

**How Do We Define Disability?**

Under both the title II and title XVI programs, disability must be the result

of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected

to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	And you are . . .	Disability means you have a medically determinable impairment(s) as described above and that results in . . .
title II .....	an adult or child .....	the inability to do any substantial gainful activity (SGA).
title XVI .....	a person age 18 or older .....	the inability to do any SGA.
title XVI .....	a person under age 18 .....	marked and severe functional limitations.

**How Do We Decide Whether You Are Disabled?**

If you are seeking benefits under title II of the Act, or if you are an adult seeking benefits under title XVI of the Act, we use a five-step "sequential evaluation process" to decide whether you are disabled. We describe this five-step process 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 will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a "severe" impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Do you have the residual functional capacity to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your residual functional capacity, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for children who

apply for payments based on disability under title XVI of the Act. We describe that sequential evaluation process in § 416.924 of our regulations.

If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.994, and 416.994a of our regulations. All of the sequential evaluation processes, however, include steps at which we consider whether your impairment(s) meets or medically equals one of our listings.

**What Are the Listings?**

The listings are examples of impairments that we consider severe enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI payments based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

**How Do We Use the Listings?**

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

**What If You Do Not Have An Impairment(s) That Meets or Medically Equals a Listing?**

We use the listings only to decide that you are disabled or that you are still disabled. We will never deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the "sequential evaluation process" described above. Likewise, we will not decide that your disability has ended only because your impairment(s) does not meet or medically equal a listing.

**List of Subjects****20 CFR Part 404**

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

**20 CFR Part 416**

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: March 21, 2005.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

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**SOCIAL SECURITY ADMINISTRATION****20 CFR Parts 404 and 416**

[Regulation Nos. 4 and 16]

**RIN 0960-AF58**

**Revised Medical Criteria for Evaluating Respiratory System Disorders**

**AGENCY:** Social Security Administration.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** We are planning to update and revise the rules we use to evaluate respiratory disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Social Security Act (the Act). The rules we plan on revising are sections 3.00 and 103.00 in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings). We invite you to send us comments and suggestions for updating and revising these rules.

After we have considered your comments and suggestions, as well as information about advances in medical knowledge, treatment, and methods of evaluating respiratory disorders, and our program experience, we intend to publish for public comment a Notice of Proposed Rulemaking (NPRM) that will propose specific revisions to the rules.

As part of our long-term planning for the disability programs, we are also interested in your ideas for how we may be able to improve our programs for people who have respiratory disorders, especially those who would like to work.

**DATES:** To be sure your comments are considered, we must receive them by June 13, 2005.

**ADDRESSES:** You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted in our Internet site at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

**Electronic Version:** The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at: <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 965-0020 or TTY (410) 966-5609. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov>.

#### **SUPPLEMENTARY INFORMATION:**

##### **What Is the Purpose of This Notice?**

We are planning to update and revise the rules that we use to evaluate respiratory disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Act. The purpose of this notice is to give you an opportunity to send us comments and suggestions for updating and revising those rules as we begin the rulemaking process. We are also asking for your comments and ideas about how we can improve our disability programs in the future for people with respiratory disorders.

##### **Who Should Send Us Comments and Suggestions?**

We invite comments and suggestions from anyone who has an interest in the rules we use to evaluate claims for benefits filed by people who have respiratory disorders. We are interested in getting comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who advocate for people who have respiratory disorders, experts in the evaluation of respiratory disorders, researchers, people who make disability determinations and decisions for us, and any other individuals who may have ideas for us to consider.

##### **Will We Respond To Your Comments From This Notice?**

No, we will not respond directly to comments you send us because of this notice. However, after we consider your comments in response to this notice, along with other information such as medical research and our program experience, we will decide how to revise the rules we use to evaluate respiratory impairments. When we propose specific revisions to the rules, we will publish an NPRM in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on the revisions we propose when we publish

the NPRM, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

##### **Which Rules Are We Considering for Updating and Revision?**

We are considering two sections of our listings for updating and revision, sections 3.00 and 103.00. These are the listings for respiratory impairments for adults (Part A, 3.00) and children (Part B, 103.00). They include, but are not limited to, such impairments as emphysema, chronic bronchitis, asthma, cystic fibrosis (CF), chronic obstructive pulmonary disease (COPD), sleep-related breathing disorders, lung transplants, and bronchopulmonary dysplasia (BPD).

##### **Where Can You Find These Rules on the Internet?**

You can find these rules on our Internet site at these locations:

- Sections 3.00 and 103.00 are in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at [http://www.ssa.gov/OP\\_Home/cfr20/404/404-ap10.htm](http://www.ssa.gov/OP_Home/cfr20/404/404-ap10.htm).
- You can also look up sections 3.00 and 103.00 of the listings at <http://www.ssa.gov/disability/professionals/bluebook/>.
- If you do not have Internet access, you can find the Code of Federal Regulations in some public libraries, Federal depository libraries, and public law libraries.

##### **Why Are We Updating and Revising Our Rules for Evaluating Respiratory System Disorders?**

We last published final rules containing comprehensive revisions to the listings for respiratory impairments in the **Federal Register** on October 7, 1993 (58 FR 52346). The current listings for respiratory impairments for adults (3.00) and children (103.00) will no longer be in effect on July 1, 2005, unless we extend them or revise and promulgate them again.

##### **What Should You Comment About?**

We are interested in any comments and suggestions you have for revising sections 3.00 and 103.00 of our listings. For example, with regard to our listings, we are interested in knowing if:

- You have concerns about any of the current respiratory system listing provisions for adults or children; such as whether you think we should change any of our medical criteria or whether you think a listing is difficult to use or understand.
- You would like to see our respiratory listings include something

that they do not include now; such as conditions and/or new medical criteria that you believe should be added to the listings.

- You are aware of criteria we should use to define disabling asthma at the listing level.

- You are aware of criteria we should use to define disabling bronchopulmonary dysplasia (BPD) at the listing level.

In addition to your comments about our regulations, we are also interested in any ideas you have about how the disability requirements of the Act and our regulations affect people who have respiratory disorders, especially those who would like to work, full-time or part-time with supports. Your ideas can address our existing rules and regulations or suggest changes to the law. For example, we know that many people who have respiratory disorders might not need benefits from us if they could get treatment before their disorders make them unable to work. Others may be unable to work but may not need to stay out of work indefinitely if they could get treatment or other interventions. Many people with permanent disorders can work if they have a supporting safety net (including title II disability benefits and SSI payments). Work can also be therapeutic

for some people. Although the Act and our regulations include some access to health care through Medicare and Medicaid, some provisions for vocational rehabilitation, and a number of work incentives, these provisions are generally for people who already qualify for benefits under our disability programs.

We will consider your ideas as we develop the NPRM we intend to publish for public comment, and, where applicable, as part of our long-term planning for the disability program.

#### What Other Information Will We Consider?

We will also be considering information from many sources, including the following recent documents, for relevance to our policy for evaluating respiratory impairments.

- Expert Panel Report: Guidelines for the Diagnosis and Management of Asthma-Update on Selected Topics. National Institute of Health (NIH Publication No. 02-5075). Bethesda, MD: U.S. Department of Health and Human Services, 2002. This report is available at <http://www.nhlbi.nih.gov/guidelines/asthma/asthgdln.htm>

- Expert Panel Report II: Guidelines for the Diagnosis and Management of Asthma. National Institute of Health

(NIH Publication No. 97-4053). Bethesda, MD: U.S. Department of Health and Human Services, 1997. This report is available at <http://www.nhlbi.nih.gov/guidelines/asthma/asthgdln.htm>

#### Other Information:

#### 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 § 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 are disabled and have limited income and resources.

#### How Do We Define Disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

<i>If you file a claim under . . .</i>	<i>And you are . . .</i>	<i>Disability means you have a medically determinable impairment(s) as described above and that results in . . .</i>
title II .....	an adult or child .....	the inability to do any substantial gainful activity (SGA).
title XVI .....	a person age 18 or older .....	the inability to do any SGA.
title XVI .....	a person under age 18 .....	marked and severe functional limitations

#### How Do We Decide Whether You Are Disabled?

If you are seeking benefits under title II of the Act, or if you are an adult seeking benefits under title XVI of the Act, we use a five-step “sequential evaluation process” to decide whether you are disabled. We describe this five-step process 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 will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a “severe” impairment? If you do not have an

impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Do you have the residual functional capacity to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your residual functional capacity, age, education, and work experience? If it

does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for children who apply for payments based on disability under title XVI of the Act. We describe that sequential evaluation process in § 416.924 of our regulations.

If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.994, and 416.994a of our regulations. All of the sequential evaluation processes, however, include steps at which we consider whether your impairment(s) meets or medically equals one of our listings.

#### What Are the Listings?

The listings are examples of impairments that we consider severe

enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI payments based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

#### How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

#### What If You Do Not Have an Impairment(s) That Meets or Medically Equals a Listing?

We use the listings only to decide that you are disabled or that you are still disabled. We will never deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the “sequential evaluation process” described above. Likewise, we will not decide that your disability has ended only because your impairment(s) does not meet or medically equal a listing.

#### List of Subjects

##### 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

##### 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: March 21, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 05-7358 Filed 4-12-05; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960-AG15

#### Representation of Parties; Recognition, Disqualification, and Reinstatement of Representative

**AGENCY:** Social Security Administration.

**ACTION:** Proposed rules.

**SUMMARY:** We propose to revise our regulations to identify additional bases upon which we may bring charges to disqualify an individual from acting as a representative before the Social Security Administration (SSA), and to set forth the conditions under which we will reinstate an individual whom we have disqualified as a representative because the individual collected or received, and retains, a fee in excess of the amount we authorized. These proposed rules revise our regulations on the representation of parties to implement section 205 of the Social Security Protection Act of 2004 (SSPA) and to make additional changes in these regulations that relate to the changes required by this legislation. The rules also propose three technical changes in our regulations on the representation of parties.

**DATES:** To be sure that we consider your comments, we must receive them by June 13, 2005.

**ADDRESSES:** You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

#### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

#### FOR FURTHER INFORMATION CONTACT:

Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-1758 or TTY (410) 966-5609. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Who Is Permitted to Represent Claimants Before SSA?

Section 206(a)(1) of the Social Security Act (the Act) provides that attorneys and non-attorneys may represent claimants before SSA. Prior to enactment of the SSPA, Public Law 108-203, on March 2, 2004, section 206(a)(1) specified that “[a]n attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts” is entitled to represent claimants before SSA. Section 206(a)(1) also authorized SSA to prescribe rules and regulations governing recognition of individuals other than attorneys.

Section 205 of the SSPA amended section 206(a)(1) of the Act with respect to the recognition and disqualification of certain attorneys as claimants’ representatives. As amended, section 206(a)(1) provides that the Commissioner of Social Security (the Commissioner), after due notice and opportunity for hearing, may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency. Section 206(a)(1) as amended further provides that the Commissioner may also, after due notice and opportunity for hearing, refuse to recognize, and may disqualify, as a non-attorney representative, any attorney who has been disbarred or suspended