The New MS Listing for Social Security: Learn How Recent Changes to the MS Standard Will Impact your Disability Claim

October 24, 2017

Presented by:

Genentech | Novartis | Teva Pharmaceuticals | Acorda Therapeutics | Mallinckrodt Pharmaceuticals
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(877) 582-7011
Jamie R. Hall, Esq.

Attorney & Counselor at Law
Law Office of Jamie R. Hall
Nationwide SSDI Assistance - based out of Kennett Square, PA
Rosalind Kalb, PhD

National Multiple Sclerosis Society
West Bath, ME
Social Security Disability Insurance

- Basic Requirements:
  - Sufficient disabling condition (12 mos./death)
  - Sufficient work history
    - Lifetime work
    - Recent work
  - SSI Medical Requirements/Asset Limitations
Two-Step Test for SSDI (Applies to Any Condition)

• Can claimant perform:
  • Prior full time work in the past 15 years
  • Age-based ‘fictional work’
    • Under 50: any work (including sedentary)
    • Over age 50: light duty work
Major Factors for Two-Step Test

- Fatigue (physical and mental)
- Good days and bad days
- Upper extremity limitations
- Bladder issues
- Cognitive slowing
- Lower extremity limitations (if over age 50)
SSA Listing for MS – 11.09

• What is a listing?
  • Alternative to Two-Step Test
  • MS Listing revised fall 2016

• Two separate listing tests for MS, based on ‘extreme’ and ‘marked’ limitations
The MS Listing – Part One

• 11.09A – Extreme Limits
  • Disorganization of motor function in two extremities
  • Resulting in ‘extreme’ limitation of
    • Standing from seated position
    • Balance while standing or walking
    • Use of upper extremities
  • Very Challenging Standard
The MS Listing – Part Two

• 11.09B – Marked Limitations

  • Marked Limitations in **Physical** Function
    • “Persistent or intermittent symptoms that affect your abilities to independently initiate, sustain and complete work-related activities…”
      • Includes standing, balancing, walking, or using two extremities

AND…
The MS Listing – Part Two

...AND

- Marked Limitations in **Cognitive** Function
  - Concentrating, persisting, or maintaining pace
    - Maintaining pace without unscheduled breaks
  - Adapting or managing oneself
    - Responding to demands and accepting workplace changes
  - Understanding, remembering or applying information
    - Reliably carrying out two-step instructions
  - Interacting with others
    - Accepting correction and working with others
Alternative Listings for MS

- **Listing 2.00 – Visual Dysfunction**
  - Visual acuity below 20/200 (with glasses)
  - Visual field limitation below 20 degrees

- **Listing 12.02 – Neurocognitive Disorders**
  - Significant decline in any of complex attention, executive function, learning and memory, language, perceptual-motor, or social cognition, AND
  - Extreme limitation of one or marked limitation of two of cognitive limits in prior slide; OR
  - Condition so severe as to require at least two years of support in highly structured setting due to minimal capacity to adapt to work changes or demands

- **Listing 12.04 – Depressive, Bipolar and Related**
  - Medical documentation of numerous severe symptoms of depressive disorder or bipolar disorder, AND
  - Extreme limitation of one or marked limitation of two of cognitive limits in prior slide; OR
  - Condition so severe as to require at least two years of support in highly structured setting due to minimal capacity to adapt to work changes or demands
Hints and Tips

• The SSA considers more than just your neurologist
  • Other specialists, including urologists, physical therapists, neuropsychologists, are important
  • Nurses and other non-doctors engaging in treatment may be given weight under new SSA rules
• Keep your providers informed
• Talk with your providers about your limitations before you leave work
  • The SSA wants to see if you’ve worked through limitations and if your limitations have increased over time
• If possible, review your most important treatment records for errors and omissions
• Upon application, you or your attorney should obtain limitations statements from your providers
Guidebook Contents

• Detailed description of the application process
• Glossary
• SSA Listing of Impairments
• Disability Evaluation Checklist for Healthcare professionals
• Worksheets for Personal Use
  1. Your Medical History
  2. How MS Symptoms Impact Your Functioning and Ability to Work
  3. Your Work History
  4. Supporting information from Others 82
• Getting Assistance with Your Application
Sample Checklist Page – physical functioning

CHECK ALL SYMPTOMS THAT INTERFERE WITH YOUR PATIENT’S PHYSICAL FUNCTIONING:

☐ Flaccidity       ☐ Spasticity       ☐ Spasms
☐ Incoordination   ☐ Imbalance       ☐ Tremor
☐ Physical fatigue ☐ Weakness        ☐ Dizziness
☐ Numbness/tingling ☐ Respiratory function ☐ Swallowing
☐ Vision [may also be evaluated under 2.0 of the Listing]

Neurologic exam:

Date(s): ____________________________

Relevant findings: ______________________________________

____________________________________________________________________

Tests conducted, if any:

Date(s): ____________________________

Relevant findings: ______________________________________

____________________________________________________________________
Sample Checklist Page – cognitive functioning

☐ Neurocognitive Disorders (12.02)

☐ Medical evidence: (relevant evidence from the physician, psychologist or other medical sources showing a significant decline from a prior level of function in one or more cognitive areas):

☐ Complex attention  ☐ Executive function
☐ Learning and memory  ☐ language
☐ Perceptual-motor skills  ☐ Social cognition

Evaluation Dates: __________________________________________

Test Results: __________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
Sample Checklist Page – mood changes

Depressive, bipolar and related disorders (12.04)

☐ Medical evidence: (relevant evidence from the physician, psychologist or other medical sources demonstrating a Depressive Disorder characterized by five or more of the following):

☐ Depressed mood
☐ Diminished interest in almost all activities
☐ Sleep disturbance
☐ Appetite disturbance with change in weight
☐ Observable psychomotor agitation or retardation
☐ Decreased energy
☐ Feelings of guilt or worthlessness
☐ Difficulty concentrating or thinking
☐ Thoughts of death or suicide
Worksheets to Help You Gather Relevant Information

**Worksheet 1: Applicant Medical History**
This worksheet will help you gather the medical information you need to complete your SSDI application.

**Worksheet 2: How MS Impacts Your Functioning and Ability to Work**
This worksheet will help you describe your MS symptoms and how they impact your functioning on the job.

**Worksheet 3: Applicant Work History**
This worksheet will help you gather the work, personal, and income history you need to complete your SSDI application.

**Worksheet 4: Supporting Information from Family, Friends, Colleagues**
This worksheet will help you gather helpful information from people who know you about the ways in which your MS or other conditions have impacted your ability to function.
About Attorneys

• When do you need one?
  • Recommend at initial filing
  • Necessary for appeal and hearing

• What do they charge?
  • Contingent fee
  • 25% of past due benefits, capped at $6,000
  • Ask about costs (copying, postage, records)

• What should I look for?
  • Experience with MS claims
  • Practice focused primarily on disability claims
  • Can you actually reach out to your attorney when needed
  • Do you know which attorney will actually handle your claim and hearing
Recap: Three Ways to Get Approved

• Two-Part Test based on past work and age

• MS Listing showing extreme physical limitations

• MS Listing showing both marked physical and marked cognitive limitations
Decision Timelines

- It’s a long process!
  - Three to five months for initial decision
  - First appeal is reconsideration, roughly an additional three months (most states)
  - Request for hearing an additional 15 to 24 months

- Good luck!
Additional Resources

• Information on nationwide SSDI assistance, as well as on timelines and requirements, available at www.jrhlegal.com

• Information from the National MS Society at www.nationalMSsociety.org or 1-800-344-4867

• Social Security Administration (SSA) at www.social security.gov/disability or 1-800-772-1213
Questions/Comments

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