

Social Security Online, at <http://www.socialsecurity.gov>.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office at: http://www.access.gpo.gov/su_docs/aces/aces140.html. It is also available on the Internet site Social Security Online, <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

What Programs Do These Regulations Affect?

These regulations affect disability determinations and decisions we make for you under title II and title XVI of the Social Security Act (the Act). In addition, to the extent that Medicare and Medicaid eligibility are based on entitlement to benefits under title II and eligibility for benefits under title XVI, these regulations also affect the Medicare and Medicaid programs.

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you have limited income and resources.

How Do We Define “Disability”?

Under both the title II and title XVI programs, disability means the inability to “* * * engage in any substantial gainful activity by reason of 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.” (Sections 223(d)(1)(A) and 1614(a)(3)(A) of the Act.) This definition applies if you file a claim under title II or if you file a claim as an adult under title XVI. (There is a different definition of disability for children filing under title XVI. See section 1614(a)(3)(C) of the Act.)

In addition, we only consider you to be disabled if your physical or mental impairment(s) is so severe that you are not only unable to do your previous work, but you cannot, considering your age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy. This is true regardless of whether this kind of work exists in the

immediate area in which you live, or whether a specific job vacancy exists for you, or whether you would be hired if you applied for work. (See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act.)

We will not consider you under a disability unless you furnish medical and other evidence that we need to show that you are disabled. (See section 223(d)(5)(A) and, by reference to section 223(d)(5), section 1614(a)(3)(H) of the Act.) However, when we decide whether you are disabled (or whether you continue to be disabled), we will develop a complete medical history of at least the preceding twelve months for any case in which we decide that you are not disabled. (See sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act.)

Who Makes the Rules, Regulations, and Procedures for Providing Evidence of Disability?

Section 205(a) of the Act and, by reference to section 205(a), section 1631(d)(1) provide that:

The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

How Do We Decide Whether You Are Disabled?

To decide whether you are disabled under this statutory definition, we use a five-step sequential evaluation process, which we describe in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we find that you are not disabled regardless of your medical condition or your age, education, and work experience. If you are not, we go on to step 2 of the sequence.
2. Do you have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities? If you do not, we find that you are not disabled. If you do, we go on to step 3 of the sequence.
3. Do you have an impairment(s) that meets or equals the severity of an

impairment listed in appendix 1 of subpart P of part 404 of our regulations? If you do, and the impairment(s) meets the duration requirement, we find you disabled. If you do not, we go on to step 4 of the sequence.

4. Considering your RFC and the physical and mental demands of the work you have done in the past, does your impairment(s) prevent you from doing your past relevant work? If not, we find that you are not disabled. If so, we go on to step 5 of the sequence.

5. Considering your RFC and your age, education, and past work experience, does your impairment(s) prevent you from doing any other work? If it does, and your impairment(s) meets the duration requirement, we find that you are disabled. If it does not, we find that you are not disabled.

We use different sequential evaluation processes if we are deciding whether your disability continues. (See §§ 404.1594 and 416.994 of our regulations.) However, these different processes also include steps that consider your RFC and past relevant work, and your ability to adjust to other work considering your RFC, age, education, and work experience.

What Revisions Are We Making, and Why?

We are changing several sections in subpart P of part 404 and subpart I of part 416 to clarify our longstanding rules about how we make determinations and decisions for initial applications at steps 4 and 5 of the sequential evaluation process. The changes will also apply to steps 7 and 8 of the sequential evaluation processes for determining continuing disability in § 404.1594(f), and steps 6 and 7 in § 416.994(b)(5). However, for clarity we will refer in this preamble only to the steps of the sequential evaluation process for initial applications.

Several of the revisions clarify our longstanding interpretation of our rules that we assess your RFC once, after we have found that you have a severe impairment(s) that does not meet or equal a listing; *i.e.*, after step 3 but before we consider step 4. We use this RFC assessment first to determine, at step 4, whether you are able to do any of your past relevant work. If we determine that you cannot perform your past relevant work, or you have no past relevant work, we use the same RFC assessment at step 5 to determine whether you are able to make an adjustment to other work, given your RFC, age, education, and work experience.

Under the Act and §§ 404.1512 and 416.912 of our regulations, you