

HIV Listings Revised

On December 2, 2016, SSA published a final rule revising the criteria in the Listing of Impairments (listings) used to evaluate claims involving HIV infections in both adult and child disability claims. See 81 FR 86915 (available at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-02/pdf/2016-28843.pdf>).

Additionally, revisions were made to the introductory text of the listings used to evaluate functional limitations resulting from immune system disorders in general as well as the introductory text for the digestive, hematological, skin and cancer body systems listings to update references to HIV infection. Effective January 17, 2017, the final rule will remain in effect for three years unless SSA extends the effective date, which often occurs. Key highlights of the final rule include:

- Revised and expanded introductory text to the immune system disorders body system for evaluating HIV infections in both adults (14.00) and children (114.00);
- Created listings 14.11 and 114.11 for HIV infections;
- Added new criteria for adults and children for evaluation of HIV infections under the listings;
- Removed criteria for HIV infections that no longer represent impairments that are of listing-level severity; and
- Reserved listings 14.08 and 114.08, the current HIV listings.

Nearly three years after the original Notice of Proposed Rulemaking (NPRM) was published in February 2014 (*see* 79 FR 10730), SSA made “several changes” in the final rule from the NPRM based on the public comments received. NOSSCR had signed onto comments led by the HIV Health Care Access Working Group (HHCAWG) and Lambda Legal, which applauded SSA’s significant improvements in the proposed rules but advocated for additional improvements and clarifications, some of which SSA adopted in the final rule. For example, there was strong opposition to the proposal to remove current Section 14.00F4’s guidance on HIV infection manifestations specific to women. In response, SSA adopted this comment and placed this guidance in Section 14.00F7 of the final rule and added language to 14.11I specifically noting that certain gynecologic conditions may be manifestations of a HIV infection. There was also some inconsistency and potential for confusion between proposed 14.11H, which establishes disability based on multiple hospitalizations for “complications” of HIV, and proposed 14.11I, which addresses “manifestations” of disability that result in functional limitations, as some of the conditions given as examples of complications in 14.00F6 were not provided as examples of manifestations in 14.11I. The argument was that any “complication” that is severe enough to result in hospitalization could also be severe enough to cause functional limitations, and thus, should be referenced in the list of manifestations at 14.11I. SSA agreed and revised listing 14.11I so that the list of manifestations includes all examples of complications given in 14.00F6. Additional comments that SSA adopted include retaining language from the introductory text that explains that it will consider documentation of HIV infection and manifestations of HIV infection that is consistent with the prevailing state of medical knowledge and clinical practice and adding language to final 14.00J2 and 114.00J2 to note that HIV infection may affect the onset or course of, or treatment for, conditions in other body systems, such as cardiovascular disease and hepatitis and revising 14.11I to provide examples of cardiovascular manifestations of HIV infection.

The new 14.11 and 114.11 do not include as many listing-level severity impairments as the current 14.08 and 114.08 but do notably use CD4 counts, which is the most important laboratory indicator of how well the immune system is functioning and the strongest predictor of HIV progression. For reference, a

normal range for CD4 cells is about 500-1,500. When the CD4 count drops below 200, an individual is considered to have AIDS. New listings 14.11F and 114.F3 are met with evidence of an absolute CD4 count of 50 cells or less. Other ways to meet the new HIV listings require documentation of specific conditions: multicentric Castleman disease affecting multiple groups of lymph nodes or organs containing lymphoid tissue, primary central nervous system lymphoma, primary effusion lymphoma, progressive multifocal leukoencephalopathy and pulmonary Kaposi sarcoma. There are also “catch-all” provisions requiring evidence of “complications” of HIV infection for both adults and children, “repeated manifestations” of HIV infection for adults only, “a neurological manifestation” of HIV infection for children only, and “immune suppression and growth failure” for children only.

For members who are subscribed to our Listings/Grids Manual, updates reflecting the new HIV listings as well as the introductory texts of the other body systems listings referenced above will be coming soon!