

## New SSA Ruling on Obesity

### *Obesity impacts ability to function – or does it?*

**IN ITS ONGOING** efforts to revise and refine the guidance given to Judges and Adjudicators on how to determine total disability, the Social Security Administration has again revised its analysis of obesity and its impact on the ability to sustain work activity.

**HISTORICALLY, SOCIAL** Security clearly felt that severe obesity was a critical issue and could preclude full time work. Prior to October 1999, there was a Listing for obesity in the Listings of Impairments. However, in that year, SSA deleted that Listing and made it much more challenging for people suffering from severe obesity to obtain benefits.



**RECOGNIZING THE** problem, SSA issued a Ruling in 2002 focused on obesity and the analysis for Social Security disability benefits. Recently, however, SSA rescinded the 2002 Ruling and issued SSR

19-02p which now is the guideline for the evaluation of obesity related problems.

**IN SSR 19-02p**, SSA acknowledges that obesity can be a medically determinable impairment which can cause severe functional limitations. The Ruling does not define obesity, but notes that for some people, it means a BMI of 30 or more. For other people, the Ruling notes that BMI may be more normal, but the accumulation of fat around the waist may be defined as obesity.

**SSA WILL CONSIDER** obesity to be a medically determinable impairment if there are objective findings in the medical charts to support the diagnosis. A physician's statement of obesity is not sufficient. SSA wants the medical chart to include heights, weights, waist sizes and BMI over time.

**THE RULING** notes that obesity may cause symptoms such as fatigue, and may worsen other medical problems such as Diabetes, heart disease, respiratory problems, arthritis, mental impairments and cancer. It may impact exertional activities such as sitting, standing, walking, lifting, and non-exertional activities such as balancing,

stopping, kneeling and crouching. It could also increase stress on weight bearing joints and limit range of motion. Extreme fatty tissue in the hands could impact fingering and manipulation of objects.

**ALL OF THIS** is based upon the content of the medical charts. Patients must have their weights, heights, waist size and BMI regularly documented and must be describing these symptoms consistently at every medical visit.

**THE DIFFICULTIES** treating obesity are well known and obvious. Unfortunately, there was some analysis in the 2002 Ruling that has been deleted. The rescinded Ruling was more explicit in discussing the impact of obesity on the ability to sustain function over a full workday and work week due to fatigue, pain, shortness of breath and other symptoms. That language, along with other guidelines, was deleted.

### LET US HELP

If you and your colleagues, or your support group, want to learn more about how different medical impairments are analyzed by Social Security, contact us for one of our free in-service presentations.

# Tricky Disability Cases: Proving Pain

**CHRONIC PAIN** can make full time work impossible. Whether it is due to back problems, trauma, Fibromyalgia, Chronic Regional Pain Syndrome, Lupus or any other pain causing medical condition, pain can dramatically restrict the ability to function.

**UNDER THE** Social Security Act we must prove medical problems that can cause symptoms so severe as to make a claimant “totally disabled” for a period that has lasted, or is expected to last, at least 12 months or result in death. In most cases, the problem is not in the diagnosis - the issue is proving the severity of the symptoms.



**PAIN CASES** become a problem because we cannot scientifically prove pain, and we cannot scientifically measure chronic pain. There is no regularly used medical testing that can identify and quantify the extent of chronic pain and how it impacts a person’s ability to function in a work setting.

**SOCIAL SECURITY** calls symptoms such as pain and fatigue “subjective symptoms” – symptoms that a claimant describes but which cannot be proven scientifically. This is contrasted with “objective symptoms” such as breathing problems which can often be scientifically measured with tests such as a pulmonary function test. Social Security has agreed that subjective symptoms can be the basis for establishing total disability, but the issue again is proof.

**BASICALLY, WE** teach clients that “actions speak louder than words.” Social Security expects that someone suffering from such severe subjective symptoms as to be totally disabled will be going to doctors frequently and will be consistently describing their problems and limitations.

**ALSO, ADMINISTRATIVE** Law Judges will expect that people will be going to specialists, i.e. pain management specialists, orthopedists, neurologists, pain psychologists. Family practice physicians, even though they often make the most sense to insurance carriers, get very little weight in this process.

**THE KEY IS** to remember that Social Security Judges will be evaluating these subjective symptoms by reviewing the clinical charts of the treating specialists.

**CLINICAL CHART** notes documenting that the patient comes in and says she “is ok” or “is stable” or “shows improvement” allow judges to infer that the symptoms are not severe and that the patient can work. Clients need to be educated as early in the process as possible that the way they communicate with their medical professionals affects both the quality of their medical care and the evidence that will be used to decide their Social Security disability application.

**FREQUENCY OF TREATMENT** is another consideration. Someone going to the doctor once or twice a year will not be presumed to be significantly impaired. We have found that at a minimum people should be seeing their specialists at least quarterly.

## TRAINING YOU TO EDUCATE YOUR CLIENTS

Teaching clients the importance of medical care and how to communicate with their providers is key to both improving their future, and to getting Social Security disability applications approved. We would like to come to your agency and provide a free detailed in-service on Social Security disability issues. We can easily schedule a time to keep your staff and clients informed and up-to-date.

# How to Prove a Disability Case for Depression

*Showing proof of the severity of a claimant's symptoms is key to proving disability.*

**ONE OF THE MOST** frequently diagnosed mental health conditions, depression can often be successfully treated with holistic remedies, medications and/or counseling. Sometimes, though, depression can become a severe, chronic mental illness. At that point, it can be a significant factor in a Social Security disability application.

**SOCIAL SECURITY IS** rarely interested in the cause of depression. Sometimes the depression is long standing and other times depression is secondary to life changes due to chronic illness or other trauma. Often depression symptoms are part of another mental illness such as bipolar disorder. While causation is not a major concern, the proof of the symptoms and how those symptoms impact a claimant's ability to function, is the focus of many Social Security disability applications.

**SOCIAL SECURITY'S LISTINGS** of Impairments detail how different conditions are evaluated for disability purposes. Section 12.04, Affective Disorders,

includes Depression, Manic Syndrome and Bipolar Syndrome diagnoses. Like most of the Listings, the focus is first on proving the symptoms leading to the diagnosis – that is usually not difficult. Second, and where the fight is generally focused, is proving the severity of those symptoms and how they impact someone's functional abilities to sustain work activity.



**AS IN MOST CASES** the issue comes down to “proof” of the severity of those symptoms. Once again we must turn to the clinical charts of the treating psychiatrist and psychologist – the appropriate medical specialists. Since many psychiatrists are limited to “medication management” claimants should also be in treatment with a good

therapist or counselor. Experience shows that therapists often provide much more detail about day-to-day functional problems than most psychiatrists and become an important source of supplemental proof.

**THE KEY IS TO** remind clients that each visit should include a complete description of daily limitations and frustrations. The greater the detail, the stronger the evidence. If you have a client suffering from debilitating depression, call our office. We can help.

## WORLD SUICIDE PREVENTION DAY

**September 10**

The theme for 2018 is “Working Together To Prevent Suicide.” On September 10, join together with hundreds of thousands of other people from across the globe to prevent suicide and save more lives.

If you'd like to get more involved with IASP's campaign for World Suicide Prevention Day, use the following link:

**[WWW.IASP.INFO](http://WWW.IASP.INFO)**

## How Long Will I Receive My Benefits?

*After finally receiving disability benefits, here is information on what to expect.*

**Now that you** are receiving disability benefits, you may wonder how long they will continue, and even whether something *could stop them from coming*. In most cases, your benefits will continue until you reach retirement age, and then will simply switch programs so the benefits come from the retirement program.



**Earnings:** One thing that could stop benefits is if you are *earning too much money*. If you regain some of your health and are able to earn an income, this may affect your benefits. If you want to discuss how returning to work will affect your benefits, please contact our office.

**MEDICAL IMPROVEMENT:** Your checks may also be stopped if you improve enough so that you are no longer considered disabled. This is supposed to be determined by a periodic Continuing Disability Review. By law, these are to be done regularly, but in practice they may not be very consistent.

**CONTINUING REVIEWS** are supposed to occur every *three to seven years*. In some cases where improvement is expected, reviews are done earlier.

**SOME CASES** aren't reviewed at all – for example, cases that are considered terminal. As a practical matter, the number of people whose benefits are terminated because of medical improvement is low. It is not a complete revisiting of the disabling condition.

**IF YOU RECEIVE** a notification that SSA is beginning a review on your claim, we welcome your call regarding this process.

### LIVE WELL TIP: 5 FOODS TO BOOST YOUR HEALTH

1. Leafy greens, kale (ranked highest in anti-oxidants), bok choy, Swiss chard, and of course, good old broccoli and spinach
2. Olive oil: Olive oil not only doesn't cling to arteries, narrowing them, as do some saturated fats, but it contains powerful antioxidants
3. Flaxseeds: Flaxseeds are rich in fiber, which lowers cholesterol
4. Oatmeal: Oats rush cholesterol out of your system, keeping your cholesterol count low
5. Tea: pale, green tea is rich in polyphenols, a free radical fighter



### Refer Friends and Relatives

**WE ARE ALWAYS AVAILABLE** to answer questions or consult on a claim – if you have a friend or relative who is disabled and considering filing for benefits, we would be glad to provide a free consultation to make sure the best decision is made. We appreciate your confidence in our services.