

# Social Security

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## Disability Insurance

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(PPS-122)

**SSR 85-28**

### SSR 85-28: TITLES II AND XVI: MEDICAL IMPAIRMENTS THAT ARE NOT SEVERE

**PURPOSE:** To clarify the policy for determining when a person's impairment(s) may be found "not severe" and, thus, the basis for a finding of "not disabled" in the sequential evaluation of disability, and thereby reflect certain circuit court decisions that have taken issue with the Secretary's previously stated definition of "not severe" impairments.

**CITATIONS (AUTHORITY):** Sections 216(i), 223(d), and 1614(a)(3)(A) of the Social Security Act, as amended; Regulations No. 4, sections 404.1520-404.1523 and Regulations No. 16, sections 416.920-416.923.

**PERTINENT HISTORY:** The basic definition of disability is contained in sections 223(d)(1)(A) and 1514(a)(3)(A) of the Act. Under this definition, an individual must have, as an initial requirement, a "physical or mental impairment," as defined in sections 223(d)(3) and 1614(a)(3)(C), and which is expected either to result in death or to last at least 12 months. The principal requirement regarding impairment severity contained in the basic statutory definition of disability is that the individual's inability to engage in any substantial gainful activity (SGA) be "by reason of" the impairment.

In reporting on the Social Security Amendments of 1954 which first introduced the basic definition of disability into the Act, the Senate Committee on Finance indicated that the definition required that there be a "medically determinable *impairment of serious proportions*," that is, "of a nature and degree of severity sufficient to justify its consideration as the cause of failure to obtain any substantial gainful work."

In the Social Security Amendments of 1967, Congress introduced into the Act the provision in section 223(d)(2)(A) which sets out a specific requirement respecting impairment severity and which provides for the consideration of vocational factors in determining disability: An individual ". . . shall be determined to be under a disability only if his *physical or mental impairment or impairments are of such severity* that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any kind of substantial gainful work which exists in the national economy . . .

Visited 04/09/2015

." (emphasis added). In reporting on these amendments, both the Senate Committee on Finance and the House Committee on Ways and Means reaffirmed the need for some assurance that a finding of disability would be based on a *serious impairment*. The Committees explained that the provisions of the amendment would require, in part, that:

" . . . an individual would be disabled *only if it is shown that he has a severe medically determinable physical or mental impairment or impairments* . .

." (emphasis added).

As in 1954 and 1967, Congress, again, in the Social Security Disability Benefits Reform Act of 1984, made it clear that a denial of disability benefits may be based on medical factors alone. In amending section 223(d)(2) and section 1614(a)(3) of the Act to provide for the evaluation of the impact of multiple impairments throughout the sequential evaluation process, Congress introduced language which affirms the presence of a severity threshold in the adjudicative process:

"In determining whether an individual's physical or mental impairment or impairments are *of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section*, the Secretary shall consider the combined effect of all of the individual's impairments. . . ."

The validity of a disability decision based on medical considerations alone was also recognized in the Conferees' discussion of the amendment (House of Representatives Conference Report 98-1039 to accompany H.R. 3755. September 19, 1984, p. 30) in which it was stated that there was no intention to "either eliminate or impair" the use of the "current sequential evaluation process."

The principal that a denial determination may be made on the basis of medical considerations alone was first reflected in Regulations No. 4, section 404.1502(a), published in 1960. Regulations published in 1978 revised the 1960 statement concerning such determinations by replacing the phrase ". . . the only impairment is a slight neurosis, slight impairment of sight or hearing, or other slight abnormality or combination of slight abnormalities . . ." with ". . . the medically determinable impairment is not severe if it does not significantly limit an individual's physical or mental capacity to perform basic work-related functions."

This change in regulatory definition was introduced in the language describing step 2 of the sequential evaluation process which was formalized in regulations effective February 26, 1979. (The 1980 recodification of the Disability Regulations into common sense language reworded the definition of a not severe impairment as follows: "An impairment is not severe if it does not significantly limit your physical or mental abilities to do basic work activities." 20 C.F.R. 404.1521(a) and 416.921(a). Also see sections 404.1520(c) and 416.920(c).) These changes in regulatory language were *not* intended to alter the levels of severity for a

Visited 04/09/2015

finding of not disabled on the basis of medical considerations alone. Rather, they were intended only to clarify the circumstances under which such a finding would be justified (*Federal Register* -- March 7, 1978, p. 9296-9297; November 28, 1978, p. 55357-55358). Nevertheless, some recent circuit court decisions have taken exception to the threshold of impairment severity applied in the adjudication of subject cases which were denied on the basis of not severe impairment.

As observed by the Congress, the Social Security Administration (SSA), as part of an ongoing review, is reevaluating the application of the not severe impairment policy and will continue to do so. This ruling is part of the ongoing reevaluation and interprets and clarifies the current policy on not severe impairment, describes the threshold intended, and reflects recent legislation. Also, it is being issued to clarify that SSA's policy is consistent with various court decisions. For example, *Stone v. Heckler*, 752 F.2d 1099 (5th Cir. 1985), and *Estran v. Heckler*, 745 F.2d 340 (5th Cir. 1984), stated that "an impairment can be considered as not severe only if it is a slight abnormality which has such a minimal effect on the individual that it would not be expected to interfere with the individual's ability to work irrespective of age, education, or work experience." As *Baeder v. Heckler*, No. 84-5663 (3rd Cir. July 24, 1985), suggested, the severity regulation is to do no "more than allow the Secretary to deny benefits summarily to those applicants with impairments of a minimal nature which could never prevent a person from working."

**POLICY CLARIFICATION:** In determining, for initial entitlement to benefits, whether an individual is disabled, we follow a sequential evaluation process whereby current work activity, severity and duration of impairment, ability to do past work, and ability to do other work (in light of the individual's age, education and work experience) are considered, in that order. See 20 CFR sections 404.1520 and 416.920. In determining continuing entitlement to benefits, the adjudicator, with appropriate consideration of the medical improvement review standard, also follows a sequential evaluation process which includes the "not severe impairment" concept. Fundamental to these processes is the statutory requirement that to be found disabled, an individual must have a medically determinable impairment "of such severity" that it precludes his or her engaging in any substantial gainful work.

As explained in 20 CFR, sections 404.1520, 404.1521, 416.920(c), and 416.921, at the second step of sequential evaluation it must be determined whether medical evidence establishes an impairment or combination of impairments "of such severity" as to be the basis of a finding of inability to engage in any SGA. An impairment or combination of impairments is found "not severe" and a finding of "not disabled" is made at this step when medical evidence establishes only a slight abnormality or a combination of slight abnormalities which would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered (i.e., the person's impairment(s) has no more than a minimal effect on his or

Visited 04/09/2015

her physical or mental ability(ies) to perform basic work activities). Thus, even if an individual were of advanced age, had minimal education, and a limited work experience, an impairment found to be not severe would not prevent him or her from engaging in SGA.

The severity requirement cannot be satisfied when medical evidence shows that the person has the ability to perform basic work activities, as required in most jobs. Examples of these are walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling; seeing, hearing, and speaking; understanding, carrying out, and remembering simple instructions; use of judgment, responding appropriately to supervision, coworkers, and usual work situations; and dealing with changes in a routine work setting. Thus, these basic work factors are inherent in making a determination that an individual does not have a severe medical impairment.

Although an impairment is not severe if it has no more than a minimal effect on an individual's physical or mental ability(ies) to do basic work activities, the possibility of several such impairments combining to produce a severe impairment must be considered. Under 20 CFR, sections 404.1523 and 416.923, when assessing the severity of whatever impairments an individual may have, the adjudicator must assess the impact of the combination of those impairments on the person's ability to function, rather than assess separately the contribution of each impairment existed alone. A claim may be denied at step two only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability(ies) to perform basic work activities. If such a finding is not clearly established by medical evidence, however, adjudication must continue through the sequential evaluation process.

Inherent in a finding of a medically not severe impairment or combination of impairments is the conclusion that the individual's ability to engage in SGA is not seriously affected. Before this conclusion can be reached, however, an evaluation of the effects of the impairment(s) on the person's ability to do basic work activities must be made. A determination that an impairment(s) is not severe requires a careful evaluation of the medical findings which describe the impairment(s) and an informed judgment about its (their) limiting effects on the individual's physical and mental ability(ies) to perform basic work activities; thus, an assessment of function is inherent in the medical evaluation process itself. At the second step of sequential evaluation, then, medical evidence alone is evaluated in order to assess the effects of the impairment(s) on ability to do basic work activities. If this assessment shows the individual to have the physical and mental ability(ies) necessary to perform such activities, no evaluation of past work (or of age, education, work experience) is needed. Rather, it is reasonable to conclude, based on the minimal impact of the impairment(s), that the individual is capable of engaging in SGA.

Visited 04/09/2015

By definition, basic work activities are the abilities and aptitudes necessary to do most jobs. In the absence of contrary evidence, it is reasonable to conclude that an individual whose impairments do not preclude the performance of basic work activities is, therefore, able to perform his or her past relevant work. If the medical evidence establishes only a slight abnormality(ies) which has no more than a minimal effect on a claimant's ability to do basic work activities, but evidence shows that the person cannot perform his or her past relevant work because of the unique features of that work, a denial at the "not severe" step of the sequential evaluation process is inappropriate. The inability to perform past relevant work in such instances warrants further evaluation of the individual's ability to do other work considering age, education and work experience.<sup>[1]</sup>

Great care should be exercised in applying the not severe impairment concept. If an adjudicator is unable to determine clearly the effect of an impairment or combination of impairments on the individual's ability to do basic work activities, the sequential evaluation process should not end with the not severe evaluation step. Rather, it should be continued. In such a circumstance, if the impairment does not meet or equal the severity level of the relevant medical listing, sequential evaluation requires that the adjudicator evaluate the individual's ability to do past work, or to do other work based on the consideration of age, education, and prior work experience.

**EFFECTIVE DATE:** On publication.

**CROSS-REFERENCES:** Program Operations Manual System, sections DI 00401.390-DI 00401.410; DI A00401.390-DI A00401.410.

<sup>[1]</sup> This provision does not conflict with, nor negate, the policy stated in SSR 82-63 concerning special "no recent or relevant work experience" cases. In such cases an individual must be found to have a severe impairment(s) (i.e., one which has more than a minimal effect on the person's physical or mental ability(ies) to perform basic work activities) in order to be considered under the special provision of that Ruling.

[Back to Table of Contents](#)