### **MEDICAL SOURCE ISSUES**

1. "Acceptable Medical Sources" who can provide evidence to establish an impairment (diagnosis):

20 CFR § 416.913(a):

MDs and DOs Psychologists Optometrists Speech Pathologists

Nurse Practitioners, Physician's Assistants, Clinical Social Workers, and Counselors cannot provide evidence to establish an impairment.

2. Sources who can provide evidence of Residual Functional Capacity:

20 CFR § 416.913(c):

"Acceptable Medical Sources" even if they have never examined/treated the claimant (e.g. DDS physicians or psychologists)

20 CFR § 416.913(d):

"Other Sources" including but not limited to:

Nurse Practitioners
Physician's Assistants
Naturopaths
Chiropractors
Audiologists
Therapists (Physical and Mental Health)
Educational personnel
Social welfare personnel
"Lay evidence": friends, family, spouses, caregivers, clergy.

3. Examples of relevant case law on "other sources":

Carpenter v Astrue, 537 F3d 1264 (9th Cir 2008) (although chiropractor is not an "acceptable medical source" for diagnosing an impairment under the regulations, the SSA has made it clear that the opinion of such an "other source" is relevant to the questions of severity and functionality.)

Smolen v. Chater, 80 F3d 1273 (9<sup>th</sup> Cir 1995)( Disregard of the testimony of friends and family members violates 20 C.F.R. § 404.1513(e). According to that regulation, the Commissioner will consider observations by nonmedical sources about how impairments affect a claimant's ability to work. See 20 C.F.R. § 404.1513(e)(2). More specifically, the Commissioner's Rulings require the ALJ to consider lay witness testimony in certain types of cases. SSR 88-13 states that where a claimant alleges pain or other symptoms that are "not supported by medical evidence in the file, the adjudicator shall obtain detailed descriptions of daily activities by directing specific inquiries about the pain and its effects to ... third parties who would be likely to have such knowledge." SSR 88-13 (emphasis added). The ruling then requires the ALJ to give "full consideration" to such evidence. Id. Having been directed to consider the testimony of lay witnesses in determining a claimant's disability, the ALJ can reject the testimony of lay witnesses only if he gives reasons germane to each witness whose testimony he rejects.)

### 4. Examples of relevant case law on pain:

Brown v. Schweiker, 562 F. Supp. 284 (ED Pa 1983)(an applicant's assertions of pain must be given serious consideration by the ALJ in making a determination of disability).

Waters v Bowen, 709 F.Supp. 278 (D. Mass 1989) (when it is demonstrated that the applicant suffers from infirmities which could case pain, the applicant is not required to present objective medical evidence to support the severity of the pain).

Summers v Bowen, 813 F2d 241 (9th Cir. 1987) (pain testimony may not be disregarded simply because it is not fully corroborated by objective medical findings)

Luna v Bowen, 834 F2d 161 ( $10^{th}$  Cir 1987)(the law does not require that medical evidence identify an impairment that makes pain inevitable).

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# § 416.913. Medical and other evidence of your impairment(s).



- (a) Sources who can provide evidence to establish an impairment. We need evidence rom acceptable medical sources to establish whether you have a medically determinable mpairment(s). See § 416.908. Acceptable medical sources are—
- 1) Licensed physicians (medical or osteopathic doctors);
- 2) Licensed or certified psychologists. Included are school psychologists, or other icensed or certified individuals with other titles who perform the same function as a school sychologist in a school setting, for purposes of establishing mental retardation, learning lisabilities, and borderline intellectual functioning only;
- 3) Licensed optometrists, for purposes of establishing visual disorders only (except, in ne U.S. Virgin Islands, licensed optometrists, for the measurement of visual acuity and isual fields only). (See paragraph (f) of this section for the evidence needed for statutory lindness);
- 1) Licensed podiatrists, for purposes of establishing impairments of the foot, or foot and nkle only, depending on whether the State in which the podiatrist practices permits the ractice of podiatry on the foot only, or the foot and ankle; and
- o) Qualified speech-language pathologists, for purposes of establishing speech or nguage impairments only. For this source, "qualified" means that the speech-language athologist must be licensed by the State professional licensing agency, or be fully ertified by the State education agency in the State in which he or she practices, or hold a ertificate of Clinical Competence from the American-Speech-Language-Hearing ssociation.

- (b) Medical reports. Medical reports should include—
- (1) Medical history;
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms);
- (5) Treatment prescribed with response, and prognosis; and
- (6) A statement about what you can still do despite your impairment(s) based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section (except in statutory blindness claims). Although we will request a medical source statement about what you can still do despite your impairment(s), the lack of the medical source statement will not make the report incomplete. See § 416.927.
- c) Statements about what you can still do. At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge, and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will consider residual functional capacity assessments made by State agency nedical and psychological consultants, medical and psychological experts (as defined in \$405.5 of this chapter), and other program physicians and psychologists to be statements about what you can still do" made by nonexamining physicians and sychologists based on their review of the evidence in the case record. Statements about what you can still do (based on the acceptable medical source's findings on the factors inder paragraphs (b)(1) through (b)(5) of this section) should describe, but are not limited 5, the kinds of physical and mental capabilities listed as follows (See §§ 416.927 and 16.945(c)):
- 1) If you are an adult, the acceptable medical source's opinion about your ability, despite our impairment(s), to do work-related activities such as sitting, standing, walking, lifting, arrying, handling objects, hearing, speaking, and traveling;
- 2) If you are an adult, in cases of mental impairment(s), the acceptable medical source's pinion about your ability to understand, to carry out and remember instructions, and to sepond appropriately to supervision, coworkers, and work pressures in a work setting; nd
- 3) If you are a child, the medical source's opinion about your functional limitations ompared to children your age who do not have impairments in acquiring and using

information, attending and completing tasks, interacting and relating with others, moving about and manipulating objects, caring for yourself, and health and physical well-being.

- (d) Other sources. In addition to evidence from the acceptable medical sources listed in paragraph (a) of this section, we may also use evidence from other sources to show the severity of your impairment(s) and how it affects your ability to work or, if you are a child, how you typically function compared to children your age who do not have impairments. Other sources include, but are not limited to—
- (1) Medical sources not listed in paragraph (a) of this section (for example, nurse-practitioners, physicians' assistants, naturopaths, chiropractors, audiologists, and therapists);
- (2) Educational personnel (for example, school teachers, counselors, early intervention team members, developmental center workers, and daycare center workers);
- (3) Public and private social welfare agency personnel; and
- (4) Other non-medical sources (for example, spouses, parents and other caregivers, siblings, other relatives, friends, neighbors, and clergy).
- e) Completeness. The evidence in your case record, including the medical evidence from acceptable medical sources (containing the clinical and laboratory findings) and other nedical sources not listed in paragraph (a) of this section, information you give us about rour medical condition(s) and how it affects you, and other evidence from other sources, nust be complete and detailed enough to allow us to make a determination or decision about whether you are disabled or blind. It must allow us to determine—
- 1) The nature and severity of your impairment(s) for any period in question;
- 2) Whether the duration requirement described in § 416.909 is met; and
- 3) Your residual functional capacity to do work-related physical and mental activities, then the evaluation steps described in § <u>416.920(e)</u> or (f)(1) apply, or, if you are a child, ow you typically function compared to children your age who do not have impairments.
- ) Evidence we need to establish statutory blindness. If you are applying for benefits on le basis of statutory blindness, we will require an examination by a physician skilled in seases of the eye or by an optometrist, whichever you may select.
- 5 FR 55621, Aug. 20, 1980, as amended at 56 FR 5553, Feb. 11, 1991; 56 FR 36964, ug. 1, 1991; 58 FR 47577, Sept. 9, 1993; 62 FR 6421, Feb. 11, 1997; 65 FR 11878,

Mar. 7, 2000; 65 FR 34958, June 1, 2000; 65 FR 54777, Sept. 11, 2000; 71 FR 16459, Mar. 31, 2006; 72 FR 9242, Mar. 1, 2007]

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