Neurological Disorders Listings Undergo Changes

SSA has issued revised listings for Neurological Disorders for adults and children (Listings 11.00 and 111.00), and made minor corresponding changes to Listings 1.00 and 12.00. The new version of the listings can be found at 81 Fed. Reg. 43048 (July 1, 2016).

These listings are effective for cases filed or cases pending on or after September 29, 2016. This is the first comprehensive review of this listing since 1985, though minor changes have been made over the years. These changes were first proposed in 2014 (79 Fed. Reg. 10636, Feb. 25, 2014) and SSA received more than 3,000 comments over two open periods of comment. In the Federal Register announcement of the final listing, SSA explains that the changes reflect program experience and advances in medical knowledge. The final listings include numerous changes from the previous listings and from the proposed listings; SSA accepted some of the recommendations made in comments to the proposed listings.

The change renames the listing from Neurological to Neurological Disorders and reorganizes and revises the entire listing to match the "Question and Answer" structure of other recently revised listings.

In response to several comments expressing concern that the proposed functional criteria for determining disability in individuals with Huntington's disease (HD) and Parkinson's disease still rely on the presence of physical limitations and do not adequately address the common non-physical manifestations of these diseases, SSA explained that it will consider all impairments under all applicable body systems as part of its disability evaluation. In the listings, SSA describe each of the major body systems impairments it considers severe enough to be disabling, and lists requirements that demonstrate a level of severity and duration consistent with the definition of disability set by Congress under the Act. SSA evaluates the person's impairment(s) under the most appropriate body system(s), and recognizes that neurological disorders may co-occur with impairments it evaluates in other body systems. However, SSA intends the listings in this final rule to address only neurological disorders and the complications from those disorders. Thus, SSA provided additional guidance in the introductory text explaining how it evaluates mental disorders under these listings. SSA modified its functional criteria and severity rating scale to address the common mental aspects of neurological disorders. The intent in the new functional criteria for adults is to provide a way to evaluate impairments and determine disability appropriately, even when those impairments are difficult to evaluate based on medical criteria alone.

Several commenters suggested that SSA create separate listings for various neurological disorders, such as migraine, cluster headaches etc. SSA acknowledged the commenters' concerns, and explained that it is appropriate to provide impairment specific guidance on how it evaluates migraines and other chronic headache disorders, and SSA will address these concerns in training to ensure all adjudicators know how to establish migraine and other chronic headache disorders as medically determinable impairments (MDIs).

SSA modified its functional criteria to focus on the common mental aspects of neurological disorders, and changed the criterion from ‘‘social functioning’’ to ‘‘interacting with others’’ to be consistent with the way mental functions are described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition.3

Several commenters noted that proposed section 11.00C states, ‘‘Medical research shows that these neurological conditions may improve after a period of treatment.’’ The commenters pointed out this statement is false and we should correct it because Parkinson’s disease never improves. SSA agreed, and explained that it was not its intent to indicate in listing 11.06 that Parkinson’s disease itself may improve with treatment, as the disease is progressive, and therefore the statement was removed from the final listing.

In response to commentator’s request that SSA revise the proposed section 11.00K to clarify that motor and non-motor symptoms can be equally disabling in Parkinsonian syndromes, and to reflect that symptoms can fluctuate significantly from hour to hour and minute to minute, often making job performance in a professional environment very difficult, SSA explained that it agrees that non-motor symptoms can be as disabling as motor symptoms in Parkinsonian syndromes. However, limitations resulting from non-motor symptoms are highly variable and we evaluate them on a case-by-case basis. The new functional criteria enable adjudicators to evaluate non-motor symptoms associated with Parkinsonian syndromes under listing 11.06B. SSA also mentioned that neurological disorders may manifest in a combination of limitations in physical and mental functioning in the adult section, 11.00G. SSA will also provide guidance in training to adjudicators about the variable manifestations of neurological disorders, such as Parkinsonian syndrome.

In the modified final section 11.00D of the introductory text, SSA includes criteria for how to establish disorganization of motor function, descriptions for how to evaluate those criteria, and a definition of an extreme limitation in disorganization of motor function. If we do not find that a person is disabled on the basis of disorganization of motor function alone, as explained in 11.00D, we will find that the person’s neurological disorder is incompatible with the ability to do any gainful activity if it results in marked limitation in physical functioning and marked limitation in one of four areas of mental functioning. In the modified final section 11.00G of the introductory text, we provide definitions for marked limitations drawn from our currently used definitions in section 7.00G4 of the listing of impairments for hematological disorders and section 1.00B of the listing of impairments for musculoskeletal disorders. We also provide descriptions of the considerations for physical and mental functioning in 11.00G2 and 11.00G3.

SSA removed the criterion of an IQ score from its neurological listings because advances in medical knowledge of cerebral palsy (for adults and children), epilepsy (for children), spinal cord insults (for children), and program experience indicates that an IQ score does not provide the best measure of limitations in cognitive functioning associated with these disorders. Therefore, it may not indicate listing-level severity under the neurological listings and would be more appropriately used to evaluate mental disorders under our mental disorders body system.

SSA clarified in 11.00D2a that an inability to stand up from a seated position means that, once seated, you are unable to stand and maintain an upright position without the risk of falling unless you have the assistance of another person or the use of an assistive device, such as a walker, two crutches, or two canes. The severity of such a limitation is set at a standard much higher than that applicable to a person who is able to do sedentary work; it thereby constitutes an inability to do any gainful activity in the national economy.

SSA explained how it will evaluate adherence to prescribed treatment for epilepsy patients under 11.00C, when it removed the requirement for serum drug levels, particularly for patients prescribed newer antiepileptic drugs. SSA considers whether a claimant has taken medications or followed other treatment procedures as prescribed by a physician for three consecutive months. But, as noted, SSA no longer requires serum drug levels. When SSA last revised the listings in 1985, blood drug levels were strong indicators for prescribed treatment compliance because therapeutic ranges had been established for antiepileptic drugs (AEDs) and the ranges were often noted on laboratory results. Many newer AEDs do not have established therapeutic levels, which makes lab results difficult for our adjudicators to interpret. SSA removed the requirement for obtaining blood drug levels to address this adjudicative issue and to simplify evaluation of seizures that satisfy the listing criteria. However, SSA will continue to consider blood drug levels available in the evidence in the context of all evidence in the case record.

Subscribers to NOSSCR's listing/grids manual have received two emails with these revised listings (one with the adult listings and one with the children's listing). Be sure to follow the instructions and update your flash drive.