

## SSA Proposes Changes to Listings

After coming under criticism for not updating some Listings of Impairments, SSA is now moving to propose revisions to some sections.

- **Proposed changes to neurological listings: 79 Fed. Reg. 10636 (Feb. 25, 2014); Comments due by April 28, 2014**

SSA proposes revisions “to reflect our program experience and advances in medical knowledge, treatment, and methods of evaluating neurological disorders.” These listings – Sections 11.00 (adults) and 111.00 (children) were last comprehensively revised in 1985. In 2005, SSA obtained comments through an advanced notice of proposed rulemaking (ANPRM) and an outreach policy conference.

Consistent with other recent proposed and final changes to listings, SSA proposes to significantly expand the introductory text, resulting in listing sections that are shorter and reference the introductory text sections that explain the specific neurological disorder. There are changes to many disorders, including epilepsy and multiple sclerosis. And the proposed listings take a very different approach by including a functional limitations approach to each listing.

For example, “epilepsy” is just one listing, proposed section 11.02 (rather than 11.02 and 11.03). There are different requirements, depending on the type of seizure disorder. Current listing 11.03 (nonconvulsive epilepsy) requires a seizure pattern “occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment.” The proposed listings describe seizure frequency, depending on the type of epilepsy, in terms of “occurring at least once a month for at least 3 consecutive months,” “at least once a week for at least 3 consecutive months, or “at least once every 2 months for at least 4 consecutive months.” This would appear to be more limiting than the current listing, which allows for “averaging” seizures during a 3 month period. The proposed changes seem to require that the seizures occur on a more regular basis.

The proposed changes to multiple sclerosis (listing 11.09) would rely on two categories, rather than the current three. Current 11.09A deals with “Disorganization of motor function as described in

11.04B”: “Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).” The proposed listing 11.09 would provide for “Disorganization of motor function ... resulting in extreme limitation ... in the ability to stand up, balance, walk, or perform fine and gross motor movements.” [Proposed 11.09B deals with “marked limitation” in physical functioning and in one of 3 functional categories.] Is the proposed 11.09A more difficult to meet than the current listing 11.09A, given the definition of “extreme limitation” in the proposed introductory text?

- **Proposed changes to HIV infection listings and evaluating functional limitations in Immune System Disorders: 79 Fed. Reg. 10730 (Feb. 26, 2014); Comments due by May 27, 2014**

SSA proposes to revise the criteria in the Listings that it uses to evaluate claims involving HIV in adults and children and functional limitations for all immune disorders. Proposed changes include revising and expanding the introductory text for HIV infection; revising the introductory text for evaluating functional limitations resulting from immune system disorders; and removing current HIV infection listings 14.08A-J for adults and 14.08A-K for children.

SSA developed the proposed changes through a 2008 Advanced Notice of Proposed Rulemaking and a 2008 policy conference. SSA also commissioned a report from the Institute of Medicine (IOM) to review the criteria in the HIV infection listings. The 2010 report, *HIV and Disability: Updating the Social Security Listings*, is available at <http://iom.edu/Reports/2010/HIV-and-Disability-Updating-the-Social-Security-Listings.aspx>. The IoM’s HIV report notes that the current HIV listings “no longer reflect medical reality.” Individuals with HIV infection and AIDS live longer, given the use of antiretroviral drugs. However, it recognizes that the treatments are lifelong and “may have significant side effects.” Also, as they age, they have more chronic conditions. The report included the following recommendations: (1) There should be a listing for individuals with a CD4 cell count less than or equal to 50 cells/mm<sup>3</sup> (but they should be regularly reviewed); (2) Individuals with several

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severe or fatal conditions that are caused by HIV infection should be considered permanently disabled; (3) Individuals with severe HIV-related conditions not elsewhere in the listings should be found disabled if functioning is limited.

For instance, SSA proposes to remove listing 14.08H for HIV wasting syndrome and 14.08I for diarrhea and refers to the IOM report, which found that it is “uncommon that these manifestations alone are predictive of disability, but they may be persistent and result in a marked level of limitation(s) ....” These manifestations would be evaluated under proposed listing 14.11I, which requires “marked” limitation in one of the three areas of functioning.

### • **Extension of expiration dates for several body listings: 79 Fed. Reg. 10661 (Feb. 26, 2014)**

SSA is extending the expiration dates for the following listings, with the new expiration dates:

1. Growth Impairment (100.00) – January 30, 2015
2. Musculoskeletal – July 31, 2015
3. Respiratory System – January 30, 2015
4. Cardiovascular System – July 31, 2015
5. Digestive System – January 30, 2015
6. Skin Disorders – January 30, 2015
7. Neurological – July 31, 2015

SSA previously extended the expiration date of the Mental Disorders listings (sections 12.00 and 112.00) from January 2, 2014 to January 2, 2015. 78 Fed. Reg. 72571 (Dec. 3, 2013). In the Federal Register announcement, SSA noted that the Mental Disorders listings will be updated as soon as possible, but not before the January 2014 date. The December 2013 extension notes that SSA is still reviewing the 2,243 comments received after the NPRM was published in 2010. No recent changes have been made to the Mental Disorders listings at this time.