1310-1
The Social Security Administration (SSA) issued the following Social Security Ruling (SSR) in regards to the Sequential Evaluation Process.

If a Title XVI claimant is not working or his or her work does not demonstrate the ability to engage in any substantial gainful activity (SGA) during the period in which disability is alleged, we give primary consideration to the severity of the individual's impairment(s). In addition, if medical considerations alone are not determinative of the issue of disability for a childhood disability claimant or for a Title XVI claimant age 18 or older, we consider the ability to do past relevant work and the individual's age, education, training and work experience, as they relate to the ability to perform any other work.

The following evaluation steps are followed in sequence shown, but when a determination or decision that an individual is or is not disabled can be made at any step, evaluation under a subsequent step is not necessary.

Is the Individual Engaging in Substantial Gainful Activity?

When an individual is actually engaging in SGA or did so during any pertinent period, and there is no possibility of establishing a period of disability which ended prior to the date of the decision, a finding shall be made without consideration of either medical or vocational factors that the individual is not under a disability. When a Title XVI claimant is not (or was not) actually engaging in SGA, primary consideration is given to the severity of the individual's impairment(s).

Does the Individual Have a Severe Impairment?

Fundamental to the disability determination process is the statutory requirement that to be found disabled, an individual must have a medically determinable impairment "of such severity" that it precludes his or her engaging in any substantial gainful work. A finding of ability to engage in SGA, therefore, may be justified on the basis of medical considerations alone when a medically determinable impairment(s) is found to be not severe. An impairment is not severe if it is a slight abnormality or a combination of slight abnormalities which would have no more than a minimal effect on the individual's physical or mental ability(ies) to perform basic work activities. When an impairment is not severe, a finding of "not disabled" is made irrespective of an individual's age, education, or work experience.

When assessing the severity of multiple impairments, the adjudicator must evaluate the combined impact of those impairments on an individual's ability to function, rather than assess separately the contribution of each impairment to the restriction of function as if each impairment existed alone. When multiple impairments, considered in combination, would have more than a minimal effect on the ability to perform basic work activities, adjudication must continue through the sequential evaluation process.

The impairment severity requirement cannot be satisfied when medical evidence shows that the impairment(s) has a minimal effect on a person's ability(ies) to perform basic work activities, that is, when he or she has the abilities and aptitudes necessary to do most jobs. Examples of these are sitting, standing, walking, lifting, carrying, handling, reaching, pushing or pulling; seeing, hearing, and speaking; understanding, carrying out, and remembering simple instructions; use

of judgment, responding appropriately to supervision, coworkers, and usual work situations; and dealing with changes in a routine work setting.

It is reasonable to conclude, in the absence of contrary evidence, that an individual whose impairments do not preclude the performance of basic work activities, is able to perform his or her past relevant work. However, if medical evidence establishes only a slight abnormality(ies) that would have no more than minimal effect on the individual's ability to do basic work activities, but evidence shows that the person cannot perform past relevant work because of the unique features of that work, a denial at the "not severe" step of the sequential evaluation process is inappropriate, and adjudication should continue through subsequent steps in the process.

Does the Individual Have an Impairment(s) Which Meets or Equals the Listing?

The level of severity described in the Listing is such that an individual who is not engaging in SGA and has an impairment or the equivalent of an impairment described therein is generally considered unable to work by reason of the medical impairment alone. Thus, when such an individual's impairment or combination of impairments meets or equals the level of severity described in the Listing, and also meets the duration requirement, disability will be found on the basis of the medical facts alone in the absence of evidence to the contrary (e.g., the actual performance of SGA, or failure to follow prescribed treatment without a justifiable reason). The claimant's impairment(s) must meet or equal a listed impairment for a favorable determination or decision to be based on medical considerations alone.

Evaluating Medical Equivalence -- Medical Judgment Required

For an impairment to be found to be equivalent in severity to a listed impairment, the set of symptoms, signs and laboratory findings in the medical evidence supporting a claim must be compared with, and found to be equivalent in terms of medical severity and duration to, the set of symptoms, signs and laboratory findings specified for listed impairment. When the individual's impairment is not listed, the set for the most closely analogous listed impairment is used.

Where an individual has a combination of impairments, none of which meets or equals a listed impairment, and each impairment is manifested by a set of symptoms and relevant signs and/or abnormal laboratory findings, the collective medical findings of the combined impairments must be matched to the specific set of symptoms, signs, and laboratory findings of the listed impairment to which they can be most closely related. The mere accumulation of a number of impairments will not establish medical equivalency. In no case are symptoms alone a sufficient basis for establishing the presence of a physical or mental impairment.

Any decision as to whether an individual's impairment or impairments are medically equivalent of a listed impairment must be based on medical evidence demonstrated by medically acceptable clinical and laboratory diagnostic techniques, including consideration of a medical judgment about medical equivalence furnished by one or more physicians designated by the Secretary. The Disability Determination Services physician's documented medical judgment as to equivalency meets this regulatory requirement.

Interrelationship of Medical and Vocational Factors: Title II Worker or Childhood Disability Beneficiary/Title XVI Claimant Age 18 or Older

When a determination cannot be made on the basis of the medical factors alone (i.e., when the impairment falls short of the level of severity depicted by the Listing, yet has more than a minimal effect on the ability to perform basic work-related functions), the sequential evaluation process must continue with consideration of the vocational factors in the claim.

Evaluation under 20 CFR §416.920(e) and (f) requires careful consideration of whether the individual can do past relevant work (PRW), and if not, whether he or she can reasonably be expected to make a vocational adjustment to other work. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all the facts of the case will lead to a finding that (1) the individual has the functional and vocational capacity for other work, considering the individual's age, education, and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or (2) the extent of work that he or she can do, functionally and vocationally, is too narrow to sustain a finding of ability to engage in SGA.

Since the severity of the impairment must be the primary basis for a finding of disability, this step of the evaluation process begins with an assessment of the claimant's functional limitations and capacities. Then a determination or decision must be made as to whether the individual retains capacity to perform past relevant work. An evaluation is then made of age, education, work experience and training. Consideration of the following principles will help identify the key issues for resolution with respect to these factors. No single factor should be considered as conclusive. They should be applied in combination to the range of work that remains within the claimant's RFC

The vocational factors as well as RFC are described in detail as follows:

> RFC -- RFC is the remaining ability to perform work-related physical and mental activities. The claimant's functional capacity must be defined in terms of the claimant's ability to function in a work setting. When multiple impairments are involved, the assessment of RFC reflects the restrictions resulting from all impairments (both severe and not severe impairments). This assessment is based on all relevant evidence pertaining to RFC consistent with appropriate clinical and laboratory findings.

  Assessment of physical capacities (e.g., strength and exertional capabilities) includes an evaluation of the individual and indicates his or her maximum RFC for sustained activity on a regular basis. Such assessment also includes an evaluation of the ability to perform significant physical functions such as walking, standing, lifting, carrying, pushing, or pulling, and such other physical traits and sensory characteristics as reaching, handling, seeing, hearing, and speaking insofar as limited capacity to perform these activities may affect the individual's capacity for work for which he or she would otherwise be qualified.

  Any medically determinable impairment(s) not resulting in exertional limitations (such as certain mental, sensory or skin impairments) must be considered in terms of the limitations resulting from the impairment. When an individual has such impairment(s) in addition to an exertional impairment(s), remaining functional capacity must be assessed in terms of the degree of any additional narrowing of the individual's work-related capabilities. The assessment of impairments because of mental disorders includes consideration of such factors as the ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and customary work pressures in a routine setting.

The RFC assessment is based primarily on the medical findings, i.e., the symptoms, signs, and laboratory results, which must be complete enough to permit and support the necessary judgments concerning the individual's physical, medical, and sensory capacities and any environmental restrictions. Descriptions and observations of the claimant's restrictions by medical and nonmedical sources in addition to those made during formal medical examinations must also be considered in the determination of RFC.

Where no issue with respect to specific physical or mental capacities is raised by the allegations of the individual or the evidence obtained, the individual is considered to have no restrictions with respect to those capacities. The individual has the burden of proving that he or she is disabled and of raising any issue bearing on that determination or decision.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as "sedentary," "light," "medium," "heavy," and "very heavy." Such terms have the same meanings as are used in the Dictionary of Occupational Titles (DOT), published by the Department of Labor (DOL). In order to evaluate the claimant's skills and to help determine the existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semiskilled, and skilled. For classifying these occupations, materials published by the DOL are used.

> Age -- The term "age" refers to chronological age and the extent to which it affects the individual's ability to adapt to a new work situation and engage in work in competition with others.

The following age classifications are established in 20 CFR §416.963: younger person, person approaching advanced age, and person of advanced age. These designations of age are an expectancy only, not arbitrary limits, and may not be crucial in a particular case. Age categories are not applied mechanically in borderline cases.

> Education and Training -- Education generally refers to formal schooling; training refers to skills and knowledge acquired on the job or through general experience in an industry or field of work. 20 CFR §416.964 establishes the following classifications of educational levels: illiteracy, marginal education, limited education, high school and above, and inability to communicate in English.

Training that is vocationally significant prepares an individual to do a specific job or provides background to do a number of jobs in the same field. Training that is not reflected in the individual's actual work experience would raise questions as to its adequacy and current usefulness to the individual. Content, duration, and recency should be considered in determining the scope and application of training and its current usefulness. Normally, if an individual completed training more than 15 years prior to the point at which the claim is being considered for adjudication (or when the earnings requirement was last met if earlier) and did not make use of it in his or her work, it would not affect the claimant's vocational outlook at the present time. Moreover, even if completed with a 15-year period, training would not ordinarily be expected to qualify an

individual for more than entry level (e.g., at the apprenticeship or lowest beginning level) occupations.

> Experience -- The jobs a person has done, the length of time spent at them, and the recency of the work are major factors in determining his or her ability to work. Work experience is relevant when it was performed within the pertinent 15-year period, lasted long enough for the individual to learn the job, and consisted of SGA. Work experience must be examined in the light of available knowledge of the physical and skill demands of different kinds of work in order to evaluate the effect of the impairment on the person's ability to return to past relevant work or to utilize remaining capacities in other jobs.

The RFC assessment is used to determine whether an individual can perform past relevant work or -- considering an individual's age, education and work experience -- other work which exists in the nation's economy.

> Capacity to Do Past Relevant Work -- The RFC to meet the physical and mental demands of jobs a claimant has performed in the past (either the specific job a claimant performed or the same type of work as it is customarily performed throughout the economy) is generally a sufficient basis for a finding that the individual is not disabled. Past work experience should be considered carefully to assure that the available facts support conclusions regarding the claimant's ability or inability to perform this work.

Where an individual with a marginal education and long work experience of 35 years or more limited to the performance of arduous unskilled labor is not working, and is no longer able to perform such labor because of a severe impairment(s), such an individual will generally be found to be disabled. (See 20 CFR §416.962.) Also a person generally will be found disabled if he or she has a severe impairment of any nature, is of advanced age, has a limited education, and has no relevant work experience.

If the individual is able to meet the physical and mental demands of past relevant work, he or she should be found not disabled. However, the inability to do past relevant work is not in itself a basis for a finding of disability.

> Capacity to Do Other Work -- If an individual cannot perform any past relevant work because of a severe impairment(s), but the remaining physical and mental capacities are consistent with meeting the physical and mental demands of a significant number of jobs (in one or more occupations) in the national economy, and the individual has the vocational capabilities (considering age, education, and past work experience) to make an adjustment to work different from that performed in the past, it shall be determined that the individual is not disabled. However, if an individual's physical and mental capacities in conjunction with his or her vocational capabilities (considering age, education and past work experience) do not permit the individual to adjust to work different from that performed in the past, it shall be determined that the individual is disabled.

The assessment ability to engage in SGA involves the evaluation of such factors as the functional capacity to perform the physical or mental exertion of work and to sustain work at a level which meets the standards of SGA on a regular and continuing basis. In all such cases where a determination or decision regarding disability is to be made, the evidence must be

sufficient to permit a comparison between the claimant's capabilities and limitations and the requirements of relevant occupations.

The regulations require that, at this point in the sequential evaluation process, the rules established in Appendix 2 to Subpart P of Regulations No. 4 must be used to direct or to guide the determination as to whether the individual is "disabled." Where all factors relative to an individual coincide with those in a rule in the Appendix, that rule directs a conclusion as to whether the individual is "disabled." When all factors do not coincide with a rule (e.g., the individual has the RFC for more than light work but for less than the full range of medium work), the rules are used as a frame of reference for determining whether the individual is "disabled."

Similarly, when an individual has a combination of exertional and nonexertional impairments, the rules are used as a frame of reference for determining "disability." The exertional impairment is considered first under the applicable rule, and then the additional restriction(s) imposed by the nonexertional impairment is considered.

When an individual has a solely nonexertional impairment, the principles established in the regulations are applied in determining "disability," giving consideration to the rules for specific case situations described in Appendix 2 (i.e., use of the rules as a frame of reference). When the nonexertional impairment is a mental impairment, the ability to concentrate, to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and pressures in a work setting are considered. (See 20 CFR §416.945(c).)

(SSR No. 86-8)

1310-2
The issues before the federal Administrative Law Judge (ALJ) include "all the issues brought out in the initial, reconsidered, or revised determination that were not decided entirely in your [the applicant's] favor." However, if evidence presented before or during the hearing causes the ALJ to question a fully favorable determination, the ALJ will notify the applicant of the fact that this will be an issue at the hearing. (20 CFR §416.1446(a))

1310-3
Counties are reminded that there is now a program, the 250% Working Disabled Program that allows individuals to earn above the Substantial Gainful Activity (SGA) limit and still qualify for linkage through disability. Because of this, counties must not base a decision to process a disability determination for working persons on SGA. The county must refer the case to the Disability and Adult Programs Division (DAPD) and alert the DAPD analyst to evaluate the individual's disability based on criteria for the 250% Working Disabled program. (All County Welfare Director's Letter (ACWDL) 02-40, July 3, 2002)

1311-1
The Social Security Act encourages severely disabled persons to seek and maintain employment. These severely impaired working individuals, whose earnings from substantial gainful activity are too high to retain financial eligibility for SSI/SSP continue to remain eligible for Medicaid as deemed SSI recipients as long as their income without consideration of earnings does not exceed the SSI/SSP payment level. They are referred to as "1619(b)" recipients, because eligibility is established under Title XVI, §1619(b) of the Social Security Act.

The CDHS has issued instructions for determining eligibility for such individuals. There are four basic requirements. These individuals must:

1. Depend on Medicaid to continue working.

2. Meet all nondisability requirements for SSI/SSP benefits except for earnings.

3. Have insufficient earnings to replace SSI cash benefits, Medicaid, publicly-funded personal or attendant care which would be lost due to the individual's earnings.

AND

4. Have received SSI, or have been eligible as a 1619(b) person, in the month before the Medi-Cal Only determination/eligibility is initially established.

(All-County Welfare Directors Letter No. 97-27, June 20, 1997)

1311-2
Federal law provides, in pertinent part, that if a claimant is performing SGA, he or she will not be found to be disabled. If the claimant is working and the work is SGA, he or she will be found not disabled regardless of his or her medical condition. (20 CFR §416.920)

1311-2A
Counties are reminded that there is now a program, the 250% Working Disabled Program that allows individuals to earn above the Substantial Gainful Activity (SGA) limit and still qualify for linkage through disability. Because of this, counties must not base a decision to process a disability determination for working persons on SGA. The county must refer the case to the Disability and Adult Programs Division (DAPD) and alert the DAPD analyst to evaluate the individual's disability based on criteria for the 250% Working Disabled program. (All County Welfare Director's Letter (ACWDL) 02-40, July 3, 2002)

1311-3
Federal law provides that SGA is work that is both substantial and gainful. It is substantial if it involves doing significant physical or mental activities, even on a part-time basis. It is gainful if it is done for pay or profit. (20 CFR §416.972)

1311-4
The SGA guidelines are a basis for determining whether an individual is engaged in SGA. The guidelines are concerned only with those earnings which represents a person's own productivity. To determine an employee's countable earnings for SGA purposes:

1. Determine gross earnings, including payment in kind (e.g., room and board).

2. Deduct the amount of any subsidized earnings and the amount of certain impairment-related work expenses. Do not deduct standard payroll deductions.

3. Average monthly earnings.

(POMS DI 10505.001A.)

1311-5 REVISED 3/07
Federal law provides, in pertinent part, that earnings of $300 per month or more during the period January 1, 1980 through December 31, 1989 will ordinarily show that a claimant has engaged in SGA. . The SGA amount was $830 effective January 2005 $860 effective January 2006 and $900 effective January 2007. (20 CFR §416.974(b); All-County Welfare Directors Letters No. 04-40, December 29, 2004; 05-42, December 19, 2005; 06-34, November 16, 2006; Medi-Cal Eligibility Procedures Manual 22C-2.1)

1311-5A
Substantial Gainful Activity (SGA) Earnings Guidelines only apply to blind Title II individuals, not to those under Title XVI (the SSI program). In 1998, the SGA countable earnings figure for Title II blind individuals was $1050; in 1999, it was $1110. (POMS DI 24001.025B.3)

1311-5B ADDED 2/05
SGA rules do not apply to legally blind persons who meet the Supplemental Security Income criteria, Medi-Cal beneficiaries who return to work after disability has been approved, or to individuals applying for Medi-Cal under the 250 percent Working Disabled Program. (All County Welfare Director's Letter 04-40, December 29, 2004)

1311-6
There is a presumption that when an applicant's earnings are above the statutory minimum, the applicant is engaged in Substantial Gainful Activity (SGA). (*Keyes v. Sullivan* (1990) 894 F.2d 1053) This presumption can be rebutted. Factors to be considered in addition to the amount earned include the time spent working, quality of a person's performance, special working conditions, and the possibility of self-employment. (*Katz v. Secretary of HHS* (1992) 972 F.2d 290)

1311-7
The determination of whether a self-employed person is engaging in Substantial Gainful Activity (SGA) will not be based on income alone, but on the activities performed and their value to the business. The individual is considered engaging in SGA if:

(1) The work activity, in terms of hours worked, skills, energy output, efficiency, duties and responsibilities, is comparable to that of unimpaired individuals in the community who are in the same or similar business;

(2) The work activity, although not comparable to that of unimpaired individuals, is clearly worth $700 ($780 as of January 1, 2002) a month when considered in terms of its value to the business, or when compared to the salary an employee would be paid; or

(3) The services rendered are significant to the operation of the business and receive a substantial income from the business.

(20 CFR §416.975(a))

1311-8
A self-employed person or an employee who is forced to stop work after a short period of time because of an impairment is considered to have engaged in an unsuccessful work attempt and earnings from that work will not show an ability to perform substantial gainful activity. (20 CFR

§§416.974(a) and 416.975(a)) A short period of time is considered to be no more than six months. (POMS DI 10505.001C.)

1311-9
Illegal activities can constitute SGA if they are both substantial (involving significant physical and mental activity) and gainful (the kind of work usually done for pay or profit, whether or not a profit is realized). When an applicant engages in illegal activity (theft) to support a drug habit, he is not entitled to deduct the cost of the narcotics he purchases as an impairment-related work expense. (Social Security Ruling 94-1c, adopting *Dotson* v. *Shalala* (7th Circuit 1993) 1 F. 3d 571)

1311-10
When a heroin addict acquires approximately $4,200 of heroin in a month, there is a presumption that he is engaging in SGA as his earnings exceed $500 per month. However, in *Corrao* v. *Shalala* (1994) 20 F. 3d 943, the 9th Circuit held that the presumption was rebutted. Mr. Corrao spent only a minimal amount of time working--25 minutes to 45 minutes per transaction. Second, he did not have to exert himself significantly either physically or mentally. He did not organize drug dealers; he did not use his own money; and he did not receive cash for his portion of the drugs. There was no indication of initiative, organization, or responsibility. In general, the Court held that the ALJ has the duty to develop the record fully and fairly when the income exceeds the guideline. To determine “whether the presumption is rebutted, the factors to be considered include the responsibilities and skills required to perform the work, the amount of time the individual spends working, the quality of the individual's work, special working conditions, and for individuals who are self-employed, the value of their work to the business.” (*Corrao*, supra, 20 F. 3d at 948)

1311-11
Illegal activities can be considered substantial gainful activities. (See *Hart* v. *Sullivan* (1992) 824 F.Supp. 903) In *Hart*, the District Court of the Northern District of California held that the federal ALJ correctly denied the claimant's request for Social Security benefits on the basis that the claimant engaged in SGA. The claimant was moving $700 of heroin daily, and received $140 of heroin for his personal use. His work involved significant physical or mental activities, because of the scope of the operation and because of the claimant's ability to avoid apprehension by the authorities. In *Speaks*, the District Court of the Central District of California followed the principles established in *Corrao* v. *Shalala* (1994) 20 F. 3d 943. The *Speaks* court stated that prostitution was a profession, illegal in California but legal elsewhere. The court held that Ms. Speaks, who earned at least $600 per month, was engaging in SGA, and was thus ineligible for Social Security benefits. (*Speaks* v. *Secretary of HHS*)

1312-1
The POMS states that for an impairment or combination of impairments to be considered severe, it must significantly limit the individual's physical or mental ability to perform one or more basic work activities needed to do most jobs, for example, walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling; seeing, hearing and speaking; understanding, carrying out and remembering simple instructions; use of judgment, responding appropriately to supervision, coworkers, and usual work situations; and dealing with changes in a routine work setting. If an individual does not have a condition which significantly limits his/her physical or mental capacity to perform basic work-related functions, a finding must be made that he/she does not have a severe impairment and, therefore, is not disabled. This is a decision based on medical considerations alone; no consideration of vocational factors is necessary. When there is

no significant limitation in the ability to perform basic work-related functions, an impairment or combination of impairments will not be considered severe even though it may prevent an individual from doing work that he/she has done in the past. If the individual had a highly specialized job involving unusual work-related functions, the inability to do this work would be due to the specific demands of the highly specialized work rather than to the impairment(s). Since the individual clearly is able to perform basic work activities as they are required in most jobs, he/she does not have a severe impairment and is not disabled. (POMS DI 22001.015)

1312-2

The POMS sets forth guidelines in the evaluation of medical impairments that are not severe for purposes of evaluating Title XVI individuals over 18 years of age. While an impairment is not severe if it has no more than a minimal effect on an individual's physical or mental abilities) to do basic work activities, the possibility of several such impairments combining to produce a severe impairment must be considered. When assessing the severity of whatever impairments an individual may have, the adjudicator must assess the impact of the combination of those impairments on the person's ability to function, rather than assess separately the contribution of each impairment to the restriction of his or her activity as if each impairment existed alone. A claim may be denied under this concept only if the evidence shows that the individual's impairments, when considered in combination, are medically not severe (i.e., do not have more than a minimal effect on the persons' physical or mental abilities) to perform basic work activities). (POMS DI 24505.005A.) Inherent in a finding of a medically not severe impairment or combination of impairments is the conclusion that the individual's ability to engage in SGA is not seriously affected. Before this conclusion can be reached, however, an evaluation of the effects of the impairment(s) on the person's ability to do basic work activities must be made. A determination that an impairment(s) is not severe requires careful evaluation of the medical findings and an informed judgment about the limiting effect on physical and mental abilities to perform basic work activities, no evaluation of past work (or age, education, and work experience) is needed. (POMS DI 24505.005B.) In the absence of contrary evidence, it is reasonable to conclude that an individual whose impairments do not preclude the performance of basic work activities is, therefore, able to perform his or her past relevant work since, by definition, basic work activities are the abilities and aptitudes necessary to do most jobs. If the medical evidence established only a slight abnormality, which has no more than a minimal effect on a claimant's ability to do basic work activities, but evidence shows that the person cannot perform his or her past relevant work because of the unique features of that work, a denial at the “not severe” step of the sequential evaluation process is inappropriate. The inability to perform past relevant work in such instances warrants further evaluation of the individual's ability to do other work considering age, education, and work experience. (POMS DI 24505.005C.)

1312-3

The POMS states that duration of disability is that period of time that an individual is continuously unable to engage in SGA because of a medically determinable impairment. It extends from the onset of an impairment that prevents SGA to the time that the claimant no longer has an impairment that prevents SGA as demonstrated by medical evidence or the actual performance of SGA. An individual who was previously entitled to a period of disability must again meet the duration requirement for any subsequent period of disability. Severe impairments lasting less than 12 months cannot be combined with successive unrelated impairments to meet the duration requirement. In order to determine the duration of the impairment, the medical reports should reflect all the pertinent symptoms, signs, and laboratory findings, as well as prescribed treatment, and the response to that treatment in terms of

changes in symptoms, signs, and laboratory findings. An impairment will be considered likely to result in death if, on the basis of established medical knowledge, it is found to be in a terminal state under the particular circumstances in the case, or if it does actually result in death. Subsection E indicates that if a claimant has two or more concurrent, not severe impairments which, when considered in combination are found to be severe, it is necessary to determine whether the combined effect of those impairments can be expected to continue to be severe for 12 months. If one or more of the impairments improves or is expected to improve within 12 months, so that the combined effect of the remaining impairments is no longer severe, the individual will not meet the 12-month duration test. (POMS DI 25505.001)

1312-4
The POMS states that when the evidence shows that within 12 months of onset the individual's impairment(s) did not or will no longer prevent SGA, a durational denial is appropriate. It is necessary to consider duration in the context of the sequential evaluation process, however, since duration does not become an issue unless at some time an impairment is severe and prevents SGA. In most cases in which the evidence substantiates a finding of disability, it will be readily apparent from the same evidence whether or not the impairment is expected to result in death or has lasted or is expected to last 12 months from the onset of disability. When the application is being adjudicated before the impairment has lasted 12 months, the nature of the impairment, therapeutic history, and prescribed treatment will serve as the basis for determining whether or not the impairment is expected to result in death or will continue to prevent the individual from engaging in any SGA for the additional number of months needed to obtain the required duration. (POMS DI 25505.010)

1312-5
In projecting the individual's RFC 12 months from onset, consider all the evidence, including but not limited to:

1. The nature of the impairment.
2. Therapeutic history.
3. Prescribed treatment.
4. Functional restrictions.
5. Daily activities.
6. Type, dosage, effectiveness, and adverse side effects of any medication.
7. Nature, location, onset, duration, frequency, radiation and intensity of any pain, and response to treatment.
8. Precipitating and aggravating factors for pain or other symptoms (e.g., movement, activity, environmental conditions).

(POMS DI 24510.020B.)

1312-6
Federal law provides, in pertinent part, that we will consider all of your symptoms in making a determination as to disability (including pain, shortness of breath, weakness or nervousness) so long as there are objective medical signs and/or findings which show that there is a medical condition that could be reasonably expected to produce these symptoms. (20 CFR §416.929)

1313-1
The federal Administrative Law Judge (ALJ) must obtain an opinion from a "medical expert" (as defined in 20 CFR §§416.927(f) and 416.912(b)(6)) when there is a question as to medical equivalence and:

1. No additional medical evidence has been received, but in the ALJ's opinion the reported symptoms, signs, and laboratory findings suggest a judgment of equivalence is reasonable.

2. Additional medical evidence is received which in the opinion of the ALJ may change the prior state determination that medical equivalency does not exist.

(POMS DI 24515.013C.1; Social Security Ruling 96-6p)

1313-2
It was reversible error when the ALJ denied the disability claim based on the fact there were no limitations which prevented the claimant from performing his past work when the ALJ failed to find that the claimant's impairment did not meet or equal a listing. (*Fanning* v. *Bowen* (1987) 827 F.2d 631.)

1313-3
A finding of "disabled" will be made for persons who are not working; who have a history of 35 years or more of arduous unskilled work; who can no longer perform this past arduous unskilled work because of a severe impairment; and who have no more than a marginal education. (20 CFR §416.962; POMS DI 25010.001B.(1))

1313-4
A finding of "disabled" will be made for persons who have a severe impairment, have no past relevant work (PRW), are age 55 or older, and have no more than a limited education. (POMS DI 24510.006B.(2))

1313-5
The disability applicant was unable to use any prosthesis that was reasonably available to him, because as a practical matter he could not afford a suitable prosthesis. The 9th Circuit Court of Appeals held that the applicant, whose leg was amputated above the tarsal region, met Listing §1.10 because of his inability to obtain a prosthesis which met his needs. (*Gamble v. Chater* (1995) 68 F. 3d 319)

1313-6
In determining whether a disability applicant equals the Affective Disorder Listing §12.04, the 9th Circuit Court of Appeals held that one must evaluate whether the combined effect of the applicant's mental and physical impairments satisfies the criteria set forth in §12.04B. (*Lester v. Chater* (1995) 69 F. 3d 1453)

1313-7
An impairment is considered medically equivalent to a listed impairment if the medical finings are at least equal in severity and duration to the listed findings. The symptoms, signs and laboratory findings for the medical records in the case are compared to the corresponding medical criteria shown for any listed impairment. Medical equivalence may be shown in two ways:

(a)(1)(i) If you have an impairment that is described in the Listing of Impairments in 20 CFR §404, App. 1, Subpart P, but--

(A) You do not exhibit one or more of the medical findings specified in the particular listing, or

(B) You exhibit all of the medical findings, but one or more of the findings is not as severe as specified in the listing:

(ii) We will still find your impairment is medically equivalent to that listing if you have other medical findings related to your impairment that are at least of equal medical significance.

(2) If you have an impairment that is not described in the Listing of Impairments, or you have a combination of impairments, no one of which meets or is medically equivalent to a listing, we will compare your medical findings with those for closely comparable listed impairments. If the medical findings related to your impairments are at least of equal medical significance to those of a listed impairment, we will find that your impairment is medically equivalent to the comparable listing.

Medical equivalence must be based on medical evidence only, and the medical evidence must be supported by medically acceptable clinical and laboratory diagnostic techniques. The opinion of one or more medical or psychological consultants may also be considered. A medical consultant is defined as a physician, and a psychological consultant (as defined in 20 CFR §416.1016) must be a qualified psychologist.

The responsibility for determining medical equivalence rests with the Administrative Law Judge for cases at the hearings level.

(20 CFR §416.926(a) - (d))

1314-1
Federal law provides, in pertinent part, that a finding of disability is not precluded where an individual cannot perform a full range of sedentary work in light of the adverse factors which further narrow the range of sedentary work (even for a younger individual). (20 CFR Part 404, Subpart P, Appendix 2, §201.00(h))

Limitation to less than a full range of sedentary work makes the Grids inapplicable. The Secretary must make specific findings of an ability to perform specified jobs, based on reliable evidence in order to support a denial. (*Gonzales* v. *Secretary* (1986) 784 F.2d 1417)

1314-2

The term “younger individual” is used to denote an individual 18 through 49. For those within this group who are 45-49, age is a less positive factor than for those who are age 18-44. Accordingly, for such individuals; (1) who are restricted to sedentary work, (2) who are unskilled or have no transferable skills, (3) who have no relevant past work or who can no longer perform vocationally relevant past work, and (4) who are either illiterate or unable to communicate in the English language, a finding of disabled is warranted. While age is a more positive factor for those who are under age 45 and is usually not a significant factor in limiting such an individual's ability to make a vocational adjustment, a finding of disabled is not precluded from those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work. The following examples are illustrative:

Example 1: An individual under age 45 with a high school education can no longer do past work and is restricted to unskilled sedentary jobs because of a severe medically determinable cardiovascular impairment. A permanent injury of the right hand limits the individual to sedentary jobs which do not require bilateral manual dexterity. None of the rules in Appendix 2 are applicable to this particular set of facts, because this individual cannot perform the full range of work defined as sedentary. Since the inability to perform jobs requiring bilateral manual dexterity significantly compromises the only range of work for which the individual is otherwise qualified (i.e., sedentary), a finding of disabled would be appropriate.

Example 2: An illiterate 41-year-old individual with mild mental retardation (IQ of 78) is restricted to unskilled sedentary work and cannot perform vocationally relevant past work, which had consisted of unskilled agricultural field work; his or her particular characteristics do not specifically meet any of the rules in Appendix 2, because this individual cannot perform the full range of work defined as sedentary. A finding if disabled is appropriate. (20 CFR Part 404, Subpart P, App. 2, §201.00(h))

1314-3
Social Security Ruling (SSR) 96-9p and POMS DI 25015 deal with individuals who cannot perform a full range of sedentary work.

Those individuals are not automatically considered disabled. The disability determination is based on the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base. Where there is more than a slight impact on the individual's ability to perform the full range of sedentary work, the adjudicator must cite examples of occupations or jobs the individual can do, and provide a statement of the incidence of such work in the individual's region, or in several regions of the country to establish nondisability. (POMS DI 25015.020B.3)

1314-4
An individual who cannot perform a full range of sedentary work may have exertional limitations and restrictions which erode his/her occupational base, limiting the number of available jobs. Judgments are made using the following criteria (and are based on the assumption that there are no other limitations or restrictions to sedentary work).

1. Lifting/carrying and pushing/pulling: An individual who has an ability to lift or carry slightly less than 10 lbs., would have an occupational base not significantly eroded; however, an inability to lift or carry more than 1 or 2 lbs. would significantly erode the unskilled sedentary occupational base.

2. Standing and walking: An individual who can stand and walk for slightly less than two hours per day would have an occupational base not significantly eroded; however, a limitation to standing and walking for a total of a few minutes in a workday would significantly erode the unskilled sedentary occupational base.

3. Sitting: The unskilled sedentary base will be eroded if the individual is unable to sit for six hours in a day, but this may not significantly limit work at a higher exertional level (e.g., light) if the individual is able to stand and walk for six hours a day and meets other requirements for light work.

4. Alternate sitting and standing: Where the need for periodic alternations cannot be accommodated by scheduled breaks and a lunch period, the unskilled sedentary base will be eroded, depending on the frequency of the need to alternate sitting and standing and the length of time needed to stand.

5. Medically required hand-held assistive device: The hand-held assistive device must be medically required, and documentation as to when (e.g., all the time, periodically, distance and terrain) of when it is required should be obtained. An individual who uses such a device in one hand may still have the ability to perform lifting and carrying requirements of many unskilled sedentary occupations, while one who uses such a device for balance because of significant involvement in both lower extremities may have the occupational base significantly eroded.

In cases where the limitations fall between the extremes discussed above, a vocational resource service should be consulted. (POMS DI 25015.020B.6.; Social Security Ruling 96-9p)

1314-5
An individual who cannot perform a full range of sedentary work may have nonexertional limitations which erode his/her occupational base, limiting the number of available jobs. Judgments are made using the following criteria (and are based on the assumption that there are no other limitations or restrictions to sedentary work):

1. Postural limitations: Restrictions related to activities such as climbing ladders or scaffolds, balancing, kneeling, crouching or crawling would not usually erode the unskilled sedentary occupational base. But when balancing affects standing or walking on level terrain, that base may be significantly eroded.

2. Manipulative limitations: Any significant limitation of an individual's ability to handle and work with small objects with both hands will significantly erode the unskilled sedentary occupational base; a less significant limitation, particularly in the nondominant hand, may require consultation with a vocational resource; while the ability to feel the size, shape, temperature, or texture of an object by the fingertips would not significantly erode such occupational base.

3. Visual limitations or restrictions: Since most sedentary unskilled occupations require working with small objects, there is a significant erosion of the occupational base when there is a restriction in seeing small objects, and such

significant erosion also exists when the individual's sight makes him/her unable to avoid ordinary workplace hazards.

4. Communicative limitations: As long as the individual can hear and understand simple oral instructions, and communicate simple information, the unskilled sedentary occupational base is not significantly eroded.

5. Environmental restrictions: Exposure to extreme temperatures, wetness or humidity, vibration or unusual hazards, will generally not significantly erode the unskilled sedentary occupational base. Restrictions on ability to work in a noisy environment and be exposed to odors or dust must be individually evaluated and consultation with a vocational resource is useful.

(POMS DI 25015.020B.7; Social Security Ruling 96-9p)

1314-6
The basic mental demands of competitive, remunerative unskilled work include the abilities on a sustained basis to:

- Understand, remember, carry out simple instructions;

- Make simple work-related decisions;

- Respond appropriately to supervisors, co-workers, and work situations; and

- Deal with changes in routine work settings.

A less substantial loss of ability to meet any of the basic mental demands listed above

- Severely limits the occupational base and thus

- Would justify a finding of inability to perform other work even for persons with favorable age, education and work experience.

(POMS DI 25020.010A.3; Social Security Ruling 96-9p)

1314-7
The inability to perform jobs that require bilateral manual dexterity significantly compromises the sedentary occupational base. Since sedentary was the lowest RFC representing significant jobs in the economy, and the claimant was limited to sedentary work, the applicant was considered disabled. *Fife v. Heckler* (1985) 767 F.2d 1427.

1314-8
Environmental limitations may affect any individual's ability to work. Examples of environmental limitations include the need to avoid: being near dangerous moving machinery; certain chemicals such as petroleum derivatives; excessive dust or noise; extreme heat or cold.

An environmental limitation ordinarily would not significantly affect the range of work for individuals with the physical capacity for heavy or very heavy work.

A need to avoid only excessive amount of environmental pollutants that exist to some degree in most workplaces does not have a significant impact on any range of work.

An inability to tolerate even small amounts of dust, noise, etc. significantly impinges on all ranges of work since very few job environments are entirely free of irritants, pollutants and other potentially damaging conditions.

(POMS DI 25020.015)

1314-9
Social Security Ruling (SSR) 96-8p sets forth criteria relating to the determination of residual functional capacity (RFC). It provides, in part:

> Definition of RFC. RFC is what an individual can still do despite his or her limitations. RFC is an administrative assessment of the extent to which an individual's medically determinable impairment(s), including any related symptoms, such as pain, may cause physical or mental limitations or restrictions that may affect his or her capacity to do work-related physical and mental activities. (See SSR 96-4p) Ordinarily, RFC is the individual's maximum remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis, and the RFC assessment must include a discussion of the individual's ability on that basis. A "regular and continuing basis" means 8 hours a day, for 5 days a week, or an equivalent work schedule. RFC does not represent the least an individual can do despite his or her limitations or restrictions, but the most. RFC is assessed by adjudicators at each level of the administrative review process based on all of the relevant evidence in the case record, including information about the individual's symptoms and any "medical source statements" --i.e., opinions about what the individual can still do despite his or her impairment(s)-- submitted by an individual's treating source or other acceptable medical sources. (See also SSR 96-9p; POMS DI 25015.020A.)

The Ruling also provides:

> The RFC assessment must include a narrative discussion describing how the evidence supports each conclusion, citing specific medical facts (e.g., laboratory findings) and nonmedical evidence (e.g., daily activities, observations). In assessing RFC, the adjudicator must discuss the individual's ability to perform sustained work activities in an ordinary work setting on a regular and continuing basis (i.e., 8 hours a day, for 5 days a week, or an equivalent work schedule), and describe the maximum amount of each work-related activity the individual can perform based on the evidence available in the case record. The adjudicator must also explain how any material inconsistencies or ambiguities in the evidence in the case record were considered and resolved.

(SSR 96-8p)

1314-10
The POMS sets forth the evaluation of functional limitations and their effects on ranges of work. The operating policy is as follows:

6. MEDICALLY-NECESSARY HAND-HELD ASSISTIVE DEVICE

    a. If needed for even occasional standing and walking:

        > Precludes the ability to perform most unskilled jobs including unskilled sedentary jobs.

        > Accommodation to other work is not ordinarily expected even in the presence of an otherwise favorable profile.

An individual who cannot perform a full range of sedentary work may have exertional limitations and restrictions which erode his/her occupational base, limiting the number of available jobs. Judgments are made using the following criteria:

5. Medically required hand-held assistive device: The hand-held assistive device must be medically required, and documentation as to when (e.g., all the time, periodically, distance and terrain) of when it is required should be obtained. An individual who uses such a device in one hand may still have the ability to perform lifting and carrying requirements of many unskilled sedentary occupations, while one who uses such a device for balance because of significant involvement in both lower extremities may have the occupational base significantly eroded.

(POMS DI 25015.020B.7; Social Security Ruling 96-9p)

1314-11
The POMS sets forth the evaluation of functional limitations and their effects on ranges of work. The operating policy, in pertinent part, is as follows:

1. CLIMBING AND BALANCING

    a. As a general rule, a small degree of limitation (e.g., the person retains the capacity to ascend and descend ramps and stairs but cannot maintain balance on a ladder) would not significantly impact on any range(s) of work.

    b. Can be critical in certain specific types of occupations, e.g., occupations that require climbing ladders, ropes, poles, etc.

(POMS DI 25020.005)

The POMS sets forth a glossary of terms used in medical-vocational evaluations:

3. CLIMBING

    Ascending or descending ladders, stairs, scaffolding, ramps, poles, ropes, and the like, using the feet and legs and/or hands and arms.

(POMS DI 25001.001B.)

1314-12
The POMS sets forth a glossary of terms used in medical-vocational evaluations:

8. ENVIRONMENTAL CONDITIONS

   Conditions that may exist in work environments such as extremes in temperature, humidity, noise, vibrations, fumes, odors, presence of toxic substance, dust, poor ventilation, hazards, etc.

9. ENVIRONMENTAL LIMITATION

   An impairment-caused need to avoid one or more environmental conditions in a work-place.

(POMS DI 25001.001B.)

The POMS states that an individual who cannot perform a full range of sedentary work may have nonexertional limitations which erode his/her occupational base, limiting the number of available jobs. Judgments are made using the following criteria (and are based on the assumption that there are no other limitations or restrictions to sedentary work):

5. Environmental restrictions: Exposure to extreme temperatures, wetness or humidity, vibration or unusual hazards, will generally not significantly erode the unskilled sedentary occupational base. Restrictions on ability to work in a noisy environment and be exposed to odors or dust must be individually evaluated and consultation with a vocational resource is useful.

(POMS DI 25015.020B.7; Social Security Ruling 96-9p)

1314-13
The POMS sets forth a glossary of terms used in medical-vocational evaluations:

14. FEELING

    Perceiving such attributes of objects and materials as size, shape, temperature, or texture, by means of receptors in the skin, particularly those of the fingertips.

15. FINGERING

    Picking, pinching, or otherwise working with the fingers primarily (rather than with the whole hand or arm as in handling).

(POMS DI 25001.001B.)

POMS DI 25015.020B.7; Social Security Ruling 96-9p provides that an individual who cannot perform a full range of sedentary work may have nonexertional limitations which erode his/her occupational base, limiting the number of available jobs. Judgments are made using the following criteria (and are based on the assumption that there are no other limitations or restrictions to sedentary work):

2. Manipulative limitations: Any significant limitation of an individual's ability to handle and work with small objects with both hands will significantly erode the unskilled sedentary

occupational base; a less significant limitation, particularly in the nondominant hand, may require consultation with a vocational resource; while the ability to feel the size, shape, temperature, or texture of an object by the fingertips would not significantly erode such occupational base.

The POMS also sets forth the evaluation of functional limitations and their effects on ranges of work. The operating policy is as follows:

2. FINGERING AND FEELING

a. Fingering is needed to perform most unskilled sedentary jobs and to perform certain at all levels of exertion.

b. The mere ability to feel the size, shape, temperature or texture of an object by the fingertips, is a function required in very few jobs.

c. A loss of fine manual dexterity narrows the sedentary and light ranges of work more than it does the medium, heavy and very heavy ranges of work.

(POMS DI 25020.005)

1315-1
The Ninth Circuit Court of Appeals has held that once an ALJ has made a finding as to the individual's RFC, a second ALJ cannot change that determination absent good cause established through new and material evidence. The Court determined that the appellant, whose only changed circumstance was his increased age, was entitled to disability benefits once he had reached his new age under the previously established medical/vocational guidelines. (*Chavez* v. *Bowen* (1988) 844 F. 2d 691)

1315-2
In *Russell* v. *Bowen* (1988) 856 F.2d 81, the court held that the petitioner, who was 59 years, 5 months of age, was not entitled to be treated as 60 years of age for purposes of the Grid. The court stated that age distinctions between, e.g., 49 years old and 50, may be imperfect, but they are not irrational. The court went on to say that the ALJ cannot apply age categories "...mechanically in a borderline situation..." citing *Colvin* v. *Heckler* (1986) 782 F.2d 802, 805.

1315-3
The POMS sets forth the following criteria for dealing with "age" as a vocational factor.

1. General

"Age" means an individual's chronological age. When it is decided whether an individual is disabled under POMS DI 25015.001, one must consider the individual's chronological age in combination with the individual's residual functional capacity, education, and work experience; one does not consider the individual's ability to adjust to other work on the basis of the individual's age alone.

In determining the extent to which age affects a person's ability to adjust to other work, advancing age is an increasingly limiting factor in the person's ability to make such an

adjustment. If an individual is unemployed but still has the ability to adjust to other work, the individual is not disabled.

2. How To Apply the Age Categories

When a finding is made about an individual's ability to do other work under POMS DI 25015.001, use the age categories in POMS DI 25015.005A.4. - DI 25015.005A.6. Use each of the age categories that apply during the period for which it must be determined if an individual is disabled.

3. Borderline Age Situations

Do not apply the age categories mechanically in a borderline situation. If an individual is within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that the individual is disabled, consider whether to use the older age category after evaluating the overall impact of all the factors of the individual's case.

4. Younger Person

If an individual is a younger person (under age 50), generally do not consider that the individual's age will seriously affect the individual's ability to adjust to other work. However, in some circumstances, consider that persons age 45-49 are more limited in their ability to adjust to other work than persons who have not attained age 45.

5. Person Closely Approaching Advanced Age

If an individual is closely approaching advanced age (age 50-54), consider that the individual's age along with a severe impairment(s) and limited work experience may seriously affect the individual's ability to adjust to other work.

6. Person of Advanced Age

Consider that at advanced age (age 55 or older), age significantly affects a person's ability to adjust to other work. There are special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60-64).

7. Individuals Age 65 or Older

This age category is relevant for title XVI claims only. See POMS DI 25015.025.

(POMS DI §25015.005A.)

1315-3A
The POMS sets forth a glossary of terms used in medical-vocational evaluations:

1. AGE

a. Refers to chronological age and the extent to which it affects the individual's ability to adapt to a new work situation and to do work in competition with others. For purposes of adjudication, four age categories are used.

c. Approaching advanced age - age 50-54

(POMS DI 25001.001B.)

1315-3B
The POMS sets forth a glossary of terms used in medical-vocational evaluations:

1. AGE

a. Refers to chronological age and the extent to which it affects the individual's ability to adapt to a new work situation and to do work in competition with others. For purposes of adjudication, four age categories are used.

d. Advanced age - age 55 or over

(POMS DI 25001.001B.)

1315-3C
The POMS sets forth a glossary of terms used in medical-vocational evaluations:

1. AGE

a. Refers to chronological age and the extent to which it affects the individual's ability to adapt to a new work situation and to do work in competition with others. For purposes of adjudication, four age categories are used.

e. Closely approaching retirement age - a person of advanced age who is age 60-64

(POMS DI 25001.001B.)

1315-3D
The POMS sets forth a glossary of terms used in medical-vocational evaluations:

1. AGE

a. Refers to chronological age and the extent to which it affects the individual's ability to adapt to a new work situation and to do work in competition with others. For purposes of adjudication, four age categories are used.

b. Younger individual - under age 50

(POMS DI 25001.001B.)

1315-4
The POMS sets forth the following criteria for dealing with "education" as a vocational factor:

1. Educational Level

    a. The numerical grade level of formal schooling completed is to be used, absent evidence tot he contrary.

    b. In some cases, the numerical grade level of formal schooling completed may not be representative of an individual's present educational achievements, which could be higher or lower. Should strong convincing evidence of this exist, the educational level will be determined on the basis of such evidence.

        Example: The kinds of responsibilities one assumed when working could indicate the existence of intellectual capacities (e.g., reasoning ability, communication skills and arithmetical ability) far greater than would be indicated by the amount of formal schooling the person completed.

2. Time Lapse Since Completion

    Formal education that was completed many years ago, or unused skills and knowledge that were a part of such formal education, may no longer be very useful or meaningful in terms of the individual's ability to adapt to new work.

3. Inability to Communicate in English

    a. Is considered as an educational factor since the ability to communicate in English is often acquired or enhanced through educational exposure.

    b. Is considered primarily in the sense of whether a person possesses a sufficient vocabulary in English to perform even simple unskilled work that exists in significant numbers in the national economy.

    c. May preclude an individual from performing jobs which require conversing with peers and supervisors in English.

    d. In no sense implies that an individual lacks intelligence or formal schooling, e.g., formal schooling may have been received in another language.

4. Non-English Language

    For purpose of making determinations of capacity for other work, it is generally immaterial in what, if any, non-English language an individual may be fluent. This is true regardless of where a person resides (i.e., even if a person resides in an area where English is not the predominant language).

(POMS DI 25015.010A.)

1315-4A
The POMS sets forth a glossary of terms used in medical-vocational evaluations:

7. EDUCATION

   a. Is formal schooling or other training which contributes to the individual's ability to meet vocational requirements, e.g., reasoning ability, communication skills, and arithmetical ability.

   b. Includes the evaluation of the ability to communicate in English.

   c. For adjudicative purposes, education is classified into five categories which are defined below in d-h.

   d. Illiteracy

      > The inability to read or write English.

      > An individual who is able to sign his or her name, but cannot read or write a simple communication in the English language (e.g., instructions, inventory lists), is considered illiterate.

      > Generally, an illiterate person has little or no formal schooling in English.

   h. Inability to Communicate in English

      > The inability to speak or understand English as a result of not having been taught, or educated in the English language.

      > It also includes being illiterate in English, since for adjudicative purposes, it is assumed that a person who is unable to speak or understand English is also unable to read or write English.

(POMS DI 25001.001B.)

1315-4B
The POMS sets forth a glossary of terms used in medical-vocational evaluations:

7. EDUCATION

   a. Is formal schooling or other training which contributes to the individual's ability to meet vocational requirements, e.g., reasoning ability, communication skills, and arithmetical ability.

   b. Includes the evaluation of the ability to communicate in English.

   c. For adjudicative purposes, education is classified into five categories which are defined below in d-h.

   d. Illiteracy

      > The inability to read or write English.

> An individual who is able to sign his or her name, but cannot read or write a simple communication in the English language (e.g., instructions, inventory lists), is considered illiterate.

> Generally, an illiterate person has little or no formal schooling in English.

h. Inability to Communicate in English

> The inability to speak or understand English as a result of not having been taught, or educated in the English language.

> It also includes being illiterate in English, since for adjudicative purposes, it is assumed that a person who is unable to speak or understand English is also unable to read or write English.

(POMS DI 25001.001B.)

1315-4C
The POMS sets forth a glossary of terms used in medical-vocational evaluations:

7. EDUCATION

a. Is formal schooling or other training which contributes to the individual's ability to meet vocational requirements, e.g., reasoning ability, communication skills, and arithmetical ability.

b. Includes the evaluation of the ability to communicate in English.

c. For adjudicative purposes, education is classified into five categories which are defined below in d-h.

e. Marginal Education

> Ability in reasoning, arithmetic, and language skills which are required for the performance of simple, unskilled types of jobs.

> Absent evidence to the contrary, formal schooling at a grade level of sixth grade or less is considered a marginal education.

(POMS DI 25001.001B.)

1316-1
The POMS deals with transferability of skills as follows:

Transferability

a. Is only meaningful when a person has the functional capacity to perform the jobs/occupations to which his or her skills are transferable. See POMS DI 25001.001 for definition of transferability.

b. Is most probably meaningful among jobs in which:

- the same or less degree of skill is required, because people are not expected to do more complex jobs than they actually performed.

- the same or similar tools and machines are used; and

- the same or similar raw materials, productions, processes or services are involved.

A complete similarity of all of these factors is not necessary. There are degrees of similarity ranging from very close similarities to remote and incidental similarities among jobs.

c. The greater the degree of acquired work skills, the less difficulty an individual will experience in transferring skills to other jobs (except when the skills are such that they are not readily usable in other industries, jobs or work settings).

d. Where jobs have universal applicability across industry lines (e.g., clerical, professional, administrative, or managerial types of jobs), transferability of skills to industries differing from past work experience can usually be accomplished with very little, if any, vocational adjustment.

e. Skills that are unique to a specific work process in a particular industry or work setting are not transferable if more than a minimal vocational adjustment in terms of tools used, work process, work setting or industry is required.

f. Skills acquired in an isolated vocational setting (e.g., like many jobs in mining, agriculture or fishing) that are not readily usable in other industries, jobs, and work setting, are not considered to be transferable.

g. If an individual is of advanced age (age 55 or older), and has a severe impairment(s) that limits him or her to sedentary or light work, determine that the individual cannot make an adjustment to other work unless he/she has skills that can transfer to other skilled or semiskilled work (or if the individual has recently completed education which provides for direct entry into skilled work) that the individual can do despite his/her impairment(s). Decide if an individual has transferable skills as follows.

- If an individual is of advanced age and has a severe impairment(s) that limits him or her to no more than sedentary work, find that the individual has skills that are transferable to skilled or semiskilled sedentary work only if the sedentary work is so similar to the individual's previous work that he or she would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry.

- If an individual is of advanced age but has not attained age 60, and has a severe impairment(s) that limits him or her to no more than light work, apply the rules in POMS DI 25015.015A.3.a. - POMS DI 25015.015A.3.f. to decide if the individual has skills that are transferable to skilled or semiskilled light work.

- If an individual is closely approaching retirement age (age 60-64) and has a severe impairment(s) that limits him or her to no more than light work, find that the individual has skills that are transferable to skilled or semiskilled light work only if the light work is so similar to the individual's previous work that he or she would need to make very little, if any vocational adjustment in terms of tools, work processes, work settings, or the industry.

(POMS DI 25015.015A.3)

1316-2
There is an inherent difference between innate aptitudes and learned skills. For purposes of vocational analysis, aptitudes or traits are not transferable skills. A worker age 60 or over who is incapable of past relevant work and limited to sedentary or light exertions is presumed disabled until the Secretary of Health and Human Services (HHS) demonstrates the substantial vocational asset of transferable skills requiring little or no adjustment in terms of tools, work processes, work settings and industry. (*Renner v. Heckler* (1986) 786 F.2d 1421)

1316-3
The 9th Circuit Court of Appeals has held that for purposes of Social Security Disability determinations, a skilled or semi-skilled work history that produced no transferable skills should be treated as equivalent to an unskilled work history. Thus, in reviewing the GRID, the person with no transferable skills should be treated as an unskilled worker as in, e.g., 20 Code of Federal Regulations (CFR) Pt. 404, Subpart P., App. 2, Rule 203.05, which would otherwise direct a “not disabled” finding. (*Silveira and Vargas* v. *Apfel*, 2000 Daily Journal D.A.R. 2327, March 2, 2000)

1316-4
The POMS sets forth the following criteria for dealing with "skills" as vocational factors:

2. Skills

   a. Acquired from work may or may not be commensurate with a person's educational attainment.

   b. Are not obtained from doing unskilled work.

   c. When a person's acquired skills are not transferable, he or she is considered to be capable of adjusting to only unskilled work.

   d. Persons who possess transferable skills generally have a special advantage over unskilled workers in the labor market.

(POMS DI 25015.015A.)

1316-5
The POMS sets forth the following criteria for determining the "skill level" of prior relevant work (PRW):

1. Determining Skill Level of PRW

a. Job Corresponds to Dictionary of Occupational Titles' (DOT) Occupational Title

- Look up the occupation's specific vocational preparation (SVP) rating in the Selected Characteristics of Occupations (SCO).

- Consider the occupation to be unskilled if the SVP rating is 1 or 2.

- Consider the occupation to be semiskilled if the SVP rating is 3 or 4.

- Consider the occupation to be skilled if the SVP rating is 5 or above.

CAUTION: The DOT occupational title of an individual's PRW may be different from the job title listed by the individual. The DOT occupational title (if one exists) is determined from the description of the job duties/activities described by the individual (or an employer, coworker or family member, should the individual be unable to provide a sufficient description). The job duties/activities, not the job title given by the individual, are determinative.

b. Job Does Not Correspond to a DOT Occupational Description

- Compare the job duties/activities with the definitions of skilled, semiskilled and unskilled in POMS DI 25001.001 and with the SVP timeframes listed in the SCO.

- Consider a job as unskilled if its SVP time is determined to be from 0 to 30 days.

- Consider a job semiskilled if its SVP time is determined to be from 30 days to 6 months.

- Consider a job skilled if its SVP time is determined to be more than 6 months.

NOTE: It may be helpful in making this determination to look at SVP ratings for DOT occupational titles that, while not corresponding to the PRW described by the individual, contain duties/activities similar (in terms of skill level) to those that the person performed.

(POMS DI 25015.015B.)

1316-6
The POMS sets forth the following criteria for dealing with "training" as a vocational factor:

4. Training

a. May be vocationally significant if it prepares an individual to do a specific job or provides background to do a number of jobs in the same field. (See POMS DI 25001.001 for definition of training.)

b. Content, duration, and recency must be considered in determining the scope and application of training and its current usefulness.

c. Recently completed training may provide direct entry to a semiskilled or skilled job, but usually only at the apprenticeship or lowest level for that occupation.

d. Generally, training that was completed more than 15 years ago and was not used in a claimant's PRW, should not be considered as improving a person's current vocational outlook.

(POMS DI 25015.015A.)

1316-7
POLICY STATEMENT: The topics discussed below expand upon the disability regulations.

A 1982 Social Security Ruling (SSR) discusses transferability of skills. The following is based on that SSR.

1. Transferability of skills is an issue only when an individual's impairment(s), though severe, does not meet or equal the criteria in the Listings of the regulations but does prevent the performance of past relevant work (PRW), and that work has been determined to be skilled or semiskilled.

2. Skills, skill levels, and their potential for being transferred to other occupations.

   a. What a "skill" is. A skill is knowledge of a work activity which requires the exercise of significant judgment that goes beyond the carrying out of simple job duties and is acquired through performance of an occupation which is above the unskilled level (requires more than 30 days to learn). It is practical and familiar knowledge of the principles and processes of an art, science or trade, combined with the ability to apply them in practice in a proper and approved manner. This includes activities like making precise measurements, reading blueprints, and setting up and operating complex machinery. A skill gives a person a special advantage over unskilled workers in the labor market.

      Skills are not gained by doing unskilled jobs, and a person has no special advantage if he or she is skilled or semiskilled but can qualify only for an unskilled job because his or her skills cannot be used to any significant degree in other jobs. A person's acquired work skills may or may not be commensurate with his or her formal educational attainment.

   b. What "transferability" is. Transferability means applying work skills which a person has demonstrated in vocationally relevant past jobs to meet the requirements of other skilled or semiskilled jobs. Transferability is distinct from the usage of skills recently learned in school which may serve as a basis for direct entry into skilled work (Appendix 2, §201.00(g)).

   c. Determination that a job is unskilled. Unskilled occupations are the least complex types of work. Jobs are unskilled when persons can usually learn to do them in

30 days or less. The majority of unskilled jobs are identified in the Department of Labor's Dictionary of Occupational Titles (DOT).

d. Determination that a job is semiskilled and whether skills are transferable to other jobs. Semiskilled occupations are more complex than unskilled work and distinctly simpler than the more highly skilled types of jobs. They contain more variables and require more judgment than do unskilled occupations. Even though semiskilled occupations require more than 30 days to learn, the content of work activities in some semiskilled jobs may be little more than unskilled.

The regulations' definition of semiskilled work in regulations 20 CFR §416.968(b) states that semiskilled jobs "may require alertness and close attention . . . coordination and dexterity . . . as when hands or feet must be moved quickly to do repetitive tasks." These descriptive terms are not intended, however, to illustrate types of skills, in and of themselves. The terms describe worker traits (aptitudes or abilities) rather than acquired work skills. Skills refer to experience and demonstrated proficiency with work activities in particular tasks or jobs. In evaluating the skill level of PRW or potential occupations, work activities are the determining factors.

Worker traits to be relevant must have been used in connection with a work activity. Thus, in the regulations, the trait of alertness is connected with the work activities of close attention to watching machine processes, inspecting, testing, tending or guarding; and the traits of coordination and dexterity with the use of hands or feet for the rapid performance of repetitive work tasks. It is the acquired capacity to perform the work activities with facility (rather than the traits themselves) that gives rise to potentially transferable skills.

At the lower level of semiskilled work (next to unskilled) are jobs like those of a chauffeur and some sewing-machine operators. Also at the lower level of semiskilled work would be such jobs as room service waiter, in which the worker serves meals to guests in their rooms, taking silverware, linen, plates and food on a tray or cart and then removing the equipment from rooms after guests have eaten. Transferability of skills is not usually found from this rather simple type of work. When job activities are at this minimal level of skill, an adjudicator or administrative law judge (ALJ) can often, without assistance, make the determination that the worker has very little vocational advantage over an unskilled person and does not have transferable skills.

Slightly more complex, at a higher level of semiskilled work, are jobs like that of a nurse aide, who may also serve food to people. A nurse aide ordinarily performs other tasks which do not provide a special advantage over unskilled workers, such as dusting and cleaning rooms, changing bed linens, and bathing, dressing and undressing patients. The only duties which suggest transferable skills are those related to "nurse" rather than "aide" -- taking and recording the rates of temperature, pulse and respiration; and recording food and liquid intake and output. However, these occasional or incidental parts of the overall nurse aide job, which are a small part of a higher skilled job (nurse), would not ordinarily give a meaningful vocational advantage over unskilled.

On the other hand, a semiskilled general office clerk (administrative clerk), doing light work, ordinarily is equally proficient in, and spends considerable time doing, typing, filing, tabulating and posting data in record books, preparing invoices and statements,

operating adding and calculating machines, etc. These clerical skills may be readily transferable to such semiskilled sedentary occupations as typist, clerk-typist and insurance auditing control clerk.

e. Determination that a job is skilled and whether skills are transferable to other jobs. Skilled occupations are more complex and varied than unskilled and semiskilled occupations. They require more training time and often a higher educational attainment. Abstract thinking in specialized fields may be required, as for chemists and architects. Special artistic talents and mastery of a musical instrument may be involved, as for school band instructors. Practical knowledge of machinery and understanding of charts and technical manuals may be needed by an automobile mechanic. The president or chief executive officer of a business organization may need exceptional ability to deal with people, organize various data, and make difficult decisions in several areas of knowledge.

At a lower level of skilled work are jobs like bulldozer operator, firebrick layer, and hosiery knitting machine operator. Where the skills in (and transferability of skills from) jobs like these are at issue, occupational reference sources or a vocational specialist (VS) should be consulted as necessary.

At the upper end of skilled work are jobs like architect, aircraft stress analysis, air-conditioning mechanic, and various professional and executive or managerial occupations. People with highly skilled work backgrounds have a much greater potential for transferability of their skills because potential jobs in which they can use their skills encompass occupations at the same and lower skill levels, through semiskilled occupations. Usually the higher the skill level, the more the potential for transferring skills increases. Consultation with a VS may be necessary to ascertain whether and how these skills are transferable.

3. Documentation of skills and skill levels.

a. Sources of job information. A particular job may or may not be identifiable in authoritative reference materials. The claimant is in the best position to describe just what he or she did in PRW, how it was done, what exertion was involved, what skilled or semiskilled work activities were involved, etc. Neither an occupational title by itself nor a skeleton description is sufficient. If the claimant is unable to describe PRW adequately, the employer, a coworker or a member of the family may be able to do so.

Skills, levels of skills and potential occupations to which skills from PRW may be transferred are for the adjudicator of ALJ to determine (with the assistance, when required, of a VS or occupational reference sources).

b. Determination of skill levels of past work. In many cases, the skill level of PRW will be apparent simply by comparing job duties with the regulatory definitions of skill levels. This is especially true with most unskilled and most highly skilled work. Job titles, in themselves, are not determinative of skill level. Where it is not apparent, the adjudicator or ALJ should consult vocational reference sources; e.g., the DOT and its supplements. A VS is sometimes required to assist the adjudicator or ALJ in determining the skill level of past work.

4. Application of the concept of transferability.

   a. How transferability is determined in general. Where transferability is at issue, it is most probable and meaningful among jobs in which: (1) the same or a lesser degree of skill is required, because people are not expected to do more complex jobs than they have actually performed (i.e, from a skilled to a semiskilled or another skilled job, or from one semiskilled to another semiskilled job); (2) the same or similar tools and machines are used; and (3) the same or similar raw materials, products, processes or services are involved. A complete similarity of all these factors is not necessary. There are degrees of transferability ranging from very close similarities to remote and incidental similarities among jobs.

   Generally, the greater the degree of acquired work skills, the less difficulty an individual will experience in transferring skills to other jobs except when the skills are such that they are not readily usable in other industries, jobs and work settings. Reduced residual functional capacity (RFC) and advancing age are important factors associated with transferability because reducedRFC limits the number of jobs within an individual's physical or mental capacity to perform, and advancing age decreases the possibility of making a successful vocational adjustment.

   b. Medical factors and transferability. All functional limitations included in the RFC (exertional and nonexertional) must be considered in determining transferability. For example, exertional limitations may prevent a claimant from operating the machinery or using the tools associated with the primary work activities of his or her PRW. Similarly, environmental, manipulative, postural, or mental limitations may prevent a claimant from performing semiskilled or skilled work activities essential to a job. Examples are watchmakers with hand tremors, house painters with severe allergic reactions to paint fumes, craftsmen who have lost eye-hand coordination, construction machine operators whose back impairments will not permit jolting, and business executives who suffer brain damage which notably lowers their IQ's. These factors as well as the general capacity to perform a broad category of work (e.g., sedentary, light or medium) must be considered in assessing whether or not a claimant has transferable work skills. If an impairment(s) does not permit acquired skills to be used, the issue of transferability of skills can be easily resolved.

   c. Special provisions made for transferability. To find that an individual who is age 55 or over and is limited to sedentary work exertion has skills transferable to sedentary occupations, there must be very little, if any vocational adjustment required in terms of tools, work processes, work settings or the industry. The same is true for individuals who are age 60 and older and are limited to light work exertion. Individuals with these adverse vocational profiles cannot be expected to make a vocational adjustment to substantial changes in work simply because skilled or semiskilled jobs can be identified which have some degree of skill similarity with their PRW. In order to establish transferability of skills for such individuals, the semiskilled or skilled job duties of their past work must be so closely related to other jobs which they can perform that they could be expected to perform these other identified jobs at a high degree of proficiency with a minimal amount of job orientation.

Generally, where job skills are unique to a specific work process in a particular industry or work setting, e.g., carpenter in the construction industry, skills will not be found to be transferable without the need for more than a minimal vocational adjustment by way of tools, work processes, work settings, or industry. On the other hand, where job skills have universal applicability across industry lines, e.g., clerical, professional, administrative, or managerial types of jobs, transferability of skills to industries differing from past work experience can usually be accomplished with very little, if any, vocational adjustment where jobs with similar skills can be identified as being within an individual's RFC.

5. Example of a hypothetical case analysis. A disability applicant worked as a carpenter in the construction industry. As described by the claimant, his job was medium work in terms of the exertional level and skilled work in terms of job complexity. The skilled work functions performed by the claimant in his carpentry job included the study of blueprints, sketches or building plans for information needed in constructing, erecting, installing and repairing structures and fixtures of wood, plywood and wallboard, using saws, planes and other handtools and power tools.

   The applicant was found to be unable to do his PRW because of a cardiovascular impairment with an RFC which prevents medium exertion. There are no other impairments which might cause additional functional limitations and interfere with the transferability of his carpentry skills.

   A decisionmaker in a State agency or in the Office of Hearings and Appeals finds that the former carpenter now has the RFC for at least a full range of light work exertion and that he is age 57, not yet close to retirement age (the age group 60-64 as defined in the regulations). The adjudicator as the finder of fact or the VS as the provider of evidence may be unable to identify closely related light occupations, preferably in the construction industry.

   If unable to do so, he or she would then do further research. The research might show that there are several semiskilled light job possibilities in various worker trait groups and industries. For example, cabinet assembler and hand shaper are "manipulating" occupations in the furniture industry. Rip and groove machine operator is an "operating-controlling" occupation in the furniture industry. Box repairer in the wooden box industry and grader in the woodworking industry are two "sorting, inspecting, measuring and related work" occupations. All of these involve tools, raw materials and activities similar to those of the past carpentry work. The adjudicator alone or with the assistance of a VS is able to establish that the potential occupations exist in significant numbers in the national economy.

   If the decisionmaker were to find that the carpenter has the RFC for a full range of light work exertion but (to change one fact in the example) is closely approaching retirement age, the provision in section 202.00(f) of Appendix 2 requiring little, if any, vocational adjustment would apply. Under the circumstances the VS could state, and the decisionmaker could find, that the claimant's carpentry skills cannot be transferred with very little, if any, vocational adjustment required in terms of tools, work processes, work settings or the industry.

Should the decision maker find that the former carpenter, at any age, is now limited to sedentary work exertion, he or she would most likely find few occupations performed in the seated position which utilize the specific work sills learned and used in construction carpentry and may be unable to find transferability.

6. Findings of fact in determinations or decisions involving transferability of skills. When the issue of skills and their transferability must be decided, the adjudicator or ALJ is required to make certain findings of fact and include them in the written decision. Findings should be supported with appropriate documentation.

   When a finding is made that a claimant has transferable skills, the acquired work skills must be identified, and specific occupations to which the acquired work skills are transferable must be cited in the State agency's determination or ALJ's decision. Evidence that these specific skilled or semiskilled jobs exist in significant numbers in the national economy should be included (the regulations take administrative notice only of the existence of unskilled sedentary, light, and medium jobs in the national economy). This evidence may be VS statements based on expert personal knowledge or substantiation by information contained in the publications listed in regulations 20 CFR §416.966(d). It is important that these finds be made at all levels of adjudication to clearly establish the basis for the determination or decision for the claimant and for a reviewing body including a Federal district court.

(SSR No. 82-41)

1317-1
Federal law provides that if a person can do his or her previous work, the person will be determined not disabled. If the person cannot perform the previous work, it must be determined if the person can perform work for which the person is qualified. Any jobs which can be performed must exist in significant numbers in the national economy, either in the region where the person lives or several regions of the country. (20 CFR §416.961)

1317-2
Work exists in the national economy when it exists in significant numbers either in the region where you live or in several other regions of the country. It does not matter whether

(1) work exists in the immediate area in which you live;

(2) a specific job vacancy exists for you; or

(3) you would be hired if you applied for work.

(20 CFR §416.966(a))

You are not disabled if your residual functional capacity and vocational abilities make it possible for you to do work which exists in the national economy but you remain unemployed because of

(1) your inability to get work;

(2) lack of work in your local area;

(3) the hiring practices of employers;

(4) technological changes in the industry in which you have worked;

(5) cyclical economic conditions;

(6) no job openings for you;

(7) you would not actually be hired to do work you could otherwise do; or

(8) you do not wish to do a particular type of work.

(20 CFR §416.966(c))

1317-3
When an individual has the ability to perform work in which he/she has engaged in a foreign country, that person must be denied disability benefits because of an ability to perform past relevant work. It does not matter whether the prior work exists in the U.S. economy. (Social Security Ruling 82-40; *Quang Van Han* v. *Bowen* (1989) 882 F. 2d 1453)

1317-4
The POMS sets forth the following criteria for dealing with "work experience" as a vocational factor:

1. Work Experience

   Is considered (in determinations of capacity to perform other work) by evaluating whether any skills were obtained from the performance of past relevant work (PRW) and, if so, whether such skills are transferable to other work that falls within the individual's residual functional capacity. (See POMS DI 25001.001 for definition of work experience.)

(POMS DI 25015.015A.)

1318-1
Ordinarily, when an individual's impairment prevents effective speech, the loss of function is sufficiently severe so that there will be an allowance under Listing 2.09.

To speak effectively, an individual must be able to produce speech, by any means, which can be heard, understood, and sustained well enough to permit useful communication.

The three attributes of speech proficiency are:

1. Audibility--the ability to speak at a level sufficient to be heard.

2. Intelligibility--the ability to articulate well enough to be understood.

3. Functional efficiency--the ability to produce and sustain a serviceably fast rate of speech output over a useful period of time.

Overall speech function is not effective if any one of these attributes is missing.

(Social Security Ruling 82-57; POMS DI 24515.015)

1318-2
Where a person has a medical restriction to avoid excessive amounts of noise, the impact on the broad world of work would be minimal because most job environments do not involve great noise. (POMS DI 24510.050)

1318-3
Federal law provides, in pertinent part, that hearing ability should be evaluated in terms of a person's ability to hear and distinguish speech. (20 CFR Part 404, Subpart P, Appendix 1, §2.00(B)(1))

1318-4
An individual who cannot perform a full range of sedentary work may have nonexertional limitations which erode his/her occupational base, limiting the number of available jobs. Judgments are made using the following criteria (and are based on the assumption that there are no other limitations or restrictions to sedentary work):

1. Postural limitations: Restrictions related to activities such as climbing ladders or scaffolds, balancing, kneeling, crouching or crawling would not usually erode the unskilled sedentary occupational base. But when balancing affects standing or walking on level terrain, that base may be significantly eroded.

2. Manipulative limitations: Any significant limitation of an individual's ability to handle and work with small objects with both hands will significantly erode the unskilled sedentary occupational base; a less significant limitation, particularly in the nondominant hand, may require consultation with a vocational resource; while the ability to feel the size, shape, temperature, or texture of an object by the fingertips would not significantly erode such occupational base.

3. Visual limitations or restrictions: Since most sedentary unskilled occupations require working with small objects, there is a significant erosion of the occupational base when there is a restriction in seeing small objects, and such significant erosion also exists when the individual's sight makes him/her unable to avoid ordinary workplace hazards.

4. Communicative limitations: As long as the individual can hear and understand simple oral instructions, and communicate simple information, the unskilled sedentary occupational base is not significantly eroded.

5. Environmental restrictions: Exposure to extreme temperatures, wetness or humidity, vibration or unusual hazards, will generally not significantly erode the unskilled sedentary occupational base. Restrictions on ability to work in a noisy environment and be exposed to odors or dust must be individually evaluated and consultation with a vocational resource is useful.

(POMS DI 25015.020B.7; Social Security Ruling 96-9p)

1318-4A
An individual who cannot perform a full range of sedentary work may have nonexertional limitations which erode his/her occupational base, limiting the number of available jobs. Judgments are made using the following criteria (and are based on the assumption that there are no other limitations or restrictions to sedentary work):

3. Visual limitations or restrictions: Since most sedentary unskilled occupations require working with small objects, there is a significant erosion of the occupational base when there is a restriction in seeing small objects, and such significant erosion also exists when the individual's sight makes him/her unable to avoid ordinary workplace hazards.

(POMS DI 25015.020B.7.; Social Security Ruling 96-9p)

The POMS sets forth the evaluation of functional limitations and their effects on ranges of work. The operating policy is as follows:

10. VISUAL

a. Given only a visual impairment, a substantial occupation base will usually be found for a person who:

> Retains sufficient visual acuity to handle and work with rather large objects, and

> Has the visual fields necessary to avoid ordinary hazards in the work place.

b. Even if the criteria in "a." above are met, however, a finding of disabled could be appropriate in a few rare instances in which the claimant's profile is extremely adverse, e.g.:

> Closely approaching retirement age,

> Limited or less education,

> No transferable skills, and

> Essentially a lifetime commitment to a field of work in which good vision is essential.

(POMS DI 25020.005)

1318-5
Federal regulations deal with exertional and nonexertional limitations. (20 CFR §416.969(a))

Subsection (b) deals with exertional limitations. When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling) we consider you have only exertional limitations. When your impairment(s) and related symptoms

only impose exertional limitations and your specific vocational profile is listed in a rule contained in Appendix 2, we will directly apply that rule to decide whether you are disabled.

Subsection (c) deals with nonexertional limitations. These are symptoms, such as pain, which affect only your ability to meet the demands of jobs other than the strength demands. Some examples of nonexertional limitations are difficulty functioning because you are nervous, anxious or depressed; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical features of certain work settings, such as intolerance to dust or fumes; or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling or crouching.

If your impairment(s) and related symptoms, such as pain, only affect your ability to perform the nonexertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled.

Subsection (d) deals with combinations of exertional and nonexertional limitations. If your impairment(s) and related symptoms, such as pain, affect your ability to meet both the strength and demands of jobs other than the strength demands, we will not directly apply the rules in Appendix 2 unless there is a rule that directs a conclusion that you are disabled based upon your strength limitations.

(20 CFR §416.969)

1318-6
In some disability claims the medical facts lead to an assessment of RFC which is compatible with the performance of either sedentary or light work except that the person must alternate periods of sitting and standing. The individual may be able to sit for a time but must then get up and stand or walk for awhile before returning to sitting. Such an individual is not functionally capable of doing either the prolonged sitting contemplated in the definition of sedentary work (and for the relatively few light jobs which are performed primarily in a seated position) or the prolonged standing or walking contemplated for most light work. (Persons who can adjust to any need to vary sitting and standing by doing so at breaks, lunch periods, etc., would still be able to perform a defined range of work.)

There are some jobs in the national economy--typically professional or managerial ones--in which a person can stand or sit with a degree of choice. If an individual had such a job and is still capable of performing it or is capable of transferring work skills to such jobs, he or she would not be found disabled. However, most jobs require that a worker be in a certain place or posture for a certain length of time to accomplish a certain task.

When appropriate, consult a vocational specialist to determine the effects of a particular limitation on the range of work or particular occupation being considered.

(POMS DI 25020.005A.7 and POMS DI 25020.005D.2)

1318-7
When the evidence supports a finding that alternate sitting and standing is required, the case is outside the Grids. "Such a claimant is defined as functionally not capable of doing either the

prolonged sitting contemplated in the definition of sedentary work or the prolonged standing or walking contemplated for most light work." (*Gallant* v. *Heckler* (1984) 753 F.2d 1450)

1318-8
A man who cannot walk, stand or sit for over one hour without pain does not have the capacity to do most jobs available in the national economy. (*Gallant* v. *Heckler* (1984) 753 F.2d 1450; *Delgado* v. *Heckler* (1983) 722 F.2d 570)

1318-9
The 9th Circuit Court of Appeals, in the *Burkhart* case, dealt with the individual who does not fall within the Grids:

> "Once a claimant establishes a prima facie case of disability by demonstrating the claimant cannot return to his or her former employment, the burden then shifts to the Secretary to show that the claimant can perform other types of work in the national economy, given the claimant's age, education and work experience." (*Burkhart* v. *Bowen* (1988) 856 F.2d at 1335, 1340)
>
> The Secretary can use the Grids "only when the grids accurately and completely describe the claimant's abilities and limitations." *Jones* v. *Heckler* (9th Circuit 1985) 760 F.2d 993, 998. Where there are significant nonexertional limitations ("significant" meaning "sufficiently severe") then the Secretary must take the testimony of a vocational expert.
>
> "Nonexertional limitations" are limitations that do not directly affect a claimant's strength. They include mental, sensory, postural, manipulative or environmental limitations that affect a claimant's ability to work.
>
> When the ALJ found that the claimant could not return to his former work as a truck driver, and could not perform a full range of sedentary and light work, it was reversible error for the ALJ to find that there were hundreds of jobs the claimant could do. The matter was remanded to the Secretary to take the testimony of a vocational expert.

(*Burkhart* v. *Bowen* (1988) 856 F.2d 1335)

1318-9A
The 9th Circuit Court of Appeals reviewed whether the federal ALJ had properly evaluated the claimant's condition in Step Five of the sequential evaluation process. As the court said "At Step Five of the five-step sequential inquiry, the Commissioner bears the burden of proving that the claimant can perform 'other jobs that exist in substantial numbers in the national economy.' *Lewis* v. *Apfel*, 236 F.3d 503, 508 (9th Cir. 2001); 20 C.F.R. § 416.920(f). There are two ways for the Commissioner to meet this burden: (1) by the testimony of a vocational expert or (2) by reference to the grids. *Tackett* v. *Apfel*, 180 F.3d 1094, 1099 (9th Cir. 1999). In this case, the Commissioner attempted to satisfy this burden by applying the grids." (*Bruton* v. *Massanari* (2001) 2001 Daily Journal D.A.R. 10513, Footnote 1)

The Court then concluded that the ALJ had erred in relying on the Grids. The Court stated:

> "We have held that '(t)he Commissioner's need for efficiency justifies use of the grids at the step five' but only when the grids 'completely and accurately represent a claimant's

limitations.' *Tackett* v. *Apfel*, 180 F.3d 1094, 1101 (9th Cir. 1999) 'In other words, a claimant must be able to perform the full range of jobs in a given category' in order for the Commissioner to appropriately rely on the grids.'

"We have also held that 'significant non-exertional impairments … may make reliance on the grids inappropriate.' *Id*. at 1101-02 (citing *Desrosiers* v. *Sec'y of Health & Human Servs*., 846 F.2d 563, 577 (9th Cir. 1988). A non-exertional impairment is an impairment 'that limits [the claimant's] ability to work without directly affecting his [ ] strength.' *Desrosiers,* 846 F.2d at 579. Id.

"Dr. Styner's medical report states that Bruton is 'prophylactically precluded' from prolonged carrying, forceful pushing and pulling, and work at or above the shoulder level. The inability of a claimant to lift his arms above ninety degrees may be considered a non-exertional limitation. *Id*. at 580. Dr. Styner's medical report therefore suggests that Bruton's shoulder impairments may amount to a non-exertional physical limitation. Because Bruton may have that impairment, the Commissioner cannot rely on the grids. Instead, the Commissioner, must rely on the testimony of a vocational expert to determine under Step Five of the five-step sequential inquiry whether Bruton remained capable of performing 'other jobs that exist in substantial numbers in the national economy.' *Lewis* v. *Apfel*, 236 F.3d 503, 508 (9th Cir. 2001); 20 C.F.R. §416.920(f)."

(*Bruton* v. *Massanari*, *supra* 2001 WL 1142191, 2001 Daily Journal D.A.R. 10513, 105-14)

1318-10
The 9th Circuit Court of appeals addressed the issue of side effects of medications. The court stated that, like pain, the side effects of medications can have a significant impact on an individual's ability to work and should figure in the disability determination process. A claimant's testimony as to their limiting effects should not be trivialized. If the claimant's testimony is disregarded as to the subjective limitations of side effects, the decision must be supported with specific findings similar to those required for excess pain testimony, as long as the side effects are in fact associated with the claimant's medications. (*Varney* v. *Secretary of Health and Human Services* (1988) 846 F.2d 581)

1318-11
When an individual's exertional capacity falls between two rules, the Social Security Rulings (SSRs) provide the following guidance.

1. If the individual's exertional capacity falls between two rules which direct the same conclusion, a finding of "Disabled" or "Not disabled," as appropriate, will follow.

    A. When an exertional RFC is between the sedentary and light exertional levels and a finding of "Disabled" is indicated under both relevant rules, a finding of "Disabled" is warranted.

    B. When an exertional RFC is between medium and light work, and both relevant rules, direct a conclusion of "Not disabled," the occupational base is clearly more than what is required as representing significant numbers of jobs because even the rule for less exertion directs a decision of "Not disabled."

2. If the exertional level falls between two rules which direct opposite conclusions, i.e., "Not disabled" at the higher exertional level and "Disabled" at the lower exertional level, consider as follows:

    A. An exertional capacity that is only slightly reduced in terms of the regulatory criteria could indicate a sufficient remaining occupational base to satisfy the minimal requirements for a finding of "Not disabled."

    B. On the other hand, if the exertional capacity is significantly reduced in terms of the regulatory definition, it could indicate little more than the occupational base for the lower rule and could justify finding of "Disabled."

    C. In situations where the rules would direct different conclusions, and the individual's exertional limitations are somewhere "in the middle" in terms of the regulatory criteria for exertional ranges of work, more difficult judgments are involved as to the sufficiency of the remaining occupational base to support a conclusion as to disability. Accordingly, Vocational Specialist (VS) assistance is advisable for these types of cases.

3. Another situation where VS assistance is advisable is where an individual's exertional RFC does not coincide with the full range of sedentary work. In such cases, equally difficult judgments are involved. Rather than having two rules which direct either the same or opposite conclusions, the decisionmaker would have only one relevant rule and would have to decide whether the full range of sedentary work is significantly compromised.

A VS can assess the effect of any limitation on the range of work at issue (e.g., the potential occupational base); advise whether the impaired person's RFC permits him or her to perform substantial numbers of occupations within the range of work at issue; identify jobs which are within the RFC, if they exist; and provide a statement of the incidence of such jobs in the region in which the person lives or in several regions of the country.

    A. Where an individual's impairment has not met or equaled the criteria of the Listing of Impairments at an earlier step in the sequence of adjudication, but the full range of sedentary work is significantly compromised, §201.00(h) of Appendix 2 provides that a finding of "Disabled" is not precluded for even younger individuals.

    B. Where a person can perform all of the requirements of sedentary work except, for example, a restriction to avoid frequent contact with petroleum based solvents, there is an insignificant compromise of the full range of sedentary work. Technically, because of the restriction, this person cannot perform the full range of sedentary work. However, this slight compromise within the full range of sedentary work (i.e., eliminating only the very few sedentary jobs in which frequent exposure to petroleum based solvents would be required) leaves the sedentary occupational base substantially intact. Using the rules as a framework, a finding of "Not disabled" would be appropriate.

(SSR 83-12)

1319-1
An ALJ must give clear reasons for rejecting the credibility of pain testimony, supported by the record. Medication side effects, like pain, are idiosyncratic phenomena. To reject the existence of described severity of side effects, the ALJ just give clear reasons, supported by the record. (*Varney* v. *Secretary* (I) (1988) 846 F.2d 581, 584-586)

1319-2
The following are the guidelines established by the SSA for assessing an individual who claims to suffer from pain, fatigue, shortness of breath, weakness, or nervousness.

A symptom is an individual's own description of his or her physical or mental impairment(s). An individual's statement(s) about his or her symptoms is not enough, in itself, to establish the existence of a physical or mental impairment or that the individual is disabled.

The regulations describe a two-step process for evaluating symptoms.

> First, consider whether there is an underlying medically determinable physical or mental impairment(s)--i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques--that could reasonably be expected to produce the individual's pain or other symptoms. If there is no such impairment, or the impairment could not reasonably be expected to produce the individual's pain or other symptoms, there is no effect on the individual's ability to perform basic work activities.
>
> Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce the individual's pain or other symptoms has been shown, evaluate the intensity, persistence, and limiting effects of the individual's symptoms to determine the extent to which the symptoms limit the individual's ability to do basic work activities. For this purpose, whenever the individual's statements about the effects of pain or other symptoms are not substantiated by objective medical evidence, there must be a finding on the credibility of the individual's statements based on the medical signs and laboratory findings, the individual's own statements about the symptoms, any statements and other information provided by treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record. This requirement for a finding on the credibility of the individual's statements about symptoms and their effects is reflected in 20 CFR §416.929(c)(4). That provision provides that an individual's symptoms, including pain, will be determined to diminish the individual's capacity for basic work activities to the extent that the individual's alleged functional limitations and restrictions due to symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence in the case record.

(POMS DI 24515.066A.; Social Security Ruling 96-7p)

1319-3
When additional information is needed to assess the credibility of the individual's statements about symptoms and their effects, every reasonable effort must be made to obtain available information that could shed light on the credibility of the individual's statements. In recognition of the fact that an individual's symptoms can sometimes suggest a greater level of severity of impairment than can be shown by the objective medical evidence alone, 20 CFR §416.929(c)

describes the kinds of evidence that must be considered in addition to the objective medical evidence when assessing the credibility of an individual's statements:

1. The individual's daily activities.

2. The location, duration, frequency, and intensity of the individual's pain or other symptoms.

3. Factors that precipitate and aggravate the symptoms.

4. The type, dosage, effectiveness, and side effects of any medication the individual takes or has taken to alleviate pain or other symptoms.

5. Treatment, other than medication, the individual receives or has received for relief of pain or other symptoms.

6. Any measures other than treatment the individual uses or has used to relieve pain or other symptoms (e.g., lying flat on his or her back, standing for 15 to 20 minutes every hour, or sleeping on a board).

7. Any other factors concerning the individual's functional limitations and restrictions due to pain or other symptoms.

Once the adjudicator has determined the extent to which the individual's symptoms limit the individual's ability to do basic work activities by making a finding on the credibility of the individual's ability to function must be considered along with the objective medical and other evidence to determine whether the individual's impairment or combination of impairments is “severe” at step 2 of the sequential evaluation process and, as necessary, at each subsequent step of the process. After the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce pain or other symptoms has been established, adjudicators must recognize that individuals may experience their symptoms differently and may be limited by their symptoms to a greater or lesser extent than other individuals with the same medical impairments and the same medical signs and laboratory findings. Because symptoms, such as pain, sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, any statements of the individual concerning his or her symptoms must be carefully considered if a fully favorable determination or decision cannot be made solely on the basis of objective medical evidence.

(POMS DI 24515.066A. and B.; SSR 96-7p)

1319-4
In general, the extent to which an individual's statements about symptoms can be relied upon as probative evidence in determining whether the individual is disabled depends on the credibility of the statements. When evaluating the credibility of an individual's statements, the adjudicator must consider the entire case record and give specific reasons for the weight given to the individual's statements.

The finding on the credibility of the individual's statements cannot be based on intangible or intuitive notions about an individual's credibility. The reasons for the credibility finding must be grounded in the evidence and articulated in the determination or decision. It is not sufficient to

make a conclusory statement that "the individual's allegations have been considered" or that "the allegations are (or are not) credible." It is also not enough for the adjudicator simply to recite the factors that are described in the regulations for evaluating symptoms. The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight. This documentation is necessary in order to give the individual a full and fair review of his or her claim, and in order to ensure a well-reasoned determination or decision.

The adjudicator may find all, only some, or none of an individual's allegations to be credible. The adjudicator may also find an individual's statements, such as statements about the extent of functional limitations or restrictions due to pain or other symptoms, to be credible to a certain degree. For example, an adjudicator may find credible an individual's statement that the abilities to lift and carry are affected by symptoms, but find only partially credible the individual's statements as to the extent of the functional limitations or restrictions due to symptoms; e.g., that the individual's abilities to lift and carry are compromised, but not to the degree alleged.

A finding that an individual's statements are not credible, or not wholly credible, is not in itself sufficient to establish that the individual is not disabled. All of the evidence in the case record, including the individual's statements, must be considered before a conclusion can be made about disability.

Assessment of the credibility of an individual's statements must be based on a consideration of all of the evidence in the case record. This includes:

The medical signs and laboratory findings.

Diagnosis, prognosis, and other medical opinions.

Statements and reports from the individual and from treating or examining physicians or psychologists and other persons about the individual's medical history, treatment and response, prior work record and efforts to work, daily activities, and other information concerning the individual's symptoms and how the symptoms affect the individual's ability to work.

The adjudicator must also consider any observations about the individual recorded by SSA employees during interviews, whether in person or by telephone. When the individual attends an administrative proceeding, the adjudicator may also consider personal observations of the individual as part of the overall evaluation of the credibility of the individual's statements.

In instances in which the adjudicator has observed the individual, the adjudicator is not free to accept or reject the individual's complaints solely on the basis of such personal observations, but should consider any personal observations in the overall evaluation of the credibility of the individual's statements.

(POMS DI 24515.066B.; Social Security Ruling 96-7p)

1319-5
The 9th Circuit Court of Appeal, sitting en banc, held that the applicable standard for evaluating pain is to establish that there is some impairment which is medically ascertained, but once established, the pain need not be fully corroborated by objective medical findings.

The Court stated that although an adjudicator may find the claimant's allegations of severity to be not credible, the adjudicator must specifically make findings which support this conclusion. These findings must be sufficiently specific to allow a reviewing court to conclude the adjudicator rejected the claimant's testimony on permissible grounds and did not arbitrarily reject a claimant's testimony regarding pain. The failure of ALJs to make specific findings in disability cases is among the principal causes of delay and uncertainty in this area of the law. (*Bunnell v. Sullivan* (1991) 947 F. 2d 341)

1319-6
In *Drouin* v. *Sullivan*, the Court of Appeals found that the Administrative Law Judge (ALJ) correctly rejected Drouin's subjective complaints of pain. *Drouin* was a 25-year old high school graduate, suffering from Ehlers-Danlos Syndrome and severe scoliosis. The ALJ based the determination on the claimant's testimony that she did not lose her last two jobs because of pain; she did not take medicine nor undergo treatment for pain; testimony and records from medical experts indicated that her physical impairments were not necessarily associated with pain; her daily activities were such that she could perform work tasks; and at the hearing there was no indication that she was suffering pain.

The Court also upheld the determination that although the claimant could not return to her past relevant work (because she could not sit or stand for long periods of time or carry heavy loads) she could perform entry level or sedentary work where she would only have to sit or stand for short periods of time, alternate sitting and standing, walk up to a block and a half, and not lift more than five or ten pounds. The vocational specialist testified that there were thousands of such jobs in the San Diego area that Drouin could perform.

(*Drouin* v. *Sullivan* (1992) 966 F.2d 1255)

1319-7
While there must be a correlation between complaints of pain and underlying, supporting medical evidence, it is not required that the pain inevitably result. Pain is a highly idiosyncratic phenomenon, varying according to the pain threshold and stamina of the individual. (*Howard* v. *Heckler* (1986) 782 F.2d 1484)

1319-8
The rejection by the Administrative Law Judge (ALJ) of pain complaints that exceed the "expected" level of symptoms is improper without specific, adequate, and documented findings. (*Stewart* v. *Sullivan* (1989) 881 F.2d 740)

Excess pain allegations were properly rejected when the plaintiff's daily activities of self-care, shopping, etc., conflicted with his subjective complaints. He also failed to pursue regular medical treatment, to lose weight, or to obtain physical therapy, despite medical advice to do so. These are also substantial pieces of evidence which the ALJ could rely upon to reject the plaintiff's pain testimony. (*Fair* v. *Bowen* (1989) 885 F.2d 597)