

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

[45 FR 55621, Aug. 20, 1980, as amended at 59 FR 1636, Jan. 12, 1994; 62 FR 6429, Feb. 11, 1997]

PRESUMPTIVE DISABILITY AND
BLINDNESS

§ 416.931 The meaning of presumptive disability or presumptive blindness.

If you are applying for supplemental security income benefits on the basis of disability or blindness, we may pay you benefits before we make a formal finding of whether or not you are disabled or blind. In order to receive these payments, we must find that you are presumptively disabled or presumptively blind. You must also meet all other eligibility requirements for supplemental security income benefits. We may make these payments to you for a period not longer than 6 months. These payments will not be considered overpayments if we later find that you are not disabled or blind.

[45 FR 55621, Aug. 20, 1980, as amended at 57 FR 53853, Nov. 13, 1992]

§ 416.932 When presumptive payments begin and end.

We may make payments to you on the basis of presumptive disability or presumptive blindness before we make a formal determination about your disability or blindness. The payments can not be made for more than 6 months. They start for a period of not more than 6 months beginning in the month we make the presumptive disability or presumptive blindness finding. The payments end the earliest of—

(a) The month in which we make a formal finding on whether or not you are disabled or blind;

(b) The month for which we make the sixth monthly payment based on presumptive disability or presumptive blindness to you; or

(c) The month in which you no longer meet one of the other eligibility requirements (e.g., your income exceeds the limits).

[45 FR 55621, Aug. 20, 1980, as amended at 57 FR 53853, Nov. 13, 1992]

§ 416.933 How we make a finding of presumptive disability or presumptive blindness.

We may make a finding of presumptive disability or presumptive blindness if the evidence available at the time we make the presumptive disability or presumptive blindness finding reflects a high degree of probability that you are disabled or blind. In the case of readily observable impairments (e.g., total blindness), we will find that you are disabled or blind for purposes of this section without medical or other evidence. For other impairments, a finding of disability or blindness must be based on medical evidence or other information that, though not sufficient for a formal determination of disability or blindness, is sufficient for us to find that there is a high degree of probability that you are disabled or blind. For example, for claims involving the human immunodeficiency virus (HIV), the Social Security Field Office may make a finding of presumptive disability if your medical source provides us with information that confirms that your disease manifestations meet the severity of listing-level criteria for HIV. Of course, regardless of the specific HIV manifestations, the State agency may make a finding of presumptive disability if the medical evidence or other information reflects a high degree of probability that you are disabled.

[58 FR 36063, July 2, 1993, as amended at 66 FR 58046, Nov. 19, 2001]

§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.

We may make findings of presumptive disability and presumptive blindness in specific impairment categories without obtaining any medical evidence. These specific impairment categories are—

(a) Amputation of a leg at the hip;

(b) Allegation of total deafness;

(c) Allegation of total blindness;

(d) Allegation of bed confinement or immobility without a wheelchair, walker, or crutches, due to a long-standing condition, excluding recent accident and recent surgery;

(e) Allegation of a stroke (cerebral vascular accident) more than 3 months

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in the past and continued marked difficulty in walking or using a hand or arm;

(f) Allegation of cerebral palsy, muscular dystrophy or muscle atrophy and marked difficulty in walking (e.g., use of braces), speaking, or coordination of the hands or arms.

(g) Allegation of Down syndrome.

(h) Allegation of severe mental deficiency made by another individual filing on behalf of a claimant who is at least 7 years of age. For example, a mother filing for benefits for her child states that the child attends (or attended) a special school, or special classes in school, because of mental deficiency or is unable to attend any type of school (or if beyond school age, was unable to attend), and requires care and supervision of routine daily activities.

(i) Allegation of amyotrophic lateral sclerosis (ALS, Lou Gehrig's disease).

[45 FR 55621, Aug. 20, 1980, as amended at 50 FR 5574, Feb. 11, 1985; 53 FR 3741, Feb. 9, 1988; 56 FR 65684, Dec. 18, 1991; 67 FR 58046, Nov. 19, 2001; 68 FR 51693, Aug. 28, 2003]

DRUG ADDICTION AND ALCOHOLISM

§416.935 How we will determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(a) *General.* If we find that you are disabled and have medical evidence of your drug addiction or alcoholism, we must determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability, unless we find that you are eligible for benefits because of your age or blindness.

(b) *Process we will follow when we have medical evidence of your drug addiction or alcoholism.* (1) The key factor we will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether we would still find you disabled if you stopped using drugs or alcohol.

(2) In making this determination, we will evaluate which of your current physical and mental limitations, upon which we based our current disability determination, would remain if you stopped using drugs or alcohol and

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then determine whether any or all of your remaining limitations would be disabling.

(i) If we determine that your remaining limitations would not be disabling, we will find that your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(ii) If we determine that your remaining limitations are disabling, you are disabled independent of your drug addiction or alcoholism and we will find that your drug addiction or alcoholism is not a contributing factor material to the determination of disability.

[60 FR 8151, Feb. 10, 1995]

§416.936 Treatment required for individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability.

(a) If we determine that you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability, you must avail yourself of appropriate treatment for your drug addiction or alcoholism at an institution or facility approved by us when this treatment is available and make progress in your treatment. Generally, you are not expected to pay for this treatment. You will not be paid benefits for any month after the month we have notified you in writing that—

(1) You did not comply with the terms, conditions and requirements of the treatment which has been made available to you; or

(2) You did not avail yourself of the treatment after you had been notified that it is available to you.

(b) If your benefits are suspended for failure to comply with treatment requirements, your benefits can be reinstated in accordance with the rules in §416.1326.

[60 FR 8151, Feb. 10, 1995]

§416.937 What we mean by appropriate treatment.

By appropriate treatment, we mean treatment for drug addiction or alcoholism that serves the needs of the individual in the least restrictive setting possible consistent with your treatment plan. These settings range from