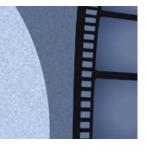


OHO Continuing Education Program A Quarterly IVT OCEP—JANUARY 2019

Four Keys to B Criteria





Know the broad scope of the B criteria "moderate" rating.

- A moderate limitation means the person's ability to function in this area independently, appropriately, and effectively, and on a sustained basis is "FAIR."
- A moderate limitation covers a wide range between a mild, or slight limitation, and a marked, or serious limitation.



Recognize that the B criteria areas often overlap.

 A deficit in one area of mental functioning often has implications for another area.



B criteria ratings are not appropriate RFC limitations.

- B criteria ratings must be translated into specific vocational terms in the RFC.
- Never use B criteria terms, such as moderate or marked, in the RFC unless they are defined by a source as specific work-related limitations.



Ensure each "moderate" or higher B criteria rating area correlates to a specific matching functional limitation in the RFC. Harmony between the B criteria and RFC is completed only through a corresponding discussion of the relevant evidence related to the limitations found.

- Explain in the RFC rationale, using the evidence, how the B criteria limitations correlate to specific functional limitations in the RFC.
- If your case is in a jurisdiction where courts have found that a limitation to simple, routine, repetitive tasks does not address persistence and pace, consider explaining whether a limitation specifically addressing persistence and pace is supported by the facts. Even in other jurisdictions, it is important for the RFC to fully account for the claimant's functional limitations.
- Be sure not to use vague or undefined terms to describe functional limitations.



OHO Continuing Education Program A Quarterly IVT

OCEP—APRIL 2019

Four Keys to Step Four





PRW is RED

- For employees
 - Recency (within the past 15 years)
 - Earnings (at SGA), and
 - Duration (long enough to learn to do it)
- Generally, calculate the 15-year recency period from the date of adjudication. If the date last insured or end of prescribed period for widow's benefits has expired, calculate from that date.
- Primary authority for PRW: 20 CFR 404.1560 and 416.960; Social Security Rulings (SSRs) 82-61 and 82-62.



Use Special Care if the Step Four Determination May be Outcome Determinative

- The step four determination is outcome determinative if the medicalvocational guidelines would direct a finding of disabled at step five. This situation may occur if the claimant is in a higher age category or over age 45 and illiterate.
- The "vocational expedient" (20 CFR 404.1520(h) and 416.920(h) allows adjudicators to bypass step four only if the evidence supports a finding of "not disabled" at step five. Use the vocational expedient only if the evidence is insufficient to determine PRW; it is not a substitute for developing the record on PRW.
- When supported by the evidence, make an alternative finding of "not disabled" at step five if the finding at step four is not disabled.



Know the Difference between PRW as Actually and Generally Performed; it Matters

- To do PRW as generally performed, the job duties need not match the Dictionary of Occupational Titles (DOT) in every detail, as long as the primary duties match.
- A claimant learns transferable skills only from work as actually performed, not as generally performed.
- A step four finding of not disabled must state whether the claimant can do PRW as actually performed, as generally performed, or both.



A Composite Job Has Significant Elements of Two or More Jobs and No Counterpart in the DOT

• A claimant can do a PRW composite job only as actually performed, and must be able to do all parts of the of the composite job.



OHO Continuing Education Program A Quarterly IVT

Quick Notes B Criteria January 16, 2019



KNOW THE BROAD SCOPE OF THE "MODERATE" RATING

- We generally find a "moderate" limitation when the claimant has a fair ability to function independently, appropriately, effectively, and on a sustained basis.
- ♣ In making B criteria findings, remember that the degrees of limitation do not represent equidistant markers on the spectrum of limitation, but rather can be considered in relation to one another:
 - In cases where a finding of "mild" is appropriate, there
 will be evidence the claimant has a slight deficit in an
 area. Relevant evidence will show generally normal
 functioning such that the overall functional deficit is not
 more than minimal.
 - In cases where a finding of "marked" is appropriate, there will be evidence that the claimant has serious functional difficulties in the area. However, there will be some, even minimal, retained functioning such that a finding of "extreme," (i.e. no useful ability to function in the area) is not appropriate.
- ♣ Thus, the "moderate" finding covers a broad range on the spectrum between "mild" and "marked."
- It is the lowest degree of limitation at which we find that a claimant's mental impairment(s) is/are severe. Therefore, at a minimum, "moderate" corresponds with a finding that the claimant's functional deficits in this area have more than minimal effect on the basic mental work activities —a threshold finding with regard to severity of impairments.

RECOGNIZE THAT B CRITERIA AREAS OFTEN OVERLAP

- Remember that we consider <u>all</u> evidence of record in making the findings of degrees of limitation in the B criteria areas.
- This means that some evidence can be relevant to multiple areas of functioning.
 - For example, a claimant may report that they are short-tempered and prone to explosive anger.
 - This may affect his or her ability to interact with others effectively.
 - It may also implicate the claimant's ability to concentrate and maintain pace if he or she dwells on things that make them angry.
 - The claimant's inability to regulate his or her emotions also suggests a deficit in the ability to adapt or manage themselves.
- Deficits in one area may impede an ability to function in another.
 - For example, a claimant with poor short-term memory may have deficits in remembering and applying information, but those short-term memory problems may also limit a claimant's ability to concentrate and maintain pace.
- ♣ Be sure that the relevant evidence supports the B criteria findings and the criteria are consistent with one another.

B CRITERIA RATINGS ARE NOT APPROPRIATE RFC LIMITATIONS

- ♣ The RFC is a critical element of any decision after Step 3 of the sequential evaluation process. The RFC is the claimant's maximum remaining ability to do sustained work activity in an ordinary work setting on a regular and continuing basis. In drafting RFCs, remember the following:
 - The RFC is claimant-specific, and the B criteria ratings (e.g., moderate, marked) are too broad for use in the individualized RFC finding.
 - For example, an RFC should never simply state, "the claimant has a moderate limitation in interaction with the public" because this does not adequately specify the individual's level of functioning.
 - Some of our terms, including "occasional," or "frequent" are defined by policy or the Dictionary of Occupational Titles (DOT). Therefore, a policy compliant RFC may use these terms without further explanation of their meanings.
 - However, if the RFC contains a term that is not clearly defined in either policy or the DOT, make sure to explain its meaning.
 - o Be mindful not to use terms such as "never" or "always" in the RFC. This is particularly true with regard to interaction with others. Such absolutes as "never" or "always" (e.g., "never have contact with supervisors") substantially erode the occupational base and are generally not consistent with competitive employment.

ENSURE THAT EACH "MODERATE" OR HIGHER B CRITERA RATING AREA CORRELATES TO A SPECIFIC MATCHING FUNCTIONAL LIMITATION IN THE RFC AND THAT THE RFC SECTION CONTAINS A THOROUGH DISCUSSION OF THE RELEVANT EVIDENCE RELATED TO THE LIMITATIONS FOUND.

4	ind Co ind are lim	finding that the claimant has "none" or merely a "mild" slight") limitation in a B criteria area does not typically dicate the need for a corresponding limitation in the RFC. Inversely, a moderate or higher degree of limitation dicates that the claimant is at least fairly limited in this ea of functioning and necessitates a corresponding nitation in the RFC.	
4	Th	e RFC limitations are drawn from a review of the	
	ev	idence as a whole. The same evidence can be relevant to	
	mo	ore than one B criteria area and some limitations may	
	ad	dress multiple areas of moderate or marked limitations.	
-	So	me common areas of concern during the adjudication	
	sta	age which may lead to a remand include the following:	
	0	A lack of harmony between the evidence, B criteria, and	
		RFC.	
	0	The decision fails to provide adequate explanation as to	
		why the specific RFC limitations were assigned to the	
		individual claimant. This "logical bridge" between the	
		evidence and the findings in the decision is crucial to the	
		defensibility of our decisions.	
	0	The B criteria area of concentrating, persisting OR	
		maintaining pace may need special attention in	
		decisions. Consider addressing all three (concentration,	
		persistence, AND pace) in the decision and explaining to	
		what, if any, degree the claimant is limited in each area.	
	0	Sizeable absenteeism or "off task" behavior findings in	
		the RFC solely attributable to the effects of mental	
		impairments may be more consistent with marked or	
		extreme B criteria findings. Ensure that the evidentiary	
		basis for such limitations is well-articulated in the	
	_	decision.	
	0	The decision must include a B criteria analysis and	
		findings every time there is a mental medically	
	_	determinable impairment (MDI). If all of the mental MDIs are deemed non-severe – in	
	0	other words, there is no B criteria degree of limitation	
		higher than mild (slight) – there is no need to limit the	
		claimant regarding their mental functioning capabilities	
		in the RFC. Of course, other factors such as side effects of	
		medications may justify RFC limitations pertaining to	
		mental abilities in the workplace even if mental	
		mental admitted in the Workplace even in interitar	

impairments themselves do not cause more than

- minimal limitation. The key is to make certain the decision explains, by reference to the evidence of record, the inclusion of such RFC limitations.
- In writing and editing a decision, check to ensure all moderate or higher B criteria limitations correspond with an RFC limitation.
- The B criteria category of Adapting or Managing Oneself is not simply a substitute for the old Activities of Daily Living B criteria. Instead, this category describes how the claimant is able to regulate emotions, control behavior, and maintain well-being in a work setting.

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OHO Continuing Education Program A Quarterly IVT

Quick Notes "Step Four" April 2019



Key One: PRW is RED

- RED is an easy to remember acronym for the three elements of past relevant work (PRW) for employees.
 - Recency (within the past 15 years)
 - Earnings (at SGA)
 - Duration (long enough to learn to do it)
- The primary authority for PRW is 20 CFR 404.1560, 416.960 and Social Security Rulings (SSRs) 82-61 and 82-62
- <u>Recency</u>: SSR 82-62 says, in some cases, work performed prior to the 15-year period is also relevant IF the evidence establishes a continuity of skills, knowledge, and processes between the earlier work and the more recent occupations.
- <u>Earnings</u>: 20 CFR 404.1574(b) and 416(b) say earnings are gross monthly earnings minus any impairment related work expenses and subsidies.
- <u>Duration</u>: Specific vocational preparation (SVP) is the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job.

SKILL LEVEL	SVP	TRAINING REQUIRED
Unskilled	1	Short demonstration
	2	30 days or less
Semi-Skilled	3	30 days up to, and including, 3 months
	4	Over 3 months up to, and including, 6 months
Skilled	5	Over 6 months up to, and including, 12 months
	6	Over 1 year up to, and including, 2 years
	7	Over 2 years up to, and including, 4 years
	8	Over 4 years up to, and including, 10 years
	9	Over 10 years

- SSRs 82-61 and 82-62 tell us, in general, to accept the claimant's description of how she performed PRW, even when there is substantial difference between the claimant's description and the description found in the DOT.
- SSR 82-62 reminds us that brief or sporadic work is not PRW.
- PRW documentation errors seen most often at the Appeals Council include:
 - o PRW not performed within the past 15 years;
 - PRW finding for work not performed at SGA level;
 - The description of PRW is insufficient to compare to the RFC;
 - Work after expiration of the DLI that is found to be PRW;
 - Unresolved conflicts between AOD, work history reports and earnings queries.
- Generally, work after the AOD is not PRW.
- Special work situations:
 - Seasonal work is PRW if it meets the RED requirements
 - Work performed during a period of disability is not PRW. You are most likely to see this situation in a continuing disability review (CDR)
 - Hobbies or volunteer work are not SGA.
- SSR 96-8p: Work on a "regular and continuing basis"
 defined as 8 hours a day, for 5 days a week, or an
 equivalent work schedule, is not required for
 determinations at Steps One or Four. Earnings, not the
 designation of part time or full time work, determines
 whether employee work is SGA.

Key Two: Use Special Care if the Step Four Determination May be Outcome Determinative

- The correct determination at Step Four may be the difference between allowing and denying disability benefits.
- The special medical-vocational profiles: arduous unskilled work; no work experience, and; lifetime commitment are considered after making the Step Four determination and before Step Five.
- The vocational expedient regulation permits an adjudicator to skip Step Four and proceed directly to Step Five. 20 CFR 404.1520(h) and 416.920(h).
 - It is not a substitute for developing vocational evidence to make a Step Four finding.
 - It can only be used if the Step Five finding would be "not disabled."
- Consider an alternative Step Five finding of not disabled if you find the claimant not disabled at Step Four. Providing an alternative basis at Step Five improves defensibility of the decision if appealed, and can cure a Step Four error.

Key Three: Know the Difference between PRW as Actually an	nd Generally perfo
The regulations and SSR 82-61 direct a finding of not	
disabled if the claimant can perform PRW as actually or	
generally performed.	
For information on work as generally performed, look to	
the DOT and VE evidence.	
 The job duties do not need to match in every detail, as 	
long as the primary duties match. This is a	
determination that rests with the adjudicator.	
The claimant is the primary source of information for	
information on work as actually performed.	
Critical Tip: When determining PRW as actually performed,	
you cannot substitute a DOT description of the job to fill in	
gaps about how the claimant actually performed the job,	
and you cannot use the DOT to measure the accuracy of	
the claimant's description of the past work.	
A focused examination of PRW is the key. Identify the basic	
work activities affected by the impairments (exertional,	
manipulative, mental, or other) since you will incorporate	
them into the RFC. Direct questions on PRW duties by	
focusing on the work activities in these categories. Then do	
a function-by-function comparison of the requirements of	
the claimant's PRW with the RFC.	
A good understanding of how the claimant actually	
performed PRW may also help with the transferable skills	
analysis. <u>Transferable skills</u> are acquired from PRW as the	
work was actually performed, not generally performed.	
Therefore, development of work as actually performed	
may help at Steps Four and Five of the evaluation.	
Decision Drafting Tips:	
 Compare the claimant's RFC with the demands of PRW, 	
as actually and generally performed. If you find the	
claimant not disabled at Step Four, make sure to	
indicate whether the claimant can do PRW as actually	

 $performed, \, generally \, performed, \, or \, both.$

- In fully favorable decisions, check the claimant's RFC and PRW before you begin writing. Make sure the RFC precludes PRW, and if it is not clear, look for supportive VE testimony or rulings to ensure the Step Four finding is supported.
- HALLEX I-2-8-20 says that decision-writing instructions should include a finding on applicable issues relating to the claimant's PRW and not merely recite the claimant's work history. The instructions should identify the PRW by job title, DOT and SVP rating, and exertion requirement. If you have a Step Five alternate finding, the instructions should make this clear.

Key Four: A Composite Job Has Significant Elements of Two or More Jobs and No Counterpart in the DOT.

- SSR 82-61 says that a composite job has significant elements of two or more occupations and does not have a counterpart in the DOT.
- Other jobs that may not have a counterpart in the DOT include:
 - Work performed in a foreign economy
 - Work in isolated industries or of a unique nature
 - Work that was not sampled by the Department of Labor, and
 - Work that has arisen since the last DOT update
- When a job has no counterpart in the DOT, you will need expert evidence from a VE to determine if the work is PRW.
- A job is a "composite job" if the duties described do not encompass all of the tasks of any one occupation. It is a blend of tasks from two or more different occupations. If you determine that PRW was a composite job, you must explain why.
- When comparing the RFC to a composite job, you can only find the claimant capable of performing the composite job if they can perform all parts of the job. Since there is no DOT counterpart for composite jobs, you cannot find the claimant able to do the composite job as generally performed, only as actually performed.
- You may find a claimant capable of performing PRW even if the PRW no longer exists in the economy (SSR 05-1c).
- You may find a claimant who performed PRW in a foreign country capable of performing that work even if it does not exist in the United States (SSR 82-40).
- Work performed in the military may be PRW.
