

Our use of the phrase “make an adjustment to other work” is not new. We used the phrase when we originally published proposed rules on the medical/vocational guidelines in appendix 2, subpart P of regulations part 404 (the grid rules) in 1978:

If an individual cannot perform his or her past relevant work, but the individual's physical and mental capacities are consistent with his or her meeting the demands of a significant number of jobs in the national economy, and the individual has the vocational capabilities (considering his or her age, education, and past work experience) to make an adjustment to work different from that which the individual has performed, it will be determined that such an individual is not under a disability. However, if such an individual's physical and mental capacities in conjunction with his or her vocational capabilities (considering his or her age, education, and work experience) are not consistent with making an adjustment to work differing from that which the individual has performed in the past, it will be determined that such an individual is under a disability.

(See 43 FR 9284, 9288 (March 7, 1978).) We used the same language in the preamble when we published the final rules for the medical/vocational guidelines (see 43 FR 55349, 55352 (November 28, 1978)) and have used similar language in our Policy Interpretation Rulings (see, e.g., SSR 83-11, “Titles II and XVI: Capability To Do Other Work—The Exertionally Based Medical-Vocational Rules Met,” Social Security Rulings, Cumulative Edition, 1983, p. 184). More recently, we have used the same or similar language in publications that we use to help the public better understand whether they may qualify for disability benefits under the Act and our regulations. Therefore, we are now using this language in our regulations.

*Sections 404.1520—Evaluation of Disability in General, and 416.920—Evaluation of Disability of Adults, in General*

We are revising the language in paragraph (a) of these sections to make it clearer. We are dividing it into five separate paragraphs ((a)(1) through (a)(5)) with headings. We also are modifying the previous language to explain more clearly what the five steps of the sequential evaluation process are, and to reflect the provisions of new paragraph (e), which we discuss below.

We are adding a new paragraph (e) to this section to explain that, after we decide that you are not working and have a severe impairment(s) that does not meet or equal any listing, we will assess your RFC. We then use this RFC assessment at step 4 to determine

whether you are able to do any past relevant work and, if we make a determination at step 5, we use the same RFC assessment in determining whether you can do any other work.

Because we are adding a new paragraph (e), we are redesignating previous paragraphs (e) and (f) as paragraphs (f) and (g). We are also revising these paragraphs to make changes consistent with the changes we are making to other rules already described. For example, they now refer to “our residual functional capacity assessment,” to “past relevant work” (instead of “work you have done in the past” or “past work experience”), and to making “an adjustment to other work.” Likewise, new paragraph (g) (previous paragraph (f)) clarifies that, at step 5, we consider “the same residual functional capacity assessment” we used at step 4. In new paragraph (f) (previous paragraph (e)), we are changing the phrase, “[i]f we cannot make a decision based on your current work activity or on medical facts alone,” to “[i]f we cannot make a determination or decision at the first three steps of the sequential evaluation process,” in order to make it clear that this language has always referred to determinations or decisions at steps 1, 2 and 3 of the sequential evaluation process. We are also making a comparable conforming change to §§ 404.1560(a) and 416.960(a). In the final rules we are adding new cross-references that were not in the proposed rules. These references are in §§ 404.1520(a)(4)(iv) and 416.920(a)(4)(iv) (referencing new §§ 404.1560(b) and 416.960(b)), and in §§ 404.1520(a)(4)(v) and 416.920(a)(4)(v) and §§ 404.1520(g) and 416.920(g) (referencing new §§ 404.1560(c) and 416.960(c)).

We are also revising the language that was in previous paragraph (f)(2) (new paragraph (g)(2)) to reflect that we are adding a second special medical-vocational profile under which we may find you disabled without referring to our grid rules. When we discuss changes we are making to §§ 404.1562 and 416.962 later in this document, we explain the second profile and our reasons for including it in the regulations. We are also modifying the language that was in previous paragraph (f)(2) (new paragraph (g)(2)) to delete the partial description of the first special medical-vocational profile because it was duplicative of information already contained in §§ 404.1562 and 416.962.

Finally, we are making a number of minor editorial changes to language that was in previous paragraphs (e) and (f) (new paragraphs (f) and (g)).

*Sections 404.1545 and 416.945—Your Residual Functional Capacity*

To make paragraph (a) easier to understand, we are revising the paragraph by breaking it into five numbered paragraphs ((a)(1) through (a)(5)) with headings. We also are reorganizing and clarifying some of the text.

In new paragraph (a)(3), “Evidence we use to assess your residual functional capacity,” we are including a reference to §§ 404.1512(c) or 416.912(c) (as appropriate), which explains your burden to provide evidence of the existence and severity of your impairment(s) and how it affects your functioning, and our responsibility to develop a complete medical history and to arrange for a consultative examination(s) if necessary.

In new paragraph (a)(5), “How we will use our residual functional capacity assessment,” we are explaining that we first use our RFC assessment to decide if you can do past relevant work and to explain that, if you cannot do past relevant work, or do not have any past relevant work, we use the same assessment to decide, at step 5, if you can make an adjustment to other work.

In addition, we are making other changes in paragraph (a) to clarify our rules. In new paragraph (a)(1), “Residual functional capacity assessment,” we are adding a sentence to explain that RFC is the most you can do despite your limitations. This incorporates into our regulations a clarification that we currently provide in SSR 96-8p, “Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims,” 61 FR 34474 (July 2, 1996). We are also making a minor change to the language that appeared in proposed paragraph (a)(2) to incorporate another clarification provided in that SSR. The new paragraph explains that, when we assess RFC, we will consider all medically determinable impairments of which we are aware, including impairments that are not “severe.”

New paragraph (a)(3) clarifies the fifth, sixth, and seventh sentences of previous paragraph (a), which discusses the evidence we consider when assessing RFC. Our intent is to clarify three points about how we consider evidence of pain and other symptoms in our RFC assessments. First, we make clear that the phrase “observations by your treating and examining physicians or psychologists”, that had appeared in previous paragraph (a), includes “statements about what you can still do,” as discussed in §§ 404.1513 and 416.913. Second, we clarify that we consider descriptions and observations