the current law. As described in the attached article, the Social Security Administration's Appeals Council has rejected the child's request for benefits and the matter has now moved to federal court.

In summary, we believe that the White House can and should (1) urge the settlement of the Hart Case on terms that will provide benefits to the child and (2) work with the Social Security Administration to effect regulatory and statutory changes that better account for developments in medical technology like the one that gave rise to this case.

Background

Judith Hart is a four-year-old girl who was conceived through the procedure of Gamete Intrafallopian Transfer, using the previously frozen sperm of her father. The procedure took place three months after her father's death from cancer. After Judith's subsequent birth, her mother applied for child's Social Security benefits on her behalf. In May 1995, a Social Security Administrative Law Judge (ALJ) in Louisiana held that Judith Hart is entitled to benefits as the child of a deceased wage earner. This ruling was reviewed and overturned by the Social Security Administration's Appeals Council in a decision announced in late November 1995. The result in the decisions of both the ALJ and the Appeals Council turned on an interpretation of Louisiana state law. (SSA informs us that the law is similar in most other states). Judith Hart's attorneys are appealing this ruling in federal district court.

Current Law

This case raises a question which is not directly addressed by the Social Security Act -- whether a child conceived by artificial means after the death of her wage earning father is eligible to receive Social Security survivors' benefits. The purpose of survivors' benefits, of course, is to replace income lost when a child's wage earning parent dies.

To qualify for survivors' benefits under the existing law, a claimant must prove that he or she is a "child" of the wage earner under one of several definitions. The principal method for determining eligibility is known as the "inheritance test." Under this test, a claimant is presumed to be an eligible, dependent child if it is determined that he or she would inherit property from the wage earner under applicable state intestacy law. Alternatively, the Act provides that an applicant may be found eligible if the wage earning parent has acknowledged in writing that the applicant is his or her child, or if a court has previously decreed in a separate action that the claimant is the child of the wage earning parent.

In the Hart case, the Appeals Council found that the claimant was not an eligible child under any one of the definitions established by the Act. First, the Appeals Council rejected the ALJ's finding that the applicant would have qualified under the "inheritance" method. The Appeals Council determined that the ALJ had misapplied Louisiana state law and had failed to consider a state statute that provides that, in order to inherit, an heir must be "in being" at the time of the intestate's death. Accordingly, this statute would bar Judith's right to inherit intestate property from her father because she was not "in being" during his lifetime.

Second, the Appeals Council rejected the claimant's alternate argument for entitlement, finding that the father had not sufficiently acknowledged his paternity in writing. The Council held that Mr. Hart's written statement had authorized his wife to use his frozen sperm as she saw fit, but did not constitute a sufficient acknowledgement that Judith was his daughter. More broadly, the Council concluded that, under the language of the Federal statute, an individual cannot acknowledge paternity of a child who has not yet been conceived. This interpretation would imply that, unless state inheritance law recognized such an acknowledgement (which is unlikely), a child not in being at the time of death could not inherit survivor benefits even if the deceased parent adequately acknowledges parenthood in advance.

Conclusion

Counsel's Office has advised the Department of Justice that we have an interest in this matter in order that we may participate in basic litigation decisions. Unless you direct otherwise, we would urge resolution of this matter in a fashion that will permit Judith Hart to receive survivors' benefits. In addition, we recommend that the Domestic Policy Council and Counsel's Office work with SSA to discuss the underlying policy to determine whether statutory and/or regulatory changes should be proposed to reflect changing medical technology.

In this regard, SSA staff preliminarily believes that any change to benefit Judith Hart should come through a legislative change and not through an agency reinterpretation of existing law. SSA staff warn that expanding the definition of the beneficiary class could increase expenditures and could undermine the purpose of the law. Moreover, they warn that line-drawing may be difficult, particularly in light of changing medical technology. For example, a rule recognizing paternity when conception occurs twenty years after the father's death would be particularly problematic, since the purpose of the benefits is to replace a parent's support that had been relied upon or reasonably expected by the child. Nonetheless, we believe that it is

worth discussing possible policy changes with SSA to accommodate concerns that the existing situation is unjust. We will, of course, continue to monitor this case and any related developments and will report them to you as appropriate.

___PROCEED AS RECOMMENDED: Urge settlement of Hart case and pursue regulatory and statutory changes.

___LET'S DISCUSS

Attachment

THE WHITE HOUSE
WASHINGTON

DATE: 12/12/95

TO: Molly Brostrom

Rm 207

FROM: White House Counsel Marvin
Room 130, OEOB, x6-7903

- ☒ FYI Latest draft, please review
- ☐ Appropriate Action and comment
- ☐ Let's Discuss
- ☐ Per Our Conversation
- ☐ Per Your Request
- ☐ Please Return
- ☐ Other

DRAFT

12/12/95 DRAFT -- PLEASE REVIEW AND COMMENT
CLOSE HOLD -- FOR REVIEW AND DISCUSSION ONLY
DRAFT -- PRIVILEGED AND ~~CONFIDENTIAL~~

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: @ DATE: 04/06/12

December 12, 1995

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN
CAROL RASCO

RE: Judith Hart case -- Social Security Administration

You have requested an update on the claim for Social Security benefits filed by Judith Hart, a child conceived after her father's death through the use of frozen sperm. This memo summarizes the status of her case and the current law. As described in the attached article, the Social Security Administration's Appeals Council has rejected the child's request for benefits and the matter will now move to federal court.

Background

Judith Hart is a four-year-old girl who was conceived through the procedure of Gamete Intrafallopian Transfer, using the previously frozen sperm of her father. The procedure took place three months after her father's death from cancer. After Judith's subsequent birth, her mother applied for child's Social Security benefits on her behalf. In May of this year, a Social Security Administrative Law Judge (ALJ) in Louisiana held that Judith Hart is entitled to benefits as the child of a deceased wage earner. This ruling was reviewed and overturned by the Social Security Administration's Appeals Council in a decision announced on November 27th. The result in the decisions of both the ALJ and the Appeals Council turned on an interpretation of Louisiana state law. (SSA informs us that the law is similar in most other states). Lawyers for Judith Hart have stated that they will appeal this ruling in federal district court.

Current Law

This case raises a complicated question which is not directly addressed by the Social Security Act -- whether a child conceived by artificial means after the death of her wage earning father is eligible to receive Social Security survivors' benefits. The purpose of survivors' benefits is to replace income lost when a child's wage earning parent dies.

To qualify for survivors' benefits under the existing law, a claimant must prove that he or she is a "child" according to one of several definitions. The principal method for determining eligibility is known as the "inheritance test." Under this test, a claimant is presumed to be an eligible, dependent child if it is determined that he or she would inherit

DRAFT

property from the wage earner under applicable state intestacy law. In addition, the Act provides that an applicant may be found eligible if the wage earning parent has acknowledged in writing that the applicant is his or her child, or if a court has previously decreed in a separate action that the claimant is the child of the wage earning parent.

In the Hart case, the Appeals Council found that the claimant was not an eligible child under any one of the definitions established by the Act. First, the Appeals Council rejected the ALJ's finding that the applicant would have qualified under the "inheritance" method. The Appeals Council determined that the ALJ had misapplied Louisiana state law and had failed to consider a state statute that provides that, in order to inherit, an heir must be "in being" at the time of the intestate's death. Accordingly, this statute would bar Judith's right to inherit intestate property from her father because she was not "in being" during his lifetime. The Appeals Council also rejected the claimant's argument that this law is unconstitutional, and commented that most states have a similar statutory requirement.

Second, the Appeals Council rejected the claimant's alternate argument for entitlement, finding that the father had not acknowledged his paternity in writing. The Council held that Mr. Hart's written statement had authorized his wife to use his frozen sperm as she saw fit, but did not constitute a sufficient acknowledgement that Judith was his daughter. More broadly, the Council concluded that, under the language of the Federal statute, an individual cannot acknowledge paternity of a child who has not yet been conceived. This interpretation would imply that, unless state inheritance law recognized such an acknowledgement (which is unlikely), a child not in being at the time of death could not inherit survivor benefits even if the deceased parent adequately acknowledges parenthood in advance.

Conclusion

Because this matter is now moving to federal court and involves a pending litigation matter of an independent agency, we ordinarily would not express any viewpoint on the matter. However, the Department of Justice will represent SSA in the litigation. SSA also has asked if the Administration wishes to discuss the underlying policy question.

Although we have not obtained a final opinion from the agency, SSA staff believe that any change to benefit Judith Hart must come through a legislative fix, rather than through an agency reinterpretation of policy. SSA staff warn that expanding the definition of the beneficiary class could increase expenditures and could undermine the purpose of the law. Moreover, they warn that line-drawing may be difficult, particularly in light of changing medical technology. For example, a rule recognizing paternity when conception occurs twenty years after the father's death would be particularly problematic, since the purpose of the benefits is to replace a parent's support that had been relied upon or reasonably expected by the child. Nonetheless, we believe that it is worth discussing possible legislative changes with SSA to accommodate concerns that the existing situation is unjust. We will, of course, continue to monitor this case and any related developments.

____ DISCUSS POLICY/LEGISLATION WITH SSA

____ MONITOR ONLY

Attachment

NATIONLINE



G. Andrew Boyd, The Times-Picayune via AP

Benefits fight: Nancy Hart with Judith in May when the girl won survivor's benefits. That decision has been reversed.

Benefits denied to girl conceived after dad's death

A Social Security panel rejected Nancy Hart's wish that her daughter — conceived with frozen sperm from her late husband — be eligible for survivor's benefits. The decision reverses a New Orleans administrative law judge's ruling in May that said Judith Hart, now 4½, is entitled to benefits of about \$700 a month until she turns 18. Federal officials rely on state law in deciding eligibility and Louisiana, like other states, doesn't recognize as an heir a child conceived after a parent's death. "They have their little manuals, and if it's not one-two-three for them, they can't take that creative leap and use their common sense," Nancy Hart said. Her lawyer, Kathryn Kolbert of the Center for Reproductive Law and Policy, said federal law "has not caught up with medical science." Hart says she'll appeal the ruling to federal court, where she also is asking to have Judith named her father's legal heir in Louisiana.

CLOSE HOLD -- FOR REVIEW AND DISCUSSION ONLY
DRAFT -- PRIVILEGED AND ~~CONFIDENTIAL~~

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: W DATE: 04/06/12

December 8, 1995

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN
CAROL RASCO

RE: Judith Hart case -- Social Security Administration

You have requested an update on the claim for Social Security benefits filed by Judith Hart, a child conceived after her father's death through the use of frozen sperm. This memo summarizes the status of her case and the current law. As described in the attached article, the Social Security Administration's Appeals Council has rejected the child's request for benefits and the matter will now move to federal court.

Background

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provides that an applicant may be found eligible if the wage earning parent has acknowledged in writing that the applicant is his or her child, or if a court has previously decreed in a separate action that the claimant is the child of the wage earning parent.

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____ DISCUSS POLICY/LEGISLATION WITH SSA

____ MONITOR ONLY

Attachment



SOCIAL SECURITY

Office of the Commissioner

February 29, 1996

MEMORANDUM FOR THE HONORABLE LEON PANETTA

FROM : Shirley S. Chater *Shirley S. Chater*
Commissioner of Social Security

SUBJECT: Social Security Administration's Weekly Report--
March 4-15, 1996--INFORMATION

CONGRESS

Hearing on "Moneysworth" and Social Security

On March 11, Senator Alan Simpson, Chairman of the Social Security and Family Policy Subcommittee of the Senate Finance Committee, will hold a hearing on Moneysworth and Social Security. Moneysworth is generally defined, in relation to Social Security, as the rate of return on taxes paid that Social Security benefits provide. Commissioner Chater has been invited to testify.

KEY AGENCY NEWS

Oral Arguments Heard by Federal District Court in Hart

On February 28, the Federal district court in New Orleans heard oral argument by the Department of Justice in Hart. The plaintiffs are a child and her mother who were denied Social Security child's and mother's benefits because the child was conceived three months after the worker's death. The worker had had his sperm frozen, and over three months after his death, Ms. Hart underwent a "gamete intrafallopian transfer" procedure under which her ova were fertilized using the worker's sperm and then implanted in her. This resulted in a pregnancy and the birth of Judith Hart on June 4, 1991. The plaintiff and her mother contend that the denial of survivor's benefits to a child conceived after the worker's death is unconstitutional. This case received National press some months ago.

The court hearing was uneventful, and at this point there has been no significant press activity (other than local). A decision by the court is expected in the next several weeks.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 2

To: *Shirley S. Chater*
Dept./Agency

From

Phone #

Fax #

Fax #

5089-101

NSN 7540-01-317-7368

GENERAL SERVICES ADMINISTRATION

FACSIMILE SHEET

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner
1825 Connecticut Avenue, 7th Floor, NW
Washington, DC 20009
Telephone Number: 202-482-7100
Fax Number: 202-482-7105

Date: _____

Pages: 2From: Brian D. CoyneTo: Molly BrostromChief of Staff

Location/Organization: _____

Social Security AdministrationTelephone Number: (202) 482-7100

Telephone Number: _____

Fax Number: (202) 482-7105Fax Number: 456-7028

Messages: _____

1-4-7

Friday, December 1, 1995
For Immediate Release



Phil Gambino / Tom Margenau
410-965-8904 Fax 410-966-9973

News Release

SOCIAL SECURITY

STATEMENT OF PHIL GAMBINO PRESS SECRETARY OF THE SOCIAL SECURITY ADMINISTRATION REGARDING THE CASE OF JUDITH HART

"At the outset, we want to make it very clear that the Social Security Administration does not deny the fact that Judith Hart is the biological child of Edward Hart, so we can understand the disappointment that her mother must feel. But our role is to impartially administer the provisions of the Social Security Act. One of those provisions requires that a child have been financially dependent upon a deceased parent, or considered dependent by the law, to qualify for his or her Social Security benefits. Because Judith was born almost 12 months after her father's death, she was never financially dependent on him.

We admire the deep feelings of love that brought Judith Hart into this world, and we join all Americans in applauding the miracles of modern medicine that resulted in her birth. But this case goes to the core of issues surrounding what government benefits and services the American people believe to be appropriate and would be willing to support. In this particular case, taxpayers must ask themselves if they believe the federal government should be responsible for supporting a child, through the payment of Social Security dependent's benefits, when the decision to bear that child is made after the father had died, and he cannot support the child."

Withdrawal/Redaction Marker

Clinton Library

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Domestic Policy Council
Molly Brostrom
OA/Box Number: 8397

FOLDER TITLE:

Judith Hart

2012-0326-S

kc777

RESTRICTION CODES

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-Nov-1995 10:22am

TO: Virginia M. Terzano

FROM: Molly Brostrom
Domestic Policy Council

SUBJECT: SSA Appeals Council Decision on Judith Hart case

Carol wanted me to give you all a heads up on the following:

The Social Security Administration's Appeals Council yesterday issued their decision on the Judith Hart case -- three months after her husband's death, Ms. Hart became pregnant through a intrafallopian transfer procedure using Mr. Hart's sperm, and gave birth to Judith Hart. Ms. Hart applied for survivors' benefits for her and her daughter -- a SSA Administrative Law Judge denied them benefits; they then appealed to the SSA Appeals Council, which decided yesterday to deny benefits.

According to SSA, the decision is in the mail and will probably reach the Harts and the press today or tomorrow.

The President expressed an interest in this at one point this summer -- picking up on the spin that this is evidence of government going too far in deciding whether Judith Hart is really her father's daughter. That wasn't the legal/technical grounds for the decision but that is how the decision can be perceived.

Marvin Krislov in Counsel's office is preparing a background memo -- let us know if you need further information.



SOCIAL SECURITY ADMINISTRATION

The General Counsel

Memorandum

DATE: November 27, 1995

TO: Brian Coyne, Chief of Staff

FROM: Arthur J. Fried, General Counsel *Arthur J. Fried*

SUBJECT: Hart Case - Appeals Council Decision

Earlier today the Appeals Council ruled in Nancy Young Hart's application for Child's Insurance Benefits for her daughter, Judith Hart, and for Mother's Insurance Benefits for herself, on the earnings record of Edward Hart, Jr. Mr. Hart died on June 14, 1990. Over three months after Mr. Hart's death, Ms. Hart underwent a intrafallopian transfer procedure using Mr. Hart's sperm. This resulted in a pregnancy and the birth of Judith Hart on June 4, 1991.

The Appeals Council found the Harts ineligible for benefits. It based this determination on the conclusions that (1) Judith Hart would not have been able to inherit from Edward through intestacy under Louisiana law, because she was not "in existence" (i.e., conceived) at the time of his death; (2) Edward Hart did not acknowledge Judith to be his daughter; (3) Edward's living with and contributing to the support of Judith's mother Nancy at the time of his death does not satisfy the requirement that the wage earner be living with and supporting the child at the time of his death because Judith had not been conceived prior to his death; and (4) Louisiana law is not unconstitutional in denying Judith the right to inherit from Edward. In conclusion, the Appeals Council stated that this result comports with the purpose of the Social Security Act - "to replace lost income" - since Judith Hart "was not actually dependent upon [Edward Hart] and could not anticipate support from him" because he died before her mother decided "to bring her into being." The next step for the Hart's is an appeal to Federal District Court.

Also, please note that the Appeals Council decision uses the language that "Judith C. Hart is not the 'child' of Edward W. Hart, Jr." because this of the technical way that the Act is written, even though the Council concludes that Edward is Judith's biological father, that she was conceived with his sperm.



SOCIAL SECURITY

Office of the Commissioner

August 1, 1995

MEMORANDUM FOR KITTY HIGGINS

FROM: BRIAN COYNE
CHIEF OF STAFF *Brian Coyne*
SOCIAL SECURITY ADMINISTRATION

SUBJECT: HART CASE

The Social Security Administration has before it a case which is challenging the issue of whether the agency must pay survivor's benefits to a child conceived through artificial means after a worker's death.

In May of this year, a SSA Administrative Law Judge in Louisiana ruled on the case of Judith Hart. Judith Hart is a four-year old girl who was conceived by a medical procedure called Gamete Intrafallopian Transfer that used a previously frozen sperm specimen from her father. The procedure took place in September of 1990, three months after her father had died of cancer. According to Nancy Hart, Judith Hart's mother, having the child was Edward Hart's last wish. After being denied by the agency, Ms. Hart appealed the decision and requested a hearing before an Administrative Law Judge (ALJ). The ALJ ruled in May, 1995 that Judith Hart is clearly the biological child of Edward and Nancy Hart and therefore entitled to survivor's benefits. ✓

To receive survivor's benefits, the Social Security Act provides that a child meet either one of two tests. If a child meets either test, the child is considered to have satisfied the dependency requirement. The first is what is known as the inheritance test. The child may be eligible to receive survivor's benefits if it can be proven that a child is eligible to inherit under state law, e.g. a dependent child through marriage, adoption etc. The second is known as the federal test of dependency, that is being the biological child through written acknowledgement, court established determination of paternity or child support, or other evidence of paternity together with documentation of established dependency, such as residence with the child, child support, or other financial support. In this case, the issues centered around state inheritance law. The ALJ ruled that although this child would not qualify under Louisiana inheritance laws because the law requires such a filing to be made within one year of the death, a Louisiana court would find the law to be unconstitutional and would grant benefits because the child clearly is the biological child.

The Social Security Administration asked the Appeals Council to review this case on July 25, 1995. The agency's concern is about whether this child can be considered "dependent" on the deceased father, which is the basis for survivor's benefits under the Social Security Act. It is expected that the Council will issue a decision sometime this fall. If the Appeals Council denies benefits, it is expected that this issue will end up in federal District Court. Ms. Hart's attorneys already filed in federal District Court in Louisiana in December of 1994 in anticipation of possible further court action. She is being represented by the Center for Reproductive Law and Policy, a non-profit law firm based in New York.

Since this case has become public, the agency has become aware that there may be a limited number of similar cases that have been approved or denied by agency officials around the country. SSA litigation staff is presently researching this fact. In addition, Commissioner Shirley Chater has requested that her policy staff review the issues surrounding this case to determine if legislation is needed. SSA policy staff is presently reviewing possible legislative remedies that might clarify the issue of dependency and survivor's benefits under the Social Security Act for possible submission to Congress later this fall.

For Immediate Release

Phil Gambino / Tom Margenau
410-965-8904 Fax 410-966-9973

News Release

SOCIAL SECURITY

**STATEMENT BY SHIRLEY S. CHATER
COMMISSIONER OF SOCIAL SECURITY**

**REGARDING THE DECISION BY SSA'S APPEALS COUNCIL
TO REVIEW THE JUDITH HART CASE**

The Hart case raises significant issues concerning the intent of the Social Security Act. The controversy regarding Judith Hart's eligibility for Social Security survivors benefits is not about whether she is the biological daughter of Edward Hart but more a question about her dependency on her deceased father. Such dependency is the crux of a child's eligibility for monthly Social Security survivor benefit payments.

As authorized by the Social Security Act, the SSA Appeals Council will undertake a comprehensive review of the Administrative Law Judge decision to award survivors benefits to Judith Hart. To ensure the integrity of the administrative appeals process, it would be inappropriate for me to comment any further at this time.

I have directed SSA's policy staff to review all applicable laws and policy-related issues raised by this case. Recent advances in modern medical practices, particularly in the field of reproductive medicine, necessitate such a review to ensure that current laws and policies reflect the intent of the Social Security Act. A regulatory or legislative response may be required once this review is completed.

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FACSIMILE SHEET

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner
1825 Connecticut Avenue, 7th Floor, NW
Washington, DC 20009
Telephone Number: 202-482-7100
Fax Number: 202-482-7105

Date: 10/4/95Pages: 3From: Brian CoyneTo: Molly Brostrom

Location/Organization: _____

Location/Organization: _____

Telephone Number: _____

Telephone Number: _____

Fax Number: _____

Fax Number: 456-7028**Messages:**

Attached is an update on the Hart Case.
Besides the Appeals Council Hearing, which
was held on September 28th, there is little
to report except what the issues are.

~~REDACTED~~

Hart's lawyers presented arguments on the
28th & the Appeals Council is expected to
rule sometime before the end of the year.

I hope this is helpful. If not, and you're looking
for more, please let me know. Brian

Informational info...

Marvin Kriskov =

- Policy isn't getting involved during process

- Q: What is our alternative?

 - are there state laws that allow ^{this} claims to be brought

 - in Hart, even though Louisiana...

Q isn't needing Congress to clarify



SOCIAL SECURITY ADMINISTRATION

The General Counsel

Memorandum

DATE: October 4, 1995

TO: Shirley S. Chater
Commissioner of Social Security

FROM: Arthur J. Fried *AJF*

SUBJECT: Update of Status of Benefit Claim of Judith Hart--
INFORMATION

The claim of Judith Hart, currently pending before the Appeals Council of the Social Security Administration, raises the issue of whether a child conceived by artificial means after the death of her wage earner father can receive Social Security survivors benefits. Judith was implanted in her mother utilizing the medical procedure of Gamete Intrafallopian Transfer. The ovum was fertilized using the frozen sperm of her father. This took place four months after her father's death from cancer and was done pursuant to his express wishes. After Judith's birth, her mother applied for mother's and child's Social Security benefits. In May of 1995, an Administrative Law Judge (ALJ) granted these benefits.

To receive survivors benefits, a child must demonstrate dependency on a wage earner. This can be done either by being eligible to inherit under the appropriate state intestacy law or by demonstrating that you were acknowledged in writing by the wage earner to be his child, that a court decree found that the wage earner was the father of the child, that a court ordered support because you were his child or that you are the biological child of the wage earner who was either living with or contributing to your support prior to his death. Since the Hart child was conceived after her father's death, the only way she can establish dependency is meeting the inheritance test described above.

The ALJ's ruling was based on his conclusion that a Louisiana State Court would rule that the Louisiana intestacy statute, which otherwise would have prohibited Judith from inheriting, was unconstitutional as applied to her. As a result, she would be eligible to inherit and would be entitled to Social Security benefits along with her mother. The Appeals Council is reviewing this decision to ensure its accuracy due to the novelty of the issues presented both regarding the nature of Judith's conception and the finding of unconstitutionality of the State intestacy statute. On September 28, argument was held before the Appeals Council and a decision is expected before the end of the year.

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Pursuant to your instructions, Agency staff have conducted a review of all applicable laws and policy issues raised by this case. Pursuant to this review, a legislative proposal is being developed which would preclude benefit eligibility for individuals who were not conceived prior to the death of one of their parents.

cc: Mr. Coyne