and have responded to them by revising the policy with respect to CDC's as packagers of loans for buisnesses in which they own interests. In this regard, a letter so advising has been prepared to be sent to CSA and appropriate changes in SBA's internal standard operating procedures are being made. In addition, two proposed regulations have been drafted dealing with CDC eligibility for SBA's section 8(a) program and Small Business Investment Company program. These proposed regulations are published elsewhere in this issue. Finally, SBA has chosen not to alter its affiliation policy, and a letter to that effect has also been prepared to be sent to CSA which explains the basis for that decision.

Dated: August 11, 1980.

William H. Mauk, Jr.

Acting Administrator.

[FR Doc. 80-25334 Filed 8-19-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Customs Service

Disclosure of Information on Export Documents; Shipper's Certification of Confidentiality

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice advises the exporting community of the provisions of a new law which changes the procedures a shipper must follow in order to request that Customs not disclose to the public the shipper's name and address from documents submitted to Customs in connection with exports from the United States. Customs will publish a final rule document at a later date amending the Customs Regulations to implement those procedural changes.

FOR FURTHER INFORMATION CONTACT: Doris B. Robinson, Freedom of Information and Privacy Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229 (202-566-8681).

SUPPLEMENTARY INFORMATION:

Background

Public Law 96-275, which was published as T.D. 80-184 in the Customs Bulletin of July 23, 1980, an Act "to protect the confidentiality of Shippers' Export Declarations and to standardize export data submission and disclosure requirements," was enacted by Congress on June 17, 1980. The provisions of that law relating to disclosure of information became effective August 1, 1980.

Section 2 of the law provides that the name and address of a shipper contained in an outward foreign manifest or documents attached to the manifest will be subject to public disclosure unless the shipper has made a biennial (every two years) certification to Customs claiming confidential treatment for that information.

New Customs Procedures

To implement the many changes required by the law, Customs will amend its regulations contained in title 19, Code of Federal Regulations, Chapter I (19 CFR Chapter I), in a final rule document to be published in the **Federal Register** at a later date. However, as regards the new certification requirement imposed by the law, Customs considers it advisable to notify members of the exporting community of changes in disclosure of information procedures by this document.

Effective August 1, 1980, if a shipper wishes to request confidential treatment by Customs of his/her name and address, the following procedures will be used:

1. A shipper, or authorized employee or official of the shipper, must submit a certification claiming confidential treatment of the shipper's name and address.

2. There is no prescribed format for a certification.

3. The certification must be submitted to the Regional Commissioner for the Region in which the port of exportation is located.

4. Each certification will be valid for a period of two (2) years from the date of its submission to Customs.

Existing Shipper's Claims For Confidentiality

A shipper who, before August 1, 1980, had applied for and obtained Customs approval of a claim for confidential treatment of the shipper's name, must submit to Customs a new "certification" claiming confidentiality of the shipper's name and address if desired, following the procedure described above. However, claims of confidentiality made by a shipper and already approved by Customs will continue in effect until 60 days after the publication in the Federal Register of the final rule document (Treasury Decision) amending the Customs Regulations to implement the new law.

Drafting Information

The principal author of this document was Todd J. Schneider, Regulations and Research Division, Office of Regulations and Rulings. However, personnel from other Customs offices participated in its development.

Dated: August 13, 1980.

R. E. Chasen.

Commissioner of Customs.

FR Doc. 80-25309 Filed 8-19-80; 8:45 am]

BILLING CODE 4810-22-M

[T.D. 80-212]

Florasynth, Inc.; Recordation of Trade Name

On June 11, 1980, there was published in the **Federal Register** (45 FR 39609) a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name FLORASYNTH, INC. The notice advised that prior to final action on the application, filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevent data, veiws, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice.

The name "FLORASYNTH, INC." is hereby recorded as the trade name of Florasynth, Inc., a corporation organized under the laws of the State of new York, located at 410 East 62nd Street, New York, New York 10021, when applied to essences and aromatic ingredients used as bases for cosmetics, toilet preparations, perfumes and colognes, and as flavor in foods, beverages and tobacco products; essential oils, used as an odorant to mask disinfectants, insecticides, and similar products; extracts, flavors, oils and emulsions for use in making soft drink syrups and bases; non-alcoholic preparation for producing a foam in soft drinks and a flavoring agent used in the preparation of root beer; orange compound adapted to produce a cloud in non-alcoholic, malt-less soft drink beverages and having flavoring ingredients; natural and synthetic organic flavors, extracts, oils, and blenders for alcoholic beverages; imitation vanilla bean flavor; grapefruit juice powder, lemon juice powder, lime juice powder, orange juice powder, and brown sugar powdered flavor; citrus oils for food purposes; onion powder and garlic powder; and coffee, manufactured in Brazil, Canada, England, France, Japan, Mexico and the United States. Various foreign subsidiaries are authorized to use the trade name.

Dated: August 14, 1980.

Salvatore E. Caramagno,

Director, Office of Regulations and Rulings.

[FR Doc. 80-25310 Filed 8-19-80; 8:45 am]

BILLING CODE 4810-22-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Systems of Records

Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register**, a notice of the existence and character of their systems of records. Accordingly, the Veterans Administration published and adopted a notice of its inventory of personal records of September 27, 1977 (42 FR 49726).

Notice is hereby given that the Veterans Administration is adding a new system of records entitled "Resident Engineer Assignment System (REAS)" (62VA08). This system is authorized under Title 5 U.S.C. Section 301 and Title 38 U.S.C. Sections 210(c) and 219.

The purpose of this new system of records is to aid in the assignment of Resident Engineers and clerical support staff to supervise VA construction sites. The data in the records will include various personal and professional information such as areas of preference, VA experience, states in which licensed, family information, etc. The data will be used exclusively in permitting the efficient scheduling of assignments of Resident Engineers and their clerical support staff to construction sites with the maximum utilization of these personnel with a minimum of relocation. No disclosures of this information will be made outside the agency.

The use of the information and data in this system is restricted solely to the office of the system manager and does not have any routine uses as defined by the Privacy Act of 1974 (5 U.S.C. 552a(a)(7)). Therefore, the requirement to give 30-days prior public notice before compiling this new system does not apply.

A "Report of New System" and an advance copy of the revised system notice were sent on June 24, 1980, to the Speaker of the House, the President of the Senate, and the Office of Management and Budget, as required by the provision of 5 U.S.C. 552a(o) of the Privacy Act and guidelines issued by the Office of Management and Budget (40 FR 45877), October 3, 1975.

Notice is hereby given that this description is effective the date of approval by the Administrator of Veterans Affairs (August 12, 1980).

Approved: August 12, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Associate Deputy Administrator.

SYSTEM NAME:

Resident Engineer Assignment System, 62VA08.

SYSTEM LOCATION:

Records are maintained in the Office of Construction, Cental Office, Veterans Administration, Washington, D.C., 20420.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Resident Engineers and their clerical staff currently employed by the Veterans Administration Central Office and assigned to nationwide construction site supervision responsibilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include information such as station assignment, last relocation date, states in which licensed, area or preference, address, family, grade and last promotion date, employment date, and VA experience. Only records that permit efficient scheduling assignments of Resident Engineers and their clerical staff to construction sites and that will maximize utilization of these personnel with a minimum of relocations will be maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C. Section 301, Title 38 U.S.C., Sections 210(c), 219.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(a) Magnetic tape at the VA Central Office.

(b) Paper documents at the VA Central Office.

RETRIEVABILITY:

Records are indexed by name of the employee and filed alphabetically.

SAFEGUARDS:

Physical Security: Maintained under lock and key in file cabinets. Access to files is restricted to Resident Engineer assignment officials on a need to know basis. The file area is locked after duty hours and protected from unauthorized access by the Federal Protective Service.

RETENTION AND DISPOSAL:

Records are maintained for the duration of employment of the Resident Engineers and clerical staff. When the employee leaves the Office of Construction the records are destroyed in accordance with approved VA procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Systems Staff, Office of Construction, Veterans Administration, Washington, D.C. 20420.

NOTIFICATION PROCEDURE:

An individual seeking information concerning the existence of records or the contents of records on him or her must furnish a written request or apply in person at the Office of the Director, Resident Engineer Staff, Office of Construction, Veterans Administration, Washington, D.C. 20420. The individual must reasonably identify the system of records and provide his or her full name.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Questionnaires completed by Resident Engineers and their clerical staff, and from present Resident Engineer staff assignment records.

[FR Doc. 80-25324 Filed 8-19-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 163
Wednesday, August 20, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Civil Aeronautics Board	1
Federal Energy Regulatory Commission	2
Federal Reserve System (Board of Governors)	3
Libraries and Information Science National Commission	4, 5
National Railroad Passenger Corporation	6

1

CIVIL AERONAUTICS BOARD.

[M–289, August 14, 1980]

TIME AND DATE: 9:30 a.m., August 21, 1980.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. Docket 38278, Southwest Airlines notice to terminate service at Beaumont/Port Arthur, Texas. (Memo No. 9864, BDA, OCCR)
3. Dockets 38412 and 38413, Braniff Airways 90-day notice of termination of all service at Cleveland, Ohio and Milwaukee, Wisconsin, (BDA, OCCR) (Memo No. 9870)
4. Docket 38547, United Air Lines notice under section 401(j)(2) to suspend nonstop or single-plane service in 34 markets. (BDA, OCCR) (Memo No. 9869)
5. Docket 34681, proposed final 419 rate of compensation for Air North service at five Upstate New York points. (Memo No. 8486–N, BDA, OCCR)
6. Docket 34802, Wien Air Alaska, Inc. Intra-Alaska Service Mail Rates. (Memo No. 9210–A, BDA)
7. Docket 37588, Palm Beach Environmental Study. (Memo No. 9446–E, 9446–F)
8. Docket 32660, Petition of the International Airforwarder Agents Association for review of staff action. (Memo No. 9865, BIA)
9. Dockets 35634 and 32660, IATA petition for reconsideration of Order 80–4–75. (Memo No. 9567–A, BIA)
10. Docket 37286, Application of Saudi Arabia Airlines Corporation for amendment of its foreign air carrier permit to add Houston, Texas and coterminalize its U.S. points. (BIA, BCP, OGC, BALJ)
11. Docket 37580, Application of TACA International Airlines, S.A. for an amendment to its foreign air carrier permit to operate scheduled all-cargo service. (Memo 9868, BIA, OGC, BALJ)
12. Docket 36916, Application of Redcoat Air Cargo Limited for foreign charter air carrier permit to carry cargo between the United States and the United Kingdom. (BIA, OGC, BALJ) (Memo No. 9867)
13. Docket 33220, Yucatan Service Case. (Instructions to staff)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673–5068.

[S–1562 Filed 8–15–80; 4:35 pm]

BILLING CODE 6320–01–M

2

FEDERAL ENERGY REGULATORY COMMISSION.

August 13, 1980.

TIME AND DATE: 10 a.m., August 20, 1980.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of Public Information.

Power Agenda—459th Meeting, August 20, 1980, Regular Meeting (10 a.m.)

CAP–1. Docket No. EL78–43, City of Bountiful, Utah, Utah Power and Light Co., City of Santa Clara, Calif. and Pacific Gas and Electric Co.
CAP–2. Project No. 2811, Public Utility District No. 1 of Klickitat County, Wash.
CAP–3. Docket No. ER80–493, Interstate Power Co.
CAP–4. Docket No. ER76–827 and ER77–427, Minnesota Power & Light Co.
CAP–5. Docket No. ER80–363 Delmarva Power & Light Co.
CAP–6. Docket Nos. ER80–38 and ER80–122, West Texas Utilities Co.
CAP–7. Docket No. ER76–716, Indiana & Michigan Electric Co.
CAP–8. Docket No. ER80–261, Mississippi Power & Light Co.
CAP–9. Docket No. ER80–222, Georgia Power Co.

Miscellaneous Agenda—459th Meeting, August 20, 1980, Regular Meeting

CAM–1. Docket No. GP80– , NGPA well category determination, USGS New Mexico, El Paso Natural Gas Co. FERC No. JD 80–34000.
CAM–2. Docket No. GP80–93, State of Louisiana, Section 103 NGPA determination, Conoco, Inc., T. Ortego A. SU, L. L. Welch A No. 17 Well, Louisiana, Docket NGPA #79–3006, FERC JD No. BD–10659.

Gas Agenda—459th Meeting, August 20, 1980, Regular Meeting

CAG–1. Docket Nos. RP74–20 and RP74–83, United Gas Pipe Line Company; Docket Nos. RP7–20, et al., (interest reimbursement) United Gas Pipe Line Co.; Docket Nos. RP74–82 and RP74–81, Columbia Gas Transmission Corp. and Columbia Gulf Transmission Corp.; Docket Nos. CP70–22, et al., Michigan-Wisconsin Pipe Line Co.; Docket Nos. RP73–102 and RP73–14 (PGA75–1), Michigan Wisconsin Pipe Line Co.; Docket Nos. RP75–96 and RP76–100, Michigan-Wisconsin Pipe Line Co.; Docket No. RP73–110, Natural Gas Pipeline Co. of America; Docket No. RP75–84, Southern Natural Gas Co.; Docket No. RP73–113, Tennessee Gas Pipeline Co.; Docket Nos. RP774–48 and RP75–3, Transcontinental Gas Pipeline Corporation.; Docket Nos. RP72–23, et al., and RP73–35, Trunkline Gas Co.; Docket No. RP73–35 and RP74–89 (PGA76–1 and AP76–2), Trunkline Gas Co.; Docket Nos. RP74–89 and RP73–35 (AP76–1), Trunkline Gas Co.
CAG–2. Docket No. TA80–2–33 (PGA80–2a), El Paso Natural Gas Co.
CAG–3. Docket No. TA80–2–57 (PGA80–2), Western Transmission Corp.
CAG–4. Docket Nos. AR61–2, et al., and AR69–1, area rate proceeding, et al. (Southern Louisiana); Docket Nos. AR64–2, et al., area rate proceeding, et al. (Texas Gulf Coast); Docket Nos. AR67–1, et al., area rate proceeding, et al. (other southwest); Docket Nos. AR70–1, et al., area rate proceeding, et al. (Permian Basin II).
CAG–5. Docket Nos. RI74–188 and RI75–23, Independent Oil and Gas Assocation of West Virginia.
CAG–6. Docket No. CP80–324, Tennessee Gas Pipeline Co. a division of Tenneco Inc.; Docket No. CP80–336, Transcontinental Gas Pipe Line Corp.
CAG–7. Docket No. CP79–150, Northwest Pipeline Corp.
CAG–8. Docket No. CP80–386, Buckeye-Tennessee Gas Gathering Co.
CAG–9. Docket No. PC79–416, ANR Storage Co.; Docket No. CP79–374, Southern Natural Gas Co.; Docket No. CP79–382, South Georgia Natural Gas Co.; Docket No. CP79–478, Great Lakes Gas Transmission Co.; Docket No. CP79–498, Michigan Wisconsin Pipe Line Co.

CAG–10. Docket No. CP80–337, Eastern Shore Natural Gas Co.
CAG–11. Docket No. CP80–379, Trunkline Gas Co.
CAG–12. Docket No. CP80–280, Tennessee Gas Pipe Line Co., a division of Tenneco Inc.
CAG–13. Docket No. CP74–150, Transcontinental Gas Pipe Line Corp.
CAG–14. Docket No. CP80–384, Michigan Wisconsin Pipe Line Co.

Power Agenda—459th Meeting, August 20, 1980, Regular Meeting

I. Licensed Project Matters

P–1. Reserved.

II. Electric Rate Matters

ER–1. Docket No. ER80–497, Appalachian Power Co.
ER–2. Docket No. ER80–506, Alabama Power Co.
ER–3. Docket No. ER80–492, Idaho Power Co.
ER–4. Docket No. ER80–511, Niagara Mohawk Power Corp.
ER–5. Docket No. ER80–508, Boston Edison Co.
ER–6. Docket No. ER80–495, Iowa Public Service Co.
ER–7. Docket No. ER80–422, Central Vermont Public Service Corp.
ER–8. Docket No. EL80–5, Central Vermont Public Service Corp.
ER–9. Docket No. E–7777 (phase II), Pacific Gas & Electric Co.; Docket No. E–7796, Pacific Power & Light Co.
ER–10. (A) Docket No. E–9563, Bonneville Power Administration (Wheeling rates); (B) Docket No. EF80–2011, Bonneville Power Administration (system rates); Docket No. RM80– , proposed rulemaking on review of Federal rate schedules; (C) Docket No. EF79–4011, Southwestern Power Administration (System rates); (D) Docket No. EF79–4021, Southwestern Power Administration (Sam Rayburn Dam project).
ER–11. Docket No. ID–1839, H. Russell Smith.
ER–12. Docket No. ID–1860, Robert L. Loughhead.

Miscellaneous Agenda—459th Meeting, August 20, 1980, Regular Meeting

M–1. Docket No. QF80–4, Consolidated Water Power Co.—small power production and congeneration facilities—qualifying status.
M–2. Docket No. RM80–65, exemption of small hydroelectric power project of 5 megawatts or less from all or part of part I of the Federal Power Act.
M–3. Docket No. RM79–79, price squeeze—procedural rules; Docket No. RM79–80; price squeeze—substantive rules.
M–4. Reserved.
M–5. Reserved.
M–6. Reconsideration of FERC practice with respect to stays.
M–7. Docket No. RM80–57, amendment to § 1.18 of the rules of practice and procedure.
M–8. (A) Docket No. RM78–15, rules relating to investigations; (B) Docket No. RM80– , delegations to the director of office of enforcement.
M–9. Docket No. RM80–16, disclosed estimation methodology approach for determination of volumes of natural gas used for exempt purposes under the incremental pricing program.

Gas Agenda—459th Meeting, August 20, 1980, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket Nos. RP77–107 and RP78–68, United Gas Pipe Line Co.

II. Producer Matters

CI–1. Docket No. RI79–21, Shell Oil Co.

Kenneth F. Plumb,

Secretary.

[S–1546 Filed 8–18–80; 9:47 am]

BILLING CODE 6450–85–M

3

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Forwarded to Federal Register on August 12, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, August 20, 1980.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such open item has been added to the Summary Agenda:

Proposal for annual Board financial support of the University of Michigan's Survey Research Center. (This matter was originally considered at an open meeting on Wednesday, August 13, 1980.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: August 15, 1980.

Theodore E. Allison,

Secretary of the Board.

[S–1561–80 Filed 8–15–80; 4:34 pm]

BILLING CODE 6210–01–M

4

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.

TIME AND DATE: 9:00–5:00 p.m., September 5 and 6, 1980 respectively.

PLACE: O'Hare/Kennedy Holiday Inn, Rosemont, Illinois.

STATUS: Closed.

MATTERS TO BE DISCUSSED: Executive session (closed meeting Sec 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703).

CONTACT PERSON FOR MORE INFORMATION: Mary Alice Hedge Reszetar, Associate Director, NCLIS, area code 202–653–6252.

Mary Alice Hedge Reszetar

Associate Director, NCLIS.

August 11, 1980.

[S–1563–80 Filed 8–15–80; 4:36 pm]

BILLING CODE 7527–01–M

5

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.

TIME AND DATE: 9–5:30 p.m., August 22 and 23, 1980 respectively.

PLACE: San Francisco Hilton Airport Inn, San Francisco, California.

STATUS: Closed.

MATTERS TO BE DISCUSSED: Executive Session (closed meeting Sec. 1703.202(2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703).

CONTACT PERSON FOR MORE INFORMATION: Mary Alice Hedge Reszetar, Associate Director, NCLIS, area code 202–653–6252.

Mary Alice Hedge Reszetar

Associate Director, NCLIS.

August 11, 1980.

[S–1564–80 Filed 8–15–80; 4:36 am]

BILLING CODE 7527–01–M

6

NATIONAL RAILROAD PASSENGER CORPORATION.

(Board of Directors)

In accordance with Rule 4a. of Appendix A of the Bylaws of the National Railroad Passenger Corporation notice is given that the Board of Directors will meet on August 27, 1980.

A. The meeting will be held on Wednesday, August 27, 1980, in the National Guard Association Building, 3rd Floor, One Massachusetts Avenue, Northwest, Washington, D.C., beginning at 9:30 a.m.

B. The meeting will be open to the public at 10:30 a.m. beginning with agenda item No. 3, as described below.

C. The agenda items to be discussed at the meeting follow.

Agenda—National Railroad Passenger Corporation

Meeting of the Board of Directors, August 27, 1980

Closed Session (9:30)

1. Internal Personnel Matters.
2. Litigation Matters

Open Session (10:30)

3. Approval of Minutes of Regular Meeting of July 30, 1980.
4. Ratify Appointment of Director to Committee.

5. Approval of Consulting Contract for the Design and Implementation of the ARTS Replacement Project.
6. Commitment Approval Requests:
80–165 Retirement and sale of five overage GG1 electric locomotives.
80–157 New Orleans—Modernize and rehabilitate equipment washing facilities.
80–169 Hialeah/St. Petersburg—Provide 480 volt standby service for HEP trains.
80–183 Acquire facility for the Amtrak Institute for Rail Services.
80–184 Purchase Conrail portion of Chicago joint track.
78–33–R1 Modernization of Beech Grove—Phase III.
76–294–S5 Fiscal year 1981 Northeast Corridor purchase.
7. Resolution Adopting Equipment Retirement Policy.
8. Film Presentation: Amtrak TV News.
9. Board Committee Reports:
Equipment.
Finance.
Legal affairs.
Northeast Corridor improvement project.
Organization and compensation.
10. President's Report.
11. New Business.
12. Adjournment.

D. Inquiries regarding the information required to be made available pursuant to Appendix A of the Corporation's Bylaws should be directed to the Assistant Corporate Secretary at (202) 383–3991.

Barbara J. Willman,
Assistant Corporate Secretary.
August 18, 1980.
[S–1565–80 Filed 8–18–80; 9:14 am]

federal register

Wednesday
August 20, 1980

Part II

Department of Health and Human Services

Social Security Administration

Federal Old Age, Survivors, and Disability Insurance Benefits

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regs. Nos. 4 and 16]

Federal Old Age, Survivors, and Disability Insurance Benefits; Supplemental Security Income for the Aged, Blind, and Disabled

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: The Department of Health and Human Services has revised the regulations in Subpart P of Part 404 and Subpart I of Part 416 to make them clearer and easier for the public to use. These subparts contain the rules for determining disability and blindness under titles II and XVI of the Social Security Act. We have completely reorganized and rewritten these rules in simpler, briefer language.

We have updated these regulations by including certain policies which we are now following in evaluating disability and blindness. We have also changed the provisions on the amount of earnings we consider representative of substantial gainful activity and on the monetary amount we do not count for trial work period purposes.

These final regulations do not include the regulatory changes which will be required by the recently enacted Social Security Disability Amendments of 1980, Pub. L. 96–265. The changes that we will have to make to our regulations because of this recent legislation will, in general, not change the substance of the policies in these final rules, including policies already being followed which we are placing in our regulations for the first time. We will, however, be making modifications in some limited areas, such as to our policy on the purchase of medical evidence in title II cases, the trial work period, substantial gainful activity, and vocational rehabilitation. We will publish these changes either with notice of proposed rulemaking or as interim regulations, as appropriate, so that the public will have full opportunity to provide views and comments before final rules are adopted.

DATES: These regulations will be effective August 20, 1980.

FOR FURTHER INFORMATION CONTACT: Harry J. Short or William J. Ziegler, Legal Assistants, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD. 21235, telephone 301–594–7337 or 301–594–7415.

SUPPLEMENTARY INFORMATION:

Revising the Disability Regulations

We have completely revised the regulations under "Operation Common Sense" and in accordance with Executive Order 12044. These regulations describe how we determine disability and blindness for the purpose of paying benefits under the disability insurance program (Part 404) and supplemental security income program (Part 416). These regulations explain (1) the requirements for receiving cash benefits based upon disability or blindness and for getting a "period of disability," (2) the evidence a person must give us when applying for benefits or a "period of disability," (3) how we evaluate the evidence to make a disability or blindness determination on a claim, (4) what we need to know and what a person must do after beginning to receive benefits, and (5) the factors we consider when determining whether a person will continue to receive these benefits or have a period of disability continue.

In order to obtain the public's views and comments before proceeding with these amendments, we published these regulations along with a Notice of Proposed Rulemaking in the **Federal Register** on July 3, 1979 (44 FR 38879). On March 23, 1979, we published, at 44 FR 17654, interim regulations setting the substantial gainful activity (SGA) level amounts for 1978 and 1979. Then on March 18, 1980, we published, at 45 FR 17131, interim regulations setting the substantial gainful activity level amount for 1980 and thereafter. We have carefully considered all the comments pertaining to the proposed amendments and the interim regulations on the 1978 and 1979 substantial gainful activity earnings guidelines, and we have answered the issues raised in these comments later in the preamble. We will respond to any comments on the 1980 SGA amounts when we publish those regulations in final form. Although we are not finalizing the 1980 figures at this time, we are including them in this recodification since the 1980 figures do have interim effectiveness.

Our Goals

We have rewritten the disability regulations to make them easier to read and understand. We have tried to remove legalistic language and bureaucratic jargon, and to define the terms we use in simpler language. We have also rearranged the sections to make it easier for persons to find information for which they may be looking.

We have also taken out of the regulations policies which we no longer follow or which we very seldom use. For example, we have deleted the rules for determining disability in 1965 and earlier, before the law was changed.

At the same time we have added to the regulations certain policies which we are now following in determining disability. These are based on provisions of the law and should be included in the regulations. Most of these policies are already in our Program Operations Manual, which State and Federal employees use when evaluating disability. This manual is available for anyone to see at any of our local social security offices. We are also putting into the regulations other policies we have adopted based on our experience in evaluating disability claims over many years. These policies will now clearly apply to all determinations, including appeals.

While legislation has recently been enacted which will require changes in disability regulations, we have not attempted to include any of these changes in this recodification. As previously explained, the purpose of this recodification is to rewrite and clarify existing regulations and incorporate a number of policies (not previously part of our regulations) that we follow in evaluating disability and blindness.

We will publish proposed regulations implementing changes required by this new legislation as Notices of Proposed Rulemaking or as Interim regulations as soon as possible.

Policies We Are Including in the Regulations for the First Time

What We Mean by an Impairment That Is Not Severe

To receive disability benefits, a person must have a severe impairment. We deny a disability claim if we find that a person does not have a severe impairment. In §§ 404.1521 and 416.921, we explain in more detail that an impairment is not severe when it does not significantly limit a person's physical or mental ability to do those things needed to work. For the first time, we explain what abilities we consider necessary in order for a person to work.

When a Person Has Two or More Impairments—Initial Claims

To get disability benefits or establish a period of disability, a person must have a severe impairment, and the impairment must either be expected to result in death or to last for 12 continuous months or longer. In

§§ 404.1522 and 416.922 we explain that, when a person has two or more impairments, we will evaluate them together to see if they are severe enough to keep the person from doing substantial gainful activity. However, in doing this evaluation, we will only include impairments which are expected to result in death or to last for 12 months or longer.

The Meaning of Medical Equivalence

When a person has a severe impairment which is one that is shown in our Listing of Impairments in Appendix 1 or is medically equivalent (equal) to one shown there, we consider that person disabled if he or she is not doing substantial gainful activity. We explain in §§ 404.1526 and 416.926 how we decide whether an impairment is equal to a listed impairment. If a person's impairment is not listed, we will consider the listed impairment most like the person's impairment to decide whether it is medically equal. If the person has more than one impairment, and none of them meets or equals a listed impairment, we will review the symptoms, signs, and laboratory findings about the impairments against the listed impairments most like the person's impairment. We will then decide whether we can consider the combination of impairments medically equal to any listed impairment.

Medical Evidence of Disability

We have stated more clearly what we consider acceptable medical evidence by listing acceptable sources and by describing the required content of medical evidence (See §§404.1513 and 416.913). We have also added osteopaths, optometrists, and psychologists to the list of acceptable medical sources.

When We Will Purchase Medical Evidence

There has been some confusion about our policies on when we will pay for medical evidence. In § 416.914 we explain that we will usually pay for medical evidence for a person who is applying for supplemental security income benefits based on disability or blindness. We will always pay for this medical evidence when we decide that we need it to make a determination of disability or blindness. We may pay for the evidence in other situations. In § 404.1514 we explain when we will pay for medical evidence for a person who is applying for title II disability benefits. We pay for it only in limited situations.

Consultative Examination at Our Expense

Sometimes we must arrange a special medical examination for a person to get the information we need to make a determination. In §§ 404.1517 and 416.917, we explain when we may ask a person to go for one of these special examinations. Frequently, we need more detailed medical information or a technical, specialized medical test which a person's treating physician cannot give us or do for us. Sometimes, we must resolve a conflict or difference in medical findings in the evidence we already have. In these sections we also point out that we will give the examiner information about the person we are sending for the examination. We will always tell the person the purpose of the examination and the name of the examiner before the examination.

Failure To Appear at a Consultative Examination

If a person does not go to an examination so that we do not get information we need to determine disability or blindness, we may find that the person is not disabled or blind, unless he or she had a good reason for not going. In §§ 404.1518(b) and 416.918(b) we give examples of what we consider good reasons for not going to an examination. These include being ill on the day of the examination, not receiving sufficient notice from us, receiving incorrect information from us, or having a death or serious illness in the family.

How We Evaluate Subjective Symptoms, Including Pain

In §§ 404.1529 and 416.929 we explain how we evaluate pain and other subjective symptoms. We recognize that the effects of pain and other subjective symptoms can usually be evaluated by clinical and laboratory diagnostic techniques.

Residual Functional Capacity

We consider a person's residual functional capacity when we are deciding whether a person is able to do his or her past work or other work. Residual functional capacity is generally the physical and mental abilities a person still has which enable him or her to work even though these abilities are limited because of his or her impairment. In §§ 404.1545 and 416.945, we explain how we determine residual functional capacity. Anyone qualified to make medical judgments may assess residual functional capacity. Qualified persons include treating or examining physicians, consultative physicians, and State agency physicians at the initial and reconsideration levels. While there are no preferred sources, the final responsibility for the assessment at the initial and reconsideration levels is with the State agency staff physician. For cases at the hearing and Appeals Council level, the responsibility for assuring that the assessment of residual functional capacity is supported by the evidence in file rests with administrative law judges or members of the Appeals Council.

Impairments Which May Warrant a Finding of Presumptive Disability or Presumptive Blindness

Under certain circumstances, we may pay benefits to a person applying for supplemental security income benefits on the basis of disability or blindness before we make a formal determination of disability or blindness. We call these payments presumptive disability and presumptive blindness payments. We only make these payments when it appears, on the basis of the available evidence, that the person is disabled or blind. If we decide later, after we get more evidence, that the person is not disabled or blind, he or she will not have to pay back the money we have already paid to him or her. In § 416.934, we give examples of 10 specific impairment categories where we will make a presumptive determination before we get any more medical evidence. We have been making presumptive payments on the basis of these impairment categories for several years.

When Vocational Factors Are Considered

In §§ 404.1560 and 416.960, we explain what evidence we will need when we cannot make a decision about whether a person is disabled on medical evidence alone. We will need information about the person's age, education, and work experience, as explained below. We may also need additional medical evidence to determine that person's residual functional capacity. If we find that the person cannot do work he or she has done in the past, we will use authoritative publications and, in some cases, the services of vocational experts, to determine what range of work or specific occupations, if any, he or she can do. These jobs must exist in significant numbers in the national economy. We define "significant numbers in the national economy" in §§ 404.1566 and 416.966.

Age as a Vocational Factor

In §§ 404.1563 and 416.963, we explain when we will ask a person to prove his

or her age. We do not generally do this. However, if we need to know a person's exact age to determine whether he or she is disabled, or if the amount of the benefit will be affected, we ask for proof of age.

Education as a Vocational Factor

In §§ 404.1564 and 416.964, we explain what information we need to know about a person's education to make a disability determination. We will ask how long a person attended school, and we will also consider how much formal or informal education a person has had through previous work, community projects, hobbies, and any other activities which may help a person to work. We will also consider any information which shows that the formal education may not have given the person as much education as the grade level might show.

Work Experience as a Vocational Factor

In §§ 404.1565 and 416.965, we explain what information we may need about a person's work experience. If we need to consider whether that person can do past work or work that is different from what he or she did in the past, we will ask for a description of jobs done in the last 15 years. This will include job duties, tools, machinery and equipment used, and physical and mental activities. However, if all the work that the person did in the last 15 years was hard labor and unskilled, and that person has very little education, we ask about all the work the person did since he or she first began working. If a claimant has only a marginal education and long work experience (e.g. 35 years or more) where he or she did only arduous unskilled physical labor; and he or she can no longer do this kind of work, we use a different rule to determine disability (see §§ 404.1562 and 416.962). With this additional information, we can tell if the claimant qualifies for benefits under this rule. We also explain that we consider past work experience to be work that will help the person work now if the work at any skill level was done within the past 15 years, lasted long enough, and was substantial and gainful.

Work Which Exists in the National Economy

We explain in §§ 404.1566 and 416.966 that, in determining whether unskilled jobs requiring sedentary, light or medium exertion exist in the national economy in significant numbers in one or more regions of the country, we will use reliable job information available in various governmental and other publications. We also explain that we may use the services of a vocational expert or other specialist when there is a question about whether the work skills used in past work can be useful in doing other work and the kinds of jobs or specific occupations in which they can be used.

Substantial Gainful Activity

In §§ 404.1574, 416.974, and 404.1584 we list the rules on determining whether a person is engaging in substantial gainful activity. In §§ 404.1575 and 416.975, we have added evaluation guides for self-employed persons and have explained what we mean by significant services by self-employed persons. Whether a person is doing significant services depends upon how much he or she is involved in the management of the business. Significant services are important in determining whether a self-employed person is doing substantial gainful activity.

Subsidies

We explain in §§ 404.1574(a) and 416.974(a) how we evaluate earnings when a person is receiving a subsidy. Subsidies are payments by an employer to an employee for more than the reasonable value of his or her work. We exclude subsidies in determining whether work is substantial gainful activity. When the employer does not set the amount of the subsidy or does not adequately explain how he or she figured the subsidy, we will try to develop how much the work is worth.

Responsibility To Notify Us of Discharge From a Hospital

We no longer require a person to tell us when he or she is discharged from a hospital or similar institution. We have found that release from a hospital is not a reliable indication of recovery from disability. Also, advances in medical treatment have reduced the average period of hospitalization, and more people are now receiving treatment outside hospitals. Elimination of this reporting requirement (1) relieves the beneficiary of a responsibility, (2) eliminates premature, unproductive investigations, (3) reduces costs to the Government and (4) reduces inconvenience to beneficiaries. We are updating §§ 404.1588 and 416.988 to reflect this change.

We May Investigate Whether Disability or Blindness Continues

After we find that a person is disabled or blind, we may determine from time to time if he or she is still disabled or blind. We may begin an investigation for this purpose for any number of reasons, including the person's failure to follow the requirements of the Social Security Act or these regulations. If our investigation shows that we should stop benefits, we will tell the person and give him or her a chance to reply. We explain these policies in §§ 404.1589 and 416.989. In §§ 404.1590 and 416.990, we discuss the events which will prompt us to investigate whether a person is still disabled.

If Medical Recovery Was Expected When a Person Returned to Work

In §§ 404.1591 and 416.991 we explain that when a person who has an impairment which is expected to improve, returns to full-time work with no significant medical limitations, we may determine that he or she is no longer disabled as of the first month in which he or she returned to work.

Why and When Disability May Be Determined To Have Stopped

In §§ 404.1579, 404.1586, 404.1594 and 416.994 we explain a new policy on when disability is considered to stop. At one time we would not find that disability or blindness had stopped unless the medical evidence showed that the person's condition had improved since we last determined that he or she was disabled. About three years ago, we changed this policy and began to find that disability or blindness had stopped if we found, on the basis of new evidence, that the person was not disabled or blind as defined in the law.

Before We Make a Determination That Disability Stopped

In § 404.1595 we explain that we will always give a person advance notice before we make a final determination that he or she is no longer disabled, unless that person already knows our decision. For example, the person may have told us that he or she was no longer disabled. In this notice, we will tell the person the reason why we have decided that he or she is no longer disabled and allow the person a chance to answer and give us additional information.

When We May Stop Benefits Before Making a Final Determination

We explain in § 404.1596 when we will stop payments before determining whether a person is still disabled. We will do this to prevent an overpayment, when a beneficiary does not cooperate in a continuing disability investigation, or if his or her whereabouts are unknown.

When a Person Becomes Disabled by Another Impairment

In §§ 404.1598 and 416.998 we explain how we treat a person who gets another impairment. If a person already receiving benefits becomes disabled by another impairment, the new impairment need not be expected to last 12 months or result in death in order for us to find the person still disabled. However, the new impairment must be severe enough to prevent substantial gainful activity and must begin in or before the month in which the last impairment ended.

The Trial Work Period

We explain our policies on the trial work period in § 404.1580, 404.1585, 404.1592 and 416.992. The trial work period is a period during which a disabled person may test his or her ability to return to work. If a disabled person does return to work, that person may work for 9 months (which do not have to be consecutive) before we evaluate this work. We consider any month in which a person performs services to be a trial work month. In §§ 404.1592 and 416.992, we define "services" to mean any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for remuneration, generally pay or profit, or is the kind normally done for remuneration. For an employee, we consider work "services" if his or her earnings after 1978 are more than $75 a month. For a self-employed person, we consider work "services" if his or her net earnings after 1978 are more than $75 a month or if the time spent in work is more than 15 hours a month. Before 1979, we used $50 a month as the amount of earnings considered to show "services".

The Appendices

The medical criteria and the medical-vocational guides used in making disability determinations were previously appendices to both subpart P of Part 404 and subpart I of Part 416. Except for Part B of Appendix 1 to subpart I, these appendices are the same, word-for-word, and were repeated at the end of both subparts only for ease of reference. Part B of Appendix 1 contains medical criteria applicable to children and, since they apply mainly to claims under title XVI, were located only in Part 416. However, Part B also applies in some cases under the title II disability insurance program. In this recodification we have taken the appendices out of Part 416 and located them only in subpart P of Part 404. This eliminates some of the unnecessary repetition in our regulations and is consistent with the goals of "Operation Common Sense." We have made the changes needed to cross-refer subpart I of Part 416 to the appendices in Part 404.

Social Security Disability Amendments of 1980

These final regulations do not include the regulatory changes which will be required by the recently enacted Social Security Disability Amendments of 1980, Public Law 96–265. The changes that we will have to make to our regulations because of this recent legislation will, in general, not change the substance of the policies in these final rules, including policies already being followed which we are placing in our regulations for the first time. We will, however, be making modifications in some limited areas, such as to our policy on the purchase of medical evidence in title II cases, the trial work period, substantial gainful activity, and vocational rehabilitation. We will publish these changes either with notice of proposed rulemaking or as interim regulations, as appropriate, so that the public will have full opportunity to provide views and comments before final rules are adopted.

Public Comments

We received comments on 95 sections of the proposed disability regulations involving over 150 different issues. Most of the comments we received came from legal aid services and other organizations involved in representing disability claimants. We also received a large number of suggestions from persons involved in the administration of the disability program.

Many of the comments we received were favorable toward our rewriting the disability regulations in simpler language. These commenters believe that we have made these regulations easier to read and understand. They also think the regulations are better organized and that information they need will be easier to find. For example, one person stated he found "the regulations to be much more comprehensive and understandable." Another person stated that she found the "rules easily readable and easily understood." Another person commented that "they are much easier to understand and include many policies which have been unwritten in the past." Still another person stated that the regulations are far more understandable, which is a "step in the right direction."

On the negative side, several people complained about our adding new material to the regulations. Generally, they believed that we should not have included new rules in the regulations at the same time we were rewriting them for clarity and ease of understanding. According to these comments, it is difficult to determine exactly what is new to the regulations and what is merely a rewritten version of the previous regulations. Some of these people questioned whether the policies we included in the regulations for the first time were actually being followed by the Social Security Administration. One person stated that "the Operation Common Sense procedure is not the place for substantive changes." Another person stated that the Notice of Proposed Rule Making (NPRM) was misleading because the summary indicated that the purpose was to rewrite the affected subparts in simpler language.

However, "Operation Common Sense" has other objectives in addition to rewriting the regulations in plain language. Some of these objectives, which we explained in the preamble to the NPRM, include updating the regulations to include important policies and removing from the regulations outdated policies we no longer follow. In the preamble, we clearly identified the policies we were including in the regulations for the first time.

We have made several changes on the basis of comments we received from the public.

One of the changes we made concerns the rule about the need to follow prescribed treatment. Under our proposal, if we believed that treatment might enable a person to work, we could send him or her to a physician at our expense for a medical opinion on treatment. In determining whether treatment could correct the impairment enough so that the person could work, we intended to consider that physician's findings and recommendations along with any other medical findings and recommendations we had received from the person's treating physician or any other medical source. Under this proposed rule, we would not have paid benefits to a person who refused to follow treatment we determined could correct the impairment enough to enable him or her to work, unless there was good reason for the person to refuse the treatment.

Because of the many critical comments we received concerning this proposed rule and the issues raised in these comments, we have not adopted this change in policy. Instead, we will continue to follow the same rule which we have followed in the past. Under this rule, which we have kept in the regulations, we only require that a person must follow treatment prescribed

by his or her own physician or other treating source.

Also, because of the many public comments which questioned the need for certification of records from hospitals and other similar institutions, we have changed our position. We will not return these records for certification unless there seems to be something questionable about them.

We have added optometrists to the list of acceptable medical sources for the measurement of loss of sight. However, we have pointed out that in some cases we may still need a report from a physician to determine other aspects of eye diseases.

Many persons pointed out to us an error in our explanation of how we evaluate symptoms, including pain. In the NPRM we stated that we would never find a person disabled based on symptoms, including pain, alone. Since we do find persons disabled on the basis of pain and other symptoms, we have explained in the final regulations that there must be medical signs or findings to show that there is a medical condition that could reasonably be expected to produce the symptoms.

We have decided to remove Appendix 1, Listing of Impairments, and Appendix 2, Medical-Vocational Guidelines, from Subpart I of Part 416 and include them only in Subpart P of Part 404. While we received some objections about doing this, we believe the advantages in not duplicating this material in Chapter III of Title 20 of the CFR outweigh the negative considerations.

In these final regulations, we have not made any significant changes in the appendices, since they were recently revised and updated. (Appendix 1, the medical criteria, was published in the Federal Register on March 27, 1979 (44 FR 18170), and Appendix 2, the vocational guidelines, was published in the Federal Register on November 28, 1978 (43 FR 55349)). We have only corrected some errors and references.

We have replaced the term "wages" wherever it appears with the broader term "pay". This change makes it clearer that we are referring to any compensation (it does not have to be cash) a person receives for his or her services and avoids confusion with "wages" as that term is defined in section 209 of the Social Security Act.

We have also made other changes of a clarifying nature.

There follows a discussion of issues which were raised in the comments made by the public in response to the NPRM published in the Federal Register on July 3, 1979 (44 FR 38879). We discuss these comments under the appropriate section headings. Many of the written comments we received necessarily had to be condensed, summarized, or paraphrased. However, we have tried to express everyone's views adequately and to respond to the issues raised.

General

Scope of Subparts

Comment: A legal aid bureau objected to our stating in §§ 404.1501(a) and 416.901(a) that disability determinations by other programs have no effect on our determinations.

Response: Determinations under other programs are considered in our evaluation of disability and blindness. Our intention was to make clear that we must make our own determinations based on social security law. Therefore, we have changed the statement to read "determinations made under other programs are not binding on our determinations."

Determinations

Who Makes Disability and Blindness Determinations

Comment: A person representing a legal aid bureau commented that §404.1503(d) should read exactly the same as § 416.903(d) in order to allow us to find an earlier disability date, a later date for ending disability, or a disability when the State agency found none. According to this person, there is no basis for this difference between the title II and title XVI disability programs.

Response: Section 221(c) of title II of the Social Security Act provides that as a result of reviewing title II disability determinations by State agencies, we may only determine that a person is not disabled, or that disability began later, or that disability ended earlier. We may not under title II change any State agency's decision to a more favorable one for the person claiming benefits. On the other hand, under section 1633 of title XVI of the Act, there are no restrictions upon our changing a State agency's disability determinations concerning supplemental security income benefits. Since the differences in these sections are in the law, we cannot adopt this comment.

Definition of Disability

Basic Definition of Disability

Comment: A legal aid bureau objects to the basic definition of disability in §§404.1505 and 416.905 because the definition does not state that other substantial gainful activity must exist in significant numbers in the national economy.

Response: These sections introduce the basic definition of disability which is further explained in later sections concerning the evaluation of disability. Under Vocational Considerations, §§ 404.1566 and 416.966, we adequately explain that we consider work to exist in the national economy when it exists in significant numbers either in the region where a person lives or in several other regions of the country. Consequently, we have not adopted this comment.

Additional Changes: We have added a statement to § 404.1505(a) to make clear that the basic definition of disability applies when a person is applying for a period of disability, or disability insurance benefits as a disabled worker, or child insurance benefits based on disability before age 22.

Disability for Children Under Age 18

Comment: Several persons commented that § 416.906 and related sections, by requiring children under age 18 to have an impairment which meets or equals the Listing of Impairments in order to be found disabled, are in conflict with the statutory language in section 1614(a)(3)(A). According to these comments, the law only requires a child under age 18 to have a medically determinable physical or mental impairment of comparable severity to that which would be disabling for an adult. An adult may be found to be disabled on the basis of vocational considerations even when the impairment does not meet or equal the Listing of Impairments. Therefore, according to these comments, we are requiring children under age 18 to have an impairment of greater severity than an adult in order to be found disabled. In their views, this requirement exceeds the test of comparable severity provided in the law and is not authorized under the law as in the case of disabled widows and widowers under title II of the Act.

Response: The title XVI definition of disability for children under age 18 does not specifically exclude the consideration of vocational factors. However, the use of vocational factors is not appropriate since the activities of children under age 18 are extremely difficult to measure in vocational terms. In view of this, it is more equitable to evaluate childhood claims only on medical terms—i.e., the impairment must meet or equal the Listing of Impairments. However, many conditions have a different effect on children than on adults, and for this reason a supplemental Listing of Impairments is also used for children. This supplement realistically expands the area of medical consideration for children, and lessens

any inequity that could result because of the absence of vocational evaluation. Therefore, we are not making any changes in this section.

What Is Needed To Show an Impairment

Comment: On commenting on §§ 404.1508 and 416.908, one person took the position that a disability claimant should be able to rely solely on statements of symptoms in a clinical setting. This person believes that under the law symptoms alone may support a finding of disability.

Response: Sections 404.1508 and 416.908 state that an impairment must be established by medical findings consisting of signs, symptoms and laboratory findings. These sections, however, go on to state that disability cannot be found on the basis of a statement of symptoms alone.

A history of symptoms, recorded in a clinical setting, is important to the evaluation of disability, and this is recognized in the regulations. However, it is essential for the regulations to specify that a statement of symptoms alone is not sufficient for a decision. The law requires that disability be determined on the basis of a medically determinable impairment. Symptoms, in the absence of any confirming signs or clinical findings, cannot meet this requirement.

Comment: Another person pointed out that §§ 404.1508 and 416.908 mention signs, symptoms, and laboratory findings but that these are not defined until later in §§404.1528 and 416.928. This person recommends that we cross-refer these sections.

Response: We agree with the comment and have added a cross reference.

Evidence

Your Responsibility To Submit Evidence

Comment: Several persons, some of whom represented legal advocacy groups, commented that §§ 404.1512 and 416.912 place too heavy a burden upon claimants by requiring them to submit medical evidence to prove disability. Some of these persons pointed out that under the title XVI supplemental security income program, which is based on need, the Secretary has a special obligation of obtaining medical evidence on behalf of the claimant.

Response: We will always assist a person in obtaining the medical evidence we need to make a disability determination. However, the person must give us the names and addresses of physicians and other treatment sources and give us permission to obtain the evidence on his or her behalf. For a person applying for supplemental security income benefits, we will pay for the medical evidence if there is any charge. When we need special medical information which a person's treating sources cannot give to us, we will send the person for medical examinations and tests at our expense. However, the person must cooperate with us in obtaining the medical evidence.

In order to clarify our responsibility, we have added the following statement to §§ 404.1512 and 416.912: "We will help you in getting medical reports when you give us permission to request them from your doctor and other medical sources."

Comment: One person objected to the language in §§ 404.1512 and 416.912 which states that we will only consider impairments which the claimant tells us about or about which the claimant gives us evidence. This person pointed out that the claimant may not be aware of what is wrong with him or her, the diagnoses may be imcomplete, or the interviewer may not have obtained all the information.

Response: We agree that we should not rely solely on the claimant's statements and the evidence which the claimant gives us. Therefore, we have changed the language in these sections to make it clear that we will consider impairments about which we receive evidence in addition to impairments about which the claimant tells us. Of course, we cannot be expected to consider impairments of which we are reasonably not aware.

Comment: Another person from a legal service foundation commented that the claimant should at least be advised of which reports we considered in making the disability determination.

Response: In making a disability determination, we consider all the medical evidence we receive about a person's medical condition. We do not routinely identify each of these medical sources when we inform the person of our decisions about disability. However, this information is available to him or her upon request.

Medical Evidence of Your Impairment

Comment: Two persons, representing a professional association, commended us for including "licensed or certified psychologists" under acceptable medical sources in §§ 404.1513 and 416.913. However, these same persons pointed out that other related sections pertaining to medical evidence refer only to "physicians" when discussing medical evidence. According to these persons, the term "health care providers" would be more appropriate.

Response: One of our main reasons for revising the regulations is to make them easier to read and understand. We believe that simply using the term physician in these sections accomplishes this purpose better than using the more general and abstract term "health care provider." The sections in which we use the word physician focus on issues which are not directly concerned with the source of the medical evidence. In sections that are directly concerned with the qualifications of persons giving us evidence, we have made it clear that acceptable evidence is not limited to reports from physicians. Therefore, we have not adopted this comment.

Comment: Another person, representing a professional association, recommended that "licensed or certified optometrists" be added to the list of acceptable sources in §§ 404.1513 and 416.913. According to this comment, we should include optometrists because doctors of optometry are licensed by all 50 states and are qualified to supply reports on visual impairments within their speciality.

Response: We agree with the comment and have added optometrists as an acceptable source for the measurement of loss of sight (the measurement of visual acuity and visual fields). However, we have also pointed out that we may need a report from a physician to determine other aspects of eye diseases.

Comment: A representative of a professional association stated that the limitations which we place upon reports from optometrists in § 404.1513 is unnecessary and inconsistent with the education of optometrists and the scope of their license to practice. According to this comment, requiring a report from a physician when a report from an optometrist would be sufficient needlessly increases costs by requiring an extra, unnecessary eye examination. This policy is also said to arbitrarily discourage the use of doctors of optometry under the title II disability program.

Response: Under the provision of this section, we accept findings from optometrists on the measurement of visual acuity and visual fields without restriction, on the same basis as we accept a report from a physician. However, we require a physician's findings to determine other aspects of an eye disease that are essential to establish a medically determinable impairment. These aspects include diagnosis and treatment. We need this information to determine whether surgery or other therapy might correct or improve sight to the extent that the

impairment would no longer be disabling. Also, in some cases, we have found that another health problem requiring evaluation by a physician is the cause of the visual loss rather than an eye disease.

Since the regulations must cover the entire range of diseases that result in loss of sight, we believe it is essential to maintain a statement placing limits on the use of evidence submitted by optometrists.

Program costs are not appreciably increased by this requirement, nor does it mean that a person must undergo two examinations, one by a physician and another by an optometrist. We make most of our determinations for all types of impairments, by using reports of past treatment, without the need to obtain an examination for the specific purpose of the disability determination. In the case of visual impairments, persons applying for benefits usually have medically records that are not restricted to an examination by an optometrist. Physicians, whether private or serving in a clinic, are still the first source of contact for most health problems. Also, optometrists frequently make referrals to physicians for consideration of surgery or other therapy. By the time a visual impairment has become so severe that a person applies for disability benefits, there is usually evidence available from a physician who has diagnosed the disease and prescribed treatment.

Comment: Another person, representing an assistance group, commented that §§ 404.1513 and 416.913 should not limit the sources from which we may obtain medical records. He pointed out that in many urban and rural areas medical clinics are staffed primarily by nurses and physician assistants. These practitioners provide useful medical reports.

Response: Under paragraph (e) of these sections, we explain that information from sources other than a licensed physician may assist us in evaluating a person's ability to work. We do accept reports from nurses, physician assistants, and other similar practitioners.

Comment: Several persons, including representatives from various legal aid groups, objected to the requirement that medical records from hospitals, clinics, sanatoriums, medical institutions, and health care facilities be certified by the custodians of the records. They believe that certification is unnecessary and would cause needless delay in obtaining medical reports.

Response: The certification requirement stated in §§ 404.1513(a) and 416.913(a) in the NPRM did not represent any change in the regulations. In following the previous regulations, however, we always accepted medical records from hospitals and other similar institutions as long as it was clear that the reports came from the hospital or institution. We considered the signature of the custodian, the letterhead, the covering letter, or other similar information sufficient for this purpose. We did not generally require certification in a legal sense. In order to avoid confusion in the future, we have modified the language in these sections to state that while these records should be certified, we will not return uncertified records unless there seems to be something questionable about them.

Comment: Another person pointed out that we should delete the reference to licensing in §§ 404.1513(e) and 416.913(e), since the practitioners we are referring to are actually licensed in most States for the practice in which they specialize.

Response: We agree with this comment, and we have eliminated the wording "not medically licensed."

When We Will Purchase Existing Evidence

Comment: One person from a legal service foundation pointed out that it would be less expensive for us to purchase existing medical records under the title II disability program than to refer persons for consultative examinations at our expense.

Response: Section 416.914 explains that we will pay for existing medical evidence for persons applying for supplemental security income benefits under title XVI of the Act. However the title II law does not allow us to routinely purchase existing medical evidence. Section 404.1514 explains that in rare situations we will pay for existing medical records under title II disability program when the only other way we can get the medical information we need is to refer the person for an expensive consultative examination. Generally, we do this when there are indications that the person is disabled but is unable to pay for the medical records. If we find that the medical sources have the additional information we need for making a disability determination but will not give it to us until they are paid, we may pay them a small fee to cover copying and mailing costs.

Additional Changes: In § 416.914 we explain that we always pay for existing medical evidence we request for use in making title XVI disability or blindness determinations. However, in the NPRM we added that we would pay for evidence we use even if we did not request it and that we might also pay for evidence we receive even if it is not needed as long as the person applying for benefits or the medical source believed that the evidence was needed. We have decided not to include these additional statements in the final regulations. These situations do not occur often enough to require regulations. Removing these statements does not mean that we will no longer pay for evidence which we did not request or need for the disability or blindness determination. As in the past, we will continue to make these decisions on a case-by-case basis. For example, we may pay for a report from a physician who submits evidence requested by a patient without knowing that sufficient information has already been sent to us by a hosptial. We cover this in our operating instructions.

If You Fail To Submit Medical and Other Evidence

Comment: One person from a legal service foundation commented that the claimant should be notified of which physicians or hospitals refused to give us evidence. According to the comment, we should also inform the claimant about what records we will pay for.

Response: We will notify the claimant if there are any problems in obtaining medical records from any of his or her treating or examing medical sources. We usually assist the claimant in contacting these sources again in order to obtain the reports. Often we refer the claimant for a special medical examination at our expense if we cannot get the reports we need from his or her own physicians and hospitals.

At the time of the initial interview, we generally tell supplemental security income claimants what medical evidence we will pay for. When we refer a claimant for a consultative examination, we give him or her a pamphlet explaining the reasons for the examination. We also explain that the examination is at our expense. Therefore, we see not reason for making any changes in the language in §§ 404.1516 and 416.916.

Comment: One person commented that these regulations are not supported by the legislative history of the title XVI disability program, because Congress intended that the burden of obtaining medical evidence for claimants rests upon the Secretary.

Response: We recognize in § 416.914 that we have the responsibility of obtaining medical evidence for supplemental security income claimants. In § 416.916 we ask only that the person cooperate with us in obtaining the medical evidence. We specifically state

that we will pay for this evidence if we find it is needed to evaluate the claim.

Comment: Sections 404.1516 and 416.916, according to one person, are not equitable, because failure to submit medical evidence will result in a denial under these regulations. This person believes that § 416.916 is especially inequitable for title XVI disability claimants. According to the comment, the "good cause" provisions for failure to appear for a consultative examination should be extended to failure to submit medical records.

Response: We always consider whether or not a person has good reason for failure to submit medical reports. However, we do not believe that it is necessary to give examples of "good cause" for failure under these sections. We agree that we cannot find a person not disabled merely for failure to give us medical evidence. Therefore, we are changing the language in these sections to explain that we will always make a disability determination on the basis of the evidence available to us.

Additional Changes: We have added an explanation to § 416.916 that a person will not be excused from giving us evidence because of religious or personal reasons against medical examinations, tests, or treatment. This rule was stated in the NPRM in § 404.1516 but was erroneously omitted from § 416.916, where it also applies.

Consultative Examination at Our Expense

Additional Changes: Upon further consideration, we have expanded § 416.917 to make it clear that we will not pay for any medical examinations arranged by a claimant or his or her representative without being asked by us. The reason we are adding this statement is because in some situations, claimants or their representatives have been arranging for medical examinations at our expense without first consulting with us. Frequently, we have found that the examination report only duplicated information already available to us or was not necessary for making a disability determination.

If You Do Not Appear at a Consultative Examination

Comment: One person from a legal aid bureau stated that in §§ 404.1518 and 416.918 we should make it clear that the listed examples of good reasons for not going to a consultative examination are not "all-inclusive." This person suggested that we include another example for not going to an examination: "For other valid reasons."

Response: These sections already state that the person must have a good reason for failing or refusing to take part in a consultative examination or test which we arrange to get information we need for a disability determination. We ask a person who is unable to go to an examination to tell us why as soon as possible. We explain that if the person has a good reason, we will schedule another examination or try to get the information we need in another way. The reasons listed are described only as "some examples of what we consider good reasons for not going to a scheduled examination." Therefore, we believe it is clear that these are not the only reasons which we will consider valid.

Comment: Another person commented that "inconvenient or unreasonable scheduling" should be included as a good reason for not going to a consultative examination.

Response: The examples we provided in §§ 404.1518 and 416.918 are only guidelines of what we consider to be good reasons for not going to a consultative examination. If the claimant cannot keep an appointment, he or she should notify us immediately. We explain this to the person when we arrange a special examination for him or her. If the claimant has a good reason, such as inconvenient time or place causing genuine hardship, we will reschedule the examination. The examples of good reasons are not the only acceptable reasons. We must consider other reasons on an individual basis.

Comment: Several persons commented about our excusing a claimant from going to a consultative examination on the basis of "having had professional or personal contact with the scheduled examiner and believing that the examiner could not be objective." One person believed that we should also consider objections to the examinations made by the claimant's representative, such as his or her attorney. Other persons commented that this example would permit a claimant to refuse an examination without any showing of bias on the examiner's part. According to these comments, the claimant would only need to assert that he or she believed, on the basis of past experience, that the examiner could not be objective. Some persons believe that the claimant should be obligated to submit evidence to show that the examiner could not be objective. Still another person pointed out that the claimant in some cases is mentally ill and could refuse an examination on the basis of delusions.

Response: In proposing this example of good reason for not going to an examination, we had a specific type of case in mind. Sometimes, without knowing all the circumstances, we refer a claimant for a consultative examination with an examiner who previously represented an interest adverse to the claimant. For example, the examiner may have represented the claimant's employer in a worker's compensation case, or he or she may have been involved in an insurance claim or legal action adverse to the claimant. In this situation, we would consider the claimant to have good reason for refusing a consultative examination with the examiner on the basis of possible bias or partiality on his or her part.

In view of the fact that this listed example has been misinterpreted by so many people, we have decided to remove it from the examples of good reasons for failure to appear for a consultative examination. Removing it from the listed examples, however, does not mean that we will no longer consider bias, prejudice, partiality, or lack of objectivity on the part of the examiner as a good reason for refusing an examination. The purpose of the examples in §§ 404.1518 and 416.918 is to give clearcut situations where the claimant would have good reason for refusing an examination. We will still consider all other reasons given by the claimant.

Comment: Other persons commented that we should spell out in §§ 404.1518 and 416.918 any adverse consequences for failure to report for a consultative examination.

Response: If a person will not go to a consultative examination, we must, of course, make the disability determination on the basis of whatever evidence is available to us. Since we usually send a person for a consultative examination when the evidence we already have is not sufficient to show disability, the refusal to go to the examination could result in our determining that the person is not disabled.

Evaluation of Disability

Evaluation of Disability in General

Comment: One person objected to §§ 404.1520(b) and 416.920(b), because they provide a sequential evaluation in which a claimant may be found not disabled on the basis of doing substantial gainful activity without considering medical or vocational factors. According to this comment, the claimant's medical condition must always be considered, especially since some people force themselves to work to meet expenses, even though the work

tends to worsen their physical or mental impairment.

Response: We consider the concerns expressed in this comment under §§ 404.1571–404.1575 and 416.971–416.975, which deal with substantial gainful activity in more detail. In §§ 404.1520 and 416.920 we give only a brief explanation of the steps we follow in evaluating disability in general. Each of the steps is explained more fully in other sections of the regulations.

After considering this comment, however, we have decided to change §§ 404.1520(b) and 416.920(b) to provide that if a person is doing substantial gainful activity, we will find that he or she is not disabled regardless of his or her medical condition, age, education, and work experience. This language is more in conformity with the law. Sections 223(d)(4) of Title II and 1614(a)(3)(D) of Title XVI of the Social Security Act provide that a person whose earnings meet the criteria established by the Secretary for determining when services or earnings demonstrate ability to engage in substantial gainful activity shall be found not disabled. The law provides that this is true *notwithstanding* the person's physical or mental impairment or his or her age, education, and work experience. We have made this change because we believe that the word "regardless" conveys the meaning of the law more clearly than "without considering." In fact, in some cases, we may have considered the medical evidence and vocational factors before becoming aware that the claimant was actually doing substantial gainful activity during the period of time in which we are considering whether he or she is disabled.

Additional Changes: In §§ 404.1520 and 416.920, paragraph (f)(2), we have changed the notation "e.g." to "i.e.", to make the insert in the parentheses read "(i.e., 35 years or more)." This change has been made because the 35 years requirement is not an example. See §§ 404.1562 and 416.962 for a further explanation of this rule.

What We Mean by an Impairment That Is Not Severe

Comment: We received a letter from one person who made extensive comments on the denial of claims on the basis of nonsevere impairments, as described in §§ 404.1521 and 416.921. The commenter contends this principle introduces an "average man" concept that conflicts with the law and with court interpretations of the law, both of which require consideration of the claimant's circumstances in each case. This person also feels that it is difficult to define with accuracy impairments that are not severe, and suggests that it would be more realistic, and just as economical, to evaluate these impairments in terms of the vocational impact in each case. This person pointed out, further, that if an impairment is truly minimal, it should not be difficult to make the decision using the vocational considerations described in §§ 404.1545 through 404.1568 and 416.945 through 416.968.

Response: Although this evaluation approach to impairments that are not severe has been in the regulations for some time, we expanded it in 1978, when we published the more detailed regulations describing the principles used in vocational evaluation. (43 FR 55349)

We anticipated that greater program efficiency would be obtained by this provision, by limiting the number of cases in which it would be necessary to follow the vocational evaluation sequence described in §§ 404.1545 through 404.1568 and §§ 416.945 through 416.968.

We are now attempting to determine whether this advantage has been realized. The reasons for this are in part due to the problems discussed by this commenter. In most cases that involve an impairment that is not severe, the vocational evaluation guides can be applied as efficiently as can the nonsevere impairment principle. Most cases of this kind do not require extensive investigation of a person's vocational background in order to evaluate them under the vocational guidelines. We can decide many cases of this type on the basis that a person can return to his or her most recent occupation. Also, defining an impairment that is not severe can sometimes be as judgmental as a decision based on vocational considerations.

We are now studying the feasibility of a possible revision of this rule. However, the rule proposed in §§ 404.1521 and 416.921 is included in this final publication since it reflects current policy. Any future revision we make in the basic concept will be published in the **Federal Register** with an opportunity for the public to comment.

When You Have Two or More Unrelated Impairments—Initial Claims

Comment: Several persons representing legal services commented that §§ 404.1522 and 416.922 are inconsistent with the law, in that two impairments, each disabling for 6 months, should be sufficient to meet the requirement that disability must last for 12 months. According to these comments, these two sections conflict with §§ 404.1598 and 416.998, which allow disability to continue under a new impairment, which is not expected to last for 12 months. One person stated that nowhere in the law is there any indication that two separate impairments cannot be combined to total a 12 month period.

Response: Under the law, in determining whether the 12 month duration requirement is met, we must look at each impairment to see how long it has lasted or is expected to last. We cannot consider in our determination any impairment lasting, or expected to last, less than 12 months. This is not inconsistent with §§ 404.1598 and 416.998, which concern determinations on whether disability continues for persons who are receiving disability benefits. These sections provide that a new impairment superimposed on a disabling impairment which has ended extends disability so long as it is disabling, even though it is expected to last less than 12 months. This is because the duration requirement is a requirement only for initial entitlement to benefits. Once we find a person to have a qualifying impairment(s), we cannot find that disability has ended, as long as he or she continues to have an impairment severe enough to prevent substantial gainful activity.

Comment: One person commented that §§ 404.1522 and 416.922 violate court interpretations of the statutory language pertaining to the 12-month duration requirement. According to this comment these sections adopt a "retrospective" viewpoint.

Response: These sections explain how we evaluate multiple impairments to determine whether they meet the duration requirement, which is the requirement that the disabling impairment must last or must be expected to last for a continuous period of 12 months. We do not intend to apply these sections in retrospect. Rather, we will apply them at the time when the disability determination is made, and in most instances the rule will affect only the first month for which we pay a disability benefit. For example, a person who suffers a leg fracture and then two months later, before complete recovery from the fracture, develops a chronic and disabiling heart condition, will not be determined to be disabled until the onset of the heart condition, assuming that we have evidence to show that the leg fracture is a temporary impairment that cannot be expected to last 12 months.

Comment: One person from a legal assistance agency objected to the word

"severe" in §§ 404.1522 and 416.922. This commenter believes that this qualification is contrary to the Act, because it implies that all impairments, even ones lasting or expected to last twelve months, will no longer be considered in evaluating disability.

Response: The sections cited in this comment concern the duration requirement; i.e., the requirement that disability must last twelve months. These sections explain that an impairment of short duration cannot be combined with another unrelated impairment to meet the twelve-month duration requirement. The reference to *severe* impairments is merely meant to confirm that there would be no concern with how long an impairment has lasted, or is expected to last, unless it is severe. The duration requirement does not come into consideration until it is first established that an impairment is disabling at some point in time.

Comment: Another person stated that the NPRM is misleading because nowhere in the preamble summary is there any reference to §§ 404.1522 and 416.922. This person claims that the Social Security Administration has never followed the policy in these sections about unrelated impairments. According to this comment, the NPRM should be republished with a clear statement that this is an entirely new policy which was never followed in the past.

Response: The preamble of the NPRM did include a summary of these sections on page 38880 of Volume 44 of the **Federal Register.** We also stated in the preamble that we were adding to the regulations the important policies which we were following in determining disability. We further pointed out that most of these policies were already in our Program Operations Manual which State and Federal employees use when evaluating disability.

The policy stated in these sections is not in the Program Operations Manual, since we only recently adopted the policy about a year before the publication of the NPRM but after a long period of consideration. Therefore, the policy was appropriately announced in the NPRM. Although this policy was being followed at the initial and reconsideration level, it was not binding upon administrative law judges and the Appeals Council, since they are only required to follow the law, the regulations, and Social Security Rulings in deciding cases. On page 38880 of the preamble we specifically stated that we were including our basic policies in the regulations, since it is desirable that the same rules apply at all levels of adjudication.

Additional Changes: In order to clarify the meaning of this section, we have revised the second sentence to read: "If you have a severe impairment(s) and then develop another unrelated severe impairment(s) but neither one is expected to last 12 months, we cannot find you disabled, even though the two impairments may in combination last for 12 months."

Medical Considerations

Listing of Impairments

Comment: Several persons commented about our taking the Listing of Impairments (Appendix 1) and the Medical Vocational Guidelines (Appendix 2) out of Part 416 and including them only in Part 404. One person stated that it is contradictory to "Operation Common Sense" to fragment the organization of related regulations. According to this commenter, the title XVI and the title II disability programs are essentially independent to each other and share only common administration. According to another comment, many persons are involved in only one of these programs and keep only the law and regulations concerning that program. This person believes that removing these appendices from Part 416 will impede the researching of disability issues. Another person noted that he only receives title II regulations from Commerce Clearing House (Unemployment Reports). This person recommended that we publish all the regulations common to both programs in one place in the Code of Federal Regulations (CFR).

Response: One of the objectives in rewriting the regulations under "Operation Common Sense" is to eliminate overlapping and duplicate material in order to insure that paperwork costs and other burdens on the public are minimized. This is an important part of the Department's program to revise, rewrite, and reduce the more than 6,000 pages of the Department's regulations in the CFR.

Both Appendix 1 and Appendix 2 were formerly located in two places, behind Subpart P of Part 404 and behind Subpart I of Part 416. The criteria in these appendices, the medical listings and the vocational guidelines, apply to both the title II and the title XVI disability programs. These appendices are exactly the same, except for Part B of Appendix 1, which was previously located only behind Subpart I of Part 416, because Part B mainly applied to the evaluation of disability for children under age 18 for purposes of the Supplemental Security Income program. However, Part B also applies in some cases under the title II disability insurance program.

In order to eliminate this duplication of material, which is exactly the same, we have published Appendix 1 and Appendix 2 only behind Subpart P of Part 404. This eliminates some of the unnecessary repetition in our regulations and is consistent with the goals of "Operation Common Sense." We have cross referenced Subpart I of Part 416 to the Appendices in Part 404. These references clearly show that we are using the same Appendices for two separate disability programs. Since Parts 404 and 416 are both published in Chapter III (Parts 400 to 499) of title 20 of the CFR, this material is available to everyone in one volume of the CFR.

Comment: One person, representing a legal aid bureau, stated that our revision of §§ 404.1525 and 416.925 requires that a claimant who has a listed impairment must prove the 12-month duration requirement. This person observed that under the previous regulations, if a claimant's medical condition met a listed impairment, we presumed that the 12-month duration requirement was met. According to this comment, this significant, additional requirement is unwarranted.

Response: The majority of the impairments listed in Appendix 1 do not require a separate decision on the duration of the impairment. This is because the majority of the described medical conditions are either static or become more severe with the passage of time. However, some impairments are also listed which are subject to improvement in some cases. If we revised the listing to include only impairments in which the duration requirement can be presumed, we would have to exclude many impairments that are subject to improvement. We believe that it is in the public interest to list as many impairments as possible. Therefore, we will no longer presume that the duration requirement is met merely because an impairment is listed in Appendix 1.

Comment: One person from a legal service agency commented that the Listing of Impairments requires overly restrictive standards for wage earner claimants, because the listing describes impairments severe enough to prevent a person from doing any gainful activity. This person observed that the law requires a more stringent standard of disability for surviving spouses, who must be unable to do gainful activity to be found disabled. Therefore, this person believes that the listing requires a worker to be as functionally limited as a surviving spouse.

Response: If a worker has an impairment which meets the duration requirement and is listed in Appendix 1, or is equal to one of the listed impairments, we will find that worker disabled on the basis that he or she is unable to do any gainful activity. This is the requirement that widows, widowers, and surviving divorced wives *must* meet in order to be found disabled. However, unlike the surviving spouse, we may still find the worker disabled even when he or she does not have any impairment which meets or equals a listed impairment. A worker who has an impairment severe enough to keep him or her from doing previous work may be found unable to do any substantial gainful activity, considering his or her age, education, and work experience. We agree with the comment that in order for us to find that the worker is disabled on medical considerations alone, the worker must meet the same standard of disability established by law for widows, widowers, and surviving divorced wives. However, this is not the only standard which we consider in evaluating the worker's claim.

Additional Changes: In §§ 404.1525 and 416.925, we have revised the last sentence in paragraph (a) to point out that the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months. In paragraph (b)(1) we have changed "similar impairment impact" to "similar effect" for clarity.

Medical Equivalence

Comments: Several comments were received on determining medical equivalence under §§ 404.1526 and 416.926. These included a comment questioning whether there has been a change in these regulations that would now require claimants to have an impairment that is medically equivalent to a listed impairment in order to be found disabled. Others commented on the complexity involved in these decisions, and whether it was proper to make this decision by comparing the person's impairment(s) with the listed impairment most like it.

Response: Nothing new has been added. Medical equivalence is still only one aspect of disability evaluation. It is used whenever claimants have a severe impairment or combination of impairments that do not meet the specific findings contained in a listing. If evaluation for medical equivalence does not result in a disability allowance, we must still consider whether the claimant is unable to do any substantial gainful activity by reason of the impairment(s), considering the vocational factors of age, education and work experience.

These decisions are complex, as pointed out by one of the commenters. In order to make these decisions as accurately as possible, however, we make all decisions of medical equivalence on the basis of medical judgments furnished by physicians in the disability program who are familiar with the medical requirements.

A comparison is made with the listed impairment most like the claimant's impairment to see if it is as severe. Each listed condition is independent, and the listed findings represent a point of severity for that particular condition at which we no longer consider it reasonable or necessary to consider vocational factors under the guidelines described in §§ 404.1560 through 404.1569 or §§ 416.960 through 416.969

Conclusions by Physicians Concerning Your Disability

Comment: One person representing a legal service foundation commented that §§ 404.1527 and 416.927 are impermissible in light of the substantial body of case law indicating that the uncontradicted conclusion of a physician is entitled to "great weight." This person further stated that the treating physician's conclusion as to the existence of disability, if uncontradicted, is "binding" upon the Secretary.

Response: In these sections we explain that under the law we are responsible for making the disability determination on the basis of the evidence. Opinions by physicans about "disability" or "the ability to work" are not binding upon us. While we carefully consider these opinions, there must be sufficient evidence to support conclusions. When there is insufficient evidence to support an opinion, we ask for additional evidence. However, we must make our determination on the basis of the evidence and not on the basis of an opinion alone and some court decisions have criticized us for not obtaining sufficient evidence.

How We Evaluate Symptoms, Including Pain

Comments: One person from a legal service foundation objected to the statement in §§ 404.1529 and 416.929 that "we will never find that you were disabled based on your symptoms, including pain alone." According to this comment, the statement violates case law indicating that pain itself can be disabling. Another person, representing a legal aid bureau, believes that these sections must be deleted, because the requirement of objective proof before subjective symptoms can be accepted is contrary to long-standing principles of law that "pain," unaccompanied by any objectively observable symptoms, will support a claim for disability benefits. Another legal service representative stated that all the courts have held that subjective medical evidence, even including pain unsupported by objective medical evidence, will support a finding of disability. Still another person from a legal aid foundation stated that these sections fail to account for the fact that pain is outside the realm of objective scientific measurement and cannot be diagnosed by laboratory and clinical procedures. According to another comment, these sections fail to recognize that pain can be separate from any particular syndrome and can be part of an overlay of multiple medical problems and physical inactivity, or even of undiagnosed but very real conditions. One person agreed that the source of pain must have a medical verification but considered the sections "overbroad" and contrary to the law. Other persons expressed similar objections to these sections.

Response: In including these sections in the regulations for the first time, we did not intend that pain itself must be objectively measured. We only require proof that there is a medical condition producing the pain. After we verify that there is a medical condition which can be expected to cause pain, we can evaluate any medical evidence submitted to determine whether the pain is disabling. Pain that is of such long duration and severity as to be significant for disability evaluation is, almost without exception, verifiable by clinical signs and findings showing a medical condition that can be reasonably expected to produce the pain. We do not require that a specific diagnosis be established, but, in practice, the medical signs and findings that show the presence of a medical condition consistent with pain will also permit a diagnosis in most cases.

After reviewing these comments, however, we realize that the language in the last sentence of these sections is unclear. It could be read to mean that we never find a person disabled when the only limitation is severe pain. We intended that there must be other signs and findings that show there is a medical condition present that can be reasonably expected to result in severe pain. We have rewritten the last sentence to clarify that pain, in itself, or other symptoms, can be disabling. This sentence now reads: "We will never find that you are disabled based on your symptoms, including pain, unless

medical signs or findings show that there is a medical condition that could be reasonably expected to produce these symptoms." In the second sentence, we have also removed the word "objective," since "signs and laboratory findings" are objective by definition.

Need To Follow Prescribed Treatment

Comment: Many persons objected to the change in policy which we proposed in §§ 404.1530 and 416.930 of the NPRM. Under this proposal, in order to receive benefits, a person would have to follow treatment which we determined would restore his or her ability to work, even if the treatment had not been prescribed by his or her own physician. In addition to the adverse comments which we received from members of the public, physicians and other Federal and State personnel involved in the day-to-day administration of the titles II and XVI disability programs also expressed serious concerns about this proposed change in our policy. A few comments agreed with this proposal, but most comments pointed out its disadvantages. Several persons representing legal aid services commented that relying on the viewpoint of a consulting physician who sees a claimant for a single examination, rather than on an attending physician who is actually treating the claimant, would be "unduly harsh and restrictive." Several persons believed that this change in policy would be an interference in the doctor-patient relationship. Some doctors thought that this policy "would be fraught with marked malpractice liability." A representative from a legal aid bureau expressed the opinion that this new requirement may cause injury to a claimant's physical or mental condition, because a consulting physician is not qualified to prescribe mandatory treatment. According to other attorneys, this provision is beyond the scope of the law and contrary to court decisions. Others pointed out that the proposed rule "gives much too much weight to consulting physicians" and that the claimant should have some freedom in deciding on whose treatment to follow. Others questioned whether consulting physicians would be willing to assume this responsibility.

Response: We have decided not to adopt that proposed rule. From the beginning, we recognized that this proposal would require careful administration on our part. We would have only applied this proposed rule to medical conditions which we carefully evaluated. We had intended to limit the proposed rule to medical conditions where it is clear that the recommended treatment conforms to widely accepted medical standards. Admittedly, we would have had difficulty in accomplishing this goal while administering a nationwide program that requires us to consider the wide variety of impairments that might produce disability and the treatment for these medical conditions.

Our intent in proposing the change in policy was to eliminate situations where we are paying disability benefits to persons who would be able to return to work if they followed appropriate treatment. By obtaining another medical opinion about appropriate treatment, we might encourage some disabled persons to seek treatment to correct their medical condition. However, there are probably few people receiving disability benefits only because of lack of proper treatment. Therefore, the proposed change in policy would have little effect on the total cost of disability benefits.

In view of the potential problems which were pointed out in the comments, we are not adopting this proposed rule. In deciding whether a person is following treatment which would restore his or her ability to work, we will continue our past policy of only considering treatment that has been prescribed by a treating source. We have revised §§ 404.1530 and 416.930 along these lines.

Comment: One person commented about the examples of good reasons for not following prescribed treatment. According to this comment, the example in paragraph (c)(2) of §§ 404.1530 and 416.930 is not appropriate, because one cannot meet the Listing of Impairments, which applies to both eyes, by having a very severe problem with one eye alone.

Response: We agree with this comment. Therefore, we have revised the example to show that a person would have good reason for refusing cataract surgery for one eye when there is an impairment of the other eye resulting in a severe loss of vision that is not subject to improvement through treatment.

Presumptive Disability and Blindness

When Presumptive Payments Begin and End

Comment: One person representing a legal aid bureau commented that paragraph (c) of § 416.932 is an additional condition for cessation of presumptive disability. This person stated that this condition should be published as a substantive change and not as part of "Operation Common Sense," since it is not in the prior regulations.

Response: The condition in paragraph (c) was previously published as a final regulation in § 416.952 in the **Federal Register** on April 24, 1978 (43 FR 17354). It read as follows: "(c) The month in which a non-medical factor of entitlement is no longer met." This described one of the conditions which would end payments based on presumptive disability or presumptive blindness. In the NPRM, we rewrote this paragraph to read: "(c) The month in which you no longer meet one of the other eligibility requirements (e.g., your income exceeds the limits)." We did not intend to make any change in the rule but only to state more clearly what we mean by "a non-medical factor of entitlement".

Impairments Which May Warrant a Finding of Presumptive Disability or Presumptive Blindness

Comment: One person observed that the list of impairments in § 416.934 which warrant a finding of presumptive disability or presumptive blindness without obtaining medical evidence is completely new to the regulations. This person belives that we should have published this list of impairments separately as a proposed substantive change and not as a part of "Operation Common Sense", in which it was "slipped in" with other regulations. This person also believes that the section should at least include a statement that the list is not meant to exclude other possibilities.

Response: We stated in the preamble of the NPRM that we were including in the regulations for the first time the important policies which we were already following. We highlighted this addition on page 38881, where we stated that "in § 416.934, we give examples of 10 specific impairment categories where we will make a presumptive determination before we get any more medical evidence." We also pointed out that we have been paying presumptive payments on the basis of these impairment categories for several years. Those categories were already listed in our operating manuals. On the second point, based on our experience, we have listed impairments that are observable or can be judged without medical evidence and have a high degree of probability of a finding of disability or blindness. In other cases we need some other evidence. In § 416.933, we already explain how we make a finding of presumptive disability or presumptive blindness in other cases in which the medical evidence shows a high degree of probability that disability or blindness exists.

Drug Addiction and Alcoholism

Medically Determined Drug Addicts and Alcoholics

Comment: One person pointed out that § 416.935 no longer includes the phrase in the previous rule which defined "contributing factor" as "material to the finding of disability." This person stated that the phrase has a specific legal meaning, narrower and clearer than "contributing factor" and should be retained in the new section, even though it may not be considered as ordinary language.

Response: We agree with this comment, and we have restored the phrase "material to the finding of your disability" in order to more clearly define the meaning of contributing factor."

Treatment Required for Medically Determined Drug Addicts and Alcoholics

Comment: One person objected to § 416.936 because it omits language from the previous rule that made it clear that ineligibility for failure to accept and comply with treatment applies only to those months in which there was noncompliance. This person believes that the language "for such month" should be retained because without it the section could be interpreted to permit permanent cessation of payments, requiring the claimant to make a new application and undergo a new determination of disability in order to become eligible again.

Response: We agree with the comment, and we have added the phrase "for any month" to make it clear that we are only referring to the month of noncompliance.

Residual Functional Capacity

Your Residual Functional Capacity

Comment: One person, in discussing §§ 404.1545 and 416.945, noted that "sensory characteristics" were included with physical abilities in paragraph (b), while only skin impairments and epilepsy were mentioned as examples of impairments other than physical or mental ones in paragraph (d).

Response: We agree that these paragraphs in the sections are confusing. Accordingly, we have deleted "and sensory characteristics" from paragraph (b) and we have added to paragraph (d) the phrase "impairments of vision, hearing or other senses, postural and manipulative limitations, and environmental restrictions."

Comment: Another person commenting on §§ 404.1545 and 416.945 stated that in determining residual functional capacity, it is not clear what we mean by the statement that we will consider other factors, such as a claimant's description of the impairment, when we cannot make a decision on medical findings. This person questioned whether a claimant's description of the impairment is not in fact the same as medical findings of his symptoms to be considered along with signs and laboratory findings.

Response: The determination of residual functional capacity is based on a medical assessment, and often requires descriptions or observations that go beyond those symptoms that are important for medical diagnosis and treatment. These observations by examining physicians relate to physical limitations that affect work and not necessarily to medical findings that relate to the treatment of the claimant's condition. The claimant's own description of how an impairment limits capacity to work may also be helpful. These descriptions and observations are then considered together with the claimant's complete medical record. Sections 404.1545(a) and 416.945(a) have been revised to clarify these points. Additional material has also been added to emphasize that the determination of residual functional capacity is not in itself a determination of disability, but is used together with the vocational guidelines to make a disability determination.

Comment: One person commented that we should consider a claimant's pain in determining residual functional capacity.

Response: Since pain, as a symptom, is a medical finding, we do consider a claimant's pain in making a decision about residual functional capacity. How we evaluate pain, and other symptoms, is described in §§ 404.1529 and 416.929.

Responsibility for Assessing and Determining Residual Functional Capacity

Comment: A person representing a legal aid bureau expressed concern that §§ 404.1546 and 416.946 require administrative law judges to accept conclusions by physicians. This person believes that the sections should specifically provide that while a physician's judgment as to residual functional capacity should be considered, it is in no way binding on the trier of fact, such as the administrative law judge, who has the responsibility to reach a finding of fact on this issue.

Response: We agree that the responsibility of the administrative law judge and the Appeals Council should be defined in these sections. Therefore, we have revised the language to make it clear that the administrative law judge, or Appeals Council, has the responsibility for deciding the claimant's residual functional capacity on the basis of the medical evidence for cases at the hearing or Appeals Council level.

Comment: One person objected to §§ 404.1546 and 416.946 because current medical forms are inadequate for furnishing a medical assessment by the treating physician as required by the regulations.

Response: These sections state that a treating or examining physician, State Agency physician, or any other physician designated by the Secretary may make an assessment and determination of the residual functional capacity. These sections, however, do not indicate that the treating or examining physician is the preferred source for the assessment of the claimant's residual functional capacity. Therefore, we ordinarily do not ask the treating physician to make an assessment.

Vocational Considerations

When Your Vocational Background Will Be Considered

Comment: A person from a social service agency believes that the provision in § 416.960(a) that states that vocational factors do not apply to supplemental security income (SSI) claimants who are eligible for benefits because of blindness will cause problems for rehabilitation agencies. This person interprets this section to mean that those who meet the blindness eligibility requirements under the SSI program can continue to receive benefits indefinitely, even though they may have acquired skills through vocational rehabilitation and have obtained successful employment.

Response: The law does not give us the discretion to decide whether vocational factors should apply to the blind as well as to the disabled. Title XVI of the Social Security Act provides two distinct benefit categories for people with impairments: disability and blindness. To receive benefits based upon blindness, the person must meet the requirement of statutory blindness by having central visual acuity of 20/200 or less in the better eye with the use of correcting lens or an equivalent limitation in the field of vision. By law the determination is made on the basis of medical considerations alone without the need to consider vocational factors. There is no requirement that the blind person be unable to work. However, if the blind person is working, we will consider the earnings under the income

and resources provisions of the law. This means that if the blind person's income and resources exceed the limitations under the law, that person will not be eligible for benefits even though blind. See §§ 416.981–416.985, which explain the policies of the SSI program with respect to blindness.

If You Have Done Only Arduous Unskilled Physical Labor

Comment: A representative from a legal aid bureau stated that §§ 404.1562 and 416.962 seem to limit the application of the rule that is stated in those sections to persons who have worked a minimum of 35 years in arduous unskilled physical labor. This person pointed out that the prior regulations explaining this rule stated "e.g., 35 to 40 years," which implied that the 35-year limit is only an example.

Response: In order for us to apply this particular rule the claimant must have done arduous unskilled labor for at least 35 years and now be unable to do this kind of work because of a severe impairment. Generally, this means that the claimant is an older person. Since the claimant must also have no more than a marginal education, we are able to make a determination of disability on the basis of these seriously adverse vocational factors without considering whether the claimant has qualifications for doing other work. However, when a claimant has done arduous unskilled labor for less than 35 years, this does not mean that we will deny the claimant's application. We look further at the claimant's vocational background, including age, education, and work experience, and may find that the claimant has no qualifications for other work. In §§ 404.1520 and 416.920, we have also changed the "e.g.," to "i.e.," in paragraph (f)(2) to clarify that the 35-year requirement is not merely an example.

Your Age as a Vocational Factor

Comment: One person representing a legal aid bureau observed that §§ 404.1563 and 416.963 omit the statement in the prior regulations which provided that the age categories "are not to be applied mechanically in borderline situations." According to this comment, this is an important provision which protects claimants from arbitrary and unreasonable treatment where their age is very close to a different category. Another person asked whether we intended to delete this provision.

Response: We agree that this provision is important, and we have restored it.

Your Work Experience as a Vocational Factor

Comment: One person considered it inconsistent that §§ 404.1565 and 416.965 provide "that your work experience applies when it was done within the last 15 years, lasted long enough (usually six months to a year) for you to learn to do it" and that §§ 404.1568 and 416.968 state that, as to unskilled work, "a person can usually learn to do the job in 30 days."

Response: We agree. We did not intend by the parenthetical guidance "(usually six months to a year)" to preclude consideration of a shorter period of relevant work. This language could cause confusion. Therefore, we have deleted it from these sections.

Comment: Another person believed that someone not familiar with the disability program could confuse the term "earnings requirements" with "substantial gainful activity" and suggested that we use different wording than "earnings requirements."

Response: We have adopted this suggestion. Accordingly, we have substituted the term "disability insured status" in § 404.1565. In § 416.965 we have deleted the statement about when the earnings requirement was last met, since there is no insured status requirement under the Supplemental Security Income Program.

Work Which Exists in the National Economy

Comment: One person questioned how "technological changes in the industry" could affect employability as do the other factors in paragraph (c) of §§ 404.1566 and 416.966.

Response: All of the seven items we listed in paragraph (c) refer to the inability to *get* a job, as opposed to the physical or mental inability to *do* a job. Technological changes, such as automation in the industry in which a person worked, may eliminate certain jobs or require greater skills or different skills.

Comment: Another person commented that §§ 404.1566 and 416.966 make it possible for administrative law judges or the Appeals Council to take administrative notice of not just the existence of jobs but also the tasks involved in jobs. According to this comment, this is a function for a vocational expert.

Response: We take administrative notice of unskilled occupations only. These occupations are entry occupations, requiring no prior experience, and can be learned after a short demonstration or within 30 days on the job. Since the tasks involved in unskilled occupations are so elementary, vocational experts would contribute little to the decisions involving vocational adjustment to this work. The unskilled occupations we refer to in Appendix 2 to Subpart P of Part 404 were taken by us from the *Dictionary of Occupational Titles*, Third Edition, published by the Department of Labor.

Additional Changes: After further consideration, we have decided to expand paragraph (c) of §§ 404.1566 and 416.966 by adding item (8) to explain that we will also find a person not disabled if his or her residual functional capacity and vocational abilities make it possible to do work which exists in the national economy, but the person remains unemployed because he or she does not wish to do a particular type of work.

In paragraph (e), which explains the use of vocational experts and other specialists, we have added a sentence to make it clear that we have the discretion to decide whether to use a vocational expert or other specialist.

Physical Exertion Requirements

Additional Changes: In §§ 404.1567 and 416.967, we have revised the first sentence of paragraph (e) to read: "Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more." In the NPRM, we defined very heavy work as involving "lifting objects weighing 100 pounds or more." This was an error on our part. The definitions of physical exertional requirements are standard definitions in the *Dictionary of Occupational Titles*, published by the Department of Labor.

Skill Requirements

Comment: One person stated that §§ 404.1568 and 416.968 should include the additional information in Appendix 2 of Subpart P about transferability of skills when dealing with older workers.

Response: Sections 404.1568 and 416.968 relate to transferable skills in general, while Appendix 2 gives specific guidance for evaluating the work skills of persons who are limited to sedentary or light work. We believe that it is not appropriate to combine these approaches. Further, neither the regulations proper nor the Appendix 2 provisions stand alone but must be used together.

Comment: Another person questioned whether a case-by-case approach is necessary for determining a claimant's work skills and the transferability of these skills to specific occupations.

Response: Transferability of skills is not an issue in most disability claims. In

many cases, we determine on the basis of medical considerations alone whether or not a claimant is disabled. In other cases, the principal disability issue is related to whether the claimant can do her or her usual work or other past relevant jobs. See §§ 404.1520 and 416.920 for the steps we follow in making a disablity determination. Transferability of skills only becomes an issue in the last step after we have determined that the claimant has a severe impairment which prevents him or her from doing past relevant work. Before we can make a decision on this issue, we must first make findings about the claimant's residual functional capacity, age, education, and work experience. To determine whether the claimant's skills are transferable to other jobs, we use reference materials such as the *Dictionary of Occupational Titles*. In some cases, we use the services of vocational experts or work evaluation centers for determining whether skills are transferable.

Additional Changes: We have revised the last sentence in paragraph (d)(3) of §§ 404.1568 and 416.968 to make it clear that we do not consider all jobs in mining, agriculture, and fishing to be so specialized that skills are not transferable.

Listing of Medical-Vocational Guidelines in Appendix 2

Comment: One person commented that we should identify by name and *Dictionary of Occupational Titles* number the separate sedentary and light unskilled occupations we refer to in §§ 404.1569 and 416.969.

Response: These jobs are described in the *Dictionary of Occupational Titles*, which is published by the Department of Labor. One can find the physical demands and skill requirements of jobs in the Supplement to the *Dictionary of Occupational Titles*. Since this information is already available, we see no purpose in publishing another list of these jobs. We state in §§ 404.1566 and 416.966 that we will take administrative notice of the *Dictionary of Occupational Titles* and other job information available from various government and other publications.

Comment: One person stated that it was difficult to understand the 65-word opening sentence in §§ 404.1569 and 416.969. This person believed that a cross-reference to Appendix 2 would be sufficient.

Response: We agree that the sentence is too long, and we have revised the language. However, we believe that a mere cross-reference is not sufficient, since this section is an important link to Appendix 2.

Substantial Gainful Activity

General Information About Work Activity

We received no comments directly on §§ 404.1573 and 416.973. However, we realized, on our own further review that the titles to these sections are misleading, since these sections do not contain evaluation guides. The guides are found in §§ 404.1574 and 404.1575 and §§ 416.974 and 416.975. We therefore changed the titles of these two sections from "Evaluation Guides for Work Activitity" to "General Information About Work Acvitity." In addition, we added a reference in § 416.973 to Subparts K and L of Part 416 to specify where the income and resource provisions may be found. This change was prompted by a comment made by an SSI recipient about the substantial gainful activity earnings guidelines.

Evaluation Guides if You Are an Employee

Comments received following publication of the interim regulations on the 1978 and 1979 SGA amounts have been considered along with the comments received following publication of the NPRM for this recodification.

Comment: A writer from an association of retired people felt that our reference to "a mentally handicapped person" in §§ 404.1574 and 416.974 seems to bring medical factors into the discussion of what constitutes SGA when the work is done under special circumstances.

Response: We did not intend to create that impression. We used that only to be illustrative. We referred to the mentally handicapped since they are the ones most likely to be engaged in doing simple tasks under supervision such as we describe. We have, however, deleted the word "mentally" to avoid any future misunderstandings.

Comment: Several commenters felt that the upper level figures are too low and thus act as disincentives for people to return to work, since in some cases it is possible for a person to receive more money by continuing to draw benefits than by working. A commenter from a State rehabilitation agency feels that a better indicator would be the Federal minimum wage multiplied by the number of hours (generally 35 to 40 hours a week) considered to be full-time employment. A writer from a State department of health and social services suggested raising the upper level SGA amount to correspond more closely with the poverty level. This same writer, when commenting on the interim regulations setting the SGA levels for 1978 and 1979, had suggested that the upper limit guidelines for disabled SSI recipients be made the same as the income exclusions for SSI recipients age 65 or over. Two other writers, a representative from a vocational rehabilitation institute and a representative from a vocational rehabilitation training center, also felt that the income guidelines should be the same as the income exclusions for SSI recipients age 65 or over. A representative of a facility for the mentally retarded wrote that the upper level guidelines applicable to all disabled persons should be made the same as for persons disabled by blindness who are receiving title II disability benefits.

Response: We have not adopted any of these suggestions. We are, however, trying to find ways to eliminate, where possible, the apparent disincentives in the current SGA guides for impaired persons to reenter the work force or to attempt rehabilitation. We have been studying various alternatives to the current guides to find out whether there is a more effective way of evaluating a person's work activity. A number of alternatives are being considered, including keeping the upper limit equal to the Federal minimum wage or to the poverty level. However, the increases in the SGA limit amounts are kept consistent with specific economic indicators, and increases beyond the amounts indicated by those indicators cannot be fiscally justified without statutory authority. Recently enacted legislation provides that extraordinary work expenses will be excluded from a person's earnings when applying the SGA earnings guidelines. We will publish a notice of proposed rulemaking to implement this provision as soon as possible.

In addition, the legislation authorizes experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of treating the work activity of disabled beneficiaries under the disability program. Plans are now being developed to set up and carry out experiments under this authority.

Comment: A recipient of supplemental security income disability benefits wrote that she has recently learned that her monthly earnings, although considerably less than the upper SGA amounts, may affect her SSI benefit. She does not understand why her earnings, which are considerably less than the amount normally considered to show that a

person has done substantial gainful activity, should affect her SSI benefit.

Response: Under the SSI program, eligibility for benefits and the amount of the benefit payable are dependent in part upon the amount of a person's income. As the amount of a person's countable income rises, his or her benefit payment is reduced. All earnings, therefore, must be evaluated under the income and resources provisions of the law. This evaluation is completely independent of any determination as to whether a person's work activity shows that he or she is doing substantial gainful activity. One evaluation has no affect upon the other. In the commenter's case the earnings, although nowhere near the upper SGA limits, still had to be evaluated for their effect, if any, on her monthly benefit amount.

Comment: A legal services agency interpreted the guides in §§ 404.1574(b)(2) and 416.974(b)(2) to mean that when a person's earnings are less than the amount shown in these sections we presume that person to be disabled; that is, that the person cannot do any substantial gainful activity. He then reasons that work at less than the lower limits ($190 for 1980) constitutes gainful activity as opposed to substantial gainful activity and believes that it is incumbent upon us to prove, when denying a widow/widower claim, that there are jobs which the claimant can perform, which pay less than the lower SGA limits.

Response: These sections do not provide a presumption that a person is disabled. The lower limits in §§ 404.1574 and 416.974 are merely monetary guides to help us determine whether a person is engaging or has engaged in substantial gainful activity. Sections 404.1520 and 416.920 set out the steps we follow in making a disability determination. When a person is working, the first step we follow is to see if the work is substantial gainful activity. We use the earning levels for this purpose. Earnings that exceed the upper level ordinarily demonstrate that the person is able to engage in substantial gainful activity. Earnings below the lower level ordinarily indicate that the person is not engaging in substantial gainful activity. However, the fact that the earnings are below the lower level does not necessarily indicate that the person does not have the ability to engage in substantial gainful activity. We still must proceed to the other steps. Only then can it be determined whether the person cannot do any substantial activity and is disabled.

Unlike the determination of other disability claims, the determination of a widow, widower or surviving divorced wife claim does not involve a decision as to the existence of other jobs that a person could do. Under section 223(d)(2)(B) of the Act, such a claim is decided based on the severity of the impairment(s). A detailed discussion of how the determination is made on such a claim is contained in §§ 404.1577–404.1580.

Comment: In commenting on the sequential evaluation process a writer from an association of retired people expressed concern that these regulations introduce the concept of "actually" or "currently" engaging in substantial gainful activity without consideration of whether a person has the ability to engage in substantial gainful activity.

Response: What a person has done is important to us when determining whether he or she is able to do substantial gainful activity. We consider any work a person has done, along with all the other vocational and medical evidence on file, to determine whether he or she is able to do substantial gainful activity.

Additional Changes: We amended the earnings guidelines in §§ 404.1574(b) (1) and (2) and 416.974(b) (1) and (2) to reflect the earnings limits applicable to earnings after calendar year 1979. In addition, we changed the title sentences of §§ 404.1574(a)(1) and 416.974(a)(1) to make them more consistent with the remaining paragraphs of §§ 404.1574 and 416.974. We changed the reference to "work" in the last sentence of §§ 404.1574(a)(1) and 416.974(a)(1) to "substantial gainful activity" to more clearly show that our concern is with whether a person is able to do substantial gainful activity. We rewrote the last sentence in paragraph (a)(4) of §§ 404.1574 and 416.974 to clearly show that medication and equipment are only examples. The discussion was not intended to be limited to only those two items.

To the discussion on earnings that are neither high enough nor low enough to show whether or not a person has engaged in substantial gainful activity, we have added (to paragraphs (b)(3)(ii) of §§ 404.1574 and 416.974) references to pay scales in a person's community. We did this to reflect what has been our long-standing policy in this area.

Evaluation Guides if You Are Self-Employed

Comment: Several writers pointed out the incorrect reference to "paragraph (b)(1) of this section" in §§ 404.1575 and 416.975.

Response: We have corrected the cross-references to show the correct sections—§§ 404.1574(b)(1) and 416.974(b)(1).

Comment: A person representing a State department of health and social services asked whether the rule in §§ 404.1575(c) and 416.975(c) provides for the deduction of soil bank payments and the value of unpaid help from gross business revenue or from net business income.

Response: Our procedures provide that the reasonable value of any significant amount of unpaid help furnished by a spouse, children, or others is to be deducted from gross income. They also provide that soil bank payments are not to be included in figuring net farm income. Our policy is that only income or earnings resulting from a person's own work activity is to be considered when determining whether a person's work is substantial gainful activity. Portions of income resulting from other factors such as unpaid help, rents, and soil bank payments do not result from a person's work and are not counted in determining the amount of substantial gainful activity. We have, however, made several changes to §§ 404.1575(c) and 416.975(c) to more clearly reflect our policies in these areas.

Additional Changes: We changed the second sentence in §§ 404.1575(a) and 416.975(a) from "We realize that we cannot use income alone . . ." to "We will not consider income alone . . ." We think the revised version more clearly reflects our policy in evaluating the earnings of a self-employed person. In §§ 404.1575 (a) and (b) and 416.975 (a) and (b) we have changed "give" and "giving" to "render" and "rendering" wherever those words were used to make the language in these sections conform to language that is in our operating manuals. To §§ 404.1575(a) and 416.975(a) we added a discussion, inadvertently left out of the NPRM, to show that earnings from work that a person is forced to stop after a short period of time because of his or her impairment will not be used to show that a person is able to do substantial gainful activity. We pointed out more clearly that paragraph (b)(1) applies to any business other than that of farm landlord. In order to be more specific we changed the references in paragraphs (c)(1) and (c)(2) of these sections from "§ 404.1574" to "§ 404.1574(b)(1)" and from "§ 416.974" to "§ 416.974(b)(1)".

Widows, Widowers, and Surviving Divorced Wives.—How We Determine Disability for Widows, Widowers, and Surviving Divorced Wives

Additional Changes: We have revised § 404.1578 to make it clear that we

cannot pay benefits to a disabled widow(er) or surviving divorced wife if he or she is actually doing substantial gainful activity regardless of the severity of the impairment.

Why and When We Will Stop Your Cash Benefits

Additional Changes: We changed the title of this section—§ 404.1579—from "Why and when we will stop your cash benefits" to "Why and when we will find that your disability has ended" to better describe the subject matter of this section. We added new paragraphs (b), (c), and (d) to § 404.1579 to provide that a widow, widower, or surviving divorced wife's disability may also be ended for failure to cooperate, if we are unable to locate him or her and there is a question as to whether he or she is still disabled and to provide the widow(er) a chance to tell us why we should not stop his or her benefits. These provisions, also provided in the regulations relating to disabled workers and persons disabled since childhood, were mistakenly left out of this section when we restructured the regulations.

Blindness

A Period of Disability Based on Blindness

Additional Changes: On the basis of a comment which we received on § 404.1565, we have changed "earnings requirement" to "insured status requirement."

Evaluation of Work Activity of Blind People

Comment: A writer from a State department of social services feels that the higher SGA earnings test for the blind (over that for the nonblind disabled) adversely affects the number of blind people who are vocationally rehabilitated. The writer points out that the Federal funding formula allocates a portion of the vocational rehabilitation funds on the basis of the number of cases that are closed because the beneficiary was able to return to substantial gainful activity. The comment argues that the higher SGA levels result in fewer case closures and, therefore, reduced funding for State agencies serving the blind.

Response: The higher SGA level for the blind was established by the Social Security Amendments of 1977. Our regulations merely reflect the law.

Additional Changes: We have rounded to the next whole dollar the amounts a blind person may earn monthly before being considered able to engage in substantial gainful activity. This aligns the amounts shown in this regulation section (§ 404.1584(d)) to the regulations relating to earnings of persons age 65 or over, which provides for rounding to whole dollars, except where to do so would result in a different grace year.

Why and When We Will Stop Your Cash Benefits

Additional changes: We added new paragraphs (c), (d), and (e) to § 404.1586 to provide that we may also find a blind person no longer disabled if he or she fails to cooperate with us, or if we are unable to locate him or her and there is a question as to whether he or she is still disabled and to provide the beneficiary a chance to tell us why we should not stop his or her benefits. These provisions, also included in the regulations relating to disabled workers and persons disabled since childhood, were mistakenly left out of this section when we rewrote the regulations. To the rules on blindness in Part 416 we added § 416.986 to give the conditions under which we will no longer consider a person disabled by blindness.

Circumstances Under Which We May Suspend Your Benefits Before We Make a Determination

Comment: A legal aid bureau wrote that, since this regulation section (§ 404.1587) has no counterpart in the present regulations, it should be deleted.

Response: Although not previously contained in the regulations the policy described in this section is not new. Since inclusion of our operating policy into the regulations makes it easier for the public to understand how we administer the program, we believe adding this policy to the regulations is consistent with the goals of Operation Common Sense.

Additional changes: We changed the reference (in § 404.1587) to "leaves no doubt" in the first sentence to "clearly shows." We believe the phrase "leaves no doubt" sets up a different level of evidentiary proof than is intended and that the phrase "clearly shows" more accurately describes the intent of this section.

Continuing or Stopping Disability or Blindness

When We Will Investigate Whether Your Disability Continues

Comment: A writer from a legal services agency feels that §§ 404.1590 and 416.990 could be improved by including in these sections information on how often cases are reviewed and how the review, or diary, dates are determined.

Response: Medical reexamination diary dates are set up on those cases where the person's impairment falls within one or more of the categories that are listed in our disability operating manuals. These categories list those impairments that can be reasonably expected to improve. We are now conducting various studies to determine whether this list of categories should be revised. We expect to make some changes. If we publish the categories at this time any changes that we later make as a result of those studies would also have to be made in the regulations. We have, therefore, not adopted this suggestion at this time.

Additional Changes: We added language explaining that we may start an investigation to determine whether a person's disability is continuing if someone in a position to know tells us that the claimant is not disabled or has returned to work.

If Your Medical Recovery Was Expected and You Returned To Work

Comment: A person representing a legal services organization wrote that he feels that these sections, 404.1591 and 416.991, should be rewritten to provide for a trial work period even though the person returned to work with no significant medical limitations. The writer points out that persons returning to work occasionally encounter unforeseen difficulties and that medical prognoses can be wrong.

Response: The cases with which these sections deal are clear-cut cases where medical improvement was reasonably expected, and the person's condition did improve and he or she returned to full-time work with no medical restrictions. Generally such persons no longer consider themselves disabled. Only persons who are disabled are entitled to a trial work period in which to test their ability to work on a sustained basis. Since these sections deal only with persons who have recovered from their disabilities, we have not adopted this suggestion.

The Trial Work Period

Additional Changes: We received no comments on these sections (§§ 404.1592 and 416.992). However, we have made several changes. We changed § 416.992 as a result of a comment on the substantial gainful activity regulations. We now explain that earnings during a trial work period, although not evaluated during the trial work period for the purpose of determining whether disability is continuing, are evaluated under the income and resources provisions of our regulations. Earnings during a trial work period can thus

affect a person's monthly benefit amount. We also made a change (in §§ 404.1592(b) and 416.992(b)) to provide the amount of earnings considered to be "services" for earnings in any calendar year before 1979. In doing so we made the dates and amounts conform to the instructions already in our operating manuals. We also made several changes to more clearly show what we do not consider to be services.

We May Ask You To Help Us Determine Whether You Are Still Disabled

Comment: A person from a legal services agency feels the §§ 404.1593 and 416.993 could be improved by referring to the appropriate paragraphs in §§ 404.1594 and 416.994 regarding cessation of a person's disability benefits if he or she fails to cooperate with us.

Response: We have adopted this suggestion.

Why and When We Will Stop Your Cash Benefits

Comment: A writer from a State department of social services thinks that these sections (§§ 404.1594 (b) and (c) and 416.994 (b) and (c)) do not clearly explain when disability ends in cases where the beneficiary returned to work, and recommends that these sections be revised to clearly differentiate between cessations based on work activity and cessations for medical reasons.

Response: We agree with the writer's recommendations and have made changes to more clearly distinguish between the medical and the work activity cessations. We may find that a person's disability has ended for medical reasons because the evidence of record reasonably supports a finding that the person is able to do substantial gainful activity even though he or she may not be working. We may also find that a person's disability has ended for work activity because the person's work activity shows that he or she is able to do substantial gainful activity. Persons who have not medically recovered are entitle to a 9-month trial work period in which to test their abilities to work. Although a determination is not made until after the trial work period, we may determine that the work a person did during the trial work period shows the ability to do substantial gainful activity, and therefore we may determine that a person's disability ended with the month following the trial work period. In other cases, although not showing ability to do substantial gainful activity during the trial work period, a person may demonstrate this ability sometime after the trial work period. We believe that the changes we have made to §§ 404.1594 and 416.994 more clearly state this policy.

Comment: Three commenters wrote that we should show that a person's medical condition has improved since disability or blindness was initially established before determining that the disability or blindness has ended. A legal services agency expressed the feeling that several recent Federal court decisions have held that we must show improvement before stopping payment of a person's benefits and that these regulations ignore those decisions. A member of another legal aid foundation feels that once a decision that a person is disabled has been made, the decision should be allowed to stand unless it is clear that his or her condition has improved. Still another legal aid society feels that to find that disability has ended without showing medical improvement, if the person has not returned to work, is patently unfair.

Response: Our previous regulations dealing with cessation of disablity (in cases other than widow's and widower's claims) provided that disability should be found to have ended when the impairment is no longer of such severity as to prevent the individual from engaging in any substantial gainful activity (SGA). Those regulations have been interpreted by some to mean that not only must the currrent evidence show that the individual is unable to engage in SGA but that the evidence must also demonstrate that the impairment forming the basis for the previous allowance (or continuance) has improved. This interpretation can result in the payment of benefits to persons who can engage in substantial gainful activity and who are no longer disabled or blind within the meaning of the law, but for whom actual "improvement" cannot be shown. These recodified regulations make it clear that disability ends when current evidence shows that the individual is able to engage in SGA regardless of whether actual improvement can be demonstrated. We do not agree that this position ignores the position taken by any Federal court. The decision that a person's disability or blindness has ended will not be based on a reexamination of old evidence but will be based on new evidence which will have to reasonably show that the person is able to perform substantial gainful activity. We do not agree that a finding that a person is disabled or blind should be allowed to stand in the face of evidence to the contrary simply because of the lack of evidence clearly showing medical improvement. We do not feel these regulations are unfair and we believe that the requirements of these new regulations provide adequate safeguards for persons who are still disabled or blind.

Additional Changes: We changed the titles of these sections from "Why and When We Will Stop Your Cash Benefits" to "Why and When We Will Find that Your Disability Has Ended" so that the title more closely describes the subject matter of the sections. In § 416.994 we corrected the incorrect reference from Subpart N to Subparts M and N.

When We Determine That You Are Not Now Disabled

Comment: Someone from a legal services agency suggested that § 404.1595 be amended to provide that first priority will be given to the opinion and evidence submitted by a person's treating physician.

Response: We do contact a person's current treating sources first. We secure a consultative examination only when we need it. The nature of a report determines the importance we give to it in the adjudicative process. We would not attach the same weight to a report that contains minimal information or an unsupported statement that a person is disabled as we would to a report that gives detailed and extensive findings upon which a determination of disability can be based. We do not believe, therefore, that we should include a categorical statement in the regulations that a treating physician's report will be given first priority.

Comment: A writer from a legal services foundation asked whether the reasons given to a beneficiary whose benefits are to be terminated are the same as those shown on the Disability Determination Transmittal. The writer expressed the belief that beneficiaries are entitled to detailed analyses of the reasons for the termination of their benefits.

Response: The advance notice that goes to a beneficiary before benefit payments are stopped gives the beneficiary 10 working days to submit additional evidence if he or she disagrees with our decision to terminate benefits. This notice gives a detailed explanation of the evidence in the claims file and tells why we are going to terminate benefits. If the beneficiary submits no new evidence, or if after we review any additional evidence our decision remains unchanged, we prepare a formal termination notice and sent it to the beneficiary. This notice cites the basis in law for our action and tells the beneficiary how to file an appeal should he or she wish to do so. It does not repeat the information already given to

the beneficiary in the advance notice. The Disability Determination Transmittal (our form SSA–833–U5) is used to document decisions to continue or stop disability benefit payments. It documents the legal basis for the decision and serves as a source document from which statistics on the disability insurance program are extracted. The rationale for stopping a person's benefits is shown on a continuation form (SSA–834–U5) and is usually quite similar to the rationale included in the advance notice. We do not believe the beneficiary would be helped by being given a copy of the Disability Determination Transmittal since it contains no information of any value to the beneficiary that has not already been given in the advance notice or the termination notice. We have, therefore, not adopted this suggestion.

Comment: This same writer also feels a copy of the Disability Determination Transmittal should be given to persons who are denied benefits at the initial or reconsideration level.

Response: As with continuing eligibility claims, the Disability Determination Transmittal documents the decision and the legal basis for that decision, and serves as a source document for statistics. Much of the information is technical or statistical in nature and would be of little help to the claimant in understanding why his or her claim has been denied. Although the Disability Determination Transmittal does show the reasons for the denial, these same reasons are also included in the notice to the person of the disallowance of his or her claim. We have always encouraged people to contact our local offices if they have any questions regarding their claims. We believe that this person-to-person contact is more helpful than a detailed letter. We also believe that furnishing a copy of the Disability Determination Transmittal to denied claimants would not really help their understanding of why they have been denied. We have, therefore, not adopted this suggestion.

Comment: A legal aid bureau commented that, since the procedures described here and in §§ 404.1596 and 404.1597 were not previously found in the regulations, Operation Common Sense is not the forum for making these changes.

Response: The procedures described in these sections, although not described in the present regulations, reflect the practices we use in administering the title II disability program. These sections do not contain any new policies or procedures. Since inclusion of these policies and procedures into the regulations makes it easier for the public to understand how we administer the program, we believe their addition to the regulations is consistent with the goals of Operation Common Sense.

Circumstances Under Which We May Suspend Your Benefits Before We Make a Determination

Comment: Someone from a legal services foundation wrote that § 404.1596(b)(2) should make more clear what we mean by ". . . we are satisfied that you received our request and our records show that you should be able to respond." The same writer asked if illiteracy is an acceptable reason for failure to respond to a written notice.

Response: We may request additional medical or other evidence by mail, telephone, personal contact, or by a combination of these ways. Our policies provide that before we suspend a person's benefits it must be reasonable to infer from information in the file that he or she has received our request. Our file must also show that the beneficiary apparently understands, or is capable of understanding, the request. In addition, the file must show that all reasonable attempts have been made to secure the beneficiary's cooperation. We believe the wording of this section adequately protects the beneficiary, and we have made no changes.

Illiteracy, in itself, is not necessarily an acceptable reason for failure to respond to a written notice. Generally the case folder will indicate whether or not the beneficiary is illiterate. Whether or not the beneficiary has been able to understand previous letters, such as the award notice, is generally reflected in the folder. In addition, there is usually a follow-up contact in person or by telephone.

Additional Changes: We have changed the reference to "leaves no doubt" in the first sentence of § 404.1596(b)(1) to "clearly shows." We believe the phrase "leaves no doubt" sets up a different level of evidentiary proof than we intended and that the phrase "clearly shows" more accurately describes the intent of this section.

If You Become Disabled by Another Impairment

Comment: A legal aid bureau commented that, since these proposed sections (§§ 404.1598 and 416.998) were not in the previous regulations, they should not be included in this recodification.

Response: Although not previously contained in the regulations, the policy described in these sections—which concern persons already receiving benefits who become disabled by subsequent impairments—is not new policy. We believe inclusion of this policy in the regulations is consistent with our efforts to increase public understanding of our administration of the program.

Other Comment

Comment: A writer from a State rehabilitation commission recommended adding a section that would permit a person to continue to receive SSA benefits while participating in a rehabilitation program whether or not he or she has medically recovered. The writer mentions that medical recovery results in termination of a person's benefits and may result in termination of his or her rehabilitation program as well.

Response: Present law dose not permit the payment of benefits after medical recovery. Although a person's benefits have to be terminated upon medical recovery, his or her rehabilitation program may not necessarily end. A State vocational rehabilitation agency may continue the program using section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730), funds instead of Social Security Trust Fund monies.

The amendments are hereby adopted as revised and set forth below.

(Catalog and Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program)

Dated: June 4, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: August 7, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950-)

1. Subpart P of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

Subpart P—Determining Disability and Blindness

General

Sec.

404.1501 Scope of subpart.
404.1502 General definitions and terms for this subpart.

Determinations

404.1503 Who makes disability and blindness determinations.
404.1504 Determinations by other organizations and agencies.

Definition of Disability

404.1505 Basic definition of disability.

404.1508 What is needed to show an impairment.
404.1509 How long the impairment must last.
404.1510 Meaning of substantial gainful activity.

Evidence

404.1512 Your responsibility to submit evidence.
404.1513 Medical evidence of your impairment.
404.1514 When we will purchase existing evidence.
404.1515 Where and how to submit evidence.
404.1516 If you fail to submit medical and other evidence.
404.1517 Consultative examination at our expense.
404.1518 If you do not appear at a consultative examination.

Evaluation of Disability

404.1520 Evaluation of disability in general.
404.1521 What we mean by an impairment that is not severe.
404.1522 When you have two or more unrelated impairments—initial claims.

Medical Considerations

404.1525 Listing of impairments in Appendix 1.
404.1526 Medical equivalence.
404.1527 Conclusion by physicians concerning your disability.
404.1528 Symptoms, signs and laboratory findings.
404.1529 How we evaluate symptoms including pain.
404.1530 Need to follow prescribed treatment.

Residual Functional Capacity

404.1545 Your residual functional capacity.
404.1546 Responsibility for assessing and determining residual functional capacity.

Vocational Considerations

404.1560 When your vocational background will be considered.
404.1561 Your ability to do work depends upon your residual functional capacity.
404.1562 If you have done only arduous unskilled physical labor.
404.1563 Your age as a vocational factor.
404.1564 Your education as a vocational factor.
404.1565 Your work experience as a vocational factor.
404.1566 Work which exists in the national economy.
404.1567 Physical exertion requirements.
404.1568 Skill requirements.
404.1569 Listing of Medical—Vocational Guidelines in Appendix 2.

Substantial Gainful Activity

404.1571 General.
404.1572 What we mean by substantial gainful activity.
404.1573 General information about work activity.
404.1574 Evaluation guides if you are an employee.
404.1575 Evaluation guides if you are self-employed.

Widows, Widowers, and Surviving Divorced Wives

404.1577 Disability defined for widows, widowers and surviving divorced wives.
404.1578 How we determine disability for widows, widowers and surviving divorced wives.
404.1579 Why and when we will find that your disability has ended.
404.1580 You are not eligible for a trial work period.

Blindness

404.1581 Meaning of blindness as defined in the law.
404.1582 A period of disability based on blindness.
404.1583 How we determine disability for blind persons who are age 55 or older.
404.1584 Evaluation of work activity of blind people.
404.1585 Trial work period for persons age 55 or older who are blind.
404.1586 Why and when we will stop your cash benefits.
404.1587 Circumstances under which we may suspend your benefits before we make a determination.

Continuing or Stopping Disability

404.1588 Your responsibility to tell us of events that may change your disability status.
404.1589 We may investigate to find out whether you continue to be disabled.
404.1590 When we will investigate whether your disability continues.
404.1591 If your medical recovery was expected and you returned to work.
404.1592 The trial work period.
404.1593 We may ask you to help us determine if you are still disabled.
404.1594 Why and when we will find that your disability has ended.
404.1595 When we determine that you are not now disabled.
404.1596 Circumstances under which we may suspend your benefits before we make a determination.
404.1597 After we make a determination that you are not now disabled.
404.1598 If you become disabled by another impairment.

Appendix 1—Listing of Impairments

Appendix 2—Medical-Vocational Guidelines

Authority: Issued under Secs. 202, 205, 216, 221, 222, 223, 225, and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 68 Stat. 1080, as amended, 68 Stat. 1081, as amended, 68 Stat. 1082, as amended, 70 Stat. 815, as amended, 70 Stat. 617, as amended, 49 Stat. 647, as amended; 42 U.S.C. 402, 405, 416, 421, 422, 423, 425, and 1302.

Subpart P—Determining Disability and Blindness

General

§ 404.1501 Scope of subpart.

In order for you to become entitled to any benefits based upon disability or blindness or to have a period of disability established, you must be disabled or blind as defined in title II of the Social Security Act. This Subpart explains how we determine whether you are disabled or blind. We discuss a "period of disability" in subpart D of this Part. We have organized the rules in the following way.

(a) We define general terms, then discuss who makes our disability determinations and state that disability determinations made under other programs are not binding on our determinations.

(b) We explain the term "disability" and note some of the major factors that are considered in determining whether you are disabled in §§ 404.1505–404.1510.

(c) Sections 404.1512–404.1518 contain our rules on evidence. We explain your responsibilities for submitting evidence of your impairment, state what we consider to be acceptable sources of medical evidence, and describe what information should be included in medical reports.

(d) Our general rules on evaluating disability are stated in §§ 404.1520–404.1523. We describe the steps that we go through and the order in which they are considered.

(e) Our rules on medical considerations are found in §§ 404.1525–404.1530. We explain in these rules—

(1) The purpose of the Listing of Impairments found in Appendix 1 of this subpart and how to use it;

(2) What we mean by the term "medical equivalence" and how we determine medical equivalence;

(3) The effect of a conclusion by your physician that you are disabled;

(4) What we mean by symptoms, signs, and laboratory findings;

(5) How we evaluate pain and other symptoms; and

(6) The effect on your benefits if you fail to follow treatment that is expected to restore your ability to work, and how we apply the rule.

(f) In §§ 404.1545–404.1546 we explain what we mean by the term "residual functional capacity," state when an assessment of residual functional capacity is required, and who may make it.

(g) Our rules on vocational considerations are found in §§ 404.1560–404.1569. We explain when vocational factors must be considered along with the medical evidence, discuss the role of residual functional capacity in evaluating your ability to work, discuss the vocational factors of age, education, and work experience, describe what we mean by work which exists in the national economy, discuss the amount of exertion and the type of skill required

for work, and describe and tell how to use the Medical-Vocational Guidelines in Appendix 2 of this subpart.

(h) Our rules on substantial gainful activity are found in §§ 404.1571–404.1574. These explain what we mean by substantial gainful activity and how we evaluate your work activity.

(i) In §§404.1577–404.1580 we explain the special rules covering disability for widows, widowers, and surviving divorced wives, and in §§ 404.1581–404.1587 we discuss disability due to blindness.

(j) Our rules on when disability continues and stops are contained in §§ 404.1588–404.1598. We explain what your responsibilities are in telling us of any events that may cause a change in your disability status, when you may have a trial work period, and when we will investigate to see if you are still disabled.

§ 404.1502 General definitions and terms for this subpart.

As used in this subpart—

"Secretary" means the Secretary of Health and Human Services.

"State agency" means an agency of a State which enters into an agreement with the Secretary to make determinations of disability for the Secretary.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for benefits or for a period of disability or is receiving benefits based on disability or blindness.

Determinations

§ 404.1503 Who makes disability and blindness determinations.

(a) *State agencies.* When there is an agreement between the State and the Secretary, the State agency designated in the agreement makes disability determinations for the Secretary for—

(1) Any person living in that State; and

(2) Any group of people named in the agreement.

(b) *Social Security Administration.* The Social Security Administration will make disability and blindness determinations for the Secretary for—

(1) Any person in any State that has not entered into an agreement with the Secretary;

(2) Any group of people not covered by an agreement with any State; and

(3) Any person living outside the United States.

(c) *What determinations are authorized.* The Secretary has authorized the State agencies and the Social Security Administration to make determinations about—

(1) Whether you are disabled or blind;

(2) The date your disability or blindness began; and

(3) The date your disability stopped.

(d) *Review of State Agency determinations.* On review of a State agency determination we may find that—

(1) You are not disabled or blind, although the State agency found you disabled or blind;

(2) Your disability or blindness began later than the date found by the State agency; and

(3) Your disability or blindness stopped earlier than the date found by the State agency.

§ 404.1504 Determinations by other organizations and agencies.

A decision by any nongovernmental agency or any other governmental agency about whether you are disabled or blind is based on its rules and is not our decision about whether you are disabled or blind. We must make a disability or blindness determination based on social security law. Therefore, a determination made by another agency that you are disabled or blind is not binding on us.

Definition of Disability

§ 404.1505 Basic definition of disability.

(a) The law defines disability as the inability to do 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. To meet this definition, you must have a severe impairment, which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy. To determine whether you are able to do any other work, we consider your residual functional capacity and your age, education, and work experience. We will use this definition of disability if you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child insurance benefits based on disability before age 22.

(b) There are different rules for determining disability for individuals who are statutorily blind. We discuss these in §§ 404.1581 through 404.1587. There are also different rules for determining disability for widows, widowers, and surviving divorced wives. We discuss these in §§ 404.1577 through 404.1580.

§ 404.1508 What is needed to show an impairment.

If you are not doing substantial gainful activity, we always look first at your physical or mental impairment(s) to determine whether you are disabled or blind. Your impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by your statement of symptoms. (See § 404.1528 for further information about what we mean by symptoms, signs, and laboratory findings.)

§ 404.1509 How long the impairment must last.

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement.

§ 404.1510 Meaning of substantial gainful activity.

Substantial gainful activity means work that—

(a) Involves doing significant and productive physical or mental duties; and

(b) Is done (or intended) for pay or profit.

(See § 404.1572 for further details about what we mean by substantial gainful activity.)

Evidence

§ 404.1512 Your responsibility to submit evidence.

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything which shows that you are blind or disabled. In making a decision we will consider all information we get from you and others about your impairments.

(b) *Kind of evidence.* You must provide medical evidence showing that you have an impairment and how severe it is during the time you say that you are disabled. We will consider only impairments you say you have or about which we receive evidence. We will help you in getting medical reports when you give us permission to request them from your doctors and other medical sources. If we ask, you must also provide evidence about your—

(1) Age;

(2) Education and training;

(3) Work experience;

(4) Daily activities both before and after the date you say that you became disabled;

(5) Efforts to work; and

(6) Any other evidence showing how your impairment(s) affects your ability to work. (In §§ 404.1560 through 404.1569 we discuss in more detail the evidence we need when we consider vocational factors.)

§ 404.1513 Medical evidence of your impairment.

(a) *Acceptable sources.* We need reports about your impairments from acceptable medical sources. Acceptable medical sources are—

(1) Licensed physicians;

(2) Licensed osteopaths;

(3) Licensed or certified psychologists;

(4) Licensed optometrists for the measurement of visual acuity and visual fields (we may need a report from a physician to determine other aspects of eye diseases); and

(5) Persons authorized to send us a copy or summary of the medical records of a hospital, clinic, sanitorium, medical institution, or health care facility. Generally, the copy or summary should be certified as accurate by the custodian or by any authorized employee of the Social Security Administration, Veterans' Administration, or State agency. However, we will not return an uncertified copy or summary for certification unless there is some question about the document.

(b) *Medical reports.* Medical reports should include—

(1) Medical history;

(2) Clinical findings (such as the results of physical or mental status examinations);

(3) Laboratory findings (such as blood pressure, x-rays);

(4) Diagnosis (statement of disease or injury based on its signs and symptoms);

(5) Treatment prescribed with response, and prognosis; and

(6) Medical assessment (except in statutory blindness claims, and disability claims for widows, widowers, and surviving divorced wives).

(c) *Medical assessment.* The medical assessment should describe—

(1) Your ability to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment, your ability to reason or make occupational, personal, or social adjustments.

(d) *Completeness.* The medical evidence, including the clinical and laboratory findings, must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. It must allow us to determine—

(1) The nature and limiting effects of your impairment(s) for any period in question;

(2) The probable duration of your impairment; and

(3) Your residual functional capacity to do work-related physical and mental activities.

(e) *Information from other sources.* Information from other sources may also help us to understand how your impairment affects your ability to work. Other sources include—

(1) Public and private social welfare agencies;

(2) Observations by non-medical sources; and

(3) Other practitioners (for example, naturopaths, chiropractors, audiologists, etc.).

§ 404.1514 When we will purchase existing evidence.

You are responsible for submitting evidence to support your disability claim. This requires you to secure the medical evidence we will need to make a disability or blindness determination from the medical sources where you were examined or treated. Although we will help you get this information by asking these sources on your behalf, we will not usually pay for this information. However, there are rare situations when we will pay for existing evidence. For example, if the evidence in file shows that you may be disabled, but it does not contain the medical findings needed to make a disability determination, and we must have this additional information. If we find that one (or more) of your medical sources has this information, but that they will not give us the information until they are paid for it, we may pay for the report. Generally, we may pay when a hospital or clinic charges a small fee to cover its copying and mailing costs, and the only other way we can get the information would be to have you take a special examination at our expense.

§ 404.1515 Where and how to submit evidence.

You may give us evidence about your impairment at any of our offices or at the office of any State agency authorized to make disability determinations. You may also give evidence to one of our employees authorized to accept evidence at another place. For more information about this, see Subpart H of this Part.

§ 404.1516 If you fail to submit medical and other evidence.

If you do not give us the medical and other evidence that we need and request, we will have to make a decision based on information available in your case. We will not excuse you from giving us evidence because you have religious or personal reasons against medical examinations, tests, or treatment.

§ 404.1517 Consultative examination at our expense.

(a) *Notice of the examination.* If your medical sources cannot give us sufficient medical evidence about your impairment for us to determine whether you are disabled, we may ask you to take part in physical or mental examinations or tests. We will pay for these examinations. We will give you reasonable notice of the date, time, and place of the examination or test, and the name of the person who will do it. We will also give the examiner any necessary background information about your condition when your own physician will not be doing the examination or test.

(b) *Reasons why we may need evidence.* We may need more medical evidence—

(1) To obtain more detailed medical findings about your impairment(s);

(2) To obtain technical or specialized medical information; or

(3) To resolve conflicts or differences in medical findings or assessments in the evidence we already have.

§ 404.1518 If you do not appear at a consultative examination.

(a) *General.* If you are applying for benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arrange for you to get information we need to determine your disability or blindness, we may find that you are not disabled or blind. If you are already receiving benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arranged for you, we may determine that your disability or blindness has stopped because of your failure or refusal. Therefore, if you have any reason why you cannot go for the scheduled appointment, you should tell us about this as soon as possible before the examination date. If you have a good reason, we will schedule another examination.

(b) *Examples of good reasons for failure to appear.* Some examples of what we consider good reasons for not going to a scheduled examination include—

(1) Illness on the date of the scheduled examination or test;

(2) Not receiving timely notice of the scheduled examination or test, or receiving no notice at all;

(3) Being furnished incorrect or incomplete information, or being given incorrect information about the physician involved or the time or place of the examination or test, or;

(4) Having had death or serious illness occur in your immediate family.

(c) *Objections by your physician.* If any of your treating physicians tell you that you should not take the examination or test, you should tell us at once. In many cases, we may be able to get the information we need in another way. Your physician may agree to another type of examination for the same purpose.

Evaluation of Disability

§ 404.1520 Evaluation of disability in general.

(a) *Steps in evaluating disability.* We consider all material facts to determine whether you are disabled. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider your physical or mental impairment(s). Your impairment must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review further.

(b) *If you are working.* 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.

(c) *You must have a severe impairment.* If you do not have any impairment(s) which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. However, it is possible for you to have a period of disability for a time in the past even though you do not now have a severe impairment.

(d) *When your impairment meets or equals a listed impairment in Appendix 1.* If you have an impairment which meets the duration requirement and is listed in Appendix 1, or we determine that the impairment is equal to one of the listed impairments, we will find you disabled without considering your age, education, and work experience.

(e) *Your impairment must prevent you from doing past relevant work.* If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment, we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled.

(f) *Your impairment must prevent you from doing any other work.* (1) If you cannot do any work you have done in the past because you have a severe impairment, we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled.

(2) If you have only a marginal education, and long work experience (i.e., 35 years or more) where you only did arduous unskilled physical labor, and you can no longer do this kind of work, we use a different rule (see § 404.1562.)

§ 404.1521 What we mean by an impairment that is not severe.

(a) *Non-severe impairment.* An impairment is not severe if it does not significantly limit your physical or mental abilities to do basic work activities.

(b) *Basic work activities.* When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

§ 404.1522 When you have two or more unrelated impairments—initial claims.

We cannot combine two or more unrelated severe impairments to meet the 12-month duration test. If you have a severe impairment(s) and then develop another unrelated severe impairment(s) but neither one is expected to last for 12 months, we cannot find you disabled, even though the two impairments in combination last for 12 months. However, we can combine unrelated impairments to see if together they are severe enough to keep you from doing substantial gainful activity. We will consider the combined effects of unrelated impairments only if all are severe and expected to last 12 months.

Medical Considerations

§ 404.1525 Listing of impairments in Appendix 1.

(a) *Purpose of the Listing of Impairments.* The Listing of Impairments describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months.

(b) *Adult and childhood diseases.* The Listing of Impairments consists of two parts:

(1) *Part A* contains medical criteria that apply to adult persons age 18 and over. The medical criteria in Part A may also be applied in evaluating impairments in persons under age 18 if the disease processes have a similar effect on adults and younger persons.

(2) *Part B* contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18. Certain criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood; i.e., when the disease process is generally found only in children or when the disease process differs in its effect on children than on adults. Additional criteria are included in Part B, and the impairment categories are, to the extent possible, numbered to maintain a relationship with their counterparts in Part A. In evaluating disability for a person under age 18, Part B will be used first. If the medical criteria in Part B do not apply, then the medical criteria in Part A will be used.

(c) *How to use the Listing of Impairments.* Each section of the Listing of Impairments has a general introduction containing definitions of key concepts used in that section. Certain specific medical findings, some of which are required in establishing a diagnosis or in confirming the existence of an impairment for the purpose of this Listing, are also given in the narrative introduction. If the medical findings needed to support a diagnosis are not given in the introduction or elsewhere in the listing, the diagnosis must still be established on the basis of medically

acceptable clinical and laboratory diagnostic techniques. Following the introduction in each section, the required level of severity of impairment is shown under "Category of Impairments" by one or more sets of medical findings. The medical findings consist of symptoms, signs, and laboratory findings.

(d) *Diagnosis of impairments.* We will not consider your impairment to be one listed in Appendix 1 solely because it has the diagnosis of a listed impairment. It must also have the findings shown in the Listing of that impairment.

(e) *Addiction to alcohol or drugs.* If you have a condition diagnosed as addiction to alcohol or drugs, this will not, by itself, be a basis for determining whether you are, or are not, disabled. As with any other medical condition, we will decide whether you are disabled based on symptoms, signs, and laboratory findings.

§ 404.1526 Medical equivalence.

(a) *How medical equivalence is determined.* We will decide that your impairment(s) is medically equivalent to a listed impairment in Appendix 1 if the medical findings are at least equal in severity and duration to the listed findings. We will compare the symptoms, signs, and laboratory findings about your impairment(s), as shown in the medical evidence we have about your claim, with the medical criteria shown with the listed impairment. If your impairment is not listed, we will consider the listed impairment most like your impairment to decide whether your impairment is medically equal. If you have more than one impairment, and none of them meets or equals a listed impairment, we will review the symptoms, signs, and laboratory findings about your impairments to determine whether the combination of your impairments is medically equal to any listed impairment.

(b) *Medical equivalence must be based on medical findings.* We will always base our decision about whether your impairment(s) is medically equal to a listed impairment on medical evidence only. Any medical findings in the evidence must be supported by medically acceptable clinical and laboratory diagnostic techniques. We will also consider the medical opinion given by one or more physicians designated by the Secretary in deciding medical equivalence.

(c) *Who is a designated physician.* A physician designated by the Secretary includes any physician employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations.

§ 404.1527 Conclusion by physicians concerning your disability.

We are responsible for determining whether you are disabled. Therefore, a statement by your physician that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. We have to review the medical findings and other evidence that support a physician's statement that you are "disabled."

§ 404.1528 Symptoms, signs, and laboratory findings.

Medical findings consist of symptoms, signs, and laboratory findings:

(a) *Symptoms* are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) *Signs* are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Pyschiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation and contact with reality. They must also be shown by observable facts that can be medically described and evaluated.

(c) *Laboratory findings* are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests.

§ 404.1529 How we evaluate symptoms, including pain.

If you have a physical or mental impairment, you may have symptoms (like pain, shortness of breath, weakness or nervousness). We consider all your symptoms, including pain, and the extent to which signs and laboratory findings confirm these symptoms. The effects of all symptoms, including severe and prolonged pain, must be evaluated on the basis of a medically determinable impairment which can be shown to be the cause of the symptom. We will never find that you are disabled based on your symptoms, including pain, unless medical signs or findings show that there is a medical condition that could be reasonably expected to produce those symptoms.

§404.1530 Need to follow prescribed treatment.

(a) *What treatment you must follow.* In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work.

(b) *When you do not follow prescribed treatment.* If you do not follow the prescribed treatment without a good reason, we will not find you disabled or, if you are already receiving benefits, we will stop paying you benefits.

(c) *Acceptable reasons for failure to follow prescribed treatment.* The following are examples of a good reason for not following treatment:

(1) The specific medical treatment is contrary to the established teaching and tenets of your religion.

(2) The prescribed treatment would be cataract surgery for one eye, when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through treatment.

(3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.

(4) The treatment because of its magnitude (e.g. open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for you; or

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

Residual Functional Capacity

§ 404.1545 Your residual functional capacity.

(a) *General.* Your impairments may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We consider your capacity for various functions as described in the following paragraphs, (b) physical abilities, (c) mental impairments, and (d) other impairments. Residual functional capacity is a medical assessment. However, it may include descriptions (even your own) of limitations that go beyond the symptoms that are important in the diagnosis and treatment of your medical condition. Observations of your work limitations in addition to those usually made during formal medical examinations[,] may also be used. These descriptions and observations, when

used, must be considered along with the rest of your medical record[,] to enable us to decide to what extent your impairment keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment. Then, using the guidelines in §§ 404.1560 through 404.1569, your vocational background is considered along with your residual functional capacity in arriving at a disability decision.

(b) *Physical abilities.* When we assess your physical abilities (e.g., strength) we assess the severity of your impairment(s) and determine your residual functional capacity for work activity on a regular and continuing basis. We consider your ability to do physical activities such as walking, standing, lifting, carrying, pushing, pulling, reaching, handling and the evaluation of other physical functions. A limited ability to do these things may reduce your ability to do work.

(c) *Mental impairments.* When we assess your impairment because of mental disorders, we consider factors such as your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, co-workers and work pressures in a work setting.

(d) *Other impairments.* Some medically determinable impairments, such as skin impairments, epilepsy, and impairments of vision, hearing or other senses, postural and manipulative limitations, and environmental restrictions do not limit physical exertion. If you have this type of impairment, in addition to one that affects physical exertion, we consider both in deciding your residual functional capacity.

§ 404.1546 Responsibility for assessing and determining residual functional capacity.

The State agency staff physicians or other physicians designated by the Secretary are responsible for assuring that the agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency staff physician must assess residual functional capacity where it is required. This assessment is based on all of the medical evidence we have, including any other assessments that may have been provided by treating or examining physicians, consultative physicians, or any other physician designated by the Secretary. (See § 404.1545.) For cases at the hearing or Appeals Council level, the responsibility for deciding your residual functional capacity rests with the administrative law judge or Appeals Council.

Vocational Considerations

§ 404.1560 When your vocational background will be considered.

(a) *General.* We may consider vocational factors when you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child insurance benefits based on disability before age 22.

(b) *Disability determinations in which vocational factors must be considered along with the medical evidence.* When we cannot decide whether you are disabled on medical evidence alone, we must use other evidence.

(1) We will use information from you about your age, education and work experience.

(2) We will consider your doctors' reports and hospital records as well as your statements and other evidence to determine your residual functional capacity and how it affects the work you can do. Sometimes, to do this, we will need to ask you to have special examinations or tests. (See § 404.1517).

(3) If we find that you can no longer do the work you have done in the past, we will determine whether you can do other work (jobs) which exists in significant numbers in the nation's economy.

§ 404.1561 Your ability to do work depends upon your residual functional capacity.

If you can do your previous work (your usual work or other applicable past work), we will determine that you are not disabled. However, if your residual functional capacity is not enough to enable you to do any of your previous work, we must still decide if you can do any other work. To do this, we consider your residual functional capacity, and your age, education, and work experience. Any work (jobs) that you can do must exist in significant numbers in the national economy (either in the region where you live or in several regions of the country). Sections 404.1563–404.1565 explain how we evaluate your age, education, and work experience when we are deciding whether or not you are able to do other work.

§ 404.1562 If you have done only arduous unskilled physical labor.

If you have only a marginal education and work experience of 35 years or more during which you did arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s), we will consider you unable to do lighter work, and therefore, disabled. However, if you are working or have worked despite your impairment(s) (except where the work is sporadic or is not medically advisable), we will review all the facts in your case, and we may find that you are not disabled. In addition, we will consider that you are not disabled if the evidence shows that you have training or past work experience which enables you to do substantial gainful activity in another occupation with your impairment, either on a full-time or a reasonably regular part-time basis.

Example: B is a 60-year-old miner with a fourth grade education who has a life-long history of arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not show that he has skills or capabilities needed to do lighter work which would be readily transferable to another work setting. Under these circumstances, we will find that B is disabled.

§ 404.1563 Your age as a vocational factor.

(a) *General.* "Age" refers to how old you are (your chronological age) and the extent to which your age affects your ability to adapt to a new work situation and to do work in competition with others. However, we do not determine disability on your age alone. We must also consider your residual functional capacity, education, and work experience. If you are unemployed because of your age and you can still do a significant number of jobs which exist in the national economy, we will find that you are not disabled. We explain in detail how we consider your age as a vocational factor in Appendix 2. However, we will not apply these age categories mechanically in a borderline situation.

(b) *Younger person.* If you are under age 50, we generally do not consider that your age will seriously affect your ability to adapt to a new work situation. In some circumstances, however, we consider age 45 a handicap in adapting to a new work setting (see Rule 201.17 in Appendix 2).

(c) *Person approaching advanced age.* If you are closely approaching advanced age (50–54), we will consider that your age, along with a severe impairment and limited work experience, may seriously affect your ability to adjust to a

significant number of jobs in the national economy.

(d) *Person of advanced age.* We consider that advanced age (55 or over) is the point where age significantly affects a person's ability to do substantial gainful activity. If you are severely impaired and of advanced age and you cannot do medium work (see § 404.1567(c)), you may not be able to work unless you have skills that can be used in (transferred to) less demanding jobs which exist in significant numbers in the national economy. If you are close to retirement age (60–64) and have a severe impairment, we will not consider you able to adjust to sedentary or light work unless you have skills which are highly marketable.

(e) *Information about your age.* We will usually not ask you to prove your age. However, if we need to know your exact age to determine whether you get disability benefits or if the amount of your benefit will be affected, we will ask you for evidence of your age.

§ 404.1564 Your education as a vocational factor.

(a) *General.* "Education" is primarily used to mean formal schooling or other training which contributes to your ability to meet vocational requirements, for example, reasoning ability, communication skills, and arithmetical ability. However, if you do not have formal schooling, this does not necessarily mean that you are uneducated or lack these abilities. Past work experience and the kinds of responsibilities you had when you were working may show that you have intellectual abilities, although you may have little formal education. Your daily activities, hobbies, or the results of testing may also show that you have significant intellectual ability that can be used to work.

(b) *How we evaluate your education.* The importance of your educational background may depend upon how much time has passed between the completion of your formal education and the beginning of your physical or mental impairment(s) and by what you have done with your education in a work or other setting. Formal education that you completed many years before your impairment began, or unused skills and knowledge that were a part of your formal education, may no longer be useful or meaningful in terms of your ability to work. Therefore, the numerical grade level that you completed in school may not represent your actual educational abilities. These may be higher or lower. However, if there is no other evidence to contradict it, we will use your numerical grade level to determine your educational abilities. The term "education" also includes how well you are able to communicate in English since this ability is often acquired or improved by education. In evaluating your educational level, we use the following categories:

(1) *Illiteracy.* Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.

(2) *Marginal education.* Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.

(3) *Limited education.* Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.

(4) *High school education and above.* High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.

(5) *Inability to communicate in English.* Since the ability to speak, read and understand English is generally learned or increased at school, we may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

(6) *Information about your education.* We will ask you how long you attended school and whether you are able to speak, understand, read and write in English and do at least simple calculations in arithmetic. We will also consider other information about how much formal or informal education you may have had through your previous work, community projects, hobbies, and any other activities which might help you to work.

§ 404.1565 Your work experience as a vocational factor.

(a) *General.* "Work experience" means skills and abilities you have acquired through work you have done which show the type of work you may be expected to do. Work you have already been able to do shows the kind of work that you may be expected to do. We consider that your work experience applies when it was done within the last 15 years, lasted long enough for you to learn to do it, and was substantial gainful activity. We do not usually consider that work you did 15 years or more before the time we are deciding whether you are disabled (or when the disability insured status requirement was last met, if earlier) applies. A gradual change occurs in most jobs so that after 15 years it is no longer realistic to expect that skills and abilities acquired in a job done then continue to apply. The 15-year guide is intended to insure that remote work experience is not currently applied. If you have no work experience or worked only "off-and-on" or for brief periods of time during the 15-year period, we generally consider that these do not apply. If you have acquired skills through your past work, we consider you to have these work skills unless you cannot use them in other skilled or semi-skilled work that you can now do. If you cannot use your skills in other skilled or semi-skilled work, we will consider your work background the same as unskilled. However, even if you have no work experience, we may consider that you are able to do unskilled work because it requires little or no judgment and can be learned in a short period of time.

(b) *Information about your work.* Under certain circumstances, we will ask you about the work you have done in the past. If you cannot give us all of the information we need, we will try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker. When we need to consider your work experience to decide whether you are able to do work that is different from what you have done in the past, we will ask you to tell us about all of the jobs you have had in the last 15 years. You must tell us the dates you worked, all of the duties you did, and any tools, machinery, and equipment you used. We will need to know about the amount of walking, standing, sitting, lifting and carrying you did during the work day, as well as any other physical or mental duties of your job. If all of your work in the past 15 years has been arduous and unskilled, and you have very little education, we

will ask you to tell us about all of your work from the time you first began working. This information could help you to get disability benefits.

§ 404.1566 Work which exists in the national economy.

(a) *General.* We consider that work exists in the national economy when it exists in significant numbers either in the region where you live or in several other regions of the country. It does not matter whether—

(1) Work exists in the immediate area in which you live;

(2) A specific job vacancy exists for you; or

(3) You would be hired if you applied for work.

(b) *How we determine the existence of work.* Work exists in the national economy when there is a significant number of jobs (in one or more occupations) having requirements which you are able to meet with your physical or mental abilities and vocational qualifications. Isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where you live are not considered "work which exists in the national economy". We will not deny you disability benefits on the basis of the existence of these kinds of jobs. If work that you can do does not exist in the national economy, we will determine that you are disabled. However, if work that you can do does exist in the national economy, we will determine that you are not disabled.

(c) *Inability to obtain work.* We will determine that you are not disabled if your residual functional capacity and vocational abilities make it possible for you to do work which exists in the national economy, but you remain unemployed because of—

(1) Your inability to get work;

(2) Lack of work in your local area;

(3) The hiring practices of employers;

(4) Technological changes in the industry in which you have worked;

(5) Cyclical economic conditions;

(6) No job openings for you;

(7) You would not actually be hired to do work you could otherwise do; or

(8) You do not wish to do a particular type of work.

(d) *Administrative notice of job data.* When we determine that unskilled, sedentary, light, and medium jobs exist in the national economy (in significant numbers either in the region where you live or in several regions of the country), we will take administrative notice of reliable job information available from various governmental and other publications. For example, we will take notice of—

(1) *Dictionary of Occupational Titles,* published by the Department of Labor;

(2) *County Business Patterns,* published by the Bureau of the Census;

(3) *Census Reports,* also published by the Bureau of the Census;

(4) *Occupational Analyses,* prepared for the Social Security Administration by various State employment agencies; and

(5) *Occupational Outlook Handbook,* published by the Bureau of Labor Statistics.

(e) *Use of vocational experts and other specialists.* If the issue in determining whether you are disabled is whether your work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, we may use the services of a vocational expert or other specialist. We will decide whether to use a vocational expert or other specialist.

§ 404.1567 Physical exertion requirements.

To determine the physical exertion requirements of work in the national economy, we classify jobs as "sedentary," "light," "medium," "heavy," and "very heavy." These terms have the same meaning as they have in the *Dictionary of Occupational Titles,* published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions:

(a) *Sedentary work.* Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

(d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

(e) *Very heavy work.* Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, we determine that he or she can also do heavy, medium, light and sedentary work.

§ 404.1568 Skill requirements.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

(a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

(b) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

(c) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

(d) *Skills that can be used in other work (transferability).* (1) *What we mean by transferable skills.* We consider you to have skills that can be used in other jobs, when the skilled or semi-skilled work activities you did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

(2) *How we determine skills that can be transferred to other jobs.* Transferability is most probable and meaningful among jobs in which—

(i) The same or a lesser degree of skill is required;

(ii) The same or similar tools and machines are used; and

(iii) The same or similar raw materials, products, processes, or services are involved.

(3) *Degrees of transferability.* There are degrees of transferability of skills ranging from very close similarities to remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting (like many jobs in mining, agriculture, or fishing) that they are not readily usable in other industries, jobs, and work settings, we consider that they are not transferable.

§ 404.1569 Listing of Medical-Vocational Guidelines in Appendix 2.

The Dictionary of Occupational Titles includes information about jobs (classified by their exertional and skill requirements) that exist in the national economy. Appendix 2 provides rules using this data reflecting major functional and vocational patterns. We apply these rules in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable impairment from doing vocationally relevant past work. The rules in Appendix 2 do not cover all possible variations of factors. Also, as we explain in § 200.00 of Appendix 2, we do not apply these rules if one of the findings of fact about the person's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In these instances, we give full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the same as the rule, we use that rule to decide whether a person is disabled.

Substantial Gainful Activity

§ 404.1571 General.

The work that you have done during any period in which you believe you are disabled may show that you are able to do work at the substantial gainful activity level. If you are able to engage in substantial gainful activity, we will find that you are not disabled. (We explain the rules for persons who are statutorily blind in § 404.1584.) Even if the work you have done was not substantial gainful activity, it may show that you are able to do more work than you actually did. We will consider all of the medical and vocational evidence in your file to decide whether or not you have the ability to engage in substantial gainful activity.

§ 404.1572 What we mean by substantial gainful activity.

Substantial gainful activity is work activity that is both substantial and gainful:

(a) *Substantial work activity.* Substantial work activity is work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before.

(b) *Gainful work activity.* Gainful work activity is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(c) *Some other activities.* Generally, we do not consider activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

§ 404.1573 General information about work activity.

(a) *The nature of your work.* If your duties require use of your experience, skills, supervision and responsibilities, or contribute substantially to the operation of a business, this tends to show that you have the ability to work at the substantial gainful activity level.

(b) *How well you perform.* We consider how well you do your work when we determine whether or not you are doing substantial gainful activity. If you do your work satisfactorily, this may show that you are working at the substantial gainful activity level. If you are unable, because of your impairments, to do ordinary or simple tasks satisfactorily without more supervision or assistance than is usually given other people doing similar work, this may show that you are not working at the substantial gainful activity level. If you are doing work that involves minimal duties that make little or no demands on you and that are of little or no use to your employer, or to the operation of a business if you are self-employed, this does not show that you are working at the substantial gainful activity level.

(c) *If your work is done under special conditions.* Even though the work you are doing takes into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level.

(d) *If you are self-employed.* Supervisory, managerial, advisory or other significant personal services that you perform as a self-employed individual may show that you are able to do substantial gainful activity.

(e) *Time spent in work.* While the time you spend in work is important, we will not decide whether or not you are doing substantial gainful activity only on that basis. We will still evaluate the work to decide whether it is substantial and gainful regardless of whether you spend more time or less time at the job than workers who are not impaired and who are doing similar work as a regular means of their livelihood.

§ 404.1574 Evaluation guides if you are an employee.

(a) *General.* We use several guides to decide whether you have done substantial gainful activity.

(1) *Your earnings may show you have done substantial gainful activity.* The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, this will show that you are able to do substantial gainful activity. On the other hand, the fact that your earnings are not substantial will not necessarily show that you are not able to do substantial gainful activity.

Earnings from work that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity.

(2) *We consider only the amounts you earn.* We do not consider any income not directly related to your productivity when we decide whether you have done substantial gainful activity. If your earnings are being subsidized, the amount of the subsidy is not counted when we determine whether or not your work is substantial gainful activity. Thus, where work is done under special conditions, we only consider the part of your pay which you actually "earn". For example, where a handicapped person does simple tasks under close and continuous supervision, we would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. An employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If your work is subsidized and your employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, we will investigate to see how much your work is worth.

(3) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Since persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(4) *If you have special work-related expenses.* If you have out-of-the-ordinary expenses in connection with your work and because of your impairment (for example, you may require special transportation), we will deduct these from your earnings if they exceeded the normal work-related expenses you would have if you were not impaired. When we decide if your work is substantial gainful activity, however, we do not deduct expenses for those things (e.g., medication or equipment) which you need even when you are not working.

(b) *Earnings guidelines.* If you are an employee, we first consider the criteria in paragraph (a) of this section, and then the guides in paragraphs (b)(1), (2), and (3) of this section.

(1) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activities as an employee show that you have engaged in substantial gainful activity if—

(i) Your earnings averaged more than $200 a month in calendar years prior to 1976;

(ii) Your earnings averaged more than $230 a month in calendar year 1976;

(iii) Your earnings averaged more than $240 a month in calendar year 1977;

(iv) Your earnings averaged more than $260 a month in calendar year 1978;

(v) Your earnings averaged more than $280 a month in calendar year 1979; or

(vi) Your earnings averaged more than $300 a month in calendar years after 1979.

(2) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

(i) Your earnings averaged less than $130 a month in calendar years before 1976;

(ii) Your earnings averaged less than $150 a month in calendar year 1976;

(iii) Your earnings averaged less than $160 a month in calendar year 1977;

(iv) Your earnings averaged less than $170 a month in calendar year 1978;

(v) Your earnings averaged less than $180 a month in calendar year 1979; or

(vi) Your earnings averaged less than $190 a month in calendar years after 1979.

However, if you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if your average earnings are not greater than $200 a month in calendar years prior to 1976, $230 a month in calendar year 1976, $240 a month in calendar year 1977, $260 a month in calendar year 1978, $280 a month in calendar year 1979, $300 a month in calendar years after 1979.

However, if there is evidence showing that you may have done substantial gainful activity, we will apply the criteria in paragraph (b)(3) of this section regarding comparability and value of services.

(3) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* If your earnings, on the average, are between the amounts shown in paragraphs (b) (1) and (2) of this section, we will generally consider other information in addition to your earnings, such as whether—

(i) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, or

(ii) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(1) of this section, according to pay scales in your community.

§ 404.1575 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone since the amount of income you actually receive may depend upon a number of different factors like capital investment, profit sharing agreements, etc. However, income from activities that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity. We will evaluate your work activity on the value to the business of your services regardless of whether you receive an immediate income for your services. We consider that you have engaged in substantial gainful activity if—

(1) Your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood;

(2) Your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 404.1574(b)(1) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing; or

(3) You render services that are significant to the operation of the business and receive a substantial income from the business.

(b) *What we mean by significant services.* (1) If you are not a farm landlord and you operate a business entirely by yourself, any services that you render are significant to the business. If your business involves the services of more than one person, we

will consider you to be rendering significant services if you contribute more than half the total time required for the management of the business, or you render management services for more than 45 hours a month regardless of the total management time required by the business.

(2) If you are a farm landlord, that is, you rent farm land to another, we will consider you to be rendering significant services if you materially participate in the production or the management of the production of the things raised on the rented farm. (See § 404.1053 of this chapter for an explanation of "material participation".) If you were given social security earnings credits because you materially participated in the activities of the farm and you continue these same activities, we will consider you to be rendering significant services.

(c) *What we mean by substantial income.* We will consider the income you receive from a business, after we deduct from gross income the reasonable value of any significant amount of unpaid help and any soil bank payments that were included as farm income, as well as normal business expenses, to be substantial if—

(1) Your net income from the business averages more than the amounts described in § 404.1574(b)(1); or

(2) Your net income from the business averages less than the amounts described in § 404.1574(b)(1) but the livelihood which you get from the business is either comparable to what it was before you became disabled or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar businesses as their means of livelihood.

Widows, Widowers, and Surviving Divorced Wives

§ 404.1577 Disability defined for widows, widowers, and surviving divorced wives.

If you are a widow, widower, or surviving divorced wife, the law provides that you must have a medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. The impairments must be of a level of severity to prevent a person from doing any gainful activity. To determine whether you are disabled, we consider only your physical or mental impairment. We do not consider your age, education and work experience.

§ 404.1578 How we determine disability for widows, widowers, and surviving divorced wives.

(a) We will find that you are disabled and pay you benefits as a widow, widower, or surviving divorced wife if—

(1) Your impairment(s) has specific clinical findings that are the same as those for any impairment in the Listing of Impairments in Appendix 1 or are medically equivalent to those for any impairment shown there;

(2) Your impairment(s) meets the duration requirement.

(b) However, even, if you meet the requirements in (a) (1) and (2) of this section, we will not find you disabled if you are doing substantial gainful activity.

§ 404.1579 Why and when we will find that your disability has ended.

(a) *If you are not disabled.* If you are entitled to disability benefits as a disabled widow, widower, or surviving divorced wife, we will find that your disability ended in the earlier of—

(1) The month your impairment, as shown by current medical evidence, is not an impairment listed in Appendix 1 or is not equal to a listed impairment; or

(2) The month you do substantial gainful activity.

(b) *If you do not cooperate with us.* If we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without a good reason) to do what we ask. The month in which your disability will be found to have ended will be the month in which you failed to do what we asked.

(c) *If we are unable to find you.* If there is a question about whether you continue to be disabled and we are unable to find you to resolve the question, we will find that your disability has ended. The month it ends will be the first month in which the question arose and we could not find you.

(d) *Before we stop your benefits.* Before we stop your benefits or a period of disability, we will give you a chance to give us your reasons why we should not stop your benefits or your period of disability. Section 404.1595 describes your rights and the procedures we will follow.

§ 404.1580 You are not eligible for a trial work period.

When you are receiving benefits because you are a disabled widow, widower, or surviving divorced wife, you are not entitled to a trial work period.

Blindness

§ 404.1581 Meaning of blindness as defined in the law.

We will consider you blind under the law for a period of disability and for payment of disability insurance benefits if we determine that you are statutorily blind. Statutory blindness is defined in the law as central visual acuity of 20/200 or less in the better eye with the use of correcting lens. An eye which has a limitation in the field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered to have a central visual acuity of 20/200 or less. Your blindness must meet the duration requirement in § 404.1509.

§ 404.1582 A period of disability based on blindness.

If we find that you are blind and you meet the insured status requirement, we may establish a period of disability for you regardless of whether you can do substantial gainful activity. A period of disability protects your earnings record under Social Security so that the time you are disabled will not count against you in determining whether you will have worked long enough to qualify for benefits and the amount of your benefits. However, you will not necessarily be entitled to receive disability insurance cash benefits even though you are blind. If you are a blind person under age 55, you must be unable to do any substantial gainful activity in order to be paid disability insurance cash benefits.

§ 404.1583 How we determine disability for blind persons who are age 55 or older.

We will find that you are eligible for disability insurance benefits even though you are still engaging in substantial gainful activity, if—

(a) You are blind;

(b) You are age 55 or older; and

(c) You are unable to use the skills or abilities like the ones you used in any substantial gainful activity which you did regularly and for a substantial period of time. (However, you will not be paid any cash benefits for any month in which you are doing substantial gainful activity.)

§ 404.1584 Evaluation of work activity of blind people.

(a) *General.* If you are blind (as explained in § 404.1581), we will consider the earnings from the work you are doing to determine whether or not you should be paid cash benefits.

(b) *Under Age 55.* If you are under age 55, we will evaluate the work you are doing using the guides in paragraph (d) of this section to determine whether or

not your work shows that you are doing substantial gainful activity. If you are not doing substantial gainful activity, we will pay you cash benefits. If you are doing substantial gainful activity, we will not pay you cash benefits. However, you will be given a period of disability as described in Subpart D of this Part.

(c) *Age 55 or older.* If you are age 55 or older, we will evaluate your work using the guides in paragraph (d) of this section to determine whether or not your work shows that you are doing substantial gainful activity. If you have not shown this ability, we will pay you cash benefits. If you have shown an ability to do substantial gainful activity, we will evaluate your work activity to find out how your work compares with the work you did before. If the skills and abilities of your new work are about the same as those you used in the work you did before, we will not pay you cash benefits. However, if your new work requires skills and abilities which are less than or different than those you used in the work you did before, we will pay you cash benefits, but not for any month in which you actually perform substantial gainful activity.

(d) *Evaluation of earnings.* The law provides a different earnings test for substantial gainful activity of people who are blind. We will not consider that you are able to engage in substantial gainful activity on the basis of earnings unless your monthly earnings average more than $334.00 in 1978; $375.00 in 1979; $417.00 in 1980; $459.00 in 1981; and $500.00 in 1982. Thereafter, an increase in the substantial gainful activity amount will depend on increases in the cost of living. For work activity performed in taxable years before 1978, the earnings considered enough to show an ability to do substantial gainful activity are the same for blind people as for others.

§ 404.1585 Trial work period for persons age 55 or older who are blind.

If you become eligible for disability benefits even though you were doing substantial gainful activity because you are blind and age 55 or older, you are entitled to a trial work period if—

(a) You later return to substantial gainful activity that requires skills or abilities comparable to those required in the work you regularly did before you become blind or became 55 years old, whichever is later; or

(b) Your last previous work ended because of an impairment and the current work requires a significant vocational adjustment.

§ 404.1586 Why and when we will stop your cash benefits.

(a) *When you are not entitled to benefits.* If you become entitled to disability cash benefits as a statutorily blind person, we will find that you are no longer entitled to benefits beginning with the earliest of—

(1) The month your vision, as shown by current medical evidence, does not meet the definition of blindness (and any remaining impairments do not make you unable to do substantial gainful activity considering your age, education and work experience);

(2) If you are under age 55, the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period); or

(3) If you are age 55 or older, the month (following completion of a trial work period) when your work activity shows you are able to use, in substantial gainful activity, skills and abilities comparable to those of some gainful activity which you did with some regularity and over a substantial period of time. The skills and abilities are compared to the activity you did prior to age 55 or blindness, whichever is earlier.

(b) *If we find that you are not entitled to disability cash benefits.* If we find that you are not entitled to disability cash benefits on the basis of your work activity but your visual impairment is sufficiently severe to meet the definition of blindness, the period of disability that we established for you will continue.

(c) *If you do not cooperate with us.* If we ask you to give us medical or other evidence or to go for a medical examination by a certain date, we will find that your disability has ended if you fail (without a good reason) to do what is asked. The month in which your disability will be found to have ended will be the month in which you failed to do what we asked.

(d) *If we are unable to find you.* If there is a question about whether you continue to be disabled by blindness and we are unable to find you to resolve the question, we will find that your disability has ended. The month it ends will be the first month in which the question arose and we could not find you.

(e) *Before we stop your benefits.* Before we stop your benefits or period of disability, we will give you a chance to give us your reasons why we should not stop your benefits or your period of disability. Section 404.1595 describes your rights and the procedures we will follow.

§ 404.1587 Circumstances under which we may suspend your benefits before we make a determination.

We will suspend your benefits if all of the information we have clearly shows that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when you are blind as defined in the law and age 55 or older and you have returned to work similar to work you previously performed.

Continuing or Stopping Disability

§ 404.1588 Your responsibility to tell us of events that may change your disability status.

If you are entitled to cash benefits or to a period of disability because you are disabled, you should promptly tell us if—

(a) Your condition improves;

(b) You return to work;

(c) You increase the amount of your work; or

(d) Your earnings increase.

§ 404.1589 We may investigate to find out whether you continue to be disabled.

After we find that you are disabled, we must determine from time to time if you are still eligible for disability cash benefits. We may begin an investigation for this purpose for any number of reasons, including your failure to follow the provisions of the Social Security Act or these regulations. If our investigation shows that we should suspend payment of your benefits, we will notify you in writing and give you an opportunity to reply. In § 404.1590 we describe those events that may prompt us to investigate whether you continue to be disabled.

§ 404.1590 When we will investigate whether your disability continues.

(a) *General.* We investigate to determine whether or not you continue to meet the disability requirements of the law. Payment of cash benefits or a period of disability ends if the medical or other evidence shows that you are not disabled or if there is not enough evidence to support a finding that disability continues.

(b) *When we will investigate.* An investigation will be started if—

(1) We need a current medical report to see if you are able to do substantial gainful activity;

(2) You return to work and successfully complete a period of trial work;

(3) Substantial earnings are reported to your wage record;

(4) You tell us that you have recovered from your disability or that you have returned to work; or

(5) Your State Vocational Rehabilitation Agency tells us that—

(i) You have completed your training;

(ii) You have returned to work;

(iii) You are able to return to work; or

(6) Some one in a position to know of your physical or mental condition tells us that you are not disabled or that you have returned to work and it appears that the report could be susbtantially correct.

§ 404.1591 If your medical recovery was expected and you returned to work.

If your impairment was expected to improve and you returned to full-time work with no significant medical limitations, we may find that your disability ended in the month you returned to work. Unless there is evidence showing that your disability has not ended, we will use the medical and other evidence already in your file and the fact that you returned to full-time work without significant limitations to determine that you are able to engage in substantial gainful activity. (If your condition is not expected to improve, we will not ordinarily review your claim until the end of the trial work period, as described in § 404.1592).

Example: Evidence obtained during the processing of your claim showed that you had an impairment that was expected to improve about 18 months after your disability began. We, therefore, told you that your claim would be reviewed again at that time. However, before the time arrived for your scheduled medical re-examination, you told us that you had returned to work. We investigated immediately and found that, in the 16th month after your disability began, you returned to full-time work without any significant medical restrictions. Therefore, we would find that your disability ended in the first month you returned to full-time work.

§ 404.1592 The trial work period.

(a) *Definition of the trial work period.* The trial work period is a period during which you may test your ability to work and still be considered disabled. It begins and ends as described in paragraph (e) of this section. During this period, you may perform "services" (see paragraph (b) of this section) in as many as 9 months, but these months do not have to be consecutive. We will not consider those services as showing that your disability has ended until you have performed services in at least 9 months. However, after the trial work period has ended we will consider the work you did during the trial work period in determining whether your disability ended at any time after the trial work period.

(b) *What we mean by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If you are an employee, we will consider your work to be "services" if in any calendar year after 1978 you earn more than $75 a month ($50 a month is the figure for earnings in any calendar year before 1979). If you are self-employed, we will consider your activities "services" if in any calendar year after 1978, your net earnings are more than $75 a month, ($50 a month is the figure for earnings in any calendar year before 1979), or you work more than 15 hours a month in the business. We generally do not consider work to be "services" when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

(c) *Limitations on the number of trial work periods.* You may have only one trial work period during a period of entitlement to cash benefits.

(d) *Who is and is not entitled to a trial work period.* (1) Those who are receving disability insurance benefits or child's insurance benefits based on disability generally are entitled to a trial work period.

(2) You are not entitled to a trial work period if—(i) You are receiving benefits because you are a disabled widow, widower, or surviving divorced wife;

(ii) You are entitled to a period of disability but not to disability insurance cash benefits; or

(iii) You are receiving benefits in a second period of disability for which you did not have to complete a waiting period.

(e) *When the trial work period begins and ends.* The trial work period begins with the month in which you become entitled to disability insurance cash benefits or to child's cash benefits based on disability. It cannot begin before the month in which you file your application for benefits. It ends with the close of whichever of the following calendar months is the earlier:

(1) The 9th month (whether or not the months have been consecutive) in which you have performed services; or

(2) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are able to do substantial gainful activity.

§ 404.1593 We may ask you to help us determine if you are still disabled.

If you are entitled to cash benefits or if a period of disability has been established for you because you are disabled, you must, upon our request and reasonable notice, undergo consultative examinations and tests to help us find out if you are still disabled. You must also give us reports from your doctor or others who have treated you, as well as any other evidence that will help us make a disability determination. You must have a good reason for not giving us this information (see § 404.1594(c)).

§ 404.1594 Why and when we will find that your disability has ended.

(a) *General.* When the medical or other evidence in your file shows that your disability has ended, we will contact you and tell you that the evidence in your file shows that you are able to do substantial gainful activity and that your eligibility for cash benefits and for a period of disability will end. Before we stop your benefits or a period of disability, we will give you a chance to give us your reasons why we should not stop your benefits or your period of disability. Section 404.1595 describes your rights and the procedures we will follow. We may also stop payment of your benefits if you have not cooperated with us in getting information about your disability or if we cannot find you (see paragraph (c) of this section).

(b) *Disabled workers and persons disabled since childhood.* If you are entitled to disability cash benefits as a disabled worker or to child's insurance benefits, we will find that your disability ended in the earliest of the following months—(1) The month in which your impairment, as shown by current medical or other evidence, is such that you are able to do substantial gainful activity;

(2) The month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period); or

(3) The month in which you actually do substantial gainful activity (where you are not entitled to a trial work period).

(c) *If you do not cooperate with us.* If we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without a good reason) to do what we ask. The month in which your disability will be found to have ended will be the month in which you failed to do what we asked.

(d) *If we are unable to find you.* If there is a question about whether you

continue to be disabled and we are unable to find you to resolve the question, we will find that your disability has ended. The month it ends will be the first month in which the question arose and we could not find you.

(e) *Before we stop your benefits.* Before we stop your benefits or a period of disability, we will give you a chance to give us your reasons why we should not stop your benefits or your period of disability. Section 404.1595 describes your rights and the procedures we will follow.

§ 404.1595 When we determine that you are not now disabled.

(a) *When we will give you advance notice.* Except in those circumstances described in paragraph (d) of this section, we will give you advance notice when we have determined that you are not now disabled because the information we have conflicts with what you have told us about your disability. If your dependents are receiving benefits on your Social Security number and do not live with you, we will also give them advance notice. To give you advance notice, we will contact you by mail, telephone or in person.

(b) *What the advance notice will tell you.* We will give you a summary of the information we have. We will also tell you why we have determined that you are not now disabled, and will give you a chance to reply. If it is because of—

(1) *Medical reasons.* The advance notice will tell you what the medical information in your file shows;

(2) *Your work activity.* The advance notice will tell you what information we have about the work you are doing or have done, and why this work shows that you are not disabled; or

(3) *Your failure to give us information we need or do what we ask.* The advance notice will tell you what information we need and why we need it or what you have to do and why.

(c) *What you should do if you receive an advance notice.* If you agree with the advance notice, you do not need to take any action. If you desire further information or disagree with what we have told you, you should immediately write or telephone the State agency or the social security office that gave you the advance notice or you may visit any social security office. If you believe you are now disabled, you should tell us why. You may give us any additional or new information, including reports from your doctors, hospitals, employers or others, that you believe we should have. You should send these as soon as possible to the local social security office or to the office that gave you the advance notice. We consider 10 days to be enough time for you to tell us, although we will allow you more time if you need it. You will have to ask for additional time beyond 10 days if you need it.

(d) *When we will not give you advance notice.* We will not give you advance notice when we determine that you are not disabled if—

(1) We recently told you that the information we have shows that you are not now disabled, that we were gathering more information, and that your benefits will stop; or

(2) We are stopping your benefits because you told us you are not now disabled; or

(3) We recently told you that continuing your benefits would probably cause us to overpay you and you asked us to stop your benefits.

§ 404.1596 Circumstances under which we may suspend your benefits before we make a determination.

(a) *General.* Under some circumstances, we may stop your benefits before we make a determination. Generally, we do this when the information we have clearly shows you are not now disabled but we cannot determine when your disability ended. These situations are described in paragraph (b)(1) and other reasons are given in paragraph (b)(2) of this section. We refer to this as a suspension of benefits. Your benefits, as well as those of your dependents (regardless of where they receive their benefits), may be suspended. When we do this we will give you advance notice. (See § 404.1595.) We will contact your spouse and children if they are receiving benefits on your Social Security number, and the benefits are being mailed to an address different from your own.

(b) *When we will suspend your benefits.* (1) *You are not now disabled.* We will suspend your benefits if the information we have clearly shows that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when—(i) New medical or other information clearly shows that you are able to do substantial gainful activity and your benefits should have stopped more than 2 months ago;

(ii) You completed a 9-month period of trial work more than 2 months ago and you are still working;

(iii) At the time you filed for benefits your condition was expected to improve and you were expected to be able to return to work. You subsequently did return to work more than 2 months ago with no significant medical restrictions; or

(iv) You are not entitled to a trial work period and you are working.

(2) *Other reasons.* We will also suspend your benefits if—(i) You have failed to respond to our request for additional medical or other evidence and we are satisfied that you received our request and our records show that you should be able to respond.

(ii) We are unable to locate you and your checks have been returned by the Post Office as undeliverable; or

(iii) You refuse to accept vocational rehabilitation services without a good reason. Section 404.422 gives you examples of good reasons for refusing to accept vocational rehabilitation services.

(c) *When we will not suspend your cash benefits.* We will not suspend your cash benefits if—(1) the evidence in your file does not clearly show that you are not disabled;

(2) We have asked you to furnish additional information; or

(3) You have become disabled by another impairment.

§ 404.1597 After we make a determination that you are not now disabled.

If we make a determination that you are not now disabled, your benefits will stop. You will receive a formal written notice telling you why you are not disabled and the month your benefits should stop. If your spouse and children are receiving benefits on your Social Security number, we will also stop their benefits and tell them why. The notices will also explain your right to reconsideration if you disagree with our determination.

§ 404.1598 If you become disabled by another impairment.

If a new, severe impairment begins in or before the month in which your last impairment ends, we will find that your disability is continuing. The new impairment need not be expected to last 12 months or to result in death, but it must be severe enough to keep you from doing substantial gainful activity.

Appendix 1.—Listing of Impairments

Part A

Criteria applicable to individuals age 18 and over and to children under age 18 where criteria are appropriate.

Sec.

1.00 Musculoskeletal system.
2.00 Special sense and speech.
3.00 Respiratory system.
4.00 Cardiovascular system.
5.00 Digestive system.
6.00 Genito-urinary system.
7.00 Hemic and lymphatic system.
8.00 Skin.

9.00 Endocrine system.
10.00 Multiple body systems.
11.00 Neurological.
12.00 Mental disorders.
13.00 Neoplastic diseases—malignant.

1.00 Musculoskeletal System

A. *Loss of function* may be due to amputation or deformity. Pain may be an important factor in causing functional loss, but it must be associated with relevant abnormal signs or laboratory findings. Evaluations of musculoskeletal impairments should be supported where applicable by detailed descriptions of the joints, including ranges of motion, condition of the musculature, sensory or reflex changes, circulatory deficits, and X-ray abnormalities.

B. *Disorders of the spine,* associated with vertebrogenic disorders as in 1.05C, result in impairment because of distortion of the bony and ligamentous architecture of the spine or impingement of a herniated nucleus pulposus or bulging annulus on a nerve root. Impairment caused by such abnormalities usually improves with time or responds to treatment. Appropriate abnormal physical findings must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that severe impairment will last for a continuous period of 12 months. This may occur in cases with unsuccessful prior surgical treatment.

Evaluation of the impairment caused by disorders of the spine requires that a clinical diagnosis of the entity to be evaluated first must be established on the basis of adequate history, physical examination, and roentgenograms. The specific findings stated in 1.05C represent the requirements for the level of severity of that impairment; these findings, by themselves, are not intended to represent the basis for establishing the clinical diagnosis. Furthermore, while neurological examination findings are required, they are not to be interpreted as a basis for evaluating the severity of any neurological impairment. Neurological impairments are to be evaluated under 11.00–11.19.

The history must include a detailed description of the character, location, and radiation of pain; mechanical factors which incite and relieve pain; prescribed treatment, including type, dose, and frequency of analgesic; and typical daily activities. Care must be taken to ascertain that the reported examination findings are consistent with the individual's daily activities.

There must be a detailed description of the orthopedic and neurologic examination findings. The findings should include a description of gait, limitation of movement of the spine given quantitatively in degrees from the vertical position, motor and sensory abnormalities, muscle spasm, and deep tendon reflexes. Observations of the individual during the examination should be reported; e.g., how he or she gets on and off the examining table. Inability to walk on heels or toes, to squat, or to arise from a squatting position, where appropriate, may be considered evidence of significant motor loss. However, a report of atrophy is not acceptable as evidence of significant motor loss without circumferential measurements of both thighs and lower legs (or upper or lower arms) at a stated point above and below the knee or elbow given in inches or centimeters. A specific description of atrophy of hand muscles is acceptable without measurements of atrophy but should include measurements of grip strength.

These physical examination findings must be determined on the basis of objective observations during the examination and not simply a report of the individual's allegation, e.g., he says his leg is weak, numb, etc. Alternative testing methods should be used to verify the objectivity of the abnormal findings, e.g., a seated straight-leg raising test in addition to a supine straight-leg raising test. Since abnormal findings may be intermittent, their continuous presence over a period of time must be established by a record of ongoing treatment. Neurological abnormalities may not completely subside after surgical or nonsurgical treatment, or with the passage of time. Residual neurological abnormalities, which persist after it has been determined clinically or by direct surgical or other observation that the ongoing or progressive condition is no longer present, cannot be considered to satisfy the required findings in 1.05C.

Where surgical procedures have been performed, documentation should include a copy of the operative note and available pathology reports.

Electrodiagnostic procedures and myelography may be useful in establishing the clinical diagnosis, but do not constitute alternative criteria to the requirements in 1.05C.

C. *After maximum benefit from surgical therapy* has been achieved in situations involving fractures of an upper extremity (see 1.12), or soft tissue injuries of a lower or upper extremity (see 1.13), i.e., there have been no significant changes in physical findings or X-ray findings for any 6-month period after the last definitive surgical procedure, evaluation should be made on the basis of demonstrable residuals.

D. *Major joints* as used herein refer to hip, knee, ankle, shoulder, elbow, or wrist and hand. (Wrist and hand are considered together as one major joint.)

E. *The measurements of joint motion are* based on the techniques described in the "Joint Motion Method of Measuring and Recording," published by the American Academy of Orthopedic Surgeons in 1965, or the "Guides to the Evaluation of Permanent Impairment—The Extremities and Back" (Chapter I); American Medical Association, 1971.

1.01 Category of Impairments, Musculoskeletal

1.02 *Active rheumatoid arthritis and other inflammatory arthritis.* With both A and B:

A. Persistent joint pain, swelling, and tenderness involving multiple joints with signs of joint inflammation (heat, swelling, tenderness) despite therapy for at least 3 months, and activity expected to last over 12 months; and

B. Corroboration of diagnosis at some point in time by either:

1. Postive serologic test for rheumatoid factor; or

2. Antinuclear antibodies; or

3. Elevated sedimentation rate.

1.03 *Arthritis of a major weight-bearing joint (due to any cause)* with limitation of motion and enlargement or effusion in the affected joint, as well as a history of joint pain and stiffness. With:

A. Gross anatomical deformity such as subluxation, contracture, bony or fibrous ankylosis, or instability; or

B. Ankylosis of the hip outside of the position of function (i.e., at less than 20° or more than 30° of flexion measured from the neutral position) and X-ray evidence of either joint space narrowing with osteophytosis or bony destruction (with erosions or cysts); or

C. Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint and return to full weight-bearing status did not occur, or is not expected to occur, within 12 months of onset.

1.04 *Arthritis of one major joint in each of the upper extremities (due to any cause)* with limitation of motion and enlargement or effusion in the affected joints as well as a history of joint pain and stiffness and X-ray evidence of either joint space narrowing with osteophytosis or bony destruction (with erosions or cysts). With:

A. Abduction of both arms at the shoulders, including scapular motion, restricted to less than 90 degrees; or

B. Gross anatomical deformity such as subluxation, contracture, bony or fibrous ankylosis, joint instability, or ulnar deviation.

1.05 *Disorders of the spine:*

A. Arthritis manifested by ankylosis or fixation of the cervical or dorsolumbar spine at 30° or more of flexion measured from the neutral position, with X-ray evidence of:

1. Calcification of the anterior and lateral ligaments; or

2. Bilateral ankylosis of the sacroiliac joints with abnormal apophyseal articulations; or

B. Osteoporosis, generalized (established by X-ray) manifested by pain and limitation of back motion and paravertebral muscle spasm with X-ray evidence of either:

1. Compression fracture of a vertebral body with loss of at least 50 percent of the estimated height of the vertebral body prior to the compression fracture, with no intervening direct traumatic episode; or

2. Multiple fractures of vertebrae with no intervening direct traumatic episode; or

C. Other vertebrogenic disorders (e.g., herniated nucleus pulposus, spinal stenosis) with the following persisting for at least 3 months despite prescribed therapy and expected to last 12 months. With both 1 and 2:

1. Pain, muscle spasm, and significant limitation of motion in the spine; and

2. Appropriate radicular distribution of significant motor loss with muscle weakness and sensory and reflex loss.

1.08 *Osteomyelitis (established by X-ray):*

A. Located in the pelvis, vertebra, femur, tibia, or a major joint of an upper or lower extremity, with persistent activity or occurrence of at least two episodes of acute activity within a 5-month period prior to adjudication, manifested by local inflammatory, and systemic signs and laboratory findings (e.g., heat, redness, swelling, drainage, leucocytosis, or increased sedimentation rate); or

B. Multiple localizations and systemic manifestations as in A above.

1.09 *Amputation or anatomical deformity of (i.e., loss of major function due to degenerative changes associated with vascular or neurological deficits, traumatic loss of muscle mass or tendons and X-ray evidence of bony ankylosis at an unfavorable angle, joint subluxation or instability):*

A. Both hands; or

B. Both feet; or

C. One hand and one foot.

1.10 *Amputation of one lower extremity (at or above the tarsal region):*

A. Hemipelvectomy or hip disarticulation; or

B. Amputation at or above the tarsal region due to peripheral vascular disease or diabetes mellitus; or

C. Inability to use a prosthesis effectively, without obligatory assistive devices, due to one of the following:

1. Vascular disease; or

2. Neurological complications (e.g., loss of position sense); or

3. Stump too short or stump complications persistent, or are expected to persist, for at least 12 months from onset; or

4. Disorder of contralateral lower extremity causing mobility restrictions.

1.11 *Fracture of the femur, tibia, tarsal bone, or pelvis* with solid union not evident on X-ray and not clinically solid, when such determination is feasible, and return to full weight-bearing status did not occur or is not expected to occur within 12 months of onset.

1.12 *Fractures of an upper extremity* with non-union of a fracture of the shaft of the humerus, radius, or ulna under continuing surgical management directed toward restoration of functional use of the extremity and such function was not restored or expected to be restored within 12 months after onset.

1.13 *Soft tissue injuries of an upper or lower extremity* requiring a series of staged surgical procedures within 12 months after onset for salvage and/or restoration of major function of the extremity, and such major function was not restored or expected to be restored within 12 months after onset.

2.00 Special Senses and Speech

A. *Ophthalmology*

1. *Causes of impairment.* Diseases or injury of the eyes may produce loss of central or peripheral vision. Loss of central vision results in inability to distinguish detail and prevents reading and fine work. Loss of peripheral vision restricts the ability of an individual to move about freely. The extent of impairment of sight should be determined by visual testing.

2. *Central visual acuity.* A loss of central visual acuity may be caused by impaired distant and/or near vision. However, for an individual to meet the level of severity described in 2.02 and 2.04, only the remaining central visual acuity for distance of the better eye with best correction based on the Snellen test chart measurement may be used. Correction obtained by special visual aids (e.g., contact lenses) will be considered if the individual has the ability to wear such aids.

3. *Field of vision.* Impairment of peripheral vision may result if there is contraction of the visual fields. The contraction may be either symmetrical or irregular. The extent of the remaining peripheral visual field will be determined by usual perimetric methods at a distance of 330 mm. under illumination of not less than 7 foot-candles. Measurements obtained on comparable perimetric devices may be used; this does not include the use of tangent screen measurements. For the phakic eye (the eye with a lens), a 3 mm. white disc target will be used, and for the aphakic eye (the eye without a lens), a 6 mm. white disc target will be used. In neither instance should corrective lenses be worn during the examination but if they have been used, this fact must be stated.

Field measurements must be accompanied by notated field charts, a description of the type and size of the target and the test distance. Tangent screen visual fields are not acceptable as a measurement of peripheral field loss.

Where the loss is predominantly in the lower visual fields, a system such as the weighted grid scale for perimetric fields described by B. Esterman (see Grid for Scoring Visual Fields, II. Perimeter, *Archives of Ophthalmology*, 79:400, 1968) may be used for determining whether the visual field loss is comparable to that described in Table 2.

4. *Muscle function.* Paralysis of the third cranial nerve producing ptosis, paralysis of accommodation, and dilation and immobility of the pupil may cause significant visual impairment. When all the muscles of the eye are paralyzed including the iris and ciliary body (total ophthalmoplegia), the condition is considered a severe impairment provided it is bilateral. A finding of severe impairment based primarily on impaired muscle function must be supported by a report of an actual measurement of ocular motility.

5. *Visual efficiency.* Loss of visual efficiency may be caused by disease or injury resulting in a reduction of central visual acuity or visual field. The visual efficiency of one eye is the product of the percentage of central visual efficiency and the percentage of visual field efficiency. (See Tables No. 1 and 2, following 2.09.)

6. *Special situations.* Aphakia represents a visual handicap in addition to the loss of central visual acuity. The term monocular aphakia would apply to an individual who has had the lens removed from one eye, and who still retains the lens in his other eye, or to an individual who has only one eye which is aphakic. The term binocular aphakia would apply to an individual who has had both lenses removed. In cases of binocular aphakia, the central efficiency of the better eye will be accepted as 75 percent of its value. In cases of monocular aphakia, where the better eye is aphakic, the central visual efficiency will be accepted as 50 percent of its value. (If an individual has binocular aphakia, and the central visual acuity in the poorer eye can be corrected only to 20/200, or less, the central visual efficiency of the better eye will be accepted as 50 percent of its value.)

Ocular symptoms of systemic disease may or may not produce a disabling visual impairment. These manifestations should be evaluated as part of the underlying disease entity by reference to the particular body system involved.

7. *Statutory blindness.* The term "statutory blindness" refers to the degree of visual impairment which defines the term "blindness" in the Social Security Act. Both 2.02 and 2.03 A and B denote statutory blindness.

B. *Otolaryngology*

1. *Hearing impairment.* Hearing ability should be evaluated in terms of the person's ability to hear and distinguish speech.

Loss of hearing can be quantitatively determined by an audiometer which meets the standards of the American National Standards Institute (ANSI) for air and bone conducted stimuli (i.e., ANSI S 3.6–1969 and ANSI S 3.13–1972, or subsequent comparable revisions) and performing all hearing measurements in an environment which meets the ANSI standard for maximal permissible background sound (ANSI S 3.1–1977).

Speech discrimination should be determined using a standardized measure of speech discrimination ability in quiet at a test presentation level sufficient to ascertain maximum discrimination ability. The speech discrimination measure (test) used, and the level at which testing was done, must be reported.

Hearing tests should be preceded by an otolaryngologic examination and should be performed by or under the supervision of an otolaryngologist or audiologist qualified to perform such tests.

In order to establish an independent medical judgment as to the level of severity in a claimant alleging deafness, the following examinations should be reported: Otolaryngologic examination, pure tone air and bone audiometry, speech reception threshold (SRT), and speech discrimination testing. A copy of reports of medical examination and audiologic evaluations must be submitted.

Cases of alleged "deaf mutism" should be documented by a hearing evaluation. Records obtained from a speech and hearing rehabilitation center or a special school for the deaf may be acceptable, but if these reports are not available, or are found to be inadequate, a current hearing evaluation should be submitted as outlined in the preceding paragraph.

2. *Vertigo associated with disturbances of labyrinthine-vestibular function, including Meniere's disease.* These disturbances of balance are characterized by an hallucination of motion or loss of position sense and a sensation of dizziness which may be constant or may occur in paroxysmal attacks. Nausea, vomiting, ataxia, and incapacitation are frequently observed, particularly during the acute attack. It is important to differentiate the report of rotary vertigo from that of "dizziness" which is described as light-headedness, unsteadiness, confusion, or syncope.

Meniere's disease is characterized by paroxysmal attacks of vertigo, tinnitus, and fluctuating hearing loss. Remissions are unpredictable and irregular, but may be longlasting; hence, the severity of impairment is best determined after prolonged observation and serial reexaminations.

The diagnosis of a vestibular disorder requires a comprehensive neuro-

otolaryngologic examination with a detailed description of the vertiginous episodes, including notation of frequency, severity, and duration of the attacks. Pure tone and speech audiometry with the appropriate special examinations, such as Bekesy audiometry, are necessary. Vestibular function is assessed by positional and caloric testing, preferably by electronystagmography. When polytograms, contrast radiography, or other special tests have been performed, copies of the reports of these tests should be obtained, in addition to reports of skull and temporal bone X-rays.

3. *Organic loss of speech.* Glossectomy or laryngectomy or cicatricial laryngeal stenosis due to injury or infection results in loss of voice production by normal means. In evaluating organic loss of speech (see 2.09), ability to produce speech by any means includes the use of mechanical or electronic devices. Impairment of speech due to neurologic disorders should be evaluated under 11.00–11.19.

2.01 Category of Impairments, Special Senses and Speech

2.02 *Impairment of central visual acuity.* Remaining vision in the better eye after best correction is 20/200 or less.

2.03 *Contraction of peripheral visual fields in the better eye.*

A. To 10° or less from the point of fixation; or

B. So the widest diameter subtends an angle no greater than 20°; or

C. To 20 percent or less visual field efficiency.

2.04 *Loss of visual efficiency.* Visual efficiency of better eye after best correction 20 percent or less. (The percent of remaining visual efficiency = the product of the percent of remaining central visual efficiency and the percent of remaining visual field efficiency.)

2.05 *Complete homonymous hemianopsia* (with or without macular sparing). Evaluate under 2.04.

2.06 *Total bilateral ophthalmoplegia.*

2.07 *Disturbance of labyrinthine-vestibular function (including Meniere's disease),* characterized by a history of frequent attacks of balance disturbance, tinnitus, and progressive loss of hearing. With both A and B:

A. Disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests; and

B. Hearing loss established by audiometry.

2.08 *Hearing impairments* (hearing not restorable by a hearing aid) manifested by:

A. Average hearing threshold sensitivity for air conduction of 90 decibels or greater, and for bone conduction to corresponding maximal levels, in the better ear, determined by the simple average of hearing threshold levels at 500, 1000, and 2000 hz. (see 2.00B1); or

B. Speech discrimination scores of 40 percent or less in the better ear.

2.09 *Organic loss of speech* due to any cause with inability to produce by any means speech which can be heard, understood, and sustained.

Table No. 1.—*Percentage of central visual efficiency corresponding to central visual acuity notations for distance in the phakic and aphakic eye (better eye)*

Snellen		Percent central visual efficiency		
English	Metric	Phakic [1]	Aphakic monocular [2]	Aphakic binocular [3]
20/16	6/5	100	50	75
20/20	6/6	100	50	75
20/25	6/7.5	95	47	71
20/32	6/10	90	45	67
20/40	6/12	85	42	64
20/50	6/15	75	37	56
20/64	6/20	65	32	49
20/80	6/24	60	30	45
20/100	6/30	50	25	37
20/125	6/38	40	20	30
20/160	6/48	30	.....	22
20/200	6/60	20	.....	.....

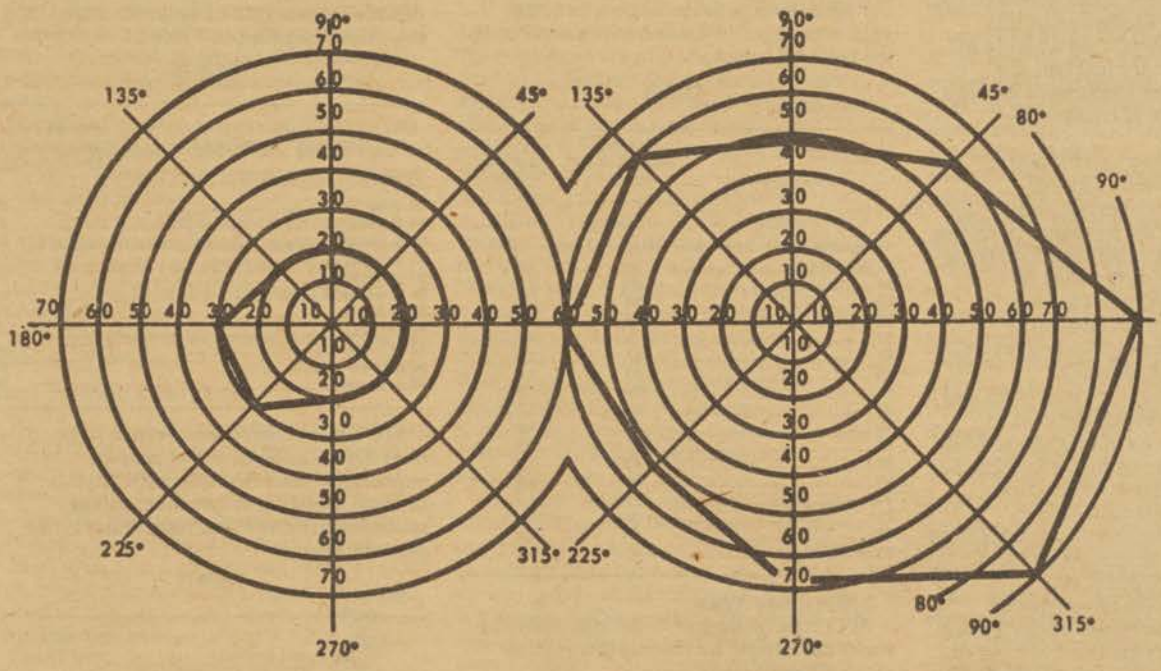
Column and Use

[1] Phakic.—1. A lens is present in both eyes. 2. A lens is present in the better eye and absent in the poorer eye. 3. A lens is present in one eye and the other eye is enucleated.

[2] Monocular.—1. A lens is absent in the better eye and present in the poorer eye. 2. The lenses are absent in both eyes; however, the central visual acuity in the poorer eye after best correction is 20/200 or less. 3. A lens is absent from one eye and the other eye is enucleated.

[3] Binocular.—1. The lenses are absent from both eyes and the central visual acuity in the poorer eye after best correction is greater than 20/200.

Table No. 2.—*Chart of visual field showing extent of normal field and method of computing percent of visual field efficiency*



1. Diagram of right eye illustrates extent of normal visual field as tested on standard perimeter at 3/330 (3 mm. white disc at a distance of 330 mm.) under 7 foot-candles illumination. The sum of the eight principal meridians of this field total 500°.

2. The percent of visual field efficiency is obtained by adding the number of degrees of the eight principal meridians of the contracted field and dividing by 500. Diagram of left eye illustrates visual field contracted to 30° in the temporal and down and out meridians and to 20° in the remaining six meridians. The percent of visual field efficiency of this field is: $6\times20+2\times30=180\div500=0.36$ or 36 percent remaining visual field efficiency, or 64 percent loss.

3.00 Respiratory System

A. *Causes of impairment.* The impairment produced by respiratory disease usually results from chronic recurrent infection or from pulmonary insufficiency or a combination of these factors.

B. *Pulmonary tuberculosis will be evaluated* on the basis of the resulting impairment to pulmonary function. Evidence of infectious or active pulmonary tuberculosis such as positive cultures, increasing lesions, or cavitation is not, by itself, a basis for determining that an individual has a severe impairment which is expected to last 12 months. However, if these factors are abnormally persistent, they should not be ignored. For example, in those unusual cases where there is evidence of persistence of pulmonary infection caused by mycobacteria for a period closely approaching 12 consecutive months, the clinical findings, complications, treatment considerations, and prognosis must be carefully assessed to determine whether, despite the absence of impairment of pulmonary function, the individual has a severe impairment that can be expected to last for 12 consecutive months.

C. *When a respiratory impairment is episodic in nature,* as may occur in complications of bronchiectasis and asthmatic bronchitis, the frequency of severe episodes despite prescribed treatment is the criterion for determining the level of impairment. Documentation for episodic asthma should include the hospital or emergency room records indicating the dates of treatment, clinical findings on presentation, what treatment was given and for what period of time, and the clinical response. Severe attacks of episodic asthma, as listed in § 3.03B, are defined as prolonged episodes lasting at least several hours, requiring intensive treatment such as intravenous drug administration or inhalation therapy in a hospital or emergency room.

D. *Documentation of pulmonary insufficiency.* The results of ventilatory function studies for evaluation under Tables I, II, and IV should be expressed in liters or liters per minute. The reported 1 second forced expiratory volume (FEV_1) should represent the largest of at least three attempts. One satisfactory maximum voluntary ventilation (MVV) is sufficient. The MVV should represent the observed value and should not be calculated from FEV_1. These studies should be repeated after administration of a nebulized bronchodilator unless the prebronchodilator values are 80 percent or more of predicted normal values or the use of bronchodilators is contraindicated. The values in Tables I, II, and IV assume that the ventilatory function studies were not performed in the presence of wheezing or other evidence of bronchospasm or, if these were present at the time of the examination, that the studies were repeated after administration of a bronchodilator. Ventilatory function studies performed in the presence of bronchospasm, without use of bronchodilators, cannot be found to meet the requisite level of severity in Tables I, II, and IV.

The appropriately labeled spirometric tracing, showing distance per second on the abscissa and the distance per liter on the ordinate, must be incorporated in the file. The FEV_1 must be recorded at a speed of at least 20 mm. per second. Calculation of the FEV_1 from a flow volume loop is not acceptable. The recording device must provide a volume excursion of at least 10 mm. per liter. The MVV should be represented by the tidal excursions measured over a 10-to-15 second interval. Tracings showing only cumulative volume for the MVV are not acceptable. The height of the individual must be recorded. Studies should not be performed during or soon after an acute respiratory illness. A statement should be made as to the individual's ability to understand the directions, and cooperate in performing the test.

3.01 Category of Impairments, Respiratory

3.02 *Chronic obstructive airway disease (due to any cause)* with spirometric evidence of airway obstruction demonstrated by MVV and FEV_1 both equal to, or less than, the values specified in Table I, corresponding to the person's height.

Table I

Height (inches)	MVV (MBC) equal to or and less than	FEV_1 equal to or less than
	L./Min.	L
57 or less	32	1.0
58	33	1.0
59	34	1.0
60	35	1.1
61	36	1.1
62	37	1.1
63	38	1.1
64	39	1.2
65	40	1.2
66	41	1.2
67	42	1.3
68	43	1.3
69	44	1.3
70	45	1.4
71	46	1.4
72	47	1.4
73 or more	48	1.4

3.03 *Asthma.* With:

A. Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive airway disease in 3.02; or

B. Episodes of severe attacks (see 3.00C), in spite of prescribed treatment, occurring at least once every 2 months, or on an average of at least 6 times a year and prolonged expiration with wheezing or rhonchi between attacks.

3.04 *Diffuse pulmonary fibrosis (sarcoidosis, Hamman-Rich syndrome, idiopathic interstitial fibrosis, and similar diffuse fibroses substantiated by chest X-ray or tissue diagnosis. This category does not include cases of bronchitis or emphysema with incidental scarring or scattered parenchymal fibrosis on X-ray).* With:

A. Total vital capacity equal to, or less than, values specified in Table II below corresponding to the person's height.

Table II

Height (inches)	V.C. equal to or less than (L.)
57 or less	1.2
58	1.3
59	1.3
60	1.4
61	1.4
62	1.5
63	1.5
64	1.6
65	1.6
66	1.7
67	1.7
68	1.8
69	1.8
70	1.9
71	1.9
72	2.0
73 or more	2.0

or

B. Diffusing capacity of the lungs for carbon monoxide less than 6 ml./mm. Hg./min. (steady-state methods) or less than 9 ml./mm. Hg./min. (single-breath methods) or less than 30 percent of predicted normal. (All methods—actual values and predicted normal values for the method used should be reported); or

C. Arterial oxygen tension (pO_2) at rest and simultaneously determined arterial carbon dioxide tension (pCO_2) equal to, or less than, the values specified in Table III.

Table III

Arterial pCO_2 (mm. Hg) *and*	Arterial (pO_2) equal to or less than (mm. Hg)
30 or below	65
31 or below	64
32 or below	63
33 or below	62
34 or below	61
35 or below	60
36 or below	59
37 or below	58
38 or below	57
39 or below	56
40 or above	55

3.05 *Other restrictive ventilatory disorders (e.g., kyphoscoliosis, thoracoplasty, pulmonary resection)* with total vital capacity equal to, or less than, values specified in Table IV corresponding to the person's height.

Table IV

Height (inches)	V.C. equal to or less than (L.)
59 or less	1.0
60	1.1
61	1.1
62	1.1
63	1.1
64	1.2
65	1.2
66	1.2
67	1.3
68	1.3

Table IV—Continued

Height (inches)	V.C. equal to or less than (L.)
69	1.3
70 or more	1.4

3.06 *Pneumoconiosis (demonstrated by X-ray evidence).* With:

A. Nodular or focal fibrosis (non-conglomerative). Evaluate under the criteria for chronic obstructive airway disease in 3.02; or

B. Interstitial or disseminated fibrosis or conglomerative disease. Evaluate under the criteria for pulmonary fibrosis in 3.04; or

C. Where A and B are mixed or cannot be differentiated—evaluate under the criteria in 3.02 or 3.04.

3.07 *Bronchiectasis (demonstrated by radio-opaque material).* With:

A. Episodes of acute bronchitis or pneumonia or hemoptysis (more than blood streaked sputum) occurring at least once every 2 months; or

B. Impairment of pulmonary function due to extensive disease should be evaluated under the criteria for chronic obstructive airway disease in 3.02 or where extensive fibrosis is evident on chest film, under the criteria for pulmonary fibrosis in 3.04.

3.08 *Pulmonary tuberculosis (caused by M. tuberculosis of pathogenic atypical mycobacteria).* Impairment of pulmonary function due to extensive disease should be evaluated under the criteria in 3.02, 3.04, or 3.05.

3.09 *Mycotic infection of lung.* With:

A. Culture of specific organisms from sputa and serial X-ray evidence of increasing or decreasing extent of lesion, both persisting for at least 3 months despite prescribed therapy; or

B. Culture of specific organisms from sputa and current X-ray evidence of a lesion and episodes of hemoptysis occuring at least once every 2 months; or

C. Impairment of pulmonary function due to extensive disease should be evaluated under the criteria in 3.02, 3.04, or 3.05.

3.11 *Cor pulmonale.* Evaluate under the criteria for 4.02D.

3.12 *Pleurocutaneous fistula* with persistent purulent drainage.

4.00 Cardiovascular System

A. *Severe cardiac impairment* results from one or more of three consequences of heart disease: (1) congestive heart failure; (2) ischemia (with or without necrosis) of heart muscle; (3) conduction disturbances and-or arrhythmias resulting in cardiac syncope.

With diseases of arteries and veins, severe impairment may result from disorders of the vasculature in the central nervous system, eyes, kidneys, extremities, and other organs.

The criteria for evaluating impairment resulting from heart disease or diseases of the blood vessels are based on symptoms, physical signs and pertinent laboratory findings.

B. *Congestive heart failure* is considered in the Listing under one category whatever the etiology (i.e., arteriosclerotic, hypertensive, rheumatic, pulmonary, congenital, or other organic heart disease). Congestive heart failure is not considered to have been established for the purpose of 4.02 unless there is evidence of vascular congestion such as hepatomegaly or peripheral or pulmonary edema which is consistent with the clinical diagnosis. (Radiological description of vascular congestion, unless supported by appropriate clinical evidence, should not be construed as pulmonary edema.) The findings of vascular congestion need not be present at the time of adjudication (except for 4.02A), but must be causally related to the current episode of severe impairment. The findings other than vascular congestion must be persistent.

Other congestive, ischemic, or restrictive (obstructive) heart disease such as caused by cardiomyopathy or aortic stenosis may result in severe impairment due to congestive heart failure, rhythm disturbances, or ventricular outflow obstruction in the absence of left ventricular enlargement as described in 4.02B1. However, the ECG criteria as defined in 4.02B2 should be fulfilled. Clinical findings such as symptoms of dyspnea, fatigue, rhythm disturbances, etc. should be documented and the diagnosis confirmed by echocardiography or at cardiac catheterization.

C. *Hypertensive vascular disease* does not result in severe impairment unless it causes severe damage to one or more of four end organs: heart, brain, kidneys, or eyes (retinae). The presence of such damage must be established by appropriate abnormal physical signs and laboratory findings as specified in 4.02 or 4.04, or for the body system involved.

D. *Ischemic heart disease* may result in severe impairment due to chest pain. Description of the pain must contain the clinical characteristics as discussed under 4.00E. In addition, the clinical impression of chest pain of cardiac origin must be supported by objective evidence as described under 4.00 F, G, or H.

E. *Chest pain of cardiac origin* is considered to be pain which is precipitated by effort and promptly relieved by sublingual nitroglycerin or rapid-acting nitrates or rest. The character of the pain is classically described as crushing, squeezing, burning, or oppressive pain located in the chest. Excluded is sharp, sticking or rhythmic pain. Pain occurring on exercise should be described specifically as to usual inciting factors (kind and degree), character, location, radiation, duration, and response to nitroglycerin or rest.

So-called "anginal equivalent" locations manifested by pain in the throat, arms, or hands have the same validity as the chest pain described above. Status anginosus and variant angina of the Prinzmetal type (e.g., rest angina with transitory ST elevation on electrocardiogram) will be considered to have the same validity as classical angina pectoris as described above. Shortness of breath as an isolated finding should not be considered as an anginal equivalent.

Chest pain that appears to be of cardiac origin may be caused by noncoronary conditions. Evidence for the latter should be actively considered in determining whether the chest pain is of cardiac origin. Among the more common conditions which may masquerade as angina are gastrointestinal tract lesions such as biliary tract disease, esophagitis, hiatal hernia, peptic ulcer, and pancreatitis; and musculoskeletal lesions such as costochondritis and cervical arthritis.

F. *Documentation of electrocardiography.*

1. *Electrocardiograms obtained at rest* must be submitted in the original or a legible copy of a 12-lead tracing, appropriately labeled, with the standardization inscribed on the tracing. Alteration in standardization of specific leads (such as to accommodate large QRS amplitudes) must be shown on those leads.

The effect of drugs, electrolyte imbalance, etc., should be considered as possible noncoronary causes of ECG abnormalities, especially those involving the ST segment. If needed and available, pre-drug (especially predigitalis) tracings should be obtained.

The term "ischemic" is used in 4.04 to describe a pathologic ST deviation. Nonspecific repolarization changes should not be confused with ischemic configurations or a current of injury.

Computer interpretations without the original or legible copies of the ECG tracings are not acceptable.

2. *Electrocardiograms obtained in conjunction with exercise tests* must include the original tracings or a legible copy of appropriate leads obtained before, during, and after exercise. Test control tracings, taken before exercise in the upright position, must be obtained. An ECG after 20 seconds of vigorous hyperventilation should be obtained. A tracing should be taken at approximately 5 METs of exercise (treadmill speed of 1.7 miles per hour at a 10 percent grade as in Stage I of the Bruce protocol) and at the time the ECG becomes abnormal according to the criteria in 4.04A. The time of onset of these abnormal changes must be noted, and the ECG tracing taken at that time should be obtained. Exercise histograms without the original tracings or legible copies are not acceptable.

Whenever electrocardiographically documented stress test data are submitted, irrespective of the type, the standardization must be inscribed on the tracings and the strips must be labeled appropriately, indicating the times recorded. The degree of exercise achieved, the blood pressure levels during the test, and any reason for terminating the test should be included in the report.

G. *Exercise testing.*

1. *When to purchase.* Since the results of a treadmill exercise test are the primary basis for adjudicating claims under 4.04, they should be included in the file whenever they have been performed. There are also circumstances under which it will be appropriate to purchase exercise tests. Generally, these are limited to claims involving chest pain which is considered to be of cardiac origin but without corroborating ECG or other evidence of ischemic heart disease.

Exercise tests should not be purchased in the absence of alleged chest pain of cardiac origin. Even in the presence of an allegation of chest pain of cardiac origin, an exercise test should not be purchased where full

development short of such a purchase reveals that the impairment meets or equals any Listing or the claim can be adjudicated on some other basis.

2. *Methodology.* When an exercise test is purchased, it should be a treadmill type using a continuous progressive multistage regimen (as typified by the Bruce protocol). The targeted heart rate should be not less than 85 percent of the maximum predicted heart rate unless it becomes hazardous to exercise to that heart rate or becomes unnecessary because the ECG meets the criteria in 4.04A at a lower heart rate. Beyond these requirements, it is prudent to accept the methodology of a qualified, competent test facility. In any case, a precise description of the protocol that was followed must be provided.

3. *Limitations of exercise testing.* Exercise testing should not be purchased for individuals who have the following: unstable progressive angina pectoris; congestive heart failure; uncontrolled serious arrhythmias (including uncontrolled auricular fibrillation); second or third-degree heart block; Wolff-Parkinson-White syndrome; uncontrolled severe hypertension; severe aortic stenosis; severe pulmonary hypertension; dissecting or ventricular aneurysms; acute illness; limiting neurological or musculoskeletal impairments, or for individuals on medication where performance of stress testing may constitute a significant risk.

The presence of noncoronary or nonischemic factors which may influence the ECG response to exercise include hypokalemia, hyperventilation, vasoregulatory asthenia, significant anemia, left bundle branch block, and other heart disease, particularly valvular.

Digitalis may cause ST segment abnormalities at rest, during, and after exercise. Digitalis-related ST depression, present at rest, may become accentuated and result in false interpretations of the ECG taken during or after exercise test.

4. *Evaluation.* Where the evidence includes the results of a treadmill exercise test, this evidence is the primary basis for adjudicating claims under 4.04. For purposes of the social security disability program, treadmill exercise testing will be evaluated on the basis of the level at which the test becomes positive in accordance with the ECG criteria in § 4.04A. However, the significance of findings of a treadmill exercise test must be considered in light of the clinical course of the disease which may have occurred subsequent to performance of the exercise test. The criteria in 4.04B are not applicable if there is documentation of an acceptable treadmill exercise test. If there is no evidence of a treadmill exercise test or if the test is not acceptable, the criteria in 4.04B should be used. The level of exercise is considered in terms of multiples of METs (metabolic equivalent units). One MET is the basal O_2 requirement of the body in an inactive state, sitting quietly. It is considered by most authorities to be approximately 3.5 ml. O_2/kg./min.

H. *Angiographic evidence.*

1. *Coronary arteriography.* This procedure is not to be purchased by the Social Security Administration. Should the results of such testing be available, the report should be considered as to the quality and kind of data provided and its applicability to the requirements of the Listing of Impairments. A copy of the report of the catheterization and ancillary studies should be obtained. The report should provide information as to the technique used, the method of assessing coronary lumen diameter, and the nature and location of any obstructive lesions.

It is helpful to know the method used, the number of projections, and whether selective engagement of each coronary vessel was satisfactorily accomplished. It is also important to know whether the injected vessel was entirely and uniformly opacified, thus avoiding the artifactual appearance of narrowing or an obstruction.

Coronary artery spasm induced by intracoronary catheterization is not to be considered as evidence of ischemic heart disease.

Estimation of the functional significance of an obstructive lesion may also be aided by description of how well the distal part of the vessel is visualized. Some patients with severe proximal coronary atherosclerosis have well-developed large collateral blood supply to the distal vessels without evidence of myocardial damage or ischemia, even under conditions of severe stress.

2. *Left ventriculography.* The report should describe the local contractility of the myocardium as may be evident from areas of hypokinesia, dyskinesia, or akinesia; and the overall contractility of the myocardium as measured by the ejection fraction.

3. *Proximal coronary arteries* (see 4.04B7) will be considered as the:

a. Right coronary artery proximal to the acute marginal branch;

b. Left anterior descending coronary artery proximal to the first septal perforator; and

c. Left circumflex coronary artery proximal to the first obtuse marginal branch.

I. *Results of other tests.* Information from adequate reports of other tests such as radionuclide studies or echocardiography should be considered where that information is comparable to the requirements in the Listing.

J. *Major surgical procedures.* The amount of function restored and the time required to effect improvement after heart or vascular surgery vary with the nature and extent of the disorder, the type of surgery, and other individual factors. If the criteria described for heart or vascular disease are met, proposed heart or vascular surgery (coronary artery bypass procedure, valve replacement, major arterial grafts, etc.) does not militate against a finding of disability with subsequent assessment of severity postoperatively.

The usual time after surgery for adequate assessment of the results of surgery is considered to be approximately 3 months. Assessment of the severity of the impairment following surgery requires adequate documentation of the pertinent evaluations and tests performed following surgery, such as an interval history and physical examination, with emphasis on those signs and symptoms which might have changed postoperatively, as well as X-rays and electrocardiograms. Where treadmill exercise tests or angiography have been performed following the surgical procedure, the results of these tests should be obtained.

Documentation of the preoperative evaluation and a description of the surgical procedure are also required. The evidence should be documented from hospital records (catheterization reports, coronary arteriographic reports, etc.) and the operative note.

Implantation of a cardiac pacemaker is not considered a major surgical procedure for purposes of this section.

4.01 Category of Impairments, Cardiovascular System

4.02 *Congestive heart failure (manifested by evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema).* With:

A. Persistent congestive heart failure on clinical examination despite prescribed therapy; or

B. Persistent left ventricular enlargement and hypertrophy documented by both:

1. Extension of the cardiac shadow (left ventricle) to the vertebral column on a left lateral chest roentgenogram; and

2. ECG showing QRS duration less than 0.12 second with S_{V1} plus R_{V5} (or R_{V6}) of 35 mm. or greater *and* ST segment depressed more than 0.5 mm. *and* low, diphasic or inverted T waves in leads with tall R waves; or

C. Persistent "mitral" type heart involvement documented by left atrial enlargement shown by double shadow on PA chest roentgenogram (or characteristic distortion of barium-filled esophagus) and either:

1. ECG showing QRS duration less than 0.12 second with S_{V1} plus R_{V5} (or R_{V6}) of 35 mm. or greater *and* ST segment depressed more than 0.5 mm. *and* low, diphasic or inverted T waves in leads with tall R waves; or

2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead V_1 *and* progressive decrease in R/S amplitude from lead V_1 to V_5 or V_6; or

D. Cor pulmonale (non-acute) documented by both:

1. Right ventricular enlargement (or prominence of the right out-flow tract) on chest roentgenogram of fluoroscopy; and

2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead V_1 *and* progressive decrease in R/S amplitude from lead V_1 to V_5 or V_6.

4.03 *Hypertensive vascular disease.* Evaluate under 4.02 or 4.04 or under the criteria for the affected body system.

4.04 *Ischemic heart disease with chest pain of cardiac origin as described in 4.00E.* With:

A. Treadmill exercise test (see 4.00F and G) demonstrating one of the following at an exercise level of 5 METs or less:

1. Horizontal or down-sloping ischemic depression of the ST segment to 1.0 mm. or greater, clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

2. Premature ventricular systoles which are multiform or bidirectional or are sequentially inscribed (3 or more); or

3. ST segment elevation to 3 mm. or greater; or

4. Development of second or third degree heart block; or

B. In the absence of a report of an acceptable treadmill exercise test (see 4.00G), one of the following:

1. Transmural myocardial infarction exhibiting a QS pattern or a Q wave with amplitude at least 1/3rd of R wave and with a duration of 0.04 second or more. (If these are present in leads III and aVF only, the requisite Q wave findings must be shown, by labelled tracing, to persist on deep inspiration); or

2. Resting ECG findings showing ischemic-type (see § 4.00F1) depression of ST segment to more than 0.5 mm. in either (a) leads I and aVL and V_6 or (b) leads II and III and aVF or (c) leads V_3 through V_6; or

3. Resting ECG findings showing an ischemic configuration or current of injury (see 4.00F1) with ST segment elevation to 2 mm. or more in either (a) leads I and aVL and V_6 or (b) leads II and III and aVF or (c) leads V_3 through V_6; or

4. Resting ECG findings showing symmetrical inversion of T waves to 5.0 mm. or more in any two leads except leads III or aVR or V_1 or V_2; or

5. Inversion of T wave to 1.0 mm. or more in any of leads I, II, aVL, V_3 to V_6 *and* R wave of 5.0 mm. or more in lead aVL *and* R wave greater than S wave in lead aVF; or

6. "Double" Master Two-Step test demonstrating one of the following:

a. Ischemic depression of ST segment to more than 0.5 mm. lasting for at least 0.08 second beyond the J junction and clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

b. Development of a second or third degree heart block; or

7. Angiographic evidence (see 4.00H) (obtained independent of social security disability evaluation) showing one of the following:

a. 50 percent or more narrowing of the left main coronary artery; or

b. 70 percent or more narrowing of a *proximal* coronary artery (see 4.00H3) (excluding the left main coronary artery); or

c. 50 percent or more narrowing involving a long (greater than 1 cm.) segment of a proximal coronary artery or multiple proximal coronary arteries; or

C. Resting ECG findings showing left bundle branch block as evidenced by QRS duration of 0.12 second or more in leads I, II, or III *and* R peak duration of 0.06 second or more in leads I, aVL, V_5, or V_6, unless there is a coronary angiogram of record which is negative (see criteria in 4.04B7); or

D. Left ventricular ejection fraction of 30 percent or less measured at cardiac catheterization or by echocardiography.

4.05 *Recurrent arrhythmias* (not due to digitalis toxicity) resulting in uncontrolled repeated episodes of cardiac syncope and documented by resting or ambulatory (Holter) electrocardiography.

4.09 *Myocardiopathies, rheumatic or syphilitic heart disease.* Evaluate under the criteria in 4.02, 4.04, 4.05, or 11.04.

4.11 *Aneurysm of aorta or major branches* (demonstrated by roentgenographic evidence). With:

A. Acute or chronic dissection not controlled by prescribed medical or surgical treatment; or

B. Congestive heart failure as described under the criteria in 4.02; or

C. Renal failure as described under the criteria in 6.02; or

D. Repeated syncopal episodes.

4.12 *Chronic venous insufficiency* of the lower extremity with incompetency or obstruction of the deep venous return, associated with superficial varicosities, extensive brawny edema, stasis dermatitis, and recurrent or persistent ulceration which has not healed following at least 3 months of prescribed medical or surgical therapy.

4.13 *Arteriosclerosis obliterans or thrombo-angiitis.* With:

A. Intermittent claudication with failure to visualize (on arteriogram obtained independent of social security disability evaluation) the common femoral or deep femoral artery in one extremity; or

B. Intermittent claudication and absence of peripheral arterial pulsations in the femoral, popliteal, dorsalis pedis, and posterior tibial arteries by Doppler or plethysmography, in one extremity; or

C. Amputation at or above the tarsal region due to peripheral vascular disease.

5.00 Digestive System

A. *Disorders of the digestive system* which result in severe impairment usually do so because of interference with nutrition, multiple recurrent inflammatory lesions, or complications of disease, such as fistulae, abscesses, or recurrent obstruction. Such complications usually respond to treatment. These complications must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that severe impairment will last for a continuous period of at least 12 months.

B. *Malnutrition or weight loss from gastrointestinal disorders.* When the primary disorder of the digestive tract has been established (e.g., enterocolitis, chronic pancreatitis, postgastrointestinal resection, or esophageal stricture, stenosis, or obstruction), the resultant interference with nutrition will be considered under the criteria in 5.08. This will apply whether the weight loss is due to primary or secondary disorders, of malabsorption, malassimilation, or obstruction. However, weight loss not due to diseases of the digestive tract, but associated with psychiatric or primary endocrine or other disorders, should be evaluated under the appropriate criteria for the underlying disorder.

C. *Surgical diversion of the intestinal tract,* including colostomy or ileostomy, are not listed since they do not represent impairments which preclude all work activity if the individual is able to maintain adequate nutrition and function of the stoma. Dumping syndrome which may follow gastric resection rarely represents a severe impairment which would continue for 12 months. Peptic ulcer disease with recurrent ulceration after definitive surgery ordinarily responds to treatment. A recurrent ulcer after definitive surgery must be demonstrated on repeated upper gastrointestinal roentgenograms or gastroscopic examinations despite therapy to be considered a severe impairment which will last for at least 12 months. Definitive surgical procedures are those designed to control the ulcer disease process (i.e., vagotomy and pyloroplasty, subtotal gastrectomy, etc.). Simple closure of a perforated ulcer does not constitute definitive surgical therapy for peptic ulcer disease.

5.01 Category of Impairments, Digestive System

5.02 *Recurrent upper gastrointestinal hemorrhage from undetermined cause* with anemia manifested by hematocrit of 30 percent or less on repeated examinations.

5.03 *Stricture, stenosis, or obstruction of the esophagus (demonstrated by X-ray or endoscopy)* with weight loss as described under § 5.08.

5.04 *Peptic ulcer disease (demonstrated by X-ray or endoscopy).* With:

A. Recurrent ulceration after definitive surgery persistent despite therapy; or

B. Inoperable fistula formation; or

C. Recurrent obstruction demonstrated by X-ray or endoscopy; or

D. Weight loss as described under § 5.08.

5.05 *Chronic liver disease (e.g., portal, postnecrotic, or biliary cirrhosis; chronic active hepatitis; Wilson's disease).* With:

A. Esophageal varices (demonstrated by X-ray or endoscopy) with a documented history of massive hemorrhage attributable to these varices; or

B. Performance of a shunt operation for esophageal varices; or

C. Serum bilirubin of 2.5 mg. per deciliter (100 ml.) or greater persisting on repeated examinations for at least 5 months; or

D. Hepatic encephalopathy. Evaluate under the criteria in 12.02; or

E. Confirmation of chronic liver disease by liver biopsy (obtained independent of social security disability evaluation) and one of the following:

1. Ascites not attributable to other causes, recurrent or persisting for at least 3 months, demonstrated by abdominal paracentesis or associated with persistent hypoalbuminemia of 3.0 gm. per deciliter (100 ml.) or less.

2. Serum bilirubin of 2.5 mg. per deciliter (100 ml.) or greater on repeated examinations.

3. Hepatic cell necrosis or inflammation, persisting for at least 3 months, documented by repeated abnormalities of prothrombin time and enzymes indicative of hepatic dysfunction.

5.06 *Chronic ulcerative or granulomatous colitis (demonstrated by endoscopy, barium enema, biopsy, or operative findings).* With:

A. Recurrent bloody stools documented on repeated examinations and anemia manifested by hematocrit of 30 percent or less on repeated examinations; or

B. Persistent or recurrent systemic manifestations, such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or

C. Intermittent obstruction due to intractable abscess, fistula formation, or stenosis; or

D. Recurrences of findings of A, B, or C above after total colectomy; or

E. Weight loss as described under § 5.08.

5.07 *Regional enteritis (demonstrated by operative findings, barium studies, biopsy, or endoscopy).* With:

A. Persistent or recurrent intestinal obstruction evidenced by abdominal pain, distention, nausea, and vomiting and accompanied by stenotic areas of small bowel with proximal intestinal dilation; or

B. Persistent or recurrent systemic manifestations such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or

C. Intermittent obstruction due to intractable abscess or fistula formation; or

D. Weight loss as described under § 5.08.

5.08 *Weight loss (due to any gastrointestinal disorder).* With:

A. Weight equal to or less than the values specified in Table I or II; or

B. Weight equal to or less than the values specified in Table III or IV and one of the following abnormal findings on repeated examinations:

1. Serum albumin of 3.0 gm. per deciliter (100 ml.) or less; or

2. Hematocrit of 30 percent or less; or

3. Serum calcium of 8.0 mg. per deciliter (100 ml.) (4.0 mEq./L) or less; or

4. Uncontrolled diabetes mellitus due to pancreatic dysfunction with repeated hyperglycemia, hypoglycemia, or ketosis; or

5. Fat in stool of 7 gm. or greater per 24-hour stool specimen; or

6. Nitrogen in stool of 3 gm. or greater per 24-hour specimen; or

7. Persistent or recurrent ascites or edema not attributable to other causes.

Tables of weight reflecting malnutrition scaled according to height and sex—To be used only in connection with 5.08.

Table I.—*Men*

Height (inches) [1]	Weight (pounds)
61	90
62	92
63	94
64	97
65	99
66	102
67	106
68	109
69	112
70	115
71	118
72	122
73	125
74	128
75	131
76	134

Table II.—*Women*

Height (inches) [1]	Weight (pounds)
58	77
59	79
60	82
61	84
62	86
63	89
64	91
65	94
66	98
67	101
68	104
69	107
70	110
71	114
72	117
73	120

Table III.—*Men*

Height (inches) [1]	Weight (pounds)
61	95
62	98
63	100
64	103
65	106
66	109
67	112
68	116
69	119
70	122
71	126
72	129
73	133
74	136
75	139
76	143

Table IV.—*Women*

Height (inches) [1]	Weight (pounds)
58	82
59	84
60	87
61	89
62	92
63	94
64	97
65	100
66	104
67	107
68	111
69	114
70	117
71	121
72	124
73	128

[1] Height measured without shoes.

6.00 Genito-Urinary System

A. *Determination of the presence of chronic renal disease will be based upon* (1) a history, physical examination, and laboratory evidence of renal disease, and (2) indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Nephrotic Syndrome.* The medical evidence establishing the clinical diagnosis must include the description of extent of tissue edema, including pretibial, periorbital, or presacral edema. The presence of ascites, pleural effusion, pericardial effusion, and hydroarthrosis should be described if present. Results of pertinent laboratory tests must be provided. If a renal biopsy has been performed, the evidence should include a copy of the report of microscopic examination of the specimen. Complications such as severe orthostatic hypotension, recurrent infections or venous thromboses should be evaluated on the basis of resultant impairment.

C. *Hemodialysis, peritoneal dialysis, and kidney transplantation.* When an individual is undergoing periodic dialysis because of chronic renal disease, severity of impairment is reflected by the renal function prior to the institution of dialysis.

The amount of function restored and the time required to effect improvement in an individual treated by renal transplant depend upon various factors, including adequacy of post-transplant renal function, incidence and severity of renal infection, occurrence of rejection crisis, the presence of systemic complications (anemia, neuropathy, etc.), and side effects of corticosteroids or immunosuppressive agents. A convalescent period of at least 12 months is required before it can be reasonably determined whether the individual has reached a point of stable medical improvement.

D. *Evaluate associated disorders and complications* according to the appropriate body system Listing.

6.01 Category of Impairments, Genito-Urinary System

6.02 *Impairment of renal function, due to any chronic renal disease expected to last 12 months (e.g., hypertensive vascular disease, chronic nephritis, nephrolithiasis, polycystic disease, bilateral hydronephrosis, etc.).* With:

A. Chronic hemodialysis or peritoneal dialysis necessitated by irreversible renal failure; or

B. Kidney transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 6.00C); or

C. Persistent elevation of serum creatinine to 4 mg. per deciliter (100 ml.) or greater or reduction of creatinine clearance to 20 ml. per minute (29 liters/24 hours) or less, over at least 3 months, with one of the following:

1. Renal osteodystrophy manifested by severe bone pain and appropriate radiographic abnormalities (e.g., osteitis fibrosa, severe osteoporosis, pathologic fractures); or

2. A clinical episode of pericarditis; or

3. Persistent motor or sensory neuropathy; or

4. Intractable pruritus; or

5. Persistent fluid overload syndrome resulting in diastolic hypertension (110 mm. or above) or signs of vascular congestion; or

6. Persistent anorexia with recent weight loss and current weight meeting the values in 5.08, Table III or IV; or

7. Persistent hematocrits of 30 percent or less.

6.06 *Nephrotic syndrome, with severe anasarca, persistent for at least 3 months despite prescribed therapy.* With:

A. Serum albumin of 3.0 gm. per deciliter (100 ml.) or less *and* proteinuria of 3.5 gm. per 24 hours or greater; or

B. Proteinuria of 10.0 gm. per 24 hours or greater.

7.00 Hemic and Lymphatic System

A. *Impairment caused by anemia* should be evaluated according to the ability of the individual to adjust to the reduced oxygen-carrying capacity of the blood. A gradual reduction in red cell mass, even to very low values, is often well tolerated in individuals with a healthy cardiovascular system.

B. *Chronicity is indicated by* persistence of the condition for at least 3 months. The laboratory findings cited must reflect the values reported on more than one examination over that 3-month period.

C. *Sickle cell disease* refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis, must be included. Vaso-

occlusive or aplastic episodes should be documented by description of severity, freguency, and duration.

Major visceral episodes include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genito-urinary involvement, etc.

D. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence. Prophylactic therapy such as with anti-hemophilic globulin (AHG) concentrate does not in itself imply severity.

E. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

The criteria in 7.11 contain the designated duration of disability implicit in the finding of a listed impairment. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of any remaining impairment must be evaluated on the basis of the medical evidence.

7.01 Category of Impairments, Hemic and Lymphatic System

7.02 *Chronic anemia (hematocrit persisting at 30 percent or less due to any cause).*

A. Evaluate the resulting impairment under criteria for the affected body system; or

B. Requiring one or more blood transfusions on an average of at least once every 2 months.

7.05 *Sickle cell disease, or one of its variants.* With:

A. Documented painful (thrombotic) crises occurring at least three times during the 5 months prior to adjudication; or

B. Requiring extended hospitalization (beyond emergency care) at least three times during the 12 months prior to adjudication; or

C. Evaluate the resulting impairment under the criteria for the affected body system.

7.06 *Chronic thrombocytopenia (due to any cause)* with platelet counts repeatedly below 40,000/cubic millimeter. With:

A. At least one spontaneous hemorrhage, requiring transfusion, within 5 months prior to adjudication; or

B. Intracranial bleeding within 12 months prior to adjudication.

7.07 *Hereditary telangiectasia* with hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

7.08 *Coagulation defects (nemophilia or a similar disorder)* with spontaneous hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

7.09 *Polycythemia vera (with erythrocytosis, splenomegaly, and leukocytosis or thrombocytosis).* Evaluate the resulting impairment under the criteria for the affected body system.

7.10 *Myelofibrosis (myeloproliferative syndrome).* With:

A. Chronic anemia. Evaluate according to the criteria of §7.02; or

B. Documented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication; or

C. Intractable bone pain with radiologic evidence of osteosclerosis.

7.11 *Acute leukemia.* Consider under a disability for 2½ years from the time of initial diagnosis.

7.12 *Chronic leukemia.* Evaluate according to the criteria of 7.02, 7.06, 7.10B, or 13.06A.

7.13 *Lymphomas.* Evaluate under the criteria in 13.06A.

7.14 *Macroglobulinemia or heavy chain disease,* confirmed by serum or urine protein electrophoresis or immunoelectrophoresis. Evaluate impairment under criteria for affected body system or under 7.02, 7.06, or 7.08.

7.15 *Chronic granulocytopenia (due to any cause).* With both A and B:

A. Absolute neutrophil counts repeatedly below 1,000 cells/cubic millimeter; and

B. Documented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication.

7.16 *Myeloma (confirmed by appropriate serum or urine protein electrophoresis and bone marrow findings).* With:

A. Radiologic evidence of bony involvement with intractable bone pain or pathological fracture; or

B. Evidence of renal impairment as described in 6.02; or

C. Hypercalcemia with serum calcium levels persistently greater than 11 mg. per deciliter (100 ml.) for at least one month despite prescribed therapy; or

D. Plasma cells (100 or more cells/cubic millimeter) in the peripheral blood.

8.00 Skin

A. *Skin lesions* may result in severe, long-lasting impairment if they involve extensive body areas or critical areas such as the hands or feet and become resistant to treatment. These lesions must be shown to have persisted for a sufficient period of time despite therapy for a reasonable presumption to be made that severe impairment will last for a continuous period of at least 12 months. The treatment for some of the skin diseases listed in this section may require the use of high dosage of drugs with possible serious side effects; these side effects should be considered in the overall evaluation of impairment.

B. *When skin lesions are associated with systemic disease* and where that is the predominant problem, evaluation should occur according to the criteria in the appropriate section. Disseminated (systemic) lupus erythematosus and scleroderma usually involve more than one body system and should be evaluated under 10.04 and 10.05. Neoplastic skin lesions should be evaluated under 13.00ff. When skin lesions (including burns) are associated with contractures or limitation of joint motion, that impairment should be evaluated under 1.00ff.

8.01 Category of Impairments, Skin

8.02 *Exfoliative dermatitis, ichthyosis, ichthyosiform erythroderma.* With extensive lesions not responding to prescribed treatment.

8.03 *Pemphigus, erythema multiforme bullosum, bullous pemphigoid, dermatitis herpetiformis.* With extensive lesions not responding to prescribed treatment.

8.04 *Deep mycotic infections.* With extensive fungating, ulcerating lesions not responding to prescribed treatment.

8.05 *Psoriasis, atopic dermatitis, dyshidrosis.* With extensive lesions, including involvement of the hands or feet which impose a severe limitation of function and which are not responding to prescribed treatment.

8.06 *Hydradenitis suppurative, acne conglobata.* With extensive lesions involving the axillae or perineum not responding to prescribed medical treatment and not amenable to surgical treatment.

9.00 Endocrine System

Cause of impairment. Impairment is caused by overproduction or underproduction of hormones, resulting in structural or functional changes in the body. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

9.01 Category of Impairments, Endocrine

9.02 *Thyroid Disorders.* With:

A. Progressive exophthalmos as measured by exophthalmometry; or

B. Evaluate the resulting impairment under the criteria for the affected body system.

9.03 *Hyperparathyroidism.* With:

A. Generalized decalcification of bone on X-ray study and elevation of plasma calcium to 11 mg. per deciliter (100 ml.) or greater; or

B. A resulting impairment. Evaluate according to the criteria in the affected body system.

9.04 *Hypoparathyroidism.* With:

A. Severe recurrent tetany; or

B. Recurrent generalized convulsions; or

C. Lenticular cataracts. Evaluate under the criteria in 2.00ff.

9.05 *Neurohypophyseal insufficiency (diabetes insipidus).* With urine specific gravity of 1.005 or below, persistent for at least 3 months and recurrent dehydration.

9.06 *Hyperfunction of the adrenal cortex.* Evaluate the resulting impairment under the criteria for the affected body system.

9.08 *Diabetes mellitus.* With:

A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or

B. Acidosis occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO_2 or bicarbonate levels); or

C. Amputation at, or above, the tarsal region due to diabetic necrosis or peripheral vascular disease; or

D. Retinitis proliferans; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04).

10.00 Multiple Body Systems

A. The impairments included in this section usually involve more than a single body system.

B. Long-term obesity will usually be associated with disorders in the musculoskeletal, cardiovascular, peripheral vascular, and pulmonary systems and the advent of such disorders is the major cause of impairment. Extreme obesity results in restrictions imposed by body weight and the additional restrictions imposed by disturbances in other body systems.

10.01 Category of Impairments, Multiple Body Systems

10.02 *Hansen's disease (leprosy).* As active disease or consider as "under a disability" while hospitalized.

10.03 *Polyarteritis or periarteritis nodosa (established by biopsy).* With signs of generalized arterial involvement.

10.04 *Disseminated lupus erythematosus (established by a positive LE preparation or biopsy or positive ANA test).* With frequent exacerbations demonstrating involvement of renal or cardiac or pulmonary or gastrointestinal or central nervous systems.

10.05 *Scleroderma or progessive systemic sclerosis (the diffuse or generalized form).* With:

A. Advanced limitation of use of hands due to sclerodactylia or limitation in other joints; or

B. Significant visceral manifestations of digestive, cardiac, or pulmonary impairment.

10.10 *Obesity.* Weight equal to or greater than the values specified in Table I for males, Table II for females (100 percent above desired level) and one of the following:

A. History of pain and limitation of motion in any weight bearing joint or spine (on physical examination) associated with X-ray evidence of arthritis in a weight bearing joint or spine; or

B. Hypertension with diastolic blood pressure persistently in excess of 100 mm. Hg measured with appropriate size cuff; or

C. History of congestive heart failure manifested by past evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema; or

D. Chronic venous insufficiency with superficial varicosities in a lower extremity with pain on weight bearing and persistent edema; or

E. Respiratory disease with total forced vital capacity equal to or less than 2.0 L. or a level of hypoxemia at rest equal to or less than the values of the following table:

Arterial pCO_2 (mm Hg) and	Arterial pO_2 equal to or less than (mm Hg)
30 or below	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40 or above	55

Table I.—*Men*

Height (inches)	Weight (pounds)
60	246
61	252
62	258
63	264
64	270
65	276
66	284
67	294
68	302
69	310
70	318
71	328
72	336
73	346
74	356
75	364
76	374

Table II.—*Women*

Height (inches)	Weight (pounds)
56	208
57	212
58	218
59	224
60	230
61	236
62	242
63	250
64	258
65	266
66	274
67	282
68	290
69	298
70	306
71	314
72	322

11.00 Neurological

A. *Convulsive disorders.* In convulsive disorders, regardless of etiology, severity will be determined according to type, frequency, duration, and sequelae of seizures. At least one detailed description of a typical seizure is required. Such description includes the presence or absence of aura, tongue bites, sphincter control, injuries associated with the attack, and postictal phenomena. The reporting physician should indicate the extent to which description of seizures reflects his own observations and the source of ancillary information. Testimony of persons other than the claimant is essential for description of type and frequency of seizures if professional observation is not available.

Documentation of epilepsy should include at least one electroencephalogram (EEG).

Under 11.02 and 11.03, a severe impairment is considered present only if it persists despite the fact that the individual is following prescribed anticonvulsive treatment. Adherence to prescribed anticonvulsant therapy can ordinarily be determined from objective clinical findings in the report of the physician currently providing treatment for epilepsy. Determination of blood levels of phenytoin sodium or other anticonvulsive drugs may serve to indicate whether the prescribed medication is being taken. Should serum drug levels appear therapeutically inadequate, consideration should be given as to whether this is caused by individual idiosyncrasy in absorption or metabolism of the drug. Where adequate seizure control is obtained only with unusually large doses, the possibility of impairment resulting from the side effects of this medication must also be assessed. Where documentation shows that use of alcohol or drugs affects adherence to prescribed therapy or may play a part in the precipitation of seizures, this must also be considered in the overall assessment of impairment severity.

B. *Brain tumors.* The diagnosis of malignant brain tumor should be established under the criteria described in 13.00B for neoplastic disease.

In histologically malignant tumors, the pathological diagnosis alone will be the decisive criterion for severity and expected duration (see 11.05A). In cases of benign tumors (see 11.05B) the severity and duration of the impairment will be determined on the bases of the symptoms, signs, and pertinent laboratory findings.

C. *Persistent disorganization of motor function* in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands, and arms.

D. *In conditions which are episodic in character,* such as multiple sclerosis or myasthenia gravis, consideration should be given to frequency and duration of exacerbations, length of remissions, and permanent residuals.

11.01 Category of Impairments, Neurological

11.02 *Epilepsy—major motor seizures, (grand mal or psychomotor), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment.* With:

A. Diurnal episodes (loss of consciousness and convulsive seizures); or

B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

11.03 *Epilepsy—minor motor seizures (petit mal, psychomotor, or focal), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment.* With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

11.04 *Central nervous system vascular accident.* With one of the following more than 3 months post-vascular accident:

A. Sensory or motor aphasia resulting in ineffective speech or communication; or

B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained

disturbance of gross and dexterous movements, or gait and station (see 11.00C).

11.05 *Brain tumors.*

A. Malignant gliomas (astrocytoma—grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, or primary sarcoma; or

B. Astrocytoma (grades I and II), meningioma, pituitary tumors, oligodendroglioma, ependymoma, clivus chordoma, and benign tumors. Evaluate under 11.02, 11.03, 11.04 A, or B, or 12.02.

11.06 *Parkinsonian syndrome* with the following signs: Significant rigidity, brady kinesia, or tremor in two extremities, which, singly or in combination, result in sustained disturbance of gross and dexterous movements, or gait and station.

11.07 *Cerebral palsy.* With:

A. IQ of 69 or less; or

B. Abnormal behavior patterns, such as destructiveness or emotional instability; or

C. Significant interference in communication due to speech, hearing, or visual defect; or

D. Disorganization of motor function as described in 11.04B.

11.08 *Spinal cord or nerve root lesions, due to any cause* with disorganization of motor function as described in 11.04B.

11.09 *Multiple sclerosis.* With:

A. Disorganization of motor function as described in 11.04B; or

B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02.

11.10 *Amyotrophic lateral sclerosis.* With:

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

11.11 *Anterior poliomyelitis.* With:

A. Presistent difficulty with swallowing or breathing; or

B. Unintelligible speech; or

C. Disorganization of motor function as described in 11.04B.

11.12 *Myasthenia gravis.* With:

A. Significant difficulty with speaking, swallowing, or breathing while on prescribed therapy; or

B. Significant motor weakness of muscles of extremities on repetitive activity against resistance while on prescribed therapy.

11.13 *Muscular dystrophy* with disorganization of motor function as described in 11.04B.

11.14 *Peripheral neuropathies.* With disorganization of motor function as described in 11.04B, in spite of prescribed treatment.

11.15 *Tabes dorsalis.* With:

A. Tabetic crises occurring more frequently than once monthly; or

B. Unsteady, broad-based or ataxic gait causing significant restriction of mobility substantiated by appropriate posterior column signs.

11.16 *Subacute combined cord degeneration (pernicious anemia)* with disorganization of motor function as described in 11.04B or 11.15B, not significantly improved by prescribed treatment.

11.17 *Degenerative disease not listed elsewhere, such as Huntington's chorea, Friedreich's ataxia, and spino-cerebellar degeneration.* With:

A. Disorganization of motor function as described in 11.04B or 11.15B; or

B. Chronic brain syndrome. Evaluate under 12.02.

11.18 *Cerebral trauma:* Evaluate under the provisions of 11.02, 11.03, 11.04, and 12.02, as applicable.

11.19 *Syringomyelia.* With:

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

12.00 Mental Disorders

A. *Introduction:* The evaluation of disability applications on the basis of mental disorders requires consideration of the nature and clinical manifestations of the medically determinable impairment(s) as well as consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work, as reflected by (1) daily activities both in the occupational and social spheres; (2) range of interest; (3) ability to take care of personal needs; and (4) ability to relate to others. This evaluation must be based on medical evidence consisting of demonstrable clinical signs (medically demonstrable phenomena, apart from the individual's symptoms, which indicate specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality) and laboratory findings (including psychological tests) relevant to such issues as restriction of daily activities, constriction of interests, deterioration of personal habits (including personal hygiene), and impaired ability to relate to others.

The severity and duration of mental impairment(s) should be evaluated on the basis of reports from psychiatrists, psychologists, and hospitals, in conjunction with adequate descriptions of daily activites from these or other sources. Since confinement in an institution may occur because of legal or social requirements, confinement per se does not establish that impairment is severe. Similarly, release from an institution does not establish improvement. As always, severity and duration of impairment are determined by the medical evidence. A description of the individual's personal appearance and behavior at the time of the examination is also important to the evaluation process.

Diagnosis alone is insufficient as a basis for evaluation of the severity of mental impairment(s). Accordingly, the criteria of severity under mental disorders are arranged in four comprehensive groups; chronic brain syndromes (see 12.02), functional (nonorganic) psychotic disorders (see 12.03), functional nonpsychotic disorders (see 12.04), and mental retardation (see 12.05). Each category consists of a set of clinical findings, one or more of which must be met, and a set of functional restrictions, all of which must be met. The functional restrictions are to be interpreted in the light of the extent to which they are imposed by psychopathology.

The criteria for severity of mental impairment(s) are so constructed that a decision can be reached even if there are disagreements regarding diagnosis. All available clinical and laboratory evidence must be considered since it is not unusual to find, in the same individual, signs and test results associated with several pathological conditions, mental or physical. For example, an individual might show evidence of depression, chronic brain syndrome, cirrhosis of the liver, etc., in various combinations.

In some cases, the results of well-standardized psychological tests, such as the Wechsler Adult Intelligence Scale (WAIS) and the Minnesota Multiphasic Personality Inventory (MMPI), may contribute to the assessment of severity of impairment. To provide full documentation, the psychological report should include key data on which the report was based, such as MMPI profiles, WAIS subtest scores, etc.

B. *Discussion of Mental Disorders:*

1. *Chronic brain syndromes* (organic brain syndromes) result from persistent, more or less irreversible, diffuse impairment of cerebral tissue function. They are usually permanent and may be progressive. They may be accompanied by psychotic or neurotic behavior superimposed on organic brain pathology. The degree of impairment may range from mild to severe. Acute brain syndromes are temporary and reversible conditions with favorable prognosis and no significant residuals. Occasionally, an acute brain syndrome may progress into a chronic brain syndrome.

2. *Functional psychotic disorders* are characterized by demonstrable mental abnormalities without demonstrable structural changes in brain tissue. Mood disorders (involutional psychosis, manic-depressive illness, psychotic depressive reaction) or thought disorders (schizophrenias and paranoid states) are characterized by varying degrees of personality disorganization and accompanied by a corrresponding degree of inability to maintain contact with reality (e.g., hallucinations, delusions).

3. *Functional nonpsychotic disorders* are likewise characterized by demonstrable mental abnormalities without demonstrable structural changes in brain tissue (psychophysiologic, neurotic, personality and certain other nonpsychotic disorders).

a. *Psychophysiologic (autonomic and visceral) disorders* (e.g., cardiovascular, gastrointestinal, genitourinary, musculoskeletal, respiratory). In these conditions, the normal physiological expression of emotions is exaggerated by chronic emotional tensions, eventually leading to a disruption of the autonomic regulatory system and resulting in various visceral disorders. If the condition persists, it may lead to demonstrable structural changes (e.g., peptic ulcer, bronchial asthma, dermatitis).

b. *Neurotic disorders* (e.g., anxiety, depressive, hysterical, obsessive-compulsive, and phobic neuroses). In these conditions there are no gross falsifications of reality such as observed in the psychoses in the form of hallucinations or delusions. Neuroses are characterized by reactions to deep-seated conflicts and are classified by the defense mechanisms the individual employs to stave off the threat of emotional decompensation (e.g., anxiety, depression, conversion, obsessive-compulsive, or phobic mechanisms). Anxiety or depression occurring in connection with overwhelming

external situations (i.e., situational reactions) are self-limited and the symptoms usually recede when the situational stress diminishes.

c. *Other functional nonpsychotic disorders,* including paranoid, cyclothymic, schizoid, explosive, obsessive-compulsive, hysterical, asthenic, antisocial, passive-aggressive, and inadequate personality; sexual deviation; alcohol addiction and drug addiction. These disorders are characterized by deeply ingrained maladaptive patterns of behavior, generally of long duration. Unlike neurotic disorders, conflict in these cases is not primarily within the individual but between the individual and his environment. In many of these conditions, the patient may experience little anxiety and little or no sense of distress, except when anxiety and distress are consequences of maladaptive behavior.

4. *Mental retardation* denotes a lifelong condition characterized by below-average intellectual endowment as measured by well-standardized intelligence (IQ) tests and associated with impairment in one or more of the following areas: learning, maturation, and social adjustment. The degree of impairment should be determined primarily on the basis of intelligence level and the medical report. Care should be taken to ascertain that test results are consistent with daily activities and behavior. A well-standardized, comprehensive intelligence test, such as the Wechsler Adult Intelligence Scale (WAIS), should be administered and interpreted by a psychologist or psychiatrist qualified by training and experience to perform such an evaluation. In special circumstances, nonverbal measures, such as the Raven Progressive Matrices or the Arthur Point Scale, may be substituted.

Unfortunately, identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual function. In this connection, it may be noted that on the WAIS, perhaps currently the most widely used measure of intellectual ability in adults, IQ's of 69 and below are characteristic of approximately the lowest 2 percent of the general population. In instances where other tests are administered, it will be necessary to convert the IQ to the corresponding percentile rank in the general population in order to determine the actual degree of impairment reflected by the IQ scores. Where more than one IQ is customarily derived from the test administered, i.e., where Verbal, Performance, and Full Scale IQ's are provided as on the WAIS, the lowest of these is to be used in conjunction with 12.05.

In cases where the nature of the individual's impairment is such that testing, as described above, is precluded, medical reports specifically describing the level of intellectual, social, and physical function should be obtained. Actual observations by district office or State DDS personnel, reports from educational institutions, and information furnished by public welfare agencies or other reliable, objective sources should be considered as additional evidence.

12.01 Category of Impairments, Mental

12.02 *Chronic brain syndromes* (organic brain syndromes). With both A and B:

A. Demonstrated deterioration in intellectual functioning, manifested by persistence of one or more of the following clincial signs:

1. Marked memory defect for recent events; or

2. Impoverished, slowed, perseverative thinking, with confusion or disorientation; or

3. Labile, shallow, or coarse affect;

B. Resulting persistence of marked restriction of daily activities and constriction of interests and deterioration in personal habits and seriously impaired ability to relate to other people.

12.03 *Functional psychotic disorders* (mood disorders, schizophrenias, paranoid states). With both A and B:

A. Manifested persistence of one or more of the following clinical signs:

1. Depression (or elation); or

2. Agitation; or

3. Psychomotor disturbances; or

4. Hallucinations or delusions; or

5. Autistic or other regressive behavior; or

6. Inappropriateness of affect; or

7. Illogical association of ideas;

B. Resulting persistence of marked restriction of daily activities and constriction of interests and seriously impaired ability to relate to other people.

12.04 *Functional nonpsychotic disorders* (psychophysiologic, neurotic, and personality disorders; addictive dependence on alcohol or drugs). With both A and B:

A. Manifested persistence of one or more of the following clinical signs:

1. Demonstrable and persistent structural changes mediated through psychophysiological channels (e.g., duodenal ulcer); or

2. Recurrent and persistent periods of anxiety, with tension, apprehension, and interference with concentration and memory; or

3. Persistent depressive affect with insomnia, loss of weight, and suicidal preoccupation; or

4. Persistent phobic or obsessive ruminations with inappropriate, bizarre, or disruptive behavior; or

5. Persistent complusive, ritualistic behavior; or

6. Persistent functional disturbance of vision, speech, hearing, or use of a limb with demonstrable structural or trophic changes; or

7. Persistent, deeply ingrained, maladaptive patterns of behavior manifested by either:

a. Seclusiveness or autistic thinking; or

b. Pathologically inappropriate suspiciousness or hostility;

B. Resulting persistence of marked restriction of daily activities and constriction of interests and deterioration in personal habits and seriously impaired ability to relate to other people.

12.05 *Mental retardation.* As manifested by:

A. Severe mental and social incapacity as evidenced by marked dependence upon others for personal needs (e.g., bathing, washing, dressing, etc.) and inability to understand the spoken word and inability to avoid physical danger (fire, cars, etc.) and inability to follow simple directions and inability to read, write, and perform simple calculations; or

B. IQ of 59 or less (see 12.00B4); or

C. IQ of 60 to 69 inclusive (see 12.00B4) and a physical or other mental impairment imposing additional and significant work-related limitation of function.

13.00 Neoplastic Disease—Malignant

A. *Introduction:* The determination of the level of severity resulting from malignant tumors is made from a consideration of the site of the lesion, the histogenesis of the tumor, the extent of involvement, the apparent adequacy and response to therapy (surgery, irradiation, hormones, chemotherapy, etc.), and the magnitude of the post-therapeutic residuals.

B. *Documentation:* The diagnosis of malignant tumor should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen. If these documents are not obtainable, then the summary of hospitalization or a report from the treating physician must include details of the findings at surgery and the results of the pathologist's gross and microscopic examination of the tissues.

For those cases in which a disabling impairment was not established when therapy was begun but progression of the disease is likely, current medical evidence should include a report of a recent examination directed especially at local or regional recurrence, soft part or skeletal metastases, and significant posttherapeutic residuals.

C. *Evaluation:* Usually, when the malignant tumor consists only of a local lesion with metastasis to the regional lymph nodes which apparently has been completely excised, imminent recurrence or metastasis is not anticipated. Exceptions are noted in 13.02E, 13.03, 13.05B, 13.09 B and E, 13.11 A and F, 13.13B, 13.16 B and C, 13.21B, 13.22 A and B, and 13.24A. For adjudicative purposes, "distant metastasis" or "metastasis beyond the regional lymph nodes" refers to metastasis beyond the lines of the usual radical en bloc resection.

Local or regional recurrence after radical surgery or pathological evidence of incomplete excision by radical surgery is to be equated with unresectable lesions (except for carcinoma of the breast, 13.09C) and, for the purposes of our program, may be evaluated as "inoperable." These situations are usually followed by severe impairment within 6 months to 1 year.

Local or regional recurrence after incomplete excision of a localized and still completely resectable tumor is not to be equated with recurrence after radical surgery. In the evaluation of lymphomas, the tissue type and site of involvement are not necessarily indicators of the severity of the impairment.

When a malignant tumor has metastasized beyond the regional lymph nodes, the impairment usually will be considered to be severe. Exceptions are hormone-dependent tumors, isotope-sensitive metastases,

metastases from seminoma of the testicles which are controlled by definitive therapy, or distant metastases which have apparently disappeared and have not been evident for 3 or more years.

D. *Effects of therapy.* Significant posttherapeutic residuals, not specifically included in the category of impairments for malignant neoplasms, should be evaluated according to the affected body system.

Where the impairment is not listed in the Listing of Impairments and is not medically equivalent to a listed impairment, the impact of any residual impairment including that caused by therapy must be considered. The therapeutic regimen and consequent adverse response to therapy may vary widely; therefore, each case must be considered on an individual basis. It is essential to obtain a specific description of the therapeutic regimen, including the drugs given, dosage, frequency of drug administration, and plans for continued drug administration. It is necessary to obtain a description of the complications or any other adverse response to therapy such as nausea, vomiting, diarrhea, weakness, dermatologic disorders, or reactive mental disorders. Since the severity of the adverse effects of anticancer chemotherapy may change during the period of drug administration, the decision regarding the impact of drug therapy should be based on a sufficient period of therapy to permit proper consideration.

E. *Onset.* To establish onset of disability prior to the time a malignancy is first demonstrated to be inoperable or beyond control by other modes of therapy (and prior evidence is nonexistent) requires medical judgment based on medically reported symptoms, the type of the specific malignancy, its location, and extent of involvement when first demonstrated.

13.01 Category of Impairments, Neoplastic Diseases—Malignant

13.02 *Head and neck* (except salivary glands—13.07, thyroid gland—13.08, and mandible, maxilla, orbit, or temporal fossa—13.11):

A. Inoperable; or

B. Not controlled by prescribed therapy; or

C. Recurrent after radical surgery or irradiation; or

D. With distant metastasis; or

E. Epidermoid carcinoma occurring in the pyriform sinus or posterior third of the tongue.

13.03 *Sarcoma of skin:*

A. Angiosarcoma with metastasis to regional lymph nodes or beyond; or

B. Mycosis fungoides with lymph node or visceral involvement.

13.04 *Sarcoma of soft parts:* Not controlled by prescribed therapy.

13.05 *Malignant melanoma:*

A. Recurrent after wide excision; or

B. With metastasis to adjacent skin (satellite lesions) or elsewhere.

13.06 *Lymph nodes:*

A. Hodgkin's disease or non-Hodgkin's lymphoma with progressive disease not controlled by prescribed therapy; or

B. Metastatic carcinoma in a lymph node (except for epidermoid carcinoma in a lymph node in the neck) where the primary site is not determined after adequate search; or

C. Epidermoid carcinoma in a lymph node in the neck not responding to prescribed therapy.

13.07 *Salivary glands*—carcinoma or sarcoma with metastasis beyond the regional lymph nodes.

13.08 *Thyroid gland*—carcinoma with metastasis beyond the regional lymph nodes, not controlled by prescribed therapy.

13.09 *Breast:*

A. Inoperable carcinoma; or

B. Inflammatory carcinoma; or

C. Recurrent carcinoma, except local recurrence controlled by prescribed therapy; or

D. Distant metastasis from breast carcinoma (bilateral breast carcinoma, synchronous or metachronus, is usually primary in each breast); or

E. Sarcoma with metastasis anywhere.

13.10 *Skeletal system* (exclusive of the jaw):

A. Malignant primary tumors with evidence of metastases and not controlled by prescribed therapy; or

B. Metastatic carcinoma to bone where the primary site is not determined after adequate search.

13.11 *Mandible, maxilla, orbit, or temporal fossa:*

A. Sarcoma of any type with metastasis; or

B. Carcinoma of the antrum with extension into the orbit or ethmoid or sphenoid sinus, or with regional or distant metastasis; or

C. Orbital tumors with intracranial extension; or

D. Tumors of the temporal fossa with perforation of skull and meningeal involvement; or

E. Adamantinoma with orbital or intracranial infiltration; or

F. Tumors of Rathke's pouch with infiltration of the base of the skull or metastasis.

13.12 *Brain or spinal cord:*

A. Metastatic carcinoma to brain or spinal cord.

B. Evaluate other tumors under the criteria described in 11.05 and 11.06.

13.13 *Lungs:*

A. Unresectable; or

B. With metastases; or

C. Recurrent after resection; or

D. Incomplete excision; or

E. Oat cell carcinoma.

13.14 *Pleura or mediastinum:*

A. Malignant mesothelioma of pleura; or

B. Malignant tumors, metastatic to pleura; or

C. Malignant primary tumor of the mediastinum not controlled by prescribed therapy.

13.15 *Abdomen:*

A. Generalized carcinomatosis; or

B. Retroperitoneal cellular sarcoma not controlled by prescribed therapy; or

C. Ascites with demonstrated malignant cells.

13.16 *Esophagus or stomach:*

A. Carcinoma or sarcoma of the upper two-thirds of the esophagus; or

B. Carcinoma or sarcoma of the distal one-third of the esophagus with metastasis to the regional lymph nodes or extension to surrounding structures; or

C. Carcinoma of the stomach with metastasis to the regional lymph nodes or extension to surrounding structures; or

D. Sarcoma of stomach not controlled by prescribed therapy; or

E. Inoperable carcinoma; or

F. Recurrence or metastasis after resection.

13.17 *Small intestine:*

A. Carcinoma, sarcoma, or carcinoid tumor with metastasis beyond the regional lymph nodes; or

B. Recurrence of carcinoma, sarcoma, or carcinoid tumor after resection; or

C. Sarcoma, not controlled by prescribed therapy.

13.18 *Large intestine* (from ileocecal valve to and including anal canal)—carcinoma or sarcoma.

A. Unresectable; or

B. Metastasis beyond the regional lymph nodes, or

C. Recurrence or metastasis after resection.

13.19 *Liver or gallbladder:*

A. Primary or metastatic malignant tumors of the liver; or

B. Carcinoma of the gallbladder; or

C. Carcinoma of the bile ducts, unresectable or with metastases.

13.20 *Pancreas:*

A. Carcinoma except islet cell carcinoma; or

B. Islet cell carcinoma which is unresectable and physiologically active.

13.21 *Kidneys, adrenal glands, or ureters*—carcinoma.

A. Unresectable; or

B. With metastasis.

13.22 *Urinary bladder*—carcinoma. With:

A. Infiltration beyond the bladder wall; or

B. Metastasis; or

C. Unresectable; or

D. Recurrence after total cystectomy; or

E. Evaluate urinary diversion after total cystectomy under the criteria in 6.02.

13.23 *Prostate gland*—carcinoma not controlled by prescribed therapy.

13.24 *Testicles:*

A. Choriocarcinoma; or

B. Other malignant primary tumors with progressive disease not controlled by prescribed therapy.

13.25 *Uterus*—carcinoma or sarcoma (corpus or cervix).

A. Inoperable and not controlled by prescribed therapy; or

B. Recurrent after total hysterectomy; or

C. Total pelvic exenteration.

13.26 *Ovaries*—all malignant, primary or recurrent tumors. With:

A. Ascites with demonstrated malignant cells; or

B. Unresectable infiltration; or

C. Unresectable metastasis to omentum or elsewhere in the peritoneal cavity; or

D. Distant metastasis.

13.27 *Leukemia:* Evaluate under the criteria of 7.00ff, Hemic and Lymphatic System.

13.28 *Uterine (Fallopian) tubes*—carcinoma or sarcoma, unresectable or with metastasis.

Part B

Medical criteria for the evaluation of impairments of children under age 18 (where criteria in Part A do not give appropriate

consideration to the particular disease process in childhood).

Sec.
100.00 Growth Impairment.
101.00 Musculoskeletal System.
102.00 Special Senses and Speech.
103.00 Respiratory System.
104.00 Cardiovascular System.
105.00 Digestive System.
106.00 Genito-Urinary System.
107.00 Hemic and Lymphatic System.
109.00 Endocrine System.
110.00 Multiple Body Systems.
111.00 Neurological.
112.00 Mental and Emotional Disorders.
113.00 Neoplastic Diseases—Malignant.

100.00 Growth impairment

A. *Impairment of growth* may be disabling in itself or it may be an indicator of the severity of the impairment due to a specific disease process.

Determinations of growth impairment should be based upon the comparison of current height with at least three previous determinations, including length at birth, if available. Heights (or lengths) should be plotted on a standard growth chart, such as derived from the National Center for Health Statistics: NCHS Growth Charts. Height should be measured without shoes. Body weight corresponding to the ages represented by the heights should be furnished. The adult heights of the child's natural parents and the heights and ages of siblings should also be furnished. This will provide a basis upon which to identify those children whose short stature represents a familial characteristic rather than a result of disease. This is particularly true for adjudication under 100.02B.

B. *Bone age determinations* should include a full descriptive report of roentgenograms specifically obtained to determine bone age and must cite the standardization method used. Where roentgenograms must be obtained currently as a basis for adjudication under 100.03, views of the left hand and wrist should be ordered. In addition, roentgenograms of the knee and ankle should be obtained when cessation of growth is being evaluated in an older child at, or past, puberty.

C. The criteria in this section are applicable until closure of the major epiphyses. The cessation of significant increase in height at that point would prevent the application of these criteria.

100.01 Category of impairments, growth

100.02 *Growth impairment,* considered to be related to an additional specific medically determinable impairment, and one of the following:

A. Fall of greater than 15 percentiles in height which is sustained; or

B. Fall to, or persistence of, height below the third percentile.

100.03 *Growth impairment,* not identified as being related to an additional, specific medically determinable impairment. With:

A. Fall of greater than 25 percentiles in height which is sustained; and

B. Bone age greater than two standard deviations (2 SD) below the mean for chronological age (see 100.00B).

101.00 Musculoskeletal System

A. *Rheumatoid arthritis.* Documentation of the diagnosis of juvenile rheumatoid arthritis should be made according to an established protocol, such as that published by the Arthritis Foundation, *Bulletin on the Rheumatic Diseases.* Vol. 23, 1972–1973 Series, p. 712. Inflammatory signs include persistent pain, tenderness, erythema, swelling, and increased local temperature of a joint.

B. *The measurements of joint motion* are based on the technique for measurements described in the "Joint Method of Measuring and Recording," published by the American Academy of Orthopedic Surgeons in 1965, or "The Extremities and Back" in *Guides to the Evaluation of Permanent Impairment,* Chicago, American Medical Association, 1971 Chapter 1, pp. 1–48.

C. *Degenerative arthritis* may be the end stage of many skeletal diseases and conditions, such as traumatic arthritis, collagen disorders, septic arthritis, congenital dislocation of the hip, aseptic necrosis of the hip, slipped capital femoral epiphyses, skeletal dysplasias, etc.

101.01 Category of impairments, musculoskeletal

101.02 *Juvenile rheumatoïd arthritis.* With:

A. Persistence or recurrence of joint inflammation despite six months of medical treatment and one of the following:

1. Limitation of motion of two major joints of 50 percent or greater; or

2. Fixed deformity of two major weight-bearing joints of 30 degrees or more; or

3. Radiographic changes of joint narrowing, erosion, or subluxation; or

4. Persistent or recurrent systemic involvement such as iridocyclitis or pericarditis or

B. Steroid dependence.

101.03 *Deficit of musculoskeletal function* due to deformity or musculoskeletal disease and one of the following:

A. Walking is markedly reduced in speed or distance despite orthotic or prosthetic devices; or

B. Ambulation is possible only with obligatory bilateral upper limb assistance (e.g., with walker, crutches); or

C. Inability to perform age-related personal self-care activities involving feeding, dressing, and personal hygiene

101.05 *Disorders of the spine.*

A. Fracture of vertebra with cord involvement (substantiated by appropriate sensory and motor loss).

B. Scoliosis (congenital idiopathic or neuromyopathic). With:

1. Major spinal curve measuring 60 degrees or greater; or

2. Spinal fusion of six or more levels. Consider under a disability for one year from the time of surgery; thereafter evaluate the residual impairment; or

3. FEV (vital capacity) of 50 percent or less of predicted normal values for the individual's measured (actual) height.

C. Kyphosis or lordosis measuring 90 degrees or greater.

101.08 *Chronic osteomyelitis* with persistence or recurrence of inflammatory signs or drainage for at least 6 months despite prescribed therapy and consistent radiographic findings.

102.00 Special Senses and Speech

A. *Visual impairments in children.* Impairment of central visual acuity should be determined with use of the standard Snellen test chart. Where this cannot be used, as in very young children, a complete description should be provided of the findings using other appropriate methods of examination, including a description of the techniques used for determining the central visual acuity for distance.

The accommodative reflex is generally not present in children under 6 months of age. In premature infants, it may not be present until 6 months plus the number of months the child is premature. Therefore absence of accommodative reflex will be considered as indicating a visual impairment only in children above this age (6 months).

Documentation of an ophthalmologic disorder must include description of the ocular pathology.

B. *Hearing impairments in children.* The criteria for hearing impairments in children take into account that a lesser impairment in hearing which occurs at an early age may result in a severe speech and language disorder.

Improvement by a hearing aid, as predicted by the testing procedure, must be demonstrated to be feasible in that child, since younger children may be unable to use a hearing aid effectively.

The type of audiometric testing performed must be described and a copy of the results must be included. The pure tone air conduction in 102.08 are based on American National Standard Institute Specifications for Audiometers, S3.6–1969 (ANSI–1969). The report should indicate the specifications used to calibrate the audiometer.

The finding of a severe impairment will be based on the average hearing levels at 500, 1000, 2000, and 3000 Hertz (Hz) in the better ear, and on speech discrimination, as specified in § 102.08.

102.01 Category of impairments, special sense organs

102.02 *Impairment of central visual acuity.*

A. Remaining vision in the better eye after best correction is 20/200 or less.

B. For children below 3 years of age at time of adjudication:

1. Absence of accommodative reflex (see 102.00A for exclusion of children under 6 months of age); or

2. Retrolental fibroplasia with macular scarring or neovascularization; or

3. Bilateral congenital cataracts with visualization of retinal red reflex only or when associated with other ocular pathology.

102.08 *Hearing impairments.*

A. For children below 5 years of age at time of adjudication, inability to hear air conduction thresholds at an average of 40 decibels (db) hearing level or greater in the better ear.

B. For children 5 years of age and above at time of adjudication:

1. Inability to hear air conduction thresholds at an average of 70 decibels (db) or greater in the better ear; or

2. Speech discrimination scores at 40 percent or less in the better ear; or

3. Inability to hear air conduction thresholds at an average of 40 decibels (db) or greater in the better ear, and a speech and language disorder which significantly affects the clarity and content of the speech and is attributable to the hearing impairment.

103.00 Respiratory System

A. *Documentation of pulmonary insufficiency.* The reports of spirometric studies for evaluation under Table I must be expressed in liters. The reported FEV_1 should represent the largest of at least three satisfactory attempts, and should be within 10 percent of another FEV_1. The appropriately labeled spirometric tracing of three FEV maneuvers must be submitted with the report, showing distance per second on the abscissa and distance per liter on the ordinate. The unit distance for volume on the tracing should be at least 15 mm. per liter and the paper speed at least 20 mm. per second. The height of the individual without shoes must be recorded.

The ventilatory function studies should not be performed during or soon after an acute episode or exacerbation of a respiratory illness. In the presense of acute bronchospasm, or where the FEV_1 is less than that stated in Table I, the studies should be repeated after the administration of a nebulized bronchodilator. If bronchodilator was not used in such instances, the reason should be stated in the report.

A statement should be made as to the child's ability to understand directions and the cooperate in performance of the test, and should include an evaluation of the child's effort. When tests cannot be performed or completed, the reason (such as a child's young age) should be stated in the report.

B. *Cystic fibrosis.* This section discusses only the pulmonary manifestations of cystic fibrosis. Other manifestations, complications, or associated disease must be evaluated under the appropriate section.

The diagnosis of cystic fibrosis will be based upon appropriate history, physical examination, and pertinent laboratory findings. Confirmation based upon elevated concentration of sodium or chloride in the sweat should be included, with indication of the technique used for collection and analysis.

103.01 Category of impairments, respiratory

103.03 *Bronchial asthma.* With evidence of progression of the disease despite therapy and documented by one of the following:

A. Recent, recurrent intense asthmatic attacks requiring parenteral medication; or

B. Persistent prolonged expiration with wheezing between acute attacks and radiographic findings of peribronchial disease.

103.13 *Pulmonary manifestations of cystic fibrosis.* With:

A. FEV_1 equal to or less than the values specified in Table I (see § 103.00A for requirements of ventilatory function testing); or

B. For children where ventilatory function testing cannot be performed:

1. History of dyspnea on mild exertion or chronic frequent productive cough; and

2. Persistent or recurrent abnormal breath sounds, bilateral rales or rhonchi; and

3. Radiographic findings of extensive disease with hyperaeration and bilateral peribronchial infiltration.

Table I

Height (in centimeters)	FEV_1 equal to or less than (liters)
110 or less	0.6
120	0.7
130	0.9
140	1.1
150	1.3
160	1.5
170 or more	1.6

104.00 Cardiovascular System

A. *General.* Evaluation should be based upon history, physical findings, and appropriate laboratory data. Reported abnormalities should be consistent with the pathologic diagnosis. The actual electrocardiographic tracing, or an adequate marked photocopy, must be included. Reports of other pertinent studies necessary to substantiate the diagnosis or describe the severity of the impairment must also be included.

B. *Evaluation of cardiovascular impairments in children* requires two steps:

1. The delineation of a specific cardiovascular disturbance, either congenital or acquired. This may include arterial or venous disease, rhythm disturbance, or disease involving the valves, septa, myocardium or pericardium; and

2. Documentation of the severity of the impairment, with medically determinable and consistent cardiovascular signs, symptoms, and laboratory data. In cases where impairment characteristics are questionably secondary to the cardiovascular disturbance, additional documentation of the severity of the impairment (e.g., catherization data, if performed) will be necessary.

C. *Chest roentgenogram* (6 ft. PA film) will be considered indicative of cardiomegaly if:

1. The cardiothoracic ratio is over 60 percent at age one year or less, or 55 percent at more than one year of age; or

2. The cardiac size is increased over 15 percent from any prior chest roentgenograms; or

3. Specific chamber or vessel enlargement is documented in accordance with established criteria.

D. *Tables I, II, and III* below are designed for case adjudication and not for diagnostic purposes. The adult criteria may be useful for older children and should be used when applicable.

E. *Rheumatic fever,* as used in this section assumes diagnoses made according to the revised Jones Criteria.

104.01 Category of impairments, cardiovascular

104.02 *Chronic congestive failure.* With two or more of the following signs:

A. Tachycardia (see Table I).

B. Tachypnea (see Table II).

C. Cardiomegaly on chest roentgenogram (see 104.00C).

D. Hepatomegaly (more than 2 cm. below the right costal margin in the right midclavicular line).

E. Evidence of pulmonary edema, such as rales or orthopnea.

F. Dependent edema.

G. Exercise intolerance manifested as labored respiration on mild exertion (e.g., in an infant, feeding).

Table I—Tachycardia at Rest

Age	Apical Heart (beats per minute)
Under 1 yr	150
1 through 3 yr	130
4 through 9 yr	120
10 through 15 yr	110
Over 15 yr	100

Table II.—*Tachypnea at Rest*

Age	Respiratory rate over (per minute)
Under 1 yr	40
1 through 5 yr	35
6 through 9 yr	30
Over 9 yr	25

104.03 *Hypertensive cardiovascular disease.* With persistently elevated blood pressure for age (see Table III) and one of the following:

A. Impaired renal function as described under the criteria in 106.02; or

B. Cerebrovascular damage as described under the criteria in 111.06; or

C. Congestive heart failure as described under the criteria in 104.2.

Table III.—*Elevated Blood Pressure*

Age	S (over) mm.	Diastolic (over) in mm.
Under 6 mo	95	60
6 mo. to 1 yr	110	70
1 through 8 yrs	115	80
9 through 11 yrs	120	80
12 through 15 yrs	130	80
Over 15 yrs	140	80

104.04 Cyanotic congenital heart disease. With one of the following:

A. Surgery is limited to palliative measures; or

B. Characteristics squatting, hemoptysis, syncope, or hypercyanotic spells; or

C. Chronic hematocrit of 55 percent or greater or arterial O_2 saturation of less than 90 percent at rest, or arterial oxygen tension of less than 60 Torr at rest.

104.05 *Cardiac arrhythmia, such as persistent or recurrent heart block or A–V dissociation (with or without therapy).* And one of the following:

A. Cardiac syncope; or

B. Congestive heart failure as described under the criteria in 104.02; or

C. Exercise intolerance with labored respirations on mild exertion (e.g., in infants, feeding).

104.07 *Cardiac syncope* with at least one documented syncopal episode characteristic of specific cardiac disease (e.g., aortic stenosis).

104.08 *Recurrent hemoptysis.* Associated with either pulmonary hypertension or extensive bronchial collaterals due to documented chronic cardiovascular disease.

104.09 *Chronic rheumatic fever or rheumatic heart disease.* With:

A. Persistence of rheumatic fever activity for 6 months or more, with significant murmur(s), cardiomegaly (see 104.00C), and

other abnormal laboratory findings (such as elevated sedimentation rate or electrocardiographic findings); or

B. Congestive heart failure as described under the criteria in 104.02.

105.00 Digestive System

A. *Disorders of the digestive system* which result in disability usually do so because of interference with nutrition and growth, multiple recurrent inflammatory lesions, or other complications of the disease. Such lesions or complications usually respond to treatment. To constitute a listed impairment, these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Documentation of gastrointestinal impairments* should include pertinent operative findings, radiographic studies, endoscopy, and biopsy reports. Where a liver biopsy has been performed in chronic liver disease, documentation should include the report of the biopsy.

C. *Growth retardation and malnutrition.* When the primary disorder of the digestive tract has been documented, evaluate resultant malnutrition under the criteria described in 105.08. Evaluate resultant growth impairment under the criteria described in 100.03. Intestinal disorders, including surgical diversions and potentially correctable congenital lesions, do not represent a severe impairment if the individual is able to maintain adequate nutrition growth, and development.

D. *Multiple congenital anomalies.* See related criteria, and consider as a combination of impairments.

105.01 Category of impairments, disgestive

105.03 *Esophageal obstruction, caused by atresia, stricture, or stenosis* with malnutrition as described under the criteria in 105.08.

105.05 *Chronic liver disease.* With one of the following:

A. Inoperable billiary atresia demonstrated by X-ray or surgery; or

B. Intractable ascites not attributable to other causes, with serum albumin of 3.0 gm./100 ml. or less; or

C. Esophageal varices (demonstrated by angiography, barium swallow, or endoscopy or by prior performance of a specific shunt or plication procedure); or

D. Hepatic coma, documentated by findings from hospital records; or

E. Hepatic encephalopathy. Evaluate under the criteria in 112.02; or

F. Chronic active inflammation or necrosis documented by SGOT persistently more than 100 units or serum bilirubin of 2.5 mg. percent or greater.

105.07 *Chronic inflammatory bowel disease (such as ulcerative colitis, regional enteritis), as documented in 105.00.* With one of the following:

A. Intestinal manifestations or complications, such as obstruction, abscess, or fistula formation which has lasted or is expected to last 12 months; or

B. Malnutrition as described under the criteria in 105.08; or

C. Growth impairment as described under the criteria in 100.03.

105.08 *Malnutrition, due to demonstrable gastrointestinal disease causing either a fall of 15 percentiles of weight which persists or the persistence of weight which is less than the third percentile (on standard growth charts).* And one of the following:

A. Stool fat excretion per 24 hours:

1. More than 15 percent in infants less than 6 months.

2. More than 10 percent in infants 6–18 months.

3. More than 6 percent in children more than 18 months; or

B. Persistent hematocrit of 30 percent or less despite prescribed therapy; or

C. Serum carotene of 40 mcg./100 ml. or less; or

D. Serum albumin of 3.0 gm./100 ml. or less.

106.00 Genito-Urinary System

A. *Determination of the presence of chronic renal disease* will be based upon the following factors:

1. History, physical examination, and laboratory evidence of renal disease.

2. Indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Renal transplant.* The amount of function restored and the time required to effect improvement depend upon various factors including adequacy of post-transplant renal function, incidence of renal infection, occurrence of rejection crisis, presence of systemic complications (anemia, neuropathy, etc.) and side effects of corticosteroid or immuno-suppressive agents. A period of at least 12 months is required for the individual to reach a point of stable medical improvement.

C. Evaluate associated disorders and complications according to the appropriate body system listing.

106.01 Category of impairments, genito-urinary

106.02 *Chronic renal disease.* With:

A. BUN of 30 mg./100 ml. or greater; or

B. Serum creatinine of 3.0 mg./100 ml. or greater; or

C. Creatinine clearance equal to or less than 42 ml./min./1.73 m^2; or

D. Chronic renal dialysis program for irreversible renal failure; or

E. Renal transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 106.00B).

106.06 Nephrotic syndrome, with edema not controlled by prescribed therapy. And:

A. Serum albumin less than 2 gm./100 ml.; or

B. Proteinuria more than 2.5 gm./1.73m^2/day.

107.00 Hemic and Lymphatic System

A. *Sickle cell disease* refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis must be included. Vaso-occlusive, hemolytic, or aplastic episodes should be documented by description of severity, frequency, and duration.

Disability due to sickle cell disease may be solely the result of a severe, persistent anemia or may be due to the combination of chronic progressive or episodic manifestations in the presence of a less severe anemia.

Major visceral episodes causing disability include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genitourinary involvement, etc.

B. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence such as abnormal thromboplastin generation, coagulation time, or factor assay.

C. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

The designated duration of disability implicit in the finding of a listed impairment is contained in 107.11. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of any remaining impairment must be evaluated on the basis of the medical evidence.

107.01 category of impairments, hemic and lymphatic

107.03 *Hemolytic anemia (due to any cause).* Manifested by persistence of hematocrit of 26 percent or less despite prescribed therapy, and reticulocyte count of 4 percent or greater.

107.05 *Sickle cell disease.* With:

A. Recent, recurrent, severe vaso-occlusive crises (musculoskeletal, vertebral, abdominal); or

B. A major visceral complication in the 12 months prior to application; or

C. A hyperhemolytic or aplastic crisis within 12 months prior to application; or

D. Chronic, severe anemia with persistence of hematocrit of 26 percent or less; or

E. Congestive heart failure, cerebrovascular damage, or emotional disorder as described under the criteria in 104.02, 111.00ff, or 112.00ff.

107.06 *Chronic idiopathic thrombocytopenic purpura of childhood* with purpura and thrombocytopenia of 40,000 platelets/cu. mm. or less despite prescribed therapy or recurrent upon withdrawal of treatment.

107.08 *Inherited coagulation disorder.* With:

A. Repeated spontaneous or inappropriate bleeding; or

B. Hemarthrosis with joint deformity.

107.11 *Acute leukemia.* Consider under a disability:

A. For 2½ years from the time of initial diagnosis; or

B. For 2½ years from the time of recurrence of active disease.

109.00 Endocrine System

A. *Cause of disability.* Disability is caused by a disturbance in the regulation of the

secretion or metabolism of one or more hormones which are not adequately controlled by therapy. Such disturbances or abnormalities usually respond to treatment. To constitute a listed impairment these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Growth.* Normal growth is usually a sensitive indicator of health as well as of adequate therapy in children. Impairment of growth may be disabling in itself or may be an indicator of a severe disorder involving the endocrine system or other body systems. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

C. *Documentation.* Description of characteristic history, physical findings, and diagnostic laboratory data must be included. Results of laboratory tests will be considered abnormal if outside the normal range or greater than two standard deviations from the mean of the testing laboratory. Reports in the file should contain the information provided by the testing laboratory as to their normal values for that test.

D. *Hyperfunction of the adrenal cortex.* Evidence of growth retardation must be documented as described 100.00. Elevated blood or urinary free cortisol levels are not acceptable in lieu of urinary 17-hydroxycorticosteroid excretion for the diagnosis of adrenal cortical hyperfunction.

E. *Adrenal cortical insufficiency.* Documentation must include persistent low plasma cortisol or low urinary 17-hydroxycorticosteroids or 17-ketogenic steroids and evidence of unresponsiveness to ACTH stimulation.

109.01 Category of impairments, endrocrine

109.02 *Thyroid Disorders.*

A. *Hyperthyroidism (as documented in 109.00C).* With clinical manifestations despite prescribed therapy, and one of the following:

1. Elevated serum thyroxine (T_4) and either elevated free T^4 or resin T_3 uptake; or

2. Elevated thyroid uptake of radioiodine; or

3. Elevated serum triiodothyronine (T_3).

B. *Hypothyrodism.* With one of the following, despite prescribed therapy:

1. IQ of 69 or less; or

2. Growth impairment as described under the criteria in 100.02 A and B; or

3. Precocious puberty.

109.03 *Hyperparathyroidism (as documented in 109.00C).* With:

A. Repeated elevated total or ionized serum calcium; or

B. Elevated serum parathyroid hormone.

109.04 *Hypoparathyroidism or Pseudo-hypoparathyroidism.* With:

A. Severe recurrent tetany or convulsions which are unresponsive to prescribed therapy; or

B. Growth retardation as described under the criteria in 100.02 A and B.

109.05 *Diabetes insipidus, documented by pathologic hypertonic saline or water deprivation test.* And one of the following:

A. Intracranial space-occupying lesion, before or after surgery; or

B. Unresponsiveness to Pitressin; or

C. Growth retardation as described under the criteria in 100.02 A and B; or

D. Unresponsive hypothalmic thirst center, with chronic or recurrent hypernatremia; or

E. Decreased visual fields attributable to a pituitary lesion.

109.06 *Hyperfunction of the adrenal cortex (Primary or secondary).* With:

A. Elevated urinary 17-hyroxycorticosteroids (or 17-ketogenic steroids) as documented in 109.00 C and D; and

B. Unresponsiveness to low-dose dexamethasone suppression.

109.07 *Adrenal cortical insufficiency (as documented in 109.00 C and E)* with recent, recurrent episodes of circulatory collapse.

109.08 *Juvenile diabetes mellitus (as documented in 109.00C) requiring parenteral insulin.* And one of the following, despite prescribed therapy:

A. Recent, recurrent hospitalizations with acidosis; or

B. Recent, recurrent episodes of hypoglycemia; or

C. Growth retardation as described under the criteria in 100.02 A or B; or

D. Impaired renal function as described under the criteria in 106.00ff.

109.09 *Iatrogenic hypercorticoid state.* With chronic glucocorticoid therapy resulting in one of the following:

A. Osteoporosis; or

B. Growth retardation as described under the criteria in 100.02 A or B; or

C. Diabetes mellitus as described under the criteria in 109.08; or

D. Myopathy as described under the criteria in 111.06; or

E. Emotional disorder as described under the criteria in 112.00ff.

109.10 *Pituitary dwarfism (with documented growth hormone deficiency).* And growth impairment as described under the criteria in 100.2B.

109.11 *Adrenogenital syndrome.* With:

A. Recent, recurrent self-losing episodes despite prescribed therapy; or

B. Inadequate replacement therapy manifested by accelerated bone age and virilization, or

C. Growth impairment as described under the criteria in 100.02 A or B.

109.12 *Hypoglycemia (as documented in 109.00C).* With recent, recurrent hypoglycemic episodes producing convulsion or coma.

109.13 *Gonadal Dysgenesis (Turner's Syndrome), chromosomally proven.* Evaluate the resulting impairment under the criteria for the appropriate body system.

110.00 Multiple Body Systems

A. *Catastrophic congenital abnormalities or disease.* This section refers only to very serious congenital disorders, diagnosed in the newborn or infant child.

B. *Immune deficiency diseases.* Documentation of immune deficiency disease must be submitted, and may include quantitative immunoglobulins, skin tests for delayed hypersensitivity, lymphocyte stimulative tests, and measurements of cellular immunity mediators.

110.01 Category of impairments, mutiple body systems

110.08 *Catastrophic congenital abnormalities or disease.* With:

A. A positive diagnosis (such as anencephaly, trisomy D or E, cyclopia, etc.), generally regarded as being incompatible with extrauterine life; or

B. A positive diagnosis (such as cri du chat, Tay-Sachs Disease) wherein attainment of the growth and development level of 2 years is not expected to occur.

110.09 *Immune deficiency disease.*

A. *Hypogammaglobulinemia or dysgammaglobulinemia.* With:

1. Recent, recurrent severe infections; or

2. A complication such as growth retardation, chronic lung disease, collagen disorder, or tumors.

E. *Thymic dysplastic syndromes* (such as Swiss, diGeorge).

111.00 Neurological

A. *Seizure disorder* must be substantiated by at least one detailed description of a typical seizure. Report of recent documentation should include an electroencephalogram and neurological examination. Sleep EEG is preferable, especially with temporal lobe seizures. Frequency of attacks and any associated phenomena should also be substantiated.

Young children may have convulsions in association with febrile illnesses. Proper use of 111.02 and 111.03 requires that a seizure disorder be established. Although this does not exclude consideration of seizures occurring during febrile illnesses, it does require documentation of seizures during nonfebrile periods.

There is an expected delay in control of seizures when treatment is started, particularly when changes in the treatment regimen are necessary. Therefore, a seizure disorder should not be considered to meet the requirements of 111.02 or 111.03 unless it is shown that seizures have persisted more than three months after prescribed therapy began.

B. *Minor motor seizures.* Classical petit mal seizures must be documented by characteristic EEG pattern, plus information as to age at onset and frequency of clinical seizures. Myoclonic seizures, whether of the typical infantile or Lennox-Gastaut variety after infancy, must also be documented by the characteristic EEG pattern plus information as to age at onset and frequency of seizures.

C. *Motor dysfunction.* As described in 111.06, motor dysfunction may be due to any neurological disorder. It may be due to static or progressive conditions involving any area of the nervous system and producing any type of neurological impairment. This may include weakness, spasticity lack of coordination, ataxia, tremor, athetosis, or sensory loss. Documentation of motor dysfunction must include neurologic findings and description of type of neurologic abnormality (e.g., spasticity, weakness), as well as a description of the child's functional impairment (i.e., what the child is unable to do because of the abnormality). Where a diagnosis has been made, evidence should be included for substantiation of the diagnosis (e.g., blood chemistries and muscle biopsy reports), wherever applicable.

D. *Impairment of communication.* The documentation should include a description of a recent comprehensive evaluation, including all areas of affective and effective communication, performed by a qualified professional.

111.01 Category of impairment, neurological

111.02 *Major motor seizure disorder.*

A. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of more than one major motor seizure per month despite at least three months of prescribed treatment. With:

1. Diurnal episodes (loss of consciousness and convulsive seizures); or

2. Nocturnal episodes manifesting residuals which interfere with activity during the day.

B. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of at least one major motor seizure in the year prior to application despite at least three months of prescribed treatment. And one of the following:

1. IQ of 69 or less; or

2. Significant interference with communication due to speech, hearing, or visual defect; or

3. Significant emotional disorder; or

4. Where significant adverse effects of medication interfere with major daily activities.

111.03 *Minor motor seizure disorder.* In a child with an established seizure disorder, the occurrence of more than one minor motor seizure per week, with alteration of awareness or loss of consciousness, despite at least three months of prescribed treatment.

111.05 *Brain tumors.* A. Malignant gliomas (astrocytoma—Grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, primary sarcoma, or brain stem gliomas; or

B. Evaluate other brain tumors under the criteria for the resulting neurological impairment.

111.06 *Motor dysfunction (due to any neurological disorder).* Persistent disorganization or deficit of motor function for age involving two extremities, which (despite prescribed therapy) interferes with age-appropriate major daily activities and results in disruption of:

A. Fine and gross movements; of

B. Gait and station.

111.07 *Cerebral palsy.* With: A. Motor dysfunction meeting the requirements of 111.06 or 101.03; or

B. Less severe motor dysfunction (but more than slight) and one of the following:

1. IQ of 69 or less; or

2. Seizure disorder, with at least one major motor seizure in the year prior to application; or

3. Significant interference with communication due to speech, hearing, or visual defect; or

4. Significant emotional disorder.

111.08 *Meningomyelocele (and related disorders).* With one of the following despite prescribed treatment:

A. Motor dysfunction meeting the requirements of § 111.03 or § 111.06; or

B. Less severe motor dysfunction (but more than slight), and:

1. Urinary or fecal incontinence when inappropriate for age; or

2. IQ of 69 or less; or

C. Four extremity involvement; or

D. Noncompensated hydrocephalus producing interference with mental or motor developmental progression.

111.09 *Communication impairment, associated with documented neurological disorder.* And one of the following:

A. Documented speech deficit which significantly affects the clarity and content of the speech; or

B. Documented comprehension deficit resulting in effective verbal communication for age; or

C. Impairment of hearing as described under the criteria in 102.08.

112.00 Mental and Emotional Disorders

A. *Introduction.* This section is intended primarily to describe mental and emotional disorders of young children. The criteria describing medically determinable impairments in adults should be used where they clearly appear to be more appropriate.

B. *Mental retardation. General.* As with any other impairment, the necessary evidence consists of symptoms, signs, and laboratory findings which provide medically demonstrable evidence of impairment severity. Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not clearly covered under the provisions of 112.05A. Developmental milestone criteria may be the sole basis for adjudication only in cases where the child's young age and/or condition preclude formal standardized testing by a psychologist or psychiatrist experienced in testing children.

Measures of intellectual functioning. Standardized intelligence tests, such as the Wechsler Preschool and Primary Scale of Intelligence (WPPSI), the Wechsler Intelligence Scale for Children (WISC), the Revised Stanford-Binet Scale, and the McCarthey Scales of Children's Abilities, should be used wherever possible. Key data such as subtest scores should also be included in the report. Tests should be administered by a qualified and experienced psychologist or psychiatrist, and any discrepancies between formal test results and the child's customary behavior and daily activities should be duly noted and resolved.

Developmental milestone criteria. In the event that a child's young age and/or condition preclude formal testing by a psychologist or psychiatrist experienced in testing children, a comprehensive evaluation covering the full range of developmental activities should be performed. This should consist of a detailed account of the child's daily activities together with direct observations by a professional person; the latter should include indices or manifestations of social, intellectual, adaptive, verbal, motor (posture, locomotion, manipulation), language, emotional, and self-care development for age. The above should then be related by the evaluating or treating physician to established developmental norms of the kind found in any widely used standard pediatrics text.

c. *Profound combined mental-neurological-musculoskeletal impairments.* There are children with profound and irreversible brain damage resulting in total incapacitation. Such children may meet criteria in either neurological, musculoskeletal, and/or mental sections; they should be adjudicated under the criteria most completely substantiated by the medical evidence submitted. Frequently, the most appropriate criteria will be found under the mental impairment section.

112.01 Category of impairments, mental and emotional

112.02 *Chronic brain syndrome.* With arrest of developmental progression for at least six months or loss of previously acquired abilities.

112.03 *Psychosis of infancy and childhood.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; constriction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Significant withdrawal or detachment; or

B. Impaired sense of reality; or

C. Bizarre behavior patterns; or

D. Strong need for maintenance of sameness, with intense anxiety, fear, or anger when change is introduced; or

E. Panic at threat of separation from parent.

112.04 *Functional nonpsychotic disorders.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; construction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Psychophysiological disorder (e.g., diarrhea, asthma); or

B. Anxiety; or

C. Depression; or

D. Phobic, obsessive, or compulsive behavior; or

E. Hypochondriasis; or

F. Hysteria; or

G. Asocial or antisocial behavior.

112.05 *Mental retardation.*—A. Achievement of only those developmental milestones generally acquired by children no more than one-half the child's chronological age; or

B. IQ of 59 or less; or

C. IQ of 60–69, inclusive, and a physical or other mental impairment imposing additional and significant restriction of function or developmental progression.

113.00 Neoplastic Diseases Malignant

A. *Introduction.* Determination of disability in the growing and developing child with a malignant neoplastic disease is based upon the combined effects of:

1. The pathophysiology, histology, and natural history of the tumor; and

2. The effects of the currently employed aggressive multimodal therapeutic regimens.

Combinations of surgery, radiation, and chemotherapy or prolonged therapeutic

schedules impart significant additional morbidity to the child during the period of greatest risk from the tumor itself. This period of highest risk and greatest therapeutically-induced morbidity defines the limits of disability for most of childhood neoplastic disease.

B. *Documentation.* The diagnosis of neoplasm should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen, along with all pertinent laboratory and X-ray reports. The evidence should also include a recent report directed especially at describing whether there is evidence of local or regional recurrence, soft part or skeletal metastasis, and significant post-therapeutic residuals.

C. *Malignant solid tumors,* as listed under 113.03, include the histiocytosis syndromes except for solitary eosinophilic granuloma. Thus, 113.03 should not be used for evaluating brain tumors (see 111.05) or thyroid tumors, which must be evaluated on the basis of whether they are controlled by prescribed therapy.

D. *Duration of disability* from malignant neoplastic tumors is included in 113.02 and 113.03. Following the time periods designated in these sections, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of a remaining impairment must be evaluated on the basis of the medical evidence.

113.01 Category of Impairments, Neoplastic Diseases—Malignant

113.02 *Lymphoreticular malignant neoplasms.* Consider under a disability:

A. For 2½ years from the time initial diagnosis, or

B. For 2½ years from the time of recurrence of active disease.

113.03 *Malignant solid tumors.* Consider under a disability:

A. For 2 years from the time of initial diagnosis; or

B. For 2 years from the time of recurrence of active disease.

113.04 *Neuroblastoma.* With one of the following:

A. Extension across the midline; or

B. Distant metastasis; or

C. Recurrence; or

D. Onset at age 1 year or older.

113.05 *Retinoblastoma.* With one of the following:

A. Bilateral involvement; or

B. Metastases; or

C. Extension beyond the orbit; or

D. Recurrence.

APPENDIX 2—MEDICAL—VOCATIONAL GUIDELINES

Sec.

200.00 Introduction.
201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).
202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).
203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).
204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).

200.00 *Introduction.* (a) The following rules reflect the major functional and vocational patterns which are encountered in cases which cannot be evaluated on medical considerations alone, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations.

(b) The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; i.e., in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the "Dictionary of Occupational Titles" and the "Occupational Outlook Handbook," published by the Department of Labor; the "County Business Patterns" and "Census Surveys" published by the Bureau of the Census; and occupational surveys of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(c) In the application of the rules, the individual's residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined.

(d) The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this Appendix 2, a conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this Appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if strength limitations resulting from an individual's impairment(s) considered with the judgments made as to the individual's age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, nonexertional impairments in terms of numbers of jobs remaining for a particular individual.

(e) Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in this Appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments resulting in both strength limitations and

nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules in this Appendix 2, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

201.00 *Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).* (a) Most sedentary occupations fall within the skilled, semi-skilled, professional, administrative, technical, clerical, and benchwork classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and benchwork occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

(b) These unskilled sedentary occupations are standard within the industries in which they exist. While sedentary work represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity.

(c) Vocational adjustment to sedentary work may be expected where the individual has special skills or experience relevant to sedentary work or where age and basic educational competences provide sufficient occupational mobility to adapt to the major segment of unskilled sedentary work. Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

(d) The adversity of functional restrictions to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by reason of any remote past education, whether it is more or less than limited education.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of ability to engage in substantial gainful activity regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 50–54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h) The term "younger individual" is used to denote an individual age 18 through 49. For those within this group who are age 45–49, age is a less positive factor than for those who are age 18–44. Accordingly, for such individuals; (1) who are restricted to sedentary work, (2) who are unskilled or have no transferable skills, (3) who have no relevant past work or who can no longer perform vocationally relevant past work, and (4) who are either illiterate or unable to communicate in the English language, a finding of disabled is warranted. On the other hand, age is a more positive factor for those who are under age 45 and is usually not a significant factor in limiting such an individual's ability to make a vocational adjustment, even an adjustment to unskilled sedentary work, and even where the individual is illiterate or unable to communicate in English. However, a finding of disabled is not precluded for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work. The following examples are illustrative: Example 1: An individual under age 45 with a high school education can no longer do past work and is restricted to unskilled sedentary jobs because of a severe medically determinable cardiovascular impairment (which does not meet or equal the listings in Appendix 1). A permanent injury of the right hand limits the individual to sedentary jobs which do not require bilateral manual dexterity. None of the rules in Appendix 2 are applicable to this particular set of facts, because this individual cannot perform the full range of work defined as sedentary. Since the inability to perform jobs requiring bilateral manual dexterity significantly compromises the only range of work for which the individual is otherwise qualified (i.e., sedentary), a finding of disabled would be appropriate. Example 2: An illiterate 41 year old individual with mild mental retardation (IQ of 78) is restricted to unskilled sedentary work and cannot perform vocationally relevant past work, which had consisted of unskilled agricultural field work; his or her particular characteristics do not specifically meet any of the rules in Appendix 2, because this individual cannot perform the full range of work defined as sedentary. In light of the adverse factors which further narrow the range of sedentary work for which this individual is qualified, a finding of disabled is appropriate.

(i) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18–44 even if they are illiterate or unable to communicate in English.

Table No. 1.—*Residual functional capacity: Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)*

Rule	Age	Education	Previous work experience	Decision
201.01	Advanced age	Limited or less	Unskilled or none	Disabled.
201.02	do	do	Skilled or semiskilled—skills not transferable [1].	Do.
201.03	do	do	Skilled or semiskilled—skills transferable [1].	Not disabled.
201.04	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Unskilled or none	Disabled.
201.05	do	High school graduate or more—provides for direct entry into skilled work [2].	do	Not disabled.
201.06	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable [1].	Disabled.

Table No. 1.—*Residual functional capacity: Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)—Continued*

Rule	Age	Education	Previous work experience	Decision
201.07	do	do	Skilled or semiskilled—skills transferable [1].	Not disabled.
201.08	do	High school graduate or more—provides for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable [1].	Do.
201.09	Closely approaching advanced age.	Limited or less	Unskilled or none	Disabled.
201.10	do	do	Skilled or semiskilled—skills not transferable.	Do.
201.11	do	do	Skilled or semiskilled—skills transferable.	Not disabled.
201.12	do	High school graduate or more—does not provide for direct entry into skilled work [3].	Unskilled or none	Disabled.
201.13	do	High school graduate or more—provides for direct entry into skilled work [3].	do	Not disabled.
201.14	do	High school graduate or more—does not provide for direct entry into skilled work [3].	Skilled or semiskilled—skills not transferable.	Disabled.
201.15	do	do	Skilled or semiskilled—skills transferable.	Not disabled.
201.16	do	High school graduate or more—provides for direct entry into skilled work [3].	Skilled or semiskilled—skills not transferable.	Do.
201.17	Younger individual age 45–49.	Illiterate or unable to communicate in English.	Unskilled or none	Disabled.
201.18	do	Limited or less—at least literate and able to communicate in English.	do	Not disabled.
201.19	do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
201.20	do	do	Skilled or semiskilled—skills transferable.	Do.
201.21	do	High school graduate or more	Skilled or semiskilled—skills not transferable.	Do.
201.22	do	do	Skilled or semiskilled—skills transferable.	Do.
201.23	Younger individual age 18–44.	Illiterate or unable to communicate in English.	Unskilled or none	Do. [4]
201.24	do	Limited or less—at least literate and able to communicate in English.	do	Do. [4]
201.25	do	Limited or less	Skilled or semiskilled—skills not transferable.	Do. [4]
201.26	do	do	Skilled or semiskilled—skills transferable.	Do. [4]
201.27	do	High school graduate or more	Unskilled or none	Do. [4]
201.28	do	do	Skilled or semiskilled—skills not transferable.	Do. [4]
201.29	do	do	Skilled or semiskilled—skills transferable.	Do. [4]

[1] See 201.00(f).
[2] See 201.00(d).
[3] See 201.00(g).
[4] See 201.00(h).

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility, even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (i.e., closely approaching advanced age, 50–54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

(e) The presence of acquired skills that are readily transferable to a significant range of semi-skilled or skilled work within an individual's residual functional capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) For a finding of transferability of skills to light work for individuals of advanced age who are closely approaching retirement age (age 60–64), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18–49) even if illiterate or unable to communicate in English.

Table No. 2.—*Residual functional capacity: Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)*

Rule	Age	Education	Previous work experience	Decision
202.01	Advanced age.	Limited or less	Unskilled or none	Disabled.
202.02	do	do	Skilled or semiskilled—skills not transferable.	Do.
202.03	do	do	Skilled or semiskilled—skills transferable [1].	Not disabled.
202.04	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Unskilled or none	Disabled.
202.05	do	High school graduate or more—provides for direct entry into skilled work [2].	do	Not disabled.
202.06	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable.	Disabled.

Table No. 2.—*Residual functional capacity: Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)*

Rule	Age	Education	Previous work experience	Decision
202.07	...do	...do	Skilled or semiskilled—skills transferable [1].	Not disabled.
202.08	...do	High school graduate or more—provides for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable.	Do.
202.09	Closely approaching advanced age.	Illiterate or unable to communicate in English.	Unskilled or none	Disabled.
202.10	...do	Limited or less—At least literate and able to communicate in English.	...do	Not disabled.
202.11	...do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
202.12	...do	...do	Skilled or semiskilled—skills transferable.	Do.
202.13	...do	High school graduate or more	Unskilled or none	Do.
202.14	...do	...do	Skilled or semiskilled—skills not transferable.	Do.
202.15	...do	...do	Skilled or semiskilled—skills transferable.	Do.
202.16	Younger individual	Illiterate or unable to communicate in English.	Unskilled or none	Do.
202.17	...do	Limited or less—At least literate and able to communicate in English.	...do	Do.
202.18	...do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
202.19	...do	...do	Skilled or semiskilled—skills transferable.	Do.
202.20	...do	High school graduate or more	Unskilled or none	Do.
202.21	...do	...do	Skilled or semiskilled—skills not transferable.	Do.
202.22	...do	...do	Skilled or semiskilled—skills transferable.	Do.

[1] See 202.00(f).
[2] See 202.00(c).

203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform medium work includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.

(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. However, an individual with a marginal education and long work experience (i.e., 35 years or more) limited to the performance of arduous unskilled labor, who is not working and is no longer able to perform this labor because of a severe impairment(s), may still be found disabled even though the individual is able to do medium work.

(c) However, the absence of any relevant work experience becomes a more significant adversity for individuals of advanced age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals closely approaching retirement age (60–64) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

204.00 *Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).* The residual functional capacity to perform heavy work or very heavy work includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of "not disabled". Environmental restrictions ordinarily would not significantly affect the range of work existing in the national economy for individuals with the physical capability for heavy work (or very heavy work). Thus an impairment which does not preclude heavy work (or very heavy work) would not ordinarily be the primary reason for unemployment, and generally is sufficient for a finding of not disabled, even though age, education, and skill level of prior work experience may be considered adverse.

Table No. 3.—*Residual functional capacity: Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s)*

Rule	Age	Education	Previous work experience	Decision
203.01	Closely approaching retirement age.	Marginal or none	Unskilled or none	Disabled.
203.02	...do	Limited or less	None	Do.
203.03	...do	Limited	Unskilled	Not disabled.
203.04	...do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.

Table No. 3.—*Residual functional capacity: Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s)—Continued*

Rule	Age	Education	Previous work experience	Decision
203.05	do	do	Skilled or semiskilled—skills transferable.	Do.
203.06	do	High school graduate or more	Unskilled or none	Do.
203.07	do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.08	do	do	Skilled or semiskilled—skills transferable.	Do.
203.09	do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.10	Advanced age	Limited or less	None	Disabled.
203.11	do	do	Unskilled	Not disabled.
203.12	do	do	Skilled or semiskilled—skills not transferable.	Do.
203.13	do	do	Skilled or semiskilled—skills transferable.	Do.
203.14	do	High school graduate or more	Unskilled or none	Do.
203.15	do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.16	do	do	Skilled or semiskilled—skills transferable.	Do.
203.17	do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.18	Closely approaching advanced age.	Limited or less	Unskilled or none	Do.
203.19	do	do	Skilled or semiskilled—skills not transferable.	Do.
203.20	do	do	Skilled or semiskilled—skills transferable.	Do.
203.21	do	High school graduate or more	Unskilled or none	Do.
203.22	do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.23	do	do	Skilled or semiskilled—skills transferable.	Do.
203.24	do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.25	Younger individual	Limited or less	Unskilled or none	Do.
203.26	do	do	Skilled or semiskilled—skills not transferable.	Do.
203.27	do	do	Skilled or semiskilled—skills transferable.	Do.
203.28	do	High school graduate or more	Unskilled or none	Do.
203.29	do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.30	do	do	Skilled or semiskilled—skills transferable.	Do.
203.31	do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

2. Subpart I of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

Subpart I—Determining Disability and Blindness

General

Sec.
416.901 Scope of subpart.
416.902 General definition and terms for this subpart.

Determinations

416.903 Who makes disability and blindness determinations.
416.904 Determinations by other organizations and agencies.

Definition of Disability

416.905 Basic definition of disability.
416.906 Disability for children under age 18.
416.907 Disability under a State plan.
416.908 What is needed to show an impairment.
416.909 How long the impairment must last.
416.910 Meaning of substantial gainful activity.

Evidence

416.912 Your responsibility to submit evidence.
416.913 Medical evidence of your impairment.
416.914 When we will purchase existing evidence.
416.915 Where and how to submit evidence.
416.916 If you fail to submit medical and other evidence.
416.917 Consultative examination at our expense.
416.918 If you do not appear at a consultative examination.

Evaluation of Disability

416.920 Evaluation of disability in general.
416.921 What we mean by an impairment that is not severe.
416.922 When you have two or more unrelated impairments—initial claims.
416.923 How we determine disability for a child under age 18.

Medical Considerations

416.925 Listing of impairments in Appendix 1 of subpart P of Part 404 of this chapter.
416.926 Medical equivalence.
416.927 Conclusion by physicians concerning your disability or blindness.
416.928 Symptoms, signs, and laboratory findings.
416.929 How we evaluate symptoms, including pain.
416.930 Need to follow prescribed treatment.

Presumptive Disability and Blindness

416.931 The meaning of presumptive disability or presumptive blindness.
416.932 When presumptive payments begin and end.
416.933 How we make a finding of presumptive disability or presumptive blindness.
416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.

Drug Addiction and Alcoholism

416.935 Medically determined drug addicts and alcoholics.
416.936 Treatment required for medically determined drug addicts and alcoholics.
416.937 What we mean by appropriate treatment.
416.938 What we mean by approved institutions or facilities.
416.939 How we consider whether treatment is available.

Residual Functional Capacity

416.945 Your residual functional capacity.
416.946 Responsibility for assessing and determining residual functional capacity.

Vocational Considerations

416.960 When your vocational background will be considered.
416.961 Your ability to do work depends upon your residual functional capacity.
416.962 If you have done only arduous unskilled physical labor.
416.963 Your age as a vocational factor.
416.964 Your education as a vocational factor.
416.965 Your work experience as a vocational factor.
416.966 Work which exists in the national economy.
416.967 Physical exertion requirements.
416.968 Skill requirements.
416.969 Listing of Medical—Vocational Guidelines in Appendix 2 of subpart P of Part 404 of this chapter.

Substantial Gainful Activity

416.971 General.
416.972 What we mean by substantial gainful activity.
416.973 General information about work activity.
416.974 Evaluation guides if you are an employee.

416.975 Evaluation guides if you are self-employed.

Blindness

416.981 Meaning of blindness as defined in the law.
416.982 Blindness under a State plan.
416.983 How we evaluate statutory blindness.
416.984 If you are statutorily blind and still working.
416.985 How we evaluate other visual impairments.
416.986 Why and when we will find that your statutory blindness has ended.

Continuing or Stopping Disability or Blindness

416.988 Your responsibility to tell us of events that may change your disability or blindness status.
416.989 We may investigate to find out whether you continue to be disabled.
416.990 When we will investigate whether your disability continues.
416.991 If your medical recovery was expected and you returned to work.
416.992 The trial work period.
416.993 We may ask you to help us determine if you are still disabled or blind.
416.994 Why and when we will find that your disability has ended.
416.996 If you become disabled by another impairment.

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Subpart I—Determining Disability and Blindness

General

§ 416.901 Scope of subpart.

In order for you to become entitled to any benefits based upon disability or blindness you must be disabled or blind as defined in title XVI of the Social Security Act. This Subpart explains how we determine whether you are disabled or blind. We have organized the rules in the following way.

(a) We define general terms, then discuss who makes our disability or blindness determinations and state that disability and blindness determinations made under other programs are not binding on our determinations.

(b) We explain the term "disability" and note some of the major factors that are considered in determining whether you are disabled in §§ 416.905–416.910.

(c) Sections 416.912–416.918 contain our rules on evidence. We explain your responsibilities for submitting evidence of your impairment, state what we consider to be acceptable sources of medical evidence, and describe what information should be included in medical reports.

(d) Our general rules on evaluating disability are stated in §§ 416.920–416.923. We describe the steps that we go through and the order in which they are considered.

(e) Our rules on medical considerations are found in §§ 416.925–416.930. We explain in these rules—

(1) The purpose and use of the Listing of Impairments found in Appendix 1 of subpart P of Part 404 of this chapter;

(2) What we mean by the term "medical equivalence" and how we determine medical equivalence;

(3) The effect of a conclusion by your physician that you are disabled;

(4) What we mean by symptoms, signs, and laboratory findings;

(5) How we evaluate pain and other symptoms; and

(6) The effect on your benefits if you fail to follow treatment that is expected to restore your ability to work, and how we apply the rule.

(f) In §§ 416.931–416.934 we explain that we may make payments on the basis of presumptive disability or presumptive blindness.

(g) In §§ 416.935–416.939 we explain the rules which apply in cases of drug addiction and alcoholism.

(h) In §§ 416.945–416.946 we explain what we mean by the term "residual functional capacity," state when an assessment of residual functional capacity is required, and who may make it.

(i) Our rules on vocational considerations are found in §§ 416.960–416.969. We explain when vocational factors must be considered along with the medical evidence, discuss the role of residual functional capacity in evaluating your ability to work, discuss the vocational factors of age, education, and work experience, describe what we mean by work which exists in the national economy, discuss the amount of exertion and the type of skill required for work, and describe how the Guidelines in Appendix 2 of subpart P of Part 404 of this chapter apply to claims under Part 416.

(j) Our rules on substantial gainful activity are found in §§ 416.971–416.974. These explain what we mean by substantial gainful activity and how we evaluate your work activity.

(k) In §§ 416.981–416.985 we discuss blindness.

(l) Our rules on when disability or blindness continues and stops are contained in §§ 416.988–416.998. We explain what your responsibilities are in telling us of any events that may cause a change in your disability or blindness status, when you may have a trial work period, and when we will investigate to see if you are still disabled.

§ 416.902 General definitions and terms for this subpart.

As used in this subpart—"Secretary" means the Secretary of Health and Human Services.

"State agency" means an agency of a State which enters into an agreement with the Secretary to make determinations of disability or blindness for the Secretary.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for or is receiving benefits based on disability or blindness.

Determinations

§ 416.903 Who makes disability and blindness determinations.

(a) *State agencies.* When there is an agreement between the State and the Secretary, the State agency designated in the agreement makes disability and blindness determinations for the Secretary for—

(1) Any person living in that State; and

(2) Any group of people named in the agreement.

(b) *Social Security Administration.* The Social Security Administration will make disability and blindness determinations for the Secretary for—

(1) Any person in any State that has not entered into an agreement with the Secretary;

(2) Any group of people not covered by an agreement with any State.

(c) *What determinations are authorized.* The Secretary has authorized the State agencies and the Social Security Administration to make determinations about—

(1) Whether you are disabled or blind;

(2) The date your disability or blindness began; and

(3) The date your disability or blindness stopped.

(d) *Review of State Agency determinations.* On review of a State agency determination or redetermination of disability or blindness we may find that—

(1) You are, or are not, disabled or blind, regardless of what the State agency found;

(2) Your disability or blindness began earlier or later than the date found by the State agency; and

(3) Your disability or blindness stopped earlier or later than the date found by the State agency.

§ 416.904 Determinations by other organizations and agencies.

A decision by any nongovernmental agency or any other governmental

agency about whether you are disabled or blind is based on its rules and is not our decision about whether you are disabled or blind. We must make a disability or blindness determinations based on social security law. Therefore, a determination made by another agency that you are disabled or blind is not binding on us.

Definition of Disability

§ 416.905 Basic definition of disability.

(a) The law defines disability as the inability to do 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. To meet this definition, you must have a severe impairment, which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy. To determine whether you are able to do any other work, we consider your residual functional capacity and your age, education, and work experience.

(b) There are different rules for determining disability for individuals who are statutorily blind. We discuss these in §§ 416.981 through 416.985.

§ 416.906 Disability for children under age 18.

If you are under age 18, we will consider you disabled if you are suffering from any medically determinable physical or mental impairment which compares in severity to an impairment that would make an adult (a person over age 18) disabled.

§ 416.907 Disability under a State plan.

You will also be considered disabled for payment of supplemental security income benefits if—

(a) You were found to be permanently and totally disabled as defined under a State plan approved under titles XIV or XVI of the Social Security Act, as in effect for October 1972;

(b) You received aid under the State plan because of your disability for the month of December 1973 and for at least one month before July 1973; and

(c) You continue to be disabled as defined under the State plan.

§ 416.908 What is needed to show an impairment.

If you are not doing substantial gainful activity, we always look first at your physical or mental impairment(s) to determine whether you are disabled or blind. Your impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by your statement of symptoms. (See § 416.928 for further information about what we mean by symptoms, signs, and laboratory findings.)

§ 416.909 How long the impairment must last.

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement.

§ 416.910 Meaning of substantial gainful activity.

Substantial gainful activity means work that—(a) Involves doing significant and productive physical or mental duties; and

(b) Is done (or intended) for pay or profit.

(See § 416.972 for further details about what we mean by substantial gainful activity.)

Evidence

§ 416.912 Your responsibility to submit evidence.

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything which shows that you are blind or disabled. In making a decision we will consider all information we get from you and others about your impairments.

(b) *Kind of evidence.* You must provide medical evidence showing that you have an impairment and how severe it is during the time you say that you are disabled. We will consider only impairments you say you have or about which we receive evidence. We will help you in getting medical reports when you give us permission to request them from your doctors and other medical sources. If we ask, you must also provide evidence about your—

(1) Age;

(2) Education and training;

(3) Work experience;

(4) Daily activities both before and after the date you say that you became disabled;

(5) Efforts to work; and

(6) Any other evidence showing how your impairment(s) affects your ability to work. (In §§ 416.960 through 416.969 we discuss in more detail the evidence we need when we consider vocational factors.)

§ 416.913 Medical evidence of your impairment.

(a) *Acceptable sources.* We need reports about your impairments from acceptable medical sources. Acceptable medical sources are—

(1) Licensed physicians;

(2) Licensed osteopaths;

(3) Licensed or certified psychologists;

(4) Licensed optometrists for the measurement of visual acuity and visual fields (see paragraph (f) of this section for the evidence needed for statutory blindness); and

(5) Persons authorized to send us a copy or summary of the medical records of a hospital, clinic, sanitorium, medical institution, or health care facility. Generally, the copy or summary should be certified as accurate by the custodian or by any authorized employee of the Social Security Administration, Veterans' Administration, or State agency. However, we will not return an uncertified copy or summary for certification unless there is some question about the document.

(b) *Medical reports.* Medical reports should include—

(1) Medical history;

(2) Clinical findings (such as the results of physical or mental status examinations);

(3) Laboratory findings (such as blood pressure, x-rays);

(4) Diagnosis (statement of disease or injury based on its signs and symptoms);

(5) Treatment prescribed with response, and prognosis; and

(6) Medical assessment (except in statutory blindness claims).

(c) *Medical assessment.* The medical assessment should describe—

(1) Your ability to do work-related activities such as sitting, standing, moving about, lifting, carring, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment, your ability to reason or make occupational, personal, or social adjustments.

(d) *Completeness.* The medical evidence, including the clinical and laboratory findings, must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. It must allow us to determine—

(1) The nature and limiting effects of your impairment(s) for any period in question;

(2) The probable duration of your impairment; and

(3) Your residual functional capacity to do work-related physical and mental activities.

(e) *Information from other sources.* Information from other sources may also

help us to understand how your impairment affects your ability to work. Other sources include—

(1) Public and private social welfare agencies;

(2) Observations by non-medical sources; and

(3) Other practitioners (for example, naturopaths, chiropractors, audiologists, etc.).

(f) *Evidence we need to establish statutory blindness.* If you are applying for benefits on the basis of statutory blindness, we will require an examination by a physician skilled in diseases of the eye or by an optometrist, whichever you may select.

§ 416.914 When we will purchase existing evidence.

We need specific medical evidence to determine whether you are disabled or blind. We will pay for the medical evidence we request, if there is a charge. We will also be responsible for the cost of medical evidence we ask you to get.

§ 416.915 Where and how to submit evidence.

You may give us evidence about your impairment at any of our offices or at the office of any State agency authorized to make disability or blindness determinations. You may also give evidence to one of our employees authorized to accept evidence at another place. For more information about this, see Subpart C of this Part.

§ 416.916 If you fail to submit medical and other evidence.

You must cooperate in furnishing us with available medical evidence about your impairment(s). When you fail to cooperate with us in obtaining evidence, we will have to make a decision based on information available in your case. We will not excuse you from giving us evidence because you have religious or personal reasons against medical examinations, tests, or treatment.

§ 416.917 Consultative examination at our expense.

(a) *Notice of the examination.* If your medical sources cannot give us sufficient medical evidence about your impairment for us to determine whether you are disabled or blind, we may ask you to take part in physical or mental examinations or tests. We will pay for these examinations. However, we will not pay for any medical examination arranged by you or your representative without being asked by us. We will give you reasonable notice of the date, time, and place of the examination or test, and the name of the person who will do it. We will also give the examiner any necessary background information about your condition when your own physician will not be doing the examination or test.

(b) *Reasons why we may need evidence.* We may need more medical evidence—

(1) To obtain more detailed medical findings about your impairment(s);

(2) To obtain technical or specialized medical information;

(3) To resolve conflicts or differences in medical findings or assessments in the evidence we already have.

§ 416.918 If you do not appear at a consultative examination.

(a) *General.* If you are applying for benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arrange for you to get information we need to determine your disability or blindness, we may find that you are not disabled or blind. If you are already receiving benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arranged for you, we may determine that your disability or blindness has stopped because of your failure or refusal. Therefore, if you have any reason why you cannot go for the scheduled appointment, you should tell us about this as soon as possible before the examination date. If you have a good reason, we will schedule another examination.

(b) *Examples of good reasons for failure to appear.* Some examples of what we consider good reasons for not going to a scheduled examination include—

(1) Illness on the date of the scheduled examination or test;

(2) Not receiving timely notice of the scheduled examination or test, or receiving no notice at all;

(3) Being furnished incorrect or incomplete information, or being given incorrect information about the physician involved or the time or place of the examination or test, or;

(4) Having had death or serious illness occur in your immediate family.

(c) *Objections by your physician.* If any of your treating physicians tell you that you should not take the examination or test, you should tell us at once. In many cases, we may be able to get the information we need in another way. Your physician may agree to another type of examination for the same purpose.

Evaluation of Disability

§ 416.920 Evaluation of disability in general.

(a) *Steps in evaluating disability.* We consider all material facts to determine whether you are disabled. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider your physical or mental impairment(s). Your impairment must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review further.

(b) *If you are working.* 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.

(c) *You must have a severe impairment.* If you do not have any impairment(s) which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience.

(d) *When your impairment meets or equals a listed impairment in Appendix 1.* If you have an impairment which meets the duration requirement and is listed in Appendix 1 of subpart P of Part 404 of this chapter, or is equal to a listed impairment, we will find you disabled without considering your age, education, and work experience.

(e) *Your impairment must prevent you from doing past relevant work.* If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment, we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled.

(f) *Your impairment must prevent you from doing any other work.* (1) If you cannot do any work you have done in the past because you have a severe impairment, we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled.

(2) If you have only a marginal education, and long work experience (i.e., 35 years or more) where you only did arduous unskilled physical labor, and you can no longer do this kind of work, we use a different rule (see § 416.962).

§ 416.921 What we mean by an impairment that is not severe.

(a) *Non-severe impairment.* An impairment is not severe if it does not significantly limit your physical or mental abilities to do basic work activities.

(b) *Basic work activities.* When we talk about basic work activities, we mean the abilities and aptitude necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

§ 416.922 When you have two or more unrelated impairments—initial claims.

We cannot combine two or more unrelated severe impairments to meet the 12-month duration test. If you have a severe impairment(s) and then develop another unrelated severe impairment(s) but neither one is expected to last for 12 months, we cannot find you disabled, even though the two impairments in combination last for 12 months. However, we can combine unrelated impairments to see if together they are severe enough to keep you from doing substantial gainful activity. We will consider the combined effects of unrelated impairments only if all are severe and expected to last 12 months.

§ 416.923 How we determine disability for a child under age 18.

We will find that a child under age 18 is disabled if he or she—(a) Is not doing any substantial gainful activity; and

(b) Has a medically determinable physical or mental impairment(s) which compares in severity to any impairment(s) which would make an adult (a person age 18 or over) disabled. This requirement will be met when the impairment(s)—

(1) Meets the duration requirement; and

(2) Is listed in Appendix 1 of subpart P of Part 404 of this chapter; or

(3) Is determined by us to be medically equal to an impairment listed in Appendix 1 of subpart P of Part 404 of this chapter.

Medical Considerations

§ 416.925 Listing of impairments in Appendix 1 of subpart P of Part 404 of this chapter.

(a) *Purpose of the Listing of Impairments.* The Listing of Impairments describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months.

(b) *Adult and childhood diseases.* The Listing of Impairments consists of two parts:

(1) *Part A* contains medical criteria that apply to adult persons age 18 and over. The medical criteria in Part A may also be applied in evaluating impairments in persons under age 18 if the disease processes have a similar effect on adults and younger persons.

(2) *Part B* contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18. Certain criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood; i.e., when the disease process is generally found only in children or when the disease process differs in its effect on children than on adults. Additional criteria are included in Part B, and the impairment categories are, to the extent possible, numbered to maintain a relationship with their counterparts in Part A. In evaluating disability for a person under age 18, Part B will be used first. If the medical criteria in Part B do not apply, then the medical criteria in Part A will be used.

(c) *How to use the Listing of Impairments.* Each section of the Listing of Impairments has a general introduction containing definitions of key concepts used in that section. Certain specific medical findings, some of which are required in establishing a diagnosis or in confirming the existence of an impairment for the purpose of this Listing, are also given in the narrative introduction. If the medical findings needed to support a diagnosis are not given in the introduction or elsewhere in the listing, the diagnosis must still be established on the basis of medically acceptable clinical and laboratory diagnostic techniques. Following the introduction in each section, the required level of severity of impairment is shown under "Category of Impairments" by one or more sets of medical findings. The medical findings consist of symptoms, signs, and laboratory findings.

(d) *Diagnoses of impairments.* We will not consider your impairment to be one listed in Appendix 1 of subpart P of Part 404 of this chapter solely because it has the diagnosis of a listed impairment. It must also have the findings shown in the Listing for that impairment.

(e) *Addiction to alcohol or drugs.* If you have a condition diagnosed as addiction to alcohol or drugs, this will not, by itself, be a basis for determining whether you are, or are not, disabled. As with any other medical condition, we will decide whether you are disabled based on symptoms, signs, and laboratory findings.

§ 416.926 Medical equivalence.

(a) *How medical equivalence is determined.* We will decide that your impairment(s) is medically equivalent to a listed impairment in Appendix 1 of subpart P of Part 404 of this chapter if the medical findings are at least equal in severity and duration to the listed findings. We will compare the symptoms, signs, and laboratory findings about your impairment(s), as shown in the medical evidence we have about your claim, with the medical criteria shown with the listed impairment. If your impairment is not listed, we will consider the listed impairment most like your impairment to decide whether your impairment is medically equal. If you have more than one impairment, and none of them meets or equals a listed impairment, we will review the symptoms, signs, and laboratory findings about your impairments to determine whether the combination of your impairments is medically equal to any listed impairment.

(b) *Medical equivalence must be based on medical findings.* We will always base our decision about whether your impairment(s) is medically equal to a listed impairment on medical evidence only. Any medical findings in the evidence must be supported by medically acceptable clinical and laboratory diagnostic techniques. We will also consider the medical opinion given by one or more physicians designated by the Secretary in deciding medical equivalence.

(c) *Who is a designated physician.* A physician designated by the Secretary includes any physician employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement board, or a State agency authorized to make disability determinations.

§ 416.927 Conclusion by physicians concerning your disability or blindness.

We are responsible for determining whether you are disabled or blind. Therefore, a statement by your physician that you are "disabled" or "blind" or "unable to work" does not mean that we will determine that you are disabled or blind. We have to review the medical findings and other evidence that support a physician's statement that you are "disabled" or "blind".

§ 416.928 Symptoms, signs, and laboratory findings.

Medical findings consist of symptoms, signs, and laboratory findings:

(a) *Symptoms* are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) *Signs* are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation and contact with reality. They must also be shown by observable facts that can be medically described and evaluated.

(c) *Laboratory findings* are anatomical, physiological, or psychological phenomena which can be shown by the use of (a) medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests.

§ 416.929 How we evaluate symptoms, including pain.

If you have a physical or mental impairment, you may have symptoms (like pain, shortness of breath, weakness or nervousness). We consider all your symptoms, including pain, and the extent to which signs and laboratory findings confirm these symptoms. The effects of all symptoms, including severe and prolonged pain, must be evaluated on the basis of a medically determinable impairment which can be shown to be the cause of the symptom. We will never find that you are disabled based on your symptoms, including pain, unless medical signs or findings show that there is a medical condition that could be reasonably expected to produce these symptoms.

§ 416.930 Need to follow prescribed treatment.

(a) *What treatment you must follow.* In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work.

(b) *When you do not follow prescribed treatment.* If you do not follow the prescribed treatment without a good reason, we will not find you disabled or blind or, if you are already receiving benefits, we will stop paying you benefits.

(c) *Acceptable reasons for failure to follow prescribed treatment.* The following are examples of a good reason for not following treatment:

(1) The specific medical treatment is contrary to the established teaching and tenets of your religion.

(2) The prescribed treatment would be cataract surgery for one eye when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through treatment.

(3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.

(4) The treatment because of its enormity (e.g. open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for you; or

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

Presumptive Disability and Blindness

§ 416.931 The meaning of presumptive disability or presumptive blindness.

If you are applying for supplemental security income benefits on the basis of disability or blindness, we may pay you benefits before we make a formal finding of whether or not you are disabled or blind. In order to receive these payments, we must find that you are presumptively disabled or presumptively blind. You must also meet all other eligibility requirements for supplemental security income benefits. We may make these payments to you for a period not longer than 3 months. These payments will not be considered overpayments if we later find that you are not disabled or blind.

§ 416.932 When presumptive payments begin and end.

We may make payments to you on the basis of presumptive disability or presumptive blindness before we make a formal determination about your disability or blindness. The payments can not be made for more than 3 months. They start for a period of not more than 3 months beginning in the month we make the presumptive disability or presumptive blindness finding. The payments end the earliest of—

(a) The month in which we make a formal finding on whether or not you are disabled or blind;

(b) The month in which we make the third monthly payment based on presumptive disability or presumptive blindness to you; or

(c) The month in which you no longer meet one of the other eligibility requirements (e.g., your income exceeds the limits).

§ 416.933 How we make a finding of presumptive disability or presumptive blindness.

We may make a finding of presumptive disability or presumptive blindness if the evidence available at the time of the presumptive disability or presumptive blindness decision, reflects a high degree of probability that you are disabled or blind. In the case of readily observable severe impairments (e.g., amputation of extremities, total blindness), we will find that you are disabled or blind without medical evidence. In all other cases, a finding of disability or blindness must be based on medical evidence or other information which, though not sufficient for a formal determination of disability or blindness, is sufficient for disability evaluators to find that there is a high degree of probability that you are disabled or blind.

§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.

We may make findings of presumptive disability and presumptive blindness in 10 specific impairment categories without obtaining any medical evidence. These specific impairment categories are—

(a) Amputation of two limbs;

(b) Amputation of a leg at the hip;

(c) Allegation of total deafness;

(d) Allegation of total blindness;

(e) Allegation of bed confinement or immobility without a wheelchair, walker, or crutches, due to a longstanding condition, excluding recent accident and recent surgery;

(f) Allegation of a stroke (cerebral vascular accident) more than 3 months in the past and continued marked difficulty in walking or using a hand or arm;

(g) Allegation of cerebral palsy, muscular dystrophy or muscle atrophy and marked difficulty in walking (e.g.,

use of braces), speaking or coordination of the hands or arms.

(h) Allegation of diabetes with amputation of a foot;

(i) Allegation of Down's syndrome (Mongolism); and

(j) Allegation of severe mental deficiency made by another individual filing on behalf of a claimant who is at least 7 years of age. For example, a mother filing for benefits for her child states that the child attends (or attended) a special school, or special classes in school, because of mental deficiency or is unable to attend any type of school (or if beyond school age, was unable to attend), and requires care and supervision of routine daily activities.

Drug Addiction and Alcoholism

§ 416.935 Medically determined drug addicts and alcoholics.

(a) We will find that you are a medically determined drug addict or alcoholic if we determine you are disabled and we find that your drug addiction or alcoholism is a contributing factor material to the finding of your disability.

(b) You will not be medically determined to be a drug addict or alcoholic if—

(1) We find that you are disabled independent of drug addiction or alcoholism; or

(2) We find that you are eligible for benefits because of your age or blindness.

§ 416.936 Treatment required for medically determined drug addicts and alcoholics.

If you are medically determined by us to be a drug addict or alcoholic you must take appropriate treatment for your condition as a drug addict or alcoholic at an approved institution or facility, when this treatment is available. You are not expected to pay for this treatment. You will not be eligible for benefits for any month in which—

(a) You do not comply with the terms, conditions and requirements of the treatment; or

(b) You do not take the treatment when available to you.

§ 416.937 What we mean by appropriate treatment.

By appropriate treatment, we mean recognized medical or other professional procedures for treatment of drug addiction or alcoholism which is carried out at or under the supervision of, an approved institution or facility (or facilities). This treatment may include—

(a) Medical examination and treatment;

(b) Psychiatric, psychological and vocational counselling; or

(c) Other appropriate services for drug addiction or alcoholism.

§ 416.938 What we mean by approved institutions or facilities.

Institutions or facilities that may be approved by the Secretary include—

(a) An institution or facility that furnishes medically recognized treatment for drug addiction or alcoholism in conformity with applicable Federal and State laws and regulations;

(b) An institution or facility accepted by a State for treatment of drug addicts or alcoholics when treatment was a requirement for eligibility for aid under the State plan in effect before the supplemental security income program; or

(c) An institution or facility used by or licensed by an appropriate State agency which is authorized to refer persons for treatment of drug addiction or alcoholism.

§ 416.939 How we consider whether treatment is available.

Our determination about whether treatment is available to you for your drug addiction or your alcoholism will depend upon—

(a) The existence of an obtainable treatment vacancy for you in an approved institution or facility;

(b) The location of the approved institution or facility, or the place where treatment, services or resources will be provided to you;

(c) The availability and cost of transportation for you to the place of treatment;

(d) Your general health, including your ability to travel and capacity to understand and follow the prescribed treatment;

(e) Your particular condition and circumstances; and

(f) The treatment that is required for your drug addiction or alcoholism.

Residual Functional Capacity

§ 416.945 Your residual functional capacity.

(a) *General.* Your impairments may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We consider your capacity for various functions as described in the following paragraphs; (b) physical abilities, (c) mental impairments, and (d) other impairments. Residual functional capacity is a medical assessment. However, it may include descriptions (even your own) of limitations that go beyond the symptoms that are important in the diagnosis and treatment of your medical condition. Observations of your work limitations in addition to those usually made during formal medical examinations[,] may also be used. These descriptions and observations, when used, must be considered along with the rest of your medical record[,] to enable us to decide to what extent your impairment keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment. Then, using the guidelines is §§ 416.960 through 416.969, your vocational background is considered along with your residual functional capacity in arriving at a disability decision.

(b) *Physical abilities.* When we assess your physical abilities, (e.g., strength) we assess the severity of your impairment(s) and determine your residual functional capacity for work activity on a regular and continuing basis. We consider your ability to do physical activities such as walking, standing, lifting, carrying, pushing, pulling, reaching, handling and the evaluation of other physical functions. A limited ability to do these things may reduce your ability to do work.

(c) *Mental impairments.* When we assess your impairment because of mental disorders, we consider factors such as your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, co-workers and work pressures in a work setting.

(d) *Other impairments.* Some medically determinable impairments, such as skin impairments, epilepsy, and impairments of vision, hearing or other senses, postural and manipulative limitations, and environmental restrictions do not limit physical exertion. If you have this type of impairment, in addition to one that affects physical exertion, we consider both in deciding your residual functional capacity.

§ 416.946 Responsibility for assessing and determining residual functional capacity.

The State staff agency physicians or any other physicians designated by the Secretary are responsible for assuring that the agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency

staff physician must assess residual functional capacity where it is required. This assessment is based on all of the medical evidence we have, including any other assessments that may have been provided by treating or examining physicans, consultative physicians, or any other physician designated by the Secretary. (See § 416.945.) For cases at the hearing or Appeals Council level, the responsibility for deciding your residual functional capacity rests with the administrative law judge or Appeals Council.

Vocational Considerations

§ 416.960 When your vocational background will be considered.

(a) *General.* We may consider vocational factors when you are applying for benefits based upon disability. We will never consider vocational factors in determining whether you are eligible for benefits based upon blindness.

(b) *Disability determinations in which vocational factors must be considered along with the medical evidence.* When we cannot decide whether you are disabled on medical evidence alone, we must use other evidence.

(1) We will use information from you about your age, education and work experience.

(2) We will consider your doctors' reports and hospital records as well as your statements and other evidence to determine your residual functional capacity and how it affects the work you can do. Sometimes, to do this, we will need to ask you to have special examinations or tests. (See § 416.917).

(3) If we find that you can no longer do the work you have done in the past, we will determine whether you can do other work (jobs) which exists in significant numbers in the nation's economy.

§ 416.961 Your ability to do work depends upon your residual functional capacity.

If you can do your previous work (your usual work or other applicable past work), we will determine that you are not disabled. However, if your residual functional capacity is not enough to enable you to do any of your previous work, we must still decide if you can do any other work. To do this, we consider your residual functional capacity, and your age, education, and work experience. Any work (jobs) that you can do must exist in significant numbers in the national economy (either in the region where you live or in several regions of the country). Sections 416.963–416.965 explain how we evaluate your age, education, and work experience when we are deciding whether or not you are able to do other work.

§ 416.962 If you have done only arduous unskilled physical labor.

If you have only a marginal education and work experience of 35 years or more during which you did arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s), we will consider you unable to do lighter work, and therefore, disabled. However, if you are working or have worked despite your impairment(s) (except where the work is sporadic or is not medically advisable), we will review all the facts in your case, and we may find that you are not disabled. In addition, we will consider that you are not disabled if the evidence shows that you have training or past work experience which enables you to do substantial gainful activity in another occupation with your impairment, either on a full-time or a reasonably regular part-time basis.

Example.—B is a 60-year-old miner with a fourth grade education who has a life-long history of arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not show that he has skills or capabilities needed to do lighter work which would be readily transferable to another work setting. Under these circumstances, we will find that B is disabled.

§ 416.963 Your age as a vocational factor.

(a) *General.* "Age" refers to how old you are (your chronological age) and the extent to which your age affects your ability to adapt to a new work situation and to do work in competition with others. However, we do not determine disability on your age alone. We must also consider your residual functional capacity, education, and work experience. If you are unemployed because of your age and you can still do a significant number of jobs which exist in the national economy, we will find that you are not disabled. We explain age as a vocational factor in Appendix 2 of subpart P of Part 404 of this chapter. However, we will not apply these age categories mechanically in a borderline situation.

(b) *Younger person.* If you are under age 50, we generally do not consider that your age will seriously affect your ability to adapt to a new work situation. In some circumstances, however, we consider age 45 a handicap in adapting to a new work setting (see Rule 201.17 in Appendix 2 of subpart P of Part 404 of this chapter).

(c) *Person approaching advanced age.* If you are closely approaching advanced age (50–54), we will consider that your age, along with a severe impairment and limited work experience, may seriously affect your ability to adjust to a significant number of jobs in the national economy.

(d) *Person of advanced age.* We consider that advanced age (55 or over) is the point where age significantly affects a person's ability to do substantial gainful activity. If you are severely impaired and of advanced age and you cannot do medium work (see § 416.967(c)), you may not be able to work unless you have skills that can be used in (transferred to) less demanding jobs which exist in significant numbers in the national economy. If you are close to retirement age (60–64) and have a severe impairment, we will not consider you able to adjust to sedentary or light work unless you have skills which are highly marketable.

(e) *Information about your age.* We will usually not ask you to prove your age. However, if we need to know your exact age to determine whether you get disability benefits, we will ask you for evidence of your age.

§ 416.964 Your education as a vocational factor.

(a) *General.* "Education" is primarily used to mean formal schooling or other training which contributes to your ability to meet vocational requirements, for example, reasoning ability, communication skills, and arithmetical ability. However, if you do not have formal schooling, this does not necessarily mean that you are uneducated or lack these abilities. Past work experience and the kinds of responsibilities you had when you were working may show that you have intellectual abilities, although you may have little formal education. Your daily activities, hobbies, or the results of testing may also show that you have significant intellectual ability that can be used to work.

(b) *How we evaluate your education.* The importance of your educational background may depend upon how much time has passed between the completion of your formal education and the beginning of your physical or mental impairment(s) and by what you have done with your education in a work or other setting. Formal education that you completed many years before your impairment began, or unused skills and knowledge that were a part of your formal education, may no longer be useful or meaningful in terms of your

ability to work. Therefore, the numerical grade level that you completed in school may not represent your actual educational abilities. These may be higher or lower. However, if there is no other evidence to contradict it, we will use your numerical grade level to determine your educational abilities. The term "education" also includes how well you are able to communicate in English since this ability is often acquired or improved by education. In evaluating your educational level, we use the following categories:

(1) *Illiteracy.* Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.

(2) *Marginal education.* Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.

(3) *Limited education.* Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.

(4) *High school education and above.* High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.

(5) *Inability to communicate in English.* Since the ability to speak, read and understand English is generally learned or increased at school, we may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

(6) *Information about your education.* We will ask you how long you attended school and whether you are able to speak, understand, read and write in English and do at least simple calculations in arithmetic. We will also consider other information about how much formal or informal education you may have had through your previous work, community projects, hobbies, and any other activities which might help you to work.

§ 416.965 Your work experience as a vocational factor.

(a) *General.* "Work experience" means skills and abilities you have acquired through work you have done which show the type of work you may be expected to do. Work you have already been able to do shows the kind of work that you may be expected to do. We consider that your work experience applies when it was done within the last 15 years, lasted long enough for you to learn to do it, and was substantial gainful activity. We do not usually consider that work you did 15 years or more before the time we are deciding whether you are disabled applies. A gradual change occurs in most jobs so that after 15 years it is no longer realistic to expect that skills and abilities acquired in a job done then continue to apply. The 15-year guide is intended to insure that remote work experience is not currently applied. If you have no work experience or worked only "off-and-on" or for brief periods of time during the 15-year period, we generally consider that these do not apply. If you have acquired skills through your past work, we consider you to have these work skills unless you cannot use them in other skilled or semi-skilled work that you can now do. If you cannot use your skills in other skilled or semi-skilled work, we will consider your work background the same as unskilled. However, even if you have no work experience, we may consider that you are able to do unskilled work because it requires little or no judgment and can be learned in a short period of time.

(b) *Information about your work.* Under certain circumstances, we will ask you about the work you have done in the past. If you cannot give us all of the information we need, we will try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker. When we need to consider your work experience to decide whether you are able to do work that is different from what you have done in the past, we will ask you to tell us about all of the jobs you have had in the last 15 years. You must tell us the dates you worked, all of the duties you did, and any tools, machinery, and equipment you used. We will need to know about the amount of walking, standing, sitting, lifting and carrying you did during the work day, as well as any other physical or mental duties of your job. If all of your work in the past 15 years has been arduous and unskilled, and you have very little education, we will ask you to tell us about all of your work from the time you first began working. This information could help you to get disability benefits.

§ 416.966 Work which exists in the national economy.

(a) *General.* We consider that work exists in the national economy when it exists in significant numbers either in the region where you live or in several other regions of the country. It does not matter whether—

(1) Work exists in the immediate area in which you live;

(2) A specific job vacancy exists for you; or

(3) You would be hired if you applied for work.

(b) *How we determine the existence of work.* Work exists in the national economy when there is a significant number of jobs (in one or more occupations) having requirements which you are able to meet with your physical or mental abilities and vocational qualifications. Isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where you live are not considered "work which exists in the national economy". We will not deny you disability benefits on the basis of the existence of these kinds of jobs. If work that you can do does not exist in the national economy, we will determine that you are disabled. However, if work that you can do does exist in the national economy, we will determine that you are not disabled.

(c) *Inability to obtain work.* We will determine that you are not disabled if your residual functional capacity and vocational abilities make it possible for you to do work which exists in the national economy, but you remain unemployed because of—

(1) Your inability to get work;

(2) Lack of work in your local area;

(3) The hiring practices of employers;

(4) Technological changes in the industry in which you have worked;

(5) Cyclical economic conditions;

(6) No job openings for you;

(7) You would not actually be hired to do work you could otherwise do, or;

(8) You do not wish to do a particular type of work.

(d) *Administrative notice of job data.* When we determine that unskilled, sedentary, light, and medium jobs exist in the national economy (in significant numbers either in the region where you live or in several regions of the country),

we will take administrative notice of reliable job information available from various governmental and other publications. For example, we will take notice of—

(1) *Dictionary of Occupational Titles,* published by the Department of Labor;

(2) *County Business Patterns,* published by the Bureau of the Census;

(3) *Census Reports,* also published by the Bureau of the Census;

(4) *Occupational Analyses* prepared for the Social Security Administration by various State employment agencies; and

(5) *Occupational Outlook Handbook,* published by the Bureau of Labor Statistics.

(e) *Use of vocational experts and other specialists.* If the issue in determining whether you are disabled is whether your work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, we may use the services of a vocational expert or other specialist. We will decide whether to use a vocational expert or other specialist.

§ 416.967 Physical exertion requirements.

To determine the physical exertion requirments of work in the national economy, we classify jobs as "sedentary," "light," "medium," "heavy," and "very heavy." These terms have the same meaning as they have in the *Dictionary of Occupational Titles,* published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions:

(a) *Sedentary work.* Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

(d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

(e) *Very heavy work.* Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, we determine that he or she can also do heavy, medium, light, and sedentary work.

§ 416.968 Skill requirements.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

(a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

(b) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

(c) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

(d) *Skills that can be used in other work (transferability).* (1) *What we mean by transferable skills.* We consider you to have skills that can be used in other jobs, when the skilled or semi-skilled work activities you did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

(2) *How we determine skills that can be transferred to other jobs.* Transferability is most probable and meaningful among jobs in which—

(i) The same or a lesser degree of skill is required;

(ii) The same or similar tools and machines are used; and

(iii) The same or similar raw materials, products, processes, or services are involved.

(3) *Degrees of transferability.* There are degrees of transferability of skills ranging from very close similarities to remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting (like many jobs in mining, agriculture, or fishing) that they are not readily usable in other industries, jobs, and work settings, we consider that they are not transferable.

§ 416.969 Listing of Medical-Vocational Guidelines in Appendix 2 of Subpart P of Part 404 of this chapter.

The *Dictionary of Occupational Titles* includes information about jobs (classified by their exertional and skill requirements) that exist in the national economy. Appendix 2 provides rules using this data reflecting major functional and vocational patterns. We

apply these rules in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable impairment from doing vocationally relevant past work. The rules in Appendix 2 do not cover all possible variations of factors. Also, as we explain in § 200.00 of Appendix 2, we do not apply these rules if one of the findings of fact about the person's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In these instances, we give full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the same as the rule, we use that rule to decide whether a person is disabled.

Substantial Gainful Activity

§ 416.971 General.

The work that you have done during any period in which you believe you are disabled may show that you are able to do work at the substantial gainful activity level. If you are able to engage in substantial gainful activity, we will find that you are not disabled. (We explain the rules for persons who are statutorily blind in § 416.984.) Even if the work you have done was not substantial gainful activity, it may show that you are able to do more work than you actually did. We will consider all of the medical and vocational evidence in your file to decide whether or not you have the ability to engage in substantial gainful activity.

§ 416.972 What we mean by substantial gainful activity.

Substantial gainful activity is work activity that is both substantial and gainful:

(a) *Substantial work activity.* Substantial work activity is work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before.

(b) *Gainful work activity.* Gainful work activity is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(c) *Some other activities.* Generally, we do not consider activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

§ 416.973 General information about work activity.

(a) *The nature of your work.* If your duties require use of your experience, skills, supervision and responsibilities, or contribute substantially to the operation of a business, this tends to show that you have the ability to work at the substantial gainful activity level.

(b) *How well you perform.* We consider how well you do your work when we determine whether or not you are doing substantial gainful activity. If you do your work satisfactorily, this may show that you are working at the substantial gainful activity level. If you are unable, because of your impairments, to do ordinary or simple tasks satisfactorily without more supervision or assistance than is usually given other people doing similar work, this may show that you are not working at the substantial gainful activity level. If you are doing work that involves minimal duties that make little or no demands on you and that are of little or no use to your employer, or to the operation of a business if you are self-employed, this does not show that you are working at the substantial gainful activity level.

(c) *If your work is done under special conditions.* Even though the work you are doing takes into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level.

(d) *If you are self-employed.* Supervisory, managerial, advisory or other significant personal services that you perform as a self-employed individual may show that you are able to do substantial gainful activity.

(e) *Time spent in work.* While the time you spend in work is important, we will not decide whether or not you are doing substantial gainful activity only on that basis. We will still evaluate the work to decide whether it is substantial and gainful regardless of whether you spend more time or less time at the job than workers who are not impaired and who are doing similar work as a regular means of their livelihood.

(f) *Possible effect on income and resource levels.* Your earnings, including earnings from work done during a trial work period, will be considered under the income and resource provisions in Subparts K and L of this part to determine whether or not your earnings cause you to exceed the limitations on income or resources under the Supplemental Security Income Program.

§ 416.974 Evaluation guides if you are an employee.

(a) *General.* We use several guides to decide whether you have done substantial gainful activity.

(1) *Your earnings may show you have done substantial gainful activity.* The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, this will show that you are able to do substantial gainful activity. On the other hand, the fact that your earnings are not substantial will not necessarily show that you are not able to do substantial gainful activity. Earnings from work that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity.

(2) *We consider only the amounts you earn.* We do not consider any income not directly related to your productivity when we decide whether you have done substantial gainful activity. If your earnings are being subsidized, the amount of the subsidy is not counted when we determine whether or not your work is substantial gainful activity. Thus, where work is done under special conditions, we only consider the part of your pay which you actually "earn". For example, where a handicapped person does simple tasks under close and continuous supervision, we would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. An employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If your work is subsidized and your employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, we will investigate to see how much your work is worth.

(3) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Since persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(4) *If you have special work-related expenses.* If you have out-of-the-ordinary expenses in connection with your work and because of your impairment (for example, you may require special transportation), we will deduct these from your earnings if they exceeded the normal work-related expenses you would have if you were not impaired. When we decide if your work is substantial gainful activity, however, we do not deduct expenses for those things (e.g. medication or equipment) which you need even when you are not working.

(b) *Earnings guidelines.* If you are an employee, we first consider the criteria in paragraph (a) of this section, and then the guides in paragraphs (b) (1), (2), and (3) of this section.

(1) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activities as an employee show that you have engaged in substantial gainful acitivity if—

(i) Your earnings averaged more than $200 a month in calendar years prior to 1976;

(ii) Your earnings averaged more than $230 a month in calendar year 1976;

(iii) Your earnings averaged more than $240 a month in calendar year 1977;

(iv) Your earnings averaged more than $260 a month in calendar year 1978; or

(v) Your earnings averaged more than $280 a month in calendar year 1979; or

(vi) Your earnings averaged more than $300 a month in calendar years after 1979.

(2) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

(i) Your earnings averaged less than $130 a month in calendar years before 1976;

(ii) Your earnings averaged less than $150 a month in calendar year 1976;

(iii) Your earnings averaged less than $160 a month in calendar year 1977;

(iv) Your earnings averaged less than $170 a month in calendar year 1978; or

(v) Your earnings averaged less than $180 a month in calendar year 1979; or

(vi) Your earnings averaged less than $190 a month in calendar years after 1979.

However, if you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if your average earnings are not greater than $200 a month in calendar years prior to 1976, $230 a month in calendar year 1976, $240 a month in calendar year 1977, $260 a month in calendar year 1978, $280 a month in calendar year 1979, $300 a month in calendar years after 1979.

However, if there is evidence showing that you may have done substantial gainful activity, we will apply the criteria in paragraph (b)(3) of this section regarding comparability and value of services.

(3) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* If your earnings, on the average, are between the amounts shown in paragraphs (b)(1) and (2) of this section, we will generally consider other information in addition to your earnings, such as whether—

(i) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, or

(ii) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(1) of this section, according to pay scales in your community.

§ 416.975 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone since the amount of income you actually receive may depend upon a number of different factors like capital investment, profit sharing agreements, etc. However, income from activities that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity. We will evaluate your work activity on the value to the business of your services regardless of whether you receive an immediate income for your services. We consider that you have engaged in substantial gainful activity if—

(1) Your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood;

(2) Your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 416.974(b)(1) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing; or

(3) You render services that are significant to the operation of the business and receive a substantial income from the business.

(b) *What we mean by significant services.* (1) If you are not a farm landlord and you operate a business entirely by yourself, any services that you render are significant to the business. If your business involves the services of more than one person, we will consider you to be rendering significant services if you contribute more than half the total time required for the management of the business, or you render management services for more than 45 hours a month regardless of the total management time required by the business.

(2) If you are a farm landlord, that is, you rent farm land to another, we will consider you to be rendering significant services if you materially participate in the production or the management of the production of the things raised on the rented farm. (See § 404.1053 of this chapter for an explanation of "material participation".) If you were given social security earnings credits because you materially participated in the activities of the farm and you continue these same activities, we will consider you to be rendering significant services.

(c) *What we mean by substantial income.* We will consider the income you receive from a business, after we deduct from gross income the reasonable value of any significant amount of unpaid help and any soil bank payments that were included as farm income, as well as normal business expenses, to be substantial if—

(1) Your net income from the business averages more than the amounts described in § 416.974(b)(1); or

(2) Your net income from the business averages less than the amounts described in § 416.974(b)(1) but the livelihood which you get from the business is either comparable to what it was before you became disabled or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar businesses as their means of livelihood.

Blindness

§ 416.981 Meaning of blindness as defined in the law.

We will consider you blind under the law for payment of supplemental security income benefits if we determine that you are statutorily blind. Statutory blindness is central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which has a limitation in the field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered to have a central visual acuity of 20/200 or less.

§ 416.982 Blindness under a State plan.

We shall also consider you blind for the purposes of payment of supplemental security income benefits if—

(a) You were found to be blind as defined under a State plan approved under title X or XVI of the Social Security Act, as in effect for October 1972;

(b) You received aid under the State plan because of your blindness for the month of December 1973; and

(c) You continue to be blind as defined under the State plan.

§ 416.983 How we evaluate statutory blindness.

We will find that you are blind if you are "statutorily blind" within the meaning of § 416.981. For us to find that you are statutorily blind, it is **not** necessary—

(a) That your blindness meet the duration requirement; or

(b) That you be unable to do any substantial gainful activity.

§ 416.984 If you are statutorily blind and still working.

There is no requirement that you be unable to work in order for us to find that you are blind. However, if you are working, your earnings will be considered under the income and resources rules in Subparts K and L of this part. This means that if your income or resources exceed the limitations, you will not be eligible for benefits, even though you are blind.

§ 416.985 How we evaluate other visual impairments.

If you are not blind as defined in the law, we will evaluate a visual impairment the same as we evaluate other impairments in determining disability. Although you will not qualify for benefits on the basis of blindness, you may still be eligible for benefits if we find that you are disabled as defined in §§ 416.905–416.907.

§ 416.986 Why and when we will find that you are no longer entitled to benefits based on statutory blindness.

(a) *If your vision does not meet the definition of blindness.* If you become entitled to payments as a statutorily blind person, we will find that your statutory blindness has ended beginning with the month your vision, as shown by current medical evidence, does not meet the definition of blindness. This will generally mean that your eligibility for payments will end two months after your blindness ended.

(b) *If you were found blind as defined in a State plan.* If you became eligible for payments because you were blind as defined in a State plan, we will find that your blindness ended in the later of—

(1) The first month in which your vision, as shown by medical or other evidence, did not meet the criteria of the appropriate State plan; or

(2) The first month in which your vision did not meet the definition of statutory blindness (§ 416.981).

(c) *If you do not cooperate with us.* If you are asked to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your blindness ended if you fail without a good reason to do what we ask. The month your blindness ends will be the month in which you fail to do what we ask.

(d) *Before we stop your payments.* Before we stop payment of your benefits we will give you a chance to give us your reasons why we should not stop payment. Subpart M of this Part describes your rights and the procedures we will follow.

Continuing or Stopping Disability or Blindness

§ 416.988 Your responsibility to tell us of events that may change your disability or blindness status.

If you are entitled to payments because you are disabled or blind, you should promptly tell us if—

(a) Your condition improves;

(b) Your return to work;

(c) You increase the amount of your work; or

(d) Your earnings increase.

§ 416.989 We may investigate to find out whether you continue to be disabled or blind.

After we find that you are disabled or blind, we must determine from time to time if you are still eligible for payment. We may begin an investigation for this purpose for any number of reasons, including your failure to follow the provisions of the Social Security Act or these regulations. If our investigation shows that we should suspend payment of your payments, we will notify you in writing and give you an opportunity to reply. In § 416.990 we describe those events that may prompt us to investigate whether you continue to be disabled or blind.

§ 416.990 When we will investigate whether your disability or blindness continues.

(a) *General.* We investigate to determine whether or not you continue to meet the disability or blindness requirements of the law. Payment ends if the medical or other evidence shows that you are not disabled or blind, or if there is not enough evidence to support a finding that disability continues.

(b) *When we will investigate.* An investigation will be started if—

(1) We need a current medical report to see if you are able to do substantial gainful activity;

(2) You return to work and successfully complete a period of trial work;

(3) Substantial earnings are reported to your wage record;

(4) You tell us that you have recovered from your disability or blindness or that you have returned to work;

(5) Your State Vocational Rehabilitation Agency tells us that—

(i) You have completed your training,

(ii) You have returned to work,

(iii) You are able to return to work; or

(6) Someone in a position to know of your physical or mental condition tells us that you are not disabled or blind or that you have returned to work, and it appears that the report could be substantially correct.

§ 416.991 If your medical recovery was expected and you returned to work.

If your impairment was expected to improve and you returned to full-time work with no significant medical limitations, we may find that your disability ended in the month you returned to work. Unless there is evidence showing that your disability or blindness has not ended, we will use the medical and other evidence already in your file and the fact that you returned to full-time work without significant limitations to determine that you are able to engage in substantial gainful activity. (If your condition is not expected to improve, we will not ordinarily review your claim until the end of the trial work period, as described in § 416.992).

Example: Evidence obtained during the processing of your claim showed that you had an impairment that was expected to improve about 18 months after your disability began. We, therefore, told you that your claim would be reviewed again at that time. However, before the time arrived for your

scheduled medical re-examination, you told us that you had returned to work. We investigated immediately and found that, in the 16th month after your disability began, you returned to full-time work without any significant medical restrictions. Therefore, we would find that your disability ended in the first month you returned to full-time work.

§ 416.992 The trial work period.

(a) *Definition of the trial work period.* The trial work period is a period during which you may test your ability to work and still be considered disabled. It begins and ends as described in paragraph (e) of this section. During this period, you may perform "services" (see paragraph (b) of this section) in as many as 9 months, but these months do not have to be consecutive. We will not consider those services as showing that your disability has ended until you have performed services in at least 9 months. However, during this trial work period we will evaluate your earnings under the income and resources rules in Subparts K and L of this part. This means that if your income or resources exceed the limitations, you will not be eligible for payments even though you have not worked a full 9 months. (See paragraph (e) of this section.) After the trial work period has ended we will consider the work you did during the trial work period in determining whether your disability ended at any time after the trial work period.

(b) *What we mean by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If you are an employee, we will consider your work to be "services" if in any calendar year after 1978 you earn more than $75 a month ($50 a month is the figure for earnings in any calendar year before 1979). If you are self-employed, we will consider your activities "services" if in any calendar year after 1978 your net earnings are more than $75 a month ($50 a month is the figure for earning in any calendar year before 1979), or you work more than 15 hours a month in the business. We generally do not consider work to be "services" when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house or in self-care.

(c) *Limitations on the number of trial work periods.* You may have only one trial work period during a period of entitlement to cash payments.

(d) *When the trial work period begins and ends.* The trial work period begins with the month in which you become entitled to benefits. It cannot begin before the month in which you file your application for benefits. It ends with the close of whichever of the following calendar months is the earlier:

(1) The 9th month (whether or not the months have been consecutive) in which you have performed services; or

(2) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are able to do substantial gainful activity.

(e) *If you fail to meet other eligibility factors.* We will count the services you do while disabled towards your period of trial work even though you may be ineligible for payments for other reasons. The months in which you are eligible for payments will be evaluated for trial work purposes upon reestablishment of your eligibility for payments under this part as though your eligibility had not been interrupted.

§ 416.993 We may ask you to help us determine if you are still disabled or blind.

If you are entitled to payments because you are disabled or blind, you must, upon our request and reasonable notice, undergo consultative examinations and tests to help us find out if you are still disabled or blind. You must also give us reports from your doctor or others who have treated you, as well as any other evidence that will help us make a determination. You must have a good reason for not giving us this information. (See § 416.994(d).

§ 416.994 Why and when we will find that your disability has ended.

(a) *General.* When the medical or other evidence in your file shows that your disability has ended, we will contact you and tell you that the evidence in your file shows that you are able to do substantial gainful activity and that your eligibility for benefits will end. Before we stop payment of your benefits, we will give you a chance to give us your reasons why we should not stop your benefits. Subparts M and N of this part describe your rights and the procedures we will follow. We may also stop payment of your benefits if you have not cooperated with us in getting information about your disability.

(b) *Disabled persons age 18 or over.* If you are age 18 or older, we will find that your disability ended in the earliest of the following months:

(1) The month in which your impairment, as shown by current medical or other evidence, is such that you are able to do substantial gainful activity;

(2) The month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period).

(c) *Disabled persons under age 18.* If you are under age 18, we will find that your disability ended in the earliest of the following months—

(1) The month your impairment, as established by current medical evidence is not an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter or is not equal to a listed impairment;

(2) The month in which you demonstrate your ability to engage in substantial gainful activity (following completion of a trial work period).

(d) *If you do not cooperate with us.* If we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without a good cause) to do what we ask. The month in which your disability will be found to have ended will be the month in which you failed to do what we asked.

(e) *Persons who were found disabled under a State plan.* If you became entitled to benefits because you were found to be disabled under a State plan, we will find that your disability ended in the later of the following months—

(1) The month in which your disability, as shown by current medical or other evidence, does not meet the criteria of the appropriate State plan; or

(2) The month in which your disability ended under the provisions of paragraphs (b), (c) or (d) of this section.

§ 416.998 If you become disabled by another impairment.

If a new, severe impairment begins in or before the month in which your last impairment ends, we will find that your disability is continuing. The new impairment need not be expected to last 12 months or to result in death, but it must be severe enough to keep you from doing substantial gainful activity.

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