

## II-5-3-2. Application of the Medical-Vocational Guidelines in Borderline Age Situations

### Appeals Council Interpretation

- SUBJECT** : Application of the Medical-Vocational Guidelines in Borderline Age Situations
- ISSUE** : What is a borderline age situation and what factors should be considered when determining whether to use a higher age than a claimant's chronological age when applying the medical-vocational guidelines?
- DISCUSSION** : The regulations at 20 CFR 404.1560(c), 404.1563(a), 416.960(c), and 416.963(a) provide that age, residual functional capacity, education, and work experience are the vocational factors relevant to determining disability at the last step of the sequential evaluation process. Sections 404.1563 and 416.963 note that 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." These regulations also define the age categories of "younger person" (under age 50), "person approaching advanced age" (50-54), and "person of advanced age" (55 or over); note the role of age as a vocational factor; and state that "we will not apply the[] age categories mechanically in a borderline situation." Because the regulations do not define the term "borderline situation," the Appeals Council has adopted the following interpretation and guidelines.
- INTERPRETATION** : To identify borderline age situations when making disability determinations, adjudicators will apply a two-part test:
- (1) Determine whether the claimant's age is within a few days or a few months of a higher age category.
  - (2) If so, determine whether using the higher age category would result in a decision of "disabled" instead of "not disabled."

If the answer to one or both is “no,” a borderline age situation either does not exist or would not affect the outcome. The adjudicator will then use the claimant's chronological age.

If the answer to both is “yes,” a borderline age situation exists and the adjudicator must decide whether it is more appropriate to use the higher age or the claimant's chronological age. (Use of the higher age category is not automatic.) To decide which age category to use, take a “sliding scale” approach. Under this approach, the claimant must show progressively more additional vocational adversity(ies) — to support use of the higher age — as the time period between the claimant's actual age and his or her attainment of the next higher age category lengthens.

One finds additional vocational adversity(ies) if some adjudicative factor(s) is relatively more adverse when considered in terms of that factor's stated criteria, or when there is an additional element(s) which has adverse vocational implications. Examples of these additional vocational adversities are the presence of an additional impairment(s) which infringes upon—without substantially narrowing—a claimant's remaining occupational base; or the claimant may be barely literate in English, have only a marginal ability to communicate in English, or have a history of work experience in an unskilled job(s) in one isolated industry or work setting. (An isolated industry would be such as fishing or forestry.) Other adverse circumstances in individual cases may justify using the higher age category.

Absent a showing of additional adversity(ies) justifying use of the higher age category, the adjudicator will use the claimant's chronological age — even when the time period is only a few days. The adjudicator need not explain his or her use of the claimant's chronological age.

Consider applying these guidelines whenever the age category changes within a few months after the alleged onset date, the date last insured (or the prescribed period), or the date of the ALJ's decision.

The Appeals Council will ordinarily deny review, assuming there is no other basis for granting review, when a borderline age situation exists, the ALJ's decision does not address the issue, and the Appeals Council does not find sufficient basis in the record for using the higher age category.

APPLICATION : The Appeals Council will apply this interpretation in all cases that come before it involving the same issue.

EFFECTIVE DATE : November 2, 1993

CROSS-REFERENCE : 20 CFR 404.1560, 404.1563, 416.960, and 416.963; Office of Disability's Disability Digest 93-9.