4191-02U

SOCIAL SECURITY ADMINISTRATION

Social Security Acquiescence Ruling (AR) 14-1(8)

[Docket No. SSA-2014-0008]

Brock v. Astrue, 674 F.3d 1062 (8th Cir. 2012): Requiring Vocational Specialist (VS) or Vocational Expert (VE) Evidence When an Individual has a Severe Mental Impairment(s) — Titles II and XVI of the Social Security Act.

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling (AR).

SUMMARY: We are publishing this Social Security AR in accordance with 20 CFR 402.35(b)(2), 404.985(a), (b), and 416.1485(a), (b).

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Marc Epstein, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-8122, or TTY 410-966-5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at http://www.socialsecurity.gov.

SUPPLEMENTARY INFORMATION

An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this AR to claims at all levels of administrative review within the Eighth Circuit. We will apply this AR to all determinations or decisions made on or after [INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If we made a determination or decision on an application for benefits between March 28, 2012, the date of the Court of Appeals' decision, and [INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], the effective date of this AR, the claimant may request that we apply the AR to the prior determination or decision. The claimant must show, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that applying the AR could change our prior determination or decision in his or her case.

When we received this precedential Court of Appeals' decision and determined that an AR might be required, we began to identify those claims that were pending before the agency within the circuit that might be subject to readjudication if we subsequently issued an AR. Because we have determined that an AR is required and are publishing this AR, we will send a notice to those individuals whose claims we have identified. In the notice, we will provide information about the AR and the right to request readjudication under the AR. However, a claimant does not need to receive a notice in order to request that we apply this AR to our prior

determination or decision on his or her claim, as provided in 20 CFR 404.985(b)(2) and 416.1485(b)(2).

If we later rescind this AR as obsolete, we will publish a notice in the Federal Register to that effect, as provided in 20 CFR 404.985(e) and 416.1485(e). If we decide to relitigate the issue covered by this AR, as provided by 20 CFR 404.985(c)and 416.1485(c), we will publish a notice in the Federal Register stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: April 17, 2014.

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Carolyn W. Colvin,
Acting Commissioner of Social Security

ACQUIESCENCE RULING 14–1(8)

Brock v. Astrue, 674 F.3d 1062 (8th Cir. 2012): Requiring Vocational Specialist (VS) or Vocational Expert (VE) Evidence When an Individual has a Severe Mental Impairment(s) — Titles II and XVI of the Social Security Act.

ISSUE: Must an adjudicator obtain VS or VE evidence to determine whether a claimant with a severe mental impairment can perform jobs that exist in significant number in the national economy, given his or her residual functional capacity (RFC), age, education and work experience?

STATUTE/REGULATION/RULING CITATION: Sections 205(b), 223(d)(2)(A); 223(d)(5)(A); 1614(a)(3)(B); 1614(a)(3)(H)(i) of the Social Security Act (42 U.S.C. 423(d)(2)(A); 423(d)(5)(A); 1382c(a)(3)(B); 1382c(a)(3)(H)(i)); 20 CFR 404.1520(a)(4)(v), 404.1520(g), 404.1566, 404.1569, 404.1569a, 416.920(a)(4)(v), 416.920(g), 416.966, 416.969, 416.969a; section 200.00(e) of 20 CFR Part 404, Subpart P, Appendix 2; Social Security Rulings (SSRs) 83-10, 83-12, 83-14, 85-15, 96-9p.

CIRCUIT: Eighth (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota).

APPLICABILITY OF RULING: This ruling applies to determinations or decisions made in the Eighth Circuit at all levels of administrative review.

DESCRIPTION OF CASE: Michael Brock (Brock) applied for Supplemental Security Income (SSI) payments based on disability alleging he was disabled due to an anxiety disorder and

attention deficit hyperactivity disorder.[1] The administrative law judge (ALJ) found that Brock's mental impairments were severe at step two of our sequential evaluation process. Despite the severe mental impairments, the ALJ found that Brock had the RFC to perform the full range of medium work contemplated in the Medical-Vocational Guidelines (the Grid rules). Considering Brock's RFC, age, education, and work experience, the ALJ used Medical-Vocational Rule 203.25 as a framework to find that Brock could adjust to work existing in significant numbers in the national economy and was "not disabled." The ALJ did not request VE testimony.

On appeal, Brock argued that because his impairments were solely nonexertional, the ALJ erred in relying solely on the Grid rules and that the ALJ should have sought VE evidence to determine whether he could adjust to other work. Brock asserted that, because the Grid rules are premised only on exertional limitations, they are not meant to direct a conclusion of "disabled" or "not disabled" for individuals who have solely nonexertional limitations. Therefore, Brock asserted that substantial evidence in the record did not support the ALJ's decision.

HOLDING: The Court of Appeals for the Eighth Circuit concluded that the ALJ erred by relying solely on the Grid rules to determine that Brock could adjust to work existing in significant numbers in the national economy. The Court held that "[b]ecause the ALJ determined that Brock suffered from severe mental impairments, the ALJ should have consulted a [VE] in determining whether Brock had the RFC to perform other jobs that exist in significant number in the national economy."

[1] Although Brock was a Title XVI case, the same principles apply to Title II. Therefore, this Acquiescence Ruling applies to both Title II and Title XVI disability claims.

STATEMENT AS TO HOW BROCK DIFFERS FROM THE AGENCY'S POLICY:

At step five of the sequential evaluation process (or the last step in the sequential evaluation process in continuing disability review claims), we consider the vocational factors of age, education, and work experience in conjunction with a claimant's RFC to determine whether the claimant can adjust to other work that exists in significant numbers in the national economy. Section 200.00(e)(1) of 20 CFR Part 404, Subpart P, Appendix 2 provides that "[i]n the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in this appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments." As explained below, the rules are, however, used as a framework for decision making.

Under SSR 85-15: Titles II and XVI: Capability To Do Other Work — The Medical – Vocational (Grid) Rules as a Framework for Evaluating Solely Nonexertional Impairments, where a person's only impairment is mental, it is not of listing severity but does prevent the person from meeting the mental demands of past relevant work and prevents the transferability of acquired work skills, the final consideration is whether the person can be expected to perform unskilled work. The basic mental demands of competitive, remunerative, unskilled work include the abilities (on a sustained basis) to understand, carry out, and remember simple instructions; to respond appropriately to supervision, coworkers, and usual work situations; and to deal with changes in a routine work setting. Where there is no exertional impairment, unskilled jobs at all levels of exertion constitute the potential occupational base for persons who can meet the mental demands of unskilled work. Under our interpretation of the regulations, an adjudicator is not

required to consult a VE or other vocational resource to determine whether a nonexertional limitation significantly erodes a claimant's occupational base when adjudicative guidance on the effect of the limitation is provided in an SSR.[2] If the occupational base is not significantly eroded by non-exertional limitations, the adjudicator may use the Grid rules as a framework, and VE testimony is not required.

In Brock, the ALJ found that Brock retained the ability to perform unskilled work. Pursuant to SSR 85-15, the ALJ found Brock's non-exertional limitations had little or no effect on the occupational base of medium exertional level unskilled work before applying the framework of Grid rule 203.25 to find Brock was not disabled.

The Brock Court's decision differs from our policy because it held that, because the ALJ found Brock had severe mental impairments, "the ALJ should have consulted a [VE] in determining whether Brock had the RFC to perform other jobs that exist in significant number in the national economy." The holding requires the ALJ to consult a VE before denying a claim at step five of our sequential evaluation process when the claim involves an individual with a severe mental impairment(s), regardless of whether adjudicative guidance available in an SSR

[2] For example, the following non-exertional limitations do not significantly erode an occupational base: limited exposure to dangerous moving machinery, unprotected heights, and ragweed allergies (sedentary jobs); limited climbing of ladders and scaffolding, crouching (sedentary and light jobs), exposure to feathers, use of a cane for prolonged ambulation and uneven terrain, or slopes (sedentary), and inability to sense texture or temperature with fingertips. See SSR 83-14: Titles II and XVI: Capability To Do Other Work – The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments, at *2. Whereas, the following nonexertional limitations generally do significantly erode an occupational base: loss of bilateral manual dexterity (sedentary jobs); constriction of visual field (light and medium jobs); no stooping, and poor balance when standing or walking on uneven terrain. See SSR 96-9p: Policy Interpretation Ruling Titles II and XVI: Determining Capability To Do Other Work – Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work, at *5-6. SSR 83-14: Titles II and XVI: Capability To Do Other Work – The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments. . SSR 83-10: Titles II and XVI: Determining Capability to do Other Work – The Medical-Vocational Rules of Appendix 2 and SSR 83-12: Titles II and XVI: 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 also provide helpful adjudicative guidance on using the rules and the impact of nonexertional impairments on the exertional occupational base.

holds that the resulting nonexertional limitation(s) does not significantly erode the occupational base and application of the applicable Grid rule is appropriate.

EXPLANATION OF HOW WE WILL APPLY THE BROCK DECISION WITHIN THE CIRCUIT:

This Ruling applies only to claims in which the claimant resides in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota at the time of the determinations or decision at the initial, reconsideration, and ALJ hearing levels.

In making a disability determination or decision at step five of the sequential evaluation process (or the last step in the sequential evaluation process in continuing disability review claims), we will not rely exclusively on the Grid rules as a framework for decision making when an individual has a severe mental impairment(s). Before we deny a claim for disability benefits at step five (or the last step in the sequential evaluation process in continuing disability review claims) when a claimant has a severe mental impairment(s), we will produce VE evidence in claims at the hearing level. For claims decided at the initial and reconsideration levels, we will use evidence from a VS, the Dictionary of Occupational Titles (DOT), or another reliable source of job information, such as the ones listed in 20 CFR 404.1566(d) and 416.966(d).

At the Appeals Council level, the Appeals Council will use this AR to determine whether it was correctly applied at the hearing level. However, when the Appeals Council exercises its authority to issue a corrective unfavorable decision, the Appeals Council may rely on vocational evidence adduced at the hearing.

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