PO Box 101110
Cape Coral, FL
33910
(800) 814-0808
www.avardlaw.com

AVARD Law Offices, P.A.

Carol Avard, Esq.
Douglas Mohney, Esq.
Craig Polhemus, Esq.

Issue	Law and Rules	Useful Information
Statutory History	**Social Security Amendments of 1972, P.L. 92-603:** • From the beginning of the SSI program, claimants whose DAA was material to their disability were required to: 1) Accept treatment if available, and 2) Have their benefits paid to a representative payee.	• Of predominantly historical interest.
	Social Security Independence and Program Improvements Act of 1994, P.L. 103-296: • Extended treatment requirements to SSDI, • Suspended benefits for noncompliance with treatment, • Limited payments to SSI recipients disabled due to DAA to 36 months; • Limited payments to SSDI recipients disabled due to DAA to 36 months during which treatment was available.	• Of predominantly historical interest.
	Contract with America Advancement Act, P.L. 104-121: • Individuals already receiving benefits based on DAA underwent new medical determinations and benefits were stopped unless DAA was found	• Of 209,000 beneficiaries coded as DAA cases, benefits ceased for 123,000. (History of SSA 1993-2000, Chapter 4: Program Changes, https://www.ssa.gov/history/ssa/ssa2000chapter4.html)

	not material to the finding of disability. • For claims filed or finally adjudicated on or after March 29, 1996, benefits denied if DAA is material to their disability.	• Excludes from the definition of "disabled" those for whom DAA is a contributing factor material to the determination of disability
Issue	**Law and Rules**	**Useful Information**
Implementing Regulation:	**20 CFR § 404.1535, 20 CFR § 416.935, How we will determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability.**	• Key factor is whether claimant would still be disabled if he or she stopped using drugs or alcohol • SSA evaluates: 1) which physical and mental limitations would remain if claimant stopped using drugs or alcohol and 2) whether remaining limitation(s) would be disabling if claimant stopped using drugs or alcohol • If remaining limitations would not be disabling in the absence of drug or alcohol use, drug addiction or alcoholism is material • If remaining limitations would be disabling in the absence or drug or alcohol use, drug addiction of alcoholism is not material • SSA evaluates: 1) which physical and mental limitations would remain if claimant stopped using drugs or alcohol and 2) whether remaining limitation(s) would be disabling if claimant stopped using drugs or alcohol • If remaining limitations would not be disabling in the absence of drug or alcohol use, drug addiction or alcoholism is material • If remaining limitations would be disabling in the absence or drug or alcohol use, drug addiction of alcoholism is not material
Issue	**Law and Rules**	**Useful Information**

Social Security Ruling	• **SSR 13-2p: TITLES II AND XVI: EVALUATING CASES INVOLVING DRUG ADDICTION AND ALCOHOLISM (DAA)** • Establishes 6-step DAA Evaluation Process for determining whether DAA is material	• Excluded drugs: 1) Tobacco, and 2) Prescription drugs used in compliance with legal prescription • Excluded conditions: 1) Fetal alcohol syndrome, 2) Fetal cocaine exposure, and 3) Addiction to prescription drugs used as prescribed (including methadone) • DAA must be medically determinable (based on medical evidence from acceptable medical source) – claimant saying "I am an alcoholic" or "I am a drug addict" does not establish DAA • Substance Abuse Disorders = Substance Dependence or Substance Abuse • DAA must be relevant to the period under consideration • Best way to establish effect of drugs or alcohol on a disability is to consider a period when drugs and alcohol were not being used • If condition is irreversible regardless of use of drugs or alcohol, period of abstinence is irrelevant • If period of abstinence occurs when receiving in-patient treatment, effects of abstinence should be separated from effects of treatment
Issue	**Cases**	**Useful Information**
Burden of proof is on claimant	*Cage v. Comm'r of Soc. Sec.*, 692 F.3d 118 (2nd Cir. 2012) *Parra v. Astrue*, 481 F.3d 742 (9th Cir. 2007) *Brueggemann v. Barnhart*, 348 F.3d 689 (8th Cir. 2003)	• But see SSR 13-2p, response to question 6 : "d. We will find that DAA is not material to the determination of disability and allow the claim if the record is fully developed and the evidence (including medical opinion evidence) does not establish that the claimant's physical impairment(s) would improve to the point of nondisability in the absence of DAA").

	Doughty v. Apfel, 245 F.3d 1274 (11th Cir. 2001) *Brown v. Apfel*, 192 F.3d 492 (5th Cir. 1999)	• See also Social Security Administration Emergency Teletype, No. EM-96-94 at Answer 29 (Aug. 30, 1996): "When it is not possible to separate the mental restrictions and limitations imposed by DAA and the various other mental disorders shown by the evidence, a finding of 'not material' would be appropriate") • Burden of proof vs. "tie goes to the runner" (or the claimant)
Retroactive application not unconstitutional	*Ball v. Massanari*, 254 F.3d 817 (9th Cir. 2001) *Brown v. Apfel*, 192 F.3d 492 (5th Cir. 1999).	• Of largely historical interest.
Alcoholics and drug addicts not suspect classes.	*Ball v. Massanari*, 254 F.3d 817 (9th Cir. 2001) *Mitchell v. Comm'r of Soc. Sec.*, 182 F.3d 272 (4th Cir. 1999).	
No shortcut -- DAA test cannot be imposed until claimant is deemed disabled	*Bustamante v. Massanari*, 262 F.3d 949 (9th Cir. 2001) *Drapeau v. Massanari*, 255 F.3d 1211 (10th Cir. 2001)	
Continuing disability standards do not apply where benefits terminated due to DAA	*Mittlestedt v. Apfel*, 204 F.3d 847 (8th Cir. 2000)	
Substantial evidence of materiality of DAA	*Salazar v. Barnhart*, 468 F.3d 615	

required	(10th Cir. 2006)	
District court finding that mental problems "were intertwined and exacerbated by longstanding substance abuse" failed to distinguish between substance abuse contributing to the disability and whether the disability would remain after claimant stopped using drugs or alcohol	*Sousa v. Callahan*, 143 F.3d 1240 (9th Cir. 1997)	
Even a year and a half's remission from drug (marijuana) abuse at the time of the hearing does not preclude a finding that drug abuse was a contributing factor material to claimant's disability	*Kluesner v. Astrue*, 607 F.3d 533 (8th Cir. 2010)	• Appears inconsistent with 20 CFR § 404.1535**,** 20 CFR § 416.935, and SSR 13-2p
Failure to follow prescribed procedure for determining materiality of drug abuse – failure to find that claimant would not have been disabled if he had stopped using	*Grogran v. Barnhart*, 399 F.3d 1257 (10th Cir. 2005)	

drugs or alcohol – is error **Consultative examiner's examination of claimant when she was in a structured environment which did not express an opinion on claimant's cognitive abilities in an independent work environment does not constitute substantial evidence of materiality of drug or alcohol abuse** **Where ALJ followed the analytical framework prescribed by the regulations, made detailed factual findings about alcoholism and other impairments, and supported his findings with references to the record, there is substantial evidence supporting the DAA materiality finding**	*McGoffin v. Barnhart*, 288 F.3d 1248 (10th Cir. 2002) *Vester v. Barnhart*, 416 F.3d 886 (8th Cir. 2005)	• Consistent with SSR 13-2p: If period of abstinence occurs when receiving in-patient treatment, effects of abstinence should be separated from effects of treatment • Court also suggests whether claimant could work in the absence of alcoholism may not be a medical question comparable to the traditional determination of residual functional capacity • Dissent finds no medical evidence, as opposed to mere speculation, that claimant would be able to work if she stopped drinking alcohol; two medical examinations conducted during periods of sobriety found claimant continued to suffer from depression and bipolar disorder and had a limited ability to demonstrate the stability, reliability, and social skills needed for employment

Where physicians recognized that drug abuse had impacted claimant's health in the past but opined that drug abuse did not cause claimant's pseudoseizures, ALJ did not properly support his conclusion that claimant's history of drug abuse was relevant to his determination	*Boiles v. Barnhart*, 395 F.3d 421 (7th Cir. 2005)	
DAA materiality conclusion "must be based on medical evidence, and not simply on pure speculation about the effects that drug and alcohol abuse have on a claimant's ability to work"	*Ambrosini v. Astrue,* 727 F.Supp.2d 414, 430 (W.D.Pa.2010)	
Regardless of state law authorizing the use of medical marijuana, Plaintiff must prove drug use is not a contributing factor to her disability	*Shipley v. Astrue,* No. CV-10-3003-CI, 2011 WL 3440032 at *8, fn. 6 (E.D. Wash. Aug. 8, 2011).	
Where no substantial evidence of		

current DAA after onset date, DAA materiality finding overturned and remanded for payment of benefits	*Lockhart v. Colvin*, Case No. 1:14-cv-00121-BAM (E.D.CA, Oct. 1, 2015)	
Legal Authorities	**Overview of Authorities**	**Recommended Evidence**
SSR 13-2p: (Effective date March 22, 2013) **Evaluating cases involving drug addiction and alcoholism (DAA) (rescinds and replaces SSR 82-60, Titles II & XVI)** **-implementing regulation 20 CFR §404.1535(b)(1) §416.935(b)(1)**	• A claimant shall not be considered disabled if alcoholism and/or drug addiction would be a contributing factor material to the determination that the individual is disabled, i.e., would the claimant continue to be disabled if he or she stopped using drugs and/or alcohol. i. SSA uses the Diagnostic and Statistical Manual (DSM) to define substance addiction as "maladaptive patterns of substance use that lead to clinically significant impairment or distress." ii. DAA does not include: o Fetal alcohol syndrome o Fetal cocaine exposure o Addiction to, or use of, prescription medications taken as prescribed, including methadone and narcotic pain medications o Nicotine related disorders • DAA evaluation process has 6 steps: 1) Does claimant have DAA? 2) Is the claimant disabled considering all impairments, including DAA? 3) Is DAA the only impairment? 4) Is the other impairment(s) disabling by itself while the	• Reports and records from physicians showing existence of other severe impairments • Specific statements from providers that claimant is disabled exclusive of DAA issues • organic psychological testing • MSS and Mental RFC forms (most claimant with DAA issues have significant underlying mental issues that are disabling) • 3rd party statements, records from detox centers, statements from AA/NA sponsors

	claimant is dependent upon or abusing drugs or alcohol? 5) Does the DAA cause of affect the claimant's medically determinable impairment(s)? 6) Would the other impairment(s) improve to the point of nondisability in the absence of DAA?	
SSR 82-59: Failure to Follow Prescribed Treatment **404.1530, 416.930** **404.1502, 416.902 404.1513 416.913 404.1520 416.920**	• Refusal to follow prescribed tx that would be expected to restore ability to work, may be justified when: 1) Tx was Rx by treating source (any licensed physician). NOTE: EFFECTIVE MARCH 27, 2017 THE MEDICAL EVIDENCE RULES WERE REVISED TO RECOGNIZE OPINIONS FROM Physician Assistants & Advanced Practice Registered Nurse or other licensed advanced practice nurse, among others. (See PART 404, Subpart J, §§ 404.906, 942; Subpart P, §§404.1502 - 1504; 1508, 1512-1513a; 1518-1519i, 1519n-1520, 1523; 1525, 1530, 1579, 1594, and the comparable Title XVI regulations). 2) Tx is contrary to teachings of the person's religion; 3) Cataract extraction for one eye is Rx but loss of visual efficiency in other eye is severe and cannot be corrected; 4) Fear of surgery is intense or extreme; 5) Cannot afford Tx which he/she is willing to accept and free resources are unavailable; 6) A licensed Tx source advised against Tx; 7) There is a high degree of risk because of the enormity/unusual nature of	• Treating physician, hospital, or clinic medical records • Proof of religion and its creeds • List of medical providers who refused to treat • Proof of ability to afford treatment or medication

	procedure (e.g., organ transplant, open heart surgery); 8) Tx involved amputation of an extremity (e.g, above the tarsal region); 9) The claimant is unable to work because of a condition for which major surgery was performed with unsuccessful results, and additional surgery is Rx for same impairment. • Before a determination denying a claim is made, claimant WILL BE INFORMED the claim will be denied for failure to undergo Tx, and afforded an opportunity to undergo the prescribed Tx or to show justifiable cause.	
SSR 13-1p **HALLEX I-2-1-60 Disqualification of Administrative Law Judges**	• An ALJ must not conduct a hearing if he or she is prejudiced or partial with respect to any party or has any interest in the matter pending for decision. • ALJ must be notified of objection at earliest opportunity. • If a claimant objects to an ALJ conducting the hearing in his or her case, but the ALJ decides before the hearing that the claimant's reasons for objecting do not warrant disqualification, the ALJ must: o advise the claimant in writing, setting forth the reasons for the decision; and, o note his or her refusal to disqualify himself or herself in the opening statement at the hearing as part of the procedural history of the case. • If the ALJ does not withdraw the claimant or other party to the hearing may, after the hearing, present objections to the Appeals	

	Council. • If, in conjunction with a request for review, the Appeals Council receives an allegation of ALJ unfairness, prejudice, partiality, or bias, the Appeals Council will review the claimant's allegations and hearing decision under the abuse of discretion standard. • Abuse of discretion = "erroneous and without any rational basis, or is clearly not justified under the particular circumstances of the case, such as where there has been an improper exercise, or a failure to exercise, administrative authority." • The Appeals Council relies solely on information in the administrative record in determining this issue • The sole remedy the Appeals Council may provide to the claimant is a decision or a remand for further administrative action on the particular claim for benefits under review. • Possible examples of allegations that the Appeals Council will refer to the Division of Quality Service include, "the ALJ is biased against claimants who receive workers compensation benefits or unemployment benefits" and "the ALJ shows prejudice toward women." • Claimant can also submit allegations and complaints directly to the Division of Quality Services. • In order for the Division of Quality Service to review or investigate a complaint, the complaint must be filed in writing by the claimant, another party to the hearing, the claimant's representative, someone	

	authorized to act on the claimant's or other party's behalf, or another individual who was present at the claimant's hearing (collectively, the complainant). • An individual may file a discrimination complaint alleging discrimination by an ALJ by using Form SSA-437-BK. • The discrimination complaint must be filed within 180 days of the alleged discriminatory action unless we find there is good cause for late filing. • Currently, SSA's Office of the General Counsel has the responsibility to investigate and decide complaints that individuals file under this process.	
The Rehabilitation Act of 1973, 29 U.S.C. § 701 (Pub.L. 93-112) **45 C.F.R. Part 85**	• Section 504 prohibits Federal agencies and programs that receive Federal funding from discriminating against individuals with disabilities. Part 85 specifies the actions SSA must take to ensure it does not discriminate against individuals with disabilities. • Part 85 requires SSA to evaluate its current policies and practices, including its programs, activities, and facilities, to ensure that the agency complies with Section 504 and 45 C.F.R. Part 85. • If a claimant believes that SSA, an SSA employee, an SSA contractor, or an agent of SSA discriminated against him or her, someone he or she knows, or a class of people in connection with an SSA program or activity, and he or she believes that the discrimination was based on race, color, national origin , religion, sex, sexual orientation, age, disability, or in retaliation for him or her having participated in a	The term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs.

	proceeding under this complaint process, he or she may file a complaint or have a representative file a complaint on your behalf. Form SSA-437-BK.	
20 C.F.R. §§ 404.940, 416.1440 Disqualification of ALJ if prejudiced, partial, or has interest in the case. **HALLEX I-2-1-24:** Handling Information submitted or associated in a claim(s) file about a person other than a party to the hearing **Putman v. Comm'r. Soc. Sec., No. 16-17223 (11th Cir. 3/29/2017)** **U.S. Const. amend. V** ("No person shall … be deprived of life, liberty, or property, without due process of law."). ***Ventura v. Shalala,*** 55 F.3d 900, 902 (3d Cir. 1995) (due process: impartial decision maker applied more strictly in administrative proceedings). ***Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.,*** 429 U.S. 252, 266 (1977).	• Objection to ALJ must be raised "at the earliest opportunity." • ALJ must consider objections and decide to proceed/withdraw, or if there is no withdrawal, after hearing present objection to AC. • *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.,* 429 U.S. 252, 266 (1977) allowed the use of "pattern" evidence to prove discriminatory intent.	• Evidence of prejudgment bias may include statements of the adjudicator or overt actions; use Excel spreadsheet tracking certain ALJ findings on DAA.) • Look at stats on prior ALJ findings in other decisions that show a <u>pattern</u> (obtain permission from other clients to use this pattern evidence. NOTE: HALLEX 1-2-1-24 says 3rd party information must be excluded; however 11th Circuit unpublished case of **Putman v. Comm'r. Soc. Sec., No. 16-17223**, indicates evidence of low stats in connection with other evidence can show bias
HALLEX I-3-1-25: Unfair Hearing Allegations: misconduct or bias; on- and	Administrative Procedure Act (5 U.S.C. § 556(b)) provides an agency shall make its determination part of the record and decision. Agency must audit the hearing record.	• Evidence of prejudgment bias may include statements of the adjudicator or overt actions; depositions or affidavits of former or current ODAR staff, & depositions or affidavits of attorneys or

off-the-record actions of ALJ. **5 U.S.C. § 556(b):** Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision **ABA Code of Judicial Conduct** has been used by the Merit Systems Protection Board (MSPB) as guidance.	HALLEX I-31-25; I-3-1-52. Off the record actions of unfair hearing may include intimidation, innuendo, improper attitude, inappropriate facial expression, etc. HALLEX I-3-1-25. An analyst must audit entire hearing recordings, make notes, and place the notes in the appeals file. HALLEX I-3-1-25. ABA Code of Judicial Conduct has been used by the Merit Systems Protection Board (MSPB) as guidance in determining whether there is good cause to impose disciplinary actions. See *In re Chocallo*, 1 M.S.P.R. 605, 653 (1980), *aff'd,* No. 801053 (D.D.C. Oct. 10, 1980), *aff'd in part, vacated and remanded in part on other grounds*, 673 F.2d 551 (D.C. Cir. 1982) (unpublished opinion), *cert. denied*, 459 U.S. 857 (1982). The Board applied, by analogy, the standards in Canon 3 of the Code—A Judge Should Perform the Duties of His Office Impartially and Diligently. See 5 U.S.C. § 7521 (actions against ALJs, as determined by MSPB). **Note:** Complaints regarding ALJs can be filed with the Chief ALJ's office. Refer to ssa.gov/pubs/10071.html	reps; • NOTE: HALLEX 1-2-1-24 says 3rd party information must be excluded; however 11th Circuit unpublished case of **Putman v. Comm'r. Soc. Sec., No. 16-17223**, indicates evidence of low stats in connection with other evidence can show bias
Marijuana (Cannabis)	Law	Tips
Controlled Substances Act of 1970.	It is unlawful, under the Controlled Substances Act of 1970, to knowingly or intentionally "manufacture, distribute, dispense, or possess a controlled substance,…" 20 U.S.C.§ 841(a)(1). ***Gonzales v. Raich*,** 545 U.S. 1, 26-29(2005). The CSA, pertaining to marijuana, is not unconstitutional. Congress has plenary power under	Generally, the Federal Law (CSA) is not being enforced when claimants are authorized under State medical marijuana laws to use marijuana. The Consolidated Appropriations Act (CAA), Pub. L. No. 114-113, 129 Stat. 2242, 2332-33 (2015), prohibits the DOJ to use federal funds to prosecute certain State law authorized marijuana users. The Dept. of Justice has issued Guidance Memoranda about their prosecutory priorities.

	the Commerce Clause and authority under the Supremacy Clause to prohibit use of marijuana . If there is a conflict between federal and state law, federal law generally prevails. Under the CSA Marijuana and cannabis products are considered "hallucinogens" and are Schedule I controlled substances, equivalent to heroin in that they both have a high potential for abuse. Sentences of 5-40 years plus fines may result for a first offense. Possession sentences could be up to 1 year and a fine of $1,000 for the first offense. 21 U.S.C. §§812, 844(a). ABA Model Rules of Prof'l Conduct, Rule 1.2(d), states: A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of a proposed course of conduct or assist a client to make a good faith effort to determine the scope…or application of the law. HALLEX I-1-3-9A states ODAR employees, including ALJs, must refer a matter to the Office of the Inspector General (OIG) when they suspect violation of federal laws. If the violation is unrelated to the merits of the case, the ALJ will avoid initiating inquiry during the hearing. However, after the hearing, the ALJ will refer the criminal matter to OIG and notify management.	
Rules of Prof'l Conduct ALJs' Duties		
The future of the Federal enforcement policy to avoid using funds to challenge certain State laws on marijuana is unclear	See *United States of Am. v. Marin All. for Med. Marijuana*, 139 F. Supp. 3d 1039, 1040 (N.D. Cal. 2015), *appeal dismissed* (Apr. 12, 2016**)** (interpreting § 538 to preclude enforcement of a permanent	• In accordance with DOJ guidance and the directives of the CAA, at a minimum be in compliance with State Marijuana Laws. • Establish ongoing treatment with a State authorized medical marijuana physician who is qualified to

in States that legalize marijuana. Attorney General Jeff Sessions may upend the policy against federal prosecution of state-regulated marijuana. See Exs. A-D attached include the Deputy Attorney General Ogden Memorandum of October 19,2009, & Deputy Attorney General Cole Memoranda of June 29, 2011, August 29,2013 & February 14, 2014, consisting of Dept. of Justice guidance to U.S. Attorneys not to prosecute certain State law authorized users of marijuana for medical use.	injunction prohibiting distribution of medical marijuana by a dispensary to the extent it complied with the State law). Congress enacted § 542 of the Consolidated Appropriations Act (CAA), 2016, Pub. L. No. 114-113, 129 Stat. 2242, 2332-33 (2015), which "prohibits DOJ from spending money on actions that prevent the Medical Marijuana States giving practical effect to their state laws that authorize the use, distribution, possession, or cultivation of medical marijuana." *U.S.v. McIntosh, 833 F.3d 1163, 1176-78 (9th Cir. Aug. 16, 2016)* (holding that "at a minimum, § 542 prohibits DOJ from spending funds from relevant appropriations acts for the prosecution of individuals who engaged in conduct authorized by the State Medical Marijuana Laws and who fully complied with such laws" and "prohibits the Department of Justice from preventing the implementation of the Medical Marijuana States' laws or sets of rules and only those rules that authorize medical marijuana use.") This case was based on a separation-of-powers provision of the constitution. *See Exs. A-D attached which include:* • Memorandum from Deputy Attorney General David W. Ogden, Oct. 19, 2009, *text at* http://tinyurl.com/nry8vtv; • Memorandum from Deputy Attorney General James M. Cole, June 29, 2011, *text*	prescribe marijuana. • Obtain a State authorized medical marijuana ID card. • Possess only the amounts authorized under State medical marijuana laws. • Do not divert marijuana from states where it is legal under state law in some form to other states. • Do not drive while under the influence of marijuana. • Do not use marijuana on Federal property.

	at http://tinyurl.com/ogg2owq; • Memorandum from Deputy Attorney General James M. Cole, Aug. 29, 2013, *text at* http://tinyurl.com/nrc9ur8 (collectively, reflecting Department of Justice's shifting priorities regarding enforcement of the Controlled Substances Act and expressing varying degrees of deference to states engaged in state regulation of marijuana); P.L. 113-235, § 538 (2014); P.L. 114-113, § 542 (2015) (collectively, denying budget funds to the U.S. Dept. of Justice for actions that would "prevent [specific] states from implementing their own State laws" regulating the cultivation and distribution of medical marijuana); • Memorandum from Deputy Attorney General James M. Cole, dated February 14,2014, addressing the need to prosecute under the money laundering statutes (18 U.S.C. §§§1956, 1957, & 1960). See *U.S. v. Marin Alliance for Medical Marijuana*, 139 F.Supp.3d 1039, 2015 WL 6123062 (N.D.Ca. Oct. 19, 2015) (interpreting Congressional legislation cited above); also see Solicitor General's brief in *States of Nebraska and Oklahoma v. State of Colorado,* U.S. Sup. Ct. Docket No. 22O144 ORG, *text at* http://tinyurl.com/hslwegl (urging U.S. Supreme Court to not entertain a suit against Colorado by neighboring states, where the plaintiff states argued that the federal Controlled Substances Act precluded state regulation of marijuana pursuant to the	

	Constitution's Supremacy Clause).	
Irrelevancy of Marijuana	Marijuana is irrelevant if it has little or no effect on the cardiac impairments. *Winebarger v. Berryhill*, 2017 WL 1013298 (D. Idaho, Mar. 15, 2017)	• Obtain medical source opinions from treating physicians regarding the relevancy of marijuana use.
Marijuana therapy is conservative treatment	***Monti v. Comm'r Soc.Sec. Admin.,*** 2014 WL 1679919 (D.Oregon, April 28, 2014). Medical marijuana is a conservative course of treatment that sufficiently controlled the back pain and therefore it is not as disabling as alleged. Claimant had a medical marijuana card prescribed by his doctor.	• Investigate the extent, in terms of time, that the back pain is controlled. Is it for minutes or hours, or is it days or months.
Not following treatment regime of medical marijuana was used by ALJ to show pain was not as severe as alleged.	***Lester-Mahaffey v. Comm'r Soc. Sec.*** 2017 WL 77421 (D.Oregon, January 9, 2017)	• Advise claimant to follow treatment regimes or to provide justifiable cause for not doing so under 20 C.F.R.§1530 & SSR 82-59
Credibility	***Riley v. Astrue,*** No. C11-5318-TSZ-MAT, 2012 WL 628540, at *10 (W.D.Wash. February 7, 2012): "Because plaintiff had medical authorization to possess and use medical marijuana for medical purposes, the ALJ's conclusion that plaintiff's marijuana use negatively impacts his credibility is rejected.". ***Payne-Hoppe v. Commr. Of Soc.Sec.,*** 1:11-CV-0097, 2012 WL 395472, at *14 (S.D. Ohio, Feb.7,2012; R & R adopted 2012 WL 709274 (S.D.Ohio, March 5, 2012), holding failure to follow doctor's advice to stop smoking marijuana supports unfavorable credibility determination.	• Introduce prescription evidence, as well as identification card, and applicable State marijuana laws.
Impairment related work expenses (IRWE)	POMS DI 10410.010. Prescription drugs that are a violation of federal law (e.g., medical marijuana) cannot be deducted as an IRWE even if allowed by State Law. (See 20 CFR 404.1576, 416.976)	