

How Do We Decide Whether You Are Disabled?

If you are seeking benefits under title II of the Act, or if you are an adult seeking benefits under title XVI of the Act, we use a five-step "sequential evaluation process" to decide whether you are disabled. We describe this five-step process in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order, and we stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a "severe" impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Do you have the residual functional capacity to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your residual functional capacity, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for children who apply for payments based on disability under title XVI of the Act. We describe that sequential evaluation process in § 416.924 of our regulations.

If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.994, and 416.994a of our regulations. All of the sequential evaluation processes, however, include steps at which we consider whether your impairment(s) meets or medically equals one of our listings.

What Are the Listings?

The listings are examples of impairments that we consider severe enough to prevent a person from doing any gainful activity, or that result in "marked and severe functional limitations" in children seeking SSI payments under title XVI of the Act. Although we publish the listings only in appendix 1 to subpart P of part 404 of our rules, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we evaluate your impairment(s); we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

What If You Do Not Have An Impairment(s) That Meets or Medically Equals a Listing?

We use the listings only to decide that people are disabled or that they are still disabled. We will never deny your claim or decide that you no longer qualify for benefits simply because your impairment(s) does not meet or medically equal any listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the "sequential evaluation process" that we use to evaluate all disability claims. (See §§ 404.1520, 416.920, and 416.924.) Likewise, we will not decide that your disability has ended only because your impairment(s) does not meet or medically equal a listing.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: March 21, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960-AG20

Revised Medical Criteria for Evaluating Hearing Impairments and Disturbance of Labyrinthine-Vestibular Function

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are planning to update and revise the rules we use to evaluate hearing impairments and disturbance of labyrinthine-vestibular function of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Social Security Act (the Act). The rules we plan on revising are in sections 2.00 and 102.00 in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings). We invite you to send us comments and suggestions for updating and revising these rules.

After we have considered your comments and suggestions, as well as information about advances in medical knowledge, treatment, and methods of evaluating hearing impairments and disturbance of labyrinthine-vestibular function, and our program experience, we intend to publish for public comment a Notice of Proposed Rulemaking (NPRM) that will propose specific revisions to the rules.

As part of our long-term planning for the disability programs, we are also interested in your ideas for how we may be able to improve our programs for people who have hearing impairments or disturbance of labyrinthine-vestibular function, especially those who would like to work.

DATES: To be sure your comments are considered, we must receive them by June 13, 2005.

ADDRESSES: You may give us your comments by: using our Internet site facility (i.e., Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>, or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to regulations@ssa.gov; telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted in our Internet site at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (i.e., Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

FOR FURTHER INFORMATION CONTACT:

Robert J. Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 965-0020 or TTY (410) 966-5609. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice?

We are planning to update and revise the rules that we use to evaluate hearing impairments and disturbance of labyrinthine-vestibular function of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Act. The purpose of this notice is to give you an opportunity to send us comments and suggestions for updating and revising those rules as we begin the rulemaking process. We are also asking for your comments and ideas about how we can improve our disability programs in the future for people with hearing impairments or disturbance of labyrinthine-vestibular function.

Who Should Send Us Comments and Suggestions?

We invite comments and suggestions from anyone who has an interest in the rules we use to evaluate claims for benefits filed by people who have hearing impairments or disturbance of labyrinthine-vestibular function. We are interested in getting comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who advocate for people who have hearing impairments or disturbance of labyrinthine-vestibular function, experts in the evaluation of hearing impairment or disturbance of labyrinthine-vestibular function, researchers, people who make disability determinations and decisions for us, and any other individuals who may have ideas for us to consider.

Will We Respond to Your Comments From This Notice?

No, we will not respond directly to comments you send us because of this notice. However, after we consider your comments in response to this notice, along with other information, such as results of current medical research and our program experience, we will decide how to revise the rules we use to evaluate hearing impairments and disturbance of labyrinthine-vestibular function. When we propose specific revisions to the rules, we will publish an NPRM in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on the revisions we propose when we publish the NPRM, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

Which Rules Are We Considering for Updating and Revision?

We are considering for updating and revision the listings for hearing impairments in sections 2.00 and 102.00 and the listing for disturbance of labyrinthine-vestibular function in section 2.00. Sections 2.00 and 102.00 contain the listings for special senses and speech for adults (Part A, 2.00) and children (Part B, 102.00). Section 2.00 also has listings for disorders of vision and loss of speech. Section 102.00 also has a listing for disorders of vision. We are not asking for comments on the listings for disorders of vision or loss of speech in this notice. We intend to publish separately proposed rules that would update the criteria for those disorders.

Where Can You Find These Rules on the Internet?

You can find these rules on our Internet site at these locations:

- Sections 2.00 and 102.00 are in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at http://www.ssa.gov/OP_Home/cfr20/404/404-ap10.htm.

- You can also look up sections 2.00 and 102.00 of the listings at <http://www.ssa.gov/disability/professionals/bluebook/>.

- If you do not have Internet access, you can find the Code of Federal Regulations in some public libraries, Federal depository libraries, and public law libraries.

Why Are We Updating and Revising Our Rules for Evaluating Hearing Impairments and Disturbance of Labyrinthine-Vestibular Function?

We last published final rules making comprehensive revisions to the part A listings for evaluating hearing impairments and disturbance of labyrinthine-vestibular function on March 27, 1979 (44 FR 18170). We last published final rules making comprehensive revisions to the part B listings for evaluating hearing impairments on March 16, 1977 (42 FR 14705). On April 24, 2002, we made a technical revision to the introductory text in section 2.00B2, "*Vertigo associated with disturbances of labyrinthine-vestibular function, including Meniere's disease*," to incorporate imaging techniques other than x-rays (67 FR 20018). However, we have not comprehensively revised the part A rules since 1979 or the part B rules since 1977.

The current listings for hearing impairments for adults (2.00) and children (102.00), and the current listing for disturbance of labyrinthine-vestibular function for adults (2.00), will no longer be effective on July 1, 2005, unless we extend them or revise and promulgate them again.

What Should You Comment About?

We are interested in any comments and suggestions you have about the listings for hearing impairments and disturbance of labyrinthine-vestibular function in sections 2.00 and 102.00 of our listings. For example, with regard to our listings, we are interested in knowing if:

- You think we should continue to have these listings, but you have concerns about the current listings; such as whether you think we should change any of our medical criteria or whether you think the listings are difficult to use or understand.

• You would like to see these listings include something that they do not include now; such as separate criteria for individuals who have had cochlear implants, or a listing for disturbance of labyrinthine-vestibular function for children.

In addition to your comments about our regulations, we are also interested in any ideas you have about how the disability requirements of the Act and our regulations affect people who have hearing impairments or disturbance of vestibular-labyrinthine function, especially those who would like to work, full-time or part-time, with supports. Your ideas can address our existing rules and regulations or suggest changes to the law. For example, we know that many people who have disturbance of labyrinthine-vestibular function might not need benefits from us if they could get treatment before their disease or injury makes them unable to work. Others may be unable to work but may not need to stay out of work indefinitely if they could get treatment or other interventions. Many people with permanent impairments can work if they have a supporting safety net (including title II disability benefits and SSI payments). Work can also be therapeutic for some people. Although the Act and our regulations include some access to health care through Medicare and Medicaid, some provisions for vocational rehabilitation, and a number of work incentives, these provisions are generally for people who already qualify for benefits under our disability programs.

We will consider your ideas as we develop the NPRM we intend to publish for public comment, and, where applicable, as part of our long-term planning for the disability program.

What Other Information Will We Consider?

We will also be considering information from other sources, including the following recent documents, for relevance to our policy for evaluating hearing impairments or disturbances of labyrinthine-vestibular impairments.

• National Research Council, Committee on Disability Determinations for Individuals with Hearing Impairments. *Hearing Loss: Determining Eligibility for Social Security Benefits*. Washington DC: The National Academies Press, 2004 (available at <http://www.nap.edu/catalog/11099.html>).

• David C. Dale and Daniel D. Federman, eds. "Neurology." *ACP Medicine* (2004), Elliot M. Frohman,

New York: WebMD Professional Publishing, 2004.

• Michael Cunningham and Edward O. Cox. "Hearing Assessment in Infants and Children: Recommendations Beyond Neonatal Screening." *Pediatrics*, 111(2), February 2003:436–440.

• Joint Committee on Infant Hearing. "Year 2000 Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs." *Pediatrics*, 106(4), October 2000:798–817.

• American Speech-Language Hearing Association (2004). Guidelines for the Audiologic Assessment of Children from Birth to 5 Years of Age [Guidelines]. (Available at <http://www.asha.org/members/deskref-journals/deskref/default>).

Other Information:

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define Disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

<i>If you file a claim under . . .</i>	<i>and you are . . .</i>	<i>disability means you have a medically determinable impairment(s) as described above and that results in . . .</i>
title II	an adult or child.	the inability to do any substantial gainful activity (SGA).
title XVI ...	a person age 18 or older.	the inability to do any SGA.
title XVI ...	a person under age 18.	marked and severe functional limitations.

How Do We Decide Whether You Are Disabled?

If you are seeking benefits under title II of the Act, or if you are an adult seeking benefits under title XVI of the Act, we use a five-step "sequential evaluation process" to decide whether you are disabled. We describe this five-step process in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a "severe" impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Do you have the residual functional capacity to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your residual functional capacity, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for children who apply for payments based on disability under title XVI of the Act. We describe that sequential evaluation process in § 416.924 of our regulations.

If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.994, and 416.994a of our regulations. All of the sequential evaluation processes, however, include steps at which we consider whether your impairment(s) meets or medically equals one of our listings.

What Are the Listings?

The listings are examples of impairments that we consider severe enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI payments based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

What If You Do Not Have an Impairment(s) That Meets or Medically Equals a Listing?

We use the listings only to decide that you are disabled or that you are still disabled. We will never deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the "sequential evaluation process" described above. Likewise, we will not decide that your disability has ended only because your impairment(s) does not meet or medically equal a listing.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability

benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: March 21, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960-AF35

Revised Medical Criteria for Evaluating Neurological Impairments

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are planning to update and revise the rules we use to evaluate neurological impairments of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Social Security Act (the Act). The rules we plan on revising are sections 11.00 and 111.00 in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings). We invite you to send us comments and suggestions for updating and revising these rules.

After we have considered your comments and suggestions, as well as information about advances in medical knowledge, treatment, and methods of evaluating neurological disorders, and our program experience, we intend to publish for public comment a Notice of Proposed Rulemaking (NPRM) that will propose specific revisions to the rules.

As part of our long-term planning for the disability programs, we are also interested in your ideas for how we may be able to improve our programs for people who have neurological disorders, especially those who would like to work.

DATES: To be sure your comments are considered, we must receive them by June 13, 2005.

ADDRESSES: You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to regulations@ssa.gov; telefax to (410) 966-2830, or letter to the Commissioner of Social Security, P.O.

Box 17703, Baltimore, Maryland 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted in our Internet site at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at: <http://policy.ssa.gov/pnpublic.nsf/LawRegs>.

FOR FURTHER INFORMATION CONTACT: Fran O. Thomas, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 966-9822 or TTY (410) 966-5609. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice?

We are planning to update and revise the rules that we use to evaluate neurological impairments of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Act. The purpose of this notice is to give you an opportunity to send us comments and suggestions for updating and revising those rules as we begin the rulemaking process. We are also asking for your comments and ideas about how we can improve our disability programs in the future for people with neurological disorders.

Who Should Send Us Comments and Suggestions?

We invite comments and suggestions from anyone who has an interest in the rules we use to evaluate claims for benefits filed by people who have neurological disorders. We are interested in getting comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who advocate for people who have neurological disorders, experts in the evaluation of neurological