



November 28, 2023

Kilolo Kijakazi
Acting Commissioner
Social Security Administration
6401 Security Boulevard

Submitted via www.regulations.gov

Re: Intermediate Improvement to the Disability Adjudication Process: Including How We Consider Past Work, Docket No. SSA-2023-0024

Dear Acting Commissioner Kijakazi:

This comment is submitted on behalf of the Consortium for Constituents with Disabilities (CCD), Social Security Task Force (SSTF). CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance. Our Social Security Task Force focuses on disability policy issues in the Title II Social Security Disability Income (SSDI) program and the Title XVI Supplemental Security Income (SSI) program. The SSI and Title II income supports, along with the related Medicaid and Medicare benefits, are the means of survival for millions of people with severe disabilities. They rely on SSA to adjudicate their applications promptly and fairly for disability benefits and to handle many other government functions that are critical to their well-being.

Thank you for the opportunity to comment on this proposal.

I. The Task Force Applauds SSA's Proposal to Shorten the definition for PRW.

The Task Force applauds SSA for proposing to revise the definition of past relevant work (PRW) for those that meet the no work profile by reducing the PRW considered from that completed in the last fifteen years, to that completed in the last five years. For thirty years, the federal regulations have required SSA to use an applicant's fifteen-year work history to assess their ability to return to work.¹ Although CCD² takes the position that past work experience is useful

¹ 20 C.F.R. §§ 404.1560, 416.960.

² Consortium for Citizens with Disabilities, *Letter to the SSA, Dec. 14, 2015*, <https://www.c-c-d.org/fichiers/CCD-SSTF-Comments-ANPRM-on-vocational-factors-final-12-14.pdf>

evidence to determine whether someone can work, we also believe that such a long "lookback" period is unnecessary and creates a significant administrative burden that contributes to delayed evaluation of claims.

II. Streamlining the definition of PRW to look only at the Last 5-years Will Reduce Administrative Burden.

The fifteen-year PRW look-back imposes a substantial administrative burden on the Agency and on claimants. To assess PRW, SSA asks claimants to complete the Adult Disability Report (form SSA-3368) which includes a section on job history and to provide information for up to 5 jobs they held in the last 15 years. Then, in 85% of adult cases, SSA will also ask claimants to complete a subsequent Work History Report (form SSA-3369). The SSA-3369 is a complicated ten-page form. It asks claimants to provide: dates of work for each job as well as details about each position including: pay rate; whether the claimant used machines, tools or special skills; asks claimants to estimate the number of hours the claimant had to walk, stand, sit, climb, stoop, kneel, crawl, handle, and reach in each job, as well as how much needed to be lifted or carried at each jobs. Unsurprisingly, consistent with what SSA heard through the Applicant Disability Applicant Survey, our members report that claimants frequently have a hard time recalling such minute details regarding their past work, particularly if these work experiences occurred more than five or ten years ago. Trying to recall these details stresses claimants and sometimes causes them to spend considerable time trying to contact former employers, or to guess and provide inaccurate (and sometime adverse) information to the Agency. Completing this form is time-intensive, and if a claimant's initial disability claim is denied, they will be asked to complete this form a second time during reconsideration review. Reducing the look-back to five years will lessen this burden on claimants by reducing the number of positions they need to recall and report on.

Collecting this much information is also extremely burdensome for SSA staff, who need to process these forms and engage in outreach anytime the claimant does not provide sufficient evidence on the form.³ Because changing workforce norms mean that people switch jobs more often than they used to, Disability Determination Services (DDS) staff often have to engage in lengthy interviews to try to get the "sparse" and often "inaccurate" recollections, since claimants often do not remember all of the specifics of such remote jobs.⁴ This is time-consuming and sometimes harmful to claimants whose case may be negatively impacted by a mistaken recollection.⁵

We encourage SSA to swiftly implement this proposal, which will help streamline claims at the DDS level.

III. CCD SSTF Recommends Streamlining Additional Vocational Profiles

As noted above, we applaud SSA for its proposal to revise the definition of past relevant work for the no work profile. To further reduce administrative burdens on claimants and SSA, we

³ Written Testimony of Jaqueline Russell, House Ways and Means Committee Social Security Subcommittee at 6, 7 (Oct. 26, 2023), available at <https://gop-waysandmeans.house.gov/wp-content/uploads/2023/10/Russell-Testimony.pdf>

⁴ *Id.*

⁵ *Id.*

additionally recommend the following revisions to the vocational profiles impacted by this proposal. These include:

- Lifetime Commitment Special Vocational Profile:

The special vocational profile for Lifetime Commitment requires a person to be aged 60 or older and to have less than a high school education and have been in the same unskilled field for 30 years.

At age 60, and after 30 years within an unskilled field, is it vocationally relevant to have less than a high school education versus a high school education? We recommend that you raise this education level to the high school level or consider removing the education requirement entirely. This educational requirement likely precludes processing claims with merit more expeditiously.

Also, is it vocationally relevant that a person is aged 60 versus aged 55? We also recommend that you lower this age limit to age 55.

Finally, we recommend reducing the number of years for a lifetime commitment from thirty years to twenty years.

- Arduous Work Special Vocational Profile

Currently, the special vocational profile for Arduous Unskilled Work is limited to individuals with a marginal education. After 35 years of very heavy and physically demanding work in an unskilled job, is it relevant if the person has a high school education or its equivalent? We recommend that you eliminate an educational limitation or raise the education level to a high school education.

IV. Proposed Revisions to SSA-3369-BK.

In response to SSA's solicitation, the Task Force recommends SSA consider eliminating the use of the SSA-3369 altogether or revising this form. If SSA retains this form, it is paramount that SSA take steps to streamline this form to ensure that it is as accessible as possible. Some recommendations to improve this form include, SSA ensuring that the form is written in as clear and concise language as possible and analyzing the form for literacy level. We also recommend SSA make this form available in multiple languages. SSA collects information about literacy and limited-English proficiency status as part of its disability adjudications. SSA is aware that many are limited English proficient, or lack literacy, and are not able to read these critical forms. Because the ability to respond to this form could adversely affect an applicant's disability claim, it is essential that SSA provide these in a language the claimant can read, whenever possible. For claimants that SSA is aware are illiterate, SSA should also be doing telephonic outreach. Because SSA often sends this form to claimants multiple times, we recommend SSA prioritize making the SSA 3369-BK available online.

Because people often cannot recall all their past work, we recommend that SSA consider pre-populating these forms with information about any jobs in the applicant's employment history known to SSA and to ask the claimant to confirm or correct these jobs. This will ease the

claimant’s burden by jogging their memory about past work, which may make it easier for them to provide accurate information.

Moreover, this form can be streamlined by reconsidering questions about whether individuals “use machines, tools, or equipment” or “use technical knowledge or skills.” What do these questions mean? Is a computer a machine? What constitutes technical knowledge or skill? Due to the lack of clarity, we recommend removing these questions altogether.

Most claimants do not measure their work activities like walking, standing, sitting or lifting by hour or precisely know how much they had to lift by weight. Asking them to report on how long they kneeled, crouched, or how much they lifted is begging for imprecise answers based on speculation. The National Council of Disability Determination Directors reports that previous employers and third parties also do not recall prior work responsibilities with this much detail. We recommend SSA study to see if there are questions that would better target the information SSA needs. For example, if SSA asked more general questions like, please note if you had to do any of these activities in this position: walking, standing, crouching, kneeling, crawling, handling, grabbing or grasping large objects, reaching, or writing, typing or handling small objects—with check boxes for each one.

Additionally, in order to further the forms’ purpose of assessing the availability of past-relevant work, we recommend you add a question(s) to ascertain if individuals had any trouble completing job duties in any particular position, or received any informal or formal accommodations, or extra help, to complete the core functions of their job duties.

V. Reducing the PRW to 5 Years Makes Sense.

Work conditions change rapidly, particularly in those subject to technological advances. Many jobs that were prevalent in the past are now obsolete.⁶ People’s ability to retain skills they learn on the job, erode over time. Thus, job skills lose significant value the older they are.

We agree with SSA that by streamlining the definition of PRW, this proposal will allow claimants to focus on the most current and relevant information about their past work. Research suggests that the half-life of job skills is no more than five-years.⁷ Accordingly, SSA’s proposal to look at the last-five years of work makes sense, since performance of job skills in those positions is likely the most pertinent to questions of whether the claimant can return to past work or perform other work in the economy.

Respectfully submitted,

American Association on Health and Disability
Caring Across Generations

⁶ Lisa Rein, *Social Security denies disability benefits based on list with jobs from 1977*, Wash. Po. Dec. 27, 2022, <https://www.washingtonpost.com/politics/2022/12/27/social-security-job-titles-disabled-applicants-obsolete/>.

⁷ Emeritus, *The Half-Life of Skills* (Aug. 4, 2021), <https://emeritus.org/blog/the-half-life-of-skills/>; Sonia Malik, IBM Learning Blog: Skills Transformation for the 2021 Workplace (Dec. 7, 2020), <https://www.ibm.com/blogs/ibm-training/skills-transformation-2021-workplace/#:~:text=Research%20suggests%20that%20skills%20generally,skilling%20effort%20to%20stay%20relevant.>

Center for Law and Social Policy (CLASP)
Community Legal Services of Philadelphia
Justice in Aging
Lakeshore Foundation
National Association of Councils on Developmental Disabilities
National Association of Disability Representatives (NADR)
National Committee to Preserve Social Security and Medicare
National Disability Rights Network
National Down Syndrome Congress
National Organization of Social Security Claimant's Representatives (NOSSCR)
National PLAN Alliance (NPA)
Paralyzed Veterans of America
The Arc of the US
United Spinal Association