

May 12, 2014 Teleconference on Proposed Medical Criteria for Evaluating Neurological Disorders in the Listing of Impairments

Introduction:

Welcome to the teleconference with the Social Security Administration (SSA) on our proposed criteria for evaluating neurological disorders. We want to give you an opportunity to hear about our work on the Notice of Proposed Rulemaking (NPRM) for Evaluating Neurological Disorders.

My name is Shirleeta Stanton, Deputy Associate Commissioner in the Office of Disability Policy in SSA.

The goal of today's teleconference is to provide you with information on certain proposed changes to the medical criteria for evaluating neurological disorders in the Listing of Impairments as described in the NPRM and to give you an opportunity to comment on the information provided to you during this call.

We also want you to know that we reopened the comment period to provide you additional time to share your comments with us. The new comment period ends on June 2, 2014.

Today, I will:

- Give a general background on the disability program,
- Provide information on how we revise the listings,
- Share what information we considered when we drafted the NPRM, and
- Provide information about the proposed functional criteria in the listings to evaluate a person's neurological condition.

Background on the Rulemaking Process:

- We conduct rulemaking activities using the Administrative Procedure Act's (APA) notice and comment rulemaking procedures. Right now, we are in the midst of the rulemaking process with our proposed rules for evaluating neurological disorders.
- When we publish a proposed rule in the Federal Register, we notify the public of the opportunity to make comments. We invite you to send your comments to us by any one of three methods—Internet, fax, or mail—and we will consider all of the significant comments we receive.
- Because we are in the midst of the rulemaking process, we won't be discussing any specific changes we may plan to make to the proposed rules. We do, however, encourage you to comment on the rules that we have proposed.
- Rulemaking does not close until we address public comments and publish a final rule.

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- When we determine it would be helpful to provide information to members of the public during rulemaking, as we are doing today, we announce the meeting publicly in the Federal Register. We will also publish a summary of the meeting as part of the rulemaking record for full disclosure to the public.

General Background on the Disability Program:

To give you background on the Social Security disability program, I am going to share with you some basic information about how we evaluate disability claims. Under the Social Security Act, “disability” is defined as the inability to engage in any substantial gainful activity due to any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. For children under the supplemental security income program or SSI, disability means that the child has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

We require objective medical evidence that shows that a person has a medically determinable impairment that meets our disability requirements.

We evaluate initial adult disability claims under a sequential five-step evaluation process. At step one, we determine whether the person is engaging in substantial gainful activity or SGA. If the person is not engaging in SGA, we go to step two, where we assess whether he or she has an impairment or combination of impairments that is severe. Throughout the sequential evaluation, we consider the combined effect of all of the person’s physical and mental impairments.

If we determine that the person does not have an impairment that is severe, we find that he or she is not disabled. If the person’s impairment, or combination of impairments, is severe, we go to step three.

At step three, we determine whether the person’s impairment or combination of impairments “meets” or “medically equals” the criteria of one of the listings in our regulations. The listings describe, for each major body system, the impairments we consider severe enough to prevent an individual from doing any gainful activity.

For children, when an impairment, alone or in combination with another impairment, is severe but does not meet or medically equal a listing in any affected body system, we determine whether it results in limitations that functionally equal the listings. By “functionally equal the listings,” we mean that the child’s impairment must be of listing-level severity, that is, it must result in “marked” limitation in two of the domains of functioning that we consider or “extreme” limitation in one domain. In evaluating the effects of a child’s impairment on his or her functioning, we consider what the child cannot do, has difficulty doing, needs help doing, or is restricted from doing because of his or her impairment. If a person has an impairment or combination of impairments that meets or medically equals the criteria in a listing, or a child has

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an impairment or a combination of impairments that meets, medically equals, or functionally equals the listings, we allow the disability claim. If not, we deny the claim.

For adults, when an impairment, alone or in combination with other impairment(s), is severe but does not meet or medically equal a listing in any affected body system, at step four we determine what is the most that an individual can do despite his or her impairment or list of impairments. We call this a person's residual functional capacity or RFC. We evaluate the person's RFC and determine if it prevents the person from performing any past relevant work. If the person can perform his or her past relevant work, we find that he or she is not disabled.

If the person cannot perform past relevant work, or if the person did not have any past relevant work, we go to step five of sequential evaluation. At this step, we determine whether the person can do other work that exists in significant numbers in the national economy. If the person can perform other work, we will find he or she is not disabled. If the person cannot perform other work, we will find he or she is disabled.

How do we revise the listings?

We have been using listings in one form or another since 1955. Not every condition is included in the listings. Most of the listed impairments are permanent or can be expected to result in death. For some listings, we state a specific period of time for which the impairment will meet the listing. For others, the evidence must show that the impairment has lasted or can be expected to last for a continuous period of at least 12 months. If a person has an impairment or combination of impairments that meets or medically equals the criteria in a listing, or a child has an impairment or a combination of impairments that functionally equals the listings, we allow the disability claim.

We revise the listings on an ongoing basis using the Federal rulemaking process, which is the process we are using now to propose revisions to the neurological listings. When we update listings, we consider information from a variety of sources, including outreach meetings with medical experts, advocates, adjudicators, and people with impairments. We also include information gained from public comments in response to an advance notice of public rulemaking.

What information we considered when revising the proposed Medical Criteria for Evaluating Neurological Disorders:

Our teleconference today focuses on step three of the sequential evaluation process - the listings - since we are proposing new rules for evaluating neurological disorders under the listings.

At this point in the process, we have conducted outreach, proposed rules, and sought public comment on those rules. Before we publish final rules, we will consider all of the public comments we receive.

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We received information from medical experts and members of the public on evaluating Neurological Disorders:

When we developed the revised medical criteria for evaluating neurological disorders that we proposed in the NPRM we considered the 133 public comments that we received in response to an advance notice of proposed rulemaking that we published in the Federal Register on April 13, 2005. In this publication, we invited the public to send us written comments on and suggestions for updating the neurological body system.

We also considered the public comments that we received in July 2005 when we conducted an “Outreach Conference on Neurological Disorders in the Disability Programs.” We obtained information from the November 2008 Compassionate Allowance Hearing on Brain Injuries and Stroke. From 2005 through 2011, we also met with a number of organizations, including the Veterans Administration/Veterans Health Administration (VA/VHA) Mental Health Forum.

Additionally, we used information from a variety of sources, including:

- Medical experts in the field of neurology, experts in other related fields, advocacy groups for people with neurological disorders, as well as individuals with neurological disorders and their families;
- We used information obtained from People who make and review disability determinations and decisions for us in State agencies, in our Office of Quality Review, and in our Office of Disability Adjudication and Review; and
- Published sources we listed in the References section at the end of the preamble in the NPRM and other sources cited in public comments.

Furthermore, the revisions that we have proposed to the neurological body system reflect our program experience and medical advances in evaluating neurological disorders.

Information on the functional criteria in the proposed neurological listings:

Several commenters expressed concern that the current neurological listings do not address the mental aspects of many neurological disorders. We recognize that neurological disorders often result in both physical and mental limitations. To improve the way that we evaluate mental limitations associated with neurological disorders, we propose functional criteria in this NPRM.

The functional criteria consist of four areas of functioning: 1) Physical, 2) Activities of daily living, 3) Social, and 4) Completing tasks in a timely manner. Three of the four areas are based on the same areas of functioning that we use to evaluate mental functioning in the Mental disorder listings. Furthermore, we use these criteria in the Immune disorder listings and we are proposing to add them to the Hematological disorder listings.

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We believe it is a good idea to add functional criteria to the Neurological disorder listings because:

- The functional criteria address both physical and mental limitations associated with neurological disorders. Three of the four areas of functioning, “activities of daily living,” “social,” and “completing tasks in a timely manner” require both physical and mental abilities. This means our adjudicators would be able to evaluate both physical and mental limitations under the neurological body system, just as they evaluate the physical and mental limitations of immune disorders under the Immune disorder listings, for example.
- SSA adjudicators are already familiar with these functional criteria. Our adjudicators would make a smooth transition into using these criteria to evaluate the physical and mental limitations of neurological disorders.
- The proposed functional criteria would provide adjudicators with a more efficient way of evaluating mental limitations in the Neurological disorders body system.
- It is likely that our adjudicators would be able to make allowance decisions sooner under the Neurological disorders body system and not have to cross reference to the Mental disorders body system. Of course, our adjudicators may use the Mental disorders criteria to evaluate a person’s mental condition, if it is appropriate.

How each case is evaluated is largely determined by the disabled individual’s allegations and the medical evidence available in the case file. Our adjudicators are trained to evaluate cases based upon how a condition affects each person. Our adjudicators are also trained on various medical disorders. For example, we train our adjudicators to understand that many neurological disorders do affect a person’s physical and mental functioning.

An adjudicator may evaluate physical and mental impairments caused by a neurological disorder using the proposed neurological listings criteria. However, if the mental impairment satisfies the criteria under the mental disorders body system, an adjudicator may evaluate the mental impairment using the mental disorders criteria.

Our adjudicators are not precluded from evaluating a person’s impairment using listings criteria in more than one body system. Adding functional criteria to the neurological listings is simply another option to evaluate the many manifestations of neurological disorders.

It is also important to remember that the listings are just one of five possible steps in the sequential evaluation process. **We do not deny claims at the listings step.** If we do not find that an impairment meets our listings criteria, we continue to other steps of the sequential evaluation process where we may consider a person’s age, education, work or school history, and residual functional capacity.

We are currently reviewing all public comments we have received on the neurological NPRM. We will consider all comments we receive as we draft the final rule. We may make changes to what we have proposed based on comments we receive. If we publish final rules, we will include

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a summary of those relevant comments received along with responses and an explanation of how we will apply the new rules.

In Closing:

We want to thank you for spending the time to meet with us today. Your comments on the neurological NPRM are helpful to us as we work toward revising our rules for evaluating neurological disorders. We look forward to continuing to work with you as we continue to improve the disability program.

We will be posting the transcript of this teleconference on our website at www.socialsecurity.gov and publishing the transcript as part of the rulemaking record in the Federal Register.

The new comment period for the neurological NPRM ends on June 2, 2014. This concludes the SSA teleconference summary.