

SHD Paraphrased Regulations - Disability

1300 General

1300-1

Disability may be verified by a Social Security Administration (SSA) Title II award letter which shows current receipt of benefits and no reexamination date or a reexamination date in the future, or an SSA Title II increase or decrease notice, or a signed statement from the SSA which indicates that the applicant is eligible to Social Security benefits based on disability. (§50167(a)(1)(B))

1300-2

The Social Security Administration (SSA) makes disability determinations based on social security law. A disability determination by any other governmental or nongovernmental agency is not binding on the SSA. (POMS DI 24515.011)

1301-1

The Federal District Court has held that a Social Security Administration (SSA) determination of nondisability superseded a previous state agency determination of disability. On August 31, 1992 the U.S. District Court, C.D. Cal., No. CV 87-3901 AWT, issued a Second Amended Declaratory Judgment and Injunction in *Disabled Rights Union v. Kizer*. This Judgment declared that 42 CFR §435.541(b) (1991) was invalid because on its face it directly conflicted with the requirements of 42 U.S.C. §1396(a)(v). The court further ordered that no action should be taken to terminate a Medi-Cal recipient's benefits until the SSI appeal period has expired and it has been determined that the recipient did not appeal the SSI denial timely, or did not have good cause for an untimely filing. (*Disabled Rights Union v. Kizer* (1990) 744 F.Supp. 221)

1301-2

Federal law provides that a State plan may provide for the making of determinations of disability or blindness for the purpose of determining eligibility for medical assistance under the State plan by the single State agency or its designees, and make medical assistance available to individuals whom it finds to be blind or disabled and who are disabled or otherwise eligible for such assistance during the time period prior to which a final determination of disability or blindness is made by the Social Security Administration (SSA) with respect to such an individual. In making such determinations, the State must apply the definitions of disability and blindness found in Section 1614(a) of the Social Security Act. (42 United States Code (USC) §1396(a)(v)(i), added in November 1990) The administrative review process is available to applicants. The section states that after an initial determination is made by SSA, an applicant may request reconsideration, a hearing before an Administrative Law Judge (ALJ), and review by the Appeals Council before exhausting the administrative review process. Subsection (a)(5) states that when the applicant has completed those steps of the administrative review process, SSA will have made its final decision. (20 CFR §416.1400)

1301-3

The CDHS has instructed counties as follows: Due to the numerous levels of appeals and extensive backlogs in Social Security Administration (SSA) hearings, beneficiaries could receive Medi-Cal for several years before a final decision is rendered. "A decision

SHD Paraphrased Regulations - Disability

1300 General

becomes 'FINAL' when the beneficiary does not or cannot appeal the termination of Title II or SSI/SSP disability benefits any further. Medi-Cal benefits will continue through the 65-day period following the denial of an appeal in which the next level of appeal can be filed." (All-County Welfare Directors Letter No. 97-28, June 23, 1997, p. 5)

1301-4 Added

8/1242 Code of Federal Regulations (CFR) Part 435.541 (effective January 10, 1990) provides, in pertinent part, that an SSA disability determination is binding on a state agency until the determination is changed by SSA. If such determination is changed, the new determination is also binding on the agency. The agency must refer to SSA all applicants who allege new information or evidence affecting previous SSA determinations of ineligibility based upon disability for reconsideration or reopening of the determination unless:

- 1) The individual alleges a disabling condition different from or addition to that considered by SSA in making its determination; or
- 2) The individual alleges a change or deterioration of a condition more than 12 months after SSA's evaluation of such condition; or
- 3) The individual alleges a change or deterioration of a condition less than 12 months after SSA's evaluation of such condition, has applied with SSA for reconsideration or reopening of its disability decision, and SSA has refused to consider the new allegations.

1302-1

Verification of disability may be made in accordance with procedures established by the Disability and Adult Programs Division (DAPD), formerly known as the Disability Evaluation Division (DED) of the California Department of Social Services. Except in the event of a delay due to circumstances beyond the control of the county, all necessary information shall be submitted to DAPD within 10 days after the county's receipt of the Statement of Facts. (§50167(a)(1)(D); All-County Welfare Directors Letter No. 97-54, December 1, 1997)

1302-2

The DED (now called the DAPD) evaluates disability and prepares a rationale explaining the basis for the decision when the person is determined not disabled. The rationale for the denial is sent to the county attached to the form MC 221. These rationales must be attached to any denial notice sent to the applicant. The denial notice must state that the application is denied due to lack of disability and refer the applicant to the attachment for further explanation. Notices which do not contain the rationale constitute inadequate notice. Do not attach any other documents, including the MC 221, as such documents are not written for clients and are confusing and/or misleading to the applicant. (All-County Welfare Directors Letter (ACWDL) No. 86-52, September 29, 1986; *Visser v. Kizer*)

1302-3

SHD Paraphrased Regulations - Disability

1300 General

The Social Security Administration (SSA) issued an Acquiescence Ruling (AR) implementing Chavez v. Bowen. AR 97-4(9) was published on 12/03/97, to explain how the decision by the Ninth Circuit Court of Appeals in Chavez will be applied within this circuit. The court in Chavez concluded that a final decision of the Commissioner after a hearing by an administrative law judge (ALJ) that found the claimant not disabled gives rise to a presumption that the claimant continues to be not disabled after the period adjudicated, and that this presumption of continuing nondisability applies when adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim. In order to rebut the presumption of continuing nondisability, a claimant must prove "changed circumstances" affecting the issue of disability with respect to the unadjudicated period.

The court further indicated that where the claimant rebuts the presumption by proving a "changed circumstance," the Commissioner then must give effect to certain findings contained in the final decision on the prior claim in determining whether the claimant is disabled with respect to the unadjudicated period involved in the subsequent claim. The court concluded that where such final decision on the prior claim contained findings of the claimant's residual functional capacity (RFC), education, and work experience, the

SHD Paraphrased Regulations - Disability

1300 General

Commissioner may not make different findings in adjudicating the subsequent disability claim unless there is new and material evidence relating to the claimant's RFC, education, or work experience. (POMS DI 32720.001B., implementing AR 97-4(9))

This AR applies at the initial, reconsideration, ALJ, or Appeals Council (AC) level when the following are met:

* The adjudicator is deciding a subsequent disability claim with an unadjudicated period arising under the same title of the Act as a prior disability claim, and

* There was a decision by an ALJ or the AC on the prior disability claim that the claimant was not disabled (i.e., that the individual did not become disabled or that the individual's disability had ceased, see POMS DI 32720.010B.3) and this decision has become final, and

* The final decision by the ALJ or AC that the claimant was not disabled was based on the individual's work activity or earnings, on an evaluation of the medical evidence of the individual's impairments alone, or on a consideration of both medical and vocational factors, and was not based on the individual's failure to cooperate, failure to follow prescribed treatment, or whereabouts unknown, and

* The claimant resides in, e.g., California.

SHD Paraphrased Regulations - Disability

1300 General

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| (POMS DI 32720.005) A claimant may rebut the presumption of continuing nondisability by showing a "changed circumstance" affecting the issue of disability with respect to the unadjudicated period. A "changed circumstance" refers to a change in the circumstances on which the ALJ or the AC based the final decision that the claimant was not disabled. | |
| Basis for ALJ or AC decision that claimant was not disabled: | Examples of "changed circumstance": |
| Claimant's performance of substantial gainful activity (SGA). | - Reduction in or cessation of work activity. |
| Claimant's impairment(s) not severe; or Title XVI child claimant's impairment(s) does not meet, medically equal, or functionally equal in severity a listed impairment in the Listing of Impairments. | - An increase in the severity of the claimant's impairment(s). - The alleged existence of an impairment(s) not previously considered. |

SHD Paraphrased Regulations - Disability

1300 General

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| Title II claimant or Title XVI adult claimant able to perform past relevant work. | - An increase in the severity of the claimant's impairment(s). |
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SHD Paraphrased Regulations - Disability

1300 General

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| | The alleged existence of an impairment(s) not previously considered. |

SHD Paraphrased Regulations - Disability

1300 General

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SHD Paraphrased Regulations - Disability

1300 General

1302-4

All the regulations cited refer to the Manual of Policies and Procedures (MPP), unless otherwise noted.

Section 22-009.1 provides that a request for hearing must be filed within 90 days of the action with which the claimant is dissatisfied. If the claimant received adequate notice of the action, the date of the action is the date the notice was mailed to the claimant.

Section 22-001(c)(5) defines a county action as one which requires adequate notice, as well as any other county action or inaction relating to the claimant's application for or receipt of aid.

Section 22-021.1 provides that the county is required to provide adequate notice when aid is granted, increased, denied, decreased, suspended, canceled or discontinued. Adequate notice must also be provided when the county demands repayment of an overpayment or CalFresh overissuance. Adequate notice is defined as written notice informing the claimant of the action that the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing, and if appropriate, the circumstances under which aid will be continued if a hearing is requested. When appropriate, the notice shall also inform the claimant regarding what information or action, if any, is needed to reestablish eligibility or determine a correct amount of aid. In all cases, the notice is to be prepared on a standard form approved by the State Department of Social Services. The notice shall be prepared in clear, nontechnical language and shall be mailed or given to the claimant in duplicate. See also §22-001(a).

A request for hearing shall be dismissed if the request for hearing is filed beyond the time limit set forth in §22-009. (§22-054.32)

1302-5

In *Udd v. Massanari*, the 9th Circuit Court of Appeals reviewed the petitioner's claim that he was entitled to review a discontinuance of his Social Security disability benefits on October 31, 1976. The petitioner sought reinstatement of his benefits effective November 1, 1976, even though he had not filed an appeal on the discontinuance for more than 15 years. The reason for the late filing was that the petitioner allegedly lacked the mental capacity to understand the termination notice, and he had no person to represent him. The Appeals Court agreed with these contentions, determined the filing was timely, and order benefits restored effective November 1, 1976.

The basis for this conclusion - as to the timely filing - is set forth in the analysis below:

"It is axiomatic that due process requires that a claimant receive meaningful notice and an opportunity to be heard before his claim for disability benefits may be denied. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Udd argues that the 1976 termination of benefits denied him due process of law because his mental

SHD Paraphrased Regulations - Disability

1300 General

impairment prevented him from understanding the order of termination and complying with the administrative review process.

"In 1991, SSA issued Ruling 91-5p ('SSR 91-5p'), which provides that if a claimant presents evidence that mental incapacity prevented him from requesting timely review of an administrative action, and the claimant had no one legally responsible for prosecuting the claim on his behalf at the time of the prior adverse action, SSA 'will determine whether or not good cause exists for extending the time to request review.' SSR' 91-5p. 'The claimant will have established mental incapacity for the purpose of establishing good cause when the evidence establishes that he or she lacked the mental capacity to understand the procedures for requesting review.' SSR 91-5p. In making the 91-5p determination, the following four factors must be considered: (1) inability to read or write; (2) lack of facility with the English language; (3) limited education; and (4) any mental or physical condition which limits the claimant's ability to do things for him/herself. SSR 91-5p. In all cases, '[t]he adjudicator will resolve any reasonable doubt in favor of the claimant.' SSR 91-5p.

"If it is determined, applying the proper criteria, that the claimant lacked the mental capacity to understand the procedures for requesting review, time limits are tolled 'regardless of how much time has passed since the prior administrative action.' SSR 91-5p. In such cases, the adjudicator must 'take the action which would have been appropriate had the claimant filed a timely request for review.' SSR 91-5p. Thus, 'a finding of good cause [to extend the time for review] will result either in a determination or decision that is subject to further administrative or judicial review of the claim, or a dismissal (for reasons other than late filing) of the request for review, as appropriate.' SSR 91-5p."

(Udd v. Massanari, supra, (2001) 245 F.3d 1096, 1098)

1303-1

Federal law provides, generally, it is the responsibility of the applicant to prove his or her disability. (20 CFR §416.912)

1303-2

Federal law provides that if the applicant does not provide evidence needed and requested regarding disability, a decision will be made based on information available in the case. (20 CFR §416.916)

1303-3

Federal law provides that if an applicant does not have a good reason for failing or refusing to take part in a consultative examination, he or she is subject to a determination that no disability exists. Good reasons for failure to appear include illness on the date of the test, inadequate notice of the scheduled examination or test, inadequate information about the physician involved, or the applicant having had death or serious illness occur in the immediate family. (20 CFR §416.918)

SHD Paraphrased Regulations - Disability

1300 General

1303-4

Federal law states that in order to receive benefits, the applicant or recipient must follow treatment prescribed by her physician if this treatment can restore her ability to work. When the applicant or recipient does not follow the prescribed treatment without a good reason, then she will not be found to be disabled. Acceptable reasons for failure to follow prescribed treatment are as follows: (1) The specific medical treatment is contrary to the established teaching and tenets of the applicant or recipient's religion. (2) The treatment would be cataract surgery for one eye under certain conditions. (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. (5) The treatment involves amputation of an extremity or a major part of an extremity. (20 CFR §416.930)

1303-5

Obesity is not necessarily a remediable condition. It can be considered a contributing factor in determining disability. While a claimant's "impairments can be improved by simply following a doctor's orders to lose weight, losing weight is a task which is not equivalent to taking pills or following a prescription." (*Hammock v. Bowen* (1989) 867 F. 2d 1209, 1215)

An ALJ cannot assume that obesity is remediable, and deny a claim based on failure to follow prescribed medical treatment, as required by 20 CFR §416.930. The fact that a particular claimant had lost weight in the past does not establish that weight loss is feasible; rather, the fact that the claimant could not keep the weight off suggests the condition may not be remediable. The "ALJ was required to examine the medical conditions and personal factors that bear on whether Dodrill [the claimant] can reasonably remedy her obesity." (*Dodrill v. Shalala* (1993) 12 F. 3d 915, 919 citing *Hamock v. Bowen, supra*)

1303-6

Before failure to follow prescribed treatment for obesity can become an issue in a case, one must first find that the individual is disabled because of obesity or a combination of obesity and another impairment(s). 20 CFR §416.930 provides that, in order to get benefits, an individual must follow treatment prescribed by his or her physician if the treatment can restore the ability to work, unless the individual has an acceptable reason for failing to follow the prescribed treatment. SSA will rarely use "failure to follow prescribed treatment" for obesity to deny or cease benefits.

Social Security Ruling (SSR) 82-59 "Titles II and XVI: Failure To Follow Prescribed Treatment," explains that failure to follow prescribed treatment exists when all of the following conditions are present:

- The individual has an impairment(s) that meets the definition of disability, including the duration requirement, and

SHD Paraphrased Regulations - Disability

1300 General

- A treating source has prescribed treatment that is clearly expected to restore the ability to engage in substantial gainful activity, and
- The evidence shows that the individual has failed to follow prescribed treatment without a good reason.

If an individual who is disabled because of obesity (alone or in combination with another impairment(s)) does not have a treating source who has prescribed treatment for the obesity, there is no issue of failure to follow prescribed treatment.

The treatment must be prescribed by a treating source, as defined in 20 CFR §416.902, not simply recommended. A treating source's statement that an individual "should" lose weight or has "been advised" to get more exercise is not prescribed treatment.

When a treating source has prescribed treatment for obesity, the treatment must clearly be expected to improve the impairment to the extent that the person will not be disabled. The goals of treatment for obesity are generally modest, and treatment is often ineffective. Therefore, do not find failure to follow prescribed treatment unless there is clear evidence that treatment would be successful. The obesity must be expected to improve to the point at which the individual would not meet the definition of disability, considering not only the obesity, but any other impairment(s).

Finally, even if it is found that a treating source has prescribed treatment for obesity, that the treatment is clearly expected to restore the ability to engage in SGA, and that the individual is not following the prescribed treatment, consider whether the individual has a good reason for doing so. In making this finding, follow the guidance in regulations and SSR 82-59, which provide that acceptable justifications for failing to follow prescribed treatment include, but are not limited to, the following:

- The specific medical treatment is contrary to the teaching and tenets of the individual's religion.
- The individual is unable to afford prescribed treatment that he or she is willing to accept, but for which free community resources are unavailable.
- The treatment carries a high degree of risk because of the enormity or unusual nature of the procedure.

In this regard, most health insurance plans and Medicare do not defray the expense of treatment for obesity. Thus, an individual who might benefit from behavioral or drug therapy might not be able to afford it. Also, because not enough is known about the long-term effects of medications used to treat obesity, some people may be reluctant to use them due to the potential risk.

Because of the risks and potential side effects of surgery for obesity, do not find that an individual has failed to follow prescribed treatment for obesity when the prescribed treatment is surgery.

(SSR No. 00-03p; POMS DI 24570.001B.)

SHD Paraphrased Regulations - Disability

1300 General

1304-1

The ALJ has the duty to fully and fairly develop the record and to assure that the applicant's interests are considered "...even when the claimant is represented by counsel." (*Brown v. Heckler* (1983) 713 F.2d 441, 443; *Smolen v. Chater* (1996) 80 F.3d 1273)

1304-1A

The 9th Circuit Court of Appeals has required that the ALJ in a social security case develop the record, even when the claimant is represented. There is a heightened duty when the claimant is mentally ill. As the Court said:

"The ALJ in a social security case has an independent 'duty to fully and fairly develop the record and to assure that the claimant's interests are considered.' *Smolen*, 80 F.3d at 1288 (quoting *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983)). This duty extends to the represented as well as to the unrepresented claimant. Id. When the claimant is unrepresented, however, the AU must be especially diligent in exploring for all the relevant facts. *Cox v. Califano*, 587 F.2d 988, 991 (9th Cir. 1978). In this case, Tonapetyan was represented, but by a lay person rather than an attorney. The ALJ's duty to develop the record fully is also heightened where the claimant may be mentally ill and thus unable to protect her own interests. *Higbee v. Sullivan*, 975 F.2d 558, 562 (9th Cir.1992). Ambiguous evidence, or the ALJ's own finding that the record is inadequate to allow for proper evaluation of the evidence, triggers the ALJ's duty to 'conduct an appropriate inquiry.' *Smolen*, 80 F.3d at 1288; *Armstrong v. Commissioner of Soc. Sec. Admin.*, 160 F.3d 587, 590 (9th Cir.1998). The ALJ may discharge this duty in several ways, including: subpoenaing the claimants physicians, submitting questions to the claimants physicians, continuing the hearing, or keeping the record open after the hearing to allow supplementation of the record. *Tidwell v. Apfel*, 161 F.3d 599, 602 (9th Cir. 1998); *Smolen*, 80 F.3d at 1288."

(*Tonapetyan v. Halter* (2001) 242 F. 3d 1144, 1150)

1304-2

An ALJ must give clear reasons for rejecting the credibility of pain testimony, supported by the record. Medication side effects, like pain, are idiosyncratic phenomena. To reject the existence of described severity of side effects, the ALJ just give clear reasons, supported by the record. (*Varney v. Secretary* (I) (1988) 846 F.2d 581, 584-586)

1304-3

An ALJ is not bound by the uncontroverted opinions of the applicant's physicians on the ultimate issue of disability, but cannot reject them without presenting clear and convincing reasons for doing so. Neither personal observations by the ALJ at the hearing nor the inability of the reporting physicians to support their opinions with objective findings constitutes the required clear and convincing reasons to reject uncontroverted opinions. The ALJ's personal observations are especially inadequate to

SHD Paraphrased Regulations - Disability

1300 General

rebut expert opinions in a case involving psychiatric impairment. (*Montijo v. Secretary* (1984) 729 F.2d 599, 601-602)

1304-4

Where the evidence is susceptible of more than one rational interpretation, it is the ALJ's conclusion which must be upheld. In making findings, the ALJ is entitled to draw inferences logically flowing from the evidence. *Sample v. Schweiker* (1982) 694 F.2d 639.

1304-5

Vocational conclusions reached by an ALJ, without testimony or evidence from a vocational expert, represented an improper reliance upon information outside the record, deprived the applicant of an opportunity to cross-examine or rebut, and lacked sufficient support to constitute substantial evidence. *Burkhart v. Bowen* (1988) 856 F.2d 1335.

1304-6

It was reversible error when the ALJ denied the disability claim based on the fact there were no limitations which prevented the claimant from performing his past work when the ALJ failed to find that the claimant's impairment did not meet or equal a listing. (*Fanning v. Bowen* (1987) 827 F.2d 631.)

1304-7

When resolving a conflict between the opinions of a treating physician and an examining physician, the opinion of the treating physician is entitled to greater weight, and may be rejected only on the basis of findings setting forth specific, legitimate reasons based on substantial evidence in the record. (*Sprague v. Bowen* (1987) 812 F.2d 1226, 1230)
The opinions of treating physicians are entitled to greater weight than "one-shot" consultants since the treating doctor is "employed to cure" and has a greater opportunity to observe and know the applicant as an individual. (*Murray v. Heckler* (1983) 722 P.2d 499, 502)

1304-8

Where a treating physician states an opinion which is uncontradicted and which rests on substantial medical evidence, such opinion shall not be disregarded by an Administrative Law Judge (ALJ) unless clear and convincing reasons for doing so are set forth. An ALJ must accept the treating physician's opinion in the absence of clear and convincing reasons to reject it. (*Davis v. Heckler*, (1989) 868 F.2d 323; *Lester v. Chater* (1996) 81 F. 3d 821; *Magallanes v. Bowen* (1989) 881 F. 2d 747)

When the ALJ had pointed to specific examples where the treating physician's reported level of the claimant's impairment was not consistent with the claimant's described symptoms, and the ALJ had also pointed to inconsistencies between the reports of the treating physicians, his detailed and thorough summary of the facts and conflicting clinical evidence entitled him to reject the treating physicians' opinions. (*Morgan v. Commissioner* (1999) 169 F. 3d 595)

SHD Paraphrased Regulations - Disability

1300 General

1304-9

In general, the extent to which an individual's statements about symptoms can be relied upon as probative evidence in determining whether the individual is disabled depends on the credibility of the statements. When evaluating the credibility of an individual's statements, the adjudicator must consider the entire case record and give specific reasons for the weight given to the individual's statements.

The finding on the credibility of the individual's statements cannot be based on intangible or intuitive notions about an individual's credibility. The reasons for the credibility finding must be grounded in the evidence and articulated in the determination or decision. It is not sufficient to make a conclusory statement that "the individual's allegations have been considered" or that "the allegations are (or are not) credible." It is also not enough for the adjudicator simply to recite the factors that are described in the regulations for evaluating symptoms. The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight. This documentation is necessary in order to give the individual a full and fair review of his or her claim, and in order to ensure a well-reasoned determination or decision.

The adjudicator may find all, only some, or none of an individual's allegations to be credible. The adjudicator may also find an individual's statements, such as statements about the extent of functional limitations or restrictions due to pain or other symptoms, to be credible to a certain degree. For example, an adjudicator may find credible an individual's statement that the abilities to lift and carry are affected by symptoms, but find only partially credible the individual's statements as to the extent of the functional limitations or restrictions due to symptoms; e.g., that the individual's abilities to lift and carry are compromised, but not to the degree alleged.

A finding that an individual's statements are not credible, or not wholly credible, is not in itself sufficient to establish that the individual is not disabled. All of the evidence in the case record, including the individual's statements, must be considered before a conclusion can be made about disability.

Assessment of the credibility of an individual's statements must be based on a consideration of all of the evidence in the case record. This includes:

- The medical signs and laboratory findings.

- Diagnosis, prognosis, and other medical opinions.

- Statements and reports from the individual and from treating or examining physicians or psychologists and other persons about the individual's medical history, treatment and response, prior work record and efforts to work, daily activities, and other information concerning the individual's symptoms and how the symptoms affect the individual's ability to work.

SHD Paraphrased Regulations - Disability

1300 General

The adjudicator must also consider any observations about the individual recorded by SSA employees during interviews, whether in person or by telephone. When the individual attends an administrative proceeding, the adjudicator may also consider personal observations of the individual as part of the overall evaluation of the credibility of the individual's statements.

In instances in which the adjudicator has observed the individual, the adjudicator is not free to accept or reject the individual's complaints solely on the basis of such personal observations, but should consider any personal observations in the overall evaluation of the credibility of the individual's statements.

(POMS DI 24515.066B.; Social Security Ruling 96-7p)

1304-10

In *Drouin v. Sullivan*, the Court of Appeals found that the Administrative Law Judge (ALJ) correctly rejected Drouin's subjective complaints of pain. Drouin was a 25-year old high school graduate, suffering from Ehlers-Danlos Syndrome and severe scoliosis. The ALJ based the determination on the claimant's testimony that she did not lose her last two jobs because of pain; she did not take medicine nor undergo treatment for pain; testimony and records from medical experts indicated that her physical impairments were not necessarily associated with pain; her daily activities were such that she could perform work tasks; and at the hearing there was no indication that she was suffering pain.

The Court also upheld the determination that although the claimant could not return to her past relevant work (because she could not sit or stand for long periods of time or carry heavy loads) she could perform entry level or sedentary work where she would only have to sit or stand for short periods of time, alternate sitting and standing, walk up to a block and a half, and not lift more than five or ten pounds. The vocational specialist testified that there were thousands of such jobs in the San Diego area that Drouin could perform.

(*Drouin v. Sullivan* (1992) 966 F.2d 1255)

1304-11

The rejection by the Administrative Law Judge (ALJ) of pain complaints that exceed the "expected" level of symptoms is improper without specific, adequate, and documented findings. (*Stewart v. Sullivan* (1989) 881 F.2d 740)

Excess pain allegations were properly rejected when the plaintiff's daily activities of self-care, shopping, etc., conflicted with his subjective complaints. He also failed to pursue regular medical treatment, to lose weight, or to obtain physical therapy, despite medical advice to do so. These are also substantial pieces of evidence which the ALJ could rely upon to reject the plaintiff's pain testimony. (*Fair v. Bowen* (1989) 885 F.2d 597)

1304-12

SHD Paraphrased Regulations - Disability

1300 General

The issues before the federal Administrative Law Judge (ALJ) include "all the issues brought out in the initial, reconsidered, or revised determination that were not decided entirely in your [the applicant's] favor." However, if evidence presented before or during the hearing causes the ALJ to question a fully favorable determination, the ALJ will notify the applicant of the fact that this will be an issue at the hearing. (20 CFR §416.1446(a))

1304-13

The 9th Circuit Court of Appeals reviewed an ALJ's denial of an applicant's claim for Social Security disability (SSD) benefits after the Department of Veteran Affairs (VA) had determined the applicant was 80% disabled due to depression and lower back injury. The ALJ had not mentioned the VA determination in his opinion.

The Court, following the approach of the Fourth, Fifth and Eleventh Circuits, held that in "... an SSD case an ALJ must ordinarily give great weight to a VA determination of disability."

Based on the record before it and the VA finding of disability, the Court found the applicant disabled throughout the relevant period.

(McCartey v. Massanari, 2002 Daily Journal DAR 8870, August 6, 2002)

1304-14

The disability determination or hearing decision must be set forth carefully. The rationale must reflect the sequential evaluation process; describe the weight attributed to the pertinent medical, nonmedical and vocational factors in the case; and reconcile any significant inconsistencies. Reasonable inferences may be drawn, but presumptions, speculations and suppositions should not be substituted for evidence.

If the determination or decision is based on medical-vocational considerations, it must always contain findings that the individual is not engaging in SGA; there is a severe impairment, but that the individual's impairment(s) does not meet or equal that of any impairment described in the Listing of Impairments; must describe the individual's specific RFC; and must sequentially relate it to physical and mental demands of past work or other substantial work to which the individual could or could not be expected to make a vocational adjustment by reason of her or his age, education and past work experience. Each finding of fact must be based on supporting evidence.

In the rationale for a denial, a mere conclusion that "the impairment(s) is not severe enough to prevent the claimant from engaging in SGA" is insufficient. If the evidence establishes that the impairment(s) is "not severe," the rationale must show that the impairment(s) would not have more than a minimal effect on the performance of basic work-related functions. If a denial may not be made on this basis, the rationale must reflect the remainder of the sequential evaluation process.

Similarly, an allowance based on a mere conclusion that the claimant is "not able to engage in SGA" is insufficient. The rationale must state fully the reasons for the inability to engage in SGA based on the evidence of record, the applicable regulations, and the determinative step in the sequential evaluation process. Under the regulations, a finding

SHD Paraphrased Regulations - Disability

1300 General

that an individual's impairment(s) does not meet or equal the Listing effectively indicates that he or she has a sufficient work capability at the sedentary or a higher exertional level, to require medical-vocational evaluation. Therefore, an allowance determination or decision based on a conclusion that "the claimant has no RFC" is never appropriate. If the impairment(s) does not meet or equal the Listing, the rationale must reflect the remainder of the sequential evaluation process. If the claimant does not, in fact, have the RFC for a full range of sedentary work, the case must be evaluated within the framework of the vocational rules. The functional restrictions which limit the claimant to less than the full range of sedentary work must be specified. It must then be determined whether, considering all of the functional limitations, a "significant number" of sedentary jobs which the claimant can perform exists in the national economy.

Where denial is on the basis of duration, if based on medical-vocational considerations, the projected RFC must similarly be described and related.

(Social Security Ruling No. 86-8)

1305-2

The POMS sets forth the responsibilities for assisting claimants to obtain evidence. In requests to the claimant for assistance in obtaining evidence, explain what additional information or evidence is needed and why; list the sources from whom it is to be obtained; and advise the claimant that without the requested evidence, the case will be decided based on the evidence in file. (POMS DI 22501.003B.)

1308-1

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

1. AGE
 - a. Refers to chronological age and the extent to which it affects the individual's ability to adapt to a new work situation and to do work in competition with others. For purposes of adjudication, four age categories are used.
 - b. Younger individual - under age 50
 - c. Approaching advanced age - age 50-54
 - d. Advanced age - age 55 or over
 - e. Closely approaching retirement age - a person of advanced age who is age 60-64
2. ARDUOUS WORK
 - a. Is primarily physical work requiring a high level of strength or endurance.
 - b. Will usually entail physical demands that are classified as heavy.

SHD Paraphrased Regulations - Disability

1300 General

- c. Work not classified as heavy may be arduous if it demands a great deal of stamina or activity such as bending or lifting at a very fast pace.
- 3. CARRYING Transporting an object, usually holding it in the hands or arms or on the shoulder.
- 4. CLIMBING Ascending or descending ladders, stairs, scaffolding, ramps, poles, ropes, and the like, using the feet and legs and/or hands and arms.
- 5. CRAWLING Moving about on the hands and knees or hands and feet.
- 6. CROUCHING Bending the body downward and forward by bending the legs and spine.
- 7. EDUCATION
 - a. Is formal schooling or other training which contributes to the individual's ability to meet vocational requirements, e.g., reasoning ability, communication skills, and arithmetical ability.
 - b. Includes the evaluation of the ability to communicate in English.
 - c. For adjudicative purposes, education is classified into five categories which are defined below in d-h.
 - d. Illiteracy
 - o The inability to read or write English.
 - o An individual who is able to sign his or her name, but cannot read or write a simple communication in the English language (e.g., instructions, inventory lists), is considered illiterate.
 - o Generally, an illiterate person has little or no formal schooling in English.
 - e. Marginal Education
 - o Ability in reasoning, arithmetic, and language skills which are required for the performance of simple, unskilled types of jobs.
 - o Absent evidence to the contrary, formal schooling at a grade level of sixth grade or less is considered a marginal education.
 - f. Limited Education
 - o Ability in reasoning, arithmetic, and language skills which, although more than that which is generally required to carry out the duties of unskilled work, does not provide the individual with

SHD Paraphrased Regulations - Disability

1300 General

the educational qualifications necessary to perform the majority of more complex job duties involved in semiskilled or skilled jobs.

- o Absent evidence to the contrary, a seventh through eleventh grade of formal education is considered a limited education.
- g. High School Education and Above
 - o Ability in reasoning, arithmetic, and language skills acquired at a level of twelfth grade or, above.
 - o Absent evidence to the contrary, these educational capacities qualify an individual for work at a semiskilled through skilled level of job complexity.
- h. Inability to Communicate in English
 - o The inability to speak or understand English as a result of not having been taught, or educated in the English language.
 - o It also includes being illiterate in English, since for adjudicative purposes, it is assumed that a person who is unable to speak or understand English is also unable to read or write English.

8. ENVIRONMENTAL CONDITIONS

Conditions that may exist in work environments such as extremes in temperature, humidity, noise, vibrations, fumes, odors, presence of toxic substance, dust, poor ventilation, hazards, etc.

9. ENVIRONMENTAL LIMITATION

An impairment-caused need to avoid one or more environmental conditions in a work place.

10. EXERTIONAL ACTIVITY

One of the primary strength activities (i.e., sitting, standing, walking, lifting, carrying, pushing and pulling).

11. EXERTIONAL IMPAIRMENT

An impairment which is medically determinable and causes an exertional limitation(s).

12. EXERTIONAL LEVEL

A work classification defining the functional requirements of work in terms of the range of the primary activities required (e.g., sedentary, light, medium, heavy and very heavy).

SHD Paraphrased Regulations - Disability

1300 General

13. EXERTIONAL LIMITATION

An impairment-caused limitation which affects the capability to sit, stand, walk, lift, carry, push or pull.

14. FEELING

Perceiving such attributes of objects and materials as size, shape, temperature, or texture, by means of receptors in the skin, particularly those of the fingertips.

15. FINGERING

Picking, pinching, or otherwise working with the fingers primarily (rather than with the whole hand or arm as in handling).

16. FRAMEWORK DECISION

A decision which is not "directed" by a particular rule in Appendix 2 but uses the Appendix 2 rules as adjudicative guidance.

17. FREQUENT

Occurring from one-third to two-thirds of the time.

18. FULL RANGE OF WORK

All or substantially all of the unskilled occupations existing at an exertional level.

19. HANDLING

Seizing, holding, grasping, turning, or otherwise working with the hand or hands (fingering not involved).

20. HEAVY WORK

- a. Requires lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds.
- b. The functional capacity to perform heavy work includes the functional capacity to perform medium, light and sedentary work.

21. KNEELING

Bending the legs at the knees to come to rest on the knee or knees.

22. LIFTING

Raising or lowering an object from one level to another.

SHD Paraphrased Regulations - Disability

1300 General

23. LIGHT WORK

- a. Requires lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds.
- b. 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 or pulling of arm or leg controls, e.g., mattress sewing machine operator.
- c. Usually requires only occasional rather than frequent stooping.
- d. Usually involves (at least to some degree) grasping, holding, and turning objects, but does not require use of the fingers for fine activities to the extent required in much sedentary work.
- e. Usually requires standing or walking, off and on, for a total of approximately six hours of an eight-hour day.
- f. Many unskilled light jobs are performed primarily in one location, with the ability to stand being more critical than the ability to walk.
- g. The functional capacity to perform light work includes the functional capacity to perform sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

24. MATERIAL DISCREPANCY

A discrepancy which affects the ultimate decision of "disabled" or "not disabled".

25. MAXIMUM SUSTAINED WORK CAPACITY

The highest functional level a person can perform on a regular work basis-- sedentary, light, medium, heavy or very heavy work.

26. MEDIUM WORK

- a. Requires lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds.

NOTE: Being able to frequently lift or carry objects weighing up to 25 pounds is often more critical than being able to lift up to 50 pounds at a time.
- b. Usually requires frequent stooping and crouching.
- c. Usually requires standing or walking, off and on, for a total of approximately six hours of an eight-hour workday.

SHD Paraphrased Regulations - Disability

1300 General

- d. Very few medium occupations in the national economy are performed primarily in a sitting position.
 - e. Only the ability to grasp, hold and turn objects is usually necessary, as opposed to the finer activities in much sedentary work, which require precision use of the fingers.
 - f. The functional capacity to perform medium work includes the functional capacity to perform sedentary and light work.
27. NONEXERTIONAL IMPAIRMENT
- A medically determinable impairment which causes a limitation(s) on work activities other than sitting, standing, walking, lifting, carrying, pushing or pulling.
28. NONEXERTIONAL LIMITATION
- a. An impairment-caused limitation on a work activity other than sitting, standing, walking, lifting, carrying, pushing or pulling.
 - b. Example: A limitation affecting mental abilities, vision, hearing, speech, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering or feeling.
29. OCCASIONALLY
- Occurring from very little up to one-third of the time.
30. OCCUPATIONAL BASE
- The number of occupations, as represented by the Residual Functional Capacity (RFC), that an individual is functionally (i.e., medically) capable of performing.
31. OTHER WORK
- Work other than a person's past relevant work.
32. PAST RELEVANT WORK (PRW)
- Work that:
- a. was performed within the relevant work period and
 - b. was Substantial Gainful Activity (SGA), and
 - c. lasted long enough for the person to learn to do it, i.e.:
 - o learn the techniques,
 - o acquire the necessary information, and

SHD Paraphrased Regulations - Disability

1300 General

- o develop the facilities needed for average performance of the job situation. The length of time this takes depends on the nature and complexity of the work.

33. PULLING

Exerting force upon an object so that the object move toward the force.

34. PUSHING

Exerting force upon an object so that the object moves away from the force.

35. RANGE OF WORK

Occupations existing at an exertional level.

36. REACHING

Extending the hands and arms in any direction.

37. RELEVANT WORK PERIOD

- a. For Title II claims the relevant work period is 15 years prior to the date of adjudication (or, if earlier, prior to the date insured status was last met).
- b. For Title XVI claims the relevant work period is 15 years prior to the date of adjudication.
- c. For both Title II and Title XVI Continuing Disability Reviews (CDRs) the relevant period is 15 years prior to the date of adjudication of the CDR.
- d. The criteria in a-c above apply to all levels of adjudication (i.e., initial, reconsideration, hearings, and Appeals Council levels). The date of adjudication is not frozen at the initial determination, i.e., it is the date of the decision at any level of review.

38. RESIDUAL FUNCTIONAL CAPACITY (RFC)

See definition in POMS DI 24510.001.

39. SEDENTARY WORK

- a. Requires lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools.
- b. Although sitting is involved, a certain amount of walking and standing is often necessary in carrying out job duties.

SHD Paraphrased Regulations - Disability

1300 General

- c. Periods of standing or walking should generally total no more than about two hours of an eight-hour workday and sitting should generally total approximately six hours of an eight-hour workday.
 - d. Most unskilled sedentary jobs require good use of the hands and fingers for repetitive hand-finger actions.
 - e. Does not entail significant stooping or crouching since the work is performed primarily in a seated position.
40. SEMISKILLED WORK
- a. Work which needs some skills but does not require doing the more complex duties.
 - b. May require alertness and close attention to:
 - o watching machine processes; or
 - o inspecting, testing or otherwise looking for irregularities; or
 - o tending or guarding equipment, property, material, or persons against loss, damage or injury; or
 - o other types of activities which are similarly less complex than skilled work, but more complex than unskilled work.
 - c. A job may be classified as semiskilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.
 - d. Occupations with a Specific Vocational Preparation (SVP) rating of "3" or "4" (as rated in the SCO) are considered to be semiskilled.
41. SKILL
- a. Refers to experience and demonstrated proficiency with work activities in particular tasks or jobs.
 - b. Is knowledge of a work activity which requires the exercise of significant judgment that goes beyond the carrying out of simple job duties.
 - c. Is practical and familiar knowledge of the principles and processes of an art, science or trade, combined with the ability to apply them in practice in a proper and approved manner.
 - d. Examples:
 - o making precise measurements

SHD Paraphrased Regulations - Disability

1300 General

- o reading blueprints
- o setting up and operating complex machinery

42. SKILL LEVEL

A work classification whereby work is defined according to skill requirements, i.e., unskilled, semiskilled, or skilled.

43. SKILLED WORK

- a. Work which 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.
- b. May require:
 - o laying out work
 - o estimating quality
 - o determining the suitability and needed quantities of materials
 - o making precise measurements
 - o reading blueprints or other specifications
 - o making necessary computations or mechanical adjustments to control or regulate the work
 - o dealing with people, facts, or figures or abstract ideas at a high level of complexity
- c. Occupations with an SVP rating "5" or higher (as rated in the SCO) are considered to be skilled.

(POMS DI 25001.001B.)

1308-1A

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

- 1. AGE
 - a. Refers to chronological age and the extent to which it affects the individual's ability to adapt to a new work situation and to do work in competition with others. For purposes of adjudication, four age categories are used.
 - c. Approaching advanced age - age 50-54

SHD Paraphrased Regulations - Disability

1300 General

(POMS DI 25001.001B.)

1308-1B

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

1. AGE
 - a. Refers to chronological age and the extent to which it affects the individual's ability to adapt to a new work situation and to do work in competition with others. For purposes of adjudication, four age categories are used.
 - d. Advanced age - age 55 or over

(POMS DI 25001.001B.)

1308-1C

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

1. AGE
 - a. Refers to chronological age and the extent to which it affects the individual's ability to adapt to a new work situation and to do work in competition with others. For purposes of adjudication, four age categories are used.
 - e. Closely approaching retirement age - a person of advanced age who is age 60-64

(POMS DI 25001.001B.)

1308-1D

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

1. AGE
 - a. Refers to chronological age and the extent to which it affects the individual's ability to adapt to a new work situation and to do work in competition with others. For purposes of adjudication, four age categories are used.
 - b. Younger individual - under age 50

(POMS DI 25001.001B.)

1308-1E

SHD Paraphrased Regulations - Disability

1300 General

POMS DI 25001.001B sets forth a glossary of terms used in medical-vocational evaluations:

2. ARDUOUS WORK

- a. Is primarily physical work requiring a high level of strength or endurance.
- b. Will usually entail physical demands that are classified as heavy.
- c. Work not classified as heavy may be arduous if it demands a great deal of stamina or activity such as bending or lifting at a very fast pace.

(POMS DI 25001.001B.)

1308-1G

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

7. EDUCATION

- a. Is formal schooling or other training which contributes to the individual's ability to meet vocational requirements, e.g., reasoning ability, communication skills, and arithmetical ability.
- b. Includes the evaluation of the ability to communicate in English.
- c. For adjudicative purposes, education is classified into five categories which are defined below in d-h.
- d. Illiteracy
 - > The inability to read or write English.
 - > An individual who is able to sign his or her name, but cannot read or write a simple communication in the English language (e.g., instructions, inventory lists), is considered illiterate.
 - > Generally, an illiterate person has little or no formal schooling in English.
- h. Inability to Communicate in English
 - > The inability to speak or understand English as a result of not having been taught, or educated in the English language.
 - > It also includes being illiterate in English, since for adjudicative purposes, it is assumed that a person who is unable to speak or understand English is also unable to read or write English.

SHD Paraphrased Regulations - Disability

1300 General

(POMS DI 25001.001B.)

1308-1H

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

7. EDUCATION

- a. Is formal schooling or other training which contributes to the individual's ability to meet vocational requirements, e.g., reasoning ability, communication skills, and arithmetical ability.
- b. Includes the evaluation of the ability to communicate in English.
- c. For adjudicative purposes, education is classified into five categories which are defined below in d-h.
- d. Illiteracy
 - > The inability to read or write English.
 - > An individual who is able to sign his or her name, but cannot read or write a simple communication in the English language (e.g., instructions, inventory lists), is considered illiterate.
 - > Generally, an illiterate person has little or no formal schooling in English.
- h. Inability to Communicate in English
 - > The inability to speak or understand English as a result of not having been taught, or educated in the English language.
 - > It also includes being illiterate in English, since for adjudicative purposes, it is assumed that a person who is unable to speak or understand English is also unable to read or write English.

(POMS DI 25001.001B.)

1308-1I

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

7. EDUCATION

- a. Is formal schooling or other training which contributes to the individual's ability to meet vocational requirements, e.g., reasoning ability, communication skills, and arithmetical ability.

SHD Paraphrased Regulations - Disability

1300 General

- b. Includes the evaluation of the ability to communicate in English.
- c. For adjudicative purposes, education is classified into five categories which are defined below in d-h.
- e. Marginal Education
 - > Ability in reasoning, arithmetic, and language skills which are required for the performance of simple, unskilled types of jobs.
 - > Absent evidence to the contrary, formal schooling at a grade level of sixth grade or less is considered a marginal education.

(POMS DI 25001.001B.)

1308-1J

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

8. ENVIRONMENTAL CONDITIONS

Conditions that may exist in work environments such as extremes in temperature, humidity, noise, vibrations, fumes, odors, presence of toxic substance, dust, poor ventilation, hazards, etc.

9. ENVIRONMENTAL LIMITATION

An impairment-caused need to avoid one or more environmental conditions in a work-place.

(POMS DI 25001.001B.)

The POMS states that an individual who cannot perform a full range of sedentary work may have nonexertional limitations which erode his/her occupational base, limiting the number of available jobs. Judgments are made using the following criteria (and are based on the assumption that there are no other limitations or restrictions to sedentary work):

- 5. Environmental restrictions: Exposure to extreme temperatures, wetness or humidity, vibration or unusual hazards, will generally not significantly erode the unskilled sedentary occupational base. Restrictions on ability to work in a noisy environment and be exposed to odors or dust must be individually evaluated and consultation with a vocational resource is useful.

(POMS DI 25015.020B.7; Social Security Ruling 96-9p)

1308-1J

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

SHD Paraphrased Regulations - Disability

1300 General

8. ENVIRONMENTAL CONDITIONS

Conditions that may exist in work environments such as extremes in temperature, humidity, noise, vibrations, fumes, odors, presence of toxic substance, dust, poor ventilation, hazards, etc.

9. ENVIRONMENTAL LIMITATION

An impairment-caused need to avoid one or more environmental conditions in a work-place.

(POMS DI 25001.001B.)

The POMS states that an individual who cannot perform a full range of sedentary work may have nonexertional limitations which erode his/her occupational base, limiting the number of available jobs. Judgments are made using the following criteria (and are based on the assumption that there are no other limitations or restrictions to sedentary work):

5. Environmental restrictions: Exposure to extreme temperatures, wetness or humidity, vibration or unusual hazards, will generally not significantly erode the unskilled sedentary occupational base. Restrictions on ability to work in a noisy environment and be exposed to odors or dust must be individually evaluated and consultation with a vocational resource is useful.

(POMS DI 25015.020B.7; Social Security Ruling 96-9p)

1308-1K

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

14. FEELING

Perceiving such attributes of objects and materials as size, shape, temperature, or texture, by means of receptors in the skin, particularly those of the fingertips.

15. FINGERING

Picking, pinching, or otherwise working with the fingers primarily (rather than with the whole hand or arm as in handling).

(POMS DI 25001.001B.)

POMS DI 25015.020B.7; Social Security Ruling 96-9p provides that an individual who cannot perform a full range of sedentary work may have nonexertional limitations which erode his/her occupational base, limiting the number of available jobs. Judgments are made using the following criteria (and are based on the assumption that there are no other limitations or restrictions to sedentary work):

SHD Paraphrased Regulations - Disability

1300 General

2. Manipulative limitations: Any significant limitation of an individual's ability to handle and work with small objects with both hands will significantly erode the unskilled sedentary occupational base; a less significant limitation, particularly in the nondominant hand, may require consultation with a vocational resource; while the ability to feel the size, shape, temperature, or texture of an object by the fingertips would not significantly erode such occupational base.

The POMS also sets forth the evaluation of functional limitations and their effects on ranges of work. The operating policy is as follows:

2. FINGERING AND FEELING

- a. Fingering is needed to perform most unskilled sedentary jobs and to perform certain at all levels of exertion.
- b. The mere ability to feel the size, shape, temperature or texture of an object by the fingertips, is a function required in very few jobs.
- c. A loss of fine manual dexterity narrows the sedentary and light ranges of work more than it does the medium, heavy and very heavy ranges of work.

(POMS DI 25020.005)

1308-1L

The POMS sets forth a glossary of terms used in medical-vocational evaluations.

18. FULL RANGE OF WORK

All or substantially all of the unskilled occupations existing at an exertional level.

(POMS DI 25020.005)

1308-1M

The POMS sets forth a glossary of terms used in medical-vocational evaluations.

20. HEAVY WORK

- a. Requires lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds.
- b. The functional capacity to perform heavy work includes the functional capacity to perform medium, light and sedentary work.

(POMS DI 25001.001B.)

SHD Paraphrased Regulations - Disability

1300 General

1308-1N

The POMS sets forth a glossary of terms used in medical-vocational evaluations.

23. LIGHT WORK

- a. Requires lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds.
- b. 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 or pulling of arm or leg controls, e.g., mattress sewing machine operator.
- c. Usually requires only occasional rather than frequent stooping.
- d. Usually involves (at least to some degree) grasping, holding, and turning objects, but does not require use of the fingers for fine activities to the extent required in much sedentary work.
- e. Usually requires standing or walking, off and on, for a total of approximately six hours of an eight-hour day.
- f. Many unskilled light jobs are performed primarily in one location, with the ability to stand being more critical than the ability to walk.
- g. The functional capacity to perform light work includes the functional capacity to perform sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(POMS DI 25001.001B.)

1308-1O

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

26. MEDIUM WORK

- a. Requires lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds.

NOTE: Being able to frequently lift or carry objects weighing up to 25 pounds is often more critical than being able to lift up to 50 pounds at a time.

- b. Usually requires frequent stooping and crouching.
- c. Usually requires standing or walking, off and on, for a total of approximately six hours of an eight-hour workday.

SHD Paraphrased Regulations - Disability

1300 General

- d. Very few medium occupations in the national economy are performed primarily in a sitting position.
- e. Only the ability to grasp, hold and turn objects is usually necessary, as opposed to the finer activities in much sedentary work, which require precision use of the fingers.
- f. The functional capacity to perform medium work includes the functional capacity to perform sedentary and light work.

(POMS DI 25001.001B.)

1308-1P

The POMS sets forth a glossary of terms used in the medical-vocational evaluation:

37. RELEVANT WORK PERIOD

- a. For Title II claims the relevant work period is 15 years prior to the date of adjudication (or, if earlier, prior to the date insured status was last met).
- b. For Title XVI claims the relevant work period is 15 years prior to the date of adjudication.
- c. For both Title II and Title XVI Continuing Disability Reviews (CDR) the relevant period is 15 years prior to the date of adjudication of the CDR.
- d. The criteria in a-c above apply to all levels of adjudication (i.e., initial, reconsideration, hearings, and Appeals Council levels). The date of adjudication is not frozen at the initial determination, i.e., it is the date of the decision at any level of review.

(POMS DI 25001.001B.)

1308-1Q

The POMS sets forth a glossary of terms used in the medical-vocational evaluation:

39. SEDENTARY WORK

- a. Requires lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools.
- b. Although sitting is involved, a certain amount of walking and standing is often necessary in carrying out job duties.

SHD Paraphrased Regulations - Disability

1300 General

- c. Periods of standing or walking should generally total no more than about two hours of an eight-hour workday and sitting should generally total approximately six hours of an eight-hour workday.
- d. Most unskilled sedentary jobs require good use of the hands and fingers for repetitive hand-finger actions.
- e. Does not entail significant stooping or crouching since the work is performed primarily in a seated position.

(POMS DI 25001.001B.)

1308-1R

The POMS sets forth a glossary of terms used in the medical-vocational evaluations:

40. SEMISKILLED WORK

- a. Work which needs some skills but does not require doing the more complex duties.
- b. May require alertness and close attention to:
 - > watching machine processes; or
 - > inspecting, testing or otherwise looking for irregularities; or
 - > tending or guarding equipment, property, material, 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.
- c. A job may be classified as semiskilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.
- d. Occupations with a Specific Vocational Preparation (SVP) rating of "3" or "4"

(POMS DI 25001.001B.)

1308-1X A Social Security Ruling (SSR) sets forth definitions of terms and related concepts in the following glossary:

Broad World of Work. Work which exists at all exertional levels. It may include skilled and semiskilled work as well as unskilled work.

SHD Paraphrased Regulations - Disability

1300 General

Environmental Conditions. Extremes of temperature, humidity, noise, vibration, fumes, odors, toxic conditions, dust, poor ventilation, hazards, etc.

Exertional Activity. One of the primary strength activities (sitting, standing, walking, lifting, carrying, pushing, and pulling) defining a level of work.

Exertional Capability. A capability required to perform an exertional activity.

Exertional Limitation. An impairment-caused limitation which affects capability to perform an exertional activity.

Exertional Level (Level of Exertion). A work classification defining the functional requirements of work in terms of the range of the primary strength activities required. The primary strength activities specifically associated with the sedentary, light, and medium levels of exertion are set forth in 20 CFR §416.967 of the regulations.

The following elaborations of the activities needed to carry out the requirements of sedentary, light, and medium work are based on the same resource materials noted in §200.00(b) of Appendix 2. They may be used by decisionmakers to determine if an individual has the ability to perform the full range of sedentary, light, or medium work from an exertional standpoint.

1. **Sedentary work.** The regulations define sedentary work as involving lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although sitting is involved, 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. By its very nature, work performed primarily in a seated position entails no significant stooping. Most unskilled sedentary jobs require good use of the hands and fingers for repetitive hand-finger actions.

"Occasionally" means occurring from very little up to one-third of the time. Since being on one's feet is required "occasionally" at the sedentary level of exertion, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday, and sitting should generally total approximately 6 hours of an 8-hour workday. Work processes in specific jobs will dictate how often and how long a person will need to be on his or her feet to obtain or return small articles.

2. **Light work.** The regulations define light work as 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 in a particular light job may be very little, a job is in this category when it requires a good deal of walking or standing -- the primary difference between sedentary and most light jobs. A job is also in this category when it involves sitting most of the time but with some pushing and pulling of arm-hand or leg-foot controls, which require greater exertion than in sedentary work; e.g., mattress sewing machine operator, motor-grader operator, and road-roller operator (skilled and semiskilled jobs in these particular instances). Relatively few unskilled light jobs are performed in a seated position.

SHD Paraphrased Regulations - Disability

1300 General

"Frequent" means occurring from one-third to two-thirds of the time. Since frequent lifting or carrying requires being on one's feet up to two-thirds of a workday, the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday. Sitting may occur intermittently during the remaining time. The lifting requirement for the majority of light jobs can be accomplished with occasional, rather than frequent, stooping. Many unskilled light jobs are performed primarily in one location, with the ability to stand being more critical than the ability to walk. They require use of arms and hands to grasp and to hold and turn objects, and they generally do not require use of the fingers for fine activities to the extent required in much sedentary work.

3. Medium work. The regulations define medium work as lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. A full range of medium work requires standing or walking, off and on, for a total of approximately 6 hours in an 8-hour workday in order to meet the requirements of frequent lifting or carrying objects weighing up to 25 pounds. As in light work, sitting may occur intermittently during the remaining time. Use of the arms and hands is necessary to grasp, hold, and turn objects, as opposed to the finer activities in much sedentary work, which require precision use of the fingers as well as use of the hands and arms.

The considerable lifting required for the full range of medium work usually requires frequent bending-stooping. (Stooping is a type of bending in which a person bends his or her body downward and forward by bending the spine at the waist.) Flexibility of the knees as well as the torso is important for this activity. (Crouching is bending both the legs and spine in order to bend the body downward and forward.) However, there are relatively few occupations in the national economy which require exertion in terms of weights that must be lifted at time (or involve equivalent exertion in pushing and pulling), but are performed primarily in a sitting position, e.g., taxi driver, bus driver, and tank-truck driver (semi-skilled jobs). In most medium jobs, being on one's feet for most of the workday is critical. Being able to do frequent lifting or carrying of objects weighing up to 25 pounds is often more critical than being able to lift up to 50 pounds at a time.

Full Range of Work. All or substantially all occupations existing at an exertional level.

Limited to. Does not exceed.

Maximum Sustained Work Capability. The highest functional level a person can perform on a regular work basis -- sedentary, light, medium, heavy, or very heavy work.

Nonexertional Impairment. Any impairment which does not directly affect the ability to sit, stand, walk, lift, carry, push, or pull. This includes impairments which affect the mind, vision, hearing, speech, and use of the body to climb, balance, stoop, kneel, crouch, crawl, reach, handle, and use of the fingers for fine activities.

Nonexertional Limitation. An impairment-caused limitation of function which directly affects capability to perform work activities other than the primary strength activities.

SHD Paraphrased Regulations - Disability

1300 General

Nonexertional Restriction (Environmental Restriction). An impairment-caused need to avoid one or more environmental conditions in a workplace.

Occupational Base. The number of occupations as represented by RFC, that an individual is capable of performing. These "base" occupations are unskilled in terms of complexity. The regulations take notice of approximately 2,500 medium, light, and sedentary occupations; 1,600 light and sedentary occupations; and 200 sedentary occupations. Each occupation represents numerous jobs in the national economy. (In individual situations, specific skilled or semi-skilled occupations may be added to the base.)

Range of Work. Occupations existing at an exertional level.

Residual Functional Capacity. A medical assessment of what an individual can do in a work setting in spite of the functional limitations and environmental restrictions imposed by all of his or her medically determinable impairment(s). RFC is the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs.

Skilled Level. A work classification whereby work is defined according to skill requirements. The requirements of the different skill levels are set forth in §416.968 of the regulations as follows:

1. 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 work.
2. Semiskilled work. Semiskilled work is work which needs some skills but does not require doing the more complex work duties. Semiskilled 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, material, 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 semiskilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.
3. 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 quantities, 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

SHD Paraphrased Regulations - Disability

1300 General

require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

For a further discussion of skills see SSR 82-41.

Substantially All Activities. Nearly all (essentially all) of the activities required in an exertional range of work.

Vocational Factors: An Individual's Age, Education, and Work Experience

1. Age. The regulations provide the older age is an increasingly adverse vocational factor for persons with severe impairments. The chronological ages, 45, 50, 55, and 60 may be critical to a decision. However, the regulations also provide that age categories are not applied mechanically in borderline situations. For example, a rule for an individual of advanced age (55 or older) could be found applicable, in some circumstances, to an individual whose chronological age is 54 years and 11 months (closely approaching advanced age). No fixed guidelines as to when a borderline situation exists are provided since such guidelines would themselves reflect a mechanical approach.
2. Education. Unless there is evidence to contradict a persons's statement as to the numerical grade level completed in school, the statement will be used to determine the persons's educational abilities. The person's present level of reasoning, communication, and arithmetical ability may be higher or lower than the level of formal education. Evidence of this includes the kinds of responsibilities the person had when working, any acquired work skills, daily activities, and hobbies, as well as the results of testing. Therefore, a person will meet the criteria for the different education levels specified in the regulations, not solely on the basis of his or her statements, but based upon all evidence pertinent to evaluating that person's educational capacities.

The criterion of "high school graduate or more -- provides for direct entry into skilled work" is met when there is little time lapse between the completion of formal education and the date of adjudication, and where the content of the education would enable individuals, with a minimal degree of job orientation, to begin performing the skilled job duties of certain identifiable occupations within their RFC.

3. Previous Work Experience. A person's work experience may be none, not vocationally relevant, unskilled, semiskilled, or skilled. To meet the criterion of "skilled or semiskilled -- skills transferable," a person must have performed work which is above the unskilled level of complexity, must have identifiable skills, and must be able to use these skills in specific skilled or semiskilled occupations within his or her RFC.

(SSR No. 83-10)

1308-2

SHD Paraphrased Regulations - Disability

1300 General

The Diagnostic and Statistical Manual (DSM) of Mental Disorders IV-R, sets forth a global assessment of functioning scale (GAF Scale). The instructions for use of this scale are set forth below. Consider psychological, social, and occupational functioning on a hypothetical continuum of mental health-illness. Do not include impairment in functioning due to physical (or environmental) limitations.

Code

90 to 81

Absent or minimal symptoms (e.g., mild anxiety before an exam), good functioning in all areas, interested and involved in a wide range of activities, socially effective, generally satisfied with life, no more than everyday problems or concerns (e.g., an occasional argument with family members).

80 to 71

If symptoms are present, they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family argument); no more than slight impairment in social, occupational, or school functioning (e.g., temporarily falling behind in school work).

70 to 61

Some mild symptoms (e.g., depressed mood and mild insomnia) OR some difficulty in social, occupational, or school functioning (e.g., occasional truancy, or theft within the household), but generally functioning pretty well, has some meaningful interpersonal relationships.

60 to 51

Moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with co-workers).

50 to 41

Serious symptoms (e.g., suicidal ideation, severe obsessive rituals, frequent shoplifting) OR any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job).

40 to 31

Some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) OR major impairment in several areas, such as work or school, family relations, judgment, thinking or mood (e.g., depressed man avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school).

30 to 21

SHD Paraphrased Regulations - Disability

1300 General

Behavior is considerably influenced by delusions or hallucinations OR serious impairment in communication or judgment (e.g., sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) OR inability to function in almost all areas (e.g., stays in bed all day, no job, home, or friends.)

20 to 11

Some danger of hurting self or others (e.g., suicide attempts without clear expectation of death, frequently violent, manic excitement) OR occasionally fails to maintain minimal personal hygiene (e.g., smears feces) OR gross impairment in communication (e.g., largely incoherent or mute).

10 to 1

Persistent danger of severely hurting self or others (e.g., recurrent violence) OR persistent inability to maintain personal hygiene OR serious suicidal act with clear expectation of death.

0

Inadequate information.

(DSM of Mental Disorders IV-R, p.32)

1308-3

The Merck Manual, Sixteenth Edition, is the most widely used medical text to provide useful information to practicing physicians and other health professionals. The manual provides information about specific disease processes, which includes information about signs, symptoms, etiology, treatment, treatment side effects and prognosis.

Dependence on alcohol as a medical impairment is described in Chapter 137. An alcoholic is identified by severe dependent or addiction and a cumulative pattern of behavior associated with drinking. The most common forms of specific organ damage seen in alcoholics are cirrhosis of the liver, peripheral neuropathy, brain damage, and cardiomyopathy. Gastritis is common and pancreatitis may also develop. Patients who drink large amounts of alcohol repetitively become somewhat tolerant to its effect. This tolerance is primarily caused by adaptational changes in the body. Alcohol withdrawal syndrome begins 12 to 48 hours after cessation of intake of alcohol and is accompanied by a continuum of symptoms. Mild withdrawal syndrome includes tremor, weakness, sweating, hyperflexia, and gastrointestinal symptoms. Some individuals may suffer generalized grand mal seizures and alcoholic hallucinosis are auditory illusions and hallucinations, usually of a paranoid nature and frequently accusatory and threatening. The condition resembles schizophrenia, but there is usually no thought disorder. The hallucinosis is usually transient and responds to treatment within one to three weeks.

Delirium tremens is a severe withdrawal syndrome that begins with anxiety attacks, increasing confusion, poor sleep, marked sweating and a profound depression. Marked delirium, with gross disorientation and cognitive disruption, is associated with marked

SHD Paraphrased Regulations - Disability

1300 General

restlessness, increased pulse rate and rise in temperature. Fleeting hallucinations and nocturnal illusions that arouse fear and restlessness may occur. As the delirium progresses, a persistent coarse tremor of the hand at rest develops and sometimes extends to the head and trunk. Marked ataxia may also be present. Treatment is determined based on the initial medical evaluation that will detect any intercurrent illness that might complicate withdrawal. Delirious patients are extremely suggestible and respond well to reassurance.

Liver disease due to alcohol is described. In general, a linear correlation exists between the severity of liver damage and the intensity of alcohol abuse, as measured by duration and dose. By providing calories without essential nutrients, decreasing the appetite and causing malabsorption through its toxic effects on the gut, pancreas, alcohol promotes malnutrition. Variations in drinking patterns, susceptibility to hepatotoxic effects of alcohol, and the kinds of tissue damage promote a highly variable clinical picture. "In theory, the treatment of this condition is simple and straightforward; in practice, it is difficult: the patient must stop drinking alcohol." Much of alcoholic liver disease is reversible.

(Merch Manual, Sixteenth Edition, Ch. 65, 137)

1308-4

The POMS sets forth the evaluation of functional limitations and their effects on ranges of work. The operating policy is as follows:

1. CLIMBING AND BALANCING
 - a. As a general rule, a small degree of limitation (e.g., the person retains the capacity to ascend and descend ramps and stairs but cannot maintain balance on a ladder) would not significantly impact on any range(s) of work.
 - b. Can be critical in certain specific types of occupations, e.g., occupations that require climbing ladders, ropes, poles, etc.
2. FINGERING AND FEELING
 - a. Fingering is needed to perform most unskilled sedentary jobs and to perform certain skilled and semiskilled jobs at all levels of exertion.
 - b. The mere ability to feel the size, shape, temperature or texture of an object by the fingertips, is a function required in very few jobs.
 - c. A loss of fine manual dexterity narrows the sedentary and light ranges of work more than it does the medium, heavy and very heavy ranges of work.
3. HEARING

SHD Paraphrased Regulations - Disability

1300 General

- a. The inability to hear, because it vitally affects communication, may (depending upon the extent of hearing loss) significantly impinge on all range(s) of work.
- b. There are many possible medical variables of hearing loss and thus, the exact type and degree of loss must be considered.
- c. The overall impact of a hearing loss (or a degree of hearing loss) also depends upon the type of occupations being considered.

EXAMPLE: Certain degrees of hearing loss may preclude the performance of some occupations that require good hearing (e.g., bus driver) without precluding the performance of other occupations (e.g., printing press operator).

4. KNEELING AND CRAWLING

- a. Are relatively rare activities even in arduous work.
- b. Limitations in kneeling and crawling, in themselves, would have very little impact on the sedentary, light and medium occupational bases.
- c. A limitation(s) may affect the ability to perform certain specific occupations, e.g., a carpet layer.

5. LOSS OF USE OF AN UPPER EXTREMITY

- a. Greatly impinges on the unskilled sedentary occupational base since such jobs usually require good use of the hands.
- b. Would reduce the total number of unskilled occupations within the person's RFC to a little more than the number represented by the full range of sedentary work.
- c. Amputation above the elbow may reduce the effectiveness in use of the other hand due to the loss of bimanual manipulation and difficulty or inability to handle bulky objects.
- d. Amputation below the elbow or partial loss of use of the extremity requires consideration of:
 - o the condition of the remaining stump;
 - o the person's ability to use a prosthesis; and
 - o the person's remaining ability for fine and gross manipulation.

6. MEDICALLY-NECESSARY HAND-HELD ASSISTIVE DEVICE

- a. If needed for even occasional standing and walking:

SHD Paraphrased Regulations - Disability

1300 General

requirements involved. (See POMS DI 25001.001 for definition of "frequently.")

10. VISUAL

- a. Given only a visual impairment, a substantial occupation base will usually be found for a person who:
 - o Retains sufficient visual acuity to handle and work with rather large objects, and
 - o Has the visual fields necessary to avoid ordinary hazards in the work place.
- b. Even if the criteria in "a." above are met, however, a finding of disabled could be appropriate in a few rare instances in which the claimant's profile is extremely adverse, e.g.:
 - o Closely approaching retirement age,
 - o Limited or less education,
 - o No transferable skills, and
 - o Essentially a lifetime commitment to a field of work in which good vision is essential.

(POMS DI 25020.005)

1308-4A

The POMS sets forth the evaluation of functional limitations and their effects on ranges of work. The operating policy is as follows:

6. MEDICALLY-NECESSARY HAND-HELD ASSISTIVE DEVICE

- a. If needed for even occasional standing and walking:
 - > Precludes the ability to perform most unskilled jobs including unskilled sedentary jobs.
 - > Accommodation to other work is not ordinarily expected even in the presence of an otherwise favorable profile.

An individual who cannot perform a full range of sedentary work may have exertional limitations and restrictions which erode his/her occupational base, limiting the number of available jobs. Judgments are made using the following criteria:

SHD Paraphrased Regulations - Disability

1300 General

5. Medically required hand-held assistive device: The hand-held assistive device must be medically required, and documentation as to when (e.g., all the time, periodically, distance and terrain) of when it is required should be obtained. An individual who uses such a device in one hand may still have the ability to perform lifting and carrying requirements of many unskilled sedentary occupations, while one who uses such a device for balance because of significant involvement in both lower extremities may have the occupational base significantly eroded.

(POMS DI 25015.020B.7; Social Security Ruling 96-9p)

1308-4B

The POMS sets forth the evaluation of functional limitations and their effects on ranges of work. The operating policy, in pertinent part, is as follows:

1. CLIMBING AND BALANCING
 - a. As a general rule, a small degree of limitation (e.g., the person retains the capacity to ascend and descend ramps and stairs but cannot maintain balance on a ladder) would not significantly impact on any range(s) of work.
 - b. Can be critical in certain specific types of occupations, e.g., occupations that require climbing ladders, ropes, poles, etc.

(POMS DI 25020.005)

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

3. CLIMBING

Ascending or descending ladders, stairs, scaffolding, ramps, poles, ropes, and the like, using the feet and legs and/or hands and arms.

(POMS DI 25001.001B.)

1308-4C

The POMS sets forth the evaluation of functional limitations and their effects on ranges of work. The operating policy is as follows:

5. LOSS OF USE OF AN UPPER EXTREMITY
 - a. Greatly impinges on the unskilled sedentary occupational base since such jobs usually require good use of the hands.

SHD Paraphrased Regulations - Disability

1300 General

- b. Would reduce the total number of unskilled occupations within the person's RFC to a little more than the number represented by the full range of sedentary work.
- c. Amputation above the elbow may reduce the effectiveness in use of the other hand due to the loss of bimanual manipulation and difficulty or inability to handle bulky objects.
- d. Amputation below the elbow or partial loss of use of the extremity requires consideration of:
 - > the condition of the remaining stump;
 - > the person's ability to use a prosthesis; and
 - > the person's remaining ability for fine and gross manipulation.

(POMS DI 25020.005)

1308-5

Federal regulations deal with exertional and nonexertional limitations. (20 CFR §416.969(a))

Subsection (b) deals with exertional limitations. When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling) we consider you have only exertional limitations. When your impairment(s) and related symptoms only impose exertional limitations and your specific vocational profile is listed in a rule contained in Appendix 2, we will directly apply that rule to decide whether you are disabled.

Subsection (c) deals with nonexertional limitations. These are symptoms, such as pain, which affect only your ability to meet the demands of jobs other than the strength demands. Some examples of nonexertional limitations are difficulty functioning because you are nervous, anxious or depressed; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical features of certain work settings, such as intolerance to dust or fumes; or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling or crouching.

If your impairment(s) and related symptoms, such as pain, only affect your ability to perform the nonexertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled.

Subsection (d) deals with combinations of exertional and nonexertional limitations. If your impairment(s) and related symptoms, such as pain, affect your ability to meet both the strength and demands of jobs other than the strength demands, we will not directly

SHD Paraphrased Regulations - Disability

1300 General

apply the rules in Appendix 2 unless there is a rule that directs a conclusion that you are disabled based upon your strength limitations.

(20 CFR §416.969)

1308-6

Symptoms are an individual's own description of his or her impairment. They concern experiences with respect to physical or mental functioning and are typically reported as stressful. They are difficult to evaluate in isolation, and must be considered and assessed in relationship to observable signs that can be medically described and evaluated. Symptoms are usually alleged to stem from a specific disorder or condition. Symptoms that are associated with well-defined mental disorders may include complaints such as hallucinations, difficulty in concentrating, and feelings of hopelessness. A description of a symptom is not sufficient in itself to establish an impairment. Signs are anatomical, physiological or psychological abnormalities which can be observed. They 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 are shown by observable facts that can be medically described and evaluated. Laboratory findings are manifestations of anatomical, physiological or psychological phenomena demonstrable by the use of medically acceptable laboratory diagnostic techniques. They include chemical, electrophysiological, roentgenological, or psychological tests. In clinical practice, it may be difficult to distinguish symptoms from signs and laboratory findings. In program practice, it may be necessary to make this distinction. Generally, signs are more difficult for the individual to fashion or control. There are distinctive, characteristic signs that clinicians repeatedly associate with particular symptoms. Signs can be clinically observed or can be elicited in response to a stimulus or action by the clinician. Signs require professional skill and judgment on the part of the professional, as opposed to merely noting and reporting the individual's statement. (POMS DI 24501.020A. and B.)

1308-7

The Social Security Administration (SSA) needs reports about the individual's impairments from acceptable medical sources. These 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 (for evidence as to blindness).
- (5) Persons authorized to send a copy or summary of the medical records of a hospital, clinic, sanitarium, medical institution, or health care facility.

SHD Paraphrased Regulations - Disability

1300 General

- (6) A report of an interdisciplinary team that contains the evaluation and signature of an acceptable medical source.

(20 CFR §416.913(a))

Information from other sources may also help the SSA to understand how impairments affect the adult individual's ability to work, or the child's ability to function independently, appropriately and effectively in an age-appropriate manner. Other sources include, but are not limited to:

- (1) Public and private social welfare agencies and social workers.
- (2) Observers who know the person, e.g., relatives, friends, neighbors, caregivers, clergy.
- (3) Other practitioners, e.g., nurse practitioners, physicians' assistants, naturopaths, chiropractors.
- (4) Therapists, e.g., physical, occupational, speech, language.
- (5) Educational agencies and personnel, e.g., school teachers, psychologists, and counselors.

(20 CFR §416.913(e))

1308-8

A medical report should include:

- (1) Medical history.
- (2) Clinical findings, e.g., results of physical or mental status examinations.
- (3) Laboratory findings, e.g., blood pressure, X-rays.
- (4) Diagnosis, e.g., statement of disease or injury based on signs and symptoms.
- (5) Treatment prescribed with response and prognosis.
- (6) A statement about what the person can do despite the impairments, based on the medical source's findings.

(20 CFR §416.913(b))

1308-9

A "treating source" is the claimant's own physician(s), psychologist(s), or other medical source(s) who:

SHD Paraphrased Regulations - Disability

1300 General

- (a) Provides or has provided the claimant with medical treatment or evaluation (including treatment in any medical facility)

AND

- (b) Has or has had an ongoing treating relation with the claimant.

A physician, psychologist, or other acceptable medical source is considered a consulting source when the relationship with the claimant/patient is not based on the claimant's/patient's need for treatment, but solely on the claimant's/patient's need to obtain a report in support of his or her claim for disability. (POMS DI 22505.001B.(1) and B.(2)(a))

1308-10

A "source of record" means:

- (a) A hospital, clinic or other source, including an HMO, which has provided the claimant with medical treatment or examination.
- (b) A physician, psychologist, or other acceptable medical source who has treated or evaluated the claimant, but does not have or did not have an ongoing treatment relationship with the claimant.

(POMS DI 22505.001B.(2))