

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 404

[Docket No. SSA 2007-0065]

RIN 0960-AG65

### Revised Medical Criteria for Evaluating Functional Limitations Due to Digestive Disorders

**AGENCY:** Social Security Administration.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** On October 19, 2007, we published final rules in the **Federal Register** (72 FR 59397) revising the criteria in sections 5.00 and 105.00 of the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings), the sections that we use to evaluate claims involving digestive disorders. In those rules, we indicated that we would issue an Advance Notice of Proposed Rulemaking (ANPRM) inviting public comments on whether we should add a functional listing for digestive disorders, and if so, what functional criteria would be appropriate (72 FR at 59416). We are now requesting your comments and suggestions.

After we have considered your comments and suggestions, other information about the functional effects of digestive disorders, and our adjudicative experience, we will determine whether it is appropriate to add a functional listing for digestive disorders. If we decide to add such a listing, we will publish for public comment a Notice of Proposed Rulemaking (NPRM) that will propose specific revisions to the rules.

**DATES:** To be sure that your comments are considered, we must receive them no later than February 11, 2008.

**ADDRESSES:** You may submit comments by any of the following methods. Regardless of which method you choose, to ensure that we can associate your comments with the correct regulation for consideration, you must

state that your comments refer to Docket No. SSA-2007-0065:

- Federal eRulemaking Portal at <http://www.regulations.gov>. (This is the preferred method for submitting your comments.) In the Search Documents section, select "Social Security Administration" from the agency drop-down menu, then click "submit". In the Docket ID Column, locate SSA-2007-0065 and then click "Add Comments" in the "Comments Add/Due By" column.

- Telefax to (410) 966-2830.
- Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703.
- Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days.

Comments are posted on the Federal eRulemaking portal, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

**FOR FURTHER INFORMATION CONTACT:** Suzanne DiMarino, Social Insurance Specialist, Office of Regulations, Social Security Administration, 937 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-1769, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

##### What is the purpose of this notice?

The purpose of this notice is to give you an opportunity to send us comments and suggestions regarding the possible addition of a listing based on functional limitations to the listings for evaluating digestive disorders in sections 5.00 and 105.00 of the listings. On October 19, 2007, we published final rules revising the criteria in sections 5.00 and 105.00. Some commenters on the NPRM for those rules (66 FR 57009, published November 14, 2001)

recommended that we add a functional listing for hepatitis using criteria similar to those in listings 14.08N and 114.08O for human immunodeficiency virus (HIV). In responding to this comment, we explained that we did not adopt the recommendation because we did not believe we should add such a listing without first proposing it for public comment. We also believe that we need additional information to determine the criteria that would be included in a functional listing, and whether such a listing should be applicable to all digestive disorders or limited to specific disorders, such as hepatitis. Accordingly, we indicated in the NPRM that we would issue an Advanced Notice of Proposed Rulemaking, inviting public comments on these questions.

##### On which rules are we inviting comments?

We are considering whether to add a listing based on functional limitations to the listings for evaluating digestive disorders in sections 5.00 and 105.00 of the listings. You can find the revised rules for these listings on the Internet at: <http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAIISdocID=039144316124+0+0+0&WAIISaction=retrieve.htm>.

You can find the functional listings we use to evaluate HIV on our Internet site at these locations:

- Listing 14.08N is available at <http://www.socialsecurity.gov/disability/professionals/bluebook/14.00-Immune-Adult.htm>, and listing 114.08O is available at <http://www.socialsecurity.gov/disability/professionals/bluebook/114.00-Immune-Childhood.htm>.

- If you do not have Internet access, you can find the Code of Federal Regulations in some public libraries, Federal depository libraries, and public law libraries.

##### Who should send us comments and suggestions?

We invite comments and suggestions from anyone who has an interest in the rules we use to evaluate claims for benefits filed by people who have digestive disorders. We are interested in getting comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who represent people who have digestive disorders, State agencies that make

disability determinations for us, experts in the evaluation of digestive disorders, and researchers.

**What should you comment about?**

We are specifically interested in any comments and suggestions you have about adding a listing based on functional limitations to sections 5.00 and 105.00 of our listings. The issues we want to address are:

- Should we add a listing based on functional limitations to the listings for digestive disorders?
- If so, what criteria should we use?
- Should we use these criteria to evaluate all digestive disorders, or should they be applicable only to the evaluation of specific disorders, such as hepatitis?

**Will we respond to your comments from this notice?**

We will not respond directly to comments you send us in response to

this notice. However, after we consider your comments along with other information, such as medical research and our adjudicative experience, we may decide to add a listing based on functional limitations to the listings for digestive disorders. If we propose the addition of such a listing, we will publish an NPRM in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on any proposed addition(s) to the digestive listings if we publish an NPRM, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

**Other Information**

*Who can get disability benefits?*

Under title II of the Social Security Act (the Act), we provide for the payment of disability benefits if you are

disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

*How do we define disability?*

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under * * *	And you are * * *	Disability means you have a medically determinable impairment(s) as described above that results in * * *
Title II .....	an adult or child .....	the inability to do any substantial gainful activity (SGA).
Title XVI .....	an individual age 18 or older .....	the inability to do any SGA.
Title XVI .....	an individual under age 18 .....	marked and severe functional limitations.

*How do we decide whether you are disabled?*

If you are applying for benefits under title II of the Act, or if you are an adult applying for payments under title XVI of the Act, we use a five-step “sequential evaluation process” to decide whether you are disabled. We describe this five-step process in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and is the work you are doing SGA? If you are working and the work you are doing is SGA, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.
2. Do you have a “severe” impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.
3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the

duration requirement, we will find that you are disabled. If you do not, we will go to step 4.

4. Do you have the residual functional capacity (RFC) to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your RFC, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for children who apply for payments based on disability under SSI. If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.924, 416.994, and 416.994a of our regulations. However, all of these processes include steps at which we consider whether your impairment(s) meets or medically equals one of our listings.

*What are the listings?*

The listings are examples of impairments that we consider severe enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI payments based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

*How do we use the listings?*

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are an individual age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are an individual under age 18, we first use the criteria in part B of the listings. Part B contains criteria that apply only to individuals who are under age 18. If the criteria in part B do not apply, we may use the criteria in part A when those criteria give appropriate

consideration to the effects of the impairment(s) in children. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe as an impairment in the listings. (See §§ 404.1526 and 416.926.)

*What if you do not have an impairment(s) that meets or medically equals a listing?*

We use the listings only to decide that you are disabled or that you are still disabled. We will not deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the "sequential evaluation process." Likewise, we will not decide that your disability has ended only because your impairment(s) no longer meets or medically equals a listing.

#### List of Subjects

##### 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

##### 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: November 26, 2007.

**Michael J. Astrue,**

*Commissioner of Social Security.*

[FR Doc. E7-24061 Filed 12-11-07; 8:45 am]

**BILLING CODE 4191-02-P**

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

[Docket No. 2007-11]

#### Definition of Cable System

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of Inquiry.

**SUMMARY:** The Copyright Office is seeking comment on issues associated with the definition of the term "cable system" under the Copyright Act and

the Copyright Office's implementing rules. The Copyright Office is also seeking comment on the National Cable and Telecommunications Association's request for the creation of subscriber groups for the purposes of eliminating the "phantom signal" phenomenon. Further, the Copyright Office seeks comment on several other issues related to the existence of phantom signals on certain cable systems. The purpose of this Notice of Inquiry is to solicit input on, and address possible solutions to, the complex issues presented in this proceeding.

**DATES:** Written comments are due February 11, 2008. Reply comments are due March 26, 2008. December 12, 2007.

**ADDRESSES:** If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to the Library of Congress, U.S. Copyright Office, Public Information Office, 101 Independence Avenue, SE, Washington, DC 22043, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office.

If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site ("CCAS") located at 2nd and D Streets, NE, Washington, DC between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM 430, James Madison Building, 101 Independence Avenue, SE, Washington, DC. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL.

If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Ben Golant, Assistant General Counsel, and Tanya M. Sandros, General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** Section 111 of the Copyright Act ("Act"), title 17 of the United States Code ("Section 111"), provides cable systems with a statutory license to retransmit a performance or display of a work embodied in a primary transmission made by a television or radio station

licensed by the Federal Communications Commission ("FCC"). Cable systems that retransmit broadcast signals in accordance with the provisions governing the statutory license set forth in Section 111 are required to pay royalty fees to the Copyright Office. Payments made under the cable statutory license are remitted semi-annually to the Copyright Office which invests the royalties in United States Treasury securities pending distribution of these funds to those copyright owners who are entitled to receive a share of the fees.

## I. Background

The National Cable and Telecommunications Association ("NCTA"), by its attorneys, has petitioned the Copyright Office to commence a rulemaking proceeding to address cable copyright royalty issues arising from the current definition of "cable system" found in Section 201.17 of part 37 of the Code of Federal Regulations. The NCTA has proposed rule changes that it believes will better effectuate the cable statutory license under Section 111 of the Copyright Act. We initiate this Notice of Inquiry ("NOI") to address the issues raised by NCTA and to seek comment on its proposed changes to Section 201.17 of the Copyright Office's rules and associated cable Statement of Account ("SOA") forms. We also raise for comment several other issues pertinent to the discussion of the phantom signal phenomenon, as that concept is defined below.

### A. Statutory and Regulatory Definitions

Section 111(f) of the Copyright Act defines a "cable system" as:

"a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service. For purposes of determining the royalty fee under subsection (d)(1) [of Section 111], two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered one system." 17 U.S.C. 111(f).<sup>1</sup>

<sup>1</sup>We note that the definition of "cable system" under the Communications Act of 1934 is different than the Copyright Act definition. See 47 U.S.C. 522(7) ("the term "cable system" means a facility, consisting of a set of closed transmission paths and