

Social Security

Program Operations Manual System (POMS)

TN 6 (03-16)

DI 25015.006 Borderline Age

Citations:

20 CFR 404.1563 and 416.963, and Part 404, Subpart P, Appendix 2, Sections 201, 202, 203, and 204

A. Borderline age policy

If a claimant is within a few days to a few months of reaching a higher age category and using the chronological age would result in a denial, consider using the higher age category if it would result in a favorable determination, after evaluating **all** factors (residual functional capacity (RFC), age, education, and work experience) of the claim.

IMPORTANT: If using the claimant's chronological age would result in a partially or fully favorable determination, only consider the claimant's chronological age. This is not a borderline age situation.

B. What we mean by “within a few days to a few months”

We do not have a more precise programmatic definition for the phrase “within a few days to a few months.” The term “a few” is defined using its ordinary meaning, a small number. Usually, we consider a few days to a few months to mean a period not to exceed 6 months.

C. Identifying a borderline age situation

When evaluating a claimant's ability to adjust to other work, a borderline age situation exists if:

1. The claimant reached or will reach the next higher age category within a few days to a few months after the:
 - date of adjudication;
 - date the Title II insured status expired (date last insured);
 - end of disabled widow(er)'s benefit (DWB) prescribed period;
 - end of childhood disability benefit (CDB) reentitlement period; or
 - cessation of disability; **and**
2. Both of the following are true:

- a. Using the claimant's chronological age would result in a not disabled determination; **and**
- b. Using the next higher age category to adjudicate the borderline period would result in a **disabled** determination.

IMPORTANT: If you cannot establish all of these requirements, you do not have a borderline age situation. Use the claimant's chronological age to adjudicate the claim.

NOTE: Consider borderline age in any situation where age is a factor in the determination of disability such as:

- prior to expediting the vocational assessment at step 5,
- when doing a transferability of skills assessment, or
- when considering use of the "No Work" or "Lifetime Commitment" special medical-vocational profiles.

D. Examples for identifying a borderline age situation

EXAMPLE 1:

The claimant filed a concurrent claim for Title II and Title XVI benefits. He was 50 years old when he applied, but was 2 months shy of age 50 when his Title II insured status expired. He has an eighth grade education and can no longer do his unskilled past relevant work (PRW). The claimant is limited to sedentary work and medical-vocational rule 201.09 directs a finding of disabled at age 50. The Title II claim presents a borderline age situation. Considering age mechanically, using the claimant's chronological age on the date his insured status expired under medical-vocational rule 201.18, would result in a denial. The claimant attained an age that would change the outcome of the decision to an allowance (medical-vocational rule 201.09) within a few days to a few months after his insured status expired. Although, the Title XVI claim is already an allowance and, therefore, does not present a borderline age issue, per DI 25501.370A.2, we will enter the Title II EOD for the Title XVI claim as well.

NOTE: For the majority of concurrent claims, you will follow existing policy regarding establishing onset in concurrent claims and enter the Title II EOD for the Title XVI claim. For an exception to this, see details in DI 25501.370A.2, third bullet.

EXAMPLE 2:

The claimant is age 51 at the time of the adjudication. She has semi-skilled PRW at the medium level of exertion with no transferable skills and her RFC limits her to no more than sedentary work. She has a 12th grade education with no direct entry (i.e., she has not recently completed education or training that provides for direct entry into skilled or semiskilled work). Medical-vocational rule 201.14 directs a finding of disabled as of age 50. The representative asks to apply the medical-vocational rules non-mechanically and find the claimant disabled six months prior to age 50.

This is not a borderline age situation because the claim is not a denial when applying the age categories mechanically.

E. Procedure for deciding which age category to use in a borderline age situation

Consider the criteria for both of the medical-vocational rules for the claimant's chronological age and the next higher age category. Reexamine the overall impact of all the factors of the case on the claimant's ability to adjust to other work.

IMPORTANT: Do not use the higher age category automatically in a borderline age situation.

1. Analyze the factors of the case

a. Time period considered for borderline age

Look at the time-period under review. For example, the time-period may be "a few days to a few months" between the date of adjudication and the date the claimant attains age 55. For our definition of "a few days to a few months," see DI 25015.006B.

NOTE: The closer the claimant is to the next higher age category (older), the more disadvantageous the claimant's age.

b. Education considerations for borderline age

Education below the high school level may be vocationally disadvantageous.

Use the following chart to look at the claimant's education within the range of education criteria for the higher age category rule:

If the education category is:	Relative vocational benefit ranges	
	From lowest educational attainment within the range (most adverse)	To highest educational attainment within the range (not adverse)
Limited or less but literate and able to communicate in English	No formal education but literate and able to communicate in English	11th grade
Limited or less	Illiterate or unable to communicate in English, regardless of formal, educational attainment	11th grade
Marginal or less		6th grade

	Illiterate or unable to communicate in English, regardless of formal, educational attainment	
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Be careful not to double weigh education. The following are examples of double weighing:

- If the claimant is "Illiterate or unable to communicate in English," the chronological age medical-vocational rule(s) requires the education category "Illiterate or unable to communicate in English," and the case presents a borderline age situation, it would be double weighing to use the education factor to support an allowance. This situation only occurs when the chronological age medical-vocational rule is 202.16 or 201.23.

NOTE: If the claimant resides in Texas, Louisiana, or Mississippi when the case is decided, AR 86-3 *Martinez v. Heckler* may apply. See details in DI 52750.000.

- Since we consider the issue of whether the claimant's actual education level is consistent with his or her reported years of education, before determining what medical-vocational rule(s) applies, do not reconsider issues such as special education, home schooling, and possession of a General Equivalency Diploma (GED) as a support for using the higher age category in a borderline age situation.

Examples of when education may support using the higher age category:

EXAMPLE 1:

A claimant who is 54 years, 9 months of age on the date of adjudication (or on the date his insured status expired), with a light RFC, unskilled medium work experience, and a 5th grade education would be found disabled under medical-vocational rule 202.01 at attainment of age 55. The rule requires limited or less education (11th grade or less). The adjudicator should consider whether education may be more vocationally adverse if the claimant has an education at the lower end of the rule continuum. If so, this is a borderline age situation and the adjudicator may allow the claimant as of the date of adjudication (or on the date his insured status expired) when his age was 54 years and 9 months.

EXAMPLE 2:

A claimant who is illiterate, has a sedentary RFC, and is 44 years and 9 months old on the date of adjudication would be found not disabled under medical-vocational rule 201.23 based on his chronological age. The applicable rule for the higher age category, rule 201.17, directs a finding of disabled, but that rule already considers illiteracy. In this situation, there must be a factor(s) other than illiteracy to justify use of the higher age category.

c. Past relevant work (PRW) considerations for borderline age

Look at the claimant's actual PRW within the past work experience requirements of both the chronological age rule and higher age rule. Consider the following:

- If the PRW category for both rules is “unskilled or none,” the factor could be considered more vocationally adverse if the claimant had no work history or a minimal unskilled work history than if the claimant had a long continuous history of unskilled work.
- If the claimant has PRW from many years ago, but is within the 15-year period, that factor is more vocationally adverse than PRW that ended in the recent past.
- If the claimant’s only PRW was in an isolated industry, such as forestry, fishing, or mining, that factor is more vocationally adverse than PRW that exists in many areas or that uses common processes.

EXAMPLE of isolated industry:

A claimant aged 54 years and 11 months with a 10th grade education, a light RFC, and past medium skilled work with no transferable skills meets medical-vocational rule 202.02 at attainment of age 55. The claimant’s PRW was as a salmon fisherman, which is considered a job in an isolated industry. You could consider this work as more vocationally adverse than work that exists in many areas or that uses common processes.

d. Residual functional capacity (RFC) considerations for borderline age

If the claimant’s RFC limitations adversely affect his or her (unskilled) occupational base, but do not substantially erode it, consider the limitations in the borderline age analysis. Our Social Security Rulings (SSRs) provide authoritative information about the impact of certain RFC limitations on the unskilled occupational base. The Office of Disability Policy desk guide for Citing a Social Security Ruling (SSR) at Step 5 summarizes this information.

REMINDER: If the occupational base erosion is substantial, be careful to select the correct medical-vocational rule. Do not use RFC in these cases to support the borderline age analysis. That would be double weighing.

EXAMPLE of double weighing:

A claimant who is 49 years, 7 months of age with a 12th grade education, semi-skilled medium work history with no transferable skills has been given a light RFC with standing and walking limited to 4-hrs in an 8-hr workday. In this case, we are finding that the 4-hour limitation in standing/walking significantly erodes the occupational base of light work, so we are using a sedentary rule as a framework for a determination. Medical-vocational rule 201.21 (younger individual) denies, while medical-vocational rule 201.14 (closely approaching advanced age) allows. The claimant is within a few days to a few months of attaining a higher age category; therefore, borderline age provisions apply. In this case, we are not able to use the RFC limitations of standing/walking for 4 hours of an 8-hour day to support a borderline age analysis, because we considered the effect of reduced standing or walking on the light occupational base when we determined that a sedentary rule would be appropriate as a framework for our determination. This would be double weighing.

EXAMPLE that is not double weighing:

A claimant is 54 years, 11 months of age. He has a 12th grade education with no direct entry into skilled or semiskilled work. He has a light RFC with restricted overhead reaching. Medical-vocational rule 202.13 (closely approaching advanced age) denies, while medical-vocational rule 202.04 (advanced age) allows. The claimant is within a few days to a few months of attaining a higher age category; therefore, borderline age provisions apply. In this case, the additional limitation in overhead reaching does not significantly erode the light occupational base. Therefore, this limitation can be considered in the borderline age analysis. Since the overhead reaching limitation affects the light occupational base enough that it does not significantly erode the light base to sedentary, we can use it to support an allowance under the borderline age criteria. This would not be double weighing.

2. Determine whether the overall impact of the factors justifies using the higher age category to find the claimant “disabled”

IMPORTANT: Do not double weigh any factors of the case. Also, remember, you must consider and evaluate the overall impact of all of the factors of the case.

Consider the time period for borderline age in conjunction with the claimant’s RFC, age, education, and work experience, as explained in 20 CFR 404, Subpt. P, Appendix 2. Take a “sliding scale” approach. To support use of the higher age category, the factors of the case must show a progressively more adverse impact on the claimant’s ability to adjust to other work as the period between the claimant’s actual age and his or her attainment of the next higher age category lengthens. If the factors of the case:

- support using the next higher age category, find the claimant disabled. For established onset date (EOD) instructions in borderline age allowance determinations and decisions, see DI 25501.410.
- do not support using the higher age category, use the age category corresponding to the claimant’s chronological age, even if the time- period is only a few days. The claimant is not disabled.

REMEMBER: You cannot allow a claim using the Special Medical-Vocational Profiles or Medical-Vocational Guidelines unless you first make a finding of fact about step 4 of the sequential evaluation process. For details on Expedited Vocational Assessment at Steps 4 and 5 of Sequential Evaluation, see DI 25005.005.

F. Examples of factors that may impact the case

Following are examples of case factor combinations that could support use of the higher age category in a borderline age situation:

EXAMPLE 1:

The claimant was 54 years, 10 months old on the date his Title II insured status expired (or the date of adjudication or the date the DWB prescribed period or CDB reentitlement period ended), has a light RFC, an eighth grade education, and no transferable skills from his semiskilled PRW that ended 10 years ago (medical-vocational rule 202.11 denies and medical-vocational rule 202.02 allows).

EXAMPLE 2:

The claimant is 49 years, 11 months old, has a sedentary RFC, a 5th grade education, and unskilled PRW (medical-vocational rule 201.18 denies and medical-vocational rule 201.09 allows).

EXAMPLE 3:

The claimant is 54 years 6 months old, has a medium RFC, 4th grade education, and no PRW (medical-vocational rule 203.18 denies and medical-vocational rule 203.10 allows).

G. Documenting consideration of borderline age

Whether you allow or deny the claim, document how you considered borderline age:

- Explain your decision to use the next higher age category or your decision to use the claimant's chronological age, including the case- specific supporting factors.
- In the Electronic Claims Analysis Tool (eCAT), put the explanation in the text box found in the Borderline Age section of the Past Relevant and/or Other Work page(s). If you are not using eCAT, document how you considered the borderline age issue and place it in the E (blue) section (Disability Development and Documentation) of the electronic or paper modular disability folder.

H. References

- DI 25003.001 Vocational Specialists
- DI 25005.005 Expedited Vocational Assessment at Steps 4 and 5 of Sequential Evaluation
- DI 25010.001 Special Medical-Vocational Profiles
- DI 25015.010 Education as a Vocational Factor
- DI 25015.015 Work Experience as a Vocational Factor
- DI 25015.017 Transferability of Skills Assessment (TSA)
- DI 25020.000 Functional Limitations and Their Effects on Ranges of Work - Table of Contents
- DI 25025.015 Using a Rule as a Framework When Exertional Capacity Falls between Two Rules
- DI 25025.020 Applying the Medical-Vocational Rules When the Claimant has Exertional and Nonexertional Limitations
- DI 25501.410 Established Onset Date (EOD) and Borderline Age

- DI 26530.015 Personalized Disability Explanation in Initial Closed Period and Unfavorable Onset Date Allowances
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