

§ 404.1616

20 CFR Ch. III (4–1–10 Edition)

(b) The State agency will make disability determinations based only on the medical and nonmedical evidence in its files.

(c) Disability determinations will be made by either:

(1) A State agency medical or psychological consultant and a State agency disability examiner;

(2) A State agency disability examiner alone when there is no medical evidence to be evaluated (*i.e.*, no medical evidence exists or we are unable, despite making every reasonable effort, to obtain any medical evidence that may exist) and the individual fails or refuses, without a good reason, to attend a consultative examination (see § 404.1518); or

(3) A State agency disability hearing officer.

See § 404.1616 for the definition of medical or psychological consultant and § 404.915 for the definition of disability hearing officer. The State agency disability examiner and disability hearing officer must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity.

See § 404.1572 for what we mean by substantial gainful activity.

(d) An initial determination by the State agency that an individual is not disabled, in any case where there is evidence which indicates the existence of a mental impairment, will be made only after every reasonable effort has been made to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. (See § 404.1616 for the qualifications we consider necessary for a psychologist to be a psychological consultant and § 404.1617 for what we mean by "reasonable effort".) If the services of qualified psychiatrists or psychologists cannot be obtained because of impediments at the State level, the Commissioner may contract directly for the services. In a case where there is evidence of mental and nonmental impairments and a qualified psychologist serves as a psychological consultant, the psychologist

will evaluate only the mental impairment, and a physician will evaluate the nonmental impairment.

(e) The State agency will certify each determination of disability to us on forms we provide.

(f) The State agency will furnish us with all the evidence it considered in making its determination.

(g) The State agency will not be responsible for defending in court any determination made, or any procedure for making determinations, under these regulations.

[52 FR 33926, Sept. 9, 1987, as amended at 56 FR 11018, Mar. 14, 1991; 61 FR 11135, Mar. 19, 1996; 62 FR 38452, July 18, 1997; 65 FR 34958, June 1, 2000]

§ 404.1616 Medical or psychological consultants.

(a) *What is a medical consultant?* A medical consultant is a person who is a member of a team that makes disability determinations in a State agency, as explained in § 404.1615, or who is a member of a team that makes disability determinations for us when we make disability determinations ourselves.

(b) *What qualifications must a medical consultant have?* A medical consultant must be an acceptable medical source identified in § 404.1513(a)(1) or (a)(3) through (a)(5); that is, a licensed physician (medical or osteopathic), a licensed optometrist, a licensed podiatrist, or a qualified speech-language pathologist. The medical consultant must meet any appropriate qualifications for his or her specialty as explained in § 404.1513(a). In claims adjudicated under the procedures in part 405 of this chapter, medical experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

(c) *Are there any limitations on what medical consultants who are not physicians can evaluate?* Medical consultants who are not physicians are limited to evaluating the impairments for which they are qualified, as described in § 404.1513(a). Medical consultants who are not physicians also are limited as to when they may serve as a member of

a team that makes a disability determination. For example, a speech-language pathologist who is a medical consultant in a State agency may be a member of a team that makes a disability determination in a claim only if a speech or language impairment is the only impairment in the claim or if there is a combination of a speech or language impairment with another impairment but the speech or language impairment alone would justify a finding of disability. In all other cases, a physician will be a member of the team that makes a disability determination, except in cases in which this function may be performed by a psychological consultant as discussed in paragraph (f) of this section and § 404.1615(d).

(d) *What is a psychological consultant?*

A psychological consultant is a psychologist who has the same responsibilities as a medical consultant explained in paragraph (a) of this section, but who can evaluate only mental impairments.

(e) *What qualifications must a psychological consultant have?* A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. For disability program purposes, a psychologist will not be considered qualified unless he or she:

(1) Is licensed or certified as a psychologist at the independent practice level of psychology by the State in which he or she practices; and

(2)(i) Possesses a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or

(ii) Is listed in a national register of health service providers in psychology which the Commissioner of Social Security deems appropriate; and

(3) Possesses 2 years of supervised clinical experience as a psychologist in health service, at least 1 year of which is post masters degree.

(4) In claims adjudicated under the procedures in part 405 of this chapter, psychological experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

(f) *Are there any limitations on what a psychological consultant can evaluate?*

Psychological consultants are limited to the evaluation of mental impairments, as explained in § 404.1615(d). Psychological consultants also are limited as to when they can serve as a member of a team that makes a disability determination. They may do so only when a mental impairment is the only impairment in the claim or when there is a combination of a mental impairment with another impairment but the mental impairment alone would justify a finding of disability.

[65 FR 34958, June 1, 2000, as amended at 71 FR 16445, Mar. 31, 2006]

§ 404.1617 Reasonable efforts to obtain review by a qualified psychiatrist or psychologist.

(a) The State agency must determine if additional qualified psychiatrists and psychologists are needed to make the necessary reviews (see § 404.1615(d)). Where it does not have sufficient resources to make the necessary reviews, the State agency must attempt to obtain the resources needed. If the State agency is unable to obtain additional psychiatrists and psychologists because of low salary rates or fee schedules it should attempt to raise the State agency's levels of compensation to meet the prevailing rates for psychiatrists' and psychologists' services. If these efforts are unsuccessful, the State agency will seek assistance from us. We will assist the State agency as necessary. We will also monitor the State agency's efforts and where the State agency is unable to obtain the necessary services, we will make every reasonable effort to provide the services using Federal resources.

(b) Federal resources may include the use of Federal contracts for the services of qualified psychiatrists and psychologists to review mental impairment cases. Where Federal resources are required to perform these reviews, which are a basic State agency responsibility, and where appropriate, the State agency's budget will be reduced accordingly.

(c) Where every reasonable effort is made to obtain the services of a qualified psychiatrist or psychologist to review a mental impairment case, but