

§ 404.1508

in a jail, prison, or other penal institution or correctional facility for conviction of a felony committed after October 19, 1980. The exclusion of the impairment, or aggravation, applies in determining disability for benefits payable for any month during which you are confined. This rule does not preclude the establishment of a period of disability based upon the impairment or aggravation. You may become entitled to benefits upon release from prison provided that you apply and are under a disability at the time.

(c) *Felonious offenses.* We will consider an offense a felony if—

(1) It is a felony under applicable law; or

(2) In a jurisdiction which does not classify any crime as a felony, it is an offense punishable by death or imprisonment for a term exceeding one year.

(d) *Confinement.* In general, a jail, prison, or other penal institution or correctional facility is a facility which is under the control and jurisdiction of the agency in charge of the penal system or in which convicted criminals can be incarcerated. Confinement in such a facility continues as long as you are under a sentence of confinement and have not been released due to parole or pardon. You are considered confined even though you are temporarily or intermittently outside of the facility (e.g., on work release, attending school, or hospitalized).

[48 FR 5714, Feb. 8, 1983]

§ 404.1508 What is needed to show an impairment.

If you are not doing substantial gainful activity, we always look first at your physical or mental impairment(s) to determine whether you are disabled or blind. Your impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by your statement of symptoms (see § 404.1527). (See § 404.1528 for further information about

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what we mean by symptoms, signs, and laboratory findings.)

[45 FR 55584, Aug. 20, 1980, as amended at 56 FR 36954, Aug. 1, 1991]

§ 404.1509 How long the impairment must last.

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement.

§ 404.1510 Meaning of substantial gainful activity.

Substantial gainful activity means work that—

(a) Involves doing significant and productive physical or mental duties; and

(b) Is done (or intended) for pay or profit.

(See § 404.1572 for further details about what we mean by substantial gainful activity.)

§ 404.1511 Definition of a disabling impairment.

(a) *Disabled workers, persons disabled since childhood and, for months after December 1990, disabled widows, widowers, and surviving divorced spouses.* If you are entitled to disability cash benefits as a disabled worker, or to child's insurance benefits, or, for monthly benefits payable after December 1990, to widow's, widower's, or surviving divorced spouse's monthly benefits, a disabling impairment is an impairment (or combination of impairments) which, of itself, is so severe that it meets or equals a set of criteria in the Listing of Impairments in appendix 1 of this subpart or which, when considered with your age, education, and work experience, would result in a finding that you are disabled under § 404.1594. In determining whether you have a disabling impairment, earnings are not considered.

(b) *Disabled widows, widowers, and surviving divorced spouses, for monthly benefits for months prior to January 1991.* If you have been entitled to disability benefits as a disabled widow, widower, or surviving divorced spouse and we must decide whether you had a disabling impairment for any time prior