

§ 220.51 Notice of the examination.

If the Board arranges for an examination or test, the claimant will be provided with reasonable notice of the date, time, and place of the examination or test and the name of the person who will do it. The Board will also give the examiner any necessary background information about the claimant's impairment(s).

§ 220.52 Failure to appear at a consultative examination.

(a) *General.* The Board may find that the claimant is not disabled if he or she does not have good reason for failing or refusing to take part in a consultative examination or test which was arranged by the Board. If the individual is already receiving an annuity and does not have a good reason for failing or refusing to take part in a consultative examination or test which the Board arranged, the Board may determine that the individual's disability has stopped because of his or her failure or refusal. The claimant for whom an examination or test has been scheduled should notify the Board as soon as possible before the scheduled date of the examination or test if he or she has any reason why he or she cannot go to the examination or test. If the Board finds that the claimant has a good reason for failure to appear, another examination or test will be scheduled.

(b) *Examples of good reasons for failure to appear.* Some examples of good reasons for not going to a scheduled examination or test include—

(1) Illness on the date of the scheduled examination or test;

(2) Failure to receive notice or timely notice of an examination or test;

(3) Receipt of incorrect or incomplete information about the examination or test; or

(4) A death or serious illness in the claimant's immediate family.

(c) *Objections by a claimant's physician.* The Board should be notified immediately if the claimant is advised by his or her treating physician not to take an examination or test. In some cases, the Board may be able to secure the information which is needed in another way or the treating physician may agree to another type of examination for the same purpose.

§ 220.53 When the Board will purchase a consultative examination and how it will be used.

(a)(1) *General.* The decision to purchase a consultative examination for a claimant will be made after full consideration is given to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis, etc.) is readily available from the records of the claimant's medical sources. Upon filing an application for a disability annuity, a claimant will be required to obtain from his or her medical source(s) information regarding the claimed impairments. The Board will seek clarification from a medical source who has provided a report when that report contains a conflict or ambiguity, or does not contain all necessary information or when the information supplied is not based on objective evidence. The Board will not, however, seek clarification from a medical source when it is clear that the source either cannot or will not provide the necessary findings, or cannot reconcile a conflict or ambiguity in the findings provided from the source's records. Therefore, before purchasing a consultative examination, the Board will consider not only existing medical reports, but also the background report containing the claimant's allegations and information about the claimant's vocational background, as well as other pertinent evidence in his or her file.

(2) When the Board purchases a consultative examination, we will use the report from the consultative examination to try to resolve a conflict or ambiguity if one exists. The Board will do this by comparing the persuasiveness and value of the evidence. The Board will also use a consultative examination to secure needed medical evidence the file does not contain such as clinical findings, laboratory tests, a diagnosis or prognosis necessary for decision.

(b) *Situations requiring a consultative examination.* A consultative examination may be purchased when the evidence as a whole, both medical and non-medical, is not sufficient to support a decision on the claim. In addition, other situations, such as one or more of the following, will normally

§ 220.54

require a consultative examination (these situations are not all-inclusive):

(1) The specific additional evidence needed for adjudication has been pinpointed and high probability exists for obtaining it through purchase.

(2) The additional evidence needed is not contained in the records of the claimant's treating sources.

(3) Evidence that may be needed from the claimant's treating or other medical sources cannot be obtained for reasons beyond his or her control, such as death or noncooperation of the medical source.

(4) Highly technical or specialized medical evidence which is needed is not available from the claimant's treating sources.

(5) A conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved.

(6) There is an indication of a change in the claimant's condition that is likely to affect his or her ability to function, but current severity is not documented.

(7) Information provided by any source appears not to be supported by objective evidence.

§ 220.54 When the Board will not purchase a consultative examination.

A consultative examination will not be purchased in the following situations (these situations are not all-inclusive):

(a) In disabled widow(er) benefit claims, when the alleged month of disability is after the end of the 7-year period specified in § 216.38 and there is no possibility of establishing an earlier onset, or when the 7-year period expired in the past and all the medical evidence in the claimant's file establishes that he or she was not disabled on or before the expiration date.

(b) When any issues about the actual performance of substantial gainful activity have not been resolved.

(c) In childhood disability claims, when it is determined that the claimant's alleged childhood disability did not begin before the month of attainment of age 22. In this situation, the claimant could not be entitled to benefits as a disabled child unless found disabled before age 22.

20 CFR Ch. II (4-1-10 Edition)

(d) When, on the basis of the claimant's allegations and all available medical reports in his or her case file, it is apparent that he or she does not have an impairment which will have more than a minimal effect on his or her capacity to work.

(e) Childhood disability claims filed concurrently with the employee's claim and entitlement cannot be established for the employee.

(f) Survivors childhood disability claims where entitlement is precluded based on non-disability factors.

§ 220.55 Purchase of consultative examinations at the reconsideration level.

(a) When a claimant requests a review of the Board's initial determination at the reconsideration level of review, consultative medical examinations will be obtained when needed, but not routinely. A consultative examination will not, if possible, be performed by the same physician or psychologist used in the initial claim.

(b) Where the evidence tends to substantiate an affirmation of the initial denial but the claimant states that the treating physician or psychologist considers him or her to be disabled, the Board will assist the claimant in securing medical reports or records from the treating physician.

§ 220.56 Securing medical evidence at the hearings officer hearing level.

(a) Where there is a conflict in the medical evidence at the hearing level of review before a hearings officer, the hearings officer will try to resolve it by comparing the persuasiveness and value of the conflicting evidence. The hearings officer's reasoning will be explained in the decision rationale. Where such resolution is not possible, the hearings officer will secure additional medical evidence (e.g., clinical findings, laboratory test, diagnosis, prognosis, etc.) to resolve the conflict. Even in the absence of a conflict, the hearings officer will also secure additional medical evidence when the file does not contain findings, laboratory tests, a diagnosis, or a prognosis necessary for a decision.

(b) Before requesting a consultative examination, the hearings officer will