

§ 416.946 Responsibility for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency medical or psychological consultant and a State agency disability examiner make the disability determination as provided in § 416.1015(c)(1) of this part, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity. When a State agency disability examiner makes a disability determination alone as provided in § 416.1015(c)(3), the disability examiner is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 416.1414, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 416.1418, the Associate Commissioner for the Office of Disability Determinations or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level or at the Appeals Council review level, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

[68 FR 51165, Aug. 26, 2003, as amended at 71 FR 16461, Mar. 31, 2006; 75 FR 62683, Oct. 13, 2010; 76 FR 24812, May 3, 2011]

VOCATIONAL CONSIDERATIONS

§ 416.960 When we will consider your vocational background.

(a) *General.* If you are age 18 or older and applying for supplemental security income benefits based on disability, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (see § 416.920), we will consider your re-

sidual functional capacity together with your vocational background, as discussed in paragraphs (b) and (c) of this section.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work. See § 416.920(h) for an exception to this rule.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. (See § 416.965(a).)

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. (See § 416.965(b).) We may use the services of vocational experts or vocational specialists, or other resources, such as the "Dictionary of Occupational Titles" and its companion volumes and supplements, published by the Department of Labor, to obtain evidence we need to help us determine whether you can do your past relevant work, given your residual functional capacity. A vocational expert or specialist may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, either as the claimant actually performed it or as generally performed in the national economy. Such evidence may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a vocational expert or specialist may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations imposed by the claimant's medical impairment(s) can meet the demands of the claimant's previous work, either as the claimant actually performed it or as generally performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you can still do your past work

and are not disabled. We will not consider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy.

(c) *Other work.* (1) If we find that your residual functional capacity does not enable you to do any of your past relevant work or if we use the procedures in § 416.920(h), we will use the same residual functional capacity assessment when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and the vocational factors of age, education, and work experience, as appropriate in your case. (See § 416.920(h) for an exception to this rule.) Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

[68 FR 51166, Aug. 26, 2003, as amended at 77 FR 43495, July 25, 2012]

§ 416.962 Medical-vocational profiles showing an inability to make an adjustment to other work.

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (see § 416.964) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (see §§ 416.920(c), 416.921, and 416.923), we will consider you unable to do lighter work, and therefore, disabled.

Example to paragraph (a): B is a 58-year-old miner's helper with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a "severe" combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (see §§ 416.920(c), 416.921, and 416.923), are of advanced age (age 55 or older, see § 416.963), have a limited education or less (see § 416.964), and have no past relevant work experience (see § 416.965), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to subpart P of part 404 of this chapter.

[68 FR 51166, Aug. 26, 2003]

§ 416.963 Your age as a vocational factor.

(a) *General.* "Age" means your chronological age. When we decide whether you are disabled under § 416.920(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. In determining the extent to which age affects a person's ability to adjust to other work, we consider advancing age to be an increasingly limiting factor in the person's ability to make such an adjustment, as we explain in paragraphs (c) through (e) of this section. If you are unemployed but you still have the ability to adjust to other work, we will find that you are not disabled. In paragraphs (b) through (e) of this section and in appendix 2 of subpart P of part 404 of this chapter, we explain in more detail how we consider your age as a vocational factor.

(b) *How we apply the age categories.* When we make a finding about your ability to do other work under § 416.920(f)(1), we will use the age categories in paragraphs (c) through (e) of this section. We will use each of the