

removal of one or more directors; or (3) any other matter under either the Act or applicable State laws affecting the Board's composition, size or manner of election.

15. Each Regulated Fund's chief compliance officer, as defined in rule 38a-1(a)(4), will prepare an annual report for the Board of such Regulated Fund that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2018-21375 Filed 10-1-18; 8:45 am]

BILLING CODE 8011-01-P

## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2017-0047]

### Social Security Ruling, SSR 18-01p; Titles II and XVI: Determining the Established Onset Date (EOD) in Disability Claims

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Ruling (SSR).

**SUMMARY:** We are providing notice of SSR 18-01p, which rescinds and replaces SSR 83-20, "Titles II and XVI: Onset of Disability," except as noted here. This SSR clarifies how we determine the EOD in disability claims under titles II and XVI of the Social Security Act (Act). Specifically, it addresses how we determine the EOD in claims that involve traumatic, non-traumatic, and exacerbating and remitting impairments. This ruling also addresses special considerations related to the EOD, such as work activity and previously adjudicated periods. Additionally, this SSR clarifies that an administrative law judge may, but is not required to, call upon the services of a medical expert, to assist with inferring the date that the claimant first met the statutory definition of disability. We concurrently published a separate SSR, SSR 18-02p, "Titles II and XVI: Determining the Established Onset Date (EOD) in Blindness Claims," to discuss how we determine the EOD in statutory blindness claims. SSR 18-02p rescinds and replaces two parts of SSR 83-20. Specifically, SSR 18-02p rescinds and replaces the subsection, "Title II: Blindness Cases," under the section, "Technical Requirements and Onset of

Disability"; and the subsection, "Title XVI—Specific Onset is Necessary," which is also under the section "Technical Requirements and Onset of Disability," as it applies to statutory blindness claims. Therefore, SSR 83-20 is completely rescinded and replaced by SSR 18-01p and SSR 18-02p.

**DATES:** We will apply this notice on October 2, 2018.

**FOR FURTHER INFORMATION CONTACT:** Dan O'Brien, 410-597-1632, *Dan.O'Brien@ssa.gov*. For information on eligibility or filing for benefits, call our national toll-free number at 1-800-772-1213, or visit our internet site, Social Security online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are publishing it in accordance with 20 CFR 402.35(b)(1).

We use SSRs to make available to the public precedential decisions relating to the Federal old age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made in our administrative review process, Federal court decisions, decisions of our Commissioner, opinions from our Office of the General Counsel, or other interpretations of law and regulations.

Although SSRs do not have the same force and effect as law, they are binding on all components of the Social Security Administration in accordance with 20 CFR 402.35(b)(1).

This SSR will remain in effect until we publish a notice in the *Federal Register* that rescinds it, or until we publish a new SSR in the **Federal Register** that rescinds and replaces or modifies it.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

**Nancy A. Berryhill,**

Acting Commissioner of Social Security.

### Policy Interpretation Ruling

#### Titles II and XVI: Determining the Established Onset Date (EOD) in Disability Claims

We are providing notice of SSR 18-01p, which rescinds and replaces SSR 83-20, "Titles II and XVI: Onset of Disability," except as noted here. Concurrently, we published a separate SSR, SSR 18-02p, "Titles II and XVI: Determining the Established Onset Date (EOD) in Blindness Claims," to discuss how we determine the EOD in statutory

blindness claims. SSR 18-02p rescinds and replaces two parts of SSR 83-20. Specifically, SSR 18-02p rescinds and replaces the subsection, "Title II: Blindness Cases," under the section, "Technical Requirements and Onset of Disability"; and the subsection, "Title XVI—Specific Onset is Necessary," which is also under the section "Technical Requirements and Onset of Disability," as it applies to statutory blindness claims. Therefore, as of October 2, 2018, the date this SSR was published in the **Federal Register**, SSR 83-20 is completely rescinded and replaced by SSR 18-01p and SSR 18-02p.

**Purpose:** This SSR explains what we mean by EOD and clarifies how we determine the EOD in disability claims under titles II and XVI of the Act. Specifically, it addresses how we determine the EOD in claims that involve traumatic, non-traumatic, and exacerbating and remitting impairments. This ruling also addresses special considerations related to the EOD, such as work activity and previously adjudicated periods. Additionally, this SSR clarifies that an administrative law judge (ALJ) may, but is not required to, call upon the services of a medical expert (ME), to assist with inferring the date that the claimant first met the statutory definition of disability.

**Citations:** Sections 223 and 1614 of the Act, as amended; 20 CFR 404.130, 404.303, 404.315-316, 404.320-321, 404.335-336, 404.350-351, 404.988-.989, 404.1505, 404.1510, 404.1512-.1513, 404.1520, 404.1574, 416.202, 416.325, 416.905-906, 416.910, 416.912-913, 416.920, 416.924, 416.974, and 416.1488-1489; 20 CFR part 404, subpart P, appendices 1 and 2.

### Policy Interpretation

To be entitled to disability benefits under title II of the Act or to be eligible for Supplemental Security Income (SSI) payments based on disability under title XVI of the Act, a claimant must file an application, meet the statutory definition of disability,<sup>1</sup> and satisfy the applicable non-medical requirements. If we find that a claimant meets the statutory definition of disability and meets the applicable non-medical requirements during the period covered by his or her application, we then

<sup>1</sup> See 42 U.S.C. 423(d)(1)(A), 1382c(a)(3)(A); 20 CFR 404.1505(a), 416.905(a) (defining disability for adults); 42 U.S.C. 1382c(a)(3)(C); 20 CFR 416.906 (defining disability for children); see also 20 CFR 404.1520(a)(4), 416.920(a)(4) (setting forth the five-step sequential evaluation we use to determine disability for adults); 20 CFR 416.924 (setting forth the three-step sequential evaluation we use to determine disability for children).

determine the claimant's EOD. Generally, the EOD is the earliest date that the claimant meets both the definition of disability and the non-medical requirements for entitlement to benefits under title II of the Act or eligibility for SSI payments under title XVI of the Act during the period covered by his or her application. Because entitlement and eligibility depend on non-medical requirements, the EOD may be later than the date the claimant first met the definition of disability, and some claimants who meet the definition of disability may not be entitled to benefits under title II or eligible for disability payments under title XVI.<sup>2</sup>

## Outline

- I. How do we determine the EOD?
  - A. What are the non-medical requirements for entitlement and eligibility under the Act?
  - B. How do we determine whether a claimant meets the statutory definition of disability and, if so, when the claimant first met that definition?
    1. How do we determine when a claimant with a traumatic impairment first met the statutory definition of disability?
    2. How do we determine when a claimant with a non-traumatic or exacerbating and remitting impairment first met the statutory definition of disability?
    3. How do we determine when a claimant with more than one type of impairment first met the statutory definition of disability?
- II. What are some special considerations related to the EOD?
  - A. How does work activity affect our determination of the EOD?
  - B. May we determine the EOD to be in a previously adjudicated period?
- III. When is this SSR applicable?

## Discussion

### I. How do we determine the EOD?

When we need to determine a claimant's EOD, we start by considering whether we can establish the EOD as of the claimant's potential onset date (POD) of disability. The POD is the first date when the claimant met the non-medical requirements during the period covered by his or her application. The POD is the earliest date that we consider for the EOD because it affords the claimant the maximum possible benefits for the period covered by his or her

application. The POD may be the same as, earlier than, or later than the claimant's alleged onset date, which is the date that the claimant alleges he or she first met the statutory definition of disability.

The period covered by an application refers to the period when a claimant may be entitled to benefits under title II or eligible for SSI payments under title XVI of the Act based on a particular application. The period covered by an application depends on the type of claim. For example, the Act and our regulations explain that if a claimant applies for disability insurance benefits under title II of the Act after the first month that he or she could have been entitled to them, he or she may receive benefits for up to 12 months immediately before the month in which the application was filed.<sup>3</sup> If a claimant applies for SSI payments based on disability under title XVI of the Act after the first month that he or she meets the other eligibility requirements, we cannot make SSI payments based on disability for the month in which the application was filed or any months before that month.<sup>4</sup> That is, we cannot make retroactive payments based on disability under title XVI of the Act.

If the claimant meets the statutory definition of disability on his or her POD, we use the POD as the EOD because it would be the earliest date at which the claimant meets both the statutory definition of disability and the non-medical requirements for entitlement to benefits under title II or eligibility for SSI payments under title XVI during the period covered by his or her application. In contrast, if the claimant first meets the statutory definition of disability after his or her POD, we use the first date that the claimant meets both the statutory definition of disability and the applicable non-medical requirements as his or her EOD.

#### A. What are the non-medical requirements for entitlement and eligibility under the Act?

The non-medical requirements vary based on the type(s) of claim(s) the claimant filed. To illustrate, we identify below the most common types of disability claims and some of the regulations that explain the non-medical requirements for that type of claim.

- Disability insurance benefits: 20 CFR 404.315, 404.316, 404.320, and 404.321;
- Disabled widow(er)'s benefits: 20 CFR 404.335 and 404.336;

- Childhood disability benefits: 20 CFR 404.350 and 404.351; and
- Supplemental Security Income: 20 CFR 416.202 and 416.305.

#### B. How do we determine whether a claimant meets the statutory definition of disability and, if so, when the claimant first met that definition?

We need specific medical evidence to determine whether a claimant meets the statutory definition of disability. In general, an individual has a statutory obligation to provide us with the evidence to prove to us that he or she is disabled.<sup>5</sup> This obligation includes providing us with evidence to prove to us when he or she first met the statutory definition of disability. The Act also precludes us from finding that an individual is disabled unless he or she submits such evidence to us.<sup>6</sup> The Act further provides that we:

[S]hall consider all evidence available in [an] individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability.<sup>7</sup> In addition, when we make any determination, the Act requires us to:

[M]ake every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.<sup>8</sup>

"Complete medical history" means the records from the claimant's medical source(s) covering at least the 12-month period preceding the month in which the claimant applied for disability benefits or SSI payments.<sup>9</sup> If the claimant says his or her disability began less than 12 months before he or she applied for benefits, we will develop the claimant's complete medical history beginning with the month he or she says his or her disability began, unless we have reason to believe the claimant's disability began earlier.<sup>10</sup> If applicable, we will develop the claimant's complete medical history for the 12-month period

<sup>5</sup> To meet the statutory definition of disability, the claimant must show that he or she is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C. 423(d)(1)(A), 1382c(a)(3)(A); 20 CFR 404.1505(a), 416.905(a).

<sup>6</sup> 42 U.S.C. 423(d)(5)(A), 1382c(a)(3)(H)(i); 20 CFR 404.1512(a), 416.912(a).

<sup>7</sup> 42 U.S.C. 423(d)(5)(B), 1382c(a)(3)(H)(i).

<sup>8</sup> *Id.*

<sup>9</sup> 20 CFR 404.1512(b)(1)(ii), 416.912(b)(1)(ii).

<sup>10</sup> *Id.*

<sup>2</sup> Under title II of the Act, a claimant may be entitled to a period of disability even though he or she does not qualify for monthly cash benefits. 20 CFR 404.320(a).

<sup>3</sup> 42 U.S.C. 423(b); 20 CFR 404.621(a).

<sup>4</sup> 42 U.S.C. 1382(c)(7); 20 CFR 416.335.

prior to the month he or she was last insured for disability insurance benefits,<sup>11</sup> the month ending the 7-year period when the claimant must establish his or her disability if he or she applied for widow's or widower's benefits based on disability,<sup>12</sup> or the month the claimant attained age 22 if he or she applied for child's benefits under title II<sup>13</sup> based on disability.<sup>14</sup>

We consider all of the evidence of record when we determine whether a claimant meets the statutory definition of disability.<sup>15</sup> The period we consider depends on the type of claim and the facts of the case. For example, a claimant who has applied for disability insurance benefits under title II of the Act must show that:

- He or she met the statutory definition of disability before his or her insured status expired, and
- He or she currently meets the statutory definition of disability,<sup>16</sup> or his or her disability ended within the 12-month period before the month that he or she applied for benefits.<sup>17</sup>

As another example, a claimant who has applied for child's benefits under title II must show that:

- He or she met the statutory definition of disability before he or she attained age 22, and
- He or she currently meets the statutory definition of disability,<sup>18</sup> or his or her disability ended within the 12-month period before the month that he or she applied for benefits.<sup>19</sup>

<sup>11</sup> See 20 CFR 404.130.

<sup>12</sup> See 20 CFR 404.335(c)(1).

<sup>13</sup> See 20 CFR 404.350.

<sup>14</sup> 20 CFR 404.1512(b)(1)(iii).

<sup>15</sup> See 20 CFR 404.1513, 416.913 (describing the categories of evidence we consider).

<sup>16</sup> For a disability insurance benefits claim under title II, an adjudicator may also determine that the claimant had a closed period of disability when the claimant was disabled for at least 12 continuous months and his or her disability ceased after the month of filing, but prior to the date of adjudication.

<sup>17</sup> See 42 U.S.C. 416(i), 423(a)(1); 20 CFR 404.315(a), 404.320. For title II claims, if we find that the claimant did not meet the statutory definition of disability before his or her insured status expired, we will not determine whether the claimant is currently disabled or was disabled within the 12-month period before the month that he or she applied for benefits. If, however, the claimant also filed a different type of claim—for example, a claim for SSI disability payments—we may have to consider whether the claimant is currently disabled to adjudicate the SSI claim.

<sup>18</sup> For a child's benefits claim under title II, an adjudicator may also determine that the claimant had a closed period of disability when the claimant was disabled for at least 12 continuous months and his or her disability ceased after the month of filing, but prior to the date of adjudication.

<sup>19</sup> See 42 U.S.C. 402(d)(1)(B), 416(i); 20 CFR 404.320, 404.350(a)(5). For a child's benefits claim under title II, if we find that the claimant did not meet the statutory definition of disability before he

As a final example—because we cannot make SSI payments based on disability for the month in which the application was filed or any months before that month—a claimant who has applied for SSI payments under title XVI must show that he or she currently meets the statutory definition of disability.<sup>20</sup> If we find that the claimant meets the statutory definition of disability during the period under consideration, then we will determine when the claimant first met that definition. However, we will not consider whether the claimant first met the statutory definition of disability on a date that is beyond the period under consideration.

1. How do we determine when a claimant with a traumatic impairment first met the statutory definition of disability?

For impairments that result from a traumatic injury or other traumatic event, we begin with the date of the traumatic event, even if the claimant worked on that date. An example of a traumatic event that could result in a traumatic injury is an automobile accident. If the evidence of record supports a finding that the claimant met the statutory definition of disability on the date of the traumatic event or traumatic injury, we will use that date as the date that the claimant first met the statutory definition of disability.

2. How do we determine when a claimant with a non-traumatic or exacerbating and remitting impairment first met the statutory definition of disability?

Non-traumatic impairments may be static impairments that we do not expect to change in severity over an extended period, such as intellectual disability; impairments that we expect to improve over time, such as pathologic bone fractures caused by osteoporosis; or progressive impairments that we expect to gradually worsen over time, such as muscular dystrophy. Exacerbating and remitting impairments are impairments that diminish and intensify in severity over time, such as

or she attained age 22, we will not determine whether the claimant is currently disabled or was disabled within the 12-month period before the month that he or she applied for benefits. If, however, the claimant also filed a different type of claim—for example, a claim for SSI disability payments—we may have to consider whether the claimant is currently disabled to adjudicate the SSI claim.

<sup>20</sup> 42 U.S.C. 1382(c)(7); 20 CFR 416.335. For a title XVI claim, an adjudicator may also determine that the claimant had a closed period of disability when the claimant was disabled for at least 12 continuous months and his or her disability ceased after the month of filing, but prior to the date of adjudication.

multiple sclerosis. When a claimant has a non-traumatic or exacerbating and remitting impairment(s), and we determine the evidence of record supports a finding that the claimant met the statutory definition of disability, we will determine the first date that the claimant met that definition. The date that the claimant first met the statutory definition of disability must be supported by the medical and other evidence<sup>21</sup> and be consistent with the nature of the impairment(s).

We consider whether we can find that the claimant first met the statutory definition of disability at the earliest date within the period under consideration, taking into account the date the claimant alleged that his or her disability began. We review the relevant evidence and consider, for example, the nature of the claimant's impairment; the severity of the signs, symptoms, and laboratory findings; the longitudinal history and treatment course (or lack thereof); the length of the claimant's exacerbations and remissions, if applicable; and any statement by the claimant about new or worsening signs, symptoms, and laboratory findings. The date we find that the claimant first met the statutory definition of disability may predate the claimant's earliest recorded medical examination or the date of the claimant's earliest medical records, but we will not consider whether the claimant first met the statutory definition of disability on a date that is beyond the period under consideration.

If there is information in the claim(s) file that suggests that additional medical evidence relevant to the period at issue is available, we will assist with developing the record and may request existing evidence directly from a medical source or entity that maintains the evidence. We may consider evidence from other non-medical sources such as the claimant's family, friends, or former employers, if we cannot obtain additional medical evidence or it does not exist (*e.g.*, the evidence was never created or was destroyed), and we cannot reasonably infer the date that the claimant first met the statutory definition of disability based on the medical evidence in the file.

At the hearing level of our administrative review process, if the ALJ needs to infer the date that the claimant first met the statutory definition of disability, he or she may call on the services of an ME by soliciting testimony or requesting responses to written interrogatories (*i.e.*,

<sup>21</sup> See 20 CFR 404.1513, 416.913 (describing the categories of evidence we consider).

written questions to be answered under oath or penalty of perjury). The decision to call on the services of an ME is always at the ALJ's discretion. Neither the claimant nor his or her representative can require an ALJ to call on the services of an ME to assist in inferring the date that the claimant first met the statutory definition of disability.

The Appeals Council may review the ALJ's finding regarding when the claimant first met the statutory definition of disability, or any other finding of the ALJ, by granting a claimant's request for review or on its own motion authority.<sup>22</sup> The Appeals Council may also exercise its removal authority and assume responsibility of the request for hearing. The Appeals Council will review a case if there is an error of law; the actions, findings, or conclusions of the ALJ are not supported by substantial evidence; there appears to be an abuse of discretion by the ALJ; or there is a broad policy or procedural issue that may affect the general public interest.<sup>23</sup> The Appeals Council will also review a case if it receives additional evidence that meets certain requirements.<sup>24</sup> If the Appeals Council grants review, it will issue its own decision or return the case to the ALJ for further proceedings, which may include obtaining evidence regarding when the claimant first met the statutory definition of disability. If the Appeals Council issues a decision, it will consider the totality of the evidence (subject to the limitations on Appeals Council consideration of additional evidence in 20 CFR 404.970 and 416.1470) and establish the date that the claimant first met the statutory definition of disability, which is both supported by the evidence and consistent with the nature of the impairment(s).

3. How do we determine when a claimant with more than one type of impairment first met the statutory definition of disability?

If a claimant has a traumatic impairment and a non-traumatic or exacerbating and remitting impairment, we will consider all of the impairments in combination when determining when the claimant first met the statutory definition of disability. We will consider the date of the traumatic event as well as the evidence pertaining to the non-traumatic or exacerbating and remitting impairment and will determine the date on which the

combined impairments first caused the claimant to meet the statutory definition of disability.

## II. What are some special considerations related to the EOD?

### A. How does work activity affect our determination of the EOD?

We consider the date the claimant stopped performing substantial gainful activity (SGA) when we establish the EOD. SGA is work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit.<sup>25</sup> If medical and other evidence indicates the claimant's disability began on the last day he or she performed SGA, we can establish an EOD on that date, even if the claimant worked a full day. Generally, we may not determine a claimant's EOD to be before the last day that he or she performed SGA.

We may, however, determine a claimant's EOD to be before or during a period that we determine to be an unsuccessful work attempt (UWA). A UWA is an effort to do work that discontinues or reduces to the non-SGA level after a short time (no more than six months) because of the impairment or the removal of special conditions related to the impairment that are essential for the further performance of work.<sup>26</sup>

### B. May we determine the EOD to be in a previously adjudicated period?

Yes, if our rules for reopening are met<sup>27</sup> and the claimant meets the statutory definition of disability and the applicable non-medical requirements during the previously adjudicated period.<sup>28</sup> Reopening, however, is at the discretion of the adjudicator.<sup>29</sup>

## III. When is this SSR applicable?

This SSR is applicable on October 2, 2018. We will use this SSR beginning on its applicable date. We will apply this SSR to new applications filed on or after the applicable date of the SSR and to claims that are pending on and after the applicable date. This means that we will use this SSR on and after its applicable date, in any case in which we make a determination or decision. We expect

<sup>25</sup> 20 CFR 404.1510, 416.910.

<sup>26</sup> 20 CFR 404.1574(a)(1), (c) and 416.974(a)(1), (c).

<sup>27</sup> 20 CFR 404.988, 404.989, 416.1488, 416.1489.

<sup>28</sup> See also Program Operations Manual System (POMS) DI 25501.250.A.5 (explaining when a period of disability may begin during a previously adjudicated period).

<sup>29</sup> 20 CFR 404.988, 416.1488 (stating that "[a] determination, revised determination, decision, or revised decision may be reopened . . ." (emphasis added)).

that Federal courts will review our final decisions using the rules that were in effect at the time we issued the decisions. If a court reverses our final decision and remands a case for further administrative proceedings after the applicable date of this SSR, we will apply this SSR to the entire period at issue in appropriate cases when we make a decision after the court's remand.

[FR Doc. 2018-21368 Filed 10-1-18; 8:45 am]

BILLING CODE 4191-02-P

## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2016-0034]

### Social Security Ruling, SSR 18-3p; Titles II and XVI: Failure To Follow Prescribed Treatment

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Ruling (SSR).

**SUMMARY:** We are providing notice of SSR 18-3p. This Ruling provides guidance about how we apply our failure to follow prescribed treatment policy in disability and blindness claims under Titles II and XVI of the Social Security Act (Act).

**DATES:** We will apply this notice on October 29, 2018.

**FOR FURTHER INFORMATION CONTACT:** Dan O'Brien, Office of Vocational, Evaluation, and Process Policy in the Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-597-1632. For information on eligibility or filing for benefits, call our national toll-free number at 1-800-772-1213, or visit our internet site, Social Security online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are publishing it in accordance with 20 CFR 402.35(b)(1).

We use SSRs to make available to the public precedential decisions relating to the Federal old age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made in our administrative review process, Federal court decisions, decisions of our Commissioner, opinions from our Office of the General Counsel, or other interpretations of law and regulations.

Although SSRs do not have the same force and effect as law, they are binding on all components of the Social Security Administration in accordance with 20

<sup>22</sup> 20 CFR 404.969, 416.1469.

<sup>23</sup> 20 CFR 404.970, 416.1470.

<sup>24</sup> 20 CFR 404.970(a)(5), (b) and 416.1470(a)(5), (b).