

# Vocational Expert Orientation

Disability Programs, Review Process and Role

- Thank you for becoming a vocational expert (VE) for our Office of Hearings Operations (OHO).
- This Orientation Package provides the basic information you will need when you participate in administrative law judge (ALJ) hearings.
- The Power Point Presentation and the Handbook explain Social Security's disability programs, the appeals process we use and your role and responsibilities.
- We hope that you will find this Orientation Package interesting and useful.

# Vocational Expert Orientation

- Disability Programs
- The Review Process
- Role of the Vocational Expert

# Definition of Disability

- The inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months

(Title II and Title XVI of the Social Security Act).

# ***Disability Programs***

# Disability Programs

- **Title II**

- Wage earners or self-employed who pay Social Security Income taxes
- Disabled adult children of insured workers who retire, die or are disabled
- Disabled widows and widowers of insured workers

- **Title XVI**

- Payment of Supplemental Security Income (SSI) to individual who are age 65 or older, blind or disabled and who meet limited income and resource requirements

**Based on Need (income and resources)**

**Based on earnings record and payment of Social Security (FICA) taxes**

## Supplemental Security Income v. Disability Insurance Benefits

- Title XVI – 20 CFR 416.202
  - Be a resident of the United States
  - Have no more income than is permitted (20 CFR 416.202(c) and subparts K and D);
  - Have no more resources than permitted
  - File for any other benefits for which he or she is eligible (20 CFR 416.210); and
  - Paid as of application date
- Title I – 20 CFR 404.315 & 320
  - May not begin after the claimant attains full retirement age
  - Paid sufficient Social Security taxes to become “insured” for disability benefits
  - Retroactive benefits can be paid up to 12 months before date of application

# ***The Review Process***



# The Review Process

The claimant files the application and then....:

## 1. Disability Determination Services

- Initial determination-state level
- Reconsideration determination-state level
- Exception: Prototype states with single decisionmaker and only one state-level determination (Alabama, Alaska, California, Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York and Pennsylvania)

## 2. Office of Hearings Operations

- ALJ hearing - *de novo* hearing

## 3. Appeals Council (AC) Review

## 4. Federal District Court

## 5. Circuit Court of Appeals

## 6. US Supreme Court (extremely rare)

# The Review Process

## HEARING TYPES

Initial Decisions

Continuing Disability Reviews

Remands from the AC or federal courts

Redeterminations

VE Testimony is required only for Adult Disability case evaluations.

# The Sequential Evaluation Process

In determining whether an adult claimant is disabled, the ALJ generally will follow a **5-step** sequential evaluation process:

1. Has the claimant performed substantial gainful activity (SGA)? SGA is generally full-time work, where earnings exceed a certain prescribed amount.
2. Does the claimant have a severe impairment?
3. Is the claimant's impairment severe enough to meet or medically equal a listing?
4. Can the claimant perform his or her past relevant work?
5. Can the claimant perform other work that exists in significant numbers in the national economy?

*VE testimony becomes relevant at steps 4 and 5.*

# Are the following within the VE's Area of Expertise or a Finding of Fact Reserved to the Commissioner?

- Whether or not work activity rises to the level of SGA is a finding of fact reserved to the Commissioner (via the ALJ).
- The VE may give an opinion about whether or not the work activity is competitive as performed by the claimant and/or provide an expert opinion about the “value” of the work as performed by the claimant.

# Exertional Levels

- **Sedentary**
  - Lifting and/or carrying 10 pounds
  - Sitting 6 hours; standing/walking 2 hours
- **Light**
  - Lifting and/or carrying 20 pounds occasionally; 10 pounds frequently
  - Sitting/standing/walking 6 hours
  - Operation of arm, hand or leg controls
- **Medium**
  - Lifting and/or carrying 50 pounds occasionally; 25 pounds frequently
  - Sitting/standing/walking 6 hours

# Exertional Levels

- **Heavy**
  - Lifting and/or carrying 100 pounds occasionally; 50 pounds frequently
- **Very heavy**
  - Lifting and/or carrying over 100 pounds occasionally; 50 pounds frequently

# Skill Levels

- Unskilled, semiskilled and skilled work
  - A *skill* is
    - knowledge of a work activity that requires the exercise of significant judgment beyond the carrying out of simple job duties.
    - This includes activities like making precise measurements, reading blueprints, and setting up and operating complex machinery.
    - Skills are generally acquired through the performance of an occupation which is above the unskilled level; *a claimant cannot gain skills from performing unskilled work.*

# Skill Levels-

## “skills” versus worker “traits”

- Traits are inherent qualities that a worker brings to the job, such as good eyesight or good eye-hand coordination.
- For example, the *traits* of coordination and dexterity may be contrasted with a *skill* in the use of the hands or feet for the rapid performance of repetitive work tasks.
- It is the acquired capacity to perform the work activities with facility that gives rise to potentially transferable skills.



# Skill Levels- Unskilled Work

- needs little or no judgment to do simple duties
- learned on the job in a short period of time by simple demonstration or in 30 days or less.
- little specific vocational preparation and judgment are needed.
- ***A person does not gain work skills by doing unskilled jobs.***

# Skill Levels- Semiskilled Work

- Semiskilled occupations are:
  - more complex than unskilled ones and simpler than the more highly skilled types of occupations;
  - contain more variables and require more judgment than unskilled occupations; and
  - typically require more than 30 days to learn and up to 60 days. The VE must pay close attention to the complexities of the job in dealing with data, people, or objects, and the judgments required to do the work.
- An occupation may be classified as semiskilled when coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

# Skill Levels – Skilled Work

- Skilled work is more complex and varied than semiskilled work; it requires more training time and often a higher educational attainment.
- Skilled work may require:
  - judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality or quantity of material to be produced
  - making precise measurements
  - reading blueprints or other specifications
  - making necessary computations or mechanical adjustments
  - dealing with people, facts, figures, or abstract ideas at a high level of complexity.

# Social Security Ruling (SSR) 82-41: Transferability of Skills

- 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.
- Are the skills transferable, considering the claimant's age, education and past work experience?
  - Unskilled past relevant work does not provide any transferable skills.
  - Semi-skilled and skilled past relevant work may provide transferable skills.
- For individuals age 55 and over to perform other work by way of transferable skills, there must be very little (if any) vocational adjustment in terms of tools, work processes, work settings, or the industry. 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.
- When applying transferability, the other jobs will likely require the same or a lesser degree of skill in comparison to the relevant past job, because the claimant is not expected to perform more complex jobs than he or she performed in the past.
- The ALJ will ask you a series of specific questions to determine if skills are transferable to other work which exists in significant numbers in the national economy to which the claimant can make a vocational adjustment considering his/her age, education, past work experience, and defined residual functional capacity.

# The Sequential Evaluation

## 20 CFR 404.1520 and 416.920

- Step 5: Can the claimant do other work? Vocational Expert Testimony at Hearing
  - Considering the claimant's age, education, past work experience and the residual functional capacity just defined...Are there unskilled occupations to which the hypothetical individual can make a vocational adjustment in the national economy?
  - VE Identifies:
    - DOT title,
    - DOT number,
    - Skill level,
    - Exertional level, and
    - Numbers of jobs in the national economy (some ALJs may ask for regional or local numbers)

# Step 5: Hypothetical Question for the VE-Sample

- **ALJ:** Assume that a hypothetical individual who is the same age as the claimant (Younger Individual), and who has the same educational background (High School Education) and same past work experience as the claimant, has the following residual functional capacity (RFC):
  - Light work, except he can stand and walk up 4 hours in an 8 hour workday, and he must use a cane to ambulate longer distances greater than one block outside the home.
  - He can tolerate superficial and occasional contact with the general public without strict production requirements.
  - He can understand, remember and carry out simple instructions throughout an ordinary workday and workweek with normal breaks on a sustained basis.
  - He can tolerate occasional exposure to dust, fumes, odors, gases, pulmonary irritants and hazards, such as dangerous moving machinery and unprotected heights.

# Step 5: VE's Opinion Testimony at Hearing:

- **ALJ** (continued): Is the claimant able to perform her past work?
- **VE**: The claimant is not able to perform his/her past work.
- **ALJ**: Is there other work that the claimant could perform?
- **VE**: Yes, there are unskilled occupations such an individual could perform. Three representative occupations would include:
  - Inspector/hand packager; Dictionary of Occupational Titles (DOT) # 559.687-074; Specific Vocational Preparation (SVP) level 2 and light; 82,150 jobs nationally and 1,362 jobs regionally
  - Assembler, small parts; DOT # 076-684-022; SVP 2 and light; 229,240 jobs nationally and 1,550 jobs regionally
  - Mailroom clerk; DOT # 209.687-036; SVP 2 and light; 119,960 jobs nationally and 2,120 jobs regionally

# Step 5: VE's Opinion Testimony at Hearing:

- **ALJ:** Ms. Vocational Expert, please identify whether your opinion varies from information contained in the DOT/Selected Characteristics of Occupations (SCO) and the basis for your testimony.
- **VE:** Well, your Honor, the DOT/SCO does not expressly identify occupations allowing standing and walking up 4 hours in an 8 hour workday or the use of cane. I based my opinion on my 40 years of vocational experience, including placing individuals in these same occupations with similar limitations, labor market surveys, knowledge of labor markets through the present date and experience preparing corporate training for mailroom clerks.
- **ALJ:** Counsel, do you have questions for the Vocational Expert.
- Let's look further into the law and regulations....



## **§ 404.1566. Work which exists in the immediate area in which the claimant lives.**

(a) *General.* We consider that work exists in the national economy when it exists in significant numbers either in the region where the claimant lives or in several other regions of the country.

It does not matter whether—

- (1) Work exists in the immediate area in which the claimant lives;
- (2) A specific job vacancy exists for the claimant; or
- (3) The claimant would be hired if he or she applied for work.

# § 404.1566. Work which exists in the national economy.

(c) *Inability to obtain work.* We will determine that the claimant is not disabled, if his or her residual functional capacity and vocational abilities make it possible to do work which exists in the national economy, but he or she remains unemployed because of—

- (1) Inability to get work;
- (2) Lack of work in local area;
- (3) The hiring practices of employers;
- (4) Technological changes in the industry in which he or she has worked;
- (5) Cyclical economic conditions;
- (6) No job openings for him or her;
- (7) He or she would not actually be hired to do work he or she could otherwise do; or
- (8) He or she does not wish to do a particular type of work.

# SSR 00-4p: VE Testimony that varies from the DOT

- The DOT lists maximum requirements of occupations as generally performed, not the range of requirements of a particular job as it is performed in specific settings.
- Technology, safety, processes or equipment advances may not be accounted for in the job descriptions in the DOT. This may change skill levels, exertional levels and transferability of skills.
- Ergonomic workplace advances may not be accounted for in the DOT job descriptions.
- The DOT does not provide the numbers of jobs.


# Basis for the Vocational Expert Opinion:

## What is the basis for the VE's opinion when it varies from the DOT?

- When there is a conflict or an apparent conflict between the VE testimony and the DOT, the ALJ must elicit a **reasonable explanation** for the conflict before relying on it to support a disability determination. (SSR 00-4p)
- Examples of reasonable explanations for such conflicts include, but are not limited to the following:
  - Information about a particular job's requirements or about occupations not listed in the DOT, and the VE is able to provide this from the VE's experience in job placement or career counseling. (SSR 00-4p)
  - The DOT lists maximum requirements of occupations as generally performed, not the range of requirements of a particular job as it is performed in specific settings. A VE may be able to provide more specific information about jobs or occupations than the DOT. (SSR 00-4p)
- The VE should be prepared to cite his or her sources and respond to questions about those sources.

For each representative occupation, the VE should:

- Identify the job title and the DOT code,
- Identify the skill level and the exertional level,
- Explain variations from the DOT, and
- State the estimated number of jobs in the nation (and region, if asked).



# ***Role of the Vocational Expert***

# Role of the VE

- **Provide impartial expert vocational opinion testimony at ALJ hearings**
  - via telephone,
  - via video teleconferencing (VTC), or
  - in person
- **Give expert opinions via written interrogatories**
- **To rely on and reference the DOT/SCO**
  - but to identify the basis for the expert's opinion when it varies from the DOT/SCO

# Role of the VE

- **ALJs may use Vocational Expert assistance to:**
  - Identify/characterize the claimant's past work
  - Assist the ALJ in determining whether a claimant can do his past work
  - Opine whether an individual has performed semiskilled or skilled work long enough to perform the job at the requisite skill level
  - Identify the skill level, physical demands and mental demands of occupations
  - Give an opinion about whether occupations exist to which a hypothetical claimant with specific functional limitations can make a vocational adjustment to other work



# Role of the VE

- **ALJs may use Vocational Expert assistance to:**
  - Identify the characteristics of work settings
  - Perform a transferrable skills analysis
  - Identify the existence and incidence (numbers) of jobs within occupations
  - Opine on the “value” of work when performed with accommodations and/or whether the job is competitive when performed with the accommodations

# Role of the VE: Responsibilities

- **Prehearing preparation**
- **At the Hearing**
  - Answer hypothetical questions within the VE's area of expertise in our hearing process
  - Respond to questions about resources used and basis for opinions
- **Conduct at the Hearing**
  - Testify under oath
  - Impartial testimony and must avoid the appearance of impropriety
  - Answer completely but do not volunteer
  - Understand and use appropriate disability terminology

# Role of the VE

- **Do not testify about or answer a question about:**
  - medical matters, such as what limitations you believe result from a medical condition
  - Whether you believe the claimant is disabled
  - Whether you think the claimant can actually get hired
  - Whether the numbers of jobs is significant
  - Whether work is past relevant work (PRW)
  - Whether “if everything the claimant said is true, can the claimant work?”
  - Whether “if the Doctor’s opinion in Exhibit X is true, can the claimant work?”

*~Thank you~*