

I-2-2-42. Borderline Age

Last Update: 3/25/16 (Transmittal I-2-168)

A. General

When determining disability, the Social Security Administration (SSA) will use each of the age categories applicable to a claimant during the period for which SSA is determining whether the claimant is disabled. SSA will not apply the age categories mechanically in a borderline age situation. If a claimant is within a few days to a few months of reaching an older age category (hereinafter "higher age category"), and using the higher age category would result in a determination of decision that the claimant is disabled, SSA will consider whether to use the higher age category after evaluating the overall impact of all the factors of the case. See 20 CFR 404.1563 and 416.963.

NOTE: If using the claimant's chronological age will result in a favorable decision, an administrative law judge (ALJ) will not use the higher age category solely because it will result in a more favorable onset date, determination, or decision for the claimant.

B. Identifying a Borderline Age Situation

If application of a claimant's chronological age results in a decision that the claimant is not disabled, an ALJ will identify whether the claim may involve a borderline age situation by applying a two-part test:

- Is the claimant's age within a few days or a few months of the next higher age category?
- Will the higher age category result in a decision of "disabled" instead of "not disabled"?

If the answer to one or both parts of the test is "no," a borderline age situation either does not exist or would not affect the outcome of the decision. The ALJ will then use the claimant's chronological age.

If the answer to both parts of the test is "yes," a borderline age situation exists, and the ALJ must decide whether it is more appropriate to use the claimant's chronological age or the higher age category.

1. Is the Claimant's Age Within a Few Days or Months of the Next Higher Age Category?

SSA does not have a precise programmatic definition for the phrase "within a few days to a few months." The word "few" should be defined using its ordinary meaning, e.g., a small number. Generally, SSA considers a few days to a few months to mean a period not to exceed six months.

To decide the first part of the test, ALJs will assess whether the claimant reaches or will reach the next higher age category within a few days to a few months after the:

- Date of adjudication;
- Date last insured;
- End of disabled widow(er)'s benefit prescribed period;
- End of child disability re-entitlement period; or
- Date of cessation of disability.

2. Will the Higher Age Category Result in a Decision of “Disabled” Instead of “Not Disabled”?

As previously stated, if using the higher age category does not affect the outcome of the decision, a borderline age situation does not exist, and the ALJ will use the claimant's chronological age to adjudicate the case. However, if the other criteria is met and using the higher age category does affect the outcome of the decision, a borderline age situation does exist, and the ALJ will use the procedures outlined in HALLEX I-2-2-42 C below.

C. Deciding Whether to Apply a Higher Age Category in a Borderline Age Situation

ALJs will not use the higher age category automatically in a borderline age situation. ALJs will consider whether to use the higher age category after evaluating the overall impact of all the factors on the claimant's ability to adjust to doing other work (e.g., residual functional capacity combined with age, education, and work experience as explained in 20 CFR 404.1563, 416.963, and Part 404, Subpart P, Appendix 2). For additional information and examples, see also Program Operations Manual System (POMS) DI 25015.006.

When deciding whether to apply a higher age category in a borderline age situation, the ALJ will:

1. Determine the Time Period Under Review.

The ALJ will first determine the time period under review. For example, under a particular fact scenario, the time under review may be a “few days to a few months” between the date of adjudication and the date the claimant attains age 55 and would be found disabled under a direct application of the medical-vocational rules. The closer in time the claimant is to the next higher age category, the more disadvantageous the claimant's age.

2. Analyze the Other Factor(s) of the Case.

The ALJ will consider all other factor(s) relevant to the case (e.g., residual functional capacity combined with age, education, and work experience as explained in 20 CFR 404.1563, 416.963, and Part 404, Subpart P, Appendix 2) for each of the medical-vocational rules for chronological age and the higher age category. The ALJ will consider whether an adjudicative factor(s) is relatively more adverse under the

criteria of each rule, or whether there is an additional element(s) present that seriously affects a claimant's ability to adjust to other work. Examples of situations where certain factors may impact the case can be found in POMS DI 25015.006E.

ALJs must be careful not to double-weigh a factor if the medical-vocational rule for the higher age category already incorporates the factor. For example, if the applicable medical-vocational rule for the higher age category already considers illiteracy (such as a younger individual age 44 years and 9 months who has a reduced sedentary residual functional capacity, and the adjudicator is considering applying the higher age category (45-49) medical-vocational rule 201.17), then there would need to be factors other than illiteracy to justify application of the higher age category.

3. Determine Whether the Overall Impact of the Factor(s) Justifies Using the Higher Age Category to Find the Claimant “Disabled.”

The ALJ will take a “sliding scale” approach when determining which age category to use. To support the use of the higher age category, the claimant must show that the factor(s) have a progressively more adverse impact on his or her ability to adjust to other work as the period between the claimant's actual age and attainment of the next higher age category lengthens.

4. Determine Onset.

If all of the factors support using the higher age category, the ALJ will find the claimant disabled with an established onset date corresponding to the:

- Date of adjudication;
- Date last insured;
- End of disabled widow(er)'s benefit prescribed period;
- End of child disability re-entitlement period; or
- Date of cessation of disability.

If there is no support for the use of the higher age category (e.g., the factors present do not negatively affect or have a more adverse impact on the case), ALJs will use the claimant's chronological age, even when the period under consideration is only a few days.

5. Include in the Decision an Explanation that the Borderline Age Situation Was Considered.

The ALJ will explain in the decision that he or she considered the borderline age situation, state whether he or she applied the higher age category or the chronological age, and note the specific factor(s) he or she considered.

NOTE: Even when the ALJ is using the higher age category to issue a favorable decision, the ALJ must identify the

specific factors that support the use of the higher age category.