

## SOAR Dialogue Highlights

3/21/13

Attendees: Emily Carmody, TJ Reynolds-Emwanta , Rose Fisher, Donna Taylor, Marketa Gray, Daphne Drew, Aundry Freeman, Charlene Powell, Tracy Miller, Chase Arredondo, Nitiki Kilgore, Joyce Allen, Elizabeth McDermott, LaTonya Haizlip

### Introductions

- Emily Carmody- Closing in on SOAR outcomes goals for the 1<sup>st</sup> Quarter, if you have SOAR Outcome Reports please send them
- TJ Reynolds-Emwanta- Winston-Salem is having an implementing SOAR in W-S training on April 24<sup>th</sup> that we are excited, 1 approval for the month
- Donna Taylor- will be attending SOAR training next week
- Rose Fisher, Marketa Gray, LaTonya Haizlip - no updates
- Daphne Drew- still working on a ton of referrals, working with probation and parole to get information
- Aundry Freeman- Have a couple of outcomes to send, waiting on information about payments
- Charlene Powell- No updates
- Tracy Miller- No updates so far
- Chase Arredondo- Got two approvals this month, talk about getting another SOAR coordinator with RHA
- Nitiki Kilgore- Two approvals this month
- Joyce Allen- No updates at this time
- Elizabeth McDermott- Two approvals this week, medical student is now working with Liz to help her with the Medical Summary Reports

### Review of Recently SSA Drug Addiction & Alcoholism (DAA) Document

On this month's SOAR Dialogue Call, the group reviewed a recently release document from SSA clarifying the DAA policy. Please refer to this document for the discussion outline below:

<https://s3.amazonaws.com/public-inspection.federalregister.gov/2013-03751.pdf>

- Page 1-5: Explanation for the Social Security Ruling
  - P. 4-5- citation of the actual DAA policy from the Social Security Act
- Page 6-8: What is DAA?
  - SSA defines DAA as substance use disorders which includes:
    - All Substance Dependence and Substance Abuse diagnoses listed in the DSM IV
    - Two Substance Induced Disorders-
      - Substance Induced Persisting Dementia
      - Substance Induced Persisting Amnestic Disorder
  - SSA does not consider DAA
    - Fetal alcohol syndrome and fetal cocaine exposure

- Addiction to or use of prescribed medication (including pain medications and Methadone)
    - Occasional drug and alcohol use
    - Nicotine addiction
- Page 8-9: What is the DAA policy?
  - SSA defines the terms “not material” and “material”
    - Not material- claimant would be disabled if not using drugs and alcohol (Approval)
    - Material- claimant would not be disabled if not using drugs and alcohol (Denial)
- Page 9-10: When does SSA make a determination about DAA?
  - SSA only makes a DAA determination when:
    - Medical evidence that the claimant has a Substance Use Disorder
    - Client is determined to be disabled considering all impairments including the Substance Use Disorder
  - SSA does not make a DAA determination
    - If the claimant’s history of addiction and alcoholism was not during the period under consideration for the disability claim.
- Page 10: How does SSA determine if the claimant has DAA?
  - Claimant only has DAA if they have a medically diagnosed Substance Use Disorder
  - However, an exact diagnosis is not necessary for SSA to determine that someone has DAA.
- Page 10-17: The Sequential Evaluation that SSA uses to determine materiality of DAA
  - SSA puts every case through a 5 step Sequential Evaluation (as outlined in Module V of your SOAR binder)
  - If a claimant has DAA, they are put through a second sequential evaluation outlined in this section.
  - P. 10- Burden of Proof
    - It is the claimant’s burden to prove that they have a disability throughout the DAA process.
    - It is the responsibility of the SOAR caseworker and claimant to provide SSA/DDS with accurate information about DAA and whether it is material to the disabling condition.
  - P. 11-12- Step by Step Outline of the Process
    - The outline is set up from the simplest to the most complex cases
    - Step 1: simply, does the claimant have DAA
      - Yes- go to Step 2
      - No- no need to go through the process because a DAA decision is not necessary
    - Step 2: Considering all impairments (physical, mental health and substance use) is the claimant disabled according to SSA’s definition?
      - Yes- go to Step 3

- No- Then the case is Denied because the claimant isn't disabled.
  - Step 3: Is the Substance Use Disorder the only medically diagnosed impairment?
    - Yes- Then the DAA is material and the case is Denied.
    - No- Got to Step 4.
  - Step 4: While the claimant is still using drugs and alcohol, do the other diagnosed impairment(s) (physical and/or mental health) by itself meet the requirements to be disabling (affect functioning, meet or equal a listing)?
    - Yes- Go to Step 5.
    - No- DAA is material and the case is Denied.
  - Step 5: Does the DAA cause or affect the other impairment (s) (physical and/or mental health)?
    - Yes (two options)-
      - BUT, the other impairment(s) is irreversible and/or could not improve without drugs and alcohol- Approved. OR
      - AND, DAA could be material- Go to Step 6.
    - No- DAA is not material- Approved.
  - Step 6: Would the other impairments improve to the point that the claimant would not be disabled if they stopped using drugs and alcohol (most complex decision)?
    - Yes- DAA is material- Denied
    - No- DAA is not material- Approved
    - SSA recognizes that this stage is complex.
    - SSA states that this decision is based on the evidence provided to DDS/SSA
    - In some cases they rely on medical judgments from doctors to make this decision.
    - How they make this decision is different for physical and mental health impairments (explained in next two sections).
- P. 12-17- Offers detailed explanations of the DAA Sequential Evaluation described above.
- Page 17-21- How SSA makes the Step 6 determination for physical impairments
  - SSA recognizes that using drugs and alcohol can cause/exacerbate the effects of physical impairments that could resolve when people stop using drugs and alcohol.
  - SSA states that periods of abstinence relevant to the time they are looking at for evaluating the physical impairment provides some of the best evidence.
    - Information about these abstinence periods and the claimant's functioning does not have to come from a doctor.
    - Other medical sources (PA, NP, etc.) and other sources (family, etc.) can provide this information to SSA.

- If the claimant has a physical impairment that is likely to improve without drugs and alcohol, SSA may consider opinions from treating doctors (including specialists) that have more information specific to the claimant's impairment.
  - The opinion has to include medical support backing it up, including the knowledge and expertise of the treating doctor.
  - SSA will not order a CE just to get this kind of opinion.
- DDS physicians can provide a medical opinion about DAA based on their knowledge and expertise.
- ALJ hearings can use medical experts for these medical opinions as well.
- If there are no periods of abstinence,
  - A doctor can provide a medical opinion regarding the claimant's limitations without drugs and alcohol.
  - SSA considers this opinion sufficient as long as the doctor provides support for their opinion.
  - VERY IMPORTANT FOR SOAR CASEWORKERS: Medical Summary Reports that provide this information and are signed by a treating doctor would be sufficient evidence for SSA.
- DDS Examiners and ALJs should not rely on a medical opinion that DAA is material if there is medical evidence to show that DAA is not material and if they do, they have to provide the rationale for making this decision.
- Page 21-22: How SSA makes the Step 6 determination for mental health impairments
  - SSA recognizes that there is no reliable research that SSA can use to predict that a claimant's mental health condition would improve without drugs and alcohol.
  - Because of this, in order for SSA to find that DAA is material
    - SSA must have medical evidence to show that the mental health impairment would improve without drugs and alcohol
    - Medical opinion is NOT enough to find DAA is material.
  - SSA may order a CE to determine if the claimant has a mental health disorder.
  - SSA will find that DAA is not material and Approve the application if
    - Their records are fully developed AND
    - There is no evidence that the mental health impairment would improve without DAA.
  - KEY TAKEAWAY: In order to find that DAA is material with mental health, DDS Examiners and ALJ judges have to have medical evidence to support this. They cannot rely on opinion.
- Page 22-26: SSA reviews the evidence they will need in DAA cases
  - SSA will need DAA evidence if medical records show a Substance Use Disorder. SSA has to have medical evidence to support that the claimant has a DAA issue.
    - SSA can't rely on self-report to establish DAA
    - SSA can't rely on DUI or DWI charges to establish DAA
    - SSA can't rely on another person's report to establish DAA

- SSA emphasized the importance of evidence provided from non-medical, other sources in determining DAA case (SOAR Caseworkers, NP, LCSW, family, etc.)
- SSA states that “other sources may be the most important information in the case record for these documentation issues.”
- CEs will be purchased if SSA feels they do not have enough medical evidence about the physical and/or mental health impairments.
  - SSA notes that this happens frequently with homeless claimants because they do not have ongoing treatment.
  - This is why SOAR Caseworkers provide a Medical Summary Report and can avoid CEs.
- Page 26-29: SSA explains how they look at periods of abstinence
  - SSA states that they can’t provide a clear definition of what a period of abstinence is because each case and drug/alcohol is different in terms of effects
  - If the claimant has a period of abstinence, SSA needs evidence about their functioning during that time.
  - Periods of abstinence in an inpatient setting or highly structured environment:
    - SSA recognizes that people’s functioning can improve when these settings due to the treatment provided and not just the absence of drugs and alcohol
    - An impairment would still be considered disabling even if functioning improves with the increased supports and the highly structured environment
    - SSA will not rely on one hospitalization to show that DAA is material- they have to have evidence from outside of the inpatient setting
    - Repeated hospitalizations, ER visits, and treatment for mental health impairments can show that DAA is NOT material if the claimant improves at the end of each treatment episode.
- Page 29-30: Claimant credibility when using drugs and alcohol
  - SSA states that DDS examiners cannot presume that claimants with Substance Use Disorders are not inherently less credible
- Page 30: SSA states they do not have special rules about date of onset for DAA cases
- Page 30-31: SSA outlines how they evaluate cases where the claimant does not follow a prescribed course of treatment
  - SSA states that this issue only affects a physical or mental health impairment and not the Substance Use Disorder
  - The claimant must have a good cause for failing to follow treatment
  - For this to be taken into consideration, the treatment must be “clearly expected” to improve the condition to the point where an individual would not be disabled
- Page 32-33: SSA states that DDS Examiners and ALJs make the determination if DAA is material to a case
- Page 33-34: SSA states that DDS Examiners and ALJs must provide sufficient information about DAA
  - Examiners must show how they determined

- That the claimant has DAA
  - That the DSS is material or is not material
- A single statement from the DDS Examiner or ALJ is not sufficient
- If you have cases where this information is not provided in the case file (You can request a CD from SSA for previous cases) and DAA was a factor in the case, please let Emily Carmody know.
- Page 34-35: Discusses how SSA considers federal district and circuit court decisions

If you have questions about this document or any of the points outline above, please contact Emily Carmody at [emily@ncceh.org](mailto:emily@ncceh.org).

**Next SOAR Dialogue Call: Thursday, April 18<sup>th</sup> at 10 AM**