

## SSA Issues Final Rules on Revised Mental Disorders Listings

SSA issued final rules on the revised medical criteria for evaluating mental disorders on September 26, 2016, more than six years after the Notice of Proposed Rulemaking (NPRM) was originally published in the Federal Register (*see* 75 Fed. Reg. 51336). Specifically, SSA revised the criteria in the Listing of Impairments that it uses to evaluate claims involving mental disorders in adults and children under titles II and XVI of the Social Security Act. The final rules go into effect on January 17, 2017 and can be found at <https://www.gpo.gov/fdsys/pkg/FR-2016-09-26/pdf/2016-22908.pdf>.

NOSSCR generally supports the new listings, as they are an improvement reflective of current professional thinking. Major changes from the current listings include updated titles (see chart below) and addition of brand new listings.

Current listings titles	New listings titles
12.02 Organic mental disorders	12.02 Neurocognitive disorders
12.03 Schizophrenic, paranoid and other psychotic disorders	12.03 Schizophrenia spectrum and other psychotic disorders
12.04 Affective disorders	12.04 Depressive, bipolar and related disorders
12.05 Intellectual disability	12.05 Intellectual disorder
12.06 Anxiety-related disorders	12.06 Anxiety and obsessive-compulsive disorders
12.07 Somatoform disorders	12.07 Somatic symptom and related disorders
12.08 Personality disorders	12.08 Personality and impulse-control disorders
12.09 Substance addiction disorders	12.09 RESERVED
12.10 Autistic disorder and other pervasive developmental disorder	12.10 Autism spectrum disorder
	12.11 Neurodevelopmental disorders
	12.12 RESERVED
	12.13 Eating disorders
	12.15 Trauma- and stressor-related disorders

As displayed in the chart above, key revisions include the addition of eating disorders and trauma- and stressor-related disorders, separation of neurodevelopmental disorders from 12.10 into its own listing and removal of substance addiction disorders altogether.

Other specific changes include the criteria required to meet particular listings. For example, the newly titled neurocognitive disorders listings (12.02), formerly organic mental disorders, no longer includes “repeated episodes of deterioration or decompensation, each of extended duration” as part of the paragraphs B and C criterion. The paragraph B criteria now require an “extreme limitation of one, or marked limitation of two, of the following areas of mental functioning: (1) understand, remember, or apply information; (2) interact with others; (3) concentrate, persist, or maintain pace; or (4) adapt or manage oneself.” The paragraph C criteria still require that the mental disorder have been in existence for over a period of at least 2 years, which the new listing categorizes as “serious and persistent,” and continues to require marginal adjustment, although with a different definition. The other paragraph C criterion now requires “medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental

disorder,” as opposed to an “inability to function outside of a highly supportive living arrangement, with an indication of continued need for such an arrangement,” for at least 1 year. In that same listing, documentation of a “loss of measured intellectual ability of at least 15 IQ points...” will no longer satisfy the paragraph A criterion. Instead, to satisfy paragraph A in the new listing 12.02, there must be “medical documentation of a significant cognitive decline from a prior level of functioning in *one* or more of the cognitive areas of (1) complex attention, (2) executive function, (3) learning and memory, (4) language, (5) perceptual-motor, or (6) social cognition.

Similarly, the newly titled depressive, bipolar and related disorders listings (12.04), formerly affective disorders, no longer separates the paragraph A criterion by “depressive,” “manic” and “bipolar” syndrome and now only includes “depressive” and “bipolar” disorder, each with different symptoms that must “characterize” the disorder (five symptoms for depressive disorder and three for bipolar disorder). The paragraphs B and C criteria are exactly the same as listing 12.02 listed above.

The 12.05 listing criteria, for intellectual disorders, has also been significantly changed. While still requiring evidence demonstrating that the disorder began prior to age 22, the first way to satisfy listing 12.05 (through paragraph A) now requires a (1) “significantly subaverage general intellectual functioning,” evidenced by a “cognitive inability” to participate in standardized testing; and (2) “significant deficits in adaptive functioning,” manifested by a dependence upon others for personal needs. The second way to satisfy listing 12.05 (through paragraph B), in addition to evidence supporting that the disorder began prior to age 22, now requires (1) a full scale (or comparable) IQ score of 70 or below or (2) a full scale (or comparable) IQ score of 71-75 accompanied by a verbal or performance IQ score (or comparable part score) of 70 or below *and* “significant deficits in adaptive functioning manifested by extreme limitation of one, or marked limitation of two, of the following areas of mental functioning: (a) understand, remember, or apply information; (b) interact with others; (c) concentrate, persist or maintain pace; or (d) adapt or manage oneself.

The newly titled anxiety and obsessive-compulsive disorders listings (12.06), formerly anxiety-related disorders, now separates the criteria for anxiety disorder, panic disorder and agoraphobia, and obsessive-compulsive disorder. It is similar in format to listing 12.04, requiring each disorder be “characterized” by different symptoms (three for anxiety disorder, one for panic disorder and agoraphobia, and one for obsessive-compulsive disorder) and the exact same paragraphs B and C criteria.

The brand new eating disorders listings (12.13) requires evidence of “a persistent alteration in eating or eating-related behavior that results in a change in consumption or absorption of food and that significantly impairs physical or psychological health” and an “extreme limitation of one, or marked limitation of two, of the following areas of mental functioning: (1) understand, remember, or apply information; (2) interact with others; (3) concentrate, persist, or maintain pace; or (4) adapt or manage oneself.”

The brand new trauma- and stressor-related disorders listings (12.15) is satisfied by paragraphs A and B, or A and C, with paragraphs B and C criteria exactly the same as listings 12.02, 12.04 and 12.06. The paragraph A criterion, however, requires medical documentation of *all* of the following: (1) exposure to actual or threatened death, serious injury or violence; (2) subsequent involuntary re-experiencing of the traumatic event (for example, intrusive memories, dreams or flashbacks); (3) avoidance of external reminders of the event; (4) disturbance in mood and behavior; and (5) increases in arousal and reactivity (for example, exaggerated startle response, sleep disturbance).

In formulating the final rules, SSA did adopt, at least in part, many of NOSSCR's comments to the proposed rules that were published on August 19, 2010. *Available at <https://www.gpo.gov/fdsys/pkg/FR-2010-08-19/pdf/2010-20247.pdf>*. Specifically, NOSSCR recommended that SSA include language in proposed 12.00G2 that "requires adjudicators to consider the factors in the regulations for weighing medical opinion when considering evidence from 'medical sources.'" SSA partially adopted this comment and, in response, added a reference to the regulations on evaluating opinion evidence in 12.00C1 and 112.00C1. SSA also fully adopted NOSSCR's comments asking that it make clear that the list of psychosocial supports and structured settings and living arrangements does not include all possible supports a claimant with mental disorders may receive, or in which he or she may be involved by adding a phrase to the final 12.00D1 indicating that the types of supports listed in that section are "some examples of the supports" that a claimant "may" receive. In the same vein, SSA adopted NOSSCR's comments requesting that it add supported housing with wrap-around services as an example of psychosocial supports and highly structured settings in proposed 12.00F2 by including reference to "'24/7 wrap-around' mental health services" to the examples of possible supports and structured settings and living arrangements in final 12.00D1d. In regards to proposed paragraph B1 ("understand, remember, *and* apply information") and paragraph B3 ("concentrate, persist, *and* maintain pace"), NOSSCR recommended that SSA not use "and" and instead use "or" in these paragraphs for all the listings to avoid misinterpretation as a change in policy that would set a higher standard for a claimant's mental disorder satisfying those criteria. NOSSCR also recommended that SSA clarify in section 12.00 Introduction that if a claimant has "extreme" or "marked" limitation in any single part of the paragraphs B1 or B3 areas of mental functioning, then that claimant has that degree of limitation for that whole paragraph B criterion. SSA agreed with these comments and the reasoning provided; therefore, SSA adopted these recommendations by explaining in new sections, final 12.00F3f and 112.00F3e, that for paragraphs B1, B3 and B4, the greatest degree of limitation of any single part of the area of mental functioning will direct the rating of limitation for that whole area of functioning to ensure that adjudicators apply these criteria properly. Further, SSA adopted NOSSCR's comments recommending that it add a provision to listing 12.05D and 112.05D to indicate that a claimant's impairment will satisfy the listing requirements if the impairments result in "extreme" limitation of one of the functional criteria categories.

For those members that are also subscribed to our Listings/Grids Manual, an update reflecting the new mental listings will be coming soon!