

of your impairment-related limitations from both medical and non-medical sources. Third, by removing the phrase “that are important in the diagnosis and treatment of your medical condition” from the fifth sentence of previous paragraph (a), we make clear that we consider all limitations that result from your medically determinable impairments, not just those that are important in the diagnosis and treatment of a medical condition. We also are deleting the entire eighth sentence of previous paragraph (a), which could have been misinterpreted to mean that we may or may not consider evidence that we already have. Because that is not our intent, and because these final rules make clear that we consider all relevant medical and nonmedical evidence in the case record, we believe this sentence is unnecessary.

We are revising the last sentence of previous paragraph (a) (now the last sentence of new (a)(5)(ii)) to remove the language that discusses our rules on RFC assessment in deciding whether your disability continues or ends. Those rules are already discussed in §§ 404.1594 and 416.994, and the new language simply directs you to those sections.

We made a minor editorial change to proposed §§ 404.1545(a)(5)(ii) and 416.945(a)(5)(ii) to clarify that we consider if you can make an adjustment to “any” other work. This change retains language from §§ 404.1561 and 416.961, being deleted by these rules. In § 416.945(a)(5)(ii), we also made a minor change to the next to the last sentence of the proposed rule by adding the word “assessment” to conform it to the language in proposed (and new) § 404.1545(a)(5)(ii).

We are making a number of other editorial changes to the previous rule. These changes are intended only to clarify the previous language and to reorganize the provisions into a more logical order.

*Sections 404.1546 and 416.946—Responsibility for Assessing and Determining Your Residual Functional Capacity*

We are revising the heading of these sections, which were previously titled “Responsibility for assessing and determining residual functional capacity.” to “Responsibility for assessing your residual functional capacity.” The two words “and determining” are superfluous. Our assessment is our determination about RFC.

Because of agency reorganizations, we are changing the title in the existing regulations in paragraph (b) of these

sections, “Director of the Office of Disability Hearings” and in the proposed regulations in paragraph (b) of these section, “Associate Commissioner for Disability” to “Associate Commissioner for Disability Determinations” because this individual or his or her delegate is now responsible for assessing residual functional capacity in the disability hearing process.

The other changes we are making in this section are editorial. To make the section easier to understand, we are breaking up the previous single paragraph into three separate paragraphs that address the responsibilities of:

- State agency medical and psychological consultants (new paragraph (a)),
- State agency disability hearing officers (new paragraph (b)), and
- Administrative law judges and Appeals Council administrative appeals judges (new paragraph (c)).

We are making minor editorial changes to the wording in proposed paragraph (c) to make it clearer.

*Sections 404.1560 and 416.960—When Your Vocational Background Will Be Considered*

We are changing the previous heading, putting it into active voice, to make the meaning clearer.

We are also making changes in paragraphs (a) “General,” (b) “Past relevant work,” and (c) “Other work,” consistent with the changes we are making in other sections, already noted above.

For clarity, we are revising paragraph (b) by dividing it into three paragraphs with headings, designated (b)(1) through (b)(3). We are adding a new sentence in new paragraph (b)(1), “Definition of past relevant work,” defining “past relevant work” as work you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn how to do it. This definition is based on our longstanding interpretation in SSR 82–62, already noted above. We also are adding a cross-reference to § 404.1565(a) or 416.965(a), as appropriate, because these paragraphs explain how we determine the 15-year period.

In paragraph (b)(2), “Determining whether you can do your past relevant work,” we are adding new language to explain how we obtain information that we need to determine, at step 4 of the sequential evaluation process, whether your impairment(s) prevents you from doing your past relevant work. The new language indicates that we ask you for information about work you have done

in the past, and that we may ask other people who know about your past work. This is consistent with the provisions in §§ 404.1565(b) and 416.965(b), and we are including a cross-reference to each of those sections, as appropriate, in new paragraph(b)(2).

We also are explaining in new paragraph(b)(2) that we may use the services of VEs or VSSs, or other resources such as the “Dictionary of Occupational Titles,” to obtain evidence that we need to help us determine whether you can do your past relevant work. This is a longstanding policy interpretation set out in SSR 82–61, “Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation As Generally Performed,” Social Security Rulings, Cumulative Edition, 1982, p. 185.

In response to a public comment, we are making changes to the language that appeared in proposed paragraph (b)(2) to clarify the role of a VE at step 4 and to clarify that, if we obtain additional evidence at step 4, that evidence is used to help our adjudicators decide if an individual can do his or her past relevant work.

We are editing the second sentence of previous paragraph (b), making it into two sentences for clarity, and redesignating it as new paragraph (b)(3), “If you can do your past relevant work.” Based on a public comment we received in response to the notice of proposed rulemaking, we are also revising proposed paragraph (b)(3) to clarify that, in determining whether you have the RFC to do your past relevant work, we do not consider whether the past relevant work exists in significant numbers in the national economy. In response to this comment, we are also making related clarifying changes to proposed paragraphs (b)(3) and (c) and to §§ 404.1569a and 416.969a.

We are modifying previous paragraph (c) to make clear that, if we decide at step 5 that you are not disabled, we are responsible for providing evidence of other work you can do (consistent with new §§ 404.1512(g) and 416.912(g)). The modified paragraph also makes clear that we are not responsible for providing additional evidence of RFC or for making another RFC assessment at step 5. This is because we use the same RFC assessment at step 5 that we made before we considered whether you have the RFC to do past relevant work at step 4, a point in our process at which you have the burdens of production and persuasion.

We are also making minor changes to the language that appeared in proposed paragraph (c) to conform it with the new language in §§ 404.1520 and 416.920