



4191-02U

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2012-0035]

Social Security Ruling (SSR) 17-2p: Titles II and XVI: Evidence Needed by Adjudicators at the Hearings and Appeals Council Levels of the Administrative Review Process to Make Findings about Medical Equivalence

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are providing notice of SSR 17-2p. This SSR provides guidance about how adjudicators at the hearings and Appeals Council (AC) levels of the administrative review process make findings about medical equivalence in disability claims under titles II and XVI of the Social Security Act.

DATES: Effective Date: March 27, 2017.

FOR FURTHER INFORMATION CONTACT: Joshua Silverman, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 594-2128. 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: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans

benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all components of the Social Security Administration. 20 CFR 402.35(b)(1).

This SSR will remain in effect until we publish a notice in the Federal Register that rescinds it, or we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security-- Disability Insurance; 96.002, Social Security-- Retirement Insurance; 96.004, Social Security-- Survivors Insurance; 96.006--Supplemental Security Income.)

Nancy A. Berryhill,
Acting Commissioner of Social Security.

POLICY INTERPRETATION RULING

Social Security Ruling, SSR 17-2p: Titles II and XVI: Evidence Needed by Adjudicators at the Hearings and Appeals Council Levels of the Administrative Review Process to Make Findings about Medical Equivalence.

This Social Security Ruling (SSR) rescinds and replaces SSR 96-6p: “Titles II and XVI: 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.”

PURPOSE: This SSR provides guidance on how adjudicators at the hearings and Appeals Council (AC) levels of our administrative review process make findings about medical equivalence in disability claims under titles II and XVI of the Social Security Act (Act).

CITATIONS: Sections 216(i), 223(d), and 1614(a) of the Act, as amended; 20 CFR 404.1526 and 416.926.

BACKGROUND:

The Sequential Evaluation Process

We use a five-step sequential evaluation process to determine whether an adult is disabled under titles II or XVI of the Act.¹ We use a different process to decide whether a child is disabled under title XVI of the Act.² In both situations, if we can find an individual is disabled at a step, we make a determination or decision at that step and do not go on to the next step.³

At step 3 of the sequential evaluation process for determining disability in adult and child claims, we make a medical assessment to determine whether an individual's impairment(s) meets a listing in the Listing of Impairments (listings).⁴ If an individual's impairment(s) meets all the criteria of any listed impairment in the listings, we will find that the individual is disabled. If an individual has an impairment(s) that does not meet all of the requirements of a listing, we then determine whether the individual's impairment(s) medically equals a listed impairment. An impairment is medically equivalent to a listed impairment if it is at least equal in severity and duration to the criteria of any listed impairment. We can find medical equivalence in three ways:

1. If an individual has an impairment that is described in the listings, but either:
 - a. the individual does not exhibit one or more of the findings specified in the particular listing, or
 - b. the individual exhibits all of the findings, but one or more of the findings is not as severe as specified in the particular listing,

¹ See 20 CFR 404.1520 and 416.920.

² See 20 CFR 416.924.

³ See 20 CFR 404.1520(a)(4) and 416.920(a)(4).

⁴ 20 CFR Part 404, Subpart P, Appendix 1.

then we will find that his or her impairment is medically equivalent to that listing if there are other findings related to the impairment that are at least of equal medical significance to the required criteria.

2. If an individual has an impairment(s) that is not described in the listings, we will compare the findings with those for closely analogous listed impairments. If the findings related to the impairment(s) are at least of equal medical significance to those of a listed impairment, we will find that the impairment(s) is medically equivalent to the analogous listing.

3. If an individual has a combination of impairments, no one of which meets a listing, we will compare the findings with those for closely analogous listed impairments. If the findings related to the impairments are at least of equal medical significance to those of a listed impairment, we will find that the combination of impairments is medically equivalent to that listing.⁵

If we determine an individual's impairment(s) does not meet or medically equal a listed impairment, we continue evaluating the claim using the sequential evaluation process.⁶

Who decides whether an individual's impairment medically equals a listing?

At the initial and reconsideration levels of the administrative review process, Federal or State agency Medical Consultants (MC) or Psychological Consultants (PC) consider the evidence and make administrative medical findings about medical issues, including whether an

⁵ See 20 CFR 404.1526 and 416.926.

⁶ In adult claims, we will determine the individual's residual functional capacity and then go to step 4 of the sequential evaluation process. See 20 CFR 404.1520 and 416.920. In a child's claim under Title XVI, we will determine whether the child's impairment(s) functionally equals the Listings at step 3. See 20 CFR 416.926a.

individual's impairment(s) meets or medically equals a listing.⁷ MCs and PCs are highly qualified medical sources who are also experts in the evaluation of medical issues in disability claims under the Act. In most situations,⁸ we require adjudicators at the initial and reconsideration levels to obtain MC or PC administrative medical findings about medical equivalence.

At the hearings level of the administrative review process, administrative law judges (ALJ) and some attorney advisors⁹ determine whether an individual's impairment(s) meets or medically equals a listing at step 3 of the sequential evaluation process. To assist in evaluating this issue, adjudicators at the hearings level may ask for and consider evidence from medical experts (ME) about the individual's impairment(s), such as the nature and severity of the impairment(s).

⁷ In some States, we are testing modifications to the disability determination procedures that allow disability examiners to decide whether an individual's impairment(s) medically equals a listing without requiring consultation with an MC or PC, although such consultation is permissible. One modification authorizes specialized State agency disability examiners called "single decisionmakers" (SDM) to make initial and reconsideration determinations without consulting an MC or PC in some types of claims. See 20 CFR 404.906(b)(2) and 416.1406(b)(2). The other modification being tested allows disability examiners to make fully favorable determinations in quick disability determinations (QDD) and compassionate allowance (CAL) claims without requiring consultation with an MC or PC because those types of claims involve the most obviously disabling impairments. See 20 CFR 404.1615(c)(3) and 416.1015(c)(3). In those States using the testing modifications, there may not be an MC or PC medical assessment in the file. Both of these testing modifications are scheduled to end by the end of calendar year 2018. See 81 FR 73027 (2016) and 81 FR 58544 (2016).

⁸ As stated in the prior footnote, disability examiners are not required to obtain MC or PC input about medical equivalence in certain SDM claims and in QDD and CAL claims. In those States using the testing modifications, there may not be a MC or PC medical assessment in the file.

⁹ See 20 CFR 404.942 and 416.1442.

At the AC level of the administrative review process, when the AC exercises its authority to issue a decision,¹⁰ it determines whether an individual's impairment(s) meets or medically equals a listing. The AC may ask its medical support staff to help decide whether an individual's impairment(s) medically equals a listing.

POLICY INTERPRETATION

Evidentiary requirements

At the hearings level or at the AC level when the AC issues its own decision, the adjudicator is responsible for the finding of medical equivalence. The adjudicator must base his or her decision about whether the individual's impairment(s) medically equals a listing on the preponderance of the evidence in the record. To demonstrate the required support of a finding that an individual is disabled based on medical equivalence at step 3, the record must contain one of the following:

1. A prior administrative medical finding from an MC or PC from the initial or reconsideration adjudication levels supporting the medical equivalence finding, or
 2. ME evidence, which may include testimony or written responses to interrogatories, obtained at the hearings level supporting the medical equivalence finding,
- or

¹⁰ The Appeals Council issues decisions in cases after it grants a request for review or takes own motion review of a hearing decision. See 20 CFR 404.969-970 and 416.1469-1470. The Appeals Council may also make a decision after a Federal court remands a case. See 20 CFR 404.983 and 416.1483.

3. A report from the AC's medical support staff supporting the medical equivalence finding.

When an MC or PC makes administrative medical findings at the initial or reconsideration levels, the findings are part of the Commissioner's determination; therefore, they are not evidence at that level of adjudication.¹¹ At subsequent levels of the administrative review process, the MCs' or PCs' administrative medical findings made at the initial or reconsideration levels are prior administrative medical findings, which are evidence.¹² Although adjudicators at the hearings and AC levels are not required to adopt prior administrative medical findings when issuing decisions, adjudicators must consider them and articulate how they considered them in the decision.¹³

When an adjudicator at the hearings level obtains ME testimony or written responses to interrogatories about whether an individual's impairment(s) medically equals a listing, the adjudicator cannot rely on an ME's conclusory statement that an individual's impairment(s) medically equals a listed impairment(s). Whether an impairment(s) medically equals the

¹¹ See 20 CFR 404.1513a(a)(1) and 416.913a(a)(1).

¹² See 20 CFR 404.1513a(b)-(c) and 416.913a(b)-(c). It is possible for an MC or PC to have found that an individual's impairment(s) medically equal(s) the requirements of a listed impairment(s), but we would still not make a favorable determination. For example, we could find that the individual does not meet nonmedical requirements for eligibility.

¹³ See 20 CFR 404.1513a(b)-(c), 404.1520c, 416.913a(b)-(c), and 416.920c. In States using the two testing modifications discussed in footnote 7, the record may not contain any MC or PC prior administrative medical finding about medical equivalence that an adjudicator is able to consider. In these situations, the adjudicator may find that an individual's impairment(s) medically equals a listed impairment using the second or third method, but not the first method. In these situations, the adjudicator is not required to obtain ME evidence or medical support staff input before making a finding that the claimant's impairment(s) do not medically equal a listing.

requirements of a listed impairment is an issue reserved to the Commissioner. If the ME states that the individual's impairment(s) medically equals a listed impairment, the adjudicator must ask the ME to identify medical evidence in the record that supports the ME's statements. Adjudicators will consider ME testimony and interrogatories using our rules for considering evidence. The adjudicator will then consider whether an individual's impairment(s) medically equals a listing using one of the three methods specified in 20 CFR 404.1526 and 416.926.

Similarly, when the AC obtains a report from its medical support staff to evaluate medical equivalence, the AC retains final responsibility for determining whether an individual's impairment(s) medically equals a listed impairment. The AC will consider the medical support staff's report and all other supporting medical evidence using our rules for considering evidence. The AC will then consider whether an individual's impairment(s) medically equals a listing using one of the three methods specified in 20 CFR 404.1526 and 416.926.

If an adjudicator at the hearings or AC level believes that the evidence does not reasonably support a finding that the individual's impairment(s) medically equals a listed impairment, we do not require the adjudicator to obtain ME evidence or medical support staff input prior to making a step 3 finding that the individual's impairment(s) does not medically equal a listed impairment.

Articulation requirements

An adjudicator at the hearings or AC level must consider all evidence in making a finding that an individual's impairment(s) medically equals a listing. To make a finding of medical

equivalence, the adjudicator must articulate how the record establishes medical equivalency using one of the three methods specified in 20 CFR 404.1526 and 416.926. An adjudicator must provide a rationale for a finding of medical equivalence in a decision that is sufficient for a subsequent reviewer or court to understand the decision. Generally, this will entail the adjudicator identifying the specific listing section involved, articulating how the record does not meet the requirements of the listed impairment(s), and how the record, including ME or medical support staff evidence, establishes an impairment of equivalent severity.

Similarly, an adjudicator at the hearings or AC level must consider all evidence in making a finding that an individual's impairment(s) does not medically equal a listing. If an adjudicator at the hearings or AC level believes that the evidence already received in the record does not reasonably support a finding that the individual's impairment(s) medically equals a listed impairment, the adjudicator is not required to articulate specific evidence supporting his or her finding that the individual's impairment(s) does not medically equal a listed impairment. Generally, a statement that the individual's impairment(s) does not medically equal a listed impairment constitutes sufficient articulation for this finding. An adjudicator's articulation of the reason(s) why the individual is or is not disabled at a later step in the sequential evaluation process will provide rationale that is sufficient for a subsequent reviewer or court to determine the basis for the finding about medical equivalence at step 3.

EFFECTIVE DATE: This SSR is effective on March 27, 2017.

CROSS-REFERENCES: 20 CFR 404.1526 and 416.926.

[FR Doc. 2017-05959 Filed: 3/24/2017 8:45 am; Publication Date: 3/27/2017]