

## STEP ONE: Substantial Gainful Activity (SGA)

Ruling	Overview of Ruling	Suggested Hearing Evidence
SSR 83-33: Determining Whether Work is Substantial Gainful Activity -- Employees  404.1571-1576;416.971-976	<ul style="list-style-type: none"> <li>• SGA:</li> <li>• "Significant" physical/mental activity; in the "kind" of work for pay/profit; "significant activities" that are "useful", have "economic value".</li> <li>• "Substantial" work can be part-time, paid less, have less responsibility.</li> <li>• "Gainful": a "kind" of work for pay (cash/in-kind).</li> <li>• Self-care, household task, training, hobbies, are not SGA.</li> <li>• Deduct subsidies &amp; impairment-related work expenses (IRWE) from gross earnings</li> <li>• Earnings Guidelines (also see POMS: DI 10501.015 &amp; I0505.010): Do not exceed in 2011 – an average of \$1000/mo; and if blind \$1640/mo.</li> <li>• Services: at or less than guidelines amounts can be SGA when earnings are <i>controlled</i> by claimant; comparable to unimpaired workers in time, energy, skill, responsibility; or worth guideline amounts, except if "sheltered" work, or an Unsuccessful Work Attempt (UWA).</li> <li>• <i>Subsidy</i>: paid more than value of work. Cf. time, energy, skills, &amp; responsibility, to work by unimpaired; e.g., less productivity, more supervision/assistance for simple tasks; slowness, inefficiency; sheltered work; government training program</li> </ul>	<ul style="list-style-type: none"> <li>• Employer or supervisor's opinion of value of employee's work</li> <li>• Wage Reports</li> <li>• IRWE reports (pharmacy bills, Med. Device/Equipment, &amp;/or Transportation expenses)</li> <li>• Interrogatories to employer</li> </ul>
SSR 05-2: Determination Of Substantial Gainful Activity If Substantial Work Activity is	<ul style="list-style-type: none"> <li>• Brief unsustained work</li> <li>• Forced to stop/reduce below SGA</li> <li>• Significant break in <i>continuity</i> of work before UWA: work reduced (limited) to non-SGA due to impairment/removal of essential special conditions; before onset work is discontinued, reduced (limited) to</li> </ul>	<ul style="list-style-type: none"> <li>• Monthly/Quarterly Wage Reports; absence/sick time reports; doctors' appointment records; remission medical</li> </ul>

<p>Discontinued Or Reduced— Unsuccessful Work Attempt</p> <p>404.1574(a)(1); 416.974(a)(1)</p>	<p>non-SGA due to retirement, or never engaged in work activity. e.g., no work for 30 consecutive days OR changed to other type of work/employer</p> <ul style="list-style-type: none"> <li>• Generally n/a to re-entitlement &amp; reinstatement periods</li> <li>• In 3 months or less: reduce to non-SGA due to impairment/removal of essential special conditions</li> <li>• Between 3 &amp; 6 months: reduce to non-SGA due to impairment/removal of essential special conditions PLUS: frequent absences; unsatisfactory work; work done in remission period; OR under “special conditions”</li> <li>• Special Conditions: co-worker assistance; irregular hours, frequent rest periods; special equipment; accommodated work; help getting to/from work; lower productivity than others; work obtained through family</li> <li>• IRWE: deduct from gross wages – cost attendant care, Med. Devices/equipment/prostheses, drugs if needed to enable work activity; paid for transportation.</li> </ul>	<p>records; supervisor work opinion reports, evaluations for special conditions; IRWE reports/pharmacy records; travel/mileage affidavits; physician opinion on work stoppage/reduction.</p>
<p>SSR 84-26: Deducting Impairment-Related Work Expenses From Earnings in Determinations as to Substantial Gainful Activity Under Titles II And XVI and as to Countable Earned Income Under Title XVI</p> <p>404.1576, 416.976</p>	<ul style="list-style-type: none"> <li>• Deduct from gross earnings within “reasonable limits”, IRWE <b><i>needed in order to work</i></b>: attendant care (bathing, toileting, dressing, cooking, eating, communicating, traveling to/from work), medical devices (e.g., wheelchair, respirator, hemodialysis equipment, breathing machine, pacemaker, inhalator, nebulizer, traction, braces), equipment (modified vehicles), prostheses, similar items (dog guides), similar services</li> <li>• Do not deduct routine drugs/services unless designed to control (reduce symptoms) the disability in order to work (e.g., seizure meds; chemotherapy, corrective surgery, antidepressant meds)</li> <li>• Deduct diagnostic procedures related to control impairments (e.g., brain scans, electroencephalograms)</li> <li>• Cost must be paid by claimant</li> <li>• Family member payments for attendant care, not deductible unless it results in economic loss to other employment</li> <li>• Deduct work-related equipment (one-handed typewriters, typing aids, page-turning devices, sensory/vision aids, special tools to accommodate impairments, air cleaners, exercycles Rx by doctors).</li> <li>• Residential modifications (ramps, railings, pathways); work-at-home modifications (doorway enlargement;</li> </ul>	<ul style="list-style-type: none"> <li>• Claimant’s Proof of purchase/lease of all impairment related work expenses, e.g., cancelled checks, receipts, verification by suppliers, claimant statements of attendant’s duties, receipts for travel costs, &amp;/or mileage.</li> </ul>

	<p>workspace modification to aid in dexterity)</p> <ul style="list-style-type: none"> <li>• Cost of IRWE within “reasonable limits” can be what Medicare allows.</li> </ul>	
SSR 83-35: Averaging of Earnings in Determining Whether Work is Substantial Gainful Activity (404.1574a, 416.974a)	<ul style="list-style-type: none"> <li>• Average over entire/actual period of work if continuous w/o significant change in work patterns/earnings</li> <li>• Average over separate period or work if SGA levels change. Ave. for each period if a different SGA level applies.</li> </ul>	<ul style="list-style-type: none"> <li>• Employer wage records.</li> <li>• SGA levels (see POMS DI 10501.015)</li> </ul>
SSR 83-34: Determining Whether Work is Substantial Gainful Activity – Self-Employed Persons  404.1575, 416.975	<p>Three Tests:</p> <ul style="list-style-type: none"> <li>• <b>TEST 1 <i>Significant Services &amp; Substantial Income</i></b> <ul style="list-style-type: none"> <li>○ <i>Significant Services:</i></li> <li>○ <u>One Person:</u> If no substantial income, use tests (2) or (3) described below.</li> <li>○ <u>More than one person:</u> SGA found if owner/partner has significant services, i.e., contributes more than half the total time required for management, OR more than 45 hours/mo.</li> <li>○ <i>Substantial income:</i>(a)use SGA Earnings Guidelines; (b) use countable income averages more/mo. than earnings guidelines -- based on productivity: determine net income (gross income minus expenses,deduct unpaid help, IRWE, unincurred bus. expenses even if paid by 3<sup>rd</sup> party); (c) compare livelihood of person before disability up to 5 yrs., OR, if inconclusive, use community standard of livelihood of unimpaired persons’ similar businesses.</li> </ul> </li> <li>• <b>TEST 2 &amp; 3 <i>Comparability of Work &amp; Worth of Work.</i></b> <ul style="list-style-type: none"> <li>○ Use these tests if no SGA (based on significant services &amp; substantial income).</li> <li>○ Work activity comparable to unimpaired’s in similar local businesses (based on hours, skills, energy, output, efficiency, duties, responsibility)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Obtain tax returns up to 5 years prior. Local labor market reports on wages; account of services rendered by others &amp; pro-rata value if p/t; IRWE records; names of 3<sup>rd</sup> parties paying expenses; chamber of commerce records of local businesses. Records of hours, skills, energy, output, efficiency, duties, responsibility. Contact reports from knowledgeable people who observed self-employed person’s work activity</li> </ul>
SSR 94-1c: -- Disability -- Illegal Activity as Substantial Gainful Activity	<ul style="list-style-type: none"> <li>• It is SGA to steal/panhandle for drug expenses worth \$5,600/month. No need to deduct daily cost of \$200-300/day to support habitual heroine/cocaine use when it is not related to a reduction/elimination of symptoms and it only exacerbates the medical condition. Conclusive evidence required to find SGA. General descriptions result in non-SGA findings (see</li> </ul>	

## STEP TWO: Severe Impairment

Ruling	Overview of Ruling	Suggested Hearing Evidence
SSR 85-28: Medical Impairments That Are Not Severe  404.1520-1523, 416.920-923	<ul style="list-style-type: none"> <li>• "Basic work activities" are the "<b><i>abilities and aptitudes</i></b>" necessary to do most jobs.</li> <li>• If evidence shows only a slight abnormality(ies) with no more than a minimal effect on ability to do basic work activities, but evidence shows the claimant cannot perform his/her past relevant work because of the unique features of that work, <i>a denial at the "not severe" step is inappropriate.</i></li> <li>• Impairment is not severe if it has no more than a minimal effect on claimant's ability to perform <b>basic work activities</b></li> <li>• Examples of basic work activities: walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling; seeing, hearing, and speaking; understanding, carrying out, and remembering simple instructions; use of judgment, responding appropriately to supervision, coworkers, and usual work situations; and dealing with changes in a routine work setting.</li> <li>• Combination of impairments must be considered: Several non severe impairments can combine to produce a severe impairment.</li> <li>• Step 2 denial can only occur after evaluation of each impairment and combination of impairment and it has been found that the impairment(s) do not have more than a minimal effect on claimant's physical or mental abilities to perform basic work.</li> <li>• If the ALJ is unclear about the effects of claimant's impairments on his ability to do basic work, the sequential evaluation process must continue.</li> </ul>	<ul style="list-style-type: none"> <li>• Medical Source Statement, Mental and/or Physical RFC; other agency evaluations, such as Vocational Rehabilitation, Workers' Compensation and VA decisions</li> </ul>
SSR 96-3p: Considering Allegations Of Pain And Other Symptoms In Determining Whether A Medically	<ul style="list-style-type: none"> <li>• Symptom-related limitations and restrictions must be considered, <i>provided the individual has a medically determinable impairment(s) that could reasonably be expected to produce the symptoms.</i> If the adjudicator finds the symptoms cause limitations/restrictions having more than a minimal effect on ability to do basic work activities, the ALJ must find the impairment(s) is severe <i>even if the objective medical</i></li> </ul>	<ul style="list-style-type: none"> <li>• Medical Source Statements (MSS), RFC and Mental RFC forms, medical records</li> <li>• Work supervisor opinions, school records, employment records, counselor's</li> </ul>

<p>Determinable Impairment Is Severe</p> <p>404.1529, 416.929</p>	<p><i>evidence would not in itself establish that the impairment is severe.</i></p> <ul style="list-style-type: none"> <li>• Single or combination of medically determinable impairment(s) that meets the duration requirement.</li> <li>• The symptoms of the impairment(s) will not be considered unless: <ul style="list-style-type: none"> <li>○ A: The original impairment has been established by objective medical evidence (signs and lab findings) AND</li> <li>○ B: This impairment could reasonably be expected to produce the symptoms.</li> </ul> </li> <li>• Once A and B are established, the intensity, persistence and limiting effects of the symptoms must be considered in determining whether or not the symptom is severe</li> <li>• Impairment must significantly limit an individual's ability to perform basic work activities (SSR 85-28)(20 CFR 404.1521(b)).</li> <li>• ALJ must assess the functionally limiting effects of <i>each</i> alleged impairment on an individual's ability to do basic work</li> <li>• The impairment(s) must result in significant limitations, not a slight abnormality.</li> <li>• Will be considered slight if the impairment(s) only has a minimal effect on the ability to do basic work activities</li> </ul>	<p>recommendations for structured work, testimony from friends, co-workers, teachers, etc. vocational expert opinions</p>
<p>SSR 96-4p: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations</p> <p>404.1508, 416.908, 404.1528, 416.928, 404.1529, 416.929</p>	<ul style="list-style-type: none"> <li>• Need to establish the existence of a medically determinable physical or mental impairment.</li> <li>• The impairment must be an abnormality that can be shown by medically acceptable clinical and laboratory diagnostic techniques</li> <li>• <b>No symptom or combination of symptoms</b> by itself can be considered a medically determinable impairment.</li> <li>• Exertional limitations effect the 7 strength demands of working: (1) sitting, (2) standing, (3) walking, (4) lifting, (5) carrying, (6) pushing, and (7) pulling</li> <li>• Nonexertionals include all limitations and restrictions that are not one of the 7 strength demands and mental limitations.</li> <li>• <b>Symptoms are not exertional or nonexertional</b>, but, the symptoms result in the exertional or nonexertional limitations.</li> <li>• [EXAMPLE: DEGENERATIVE DISC DISEASE CAN BE A SEVERE IMPAIRMENT THAT RESULTS IN BACK PAIN, WHICH IS A SYMPTOM. THIS SYMPTOM, I.E., PAIN, CAN LIMIT ONE'S ABILITY TO LIFT (EXERTIONAL) OR</li> </ul>	<ul style="list-style-type: none"> <li>• All treating source medical records, including hospitals, chiropractors, mental health facilities. Remember to include vision, hearing, dental clinics, schools, IEP records.</li> </ul>

	CONCENTRATE (NONEXERTIONAL).] Symptoms such as pain, fatigue, shortness of breath, weakness, nervousness may cause exertional and nonexertional limitations/restrictions.	
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STEP THREE: Meet or Equal a Listing Impairment		
Ruling	Overview of Ruling	Suggested Hearing Evidence
Meet a Listing		
SSR 96-2p: Giving Controlling Weight to Treating Source Medical Opinions  404.1502, 416.902, 404.1527, 416.927	<ul style="list-style-type: none"> <li>• Must provide valid reasons for rejecting treating physician's opinions;</li> <li>• Treating source opinion on a listing must be considered</li> <li>• Treating source medical opinion must be well supported by medically acceptable clinical and laboratory diagnostic techniques</li> <li>• If treating source's medical opinion is well-supported and not inconsistent with other substantial evidence in the case record, it must be given controlling weight; i.e., IT MUST BE ADOPTED.</li> <li>• Even if treating source's medical opinion is well supported, controlling weight may not be given to the opinion unless it also is "not inconsistent" with the other substantial evidence in the case record.</li> <li>• The judgment whether a treating source's medical opinion is well-supported and not inconsistent with the other substantial evidence in the case record requires an understanding of the clinical signs and laboratory findings and what they signify.</li> <li>• A finding that a treating source's medical opinion is not entitled to controlling weight does not mean that the opinion is rejected. It may still be entitled to deference and adopted by the adjudicator</li> </ul>	<ul style="list-style-type: none"> <li>• Medical source statement and residual functional capacity forms are key; office notes of doctors, objective medical evidence (MRIs, CT scans, range of motion testing, functional capacity evaluation)</li> </ul>
SSR 96-5p: Medical Source Opinions on Issues Reserved to the Commissioner  404.1520(e) 419.920(e)	<ul style="list-style-type: none"> <li>• Treating source opinions on issues reserved to the Commissioner are never entitled to controlling weight or special significance. The following are examples of such issues. <ul style="list-style-type: none"> <li>○ Whether an individual's impairment(s) meets or is equivalent in severity to the requirements of any impairments(s) in the listings;</li> <li>○ What an individual's RFC is;</li> <li>○ Whether an individual's RFC prevents him or her from doing past relevant work;</li> <li>○ How the vocational factors of age, education, and work experience apply; and</li> <li>○ Whether an individual is disabled under the Act</li> </ul> </li> <li>• Adjudicators must always carefully consider medical</li> </ul>	<ul style="list-style-type: none"> <li>• Medical source statement and residual functional capacity forms with supporting treatment records are key; objective medical evidence (MRIs, CT scans, range of motion testing, functional capacity evaluation)</li> </ul>



	<p>source opinions about any issue, even those reserved to the Commissioner</p> <ul style="list-style-type: none"> <li>• Adjudicator must make every effort to recontact a treating source if opinion is unclear and must explain the consideration given to a treating source's opinion</li> </ul>	
<p>SSR 06-03p: Considering Opinions and Other Evidence from Sources Who Are Not "Acceptable Medical Sources" in Disability Claims; Considering Decisions on Disability by Other Governmental and Non-governmental Agencies</p> <p>404.1513, 416.913</p>	<ul style="list-style-type: none"> <li>• "Medical sources" refers to both "acceptable medical sources" and other healthcare providers</li> <li>• Acceptable medical sources are: <ul style="list-style-type: none"> <li>○ Licensed physicians (medical or osteopathic doctors);</li> <li>○ Licensed or certified psychologists. Included are school psychologists, or other licensed or certified individuals with other titles who perform the same function as a school psychologist in a school setting, for purposes of establishing mental retardation, learning disabilities, and borderline intellectual functioning only;</li> <li>○ Licensed optometrists, for the measurement of visual acuity and visual fields (for claims under title II, we may need a report from a physician to determine other aspects of eye disease);</li> <li>○ Licensed podiatrists, for purposes of establishing impairments of the foot, or foot and ankle only, depending on whether the State in which the podiatrist practices permits the practice of podiatry on the foot only, or the foot and ankle; and</li> <li>○ Qualified speech-language pathologists, for purposes of establishing speech or language impairments only</li> </ul> </li> <li>• Need an "acceptable medical source" to establish a "medically determinable impairment".</li> <li>• Need "acceptable medical sources for "treating sources" entitled to controlling weight.</li> <li>• "Other sources" of evidence may be used to show SEVERITY of impairment(s) and how it affects ability to FUNCTION. These are: nurse practitioners, physician assistants, licensed clinical social workers, naturopaths, chiropractors, audiologists, and therapists; AND "non-medical sources", e.g., educational personnel, school teachers, counselors, early intervention teams, developmental center workers, daycare center workers, spouses, parents, caregivers, siblings, relatives, friends, neighbors, clergy, employers, public and private social welfare personnel, or rehab counselors.</li> </ul>	<ul style="list-style-type: none"> <li>• Other sources' medical source statements</li> <li>• School and work records, police records, welfare agencies, statements from friends, family, co-workers, neighbors, teachers, clergy</li> </ul>

	<ul style="list-style-type: none"> <li>• A factor to consider when evaluating opinions and other evidence also includes the “amount of understanding of the disability program and evidentiary requirements that the “acceptable medical source” has and his/her familiarity with “other” information in the case record.</li> <li>• Because regulations 404.1527, 416.927 require consideration of ANY OTHER factors tending to support or contradict a medical opinion, information from “other sources” (medical and non-medical sources) is important. All evidence must be considered in every case.</li> <li>• Weight given to “<b>other sources</b>” depends on how long they knew/saw the claimant; consistency of opinion with other evidence; degree of relevancy; explanation of opinion; source of specialty/expertise related to the impairment; other factors supporting or refuting the opinion.</li> <li>• Opinions from medical source not an acceptable medical source may outweigh the acceptable source, if the source has seen the patient longer, gave a better explanation, provided better supporting evidence. This does not conflict with the treating source rules in 404.1527(d)(2), 416.927(d)(2), SSR 96-2p.</li> </ul>	
<b>Equal a Listing</b>		
SSR 96-6p: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence  404.1512 (b) (6)-	<ul style="list-style-type: none"> <li>• When an ALJ finds an impairment is NOT equivalent to a listing, the requirement to receive expert opinion evidence MAY be satisfied by State agency medical or psychological consultants or program physician. HOWEVER, an ALJ MUST obtain an updated medical opinion from a MEDICAL EXPERT when: (I) no additional medical evidence is received, but the ALJ/Appeals Council believes the symptoms, signs, and laboratory findings SUGGEST that a judgment of equivalence may be reasonably made, OR</li> <li>• When additional medical evidence (from any source) IS received and the ALJ/Appeals Council believes that evidence may change the State agency medical or psychological consultant’s findings that the impairment is not equivalent in severity.</li> <li>• That does not mean the ALJ must accept the findings of the medical expert, it only means, the ALJ must consider all medical opinions and explain the weight given to those opinions as set forth in 404.1527 &amp; 416.927.</li> </ul>	<ul style="list-style-type: none"> <li>• MSS/RFC and Mental RFC to counter any damaging state agency opinions with supporting documents. Search internet to make sure agency consultant is qualified to render opinion – same specialty, etc.</li> </ul>



(8), 416.912(b) (6)-(8)		
<p>SSR 02-1p: Evaluation of Obesity</p> <p>See listings, sections 1.00Q, 3.001, and 4.00F</p>	<ul style="list-style-type: none"> <li>• <i>"Obesity" is considered a "medically determinable impairment";</i></li> <li>• NIH medical criteria establish obesity in three levels: Level 1 with a body mass index (BMI) of 30.0-34.9; Level II BMI of 35.0-39.9, Level III, extreme obesity, with BMI greater than or equal to 40.</li> <li>• Treatment is often unsuccessful. Therefore, SSA will "rarely use failure to follow prescribed treatment" for obesity to deny or cease benefits.</li> <li>• Obesity commonly leads to and often complicates chronic diseases of cardiovascular, respiratory, &amp; musculoskeletal body systems. Obesity increases the risk of developing impairments such as Type II diabetes, gall bladder disease, hypertension, heart disease, peripheral vascular disease, dyslipidemia, stroke, osteoarthritis, and sleep apnea. It may cause or contribute to mental impairments such as depression.</li> <li>• ALJ is required to accept a diagnosis of obesity given by a treating source or consulting examiner in the absence of record evidence to the contrary.</li> <li>• If obesity is "severe", SSA can find it meets or equals a listing. E.g., obesity, by itself, is medically equivalent as it may substitute for the major dysfunction of a joint(s) due to ANY CAUSE, with the involvement of one major peripheral weight-bearing joint in listing 1.02A or 101.02A. Also, equivalency may be found with multiple impairments, including obesity, not one of which meets/equals a listing, but the combination is equivalent in severity to a listed impairment, e.g., obesity affecting the cardiovascular,&amp;/or respiratory systems.</li> <li>• Deletion of Listing 9.09 does not affect claims for benefits that were approved BEFORE October 25, 1999.</li> </ul>	<ul style="list-style-type: none"> <li>• Body Mass Index (BMI) of 30.0 or above is obese. Above 40 is extreme and considered greatest risk for obesity related impairments. Medical records demonstrating height and weight are key, along with records showing joint pain, trouble breathing, HTN, sleep apnea, etc.</li> </ul>
<p>SSR 02-2p: Evaluation of Interstitial Cystitis</p> <p>404.1522, 416.922, 404.1523 416.923</p>	<ul style="list-style-type: none"> <li>• Interstitial Cystitis(IC) is a complex chronic bladder disorder, when accompanied by appropriate symptoms, signs, and laboratory findings, it is a medically determinable impairment that if severe, can meet or equal a listing of impairments. E.g., IC may increase the severity of coexisting or related impairments, including mental disorders, to the extent the combination of impairments meets a listing. Also, true in reverse: coexisting/related impairments may increase the severity of IC.</li> </ul>	<ul style="list-style-type: none"> <li>• Physical examination and treatment records showing urinary frequency, pain, tenderness in the bladder or suprapubic area</li> <li>• Diagnostic testing including urinalysis, cystoscopy, biopsy of</li> </ul>

	<ul style="list-style-type: none"> <li>Occurs in women 10 times more often than in men</li> <li>Can be associated with irritable bowel syndrome, inflammatory bowel disease, or systemic lupus erythematosus.</li> <li>There is no definitive test to diagnose IC; the diagnosis is one of exclusion. SSA generally relies on the physician's judgment who made the diagnosis</li> </ul>	<p>bladder wall</p> <ul style="list-style-type: none"> <li>Opinion evidence and supporting records from diagnosing physician are key.</li> </ul>
<p>SSR 03-2p: Evaluating Cases Involving Reflex Sympathetic Dystrophy Syndrome/ Complex Regional Pain Syndrome</p> <p>404.1523, 416.923, 404.1526-1530, 416.926-930</p>	<ul style="list-style-type: none"> <li>RSDS/CRPS is a medically determinable impairment when based on <ul style="list-style-type: none"> <li>(1) medical signs : swelling, autonomic instability; changes in skin color texture, temperature, sweating; abnormal hair/nail growth; osteoporosis; involuntary movements of affected region; abnormal pilomotor erection (gooseflesh);</li> <li>(2) symptoms (c/o pain out of proportion to severity of the precipitant), extreme sensitivity to touch, pressure, sensations of heat/cold,</li> <li>(3) laboratory findings</li> </ul> </li> <li>When longitudinal treatment records show persistent limiting pain where one or more abnormal signs were documented, it can be reliably determined that RSDS/CRPS is a medically determinable impairment.</li> <li>When alleged onset is less than 12 months prior to adjudication, it must be projected whether the impairment will likely exist at the end of 12 months.</li> <li>Consideration of psychological manifestations may result in meeting or equaling the severity of a mental listing. Recognizes that pain caused by RSDS may affect ability to maintain attention and concentration.</li> </ul>	<ul style="list-style-type: none"> <li>Treating physician opinions, office notes, lab findings, hospital records of precipitating injury, accident reports, statements from third parties, photographs of skin color changes</li> <li>Completed mental RFC and mental impairment listing questionnaire</li> </ul>
<p>SSR 12-2p Evaluation of Fibromyalgia</p> <p>404.1520, 404.1520a, 404.1522-1523, 416.920 419.920a</p>	<ul style="list-style-type: none"> <li>Fibromyalgia (FM) is a complex medical condition characterized primarily by widespread pain in the joints, muscles, tendons, or nearby soft tissues that has persisted for at least 3 months.</li> <li>Two different sets of criteria for diagnosing FM: Two different sets of criteria for diagnosis A) 1990 American College of Rheumatology (ACR) Criteria for Classification of Fibromyalgia, and B) 2010 ACR Preliminary Diagnostic Criteria</li> <li>ACR Criteria: (1) hx of widespread pain; (2) at least 11 positive tender points; (3) evidence that other disorders were excluded.</li> <li>2010 ACR Preliminary Diagnostic Criteria 2010 ACR Criteria: (1) hx of widespread pain; (2) repeated manifestations of 6 or more FM symptoms, signs, or co-occurring conditions; (3) evidence that other disorders</li> </ul>	<p>-MSS Statements, Mental RFC forms and opinions from physicians (preferably a rheumatologist), psychologists and/or psychiatrists</p> <p>-3<sup>rd</sup> party statements from neighbors, friends, relatives, clergy, past employers, rehabilitation counselors, teachers and/or school records</p> <p>-Statements from SSA personnel who interviewed claimant</p>

	were excluded	
<p>SSR 14-1p: Evaluating Cases Involving Chronic Fatigue Syndrome (CFS) (Rescinds and replaces SSR 99- 2p)</p> <p>404.1520, 404.1520a, 416.920, 416.920a, 404.1522-1523, 416.922-923</p>	<ul style="list-style-type: none"> <li>Chronic Fatigue Syndrome (CFS) is a medically determinable impairment when accompanied by <i>medical signs</i> (palpably swollen/tender lymph nodes; non-exudative pharyngitis, muscle tenderness, and positive tender points), <i>laboratory findings</i> (absence of definitive testing does not preclude reliance on: elevated antibody titer to EBV capsid antigen equal to or great than 1:5120, or early antigen equal to or greater than 1:640; abnormal magnetic resonance imaging brain scan; neurally mediated hypotension from tilt table testing or similar test; abnormal exercise stress test or sleep study), and when severe it can meet or equal a listing of impairments.</li> <li>There is considerable overlap between CFS and Fibromyalgia. Claimants with CFS who have tender points have a medically determinable impairment. However, even in cases where the claimant does not have the tender points sufficient to establish fibromyalgia (if it fulfills the criteria from the American College of Rheumatology), they will still be found to have a medically determinable impairment. Thus, it is established that fibromyalgia which is documented by tender points, is a medically determinable impairment.</li> <li>CFS is a systemic disorder with complex of symptoms. Criteria developed by Centers for Disease Control and Prevention (CDC), that requires <i>four or more of a specified list of symptoms</i>. Characterized by prolonged fatigue that lasts 6 months or more and results in substantial reduction in previous levels of occupational, education, social, or personal activities”</li> <li>The symptom list is as follows: (1) postexertional malaise lasting more than 24 hours; (2) self-reported impairment in short-term memory or concentration severe enough to cause substantial reduction in previous levels of occupational, education, social, or personal activities; (3) sore throat; (4) tender cervical or axillary lymph nodes; (5) muscle pain; (6) multi-joint pain w/o joint swelling or redness; (7) headaches of a new type, pattern, or severity; and (8) waking unrefreshed.</li> <li>CFS is diagnosed only after alternative medical and psychiatric causes of chronic fatigue have been</li> </ul>	<ul style="list-style-type: none"> <li>CFS forms, MSS statements, also American College of Rheumatology Criteria for Fibromyalgia should be considered and corresponding reports from treating physicians obtained (preferably a rheumatologist) Mental RFC forms and opinions from treating psychologist or psychiatrist</li> </ul>

	<p>excluded.</p> <ul style="list-style-type: none"> <li>• Medical sources should be contacted first before ordering consultative examinations.</li> <li>• Many CFS claimants exhibit medical signs, such as anxiety/depression.</li> <li>• CFS is not a listed impairment but it may meet or equal impairment, e.g., claimants with CFS have psychological manifestations related to CFS, and consideration should be given to whether they meet the mental disorders in 20 CFR, part 404.subpart P, appendix 1, sections 12.00 ff, or 112.00 ff.</li> </ul>	
<p>SSR 14-2p Evaluation of Diabetes Mellitus</p>	<ul style="list-style-type: none"> <li>• Diabetes Mellitus (DM) is a chronic condition characterized by high blood glucose levels that result from the body's inability to produce insulin. Two types of DM:</li> </ul> <p>(1) Type 1 DM-Previously known as juvenile-onset DM or insulin dependent DM. The pancreas does not produce insulin due to autoimmune destruction. Onset usually predicated by increased thirst, increased appetite, increased urination, unexplained weight loss, fatigue or drowsiness; and blurred vision. Develops most often in childhood but can occur at any age.</p> <p>(2) Type 2-Previously known as adult-onset DM or non-insulin dependent DM. The pancreas does not produce enough insulin. Similar type symptoms as Type I but not usually as obvious. Other symptoms include slow healing cuts or bruises; numbness in hands and/or feet; recurrent infections of the skin, gums or bladder. Type 2 more common in obese people.</p> <ul style="list-style-type: none"> <li>• Chronic DM complications: <ul style="list-style-type: none"> <li>(1) Diabetic retinopathy;</li> <li>(2) Cardiovascular disease;</li> <li>(3) Diabetic nephropathy;</li> <li>(4) Diabetic neuropathy-either peripheral or autonomic</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Treating physician opinions, MSS, lab findings, hospital records, statements from 3<sup>rd</sup> parties, photographs of chronic wounds, EMS reports</li> </ul>
<p>SSR 14-3p Evaluation of Other Endocrine Disorders</p> <p>20 C.F.R. §§ 404.1520a, 416.920a,</p>	<ul style="list-style-type: none"> <li>• Endocrine glands producing either too much or too little of certain hormones. There are 6 types: <ul style="list-style-type: none"> <li>1) Pituitary gland disorders; <ul style="list-style-type: none"> <li>(a) Hyperpituitarism-excess production of growth hormone (GH), causing skeletal gigantism, acromegaly, joint pain, swelling, vision problems, etc.;</li> <li>(b) Hypopituitarism- Decreased production of GH</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• MSS Statements, laboratory studies, genetic testing, photographs of impairments, 3<sup>rd</sup> party statements, hospital and EMS records</li> </ul>

404.1510, 416.910	<p>causing diabetes insipidus with dehydration, electrolyte imbalance, etc.</p> <p>2) Thyroid gland disorders;  (a) Hyperthyroidism- Excess production of thyroid hormone-Ex. Graves disease;  (b) Hypothyroidism- Low production of thyroid hormone-Ex. Hashimoto thyroiditis.</p> <p>3) Parathyroid gland disorders;  (a) Hyperparathyroidism- Excess parathyroid hormone (PTH), Ex. Hypercalcemia;  (b) Hypoparathyroidism- Low PTH production, ex. Generalized weakness, fatigue, muscle wasting.</p> <p>4) Adrenal gland disorders;  (a) Hyperadrenalism- Excess cortisol, Ex. Cushing syndrome;  (b) Hypoadrenalism-Adrenal insufficiency, Ex. Addison disease.</p> <p>5) Pancreatic disorders-Issues with digestive enzymes and insulin</p> <p>6) Gonadal disorders-Primarily hypogonadism</p>	

STEP FOUR: Capable of Past Relevant Work		
Ruling	Overview of Ruling	Suggested Hearing Evidence
SSR 85-16: Residual Functional Capacity for <b>Mental</b> Impairments  404.1545(c), 416.945(c)	<ul style="list-style-type: none"> <li>• Claimant with IQ 60-69 may need CLOSER supervision than a person w/an IQ 70-79 w/regard to understanding/carrying out simple ORAL instructions</li> <li>• Assess ability to understand, carry out, remember instructions, respond appropriately to supervision, coworkers, customary work pressures in work settings;</li> <li>• Assess the frequency, intensity (hallucinations, delusions, paranoia, depression, elation, confusion, disorientation, conversion, phobias, psychophysiological symptoms, withdrawn, bizarre behavior, anxiety, &amp;/or tension). Claimants with paranoid tendencies are expected to experience moderate to moderately severe</li> </ul>	<ul style="list-style-type: none"> <li>• DOT, OOH, O*Net occupations for each job that is PRW;</li> <li>• MRFC forms from treating &amp; non-treating sources</li> <li>• Medical history, psychological tests,</li> <li>• Other source reports</li> </ul>

	<p>difficulty relating to coworkers, supervisors, or tolerating normal work pressures.</p> <ul style="list-style-type: none"> <li>• Assess ADLs (quality in occupational &amp; social spheres)/work activity.</li> <li>• Assess ability to sustain activities over time (frequency, appropriateness, independence)</li> <li>• 3rd party observations, medical, non-medical sources</li> <li>• Treating sources necessary to the determination. Re-contact treating source to resolve inconsistencies</li> <li>• Other source evidence (social worker, employer, family, nurses, etc.)</li> </ul>	
<p>SSR 96-7p: Evaluation Of Symptoms in Disability Claims: Assessing The <b>Credibility</b> Of An Individual's Statements</p> <p>404.1529, 416.929</p>	<ul style="list-style-type: none"> <li>• Need medically determinable physical/mental impairment shown by medically acceptable clinical/laboratory diagnostic techniques—reasonably expected to produce the pain/symptoms in order to have symptoms affect ability to do basic work activity.</li> <li>• Symptoms: evaluate intensity, persistence, limiting effects on ability to do basic work activities. If not substantiated by objective medical evidence, a finding on credibility must be made (based on entire record).</li> <li>• 7 factors used to assess credibility (in addition to objective medical evidence): daily activities; location, duration, frequency, intensity of pain/symptoms; precipitating/aggravating factors; type, dosage, effectiveness, side effects of meds; tx received to relieve pain/symptoms; measures used to relieve pain; other factors re limitations/restrictions caused by pain/symptoms.</li> <li>• Symptoms cannot be measured objectively, but their effects can be clinically observed (reduced joint motion, muscle spasm, sensory deficit, and motor disruption). These lend credibility to allegations of pain/symptoms and functional effects</li> <li>• Cannot ignore allegations of intensity of pain solely because there is no objective medical evidence.</li> <li>• Cannot draw inferences from failure to get tx.</li> <li>• Consider lay evidence</li> </ul>	<ul style="list-style-type: none"> <li>• Records of medical signs, lab findings, claimant statements, MSS, State agency credibility findings, witness statements</li> </ul>
<p>SSR 96-8p: Assessing Residual Functional Capacity in Initial Claims</p> <p>404.1545, 416.945</p>	<ul style="list-style-type: none"> <li>• RFC: ability to do sustained work, regular/continuing, 8 hrs/day, 5 days/wk.</li> <li>• Functional limits/restrictions from medically determinable impairments (or combination) &amp; impact on symptoms</li> <li>• Function-by-function basis (based on all evidence) which is done before determining exertional levels</li> <li>• RFC is the most (not least) a person can do</li> <li>• Consider severe and non-severe impairments in</li> </ul>	<ul style="list-style-type: none"> <li>• Statements about symptoms, MSS, other source evidence. Effects of treatment, ADL reports, lay evidence, recorded observations, work attempts, need for</li> </ul>



	<p>combination</p> <ul style="list-style-type: none"> <li>• Must perform substantially all requirements of specific exertional/nonexertional components of the job at that level</li> <li>• Detailed findings</li> <li>• Resolution of inconsistencies in evidence</li> <li>• Mental RFC: understand, carry out, remember instructions; use judgment to make work-related decisions; respond appropriately to supervision, co-workers, work situations; deal with changes in routine work setting – required by competitive, remunerative work.</li> <li>• Medication side effects</li> <li>• B &amp; C criteria in PRTF is not RFC but is used to assess severity at steps 2 &amp; 3. Mental RFC uses a more detailed assessment of the functions under the broad PRTF categories.</li> <li>• Exertional: sit, stand, walk, lift, carry, push, and pull.</li> <li>• Nonexertional: postural (e.g., stoop, climb); manipulative (reach, handle); visual (see: small objects, follow instructions, avoid hazards at work), communicative (hearing, speaking &amp; effect on communication at work), environmental (temp. extremes)</li> <li>• Cannot deny benefits based solely on adjudicator's personal observations.</li> </ul>	structured living environment, work evaluations, effects of pain; RFC/MRFC forms
SSR 82-40: The Vocational Relevance of the Past Work Performed in a Foreign Country	<ul style="list-style-type: none"> <li>• Job in foreign economy need not have counterpart in US. Relevance of PRW in foreign economy is no different from that in the US. Assess same physical/mental demands of particular past job.</li> </ul>	<ul style="list-style-type: none"> <li>• Obtain job descriptions from former employer</li> <li>• Claimant statements about physical and mental demands of the job</li> <li>• International Standard Classification of Occupations</li> </ul>
SSR 82-61: Past Relevant Work -- The Particular Job or the Occupation as Generally Performed  404.1565, 416.965	<ul style="list-style-type: none"> <li>• Unable to perform actual demands of past work OR job duties of work as generally performed in national economy.</li> <li>• <i>Composite /hybrid jobs</i> – significant elements of two or more occupations &amp; have no counterpart in the DOT. Not proper to bifurcate the job and find claimant can return to the least demanding component. Composite job entails duties performed at different exertional levels. Must be evaluated based on facts of each case.</li> </ul>	<ul style="list-style-type: none"> <li>• Obtain job descriptions from employer, claimant, DOT, OOH, O*NET</li> <li>• Completed RFC/MRFC reports</li> </ul>

	<ul style="list-style-type: none"> <li>• THREE TESTS: (1) capacity to perform PRW based on broad generic, occupational classification of job, e.g., “delivery job,” “packaging job,”; (2) capacity to perform particular functional demands and job duties peculiar to an individual job as actually performed.(3) capacity to perform functional demands/job duties of job as ordinarily required in national economy.</li> <li>• If available job documentation &amp; vocational resource material is not sufficient, a VE may be necessary at Step 4.</li> <li>• ALJ may not ignore significant requirement of Past Relevant Job when determining demands of that job as generally performed. To classify PRW according to the least demanding function is contrary to the letter and spirit of Social Security Act (also see <i>Carmickle v. Comm’r, Soc Sec Admin</i>, 533 F.4d 1155 (9th Cir. 2008); <i>Valencia v. Heckler</i>, 751 F.2d 1082 (9th Cir. 1985))</li> </ul>	
<p>SSR 82-62: A Disability Claimant's Capacity to Do Past Relevant Work, in General</p> <p>404.1565(a), 416.965(a)</p>	<ul style="list-style-type: none"> <li>• PRW is RELEVANT if performed with 15 years of adjudication date or 15 years prior to the date-last-insured.</li> <li>• No PRW can be found if it is sporadic or for brief period during the 15 year period</li> <li>• Duration of PRW must be sufficient to learn the job</li> <li>• In continuing disability cases, PRW is work performed in 15 year period before adjudication of CD issue.</li> <li>• Cf. limiting effect of impairments with physical/mental demands of PRW</li> <li>• ALJ decision requires THREE FINDINGS: (1) finding of fact of individual RFC; (2) findings of fact of physical/mental demands of PRW; and (3) findings of fact that individual’s RFC would permit a return to PRW (supported with rationale)</li> <li>• ALJ to make specific findings re mental demands of PRW, e.g., what will produce tension/anxiety: speed, precision, complexity of tasks, independent judgments, working with other people, etc., to determine if the mental impairment is compatible with the work.</li> <li>• ALJ to make specific findings re stress related cardiac impairment or gastro-intestinal d/o on the ability to perform PRW</li> </ul>	<ul style="list-style-type: none"> <li>• Earnings records with DLI</li> <li>• New Hire/Quarterly Earnings by Employer reports;</li> <li>• DOT, OOH;O*NET</li> <li>• Detailed records about strength, endurance, manipulative ability, mental demands, other job requirements.</li> <li>• Completed RFC/MRFC reports</li> </ul>
Whether Past Relevant Work Must Exist in Significant Numbers in the National Economy	<ul style="list-style-type: none"> <li>• PRW can be work that may no longer exist (elevator operators) and PRW does not have to exist in substantial numbers in the national economy</li> </ul>	

STEP FIVE: Capable of Other Work		
Ruling	Overview of Ruling	Suggested Hearing Evidence
SSR 83-5a: --Disability -- Medical- Vocational Guidelines -- Conclusiveness of Rules	<ul style="list-style-type: none"> <li>Appeals Council directive that “Grids Rules” are conclusive.</li> <li>ALJ erred in finding the grids created a “rebuttable presumption”</li> <li>VE testimony cannot rebut a grid conclusion.</li> <li>However, findings of fact (e.g., RFC or vocational) made by an ALJ can be rebutted. Therefore, the Rules are conclusive.</li> </ul>	Completed RFC/MRFC reports
SSR 83-10: Determining Capability to Do Other Work -- The Medical- Vocational Rules of Appendix 2  404.1562-1569(a), 416.962-969(a)	<ul style="list-style-type: none"> <li>If one factor does not coincide with the rule, use the rules with definitions/discussions in regulations</li> <li>No requirement to cite unskilled occupations if grid rule is met, but specific examples of skilled/semiskilled occupations will be cited where a grid rule directs a claimant could adjust to such occupations above the unskilled.</li> <li>Unskilled occupations: 200 sedentary; 1600 light &amp; sedentary; 2500 medium, light, sedentary.</li> <li>Grid reflects the presence of nonexertional capabilities sufficient to perform unskilled work at each exertional level.</li> <li>Work adjustment relates to substantial and gainful work based the applicable RFC and vocational factors of age, education, and work experience.</li> <li>Unskilled Sedentary: good use of hands &amp; fingers.</li> <li>Sedentary jobs: lifting no more than 10 pounds; walking/standing required occasionally (very little to 1/3rd of the time, or 2 hours of an 8 hour workday); sitting should total approximately 6 hours out of 8. Precision use of fingers as well as hands/arms, repetitive hand-finger actions.</li> <li>Light work: up to 20 pounds lifting, frequent lifting/carrying up to 10 pounds (requires being on one’s feet up to 2/3rds of the day), good deal of walking, sitting most of the time but with some pushing/pulling arm-hand/leg-foot controls but greater exertion than sedentary (skilled/semiskilled jobs in these instances) -- few unskilled light jobs are performed seated. Many</li> </ul>	<ul style="list-style-type: none"> <li>Completed RFC/MRFC reports</li> <li>Tests that measure hand/finger functioning; e.g mechanical power grasp dynamometer, electronic dynamometer for power or pinch/grasp forces</li> <li>Grade Level test results: <ul style="list-style-type: none"> <li>WAIS III</li> <li>WRAT 4</li> <li>WIAT II &amp; III</li> <li>Woodcock Johnson III</li> </ul> </li> <li>School records at all levels</li> <li>VE opinions (written or oral) with regard to past relevant work, transferability, and other work</li> </ul>

unskilled light jobs are performed in ONE location and standing is more critical than walking. Need to have use of arms/hands to grasp/hold/turn objects.

- Medium work: lift no more than 50 lbs, frequent lift/carry up to 25 lbs. Standing/walking, off and on, 6 hours out of 8 in order to meet the lifting/carrying of up to 25 lbs. frequently. Use of arms/hands to grasp, hold, turn. Considerable lifting requires frequent bending-stooping with flexibility of knees. Stoop also requires bending of spine at waist
- "Frequent": between one-third to two-thirds of time.
- Nonexertional Impairment: affects the mind, vision, hearing, speech, use of body to climb, balance, stoop, kneel, crouch, crawl, reach, handle, use fingers for fine activities. Nonexertional restrictions: avoid one or more environmental conditions.
- RFC: maximum capacity for sustained performance of physical-mental requirements of jobs
- Unskilled work: little/no judgment; simple duties: handling, feeding, off-bearing; machine tending, 30 days to learn the job, little specific vocational prep/judgment.
- Semiskilled work: less than complex duties, alertness, close attention, tending/guarding; coordination/dexterity are necessary (hands/feet moved quickly to do repetitive tasks).
- Skilled work: use judgment, lay out work, estimating, precise measurements, determine quantities of materials, blueprints, computations, mechanical adjustments, deal with people, facts, figures, abstract ideas at a high level of complexity.
- Vocational Factors: (1) Age at time of decision or before DLI, 45,50,55,60 critical to decisions – not applied mechanically in borderline cases; (2) Education: level of reasoning, communication, arithmetic may be higher or lower than the level of formal education; High School or more provides for direct entry into skilled work if little time lapse between completion of school and adjudication date, very little orientation is needed

	; (3) Previous Work Experience (see SSR 82-41, 82-61, 82-62, 82-63).	
<p>SSR 83-11: Capability to Do Other Work — The Exertionally Based Medical-Vocational Rules Met</p> <p>404.1560-1563, 416.960-963</p>	<ul style="list-style-type: none"> <li>• RFC upon which each grid table is based reflects the absence of nonexertional limitations</li> <li>• RFC reflects exertional capability to allow performance of “substantially all” of the primary strength activities</li> <li>• If reasoning, communication, arithmetic ability is lower/higher than formal education, explanations must be given. (Valid achievement testing, e.g., Wide Range Achievement Test, trumps numeric grade level completed. <i>Skinner v. Secretary of HHS</i>, 902 F.2d 447 (6th Cir. 1990).</li> <li>• If recently completed education at high school level provides for direct entry into skilled work, identify the work skills, examples of specific occupations, and a statement of the incident of such jobs in the region or several regions of the country.</li> <li>• If PRW includes skilled/semiskilled jobs and transferability is material, identify the work skills, examples of specific skilled/semiskilled occupations; &amp; incidence of jobs in the region/several regions of the country.</li> </ul>	<ul style="list-style-type: none"> <li>• Completed RFC/MRFC reports</li> <li>• Tests that measure hand/finger functioning; e.g. mechanical power grasp dynamometer, electronic dynamometer for power or pinch/grasp forces</li> <li>• Grade Level test results: <ul style="list-style-type: none"> <li>○ WAIS III</li> <li>○ WRAT 4</li> <li>○ WIAT II &amp; III</li> <li>○ Woodcock Johnson III</li> </ul> </li> <li>• School records at all levels</li> <li>• VE opinions (written or oral) with regards to past relevant work, transferability, and other work</li> </ul>
<p>SSR 83-12: Capability to Do Other Work -- The Medical-Vocational Rules as a Framework for Evaluating Exertional Limitations Within a Range of Work or Between Ranges of Work</p> <p>404.1561, 404.1566, 404.1567, 404.1569, 416.961, 416.966, 416.967, 416.969</p>	<ul style="list-style-type: none"> <li>• If claimant can do a “little” more or less than the exertion specified, e.g., light but cannot lift more than 15 pounds rather than 20, he can meet the demands of light</li> <li>• Extent of erosion of occupational base not clear, consult vocational resource: for simple issues ALJ can use publications in 404.1566/416.966; more complex cases require persons with specialized knowledge, e.g., vocational experts at hearing &amp; appeals; vocational consultants/specialist, vocational evaluation workshop at State agency level.</li> <li>• If exertional level falls between two rules directing opposite conclusions, consider whether: <ul style="list-style-type: none"> <li>○ Significantly reduced exertional capacity could show little more than an occupational base for lower rule justifying disability</li> <li>○ If exertional limitations are “in the middle;” a vocational specialist is advised.</li> <li>○ If exertional limitations do not coincide with full range of sedentary, adjudicator must decide if full range of sedentary is</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Completed RFC/MRFC reports</li> <li>• Tests that measure hand/finger functioning; e.g. mechanical power grasp dynamometer, electronic dynamometer for power or pinch/grasp forces</li> <li>• Grade Level test reports: <ul style="list-style-type: none"> <li>○ WAIS III</li> <li>○ WRAT 4</li> <li>○ WIAT II &amp; III</li> <li>○ Woodcock Johnson III</li> </ul> </li> <li>• School records at all levels</li> <li>• VE opinions (written or oral) with regards to past relevant work, transferability, and other work</li> </ul>

	<p>significantly compromised.</p> <ul style="list-style-type: none"> <li>• 201.00(h) Appendix 2: if sedentary work is significantly compromised, even younger individuals can be found disabled (See SSR 96-9p). “Slight” compromise of full range does not equate with disability.</li> <li>• “Alternate Sit/Stand”: “few” light jobs are performed seated; “prolonged sitting” is contemplated for sedentary work</li> <li>• “Most jobs have “ongoing work processes” that demand staying in a certain place/posture for a length of time to accomplish the task.</li> <li>• “Unskilled” jobs do not ordinarily allow for sit/stand at will</li> <li>• A VE should be consulted to clarify the occupational base for alternating sit/stand.</li> <li>• If PRW allowed for alternating and skills could be transferred to like jobs, a finding of disabled would not result</li> <li>• Loss of Use of <i>Upper Extremity</i>: Loss of use of arm/hand; cannot perform jobs requiring both arms/both hands. Loss of MAJOR use upper extremity is definitive as there is considerable absence of functional ability. Above elbow amputation, limits the person to light work but with added limitations due to loss of bimanual manipulation and inability to handle bulky objects. Below the elbow amputation (partial loss of use of extremity) requires detailed evaluation, remaining stump/ability to use prosthesis, remaining ability for fine/gross manipulation. The potential occupational base is BETWEEN sedentary and light. The number of occupations for such people is lower than the occupational base. Least remaining functional capacity drops to sedentary, most remaining functional capacity rises to light. A VE will be able to determine the occupational base.</li> <li>• If vocational resources are used, ALJ decision must cite examples of occupations/jobs the person can do functionally and vocationally; and provide the incidence of work in the region/several regions of the country.</li> </ul>	
SSR 83-14: Capability to Do Other Work -- The	<ul style="list-style-type: none"> <li>• Exertional: sedentary, light, medium, heavy, very heavy with three work positions(stand, walk, sit) and four work movements of objects (lift, carry,</li> </ul>	<ul style="list-style-type: none"> <li>• Completed RFC/MRFC reports</li> <li>• Tests that measure</li> </ul>



<p>Medical-Vocational Rules as a Framework For Evaluating a Combination of Exertional and Nonexertional Impairments</p> <p>404.1560-1569, 416.960-969, Appendix 2 of Subpart P, Section 200.00 (e)(2)</p>	<p>push, pull)</p> <ul style="list-style-type: none"> <li>• Nonexertional impairment is medically determinable &amp; causes nonexertional limitations or environmental restrictions.</li> <li>• Bilateral manual dexterity needed for most unskilled sedentary occupations</li> <li>• Work stresses may not be medically sustainable for people with cardiovascular or gastrointestinal d/o.</li> <li>• Mental impairments may impact skilled work with abstract or concrete variables w/ nonverbal symbolism, or dealing frequently w/ the public.</li> <li>• Sedentary jobs use hands/fingers</li> <li>• Bending (stooping – bending downward/forward from spine at waist and crouching – bending downward/forward by bending both legs and spine) frequently (1/3 to 2/3rds of time) is needed in medium, heavy, very heavy jobs</li> <li>• First determine if disability finding possible based on strength limitations alone</li> <li>• If not, full consideration of all facts must be made (all limitations/restrictions).</li> <li>• A vocational resource may help in “obvious” types of cases.</li> <li>• More complex cases, vocational may be necessary.</li> <li>• Light exertion with nonexertional impairments: light requires standing/walking most of day; frequent lifting/carrying objects up to 10 lbs imply worker is able to do occasional bending/stooping up to 1/3rd of day to bend down/forward of spine at waste. Unskilled light does not require fine use of fingers. Light requires gross use of hands (grasp, hold, turn objects).</li> <li>• Visual impairments (usually constriction of visual fields rather than acuity) may render a person a hazard to self/others (tripping over boxes while walking, cannot detect approaching persons/objects, difficulty walking up/down stairs: occupational base can be significantly diminished for light (and medium) work. But inability to crawl on hands/knees, use fingers tips, environmental restrictions, ascend/descend scaffolds, poles, ropes would not significantly impact unskilled light work</li> <li>• Medium exertion w/ nonexertional impairments:</li> </ul>	<p>hand/finger functioning; e.g mechanical power grasp dynamometer, electronic dynamometer for power or pinch/grasp forces</p> <ul style="list-style-type: none"> <li>• Grade Level test reports: <ul style="list-style-type: none"> <li>○ WAIS III</li> <li>○ WRAT 4</li> <li>○ WIAT II &amp; III</li> <li>○ Woodcock Johnson III</li> </ul> </li> <li>• School records at all levels</li> <li>• VE opinions (written or oral) with regards to past relevant work, transferability, and other work</li> </ul>
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	<p>stand/walk required most of time; gross use of hands (grasp, hold, turn) rather than fingers; considerable lifting/carrying of 50 pounds at a time, 25 lbs frequently requires frequent stooping/frequent crouching (bending back and legs) to move objects from one level to another or move objects near foot level. Medium level exertion more likely requires ascending/descending ladders/scaffolds, kneel, crawl but would not significantly affect occupational base.</p> <ul style="list-style-type: none"> <li>• Where nonexertional limitations/restrictions fall between these examples, a VS is often required</li> <li>• If vocational resource used, examples of occupations; incidence of work in region/several regions of country is required.</li> <li>• If clear that additional limitations/restrictions have very little effect on occupational base, use the rules in the tables;</li> <li>• If additional limitations/restrictions significantly erode the base, determine the remaining portion of the job base;</li> <li>• If no clear understanding of effects of limitations on job base, use a vocational specialist.</li> </ul>	
<p>SSR 85-15: Capability to Do Other Work — The Medical-Vocational Rules as a Framework for Evaluating Solely Nonexertional Impairments</p> <p>404.1569a, 416.969a</p>	<ul style="list-style-type: none"> <li>• Numerous environmental restrictions might affect range of work</li> <li>• Nonexertional impairments may affect carrying out primary strength requirements</li> <li>• Nonexertional limitations affect ability to reach, seize, hold, grasp, turn objects (handle), bend legs alone (kneel), bend spine alone (stoop), bend spine and legs (crouch), fine movements of small objects (sedentary work, demanding work, e.g., surgery), vision, speech, hearing, mental impairments (but depression/conversion d/o may limit exertion)</li> <li>• Admin. Notice of publications are sufficient vocational resources for “simple issues”.</li> <li>• More complex cases, specialized knowledge is helpful (VE at hearings and appeals level); State agencies use vocational consultants/specialist, vocation evaluation workshops.</li> <li>• Term “vocational specialist (VS) describes ALL vocational resource personnel.</li> <li>• Adverse decision where vocational resources are used, must include: (I) citations of</li> </ul>	<ul style="list-style-type: none"> <li>• Completed RFC/MRFC reports</li> <li>• Tests that measure hand/finger functioning; e.g mechanical power grasp dynamometer, electronic dynamometer for power or pinch/grasp forces</li> <li>• Grade Level tests: <ul style="list-style-type: none"> <li>○ WAIS III</li> <li>○ WRAT 4</li> <li>○ WIAT II &amp; III</li> <li>○ Woodcock Johnson III</li> </ul> </li> <li>• School records at all levels</li> <li>• VE opinions (written or oral) with regards to past relevant work, transferability, and other work</li> </ul>

occupations/jobs a person can do functionally/vocationally; and (2) statement of incidence of such work in region in which individual resides/several regions of country.

- Mental impairments. Where no transferable skills, determine capacity for unskilled work
- Mental demands of unskilled work (competitive, remunerative, on a sustained basis) include: understand, carry out, and remember simple instructions; respond appropriately to supervision, coworkers, usual work situations; deal with changes in routine work setting. A substantial loss of ability to meet ANY one of these activities would severely limit the occupational base. E.g., a younger person, college education, highly skilled PRW, with a substantial loss of ability to respond appropriately to supervision, coworkers, usual work situations would be disabled. The mentally impaired may have difficulty meeting demands of even “low-stress” jobs.
- If claimant has more than non-severe mental impairment, is of advanced age, has limited education, no PRW and NO EXERTIONAL IMPAIRMENTS, claimant would be disabled.
- “Substantial loss” of just one of the demands of unskilled work (e.g., ability to respond appropriately to supervision, coworkers, and usual work situations) justifies disability findings.
- Mental impairments are “highly individualized” – some cannot tolerate being supervised, or knowing the work is being judged/evaluated (even if remote/indirect). Mental illness is an adverse response to seemingly trivial circumstances. Mentally impaired may cease to function when faced with the demand of getting to work regularly, remaining in the workplace for a full day. A person may panic, develop palpitations, shortness of breath, feel faint, experience terror, and begin to hallucinate.
- Postural-Manipulative Impairments. Climbing/balancing usually do not significantly affect the occupational base. Stooping, kneeling, crouching, crawling – stooping (bend body downward/forward, bend spine at waist) is used when objects below the waist are involved. If one

	<p>can stoop occasionally to lift objects, sedentary/light occupation base is intact. Stooping frequently is required for medium and heavy work &amp; inability to do so would substantially affect the occupational base.</p> <ul style="list-style-type: none"> <li>• Reach, handle, finger, feel. Reach (extend hands/arms in any direction; handling (seizing, holding, grasping, turning) are required in almost all jobs. Significant limitations of reach or handle may eliminate large numbers of occupations. "Fingering" : picking, pinching, work w/ fingers and is needed to do most unskilled sedentary jobs and certain skilled/semiskilled jobs at all levels. Loss of fine manual dexterity narrows sedentary and light ranges of work more than it does medium to very heavy. A VE is recommended. However, "feeling" the size, shape, temperature, texture is not required in most jobs.</li> <li>• "Hearing" affects communication. (e.g., bus drivers require good hearing). A VE is often necessary.</li> <li>• "Visual" limitations affect working with small objects/reading small print. Good visual fields are needed to avoid ordinary hazards in workplaces.</li> <li>• "Environmental restriction": need to avoid excessive noise, dust, etc. the impact would be minimal. But, if a person can tolerate very little noise, or dust, etc., the impact may be considerable. If the restriction falls between "very little" and "excessive" a VE is generally required</li> </ul>	
AR 86-3(5): <i>Martinez v. Heckler</i> , 735 F.2d 795 (5th Cir. 1984) Disability Program -- Individuals Who Are Illiterate and Unable To Communicate in English -- Titles II and XVI of the Social Security Act	<ul style="list-style-type: none"> <li>• Court holds grid 201.23 (likewise grid 202.16) does not apply when claimant is BOTH illiterate AND unable to communicate in English, since the grid rule uses the word "or" and not "and" when addressing these two limitations. AR requires "findings" be made on both issues in the 5th Circuit</li> </ul>	
<i>Sykes v. Apfel</i> , 228 F.3d 259 (3d Cir.	<ul style="list-style-type: none"> <li>• SSA cannot use the grid rules exclusively as a framework when there is a nonexertional</li> </ul>	

<p>2000) — Using the Grid Rules as a Framework for Decisionmaking When an Individual's Occupational Base is Eroded by a Nonexertional Limitation — Titles II and XVI of the Social Security Act.</p>	<p>limitation. SSA must (1) take/produce vocational evidence such as from a vocational expert, the DOT, or other similar evidence (such as a learned treatise); or (2) Provide notice that it intends to take or is taking administrative notice of the fact that the particular nonexertional limitation(s) does not significantly erode the occupational job base. SSA must allow the claimant the opportunity to respond before denying the claim.</p>	
<p>SSR 96-9p: Determining Capability To Do Other Work-- Implications Of A Residual Functional Capacity For Less Than A Full Range Of Sedentary Work</p> <p>404.1560-1569a, 416.960-969a</p>	<ul style="list-style-type: none"> <li>• Less than full range sedentary is a very serious limitation due to a medical impairment – expected to be relatively rare but it does not always equate with disability. Critical for individuals not yet age 50.</li> <li>• RFC: to do sustained work, regular/continuing basis, 8 hrs/day, 5 days/week – the limitations caused by the physical/mental impairment. RFC is a function-by-function assessment of ability to do work-related activities (&amp; demands of PRW as actually/generally performed). Rules in appendix 2, subpart P, regulations No. 4 (grid rules) take administrative notice of existence of numerous unskilled occupations.</li> <li>• Ability to do "limited" range of sedentary does not always equate with disability but if full range is significantly eroded, it usually equates with disability</li> <li>• Word "<b>often</b>" is used side-by-side with word "<b>occasional</b>" (defined as "<b>very little</b>" &amp; <b>up to 1/3rd</b> of the 8 hour day, or no more than 2 hours). Sitting would generally total up to 6 hours. Unskilled sedentary also includes assessment of nonexertional factors: seeing, manipulating, understanding, remembering, and carrying out simple instructions.</li> <li>• Full range is substantially ALL of the 200 unskilled sedentary occupations.</li> <li>• Grids direct conclusion of disability when a person can perform substantially ALL of the STRENGTH demands of sedentary exertion, as well as physical/mental nonexertional demands</li> </ul>	<ul style="list-style-type: none"> <li>• Obtain documents upon which VE relied; names of employers VE identifies for placement into jobs; surveys VE relies upon; publications relied upon with page numbers, volume numbers, dates.</li> <li>• Software tools;</li> <li>• CV of VE &amp; verify qualifications</li> </ul>

to perform UNSKILLED work at sedentary.

- “Not disabled” requires a person have no impairment that restricts the nonexertional capabilities to a level below those needed to perform unskilled work at sedentary level. Nonexertional limitations can narrow the range of sedentary even if the person has the exertional capacity for full range of sedentary work (occupational base erosion).
- Borderline age: (see 404.1563(a), 416.963(a), SSR 83-10.
- Nonexertional impairments can affect physical demands (e.g., hysterical paralysis, fatigue, pain)
- **Significant erosion of occupational base occurs when:**
  - Limited to lifting only 1 or 2 pounds; between these 2-10 pounds, vocational resource appropriate.
  - Limited to standing/walking a few minutes
  - Limited to standing/walking between slightly less than 2 hours and a few minutes -- a vocational resource is appropriate.
- **Sitting:** expected to sit 6 hrs/8 hr day; with morning break, lunch, afternoon break at 2 hr intervals. If alternating sit/stand cannot be accommodated with scheduled breaks, the base is eroded. Extent of erosion depends on frequency of alternations, time needed to stand.
- **Hand-held assistive device:** requires medical documentation of need for device, and circumstances when needed. Not significantly eroded if only used for prolonged ambulation, uneven terrain, and ascending/descending slopes. If used for balance because of significant involvement of both lower extremities (e.g., due to neurological impairment) , base may be significantly eroded. Useful to consult vocational resource
- **Nonexertional limitations/restrictions:** (1) postural – balancing limitations when standing/walking level terrain may cause significant erosion; complete inability to stoop would significantly erode the base, but occasional limitations of stooping would minimally erode the base. (2) manipulative: most unskilled sedentary jobs use both hands/fingers (bilateral manual



	<p>dexterity) for repetitive hand-finger actions. Significant erosion results if there's any significant manipulative limitation in ability to handle and work with small objects with both hands, but when the limitation is less significant (in the non-dominant hand) consult a vocational resource. (3) Visual limitations/restrictions: if prevented from seeing small objects or not able to avoid ordinary hazards at work (boxes on floor, doors ajar, approaching people/vehicles) there is significant erosion. (4) Communicative limitations: inability to hear/understand simple oral instructions OR communicate simple information would significantly erode the base; (5) Environmental restrictions; restrictions on ability to work in noisy workplace must be evaluated on individual basis. The base may/may not be significantly eroded. Avoiding exposure to odors must be evaluated on individual basis – need to specify the environment &amp; extent of restriction (e.g., excessive/small amounts of dust to be avoided). (6) Mental Limitations: substantial loss of any ONE of the basic work activities on a sustained basis will erode the unskilled sedentary base. These activities are (a) understanding, remembering, carrying out simple instructions; (b) making judgments commensurate with functions of unskilled work (i.e., simple work related decisions);(c)responding appropriately to supervision, co-workers, usual work situations; (d) dealing with changes in routine work settings.</p> <ul style="list-style-type: none"> <li>• When extent of erosion is not clear, consult authoritative written resources, e.g., DOT, SCO, and Occupational Outlook Handbook (OOH) County Business Patterns.</li> </ul>	
SSR 82-41: Work Skills and their Transferability as Intended by the Expanded Vocational Factors Regulations Effective February 26, 1979	<ul style="list-style-type: none"> <li>• <b>Skill:</b> knowledge of a work activity, using significant judgment beyond simple duties. Knowledge of principles/processes of art, science, trade and ability to apply them (e.g., making precise measurements, reading blueprints, setting up/operating complex machinery. Skills provide a special advantage. But there is no special advantage if only qualified for unskilled because skills cannot be used to a significant degree. Skill requires experience and demonstrated proficiency. Skills: abstract thinking in specialized</li> </ul>	<ul style="list-style-type: none"> <li>• Obtain documents upon which VE relied; names of employers VE identifies for placement into jobs; surveys VE relies upon; publications relied upon with page numbers, volume numbers, dates.</li> <li>• Software tools;</li> <li>• CV of VE &amp; verify qualifications</li> </ul>

<p>404.1565, 404.1566, 404.1568, 416.965 416.966, 416.968, Appendix 2, Subpart P of Reg. No. 4, Sections 200.00(b), 201.00(e), 201.00(f), 202.00(e), 202.00(f)</p>	<p>fields, artistic talents/mastery; knowledge of machinery/charts, manuals</p> <ul style="list-style-type: none"> <li>• <b>“Transferability”</b>: applying skills from PRW to other skilled/semiskilled jobs. Distinct from using skills recently learned in school which may serve as basis for direct entry into skilled work.</li> <li>• <b>Semi-skilled</b>: more complex than unskilled (learned in less than 30 days). Requires more judgment than unskilled. Some may be little more than unskilled. Need close attention paid to actual complexities of job in dealing with data, people, or objects and to judgments required to do the work. Requires alertness/close attention, coordination/dexterity, hands/feet moved quickly for repetitive tasks (these are worker traits (aptitudes/abilities) rather than acquired skills.</li> <li>• <b>Worker traits</b>, to be relevant, must be used in connection w/ work activity (e.g., trait of alertness in connection with work activity of close attention to watching machine processes, inspecting, testing; trait of coordination/dexterity w/ use of hands/feet for rapid performance of repetitive tasks.</li> <li>• <b>Lower level semi-skilled work</b>: E.g., room service waiter, chauffeur. ALJ can often make a finding the worker has little vocational advantage over unskilled person and does not have transferable skills.</li> <li>• <b>Higher level semiskilled work</b>: slightly more complex (e.g., nurse aide who also serves food – the skills are related to the nurse tasks and not to the aide tasks</li> <li>• <b>Lower level of skill</b> (e.g., bulldozer operator, firebrick layer, hosiery knitting machine operator: a VS should be consulted</li> <li>• <b>Upper end of skilled work</b>: (e.g., architect, aircraft stress analysis, air-conditioning mechanic, professional/ executive/managerial occupations). Potential jobs where skills can be transferred are to occupations AT THE SAME AND LOWER SKILLS LEVELS, through semi-skilled occupations. VE may be necessary to determine transferability.</li> <li>• <b>Documentation of skills/skill levels</b>: <ul style="list-style-type: none"> <li>○ Job information from employer, claimant, family member, coworker. A VS should be used by adjudicators.</li> </ul> </li> </ul>	
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	<ul style="list-style-type: none"> <li>○ Transferability most probable/meaningful when (1) same/less degree of skill required; (2) same/similar tools/machines used; (3) same/similar raw materials, products, processes or serves.</li> <li>○ <b>RFC will limit transferability</b> (e.g., claimant with tremors cannot easily do a watchmakers job). Such impairments do not permit skills to be used.</li> <li>○ <b>If age 55 or over</b>, limited to sedentary, there must be very little vocational adjustment in tools, work processes, settings or industry. <b>Age 60 or over</b>, limited to light, same rule applies.</li> <li>○ <b>Unusual/isolated work, so specialized</b> (e.g., mining, agriculture, fishing) may not be readily usable. VS required.</li> <li>● <b>Findings of fact re transferability must be included in the decision.</b> The acquired work skills identified, specific occupations to which the skills are transferable must be cited; evidence they exist in significant numbers. VS may be required. (See <i>Dikeman v. Halter</i>, 245 F.3d 1182 (10th Cir. 2001)).</li> </ul>	
<p>SSR 82-63: Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work</p> <p>404.1560-1565, 404.1568, 416.960-965, 416.968 Appendix 2, Subpart P, Reg. No. 4, sections 203.00(b)&amp;(c)</p>	<ul style="list-style-type: none"> <li>● “TWO medical-vocational profiles” showing inability to make a vocational adjustment to other work based on any severe medical impairment: (1) marginal education &amp; long work experience (35+ yrs of work) limited to arduous unskilled physical labor that can no longer be performed due to a severe medical impairment and (2) advanced age, limited education and no work experience.</li> <li>● Arduous work: physical w/ high level of strength/endurance. No specific exertional level denotes arduous work. It need not be heavy to be arduous. Work with lighter objects can be arduous if it demands stamina, or repetitive bending/lifting at fast pace.</li> <li>● Unskilled work: simple duties, little judgment, short training time.</li> <li>● Marginal education: claimant may not have attained development in reasoning, arithmetic, language which would suggest a vocational potential for MORE than unskilled work. Marginal</li> </ul>	<ul style="list-style-type: none"> <li>● Obtain documents upon which VE relied; names of employers VE identifies for placement into jobs; surveys VE relies upon; publications relied upon with page numbers, volume numbers, dates.</li> <li>● Software tools;</li> <li>● CV of VE &amp; verify qualifications</li> </ul>

	<p>education is 6th grade or less.</p> <ul style="list-style-type: none"> <li>• Formal education is not conclusive of vocational competence.</li> <li>• Make finding there is no work experience -- If of advanced age and no recent/relevant work experience (no work within 15 years prior to adjudication, OR work activity performed within this 15 year period does not (on the basis of job content, recency, or duration) enhance present work capability.</li> <li>• All cases decided on the basis of whether the RFC, age, education, lack of work experience are compatible with an adjustment to competitive remunerative work.</li> <li>• Advanced age with no relevant work experience, limited education or less, equates with inability to make a vocational adjustment to substantial work if impairments are severe, i.e., significantly limits physical or mental capacity to perform basic work-related functions.</li> </ul>	
<p>SSR 00-4p: Use Of Vocational Expert Evidence, And Other Reliable Occupational Information In Disability Decisions</p> <p>404.1566-1569, 20 CFR Part 404 Subpart P, Appendix 2, §200.00(b)</p>	<ul style="list-style-type: none"> <li>• VEs testify at hearings; VSs provide evidence to disability determination services (DDS) adjudicators. For other “reliable” sources of occupational information see 404.1566, 416.966 for “examples” of where administrative notice can be taken of job data.</li> <li>• ALJ needs to give a “reasonable explanation” for conflicts between VE/VS evidence and DOT/SCO</li> <li>• At step 4 &amp; 5 “...we rely primarily on DOT...SCO for info about requirements of work in National economy... . We most often use VEs to provide evidence at a hearing ... ”.</li> <li>• VE evidence should be consistent with the DOT. If there is an APPARENT unresolved conflict, the adjudicator MUST elicit a reasonable explanation for the conflict BEFORE relying on the VE. The ALJ’s duty to fully develop the record, will inquire, on the record, whether there is consistency with the DOT.</li> <li>• Neither the DOT nor the VE evidence automatically “trumps” when there is a conflict. The ALJ must determine if VE testimony is reasonable, and provides a basis for relying on it.</li> <li>• Examples of “reasonable explanations”: (1) VE evidence can include info not listed in the DOT</li> </ul>	<ul style="list-style-type: none"> <li>• Obtain documents upon which VE relied; names of employers VE identifies for placement into jobs; surveys VE relies upon; publications relied upon with page numbers, volume numbers, dates.</li> <li>• Software tools;</li> <li>• CV of VE &amp; verify qualifications</li> </ul>

since the DOT does not include every occupation;  
 (2) evidence about particular job requirements or occupations not listed in the DOT may come from other RELIABLE publications, information from employers; VE's experience in job placement/career counseling.

- Regulatory definitions of exertional levels are controlling. If available reliable evidence indicates an exertional demand is for "medium" work, ALJ may not rely on VE testimony that it is "light" work.
- SVP in the DOT: SVP 1-2 is unskilled; SVP 3-4 is semi-skilled; SVP 5-9 is skilled. The regulatory definitions of skill levels are controlling. VE evidence may not be relied on to establish that unskilled work involves complex duties.
- "Transferability of skills". VE (or other reliable evidence) cannot be inconsistent with SSA policy on transferability. E.g., skills cannot be gained from unskilled work, cannot transfer skills to unskilled work or to a greater level of skill that acquired.
- ALJ has affirmative responsibility to ask about possible conflict between VE and DOT evidence: (1) ALJ must ask VE if it conflicts; (2) if it conflicts, ALJ WILL obtain a reasonable explanation; (3) ALJ must explain in decision how conflict was resolved.
- VE is free to give bottom line, but data/reasoning underlying it must be available on demand, if claimant challenges the VE's foundation.  
*McKinnie v. Barnhart*, 368 F.3d 907 (7th Cir. 2004).

### Other Important Rulings

Ruling	Overview of Ruling	Suggested Hearing Evidence
SSR 82-59: Failure to Follow Prescribed Treatment	<ul style="list-style-type: none"> <li>• 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), hospital, clinic, or medical facility. (This is not a DDS staff physician, or CE, and case</li> </ul>	<ul style="list-style-type: none"> <li>• Treating physician, hospital, or clinic medical records</li> <li>• Proof of religion and its creeds</li> </ul>

404.1530, 416.930	<p>therefore should not be denied. DDS should refer to Voc. Rehab. No attempt should be made to interfere with doctor-patient relationship.)</p> <p>(2) Tx is contrary to teachings of the person's religion;</p> <p>(3) Cataract extraction for one eye is Rx but loss of visual efficiency in other eye is severe and cannot be corrected;</p> <p>(4) Fear of surgery is intense or extreme;</p> <p>(5) Cannot afford Tx which he/she is willing to accept and free resources are unavailable;</p> <p>(6) A licensed Tx source advised against Tx;</p> <p>(7) There is a high degree of risk because of the enormity/unusual nature of procedure (e.g., organ transplant, open heart surgery);</p> <p>(8) Tx involved amputation of an extremity (e.g, above the tarsal region);</p> <p>(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.</p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• List of medical providers who refused to treat</li> <li>• Proof of ability to afford treatment or medication</li> </ul>
SSR 00-1c: Claims Filed Under Both the Social Security Act and the <i>Americans with Disabilities Act</i> (ADA)	<ul style="list-style-type: none"> <li>• ADA accommodation is irrelevant at step 5 and is relevant at step 4 only in terms of past relevant work as <i>actually</i> performed.</li> <li>• Receipt of SSD benefits does not stop pursuing an ADA claim for "reasonable accommodation"</li> <li>• An ADA "qualified individual" includes a disabled person "who can perform essential functions" of a job "with reasonable accommodation".</li> <li>• ADA plaintiff must proffer a sufficient explanation for the statement made to SSA that he/she is "unable to work", but there is no legal presumption by applying for disability benefits that he/she is "unable to work" due to disability since disabled persons are entitled to "reasonable accommodation" under the ADA.</li> </ul>	<ul style="list-style-type: none"> <li>• Performance evaluations</li> <li>• Checklist of accommodations</li> <li>• Supervisor work forms</li> <li>• Reports of absences with reasons</li> <li>• Wage record</li> <li>• 3<sup>rd</sup> party statement</li> </ul>
SSR 06-03p: Considering Decisions on Disability by Other Governmental and Non-governmental	<ul style="list-style-type: none"> <li>• Other agencies decisions (e.g., workers' compensation, veterans affairs, insurance companies) are not binding on SSA. But they cannot be ignored, and must be considered. They may provide insight into the impairments, may show the degree of disability. Other agencies may apply different rules/standards regarding</li> </ul>	<ul style="list-style-type: none"> <li>• Other agency decisions, e.g., VA, Workers' Comp, Long Term Disability, etc.</li> </ul>



Agencies	disability. But, the adjudicator should explain the consideration given to these decisions in the ALJ's decision. (See <i>Falcon v. Heckler</i> , 732 F.2d 827, 831 (11 <sup>th</sup> Cir. 1984): findings of another agency on disability, while not binding, are entitled to <i>great weight</i> .)	
SSR 06-03p: Considering Decisions on Disability by Other Governmental and Non-governmental Agencies	<ul style="list-style-type: none"> <li>Other agencies decisions (e.g., workers' compensation, veterans affairs, insurance companies) are not binding on SSA. But they cannot be ignored, and must be considered. They may provide insight into the impairments, may show the degree of disability. Other agencies may apply different rules/standards regarding disability. But, the adjudicator should explain the consideration given to these decisions in the ALJ's decision. (See <i>Falcon v. Heckler</i>, 732 F.2d 827, 831 (11<sup>th</sup> Cir. 1984): findings of another agency on disability, while not binding, are entitled to great weight.)</li> </ul>	<ul style="list-style-type: none"> <li>Other agency decisions, e.g., VA, Workers' Comp, Long Term Disability, etc.</li> </ul>
SSR 11-1p Procedures for Subsequent Applications  404.900(b), 416.1400(b), 404.970(b), 416.1470(b), 405.373, 404.976(b), 416.1476(b)	<p>*No longer allowed to have 2 claims for the same type of benefits pending at the same time. Claimants must choose between filing administrative review or filing a new application.</p> <p>-If you choose to pursue pending claim ; SSA will not accept a new application of the same type under the same Title.</p> <p>1) Claim pending at initial, reconsideration or Hearing level-Can still report new medical information and it will be associated with current claim.</p> <p>2) Claim pending at Appeals Council (AC)- New evidence submitted will be evaluated to determine whether the new evidence relates to the time period on or before the date of the hearing decision.</p> <p>(a) If new and material and relates to the date in question; AC will consider it with rest of the record.</p> <p>(b) If new evidence does not relate back, AC will return evidence to the claimant.</p> <ul style="list-style-type: none"> <li><b>Note:</b> <i>if new evidence does not relate back but shows a new critical or disabling condition, AND you tell AC you want to file a new claim based on this evidence, the AC MAY permit the filing of a new claim before it complete action on the pending claim.</i></li> </ul>	<ul style="list-style-type: none"> <li>New and material evidence showing the new conditions and that case now critical:</li> <li>Medical Source Statements</li> <li>Foreclosure/eviction notices</li> <li>Utility shut off notices</li> <li>3<sup>rd</sup> party statements</li> </ul>
SSR 13-1p Evaluating unfairness, bias, prejudice, etc., of an ALJ	<ul style="list-style-type: none"> <li>Statements and/or actions by ALJs that display unfairness, prejudice, partiality, bias, misconduct, or discrimination. All ALJs must fulfill their duties with fairness and impartiality. 3 separate processes to guard against unfairness in hearing process:</li> </ul>	<ul style="list-style-type: none"> <li>Witness statements from those present in the hearing- example statement from interpreter if ALJ</li> </ul>

<p>20 C.F.R. §§</p> <p>404.940, 404.967, 404.969, 404.970, 416.1469, 416.1470</p>	<p>1) Appeals Council (AC) review process: Reviewed under an abuse of discretion standard. Abuse of discretion will be found when ALJ's action was erroneous and without any rational basis, or is clearly not justified. Sole remedy from AC is a decision or a remand. AC can also refer matter to Division of Quality service-note this can be done even if no request is made by the claimant.</p> <p>2) Division of Quality Services complaint investigation process: Complaint must be in writing and can be filed by claimant, representative, another party to hearing, or someone else who was present at the hearing. Complaint must be received within 180 days of date of conduct or the date the complainant became aware of the conduct. ALJ is notified, investigation is undertaken and a report prepared. NOTE-complainant is notified the complaint has been processed but is not notified of the outcome based on the Privacy Act.</p> <p>3) Civil Rights investigation process: Can be filed by anyone who was a party to the hearing based on race, color, national origin (including English language ability), religion, sex, sexual orientation, age, disability or in retaliation for having previously filed a civil rights complaint. NOTE- Civil rights complaint can be filed in addition to filing under either 1 or 2 above. Must file within 180 days unless good cause for delay is found. Should receive a decision within 180 days of the complaint.</p>	<p>claims claimant could speak English, consider using statistics for individual ALJs to show propensity to deny certain types of cases, consult with other local attorneys who appear before same ALJ for similar cases.</p>
<p>SSR 13-2p Evaluating cases involving drug addiction and alcoholism (DAA) (rescinds and replaces SSR 82-60)</p>	<ul style="list-style-type: none"> <li>• 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. <ul style="list-style-type: none"> <li>i) SSA uses DSM to define substance addiction as "maladaptive patterns of substance use that lead to clinically significant impairment or distress."</li> <li>ii) DAA does not include: <ul style="list-style-type: none"> <li>○ Fetal alcohol syndrome</li> <li>○ Fetal cocaine exposure</li> <li>○ Addiction to, or use of, prescription medications taken as prescribed, including</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Reports and records from physicians showing existence of other severe impairments</li> <li>• Specific statements from providers that claimant is disabled exclusive of DAA issues</li> <li>• organic psychological testing</li> <li>• MSS and Mental RFC forms (most claimant</li> </ul>

	<p>methadone and narcotic pain medications</p> <ul style="list-style-type: none"> <li>○ Nicotine related disorders</li> </ul> <ul style="list-style-type: none"> <li>• DAA evaluation process has 6 steps:             <ol style="list-style-type: none"> <li>1) Does claimant have DAA?</li> <li>2) Is the claimant disabled considering all impairments, including DAA?</li> <li>3) Is DAA the only impairment?</li> <li>4) Is the other impairment(s) disabling by itself while the claimant is dependent upon abusing drugs or alcohol?</li> <li>5) Does the DAA cause or affect the claimant's medically determinable impairment(s)?</li> <li>6) Would the other impairment(s) improve to the point of nondisability in the absence of DAA?</li> </ol> </li> </ul>	<p>with DAA issues have significant underlying mental issues that are disabling)</p> <ul style="list-style-type: none"> <li>• 3<sup>rd</sup> party statements, records from detox centers, statements from AA/NA sponsors</li> </ul>
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