

Column: *Walkup Talks Disability*

## ***Social Security Disability, Vocational***

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*Michael would welcome the opportunity to try to help you with your legal claims. His web site may be found at [www.MCSLegalHelp.com](http://www.MCSLegalHelp.com), or he may be contacted at [MJWalkup@Amertech.net](mailto:MJWalkup@Amertech.net), or at 866-880-HURT (4878).*

### **Vocational**

It used to be that the SSA had a vocational expert at each and every hearing. Vocational experts are people who are experts on jobs. Many of them do job placement for workers compensation insurance carriers. Not only was it expensive to have a live expert at each hearing, but the opinions varied widely. This was not an exact science.

To solve these problems, SSA promulgated regulations in 1978 which set up criteria to be followed to analyze vocational issues. The results were put together in a chart, which looked like a spreadsheet and quickly came to be known as "The Grid". Under "The Grid" certain questions are asked which are:

- (1) How old is the claimant?
- (2) How far did the claimant get in school?
- (3) Does the claimant have any skills?
- (4) Are any of those skills transferable to lighter work? And,
- (5) How much physical work can the claimant do despite the impairment or impairments?

In terms of "age", the only point where that is really considered for most people is if they are over 50. If you are under 50, you have to be unable to do all forms of work. They then proceed in five year increments so there is one category if you are 50

to 55, another if you are 55 to 60 and the final one if you are between 60 and 65. If you are within six months of the next category, you can be bumped up.

For "education", again there are categories. The first is "less than a High School diploma", the second is "High School diploma". That's it other than being "illiterate or unable to read and write English". College and advanced degrees do not matter except in the sense that they confer skills.

For skill levels, there is "unskilled", "semi-skilled", and "skilled".

"Transferability of skills" has to do with how long it would take to learn a new job to which your skills could transfer, ie. 30 days, 60 days, or longer. You can't transfer skills from unskilled.

For work levels, which are described as "exertional limitations", there are five categories: (1) Sedentary; (2) Light; (3) Medium; (4) Heavy; (5) and Very Heavy. I won't go into how each one is defined, but there are specific definitions for each. Doctors often call anything that is less strenuous than the job the person was originally doing as "light", but that may not meet the definition used by SSA. You therefore have to be careful to get the actual limitations from the doctor in terms of weight able to be carried, amount of time able to stand and walk, lift, sit, etc. We have forms that we send the doctor for this.

**“Vocational issues usually aren’t that significant in MCS cases.”**

If you are unable to do your regular job, SSA will define how much work you can do from an exertional standpoint based on the medical opinions, and plug you into the “Grid” to make their determination. The difference between being able to do “Medium” work versus “Light” or “Light” versus “Sedentary” can make the difference in whether the benefits are awarded or denied, so this is critical in these types of cases.

If you have “non-exertional” impairments, such as environmental restrictions, or mental impairments, the Grid does not strictly apply and SSA has to employ a vocational expert to give an opinion on your specific situation. The “Grid” rules can still be used as a “guide”, however.

In terms of MCS cases, assuming we are not approaching it from a mental impairment perspective, the issues are environmental. You must be able to work on a regular basis without any accommodations being made for you. If you are sensitive to perfume, for example, there is really no job you can do as you will inevitably have to come into contact with someone, either from the general public or co-workers, who will be wearing something. If the problem is cleaning products, you can’t control what is used to clean the building, which are usually the harshest chemicals available that are not actually banned. The same is true of pesticides, as most buildings have regular spraying programs. If air fresheners are used in bathrooms, you can’t use those facilities and would have to leave the building which may not be allowed.

Therefore, the vocational issues usually aren’t that significant in MCS cases. However, if your main problems are fatigue or pain, they can play a role. Otherwise, my only question to the voca-

tional expert is “assuming that the claimant has all of the sensitivities alleged, would there be any jobs?” The answer is always “no”. Work out of the home or part time work, or work where accommodations are made, is not considered “substantial gainful employment”. You must be able to take a 40 hour per week job, not have to be absent more than one or two days per month, and not need any special accommodations.

### “Jobs”

Just a word here about what we mean by “jobs”. SSA does not consider what they call “employer hiring practices”. This means they do not consider whether or not you may be discriminated against due to the presence of various impairments. In reality, employers don’t want to hire people who have problems. SSA does not live in reality. They only consider if you could actually do the job on a *regular and consistent basis over time* IF it were offered to you.

They also don’t consider how much the job pays, what the benefits are, or where it is located. They don’t consider how you would get to work so long as you can take public transportation. It does not matter if there is actually any public transportation where you happen to live. They are looking at this from a national perspective. If you can’t drive, you can move to someplace where there is a bus or train. For MCS people, however, public transportation can be a particular problem as you are forced to remain in close proximity to others who may be wearing something to which you are sensitive. Therefore, if you can’t tolerate that, and you can’t drive due to fumes on the street, you wouldn’t be able to work.

*To be continued next month*

