

generally have the burden of proving your disability. You must furnish medical and other evidence we can use to reach conclusions about your impairment(s) and its effect on your ability to work on a sustained basis. Our responsibility is to make every reasonable effort to develop your complete medical history. That includes arranging for consultative examinations, if necessary, and making every reasonable effort to get medical reports from your own medical sources. We are responsible for helping you produce evidence that shows whether you are disabled.

Our administrative process was designed to be nonadversarial. (See §§ 404.900(b) and 416.1400(b) of our regulations; *Richardson v. Perales*, 402 U.S. 389, 403 (1971); *Sims v. Apfel*, 120 S. Ct. 2080, 2083–85, 2086 (2000).) In addressing burdens of proof, it is critical to keep in mind that we are using a term in our nonadversarial administrative process that describes a process normally used in adversarial litigation. “Burdens of proof” operate differently in the disability determination process than in a traditional lawsuit.

In the administrative process, the burden of proof generally encompasses both a burden of production of evidence and a burden of persuasion about what the evidence shows. (*Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 273 (1994) (citing *Powers v. Russell*, 30 Mass. 69, 76 (1833).) You shoulder the dual burdens of production and persuasion through step 4 of the sequential evaluation process. (See *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987).)

Although you generally bear the burden of proving disability throughout the sequential evaluation process, there is a limited shift in the burden of proof to us “only if the sequential evaluation process proceeds to the fifth step * * *.” *Bowen v. Yuckert*, *id.* When the process proceeds to the fifth step, this means that you have demonstrated the existence of a severe impairment(s) resulting in an RFC that prevents the performance of past relevant work. When we decide that you are not disabled at step 5, this means that we have determined that there is other work you can do. To make this finding, we must provide evidence that demonstrates that jobs exist in significant numbers in the national economy that you can do, given your RFC, age, education, and work experience. In legal terms, this is a burden of production of evidence.

This burden shifts to us because, once you establish that you are unable to do any past relevant work, it would be

unreasonable to require you to produce vocational evidence showing that there are no jobs in the national economy that you can perform, given your RFC. However, as stated by the Supreme Court, “It is not unreasonable to require the claimant, who is in a better position to provide information about his own medical condition, to do so.” *Bowen v. Yuckert*, *id.* Thus, the only burden shift that occurs at step 5 is that we are required to prove that there is other work that you can do, given your RFC, age, education, and work experience. That shift does not place on us the burden of proving RFC.

When the burden of production of evidence shifts to us at step 5, our role is to obtain evidence to assist in impartially determining whether there is a significant number of jobs in the national economy you can do. Thus, we have a burden of proof even though our primary interest in the outcome of the claim is that it be decided correctly. As required by the Act, the ultimate burden of persuasion to prove disability, however, remains with you.

What Specific Changes Are We Making?

Sections 404.1501 and 416.901—Scope of Subpart

The second sentence of §§ 404.1501(g) and 416.901(j) is very long, and it includes a number of clauses. We are clarifying this sentence by numbering and listing the clauses and by revising some language. This includes clarifying, in new paragraphs (g)(2) and (j)(2), that assessment of RFC is our responsibility (“our residual functional capacity assessment”) and that we use this assessment at steps 4 and 5 of the sequential evaluation process.

Sections 404.1505—Basic Definition of Disability, and 416.905—Basic Definition of Disability for Adults

We are revising the second sentence, deleting the third sentence in §§ 404.1505(a) and 416.905(a), redesignating the fourth sentence as the last sentence in § 404.1505(a) and adding four new sentences after the second sentence. The revisions in the second sentence clarify our longstanding policy that, when we consider your “previous work,” we consider only work that was “past relevant work.” Past relevant work is work that you performed within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn how to do it. (See Social Security Ruling (SSR) 82–62, “Titles II and XVI: A Disability Claimant’s Capacity To Do Past Relevant Work, In

General,” Social Security Rulings, Cumulative Edition, 1982, p. 158.)

The previous third sentence explained that we consider your RFC, age, education, and work experience when we determine whether you can do other work; *i.e.*, at step 5 of the sequential evaluation process. We are replacing this sentence (and the fourth sentence in § 404.1505(a)) with four new sentences that provide more detail about this policy, including cross-references to our rules on the sequential evaluation process and RFC. They also clarify that we assess RFC once, and that we use this assessment at both step 4 and step 5 of the sequential evaluation process.

Sections 404.1512 and 416.912—Evidence of Your Impairment

We are making several revisions in these sections to clarify both your responsibility and our responsibility. We are changing the heading of these sections from “Evidence of your impairment” to “Evidence” because, as we discuss below, we are adding a provision that is not about evidence of your impairment; *i.e.*, a provision that is about our responsibility, at step 5 of the sequential evaluation process, to provide evidence of the existence of jobs.

We are making two changes in paragraph (c) to make it clearer. These are not substantive changes. First, we are adding a new second sentence to paragraph (c) to clarify, consistent with the remainder of the paragraph, that we may ask for non-medical information about functioning or about other non-medical issues in addition to medical information. Second, we are making a slight modification to the previous second sentence (now the third sentence) to make it clearer.

We also are adding a new paragraph (g), “Other work” explaining our burden at step 5. It explains that, in order to determine that you can make an adjustment to other work, we must provide evidence of the existence of work in the national economy that you can do, given your RFC and vocational factors. The new paragraph includes cross-references to regulations that explain how we evaluate your ability to do other work (§§ 404.1560 through 404.1569a and 416.960 through 416.969a, as appropriate).

The new paragraph also clarifies, by including the phrase “make an adjustment to other work,” our longstanding interpretation of the statutory requirement that we consider your age, education, and work experience as well as your impairment(s) when we determine the ability to do other work at step 5.