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SOCIAL SECURITY ADMINISTRATION

Docket No. SSA-2012-0006

Social Security Ruling, SSR 13-2p.

Titles II and XVI: Evaluating Cases Involving Drug Addiction and Alcoholism (DAA)

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are giving notice of SSR 13-2p, in which we explain our policies for how we consider whether “drug addiction and alcoholism” (DAA) is material to our determination of disability in disability claims and continuing disability reviews. This SSR rescinds and replaces SSR 82-60, Titles II and XVI: Evaluation of Drug Addiction and Alcoholism. This SSR obsoletes EM 96-200.

EFFECTIVE DATE: (Insert date 30 days after the date of publication in the FEDERAL REGISTER.)

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Disability Programs, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-1020, or TTY 1-800-325-0778.

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

SSRs make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, special veterans benefits, and black lung benefits programs. SSRs may be based on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all of our components. 20 CFR 402.35(b)(1).

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

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security--Disability Insurance; 96.006 Supplemental Security Income.)

Dated: February 12, 2013.

Michael J. Astrue
Commissioner of Social Security.

POLICY INTERPRETATION RULINGTITLES II AND XVI: EVALUATING CASES INVOLVING DRUG ADDICTION AND ALCOHOLISM (DAA)

This Social Security Ruling (SSR) rescinds and replaces SSR 82-60: “Titles II and XVI: Evaluation of Drug Addiction and Alcoholism.”

PURPOSE: This SSR explains our policies for how we consider whether “drug addiction and alcoholism” (DAA) is a contributing factor material to our determination of disability in disability claims and continuing disability reviews.¹

CITATIONS: Sections 216(i), 223(d), 223(f), 1614(a), and 1614(c) of the Social Security Act, as amended; Regulations No. 4, subpart P, sections 404.1502, 404.1505, 404.1508, 404.1509, 404.1512, 404.1513, 404.1517, 404.1519a, 404.1520, 404.1521, 404.1523, 404.1527, 404.1528, 404.1530, 404.1535, 404.1560, 404.1594, and appendix 1; and Regulations No. 16, subpart I, sections 416.902, 416.905, 416.906, 416.908, 416.909, 416.912, 416.913, 416.917, 416.919a, 416.920, 416.921, 416.923, 416.924, 416.924a, 416.926a, 416.927, 416.928, 416.930, 416.935, 416.960, 416.987, 416.994, and 416.994a.

¹ For simplicity, we refer in this SSR only to initial adult claims for disability benefits under titles II and XVI of the Social Security Act, and to the steps of the sequential evaluation process we use to determine disability in those claims. 20 CFR 404.1520 and 416.920. The policy interpretations in this SSR apply to all other cases in which we must make determinations about disability, including claims of children (that is, people who have not attained age 18) who apply for benefits based on disability under title XVI of the Act, redeterminations of the disability of children who were receiving benefits under title XVI when they attained age 18, and continuing disability reviews of adults and children under titles II and XVI of the Act. 20 CFR 404.1594, 416.924, 416.987, 416.994, and 416.994a.

INTRODUCTION: In this SSR, we consolidate information from a variety of sources to explain our DAA policy. We include information from our regulations, training materials, and question-and-answer (Q&A) responses. We also base the SSR on information we obtained from individual medical and legal experts, the Substance Abuse and Mental Health Services Administration in the U.S. Department of Health and Human Services, and our adjudicative experience.

POLICY INTERPRETATION:

General

a. Sections 223(d)(2)(C) and 1614(a)(3)(J) of the Social Security Act (Act) provide that a claimant “shall not be considered to be disabled * * * if alcoholism or drug addiction would * * * be a contributing factor material to the Commissioner's determination that the individual is disabled.” When we adjudicate a claim for disability insurance benefits (DIB), Supplemental Security Income (SSI) payments based on disability, or concurrent disability claims include evidence from acceptable medical sources as defined in 20 CFR 404.1513 and 20 CFR 416.913 establishing that DAA is a medically determinable impairment(s) (MDI) and we determine that a claimant is disabled considering all of the claimant’s medically determinable impairments (MDIs), we must then determine whether the claimant would continue to be disabled if he or she stopped using drugs or alcohol; that is, we will determine whether DAA is “material” to

the finding that the claimant is disabled. 20 CFR 404.1535 and 416.935. See Question 2 for additional information.

b. The information that follows, presented in question and answer (Q&A) format with illustrative scenarios, provides specific detail and examples to explain our DAA policy. Question 1 specifies the MDIs we consider under our DAA policy. Different Q&As will apply during the adjudication of a specific claim based upon the evidence in that case. All adjudicators must provide sufficient information in their determination or decision that explains the rationale supporting their determination of the materiality of DAA so that a subsequent reviewer considering all of the evidence in the case record is able to understand the basis for the materiality finding and the determination of whether the claimant is disabled. Question 14 specifies what information adjudicators must include in a determination or decision that requires a finding of the materiality of DAA to the determination that the claimant is disabled.

List of Questions

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1. How do we define the term “DAA”?

a. Although the terms “drug addiction” and “alcoholism” are medically outdated, we continue to use the terms because they are used in the Act.²

i. With one exception—nicotine use disorders—we define the term DAA as Substance Use Disorders; that is, Substance Dependence or Substance Abuse as defined in the latest edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association.³ See Question 4. In general, the

² See sections 223(d)(2)(C) and 1614(a)(3)(J) of the Act.

³ American Psychiatric Association (APA), Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, (DSM-IV-TR), Washington, D.C. (2000). When we published this SSR, the APA used the term “dependence.” The APA was considering changing the term

DSM defines Substance Use Disorders as maladaptive patterns of substance use that lead to clinically significant impairment or distress.⁴

ii. There are two Substance-Induced Disorders that we consider under the definition of DAA because they may be long lasting or permanent. Substance-Induced Persisting Dementia and Substance-Induced Persisting Amnesic Disorder last beyond the usual duration of substance intoxication and withdrawal. Substance-Induced Persisting Dementia refers to the development of multiple cognitive deficits that include memory impairment and at least one of the following cognitive disturbances: aphasia, apraxia, agnosia, or a disturbance in executive functioning. To document this condition, there must be evidence from the medical history, physical examination, or laboratory findings showing that the deficits are due to the persisting effects of substance use. Substance-Induced Persisting Amnesic Disorder refers to a combination of multiple memory deficits that significantly impair social or occupational functioning and represent a significant decline from a previous level of functioning. To document this condition, the evidence must establish that the deficits are clearly due to the persisting effects of substance abuse.

b. Substance Use Disorders are diagnosed in part by the presence of maladaptive use of alcohol, illegal drugs, prescription medications, and toxic substances (such as inhalants)⁵. For this reason, DAA does not include:

“dependence” to “addiction” in the forthcoming DSM-V. For this SSR, there is no substantive difference between the two terms.

⁴ See DSM-IV-TR p. 197, Criteria for Substance Dependence and p. 199 for Substance Abuse.

- Fetal alcohol syndrome,
- Fetal cocaine exposure, or
- Addiction to, or use of, prescription medications taken as prescribed,

including methadone and narcotic pain medications.

A claimant's occasional maladaptive use or a history of occasional prior maladaptive use of alcohol or illegal drugs does not establish that the claimant has a medically determinable Substance Use Disorder. See Questions 4 and 8.

c. Although the DSM includes a category for nicotine-related disorders, including nicotine dependence, we will not make a determination regarding materiality based on these disorders.⁶

2. What is our DAA policy?

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 a claimant disabled if he or she stopped using drugs or alcohol.

⁵ We do not consider Caffeine-Induced Disorders under DAA. "Some individuals who drink large amounts of coffee display some aspects of dependence on caffeine and exhibit tolerance and perhaps withdrawal. However, the data are insufficient at this time to determine whether these symptoms are associated with clinically significant impairment that meets the criteria for Substance Dependence or Substance Abuse." DSM-IV-TR p. 231. Thus, it is not appropriate to make a determination of materiality because a claimant drinks coffee to excess and may have been diagnosed with a Caffeine-Induced Disorder. The DSM-IV-TR does not include diagnoses for Caffeine Dependence or Caffeine Abuse.

⁶We have further considered our policy in this area and have found no indication in the statutory language or the legislative history of the DAA provisions of the Act that Congress intended the DAA provisions to apply to people who use tobacco products.

a. DAA is not material to the determination that the claimant is under a disability if the claimant would still meet our definition of disability⁷ if he or she were not using drugs or alcohol. If DAA is not material, we find that the claimant is disabled.⁸

b. DAA is material to the determination of disability if the claimant would not meet our definition of disability if he or she were not using drugs or alcohol. If DAA is material, we find that the claimant is not disabled.

3. When do we make a DAA materiality determination?

a. Under the Act and our regulations, we make a DAA materiality determination only when:

i. We have medical evidence from an acceptable medical source establishing that a claimant has a Substance Use Disorder, and

ii. We find that the claimant is disabled considering all impairments, including the DAA.⁹

⁷See Section 223(d)(1) of the Act.

⁸ 20 CFR 404.1535 and 416.935.

⁹ Under title XVI, “blindness” is a separate category from “disability,” and section 1614(a)(3)(J) of the Act applies only to determinations of disability. For this reason, we do not consider the issue of materiality in cases of claimants with blindness under title XVI. 20 CFR 416.935(a).

b. We do not make a determination regarding materiality if a claimant has a history of DAA that is not relevant to the period under consideration.

4. How do we determine whether a claimant has DAA?

Subject to the exception regarding nicotine use disorders in Question 1 above, a claimant has DAA only if he or she has a medically determinable Substance Use Disorder. The DSM includes all medically determinable Substance Use Disorders; therefore, we do not require adjudicators to identify a specific DAA diagnosis in the DSM. We use the same rules for determining whether a claimant has a Substance Use Disorder as we use for any other medically determinable physical or mental impairment. See Question 8.

5. How do we determine materiality?

a. Burden of Proof. The claimant has the burden of proving disability throughout the sequential evaluation process. Our only burden is limited to producing evidence that work the claimant can do exists in the national economy at step 5 of the sequential evaluation process. See 20 CFR 404.1512, 404.1560, 416.912, and 416.960. When we apply the steps of the sequential evaluation a second time to determine whether the claimant would be disabled if he or she were not using drugs or alcohol, it is our longstanding policy that the claimant continues to have the burden of proving disability throughout the DAA materiality analysis. There does not have to be evidence from a

period of abstinence for the claimant to meet his or her burden of proving disability. See Question 9, section (d) (i).

b. DAA Evaluation Process. We describe various considerations that may apply when we decide whether we must consider the issue of materiality and, if so, whether DAA is material to the determination of disability. In this SSR, we address these considerations as a “DAA evaluation process” in a series of six steps. Although the steps are in a logical order from the simplest to the most complex cases, we do not require our adjudicators to follow them in the order we provide. For example, when DAA is the only impairment adjudicators can go directly to step three and deny the claim because DAA is material.

In the sections that follow, we provide more details about the DAA Evaluation Process.

1. Does the claimant have <u>DAA</u> ?	a. No—No <u>DAA</u> materiality determination necessary. b. Yes—Go to step 2.
2. Is the claimant disabled considering all impairments, including <u>DAA</u> ?	a. No—Do not determine <u>DAA</u> materiality. (Denial.) b. Yes—Go to step 3.
3. Is <u>DAA</u> the only impairment?	a. Yes— <u>DAA</u> material. (Denial.) b. No—Go to step 4.
4. Is the other impairment(s) disabling by itself while the claimant is dependent upon or abusing drugs or alcohol?	a. No— <u>DAA</u> material. (Denial.) b. Yes—Go to step 5.

5. Does the <u>DAA</u> cause or affect the claimant's medically determinable impairment(s)?	<p>a. No—<u>DAA</u> not material. (Allowance.)</p> <p>b. Yes, but the other impairment(s) is irreversible or could not improve to the point of nondisability—<u>DAA</u> not material. (Allowance.)</p> <p>c. Yes, and <u>DAA</u> could be material—Go to step 6.</p>
6. Would the other impairment(s) improve to the point of nondisability in the absence of <u>DAA</u> ?	<p>a. Yes—<u>DAA</u> material. (Denial.)</p> <p>b. No—<u>DAA</u> not material (Allowance.)</p>

The following are detailed explanations of each step.

a. Step 1: Does the claimant have DAA? If the evidence does not establish DAA, there can be no issue of DAA materiality. See Questions 3 and 8. Apply the appropriate sequential evaluation process only once to determine whether the claimant is disabled.

b. Step 2: Is the claimant disabled considering all of his or her impairments, including DAA? Apply the appropriate sequential evaluation process to determine whether the claimant is disabled considering all of his or her impairments, including DAA.¹⁰ If the claimant is not disabled, deny the claim.¹¹

¹⁰ 20 CFR 404.1520 and 416.920.

¹¹ For all initial claims under title II and claims of adults under title XVI, this means that the impairment(s) must prevent the claimant from doing any substantial gainful activity and meet the duration

c. Step 3: Is DAA the claimant's only impairment? Find that DAA is material to the determination of disability and deny the claim if the claimant's only MDI is a Substance Use Disorder.¹² As in all DAA materiality determinations, apply the appropriate sequential evaluation process twice. First, apply the sequential evaluation process to show how the claimant is disabled. Then, apply the sequential evaluation process a second time to document materiality and deny the claim.¹³

d. Step 4: Is the claimant's other MDI(s) disabling by itself while the claimant is dependent upon or abusing drugs or alcohol?

i. A second application of the sequential evaluation process may demonstrate that the claimant's other physical or mental impairment(s) is not sufficiently severe to establish disability by itself while the claimant is dependent upon or abusing drugs or alcohol. In this case, deny the claim because DAA is material. The claimant would not be disabled regardless of whether the other impairment(s) would improve if he or she stopped using the substance(s) he or she is dependent upon or abusing. For example:

requirement; that is, the impairment(s) must be expected to result in death or must have lasted or be expected to last for a continuous period of at least 12 months.

¹² Adjudicators should be cautious when making this finding because there is a high prevalence of physical and co-occurring mental impairments associated with long-term drug and alcohol use. If there is any indication in the record that the claimant has another physical or mental impairment(s), it is essential to request evidence regarding the other impairment(s). If there is no evidence of another physical or mental impairment(s), however, we will not develop for the mere possibility that the claimant might have another impairment(s).

¹³ We consider two issues at step 2: whether the claimant has a medically determinable impairment and whether any medical determinable impairment the claimant has is "severe" and meets the duration requirement. See 20 CFR 404.1520(a)(4)(ii) and 416.920(a)(4)(ii); SSR 96-4p.

- The other impairment(s) may not be severe while the claimant is still dependent upon or abusing the substance(s).¹⁴ For example, if a claimant has osteoarthritis of the hip with minimal changes on imaging along with DAA, DAA is generally material to the determination of disability. We would generally deny the claimant at step 2 of the sequential evaluation process based on osteoarthritis of the hip with minimal changes on imaging alone, regardless of whether the osteoarthritis would improve absent the DAA, because it would not significantly limit the claimant's ability to do basic work activities.¹⁵

- The other impairment(s) may be severe but not disabling by itself. For example, a claimant may have a severe back impairment that does not meet or medically equal a listing and does not preclude a claimant from doing past relevant work. We would deny the claim at step 4 of the sequential evaluation process based on the back impairment alone because DAA is material.

ii. When the claimant's other impairment(s) is not disabling by itself, adjudicators must still apply the sequential evaluation twice, first to show that the claimant is disabled considering all MDIs, including DAA, and a second time to show that the claimant would not be disabled absent DAA. However, we do not require adjudicators to determine whether the other impairment would improve if the claimant stopped using drugs or

¹⁴ See 20 CFR 404.1520(c), 404.1521, 416.920(c), and 416.921; SSR 85-28.

¹⁵ In some cases, people use drugs or alcohol to lessen the symptoms of their other impairment(s). Adjudicators should be alert to any evidence in the case record that suggests that a claimant's symptoms may worsen in the absence of drugs or alcohol at this or any other step in this section. We do not require adjudicators to seek evidence of this possibility, but adjudicators should follow up when there is an indication in the case record that the claimant's symptoms worsen in the absence of substance use.

alcohol he or she is dependent upon or abusing because DAA materiality is established without this additional analysis.

e. Step 5: Does the DAA cause or affect the claimant's other MDI(s)?

i. If the claimant has another physical or mental impairment(s) that results in disability¹⁶ and DAA is not causing or does not affect the other impairment(s) to the point where the other impairment(s) could be found nondisabling in the absence of DAA, DAA is not material to the determination of disability. The claim should be allowed. There are three basic scenarios:

- The claimant has a disabling impairment independent of DAA; for example, a degenerative neurological disease, a hereditary kidney disease that requires chronic dialysis, or intellectual disability (mental retardation) since birth. See 20CFR 404.1535(b)(2)(ii) and 416.935(b)(2)(ii).
- The claimant acquired a separate disabling impairment(s) while using a substance(s). One example is the claimant has quadriplegia because of an accident while driving under the influence of alcohol. A second example is the claimant acquired listing-level human immunodeficiency virus (HIV) infection from sharing a needle for intravenous drug use. In each example, the claimant acquired the impairment because of

¹⁶ Inherent in this finding is that the other impairment(s) meets the duration requirement in addition to preventing the claimant from working.

an activity related to substance use, but the Substance Use Disorder did not medically cause or exacerbate the impairment.

- The claimant's DAA medically caused the other disabling impairment(s) but the other impairment(s) is irreversible or could not improve to the point of nondisability in the absence of DAA. Examples of such impairments could include peripheral neuropathy, permanent encephalopathy, cirrhosis of the liver, Substance-Induced Persisting Dementia, and Substance-Induced Persisting Amnestic Disorder that result from long-term alcohol or drug use.

ii. As in any determination regarding materiality, adjudicators must apply the sequential evaluation process twice even when the other impairment(s) is irreversible or could not improve to the point of nondisability.

f. Step 6: Would the claimant's other impairment(s) improve to the point of nondisability in the absence of DAA?

i. This step includes some of the most complex cases for the DAA materiality analysis. At this point, we have determined that:

- The claimant has DAA and at least one other medically determinable physical or mental impairment,
- The other impairment(s) could be disabling by itself, and
- The other impairment(s) might improve to the point of nondisability if the claimant were to stop using drugs or alcohol.

ii. At this step, we must project the severity of the claimant's other impairment(s) in the absence of DAA. We make this finding based on the evidence in the claimant's case record. In some cases, we may also consider medical judgments about the likely remaining medical findings and functional limitations the claimant would have in the absence of DAA. How we make this finding differs somewhat depending on whether the claimant's other impairment(s) is physical or mental. See Questions 6 and 7, respectively.

iii. DAA is material if the claimant's other impairment(s) would improve to the point that the claimant would not be disabled in the absence of DAA. On these findings, we deny the claim. However, if the claimant's other impairment(s) would not improve to the point that the claimant would not be disabled in the absence of DAA, we allow the claim. In this instance, the DAA is not material to the determination of disability.

6. What do we do if the claimant's other physical impairment(s) improve in the absence of DAA?

a. DAA can cause or exacerbate the effects of physical impairments. In some cases, the impairments and their effects may resolve or improve in the absence of DAA.

b. Usually, evidence from a period of abstinence¹⁷ is the best evidence for determining whether a physical impairment(s) would improve to the point of

¹⁷ In this SSR, we use the term period of abstinence to describe a period in which a claimant who has, or had, been dependent upon or abusing drugs or alcohol and stopped their use.

nondisability. The period of abstinence should be relevant to the period we are considering in connection with the disability claim.¹⁸ This evidence need not always come from an acceptable medical source. If we are evaluating whether a claimant's work-related functioning would improve, we may rely on evidence from "other" medical sources, such as nurse practitioners, and other sources, such as family members, who are familiar with how the claimant has functioned during a period of abstinence. See Question 8.

c. We expect some physical impairments to improve with abstinence from drugs or alcohol.

i. Examples of such impairments that drugs or alcohol may cause or exacerbate include alcoholic hepatitis, fatty liver, and alcoholic cardiomyopathy.

ii. When a claimant has a physical impairment(s) that is likely to improve with abstinence, we may consider medical opinions from treating or nontreating sources about the likely effects that abstinence from drugs or alcohol would have on the impairment(s).¹⁹ Treating sources, especially specialists, may have the best understanding

¹⁸ The period of abstinence does not have to occur during the period we are considering in connection with the claim as long as it is medically relevant to the period we are considering. For example, a claimant for title XVI payments has a permanent physical impairment(s) that in some people improves when they stop abusing alcohol. However, there is evidence from a year before the date of the application showing that when this claimant stopped drinking, the impairment(s) improved only minimally. In this case, we may conclude that the impairment(s) would not improve to the point of nondisability in the absence of DAA. See also Question 9.

¹⁹ The finding about materiality is an opinion on an issue reserved to the Commissioner under 20 CFR 404.1527(e) and 416.927(e). Therefore, we will not ask a treating source, a CE provider, a medical expert, or any other source for an opinion about whether DAA is material. We will instead ask for medical opinions about the nature, severity, and functional effects of a claimant's impairment(s). In cases involving

of the specific clinical course of a claimant's DAA and other impairment(s), as well as whether, and the extent to which the other impairment(s) would likely improve absent DAA. If the treating source does not give supporting evidence for his or her opinion, the adjudicator should consider contacting the treating source before considering purchasing a consultative exam (CE). If we purchase a CE to evaluate the physical impairment(s), we may ask the CE provider for an opinion about whether and the extent to which the impairment(s) would be expected to improve. We will not purchase a CE solely to obtain such an opinion. In any case, we will not adopt a medical opinion about whether the impairment(s) would improve unless the medical source provides some support for the opinion. The opinion may be supported by the medical source's knowledge and expertise.

iii. At the State agency levels of the administrative review process, a State agency medical or psychological consultant (MC/PC) may use his or her knowledge and expertise to project improvement of a physical impairment(s). At the hearing and appeals levels, Administrative Law Judges (ALJs) and the Appeals Council (when the Appeals Council makes a decision) must consider such MC/PC findings as medical opinion evidence and may base their findings about materiality on these opinions. ALJs and the Appeals Council may also base their findings on testimony from medical experts. As we provide in our regulations on considering nonexamining source opinion evidence, ALJs and the Appeals Council will give weight to these opinions to the extent that they are

physical impairments, we may ask for medical opinions that project the nature, severity, and functional effects if the claimant were to stop using drugs or alcohol. In cases involving mental impairment(s) we will not ask for projections, as we explain in Question 7.

supported and consistent with other relevant evidence in the case record.²⁰ Medical source knowledge and expertise are factors that may support the finding.

iv. Some claimants who have been diagnosed with a Substance Use Disorder do not have a period of abstinence. If a claimant does not have a period of abstinence, an acceptable medical source can provide a medical opinion regarding whether the claimant's impairments would be severely limiting even if the claimant stopped abusing drugs or alcohol. We consider the opinion of an acceptable medical source sufficient evidence regarding materiality as long as the acceptable medical source provides support for their opinion. The determination or decision must include information supporting the finding. See Question 14.

v. Adjudicators should generally not rely on a medical opinion to find that DAA is material if the case record contains credible evidence from an acceptable medical source from a relevant period of abstinence indicating that the impairment(s) would still be disabling in the absence of DAA. In cases in which it is appropriate to rely on a medical opinion to find that DAA is material despite evidence indicating the impairment(s) may not improve, adjudicators must provide an appropriate rationale to resolve the apparent conflict in the evidence.

d. We will find that DAA is not material to the determination of disability and allow the claim if the record is fully developed and the evidence (including medical

²⁰ See 20 CFR 404.1527(f) and 416.927(f); SSR 96-6p.

opinion evidence) does not establish that the claimant's physical impairment(s) would improve to the point of nondisability in the absence of DAA.

7. What do we do if the claimant's co-occurring mental disorder(s) improve in the absence of DAA?

a. Many people with DAA have co-occurring mental disorders; that is, a mental disorder(s) diagnosed by an acceptable medical source in addition to their DAA. We do not know of any research data that we can use to predict reliably that any given claimant's co-occurring mental disorder would improve, or the extent to which it would improve, if the claimant were to stop using drugs or alcohol.

b. To support a finding that DAA is material, we must have evidence in the case record that establishes that a claimant with a co-occurring mental disorder(s) would not be disabled in the absence of DAA. Unlike cases involving physical impairments, we do not permit adjudicators to rely exclusively on medical expertise and the nature of a claimant's mental disorder.

c. We may purchase a CE in a case involving a co-occurring mental disorder(s). We will purchase CEs primarily to help establish whether a claimant who has no treating source records has a mental disorder(s) in addition to DAA. See Question 8. We will provide a copy of this evidence, or a summary, to the CE provider.

d. We will find that DAA is not material to the determination of disability and allow the claim if the record is fully developed and the evidence does not establish that the claimant's co-occurring mental disorder(s) would improve to the point of nondisability in the absence of DAA.

8. What evidence do we need in cases involving DAA?

a. General.

We follow our usual case development rules and procedures for any impairment in cases in which DAA materiality is, or may be, an issue²¹ We will ask for evidence regarding DAA in any case in which there is an allegation or other indication that the claimant has a Substance Use Disorder, such as evidence that a claimant is currently receiving treatment for a Substance Use Disorder or evidence of multiple emergency department admissions due to the effects of substance(s) use. If we do not initially receive sufficient evidence to evaluate DAA, we may or may not continue to develop evidence of DAA, as follows:

i. We will not continue to develop evidence of DAA if the evidence we obtain about a claimant's other impairment(s) is complete and shows that the claimant is not disabled. We will not complete development of DAA only to determine whether the

²¹ See 20 CFR 404.1512, 404.1513, 416.912, and 416.913.

claimant is disabled considering DAA because the additional evidence could only change the reason for our denial.

ii. We will not continue to develop evidence of DAA if the claimant is disabled by another impairment(s) and DAA could not be material to the determination of disability. For example, if the claimant has a disabling impairment(s) that is unrelated to, and not exacerbated by DAA, or that is irreversible, we would find that DAA is not material to the determination of disability even if we completed the development.

iii. We will attempt to complete development of DAA in all other cases, including cases in which DAA is a claimant's only alleged impairment. We generally require our adjudicators to make every reasonable effort to develop a complete medical history. Moreover, many claimants with DAA have other physical and mental impairments, and complete development ensures that we do not overlook any impairments.

b. Establishing the existence of DAA.

i. As for any medically determinable impairment, we must have objective medical evidence—that is, signs, symptoms, and laboratory findings—from an acceptable medical source that supports a finding that a claimant has DAA.²² This requirement can be satisfied when there are no overt physical signs or laboratory findings with clinical findings reported by a psychiatrist, psychologist, or other appropriate acceptable medical

²² See 20 CFR 404.1502, 404.1508, 404.1513(a), and 404.928, and 20 CFR 416.902, 416.908, 416.913(a), and 416.928.

source based on examination of the claimant. The acceptable medical source may also consider any records or other information (for example, from a third party) he or she has available, but we must still have the source's own clinical or laboratory findings.

ii. Evidence that shows only that the claimant uses drugs or alcohol does not in itself establish the existence of a medically determinable Substance Use Disorder. The following are examples of evidence that by itself does not establish DAA:

- Self-reported drug or alcohol use.
- An arrest for “driving under the influence”.
- A third-party report.

Although these examples may suggest that a claimant has DAA—and may suggest the need to develop medical evidence about DAA—they are not objective medical evidence provided by an acceptable medical source. In addition, even when we have objective medical evidence, we must also have evidence that establishes a maladaptive pattern of substance use and the other requirements for diagnosis of a Substance Use Disorder(s) in the DSM. This evidence must come from an acceptable medical source.

c. Other evidence.

i. Many claimants with Substance Use Disorders receive care from “other” non-medical and medical sources that are not acceptable medical sources. Evidence from these sources can be helpful to the adjudicator in determining the severity of DAA and

whether DAA is material to the finding of disability.²³ Examples of “other” nonmedical sources include, but are not limited to: Non-clinical social workers, caseworkers, vocational rehabilitation specialists, family members, school personnel, clergy, friends, licensed chemical dependency practitioners, and the claimant. Examples of “other” medical sources include but are not limited to: nurse practitioners, physicians’ assistants and therapists.

ii. When we have information from “other” sources, we may consider it together with objective medical findings from a treating or nontreating acceptable medical source to document that a claimant has DAA. Information from “other” sources can describe a claimant’s functioning over time and can also be especially helpful in documenting the severity of DAA because it supplements the medical evidence of record. “Other” source opinions can assist in our determination whether DAA is material to a finding of disability because it can document how well the claimant is performing activities of daily living in the presence of a comorbid impairment. In many cases, evidence from “other” sources may be the most important information in the case record for these documentation issues.²⁴

d. Consultative examinations.

i. We may purchase a CE if there is no existing medical evidence or the evidence as a whole, both medical and nonmedical, is insufficient for us to make a determination

²³ 20 CFR 404 1513(d)(1) and 416.913d(1) and 20 CFR 1513(d)(4) and 416.913(d)(4)

²⁴ See SSR 06-3p.

or decision. The type and number of CEs we purchase will depend on the claimant's allegations and the other information in the case record. For instance, claimants who have a history of multiple emergency department visits for mental symptoms are often diagnosed with Substance-Induced Disorders. Some receive a Substance Dependence or Substance Abuse diagnosis. Many of these individuals—especially those who do not have an ongoing treatment relationship with a medical source, as is frequently the case with homeless claimants—may have undiagnosed co-occurring mental disorders. We may purchase CEs to help us determine whether such claimants have co-occurring mental disorder(s). Whenever possible, we will try to purchase CEs from individuals who specialize in treating and examining people who have Substance Use Disorders or dual diagnoses of Substance Use Disorders and co-occurring mental disorders. See Questions 6 and 7 for more specific information about purchasing CEs for physical and mental impairments.

ii. We will not purchase drug or alcohol testing. A single drug or alcohol test is not sufficient to establish DAA as a medically determinable impairment, nor does it provide pertinent information that can help us determine whether DAA is material to a finding of disability.²⁵

9. How do we consider periods of abstinence?

²⁵ We will not purchase drug screening or testing to determine the validity of psychological testing. The examining psychologist or other professional who performs the test should be able to provide an opinion on the validity of the psychological test findings without drug testing.

a. Each substance of abuse, including alcohol, has different intoxication and long-term physiologic effects. In addition, there is a wide variation in the duration and intensity of substance use among claimants with DAA, and there are wide variations in the interactions of DAA with different types of physical and mental disorders. For these reasons, we are unable to provide exact guidance on the length and number of periods of abstinence to demonstrate whether DAA is material in every case. In some cases, the acute and toxic effects of substance use or abuse may subside in a matter of weeks, while in others it may take months or even longer to subside. For some claimants, we will be able to make a judgment about materiality based on evidence from a single, continuous period of abstinence, while in others we may need to consider more than one period.²⁶

b. In all cases in which we must consider periods of abstinence, the claimant should be abstinent long enough to allow the acute effects of drug or alcohol use to abate. Especially in cases involving co-occurring mental disorders, the documentation of a period of abstinence should provide information about what, if any, medical findings and impairment-related limitations remained after the acute effects of drug and alcohol use abated. Adjudicators may draw inferences from such information based on the length of the period(s), how recently the period(s) occurred, and whether the severity of the co-occurring impairment(s) increased after the period(s) of abstinence ended. To find that DAA is material, we must have evidence in the case record demonstrating that any remaining limitations were not disabling during the period.²⁷

²⁶ If, however, a claimant is abstinent and remains disabled throughout a continuous period of at least 12 months, DAA is not material even if the claimant's impairment(s) is gradually improving.

²⁷ The DSM-IV-TR provides "specifiers" describing the length and nature of remissions. For example, the specifier for a sustained full remission applies if the claimant has not evidenced any of the

In the sections that follow, we provide more detail about these general principles.

c. In addition to the length of the period, we must consider when the period of abstinence occurred.

d. We may also consider the circumstances under which a period(s) of abstinence takes place, especially in the case of a claimant with a co-occurring mental disorder(s).

i. Improvement in a co-occurring mental disorder in a highly structured treatment setting, such as a hospital or substance abuse rehabilitation center, may be due at least in part to treatment for the co-occurring mental disorder, not (or not entirely) the cessation of substance use. We may find that DAA is not material depending on the extent to which the treatment for the co-occurring mental disorder improves the claimant's signs and symptoms. If the evidence in the case record does not demonstrate the separate effects of the treatment for DAA and for the co-occurring mental disorder(s), we will find that DAA is not material, as we explain in Question 7.²⁸

ii. A co-occurring mental disorder may appear to improve because of the structure and support provided in a highly structured treatment setting. As for any mental disorder, we

criteria for dependence or abuse at any time for at least 12 months. We do not require that a period of abstinence satisfy the criteria for sustained full remission or any of the other specifiers in the DSM.

²⁸ At the hearings and appeals levels of the administrative review process, ALJs and the Appeals Council may seek assistance from medical experts in interpreting the medical evidence regarding the separate effects of treatment for DAA and a co-occurring mental disorder(s).

may find that a claimant's co-occurring mental disorder(s) is still disabling even if increased support or a highly structured setting reduce the overt symptoms and signs of the disorder.²⁹

iii. Given the foregoing principles, a single hospitalization or other inpatient intervention is not sufficient to establish that DAA is material when there is evidence that a claimant has a disabling co-occurring mental disorder(s). We need evidence from outside of such highly structured treatment settings demonstrating that the claimant's co-occurring mental disorder(s) has improved, or would improve, with abstinence.³⁰ In addition, a record of multiple hospitalizations, emergency department visits, or other treatment for the co-occurring mental disorder—with or without treatment for DAA—is an indication that DAA may not be material even if the claimant is discharged in improved condition after each intervention.

10. How do we evaluate a claimant's credibility in cases involving DAA?

We do not have special rules for evaluating a claimant's credibility in cases involving DAA. Adjudicators must not presume that all claimants with DAA are inherently less credible than other claimants. We will apply our policy in SSR 96-7p and our regulations as in any other case, considering the facts of each case. In addition, adjudicators must consider a claimant's co-occurring mental disorder(s) when they evaluate the credibility of the claimant's allegations.

²⁹ See, for example, section 12.00F in the mental disorders listings for adults, 20 CFR part 404, subpart P, appendix 1.

³⁰ The symptoms and signs of a co-occurring mental disorder or even symptoms of some physical impairments will not necessarily abate with abstinence. Sometimes, withdrawal of the substance(s) may result in a worsening of the symptoms and signs attributable to the other impairment(s); for example, increased anxiety or pain.

11. How do we establish onset in DAA cases?

We do not have special rules for establishing onset in DAA cases. In general, disability onset is the earliest date on which the evidence shows that the claimant became disabled due to a medically determinable impairment and that DAA was not material.

12. Can failure to follow prescribed treatment be an issue in DAA cases?

Yes, but it will rarely be necessary to consider the issue, and we will apply the policy only to a claimant's other physical or mental impairment(s), not the DAA.

a. The requirement to determine DAA materiality is similar to our policy on failure to follow prescribed treatment. Like that policy, it considers whether a claimant would be disabled if DAA improved. However, the claimant does not need to have been prescribed treatment for the DAA or to follow it.³¹ Therefore:

- When we find that DAA is material to our determination of disability, we do not consider whether a treating source has prescribed treatment for the DAA that is clearly expected to restore the claimant's ability to work. We have already determined

³¹ See SSR 82-59. Our rules provide in part that, for failure to follow prescribed treatment to apply, the claimant must be "disabled" and a treating source must have prescribed treatment that is "clearly expected" to restore the claimant's capacity to do substantial gainful activity. The claimant must also not have good cause for failing to follow the prescribed treatment.

that the claimant is not disabled because DAA is material, and we consider the issue of failure to follow prescribed treatment only when we find that a claimant is disabled.

- A finding that DAA is not material also implies that there is no treatment for the DAA that is “clearly expected” to restore the claimant’s ability to work since the claimant would still be disabled in the absence of DAA. Moreover, we know of no treatments for DAA that are so sufficiently and uniformly effective that they could satisfy our requirement that the prescribed treatment be clearly expected to restore the ability to work.

b. There are cases in which we can deny a claim for failure to follow prescribed treatment for an impairment(s) other than the DAA. In a case in which a claimant has both DAA and at least one other impairment, we may determine that:

- DAA is not material to our determination of disability; that is the claimant would still be disabled in the absence of DAA, but

- The claimant would not be disabled by his or her other impairment(s) if he or she followed treatment prescribed by a treating source for that impairment(s) that is clearly expected to restore the ability to work. The claimant must also not have good cause for failing to follow the treatment.

The prescribed treatment in this case must be treatment that is specifically for the other impairment(s), not for the DAA, even if the treatment might also have beneficial effects on the DAA. For example, we cannot find that a claimant has failed to follow prescribed treatment for liver disease based on a failure to follow treatment prescribed for alcohol dependence. If the cessation of drinking would clearly be expected to improve the claimant's functioning to the point that he or she is not disabled, we would find that DAA is material to the determination of disability and deny the claim for that reason.

13. Who is responsible for determining materiality?

The following adjudicators are responsible for determining materiality:

a. At the initial and reconsideration levels of the administrative review process (except in disability hearings), a State agency disability examiner makes the finding whether DAA is material to the determination of disability. A State agency MC/PC is responsible for determining the medical aspects of the DAA analysis, such as what limitations a claimant would have in the absence of DAA.

b. In disability hearings conducted by a disability hearing officer at the reconsideration level, the disability hearing officer determines whether DAA is material to the determination of disability.

c. At the ALJ and Appeals Council levels (when the Appeals Council makes a decision), the ALJ or Appeals Council determines whether DAA is material to the determination of disability.

14. What explanations does the determination or decision need to contain?

a. Adjudicators must provide sufficient information so that a subsequent reviewer considering all of the evidence in the case record can understand the reasons for the following findings whenever DAA materiality is an issue:

- The finding that the claimant has DAA;
- The finding that the claimant is disabled at step 3 or step 5 of the sequential evaluation process considering all of his or her impairments, including DAA.
- The finding that the claimant would still be disabled at step 3 or 5 of the sequential evaluation process in the absence of DAA, or the finding that the claimant would not be disabled at step 2, 4, or 5 of the sequential evaluation process in the absence of DAA.

A single statement that DAA is or is not material to the determination of disability by an adjudicator is not sufficient.

b. As we have already indicated in answering other questions, an adjudicator is not always required to address every issue related to materiality in detail. For example, an adjudicator need not determine what a claimant's remaining limitations would be absent

DAA if the claimant's other impairment(s) does not prevent the claimant from doing past relevant work even with DAA. See Question 5.

c. Disability hearing officers, ALJs, and the Appeals Council (when the Appeals Council makes a decision) must provide their rationales in their determinations and decisions. State agency adjudicators may provide explanations in their determinations or on other appropriate documents, such as residual functional capacity assessment forms.

15. How should adjudicators consider Federal district and circuit court decisions about DAA?

Our policies for considering Federal court decisions are set out in SSR 96-1p and 20 CFR 404.1585 and 416.985.

a. General. We require adjudicators at all levels of administrative review to follow agency policy, as set out in the Commissioner's regulations, SSRs, Social Security Acquiescence Rulings (ARs), and other instructions, such as the Program Operations Manual System (POMS), Emergency Messages, and the Hearings, Appeals and Litigation Law manual (HALLEX). Under sections 205(a) and (b) and 1631(c) and (d) of the Act, the Commissioner has the power and authority to make rules and regulations and to establish procedures, not inconsistent with the Act, which are necessary or appropriate to carry out the provisions of the Act. The Commissioner also has the power and authority to make findings of fact and decisions as to the rights of any individual

applying for payment under the Act. Because of the Commissioner's delegated authority to implement the provisions of the Act, we may, from time to time, issue instructions that explain the agency's policies, regulations, rules, or procedures. All adjudicators must follow our instructions.

b. District court decisions. Under our longstanding policy, when a district court decision conflicts with our interpretation of the Act or our regulations, adjudicators must apply our nationwide policy when they adjudicate other claims within that district court's jurisdiction unless the court directs otherwise, such as in a class action.³²

c. Circuit courts. If we determine that a circuit court's holding conflicts with our interpretation of the Act or our regulations, we will issue an AR explaining the court's holding, how it differs from our national policy, how adjudicators must apply the holding, and the situations in which the AR applies. Unless and until we issue an AR, adjudicators must follow our nationwide policy in adjudicating other claims within the circuit court's jurisdiction.

EFFECTIVE DATE: This SSR is effective on (insert date 30 days after publication in the Federal Register).

³² See SSR 96-1p. In a class action decided by a district court, we will issue instructions to adjudicators on how to apply the court's decision. Even in this circumstance, adjudicators must not interpret the decision for themselves because their interpretation may conflict with the agency's interpretation.

CROSS REFERENCES: SSR 82-59, “Titles II and XVI: Failure To Follow Prescribed Treatment”; SSR 85-28, “Titles II and XVI: Medical Impairments That Are Not Severe”; SSR 96-1p, Application by the Social Security Administration (SSA) of Federal Circuit Court and District Court Decisions; SSR 96-4p, Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations; SSR 96-6p, Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence; SSR 96-7p, “Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements”; SSR 06-3p: Titles II and XVI: Considering Opinions and Other Evidence From Sources Who Are Not “Acceptable Medical Sources” in Disability Claims; Considering Decisions on Disability by Other Governmental and Nongovernmental Agencies; and Program Operations Manual System (POMS) DI 23010.005, DI 24505.001, DI 24505.005, DI 24515.013, DI 24515.065, DI 24515.066, DI 26515.001, DI 28005.035-.050, DI 32701.001, DI 90070.050.