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Social Security Disability Assessments and Hearings: Coordinating SSDI With Medicaid and VA Benefits

TUESDAY, FEBRUARY 11, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Dana W. Duncan, Attorney, **Duncan Disability Law**, Nekoosa, Wis.

Rachael A. Houck, J.D., Attorney, **Gudorf Law Group**, Dayton, Ohio

Amanda Pirt Meyer, Attorney, **Haskins Short & Brindley**, Monona, WI

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DANA W. DUNCAN
ATTORNEY AT LAW

danawduncan@duncandisability.com

- Duncan Disability Law, S.C., Nekoosa, WI
- Representing claimants in Wisconsin, Minnesota, Michigan, Illinois and across America
- Handling Federal Appeals in multiple district courts, and Courts of Appeal for the Seventh, Fourth, Tenth, Sixth, Eighth, and Ninth Circuit

Recent Social Security Rulings
(SSR's Issued and Rescinded)

- SSR 18-1p
- SSR 18-2p
- SSR 18-3p
- SSR 19-1p
- SSR 19-2p
- SSR 19-3p
- SSR 19-4p

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-1p: Titles II and XVI: Determining the Established Onset Date (EOD) in Disability Claims

We are providing notice of SSR 18-01p, which rescinds and replaces SSR 83-20, "Titles II and XVI: Onset of Disability," except as noted here.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-1p: Titles II and XVI: Determining the Established

A. How do we determine whether a claimant meets the statutory definition of disability and, if so, when the claimant first met that definition?

- *We* need specific medical evidence to determine whether a claimant meets the statutory definition of disability. In general, an individual has a statutory obligation to provide us with the evidence to prove to us that he or she is disabled. This obligation includes providing us with evidence to prove to us when he or she first met the statutory definition of disability. The Act also precludes us from finding that an individual is disabled unless he or she submits such evidence to us. The Act further provides that we:

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-1p: Titles II and XVI: Determining the Established

[S]hall consider all evidence available in [an] individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability.

In addition, when we make any determination, the Act requires us to

[M]ake every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-1p: Titles II and XVI: Determining the Established

The period we consider depends on the type of claim and the facts of the case. For example, a claimant who has applied for disability insurance benefits under title II of the Act must show that:

- He or she met the statutory definition of disability before his or her insured status expired, and
- He or she currently meets the statutory definition of disability, or his or her disability ended within the 12-month period before the month that he or she applied for benefits.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-1p: Titles II and XVI: Determining the Established

Non-traumatic injury

We consider whether we can find that the claimant first met the statutory definition of disability at the earliest date within the period under consideration, taking into account the date the claimant alleged that his or her disability began. We review the relevant evidence and consider, for example, the nature of the claimant's impairment; the severity of the signs, symptoms, and laboratory findings; the longitudinal history and treatment course (or lack thereof);

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-1p: Titles II and XVI: Determining the Established

Non-traumatic injury

the length of the impairment's exacerbations and remissions, if applicable; and any statement by the claimant about new or worsening signs, symptoms, and laboratory findings. The date we find that the claimant first met the statutory definition of disability may predate the claimant's earliest recorded medical examination or the date of the claimant's earliest medical records, but we will not consider whether the claimant first met the statutory definition of disability on a date that is beyond the period under consideration.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-1p: Titles II and XVI: Determining the Established

Non-traumatic injury

At the hearing level of our administrative review process, if the All needs to infer the date that the claimant first met the statutory definition of disability, he or she may call on the services of an ME by soliciting testimony or requesting responses to written interrogatories (i.e., written questions to be answered under oath or penalty of perjury). The decision to call on the services of an ME is always at the All's discretion. Neither the claimant nor his or her representative can require an All to call on the services of an ME to assist in inferring the date that the claimant first met the statutory definition of disability.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-1p: Titles II and XVI: Determining the Established

B. May we determine the EOD to be in a previously adjudicated period?

Yes, if our rules for reopening are met and the claimant meets the statutory definition of disability and the applicable non-medical requirements during the previously adjudicated period. Reopening, however, is at the discretion of the adjudicator.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

This Social Security Ruling (SSR) rescinds and replaces SSR 82-59: "Titles II and XVI: Failure to Follow Prescribed Treatment."

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

Overview

A. Background

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

B. When we decide whether the failure to follow prescribed treatment policy may apply in an initial claim

- *Condition 1: The individual is otherwise entitled to disability or statutory blindness benefits under titles II or XVI of the Act*
- *Condition 2: There is evidence that an individual's own medical source(s) prescribed treatment for the medically determinable impairment(s) upon which the disability finding is based*
- *Condition 3: There is evidence that the individual did not follow the prescribed treatment*

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

C. How we will make a failure to follow prescribed treatment determination

Assessment 1: We assess whether the prescribed treatment, if followed, would be expected to restore the individual's ability to engage in substantial gainful activity (SGA)

Assessment 2: We assess whether the individual has good cause for not following the prescribed treatment

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

D. Development procedures

E. Required written statement of failure to follow prescribed treatment determination

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

F. When we make a failure to follow prescribed treatment determination within the sequential evaluation process Adult claims that meet or equal a listing at step 3 Title XVI child claims that meet, medically equal, or functionally equal the listings at step 3 Adult claims finding disability at step 5

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

G. Reopening a determination or decision
H. Continuing Disability Reviews (CDR)
I. Duration in disability and Title II blindness claims
J. Duration in Title XVI blindness claims
K. Claims involving both drug addiction and alcoholism (DAA) and failure to follow prescribed treatment

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

C. How we will make a failure to follow prescribed treatment determination

If all three conditions exist, we will determine whether the individual has failed to follow prescribed treatment in the claim. To make a failure to follow prescribed treatment determination, we will:

1. Assess whether the prescribed treatment, if followed, would be expected to restore the individual's ability to engage in SGA.

2. Assess whether the individual has good cause for not following the prescribed treatment.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

We may make either assessment first. If we first assess that the prescribed treatment, if followed, would not be expected to restore the individual's ability to engage in SGA, then it is unnecessary for us to assess whether the individual had good cause. Similarly, if we first assess that an individual has good cause for not following the prescribed treatment, then it is unnecessary for us to assess whether the prescribed treatment, if followed, would be expected to restore the individual's ability to engage in SGA.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

If we first determine that following the prescribed treatment would not be expected to restore the individual's ability to engage in SGA, then it is unnecessary for us to assess whether the individual had good cause for failing to follow the prescribed treatment. If we determine that following the prescribed treatment would restore the individual's ability to engage in SGA, we will then assess whether the individual has good cause for not following the prescribed treatment.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

To assess good cause in both adult and child claims, we will develop the claim according to the instructions in the Development procedures section below. The following are examples of acceptable good cause reasons for not following prescribed treatment:

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

1. Religion: The established teaching and tenets of the individual's religion prohibit him or her from following the prescribed treatment. The individual must identify the religion, provide evidence of the individual's membership in or affiliation to his or her religion, and provide evidence that the religion's teachings do not permit the individual to follow the prescribed treatment.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

2. Cost: The individual is unable to afford prescribed treatment, which he or she is willing to follow, but for which affordable or free community resources are unavailable. Some individuals can obtain free or subsidized health insurance plans or healthcare from a clinic or other provider. In these instances, the individual must demonstrate why he or she does not have health insurance that pays for the prescribed treatment or why he or she failed to obtain treatment at the free or subsidized healthcare provider.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

3. Incapacity: The individual is unable to understand the consequences of failing to follow prescribed treatment.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

4. Medical disagreement: When the individual's own medical sources disagree about whether the individual should follow a prescribed treatment, the individual has good cause to not follow the prescribed treatment. Similarly, when an individual chooses to follow one kind of treatment prescribed by one medical source to the simultaneous exclusion of an alternate treatment prescribed by another medical source, the individual has good cause not to follow the alternate treatment.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

5. Intense fear of surgery: The individual's fear of surgery is so intense that it is a contraindication to having the surgery. We require a written statement from an individual's own medical source affirming that the individual's intense fear of surgery is in fact a contraindication to having the surgery. We will not consider an individual's refusal of surgery as good cause for failing to follow prescribed treatment if it is based on the individual's assertion that success is not guaranteed or that the individual knows of someone else for whom the treatment was not successful.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

6. Prior history: The individual previously had major surgery for the same impairment with unsuccessful results and the same or similar additional major surgery is now prescribed.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

7. High risk of loss of life or limb: The treatment involves a high risk for loss of life or limb. Treatments in this category include:

· Surgeries with a risk of death, such as open-heart surgery or organ transplant.

· Cataract surgery in one eye with a documented, unusually high-risk of serious surgical complications when the individual also has a severe visual impairment of the other eye that cannot be improved through treatment.

· Amputation of an extremity or a major part of an extremity.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

8. Risk of addiction to opioid medication: The prescribed treatment is for opioid medication.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

9. Other: If the individual offers another reason for failing to follow prescribed treatment, we will determine whether it is reasonably justified on a case-by- case basis.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

We will not consider as good cause an individual's allegation that he or she was unaware that his or her own medical source prescribed the treatment, unless the individual shows incapacity as described above. Similarly, mere assertions or allegations about the effectiveness of the treatment are insufficient to meet the individual's burden to show good cause for not following the prescribed treatment.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 18-3p: Titles II and XVI: Failure to Follow Prescribed Treatment

We will determine what the individual's residual functional capacity (RFC) would be had he or she followed the prescribed treatment. We will then use that RFC to reevaluate steps 4 and 5 of the sequential evaluation process to determine whether the individual could perform his or her past relevant work at step 4 or adjust to other work at step 5. We will find the individual is disabled if we determine that the individual would remain unable to engage in SGA, even if the individual had followed the prescribed treatment. We will also find the individual is disabled if we find the individual had good cause for not following the prescribed treatment. However, we will find the individual is not disabled if the individual does not have good cause for not following the prescribed treatment and we determine that, had the individual followed the prescribed treatment, he or she could perform past relevant work or engage in other SGA.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-1p: Titles II and XVI: Effect of the Decision in *Lucia v. Securities and Exchange Commission (SEC)* on Cases Pending at the Appeals Council

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-2p: Titles II and XVI: Evaluating Cases Involving Obesity

This Social Security Ruling (SSR) rescinds and replaces SSR 02-1p; Titles II and XVI: Evaluation of Obesity.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-2p: Titles II and XVI: Evaluating Cases Involving Obesity

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-2p: Titles II and XVI: Evaluating Cases Involving Obesity

2. Which impairments are associated with obesity?
Obesity is often associated with musculoskeletal, respiratory, cardiovascular, and endocrine disorders. Obesity also increases the risk of developing impairments including:

- Type II diabetes mellitus;
- Diseases of the heart and blood vessels (for example, high blood pressure, atherosclerosis, heart attacks, and stroke);
- Respiratory impairments (for example, sleep apnea, asthma, and obesity hypoventilation syndrome);
- Osteoarthritis;
- Mental impairments (for example, depression); and
- Cancers of the esophagus, pancreas, colon, rectum, kidney, endometrium, ovaries, gallbladder, breast, or liver.

The fact that obesity increases the risk for developing other impairments does not mean that people with obesity necessarily have any of these impairments. It means that they are at greater than average risk for developing other impairments.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-2p: Titles II and XVI: Evaluating Cases Involving Obesity

5. How do we evaluate obesity under the listings?

Obesity is not a listed impairment; however, the functional limitations caused by the MDI of obesity, alone or in combination with another impairment(s), may medically equal a listing. For example, obesity may increase the severity of a coexisting or related impairment(s) to the extent that the combination of impairments medically equals a listing.

We will not make general assumptions about the severity or functional effects of obesity combined with another impairment(s) Obesity in combination with another impairment(s) may or may not increase the severity or functional limitations of the other impairment. We evaluate each case based on the information in the case record.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-2p: Titles II and XVI: Evaluating Cases Involving Obesity

We assess the RFC to show the effect obesity has upon the person's ability to perform routine movement and necessary physical activity within the work environment. People with an MDI of obesity may have limitations in the ability to sustain a function over time. In cases involving obesity, fatigue may affect the person's physical and mental ability to sustain work activity. This may be particularly true in cases involving obesity and sleep apnea.

The combined effects of obesity with another impairment(s) may be greater than the effects of each of the impairments considered separately. For example, someone who has obesity and arthritis affecting a weight-bearing joint may have more pain and functional limitations than the person would have due to the arthritis alone. We consider all work-related physical and mental limitations, whether due to a person's obesity, other impairment(s), or combination of impairments.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-4p: Titles II and XVI: Evaluating Cases Involving Primary Headache Disorders

Purpose: This SSR provides guidance on how we establish that a person has a medically determinable impairment (MDI) of a primary headache disorder and how we evaluate primary headache disorders in disability claims under titles II and XVI of the Social Security Act (Act).

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-4p: Titles II and XVI: Evaluating Cases Involving Primary Headache Disorders

Policy Interpretation

In this SSR, we explain how we establish a primary headache disorder as an MDI and how we evaluate claims involving primary headache disorders. The following information is in a question and answer format. Question 1 explains what primary headache disorders are. Question 2 explains how the medical community diagnoses primary headache disorders. Questions 3, 4, 5, and 6 provide the ICHD-3 diagnostic criteria for four common types of primary headache disorders. Question 7 explains how we establish a primary headache disorder as an MDI. Questions 8 and 9 address how we evaluate primary headache disorders in the sequential evaluation process.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-4p: Titles II and XVI: Evaluating Cases Involving Primary Headache Disorders

7. How do we establish a primary headache disorder as an MDI?

We establish a primary headache disorder as an MDI by considering objective medical evidence (signs, laboratory findings, or both) from an AMS.[211 We may establish only a primary headache disorder as an MDI. We will not establish secondary headaches (for example, headache attributed to trauma or injury to the head or neck or to infection) as MDIs because secondary headaches are symptoms of another underlying medical condition. We evaluate the underlying medical condition as the MDI. Generally, successful treatment of the underlying condition will alleviate the secondary headaches.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-4p: Titles II and XVI: Evaluating Cases Involving Primary Headache Disorders

We will not establish the existence of an MDI based only on a diagnosis or a statement of symptoms; however, we will consider the following combination of findings reported by an AMS when we establish a primary headache disorder as an MDI:

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-4p: Titles II and XVI: Evaluating Cases Involving Primary Headache Disorders

A primary headache disorder diagnosis from an AMS. Other disorders have similar symptoms, signs, and laboratory findings. A diagnosis of one of the primary headache disorders by an AMS identifies the specific condition that is causing the person's symptoms. The evidence must document that the AMS who made the diagnosis reviewed the person's medical history, conducted a physical examination, and made the diagnosis of primary headache disorder only after excluding alternative medical and psychiatric causes of the person's symptoms. In addition, the treatment notes must be consistent with the diagnosis of a primary headache disorder.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-4p: Titles II and XVI: Evaluating Cases Involving Primary Headache Disorders

An observation of a typical headache event, and a detailed description of the event including all associated phenomena, by an AMS. During a physical examination, an AMS is often able to observe and document signs that co-occur prior to, during, and following the headache event. Examples of co-occurring observable signs include occasional tremors, problems concentrating or remembering, neck stiffness, dizziness, gait instability, skin flushing, nasal congestion or rhinorrhea (runny nose), puffy eyelid, forehead or facial sweating, pallor, constriction of the pupil, drooping of the upper eyelid, red eye, secretion of tears, and the need to be in a quiet or dark room during the examination. In the absence of direct observation of a typical headache event by an AMS, we may consider a third party observation of a typical headache event, and any co-occurring observable signs, when the third party's description of the event is documented by an AMS and consistent with the evidence in the case file.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-4p: Titles II and XVI: Evaluating Cases Involving Primary Headache Disorders

Remarkable or unremarkable findings on laboratory tests. We will make every reasonable effort to obtain the results of laboratory tests. We will not routinely purchase tests related to a person's headaches or allegations of headaches. We will not purchase imaging or other diagnostic or laboratory tests that are complex, may involve significant risk, or are invasive.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-4p: Titles II and XVI: Evaluating Cases Involving Primary Headache Disorders

Response to treatment. Medications and other medical interventions are generally tailored to a person's unique symptoms, predicted response, and risk of side effects. Examples of medications used to treat primary headache disorders include, but are not limited to, botulinum neurotoxin (Botox®), anticonvulsants, and antidepressants. We will consider whether the person's headache symptoms have improved, worsened, or remained stable despite treatment and consider medical opinions related to the person's physical strength and functional abilities. When evidence in the file from an AMS documents ongoing headaches that persist despite treatment, such findings may constitute medical signs that help to establish the presence of an MDI.

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-4p: Titles II and XVI: Evaluating Cases Involving Primary Headache Disorders

9. How do we consider an MDI of a primary headache disorder in assessing a person's residual functional capacity?

If a person's primary headache disorder, alone or in combination with another impairment(s), does not medically equal a listing at step three of the sequential evaluation process, we assess the person's residual functional capacity (RFC). We must consider and discuss the limiting effects of all impairments and any related symptoms when assessing a person's RFC.[261 The RFC is the most a person can do despite his or her limitation(s).

Recent Social Security Rulings
(SSR's Issued and Rescinded)

SSR 19-4p: Titles II and XVI: Evaluating Cases Involving Primary Headache Disorders

We consider the extent to which the person's impairment-related symptoms are consistent with the evidence in the record. For example, symptoms of a primary headache disorder, such as photophobia, may cause a person to have difficulty sustaining attention and concentration. Consistency and supportability between reported symptoms and objective medical evidence is key in assessing the RFC.

20 C.F.R. § 404.1520c

(a) How we consider medical opinions and prior administrative medical findings. We will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s), including those from your medical sources. When a medical source provides one or more medical opinions or prior administrative medical findings, we will consider those medical opinions or prior administrative medical findings from that medical source together using the factors listed in paragraphs (c)(1) through (c)(5) of this section, as appropriate. The most important factors we consider when we evaluate the persuasiveness of medical opinions and prior administrative medical findings are supportability (paragraph (c)(1) of this section) and consistency (paragraph (c)(2) of this section). We will articulate how we considered the medical opinions and prior administrative medical findings in your claim according to paragraph (b) of this section.

20 C.F.R. § 404.1520c

(c) Factors. We will consider the following factors when we consider the **medical** opinion(s) and prior administrative **medical** finding(s) in your case:

(1) Supportability. The more relevant the objective **medical** evidence and supporting explanations presented by a **medical source** are to support his or her **medical** opinion(s) or prior administrative **medical** finding(s), the more persuasive the **medical** opinions or prior administrative **medical** finding(s) will be.

(2) Consistency. The more consistent a **medical** opinion(s) or prior administrative **medical** finding(s) is with the evidence from other **medical sources** and nonmedical **sources** in the claim, the more persuasive the **medical** opinion(s) or prior administrative **medical** finding(s) will be.

(3) Relationship with the claimant. This factor combines consideration of the issues in paragraphs (c)(3)(i) through (v) of this section.

20 C.F.R. § 404.1520c

(i) Length of the treatment relationship. The length of time a **medical source** has treated you may help demonstrate whether the **medical source** has a longitudinal understanding of your impairment(s).

(ii) Frequency of examinations. The frequency of your visits with the **medical source** may help demonstrate whether the **medical source** has a longitudinal understanding of your impairment(s).

(iii) Purpose of the treatment relationship. The purpose for treatment you received from the **medical source** may help demonstrate the level of knowledge the **medical source** has of your impairment(s).

20 C.F.R. § 404.1520c

- (iv) Extent of the treatment relationship. The kinds and extent of examinations and testing the **medical source** has performed or ordered from specialists or independent laboratories may help demonstrate the level of knowledge the **medical source** has of your impairment(s).
- (v) Examining relationship. A **medical source** may have a better understanding of your impairment(s) if he or she examines you than if the **medical source** only reviews evidence in your folder.

20 C.F.R. § 404.1520c

- (4) Specialization. The **medical** opinion or prior administrative **medical** finding of a **medical source** who has received advanced education and training to become a specialist may be more persuasive about **medical** issues related to his or her area of specialty than the **medical** opinion or prior administrative **medical** finding of a **medical source** who is not a specialist in the relevant area of specialty.
- (5) Other factors. We will consider other factors that tend to support or contradict a **medical** opinion or prior administrative **medical** finding. This includes, but is not limited to, evidence showing a **medical source** has familiarity with the other evidence in the claim or an understanding of our disability program's policies and evidentiary requirements. When we consider a **medical source's** familiarity with the other evidence in a claim, we will also consider whether new evidence we receive after the **medical source** made his or her **medical** opinion or prior administrative **medical** finding makes the **medical** opinion or prior administrative **medical** finding more or less persuasive.

20 C.F.R. § 404.1502

(d) Medical source means an individual who is licensed as a healthcare worker by a State and working within the scope of practice permitted under State or Federal law, or an individual who is certified by a State as a speech-language pathologist or a school psychologist and acting within the scope of practice permitted under State or Federal law.

SSR 06-3p

The distinction between "acceptable medical sources" and other health care providers who are not "acceptable medical sources" is necessary for three reasons. First, we need evidence from "acceptable medical sources" to establish the existence of a medically determinable impairment. See 20 CFR 404.1513(a) and 416.913(a). Second, only "acceptable medical sources" can give us medical opinions. See 20 CFR 404.1527(a)(2) and 416.927(a)(2). Third, only "acceptable medical sources" can be considered treating sources, as defined in 20 CFR 404.1502 and 416.902, whose medical opinions may be entitled to controlling weight. See 20 CFR 404.1527(d) and 416.927(d).

20 C.F.R. § 404.1502 versus SSR 06-3p

SSR 06-3p indicated that the same factors as an acceptable medical source applied and, at times, such opinions may be entitled to more weight than an acceptable medical source. However, SSR 06-3p was revoked due to the changes in the treating physician rule. Under the new rule, ALL medical source statements constitute evidence to be considered. There is no exception for "recognized" sources. I attached a copy of the rescission Ruling. So before March 27, 2017, apply SSR 06-3p; after March 27, 2017, there is no "acceptable medical source" preclusion, as it all involves consistency and weight.

HASKINS SHORT & BRINDLEY LLC

Attorney Amanda Pirt Meyer

Monona, Wisconsin

Practicing throughout Wisconsin

Social Security Disability, guardianships, elder law, and probate law

Hearing Challenges

Atty. Amanda Pirt Meyer

Hearings

Note the date last insured (DLI).

Check for errors—the Agency isn't perfect. Check the SSN. Are there additional contributions from recent work attempts or self-employment that would result in additional quarters?

*Pay stubs for recent work!

Think tactically about the alleged onset date (AOD).

Do you plan to make a GRID argument? Use an age calculator. Note treating source opinions, medical procedures, hospitalizations, and other acute events. Note the limitations of SSI versus SSDI.

Claimant Testimony

You should absolutely be taking some amount of time to prepare the claimant for the hearing. Your tips should be similar to those given prior to depositions, which involves 3 golden rules:

Be truthful.

Answer the question asked.

Do. Not. Exaggerate.

It is essential to build the record – this is a basic requirement of representation. Failing to raise an issue almost certainly sinks an appeal.

The Devil's Details

Almost every hearing will involve discussion of the claimant's activities of daily living (ADLs). You should have at least one detail you can illicit from the claimant about how their impairment(s) have resulted in changes or adaptations regarding ADLS.

Let's consider pain – one of the most common symptoms among claimants. Pain is notoriously difficult to translate. You might ask:

- Is the claimant utilizing formal services for care or cleaning?
- Are there family, friends, etc. who are lending support?
- Does the claimant reside in a "mutual housing" setup?
- Has the claimant moved to disability-friendly housing?

Devise Strong Hypotheticals

You should have considered, in advance of the hearing, some hypothetical questions that will highlight your strongest points. Consider exertional and non-exertional limitations, as well as the combination of limitations.

Exertional Limitations:

Sitting
Standing
Lifting weight
Carrying weight
Stooping
Crawlking
Walking
Fingering

Non-Exertional Limitations:

Attention/Focus
Pace
Persistence
Memory
Executive functioning
Processing delays

Thinking on Your Feet

You may be confronted by the following problems – what do you do?

- The claimant doesn't show to the hearing.
- The ALJ "leads" the witness into incorrect testimony.
- The ALJ doesn't let you given an opening.
- Records that were filed timely are not exhibited.
- 1696 woes.

Post-Hearing Possibilities

- It may be advantageous to ask for a CE after the hearing. If so, make that request AT the hearing before the ALJ ”closes” the evidence. If you’re unable to make that request at a hearing, you can make that request along with your good cause argument in writing.
- The post-hearing brief. Representatives may utilize these briefs to counter testimony from a medical expert or a hearing expert. There are times when you may ask to further argument that the claimant meets or equals a listing in a post-hearing brief. Again, request this AT the hearing if testimony warrants it.
- The supplemental hearing.

Specific Tools and Techniques to Improve SSDI claim results

Atty. Amanda Pirt Meyer

Prepare. Prepare. Prepare.

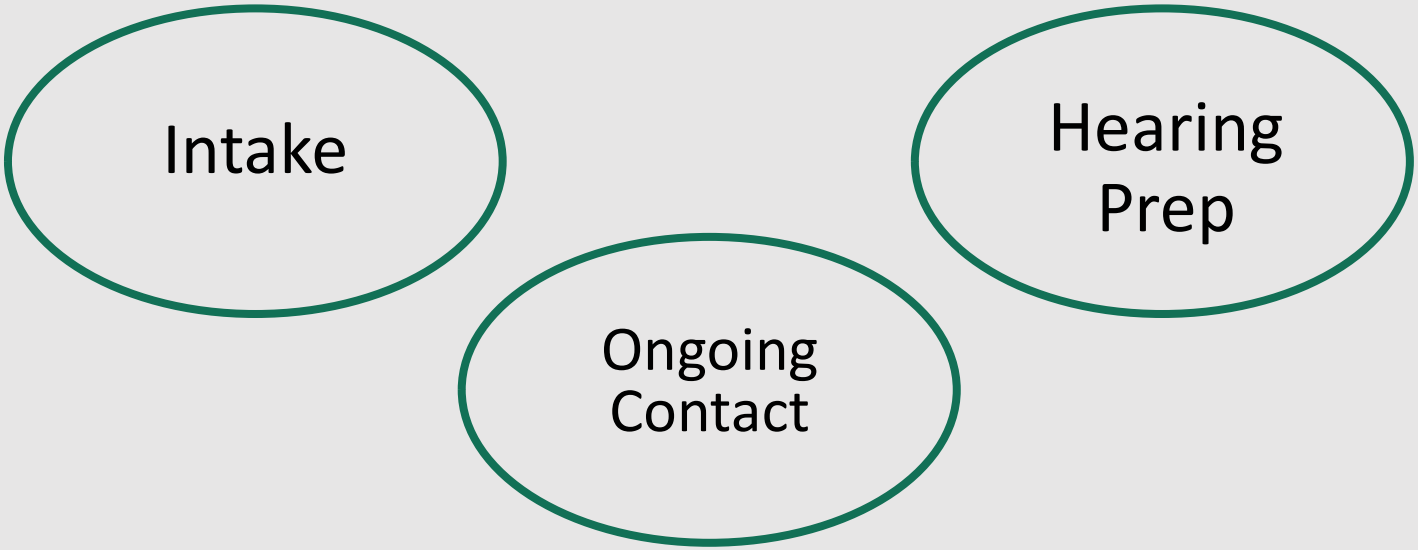
How can you improve your success rate?

Excellent and considered screening. Doing a thorough intake will alert you to information you should obtain, problem areas (that may or may not be fatal), and a ”feel” for the claimant’s ability to testify.

Screen Red Flags
(More than ONCE…)

- Eligibility
- Substance abuse
- Compliance issues
- Unemployment compensation
- Workers compensation
- Criminal charges, conviction, incarcerations, and/or probation
- The endless cycle of applications

Opportunities for Development



Evidence Submission

Remember the “new” evidence rule, effective as of 2017, mandated that all evidence MUST be submitted regardless of whether it may be prejudicial, tangential, or wholly irrelevant. As a reminder, all written evidence is due 5 business days before the hearing date.

- The earlier you submit, the better.
- Utilize cover letters.
- Enlist the claimant’s help.

See 20 CFR 404.1512(a) and 404.935. Missed deadline? review 404.935**(b)**.

Evidence Bonus

As part of the evidence changes, the Agency also expanded the list of acceptable medical sources as listed at § 404.1502.

- **PRO:** There are many more professionals that are now considered "acceptable" sources and can provide opinions.
- **CON:** The rules about considering opinions changed in that the Agency no longer gives specific evidentiary weight to ANY medication opinions – including those from treating providers. What now?

Expanding the Story

In addition to medical records, consider the following evidence:

- School/education records
- Employment information
- Vocational rehabilitation efforts
- Veterans disability information
- Worker's compensation claims
- State programs that involve vocational requirements

Treating Source Opinions
a/k/a Residual Functional Capacity Forms

- When to utilize them.
- Better your chances of getting them returned.
- Problems:
  - The incomplete opinion.
  - The “Per the patient” statement.
  - Contrasting opinions.
  - The poor opinion.
  - The nonexistent opinion.
- Utilizing affidavits.

Briefs/Statements

Preparing a short, pre-hearing, brief has many advantages. Doing so allows you the opportunity to summarize the medical record, organize relevant claim information, present your theory, and address any “red flag” issues.

<u>Categories you may want to include:</u>

- basic demographic information
- a listing of the past relevant work
- severe impairments
- significant events
- the medical listing
- proposed RFC
- grid rule
- vocational impact by impairment

Address Transferability

I think it's always advantageous to get a transferability statement out in advance of the hearing via a pre-hearing brief. Transferability is especially important with many GRID arguments you may make.

Remember that transferability speaks to SKILLS, not ABILITIES. A skill is defined as knowledge of an activity that requires the exercise of significant judgment that goes beyond simple duties, and is acquired through performance of an occupation (that is semi-skilled or skilled). A skill require more than 30 days to learn!

Work traits are innate aptitudes or abilities, like the ability to move hands or feet.

Review SSR 82-41

“Illustrating” the Picture

The following may serve as effective and persuasive exhibits:

Calendars

Photographs

Journal Articles

Police/Court Records

Newspapers

Thank you

Questions?

Amanda Pirt Meyer
pirtmeyer@hsbelderlaw.com

SSDI, Medicaid and VA Benefits

How to coordinate these benefits to achieve the best result for those in need.

Government Benefits

These programs include

1. Social Security Retirement & Disability Insurance (SSDI)
2. Supplemental Security Income (SSI)
3. Medicaid
4. Food Assistance (SNAP)
5. Subsidized Housing

Government Benefits

Needs Based

SSI
Medicaid
SNAP
HUD

Entitlement Benefits

SSDI
Childhood Disability
Medicare

Social Security Disability Insurance

Title II of the Social Security Act 42 U.S.C. 423

Entitlement is based on the following:

1. the individual's work history and payment into the system (their insured status)

2. the individual's disability

Not needs based or asset based

If found eligible for SSDI, entitled to Medicare 24 months after the onset of the disability and a 5 month waiting period

SSDI and SSI

Its possible an individual may be eligible for a combination of both benefits. This would be dependent on the amount of SSDI an individual is receiving (under $783) and would also be asset based.

Medicaid

Authorized under Title 19 of the Social Security Administration 42 U.S.C.

Several different types of Medicaid for a disabled individual

1. Aged, Blind and Disabled
2. Long-Term Care Benefits
3. MAGI
4. Medicaid for the Working Disabled
5. Medicare Premium Assistance Programs

Aged Blind and Disabled

Eligibility:

65 or older or
blind or
disabled
-and-
Lives in the community
-and-
Not on Assisted Living Waiver or Passport

Needs based: must have $2,000 or less in countable assets and make less than $783 (2020) in gross income

Long-term Care Benefits

Needs based
This is the Medicaid we work with daily for LTC and waiver programs-Part of Aged Blind and Disabled

Countable resource limit for individual of $2,000/Married couple $25,728 (CSRA $128,640)

Gross income limit $2,349 (2020)

Level of Care test

No gifting within 5 years of application

MAGI

Modified Adjusted Gross Income

Solely income based

Generally servicing children, families and pregnant women

No asset test

Purpose is to help those with low incomes obtain health care

Individual's income must be up to or less than $1,385/month

SSDI and Medicaid

Medicaid is a needs based program

Most of the time, the SSDI income is going to make an individual ineligible for Medicaid

However, there are ways to prevent loosing Medicaid….

Special Needs Trusts

In general, special needs trusts are designed to help individuals protect assets while retaining that individual's present and future entitlement to government benefits

Creation of the trust depends on 1) the source of the funds and 2) what benefits the beneficiary receives or may receive

Analysis of the beneficiary's current government benefits and the source of the funds which will be used to fund the trust is required

Special Needs Trusts

Trusts can be funded by first party assets or third party assets. Public Benefit Programs treat trusts differently depending on whether the trust is funded with third-party or first-party assets.

First-Party Self Settled Trusts
Pooled Medicaid Payback Trusts

Ohio Admin. Code 5160:1-3-05.2(C)(3)(c)
42 U.S.C. 1396p(d)(4)(c)

Requirements:

1. Grantor **must** be disabled individual, parent, grandparent or guardian
2. Beneficiary must be under 65 & disabled when trust established (any assets added after 65 are subject to transfer penalty for SSI, no penalty if of 65 with Medicaid)
3. Medicaid payback provision on behalf of the beneficiary at the beneficiary's death
4. Irrevocable
5. For beneficiary's sole benefit

First-Party Self Settled Trusts
Qualified Income Trusts

Composed solely of Medicaid recipient's income

Beneficiary can be any age
Anyone can create it
Pay Back provision for Medicaid

Prior to 2016, Ohio was a 209(b) state which allowed it to be more restrictive than federal law. Converted to a SSI state which set income cap at 3 times SSI amount. QIT used to get around that requirement.

First-Party Self Settled Trusts
Qualified Income Trusts

Do not use the funds for anything except:

1. Monthly income allowance for community spouse
2. Family Allowance
3. Patient Liability
4. Recurring medical expenses not covered by Medicaid
5. Personal Needs Allowance ($50)

STABLE Accounts

December of 2014, President Obama signed into law the Achieving a Better Life Experience Act (ABLE)- it allows individuals who are eligible to set up an ABLE account to hold a significant amount of money without forfeiting eligibility for Medicaid and SSI

Ohio's ABLE program is known as STABLE Accounts

STABLE Accounts

Established and owned by a designated beneficiary

1. A person who has a disability that began before the age of 26,

And

2. Receiving or otherwise eligible for SS benefits based on having a disability (on SSI or SSDI OR unable to engage in substantial gainful activity do to physical or mental impairment lasting more than 12 months or expected to result in death)

STABLE Accounts

Must have a physician's statement

Can only have one STABLE Account

Can be opened by beneficiary, guardian, parent, or agent under POA

Any "person" can contribute- includes individual, trust, estate, company, or corporation

STABLE Accounts Contribution Limits

1. Annual gift tax limit of $15,000
2. Maximum lifetime limit is $426,000
3. If beneficiary receives SSI, payments will be suspended if the STABLE account exceeds $100,000 (Medicaid and SNAP would continue)
4. Contributions only tax deductible for State purposes

Medicaid Pay-back provision is required

STABLE Accounts
Qualified Disability Expenses

Distributions for Qualified Disability Expenses are not considered income to the disabled individual

1. Relate to the Beneficiary's disability
2. Are for the benefit of that Beneficiary
3. Maintain or improve health, independence or quality of life for the beneficiary

If funds used for non-qualified expenses, funds are subject to a 10% penalty

STABLE Accounts
Qualified Disability Expenses

1. Education
2. Housing
3. Transportation
4. Employment training and support
5. Health and wellness
6. Financial management
7. Legal fees
8. ABLE account admin expenses
9. Funeral and burial
10. Basic living expenses

STABLE Accounts
Qualified Disability Expenses

Food and Shelter

Normally if a trust or third party paid for an individual's food or shelter, it would affect their SSI benefit (1/3 reduction), but the STABLE account can be used for housing expenses without reducing the SSI monthly benefit!

STABLE Accounts

Uses for STABLE accounts

Distributions for settlement payments under $15,000
Accumulation of excess wages
Avoid reduction of SSI if used for housing expenses
Small inheritances less than $15,000

SSDI and VA Benefits

If an individual is receiving service connected or non-service connected benefits, they can qualify for SSDI.

Social Security only looks to see that the individual requesting the disability payment "paid into" FICA for the necessary number of quarters.

Must qualify under the "disability" definition

SSDI and VA Benefits

Just like SSI v. SSDI, the VA has need based (non-service connected benefits) and non-need based (service connected benefits)

SSDI does not care if an individual is receiving other income, whereas SSI takes into consideration ALL income to determine eligibility

Non-Service connected VA compensation requires the reporting of other income….ie generally those receiving non-service connected compensation do not get SSI because the VA is generally greater

SSDI and VA Benefits

Bottom Line:

One is not "double dipping" if they qualify for SSDI and are collecting either a service connected or non-connected VA compensation!

Thank You!

Rachael A. Houck, J.D.
Gudorf Law Group, LLC
8153 North Main St.
Dayton, OH 45415

(937) 898-5583
rhouck@gudorflaw.com