

whether or not to purchase a consultative examination in accordance with the standards in §§ 220.53 through 220.54.

(g) *Point of comparison.* For purposes of determining whether medical improvement has occurred, the Board will compare the current medical severity of that impairment(s), which was present at the time of the most recent favorable medical decision that the annuitant was disabled or continued to be disabled, to the medical severity of that impairment(s) at that time. If medical improvement has occurred, the Board will compare the annuitant's current functional capacity to do basic work activities (i.e., his or her residual functional capacity) based on this previously existing impairment(s) with the annuitant's prior residual functional capacity in order to determine whether the medical improvement is related to his or her ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether the annuitant was disabled or continued to be disabled which became final.

[56 FR 12980, Mar. 28, 1991, as amended at 74 FR 63601, Dec. 4, 2009]

§ 220.178 Determining medical improvement and its relationship to the annuitant's ability to do work.

(a) *General.* Paragraphs (a), (b), and (c) of § 220.177 discuss what is meant by medical improvement, medical improvement not related to the ability to work and medical improvement that is related to the ability to work. How the Board will arrive at the decision that medical improvement has occurred and its relationship to the ability to do work, is discussed in paragraphs (b) and (c) of this section.

(b) *Determining if medical improvement is related to ability to work.* If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, the Board then must determine if it is related to the annuitant's ability to do work. In § 220.177(d) the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect the annuitant's residual functional capacity

is explained. In determining whether medical improvement that has occurred is related to the annuitant's ability to do work, the Board will assess the annuitant's residual functional capacity (in accordance with § 220.177(d)) based on the current severity of the impairment(s) which was present at that annuitant's last favorable medical decision. The annuitant's new residual functional capacity will then be compared to the annuitant's residual functional capacity at the time of the Board's most recent favorable medical decision. Unless an increase in the current residual functional capacity is based on changes in the signs, symptoms, or laboratory findings, any medical improvement that has occurred will not be considered to be related to the annuitant's ability to do work.

(c) *Additional factors and considerations.* The Board will also apply the following in its determinations of medical improvement and its relationship to the annuitant's ability to do work:

(1) *Previous impairment was medically disabling.* If the Board's most recent favorable decision was based on the fact that the annuitant's impairment(s) at that time was medically disabling, an assessment of his or her residual functional capacity would not have been made. If medical improvement has occurred and the current severity of the prior impairment(s) is no longer medically disabling based on the standard [see § 220.100(b)(3)] applied at the time of that decision, the Board will find that the medical improvement was related to the annuitant's ability to work. If the medical findings support impairment(s) that is currently so severe as to be medically disabling, the annuitant is deemed, in the absence of evidence to the contrary, to be unable to engage in substantial gainful activity. If there has been medical improvement to the degree that the impairment(s) is not currently medically disabling, then there has been medical improvement related to the annuitant's ability to work. The Board must, of course, also establish that the annuitant can currently engage in gainful activity before finding that his or her disability has ended.

§ 220.179

20 CFR Ch. II (4–1–10 Edition)

(2) *Prior residual functional capacity assessment made.* The residual functional capacity assessment used in making the most recent favorable medical decision will be compared to the residual functional capacity assessment based on current evidence in order to determine if an annuitant's functional capacity for basic work activities has increased. There will be no attempt made to reassess the prior residual functional capacity.

(3) *Prior residual functional capacity assessment should have been made, but was not.* If the most recent favorable medical decision should have contained an assessment of the annuitant's residual functional capacity (i.e., his or her impairment(s) was not medically disabling) but does not, either because this assessment is missing from the annuitant's file or because it was not done, the Board will reconstruct the residual functional capacity. This reconstructed residual functional capacity will accurately and objectively assess the annuitant's functional capacity to do basic work activities. The Board will assign the maximum functional capacity consistent with an allowance.

Example: The annuitant was previously found to be disabled on the basis that while his impairment was not medically disabling, it did prevent him from doing his past or any other work. The prior adjudicator did not, however, include a residual functional capacity assessment in the rationale of that decision and a review of the prior evidence does not show that such an assessment was ever made. If a decrease in medical severity, i.e., medical improvement, has occurred, the residual functional capacity based on the current level of severity of the annuitant's impairment will have to be compared with his residual functional capacity based on its prior severity in order to determine if the medical improvement is related to his ability to do work. In order to make this comparison, the Board will review the prior evidence and make an objective assessment of the annuitant's residual functional capacity at the time of its most recent favorable medical determination, based on the symptoms, signs and laboratory findings as they then existed.

(4) *Impairment subject to temporary remission.* In some cases the evidence shows that the annuitant's impairment(s) are subject to temporary remission. In assessing whether medical improvement has occurred in annu-

itants with this type of impairment(s), the Board will be careful to consider the longitudinal history of the impairment(s), including the occurrence of prior remission, and prospects for future worsenings. Improvement in such impairment(s) that is only temporary, i.e., less than 1 year, will not warrant a finding of medical improvement.

(5) *Prior file cannot be located.* If the prior file cannot be located, the Board will first determine whether the annuitant is able to now engage in substantial gainful activity based on all of his or her current impairments. (In this way, the Board will be able to determine that his or her disability continues at the earliest point without addressing the often lengthy process of reconstructing prior evidence.) If the annuitant cannot engage in substantial gainful activity currently, his or her disability will continue unless one of the second group of exceptions applies (see § 220.179(b)).

[56 FR 12980, Mar. 28, 1991, as amended at 74 FR 63602, Dec. 4, 2009]

§ 220.179 Exceptions to medical improvement.

(a) *First group of exceptions to medical improvement.* The law provides for certain limited situations when the annuitant's disability can be found to have ended even though medical improvement has not occurred, if he or she can engage in substantial gainful activity. These exceptions to medical improvement are intended to provide a way of finding that the annuitant is no longer disabled in those limited situations where, even though there has been no decrease in severity of the impairment(s), evidence shows that the annuitant should no longer be considered disabled or never should have been considered disabled. If one of these exceptions applies, the Board must also show that, taking all of the annuitant's current impairment(s) into account, not just those that existed at the time of the Board's most recent favorable medical decision, the annuitant is now able to engage in substantial gainful activity before his or her disability can be found to have ended. As part of the review process, the annuitant will be asked about any medical or vocational therapy that he or she has received or