

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file number SR–CboeBZX–2023–085. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–085 and should be submitted on or before November 28, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–24519 Filed 11–6–23; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2023–0013]

Social Security Ruling, SSR 23–1p.; Titles II and XVI: Duration Requirement for Disability

AGENCY: Social Security Administration.

ACTION: Notice of social security ruling (SSR).

SUMMARY: We are providing notice of SSR 23–1p. This SSR explains and clarifies our policy regarding the duration requirement for establishing disability under Titles II and XVI of the Social Security Act and implementing regulations. This ruling rescinds and replaces SSR 82–52.

DATES: We will apply this notice on November 7, 2023.

FOR FURTHER INFORMATION CONTACT:

Mary Quatroche, Social Security Administration, Office of Disability Policy, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–4794 or TTY 410–966–5609, 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 <https://www.ssa.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).

SSRs represent precedential final opinions, orders, and statements of policy and interpretations that we have adopted relating to the Federal Old Age, Survivors, and Disability Insurance program, and Supplemental Security Income program. 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 SSA components 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 that replaces or modifies it.

(Federal Assistance Listings, 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.)

The Acting Commissioner of Social Security, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for the Social

Security Administration, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

Policy Interpretation Ruling

SSR 23–1p

Titles II and XVI: Duration Requirement for Disability

This Social Security Ruling (SSR) rescinds and replaces SSR 82–52: Titles II and XVI: Duration of the Impairment.

Purpose: This SSR updates and consolidates our policy regarding the duration requirement for establishing disability under Titles II and XVI of the Social Security Act (Act) and its implementing regulations. We published SSR 82–52 in 1982, and in the ensuing four decades we revised several rules and issued policy guidance that leave the original ruling misaligned with current regulatory authority and policy guidance. For instance, we changed the sequential evaluation process for widows and Title XVI children;¹ established the process for evaluating medical improvement in continuing disability review (CDR) cases;² instituted multiple work incentives for recipients of Title XVI payments;³ and extended the reentitlement period for Title II claims.⁴

Citations (Authority): Sections 216(i), 223(d), and 1614(a) of the Act, 42 U.S.C. 416(i), 423(d), and 1382c(a), as amended; Regulations No. 4, subpart P, sections 404.988, 404.1505, 404.1509, 404.1520, 404.1523, 404.1545, 404.1574, 404.1581, 404.1592, 404.1592a, 404.1592b, 404.1594, and 404.1598; Regulations No. 16, Subpart I, sections 416.260, 416.262, 416.905, 416.906, 416.909, 416.920, 416.923, 416.924, 416.945, 416.974, 416.981, 416.994, 416.994a, 416.998, and 416.1488.

Dates: We will apply this SSR on November 7, 2023.⁵

¹ See 20 CFR 404.1520(a)(2) and 416.924.

² See 20 CFR 404.1594, 416.994, and 416.994a.

³ See section 1619(a)–(b) of the Act. See also 20 CFR 416.260 and 416.262.

⁴ See 20 CFR 404.1592a and 404.1592b.

⁵ 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 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 the decision we make after the court's remand.

²⁵ 17 CFR 200.30–3(a)(12).

Policy Interpretation

To be disabled under Title II of the Act, or as an adult⁶ under Title XVI of the Act, a claimant must be unable to engage in any substantial gainful activity (SGA) by reason of one or more medically determinable physical or mental impairments (MDIs) which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of at least 12 months.⁷ We refer to the period of time during which a claimant is continuously unable to engage in SGA because of one or more MDI(s) as “duration.”⁸

The following information is in a question-and-answer format that provides guidance on how we assess whether a person meets the duration requirement for disability. Questions 1 through 3 explain how we define and measure the duration requirement. Questions 4 and 5 provide information about how the duration requirement affects the sequential disability evaluation process. Question 6 addresses how we consider duration in continuing disability review (CDR) cases when the beneficiary or recipient has a new, severe MDI(s). Question 7 explains how we make a finding about the expected duration of an impairment and what will happen if we learn of a return to SGA within 12 months of a claimant's onset of disability.

List of Questions—

1. *How does a claimant meet the duration requirement for disability?*
2. *What is an MDI that “can be expected to result in death”?*
3. *What do we mean by “12 continuous months” and how do we measure it in initial claims?*
4. *How does the duration requirement affect the five-step sequential disability evaluation process?*
5. *How does the duration requirement affect the three-step sequential disability evaluation process for Title XVI claimants who have not yet attained 18 years of age?*
6. *How do we consider the duration requirement when the claimant has*

⁶ Title XVI claimants under age 18 are disabled if they are not performing SGA and their medically determinable physical or mental impairment(s) causes marked and severe functional limitations and can be expected to cause death or has lasted or can be expected to last for a continuous period of 12 months. See section 1614(a)(3)(C) of the Act and 20 CFR 416.906.

⁷ See sections 216(i), 223(d), 1614(a) of the Act. See also 20 CFR 404.1505, 404.1521 and 416.905, 416.921. While there is no duration requirement for statutorily blind individuals under Title XVI, the duration requirement applies to statutorily blind individuals under Title II. See generally 216(i) and 1614(a) of the Act. See also 20 CFR 404.1581 and 416.981.

⁸ 20 CFR 404.1509 and 416.909.

new, severe MDI(s) in continuing disability review (CDR) cases?

7. *What if we find that the claimant meets the duration requirement based on an expectation of continued severity, but the claimant returned to SGA within 12 months?*

Answers—

1. *How does a claimant meet the duration requirement for disability?*

Duration is the period of time during which a claimant is continuously unable to engage in SGA because of one or more MDI(s).⁹ To satisfy the duration requirement for disability, the claimant's relevant MDI(s) must have lasted or must be expected to last for a continuous period of at least 12 months, unless we expect the MDI(s) to result in death within 12 months of the onset of disability.¹⁰ An individual's inability to perform SGA because of the relevant MDI(s) must also last the required 12-month period, unless we expect an MDI(s) to result in death within 12 months of the onset of disability. A claimant must satisfy both elements to meet the duration requirement.¹¹ A claimant who was previously entitled to a period of disability must again meet the duration requirement for the current application before a subsequent period of disability can be established.¹²

2. *What is an MDI that “can be expected to result in death”?*

An MDI that “can be expected to result in death” is one for which the generally accepted prognosis within the medical field and the evidence in the case file demonstrate that the claimant is expected to die as a result of that impairment within 12 months of the date that the claimant became unable to engage in SGA. We also consider an MDI that actually results in death to be one that was “expected to result in death.”

3. *What do we mean by “12 continuous months” and how do we measure it in initial claims?*

The phrase “12 continuous months” means both that the MDI(s) must have

lasted, or be expected to last, for a continuous period of at least 12 months and that the claimant's resulting inability to perform SGA by reason of the MDI(s) must also have lasted, or be expected to last, for not less than 12 months without interruption or stopping.¹³

We measure the 12-month period from any date¹⁴ the claimant's MDI(s) first prevented the claimant from performing SGA.¹⁵ We do not consider any period during which an MDI or combination of MDIs did not prevent the claimant from performing SGA when measuring duration. The duration period may begin before, but cannot end before, the period during which we can establish entitlement or eligibility.¹⁶ For example, the duration period may begin before the date first insured (DFI) in Title II disability insurance benefit (DIB) claims, before the date of a spouse's death in Title II disabled widow(er)'s benefit (DWB) claims, prior to the potential onset date in Title II childhood disability benefits (CDB) claims, or prior to the filing date in Title XVI claims.

Unless the MDI(s) is expected to result in death, duration continues through the earliest of the following dates:

- When the MDI(s) no longer prevents the claimant from engaging in SGA; or
- When the MDI(s) is no longer expected to prevent the claimant from engaging in SGA.¹⁷

4. *How does the duration requirement affect the five-step sequential disability evaluation process?*

We consider the duration requirement at multiple steps of the five-step sequential evaluation process we use to evaluate disability in initial claims under Title II,¹⁸ age 18 redeterminations,¹⁹ and adult claims under Title XVI.²⁰ At step one, if the claimant is currently performing SGA we will generally find that the claimant is not disabled. However, if the claimant is not currently performing SGA, or if the claimant is currently performing

¹³ See *Barnhart v. Walton*, 535 U.S. 212 (2002).

¹⁴ For detailed guidance on how we determine whether a claimant meets the statutory definition of disability, and if so, when the claimant first met that definition, see SSR 18–1p Titles II and XVI: Determining the Established Onset Date (EOD) in Disability Claims.

¹⁵ For Title XVI claimants under age 18, we generally measure duration from the first date the claimant's MDI(s) results in marked and severe functional limitations. See 20 CFR 416.924.

¹⁶ See *Walton*, 535 U.S. 212 (2002).

¹⁷ For Title XVI claimants under age 18, duration ends when the child engages in SGA or no longer has marked and severe functional limitations. See 20 CFR 416.924.

¹⁸ See 20 CFR 404.1520.

¹⁹ See 20 CFR 416.987.

²⁰ See 20 CFR 416.920.

⁹ For title XVI claimants under the age of 18, duration is the period of time during which the claimant is not performing SGA and experiences marked and severe functional limitations because of a medically determinable physical or mental impairment, or a combination of impairments. See 20 CFR 416.906 and 416.924. For these claimants, we generally measure duration from the first date the claimant's MDI(s) results in marked and severe functional limitations. An impairment(s) causes marked and severe functional limitations if it meets or medically equals the severity of a set of criteria for an impairment in the listings, or if it functionally equals the listings. See 20 CFR 416.924.

¹⁰ 20 CFR 404.1509 and 416.909.

¹¹ See *Barnhart v. Walton*, 535 U.S. 212 (2002).

¹² 20 CFR 404.321.

SGA but during the period covered by the current application they did not perform SGA for at least 12 continuous months, the duration requirement could be met (as discussed in Question 1) and the sequential evaluation process would proceed to step two.

At step two, if the claimant does not have a severe MDI, or combination of MDIs that is medically severe, and has lasted, or is expected to last, for a continuous period of not less than 12 months or is expected to result in death, the claimant cannot meet the duration requirement and we will find the claimant is not disabled.²¹

Further, we do not combine two or more successive, unrelated impairments to meet the 12-month requirement in initial claims.²² For example, a claimant involved in a bicycling accident on January 1, 2022, suffered a pelvic fracture for which they underwent immediate surgery. The fracture completely healed by August 1, 2022. The same claimant injured their rotator cuff in a fall on July 1, 2022. With treatment, the rotator cuff injury resolved completely by February 2, 2023. The MDIs were unrelated and neither MDI lasted 12 months. We will find the claimant not disabled at step two because there is no severe MDI that could meet the duration requirement.²³

Because of the duration requirement, we will not consider an MDI that completely resolves in less than 12 months after step two of the sequential evaluation process. Consider, instead, a case where the individual sustained a pelvic fracture that resolved completely within nine months but had a subsequent rotator cuff injury that remained severe for 12 continuous months. Sequential evaluation for the rotator cuff impairment would continue but we would not consider the pelvic fracture beyond step two.

If the analysis proceeds to step three, we will consider: (1) whether an MDI(s) meets or medically equals a listing in the Listing of Impairments (listings), according to the set of medical criteria in the listing; and, if so (2) whether the MDI(s) meets the duration requirement.²⁴ Once the claimant establishes that their MDI(s) is severe enough to meet or equal a listed impairment, the claimant must also show that this level of severity lasted, or is expected to last, for a continuous period of at least 12 months, or that the

impairment is expected to result in death.²⁵

Some listings specify a period of time we will consider the claimant under a disability if their MDI(s) meets all the criteria of the listing. This listing specification does not change, supersede, or establish that the MDI(s) meets the duration requirement. We use this listing specification in certain instances to establish the appropriate timeline for our continuing disability review process as it relates to that impairment. The evidence of record must show that the MDI(s) also meets the duration requirement. For example, listing 6.04 (chronic kidney disease, with kidney transplant) states that we will consider an individual who has a kidney transplant due to chronic kidney disease to be under a disability for one year from the date of the transplant due to the potential for complications, such as rejection episodes and post-transplant functioning. Thereafter, we will evaluate any residual limiting effects of the impairment. If the claimant engages in SGA within 12 months from the date the MDI(s) first prevented them from performing SGA we generally will find them not disabled under the Act (as discussed in Question 7).²⁶

Other listings contain criteria with temporal requirements during which certain findings must be present. These temporal requirements do not establish that the MDI(s) met the duration requirement but instead serve as a specific indicator of listing-level severity. For example, listing 11.02 (Epilepsy, generalized tonic-clonic seizures or dyscognitive seizures) states that the seizures must occur at least once a month for at least three consecutive months, despite adherence to prescribed treatment. The frequency of seizures outlined in the listing criteria establishes that the impairment is of listing-level severity but is distinct from the duration requirement. To meet the duration requirement, the evidence must show the MDI(s) lasted at listing level or is expected to last at listing level for 12 continuous months and that the claimant's resulting inability to perform SGA by reason of the MDI(s) has lasted, or is expected to last, for not less than 12 months without interruption or stopping.

If we cannot find the claimant disabled at step three, the sequential evaluation process continues.²⁷ We

assess the claimant's residual functional capacity (RFC), which is the most an individual can do despite their impairment-related limitations.²⁸ Because of the duration requirement, we will not include limitations in the RFC assessment that completely resolve, or that we expect to completely resolve, within 12 months.

If the analysis proceeds to steps four or five of the sequential evaluation process, we consider the claimant's RFC when determining whether an individual can perform past relevant work, or other work that exists in significant numbers in the national economy.

5. How does the duration requirement affect the three-step sequential evaluation process for Title XVI claimants who have not yet attained 18 years of age?

For Title XVI disability claimants under age 18, we will consider the child disabled if the child does not perform SGA and has a medically determinable physical or mental impairment, or combination of impairments, that causes marked and severe functional limitations and has lasted or can be expected to last for a continuous period of not less than 12 months, or is expected to result in death.²⁹ In these cases, we use a three-step sequential evaluation process, and the duration requirement for disability applies throughout the sequential evaluation process for children.³⁰

At steps one and two of the sequential evaluation process for Title XVI children, we will apply the same rules discussed for steps one and two of the adult sequential evaluation process (as discussed above in response to Question 4). If the child satisfies the requirements for both steps one and two, we will proceed to step three where we consider whether the child's MDI(s) meets, medically equals, or functionally equals a listing.³¹

At step three, to establish that the child has an MDI(s) that meets, medically equals or functionally equals the listings, the evidence must show that the MDI(s) has lasted, or is expected to last, for a continuous period of at least 12 months at listing level severity or is expected to result in death.³² If a child's MDI(s) is severe but does not meet or medically equal any listing, we will determine if the MDI(s)

²¹ See 20 CFR 404.1509, 404.1520(a)(4)(ii) and 416.909, 416.920(a)(4)(ii).

²² See 20 CFR 404.1523(a) and 416.923(a).

²³ *Id.*

²⁴ See 20 CFR 404.1520(a)(4)(iii) and 416.920(a)(4)(iii).

²⁵ See 20 CFR 404.1520(d) and 416.920(d).

²⁶ See sections 216(i), 223(d), 1614(a) of the Act. See 20 CFR 404.1505, 404.1509, 404.1520 and 416.905, 416.909, 416.920. See also *Walton*, 535 U.S. at 217–22.

²⁷ See 20 CFR 404.1520(a)(4) and 416.920(a)(4).

²⁸ See 20 CFR 404.1545 and 416.945.

²⁹ See section 1614(a)(3)(C) of the Act. See also 20 CFR 416.906.

³⁰ See 20 CFR 416.924.

³¹ See 20 CFR 416.924(d).

³² See 20 CFR 416.924.

functionally equals the listings.³³ We will decide that the MDI(s) functionally equals the listings if it results in marked limitations in two domains of functioning, or an extreme limitation in one domain of functioning for a continuous 12-month period.³⁴ If the child's MDI(s) does not meet, medically equal, or functionally equal the listings, or does not meet the duration requirement, we will find the child is not disabled.

6. *How do we consider the duration requirement when the claimant has a new, severe MDI(s) in CDRs cases?*

In CDR cases, the beneficiary or recipient has already satisfied the duration requirement and established disability. As a result, we only consider the duration requirement when the impairment for which the claimant was originally found disabled has improved, and disability ended.

How we consider duration when evaluating a new severe MDI(s) depends on whether the new MDI(s) is disabling and, if so, when it became disabling. To be disabling, the new impairment(s) must be so severe as to prevent SGA.³⁵ If the previously established MDI(s) is no longer disabling but the new, severe MDI(s) is disabling, and if the new disabling MDI(s) begins in, or before, the month in which the previously established MDI(s) is no longer disabling,³⁶ we do not consider duration and will find that disability continues.³⁷ If, however, the claimant has a new disabling MDI(s) that begins after the month in which the last impairment(s) was no longer disabling, we consider the duration requirement and determine whether to establish a new period of disability using the rules for initial claims.

7. *What if we find that the claimant's MDI(s) meets the duration requirement based on an expectation of continued severity, but the claimant returned to SGA within 12 months?*

A claimant who recovers their ability to engage in SGA within 12 months is not disabled under the Act.³⁸ How we evaluate an actual return to work that is

SGA depends, in part, on whether we have already approved an award of benefits.

If we have not issued a final determination or decision that the individual was disabled and entitled to benefits, and we determine the individual returned to work within 12 months of the first date the individual's MDI(s) otherwise met the definition of disability, we deny the claim. If we issued a final determination or decision that the individual was disabled, and we later find that the individual has returned to SGA after an award of benefits, but within the 12-month period after onset, we do not reopen and reverse the determination or decision. This is because once disability payments begin, individuals might be entitled to a trial work period (Title II), or to continued Supplemental Security Income payments under section 1619(a) of the Act.³⁹

If we issued a final determination or decision that the individual was entitled to disability insurance benefits and we later determine the individual returned to SGA during the 5-month waiting period for Title II, we may reopen and revise the determination or decision to issue a denial. These individuals are not entitled to any disability benefit payments. If we later determine the return to work was an unsuccessful work attempt,⁴⁰ we may reopen and revise the denial to issue an allowance. However, we can only reopen the determination or decision within the time limitations under the rules of administrative finality.⁴¹

[FR Doc. 2023-24523 Filed 11-6-23; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice: 12251]

60-Day Notice of Proposed Information Collection: DS-157, Petition for Special Immigrant Classification for Afghan Special Immigrant Visa (SIV) Applicant

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this

notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to January 8, 2024.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering "Docket Number: -DOS-2023-0035" in the Search field. Then click the "Comment Now" button and complete the comment form.

- *Email:* PRA_BurdenComments@state.gov.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* DS-157, Petition for Special Immigrant Classification for Afghan SIV Applicant.

- *OMB Control Number:* 1405-0134.
- *Type of Request:* Extension of a currently approved collection.
- *Originating Office:* CA/VO.
- *Form Number:* DS-157.
- *Respondents:* Afghan Special Immigrant Visa (SIV) applicants.
- *Estimated Number of Respondents:* 15,000.
- *Estimated Number of Responses:* 15,000.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 15,000 hours.

- *Frequency:* Once per application.
- *Obligation to Respond:* Required to obtain or retain a benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

³³ See 20 CFR 416.924(d) and 416.926a.

³⁴ See 20 CFR 416.926a(d).

³⁵ Or, in the case of a child under age 18 receiving Supplemental Security Income payments, the new impairment(s) must be so severe as to result in marked and severe functional limitations. See 20 CFR 416.998.

³⁶ See 20 CFR 404.1594(g) and 416.994(b)(6), 416.994a(g), for how we determine the month in which the individual's last impairment(s) is no longer disabling.

³⁷ See 20 CFR 404.1598 and 416.998.

³⁸ See sections 216(i), 223(d), 1614(a) of the Act, 20 CFR 404.1505, 404.1509, 404.1520 and 416.905, 416.909, 416.920. See also *Walton*, 535 U.S. at 217-22.

³⁹ See 20 CFR 404.1592.

⁴⁰ See 20 CFR 404.1574(c) and 416.974(c).

⁴¹ See 20 CFR 404.988 and 416.1488.