



Autonomic Dysfunction, POTS, ME/CFS, MCAS, EDS and Your Eligibility for Social Security Disability Benefits

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Legal Disclaimer

- ◆ This presentation does not create an attorney-client relationship and does not constitute legal advice.



Outline of Topics

- ◆ SSDI and SSI
- ◆ SSA 5 Step Sequential Evaluation
- ◆ SSA Claims Process
- ◆ Winning a Claim and Proof Problems
- ◆ How Attorneys Get Paid
- ◆ Why You Need an Attorney
- ◆ Autonomic Dysfunction and Autoimmune Disorder Overview
- ◆ POTS
- ◆ ME/CFS
- ◆ Small Fiber Neuropathy
- ◆ Mast Cell Disease
- ◆ COVID 19 and Complications
- ◆ EDS
- ◆ Questions



The Two Types of Social Security Benefits:

An Overview of Social Security
Disability and Supplemental Security
Income Benefits

The 2 Types of Social Security Disability Benefits

- ◆ Social Security Disability Insurance (SSDI) is a disability program based on payment of FICA taxes of 20 quarters out of 40 quarters prior to filing an application. Insured!
- ◆ SSDI pays benefits from 6th month of disability or 12 months before the application, whichever is later in time.



The 2 Types of Social Security Disability Benefits

- ◆ Social Security Disability Insurance (SSDI) is a disability program based on payment of FICA taxes of 20 quarters out of 40 quarters prior to filing an application. Insured!
- ◆ SSDI pays benefits from 6th month of disability or 12 months before the application, whichever is later in time.



The 2 Types of Social Security Disability Benefits

- ◆ The amount of SSDI benefits depends on the earnings history and pays a maximum of \$3,627.00 per month.
- ◆ SSDI recipient becomes Medicare entitled after 29 months of disability.

The 2 Types of Social Security Disability Benefits

- ◆ Supplemental Security Income (SSI) is available to anyone legally in US.
- ◆ You can only have \$2,000 or \$3,000 if married in assets. Car and house are not included.
- ◆ Instant Medicaid.
- ◆ The monthly payment is \$914.00 per month.



The Five Step Sequential Evaluation Test

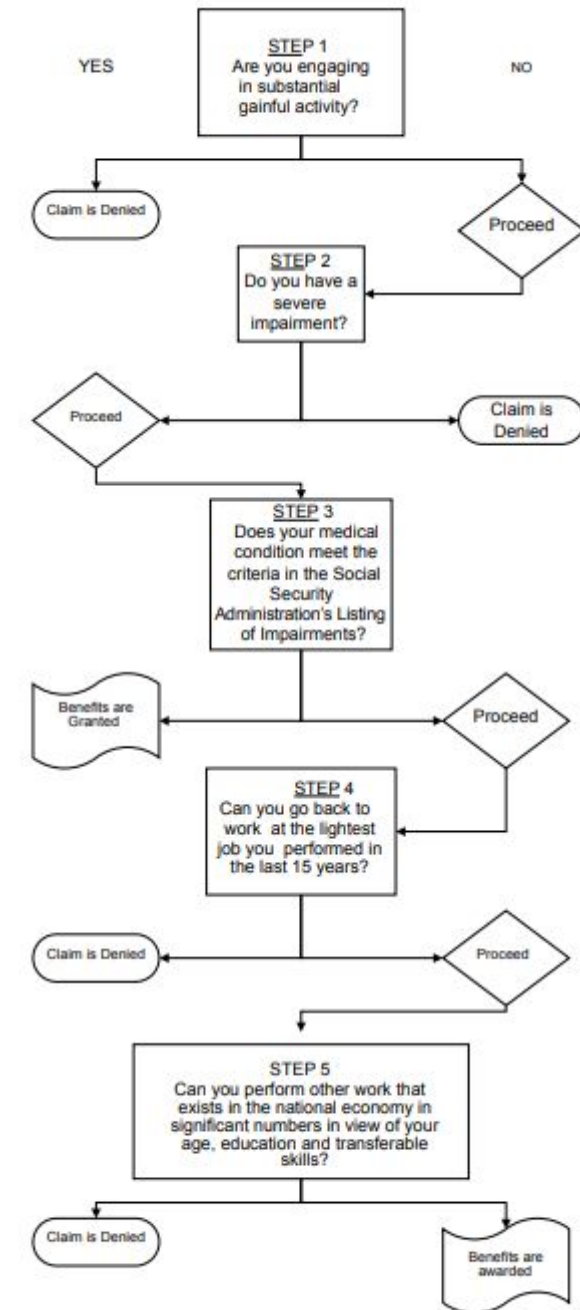
How Social Security Defines Disability

What is Disability?

- ◆ The term “disability” is a term of art which is defined as 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.”



The Five Step Sequential Evaluation





The Five Step Sequential Evaluation

- ◆ 1. Are You Working?
- ◆ 2. Is Your Medical Condition Severe?
- ◆ 3. Does Your Medical Condition Meet a Listing?
- ◆ 4. Can You Do The Lightest Job You Have Held in Last 15 Years?
- ◆ 5. Can You Do Any Other Type of Work?

The 5 Step Sequential Evaluation

- ◆ Step 1 Are You Working?
- ◆ Does your autoimmune disease prevent you from performing substantial gainful work on a full-time basis earning less than \$1,470.00?





The 5 Step Sequential Evaluation

- ◆ Step 2 Is Your Autoimmune disorder Severe?
- ◆ This step is designed to weed out cases where there is only minor limitations on the ability to work or where AD won't significantly limit the ability to perform basic work activity for at least 12 months.
- ◆ This can be a hurdle for those with AD that are slow progressing or vary in intensity and frequency.

The 5 Step Sequential Evaluation

- ◆ Step 3 Listing of Impairments
- ◆ Not all autoimmune disorders have Listings
- ◆ In order to meet the listing, the medical records must document the elements of a listing or the medical equivalent of a listing

The 5 Step Sequential Evaluation

- ◆ You must meet every element of the Listing to be awarded SSDI benefits at Step 3.



Yes! Benefits
Awarded!

- ◆ If you don't meet a Listing at Step 3, then SSA will determine how their your symptoms and limitations impact the ability to perform work.

What SSA Does If You Don't Have an RFC Form

- ◆ SSA consulting physicians normally opine autoimmune disorder claimant is capable of light duty and that results in an unfavorable decision.
- ◆ You should get your physician to complete a RFC form.
- ◆ SSA should use the RFC forms and compare the RFC to the functional requirements of the lightest job done in the last 15 years before patient became disabled.



The 5 Step Sequential Evaluation

- ◆ Step 4 Can You Do the Lightest Job They Held in the 15 Years Before You Became Disabled?
- ◆ The key to winning at Steps 4 and 5 is an accurately completed Residual Functional Capacity form (RFC) and a Mental RFC form that explains what the patient can still do, despite their autoimmune disorder.

5 Step Sequential Evaluation

- ◆ Step 5 Can You Do Any Other Type of Work?
- ◆ SSA determines what other work, if any, you can perform in the national economy taking into consideration your age, education, work experience and physical/mental capabilities.



The Key to Winning

- ◆ Under Age 50: If your autoimmune disorder prevents you from performing sedentary work you will be found disabled.
- ◆ SSA bias against younger individuals.
- ◆ Sedentary work is the ability to lift a maximum of 10 pounds at a time, sit 6 hours and occasionally walk and stand 2 hours out of an 8-hour day.



5 Step Sequential Evaluation and the Grids

- ◆ Age 50 or older: If your autoimmune disorder limits you to sedentary work and you have no transferrable work-related skills, you will be found disabled.
- ◆ Over Age 60: If your autoimmune disorder prevents you from performing past relevant work at Step 4, you will likely be found disabled.



KEY TO WINNING

- ◆ Under age 50, the key to winning is eroding the occupational base to less than sedentary by establishing exertional and non-exertional limitations.
- ◆ Age 50 -54, the key to winning is sedentary unskilled work.
- ◆ Age 55-59, the key to winning is light unskilled work.
- ◆ Age 60-64, the key to winning is light work with “very little vocational adjustment”.

The 5 Step Sequential Evaluation

- ◆ At hearing stage, the ALJ will, at trial, give the vocational evaluator (VE) a hypothetical about your age, education, transferrable skills and RFC to determine if there is other work in the national economy you are capable of performing.
- ◆ Make or break your case!



The Social Security Claim Process

Confusion, Delay and Denial



The Social Security Claim Process

- ◆ 3 Step Administrative Process - IA, RFR, Hearing
- ◆ **Initial Application decision takes about 250 days.**
- ◆ **Confusing, Time Consuming and Easy to Make Errors**
- ◆ Reviewed by Office of Disability Determinations (ODAR)
- ◆ 90% denial rate.
- ◆ Common mistakes include no doctor records, no doctor support, and failure to accurately describe work duties.



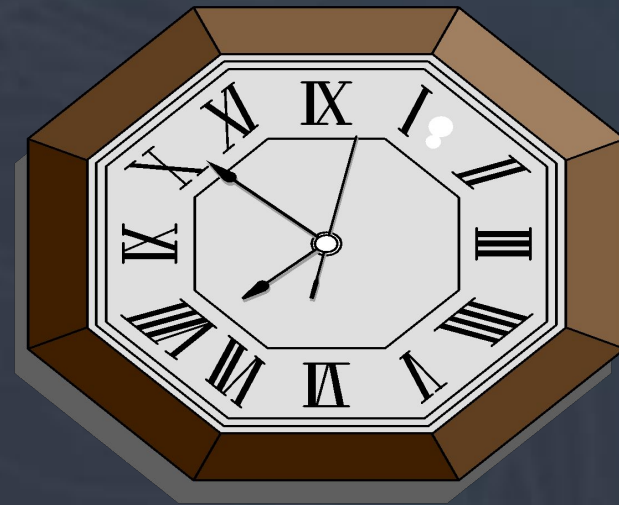
The Social Security Claims Process

- ◆ **Request for Reconsideration**
- ◆ **Must be filed in 60 days of date of decision or start all over**
- ◆ 150 to 250 days to get a decision.
- ◆ Re-reviewed by same office and 90% denial rate.
- ◆ Common mistakes include a failure to tell SSA about new diagnostic studies or doctors or changes in functionality.

The Social Security Claim Process

- ◆ **Request for Hearing**
- ◆ Must file for hearing within 60 days of date of denial or get to start over.

Takes 16- 24 months to get hearing from time of initial application to hearing or longer!





The Social Security Claim Process

- ◆ Hearing before Administrative Law Judge who is not bound by earlier decisions.
- ◆ The ALJ will use the same 5 Step Sequential Evaluation test.
- ◆ Approval rates vary by ALJ.
- ◆ 45-minute hearing.



Winning a Claim and Common Proof Problems That Can Sink Your Case

- ◆ Improperly or Incomplete Complete Forms
- ◆ Failure to Cooperate with SSA
- ◆ Medical Records
- ◆ RFC Forms
- ◆ Lack of Proper Claim Development
- ◆ Lack of Preparation



Incomplete Forms or Inaccurate Forms

- ◆ Not completing forms
- ◆ Not considering all possible disabling condition
- ◆ Not providing complete medical information
- ◆ Not providing medication information
- ◆ Inaccurate work history
- ◆ Inaccurate information about date of disability
- ◆ Inaccurate information from third party sources



Failure to Cooperate

- ◆ Failing to call SSA back when they call
- ◆ Failing to attend Consultative Examinations
- ◆ Failing to attend hearings

Medical Records

- ◆ Most medical records suffer from “DDD” otherwise known as “Document Deficiency Disease”. This requires translation of medical records, supplementation of chart notes and completion of SS forms, such as Residual Functional Capability form because the chart notes are deficient.
- ◆ Is the chart clear? Is it CPT, ICD-9 generated? Menu generated? Can you read the handwriting in report?

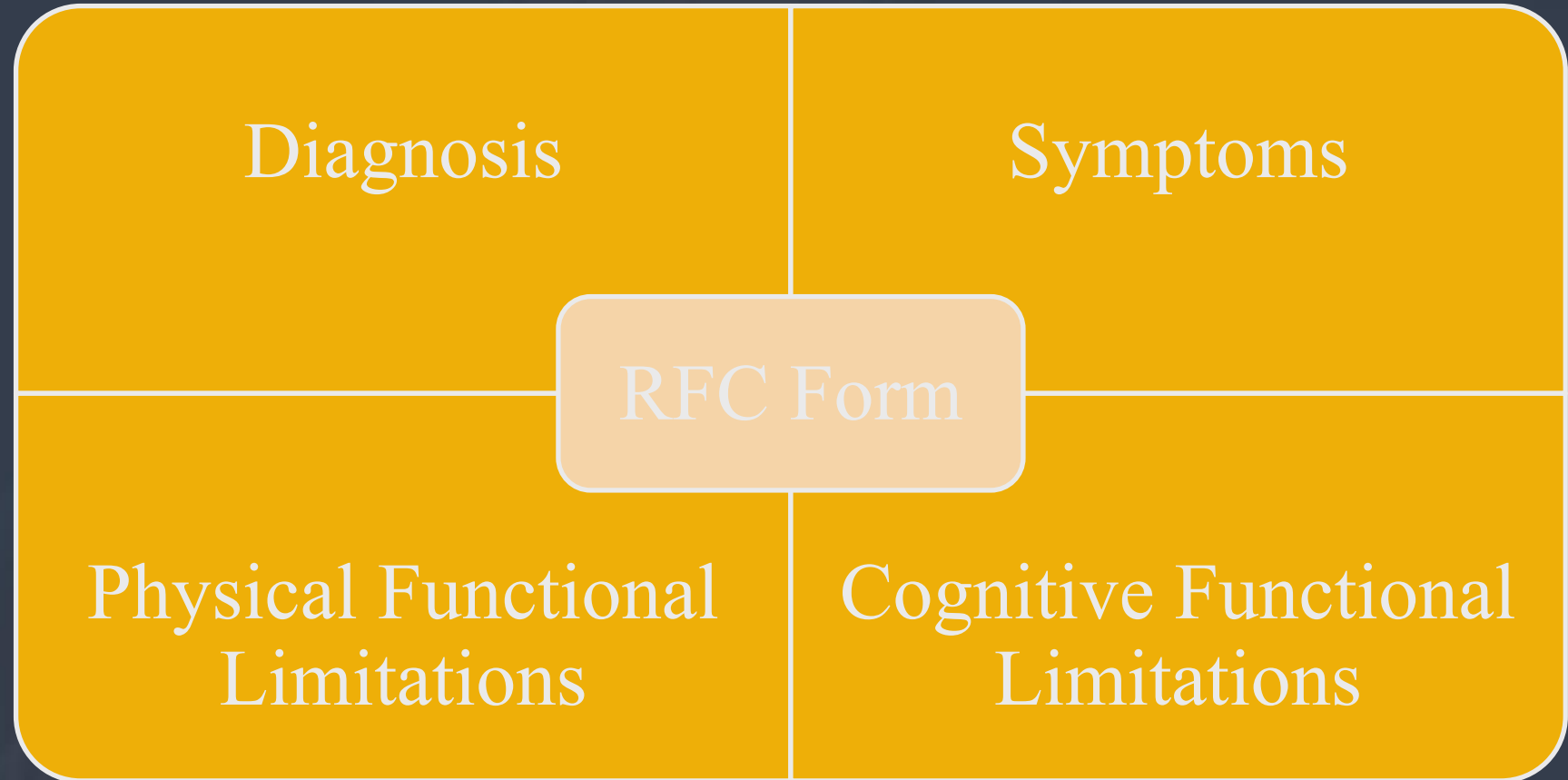
Medical Records

- ◆ Chart notes can be impenetrable or vague.
- ◆ Phrases like “feeling better”, “no new complaints”, “unchanged” will be seized upon by ALJ as indicia of recovery and ability to work.
- ◆ Incomplete interval history can be fatal.

Medical Records

- ◆ A good chart requires teamwork with patient and doctor!
- ◆ A good chart comments on functionality in terms of exertional and non-exertional impairments.
- ◆ A good chart comments on patient's functionality between visits.
- ◆ A good chart tells a story without need for a translator.

A Winning RFC



A Winning RFC

- ◆ Exertional limitations involve sitting, standing, walking, lifting, carrying, pushing and pulling.
- ◆ Non-exertional limitations include postural, manipulative, environment, mental and sensory impairments. These can include need to alternate sitting, standing, need to elevate legs, balance, difficulty bending, stooping, or squatting.

A Winning RFC

- ◆ Non-exertional limitations include difficulty with reaching, grasping, handling, fingering or difficulty relating with others, understanding or carrying out simple instructions, inability to maintain attention or concentration and poor stress tolerance.

A Winning RFC

- ◆ Your doctor's job is assist in developing the evidence and make sure your story is told to SSA and the ALJ accurately and completely.
- ◆ Will your doctor support your claim and fill out RFC forms?

RFC Proof Issues

- ◆ ALJ will determine the RFC which forms basis of hypothetical.
- ◆ An accurate RFC is key to winning!
- ◆ Your doctor must document the disabling physical, mental and sensory symptoms and comment on your functional abilities.



What You Need to Know About How a Social Security Lawyer Gets Paid

Social Security Rules and Common Contract Terms

- ◆ 25% of back benefits up to maximum of \$7,200 is presumed reasonable.
- ◆ SSA raised fee in November 2022.
- ◆ Back Benefits calculated from date of disability to date of decision plus 5 months. Disabled 1/1/2022. 5 months waiting period ends 5/31/22. Benefits paid May 1, 2023 in amount of 3,000 per month. $12 \times 3,000$ is 36,000. 25% of 36,000 is 9,000. Fee capped at 7,200.

Social Security Rules and Common Contract Terms

- ◆ Fee Petition for more
- ◆ Costs
- ◆ One time fee
- ◆ Fee issues if change attorneys



Why You Need an Attorney

- ◆ Abraham Lincoln said “A person who represents himself has a fool for a client.”
- ◆ SSA is not your friend and is not in the business of paying benefits.





Why you Need an Attorney

- ◆ Win rate is higher with representation
- ◆ Attorney takes on contingent basis so no fee unless win. No fee until win
- ◆ Medical issues in autoimmune disorders are complex and poorly understood by SSA
- ◆ SSA has no protocol for evaluating these cases.
- ◆ Proper case development of medical records and right RFC(s) crucial
- ◆ Proper preparation of medical summary and brief for court
- ◆ Proper preparation of client
- ◆ Representation at trial
- ◆ Cross examination of VE



Why you Need an Attorney

- ◆ What is at stake?
- ◆ Monthly benefits from end of waiting period until retirement age
- ◆ COLA benefits
- ◆ Life-time medical benefits



Autonomic Dysfunction

- ◆ The autonomic nervous system (ANS) controls heart rate, body temperature, breathing rate, digestion and sensation. It is connection between brain and body parts and internal organs.
- ◆ ANS includes sympathetic autonomic nervous system (SANS) and parasympathetic autonomic nervous system (PANS).
- ◆ SANS stimulates organs like heart, liver, sweat glands, skin, digestive and urinary system while PANS slows down bodily process.



Autonomic Dysfunction

- ◆ Occurs when nerves of ANS are damaged which can be chronic and worsen over time.
- ◆ Diabetes and Parkinson's are chronic conditions that can lead to autonomic dysfunction.
- ◆ Symptoms can include dizziness and fainting when standing up known as orthostatic hypotension.
- ◆ Other symptoms can include heart rate issues, sweating abnormalities, digestive problems, urinary problems and visual issues.



Types of Autonomic Dysfunction

- ◆ Postural orthostatic tachycardia syndrome (POTS)
- ◆ Neurocardiogenic syncope (NCS)
- ◆ Multiple system atrophy (MSA)
- ◆ Hereditary sensory and autonomic neuropathies (HSAN)
- ◆ Holmes-Adie syndrome (HAS)
- ◆ Other types of autonomic dysfunction can occur as a result of autoimmune disorders



Autoimmune Disorders

- ◆ Autoimmune diseases arise from an abnormal immune response of the body against substances and tissues normally present in the body.
- ◆ Localized autoimmune disease only affects specific tissues or organs. Examples include Crohn's disease, Type 1 diabetes and Graves' disease
- ◆ Systemic autoimmune disease affects body systems. Examples include multiple sclerosis (MS) or rheumatoid arthritis. More complex because of multiple body system involvement.



Autoimmune Disorders

- ◆ Post COVID development of autoimmune disorders
- ◆ Post COVID aggravation of pre-existing autoimmune disorders
- ◆ Post COVID development of systemic body disorders and autoimmune disorders



Autoimmune Disorders

- ◆ Autoimmunity is the presence of antibodies (made by B lymphocytes) and T lymphocytes directed against normal components of a person (autoantigens). The antibodies and T lymphocytes that recognize autoantigens are autoreactive cells.
- ◆ Antibodies are a biomarker of autoimmunity
- ◆ SSA wants to see positive lab work and diagnostic studies

Postural Orthostatic Tachycardia Syndrome (POTS)

- What SSA Does Not Understand

- ◆ The Term POTS
- ◆ The Symptoms of POTS
- ◆ The Types and Causes of POTS
- ◆ The Excessive Heart Rate Increase in POTS
- ◆ The Potential Listings of Impairment

Postural Orthostatic Tachycardia Syndrome (POTS)

- ◆ Postural refers to position of your body
- ◆ Orthostatic refers to the act of standing up
- ◆ Tachycardia refers to an increase in the heart rate
- ◆ Syndrome refers to group of symptoms
- ◆ SSA does not get what each acronym means in terms of symptoms and functionality



Postural Orthostatic Tachycardia Syndrome (POTS) - The 4 Types

- ◆ Neuropathic POTS is associated with damage to the small nerve fibers that regulate the constriction of blood vessels in limbs and abdomen. That causes symptoms and dysfunction of the limbs and gastrointestinal system.
- ◆ Section 11.00 Neurological Listing
- ◆ Section 5.00 Gastrointestinal Listings



Postural Orthostatic Tachycardia Syndrome (POTS) - The 4 Types

- ◆ Hyperadrenergic POTS is associated with elevated levels of norepinephrine that can cause significant tremors, cold or sweaty extremities, migraine headaches and increased urination.
- ◆ Urological listing.
- ◆ No listing for migraines

Postural Orthostatic Tachycardia Syndrome (POTS) - The 4 Types

- ◆ Hypovolemic POTS is associated with abnormally low levels of blood which causes weakness and decreased tolerance for activity.
- ◆ No equivalent listing





Postural Orthostatic Tachycardia Syndrome (POTS) - The 4 Types

- ◆ Secondary POTS is associated with other conditions known to cause autonomic neuropathy, such as diabetes, Lyme, lupus or Sjogren's. This causes POTS symptoms and symptoms of underlying disease.
- ◆ Possible Listings for other conditions

Postural Orthostatic Tachycardia Syndrome (POTS) - Diagnosis

- ◆ Diagnosis is complicated and not all doctors get POTS
 - Physical examination
 - Blood work
 - Standing test or heads-up tilt table test
- ◆ POTS Tilt Table Test
 - Abnormal heart rate response to being upright
 - Symptoms worse when upright
 - Don't develop orthostatic hypotension in first 3 minutes



Postural Orthostatic Tachycardia Syndrome (POTS) - Diagnosis

◆ Other Tests for POTS

- Valsalva maneuver that tests the response of autonomic nerves that control the heart.
- Quantitative sudomotor axon reflex test (QSART) that measures the response of the autonomic nerves responsible for regulating sweating.
- MRI and imaging testing to rule out tumors or other abnormalities.

◆ Similar Medical Symptoms of Similar Medical Conditions

- ME/CFA presents with fatigue, exercise intolerance and orthostatic intolerance.
- Fibromyalgia presents with gastrointestinal issues and excessive sweating.



POTS - Keys to Winning Claim

- Supportive Medical records with history of symptoms and functionality
- Objective testing supportive of diagnosis
- Objective testing that supports
- RFC for POTS, Mental Issues and Associated conditions
- Listing 4.00 Cardiovascular, Listing 11.00 Neurological, Listing 5.00 supported by objective testing
- Step 4 PRW
- Step 5 Other Work
 - Under 50 Less than sedentary, SRR, unskilled work
 - Over 50 Sedentary and no transferable skill



ME/CFS - What SSA Does Not Understand

- ◆ The Term ME/CFS
- ◆ The Symptoms of ME/CFS
- ◆ Autoimmunity Issues and ME/CFS
- ◆ The Potential Listings of Impairment



ME/ CFS

- ◆ Myalgic encephalomyelitis/chronic fatigue (ME/CFS) is a complex medical condition which may be caused by infections, immune system changes, stress impacting body chemistry and possible genetic link.
- ◆ Diagnosis is based on history and physical examination. No gold standard test



ME/ CFS

Primary symptoms required for a diagnosis

- Drop in activity level along with fatigue that lasts 6 months or longer. Nature of fatigue is important.
- Worsening of ME/CFS symptoms after physical or mental activity that would not have caused a problem before illness known as post-exertional malaise (PEM)
- Sleep problems



ME/ CFS

- And
- One of the following two symptoms
 - Problems with thinking and memory
 - Worsening of symptoms while standing or sitting upright (orthostatic intolerance)



ME/CFS

- ◆ Other common symptoms
 - Pain in muscles and joints
 - Headaches
 - Tender lymph nodes
 - Digestive issues
 - Irregular heart beat
 - Muscle weakness
 - Shortness of breath



ME/CFS and Autoimmunity

- ◆ Many people with ME/CFS have autoimmune conditions like fibromyalgia, Hashimoto's thyroiditis, and POTS.
- ◆ Research being done on autoimmunity issues post COVID which will impact other autoimmune diseases



ME/CFS - Keys to Winning Claim

- Examination findings and symptoms consistent with diagnosis
- Treatment by specialist and response to treatment
- RFC for ME/CFS, Mental Issues and Associated conditions
- Pulmonary Exercise test results that support RFC
- Neurocognitive testing results that support RFC
- No Listing for ME/CFS and rarely any applicable listing
- Step 4 PRW
- Step 5 Other Work
 - Under 50 Less than sedentary, SRR, unskilled work
 - Over 50 Sedentary and no transferable skill

Small Fiber Neuropathy - What SSA Does Not Understand

- ◆ The Term SFN
- ◆ The Symptoms of SFN
- ◆ The Types and Causes of SFN
- ◆ The Potential Applicable Impairment Listings



Small Fiber Neuropathy

- ◆ The primary cause of small fiber neuropathy (SFN) is diabetes and autoimmune disorders, Sjogren's, sarcoidis, parprotienemia and paraneoplastic syndrome.
- ◆ Symptoms of SFN include pain and burning sensation in the feet, trunk or arms. Electric shock level pain, lightheadedness, blood pressure drops when sitting or standing up, loss of consciousness, sweating and gastrointestinal issues



Small Fiber Sensory Neuropathy (SFN) - Keys to Winning Claim

- RFC for Neuropathy, Mental Issues and Associated conditions
- Listing 11.14 supported by motor function tests, nerve tests, and scans
- Step 4 PRW
- Step 5 Other Work
 - Under 50 Less than sedentary, SRR, unskilled work
 - Over 50 Sedentary and no transferable skill

Mast Cell Activation Syndrome- What SSA Does Not Understand

- ◆ What is Mast Cell Activation Syndrome
- ◆ The Symptoms of Mast Cell Activation Syndrome
- ◆ Mast Cell Activation Syndrome Combinations
- ◆ The Potential Applicable Impairment Listings



Mast Cell Activation Syndrome

- ◆ Mast Cell Activation Syndrome was not formally recognized by CDC before 2017.
- ◆ It occurs when mast cells (allergy cells responsible for immediate allergic reaction) trigger an allergic reaction or inflammatory response spontaneously. Mast cells secrete histamine, prostaglandins and other mediators in response to pathogens.



Mast Cell Activation Syndrome

- ◆ In MCAS the mast cells release the mediators too frequently and can cause allergic reactions in various body systems like the skin, nervous system, cardiovascular and digestive systems.



Mast Cell Activation Syndrome

- ◆ Symptoms include
 - chronic fatigue syndrome
 - itching and watery eyes
 - nasal problems
 - shortness of breath
 - recurrent arrhythmias
 - low blood pressure
 - syncope
 - POTS like symptoms



Mast Cell Activation Combinations

- ◆ Ehlers-Danlos Syndrome (EDS), POTS and MCAS can occur together.
- ◆ MCAS frequently presents with other autoimmune diseases.



Mast Cell Activation Syndrome and Listings

- ◆ There is no listing for MCAS.
- ◆ Applicable listings can include Immune Listing 14.06 if two body systems are involved with one of the body systems moderately involved and there are at least two of the following: severe fatigue, fever, malaise or involuntary weight loss.
- ◆ Other applicable listings can be based on other involved body systems or a combination of impairments.

Mast Cell Activation Syndrome - Keys to Winning Claim

- Medical records documenting symptoms and system involvement
- RFC for Neuropathy, Mental Issues and Associated conditions
- Combination of medical conditions key and not just MCAS.
- Step 4 PRW
- Step 5 Other Work
 - Under 50 Less than sedentary, SRR, unskilled work
 - Over 50 Sedentary and no transferable skill



COVID 19 and What Social Security Doesn't Get about COVID and Complications

- ◆ COVID
- ◆ COVID caused immunological issues
- ◆ The COVID combination of medical problems
- ◆ Not issued any significant guidance to DDS or ALJs
- ◆ No COVID specific listings
- ◆ How to apply listings in COVID claim



Winning a COVID Claim with Immulogical Issues

- ◆ COVID 19 diagnosis
- ◆ Medical records documenting system involvement
- ◆ Medical records with objective testing to document immulogical diagnosis and complications
- ◆ Medical records with objective testing to document restrictions and limitations
- ◆ Applicable RFC
- ◆ Preparation of client

Ehlers Danlos Syndrome (EDS) and what SSD does not understand



- ◆ What is EDS
- ◆ Symptoms of EDS
- ◆ Diagnosis of EDS
- ◆ Listings for EDS

Ehlers Danlos Syndrome (EDS) and what SSD does not understand



- ◆ EDS is NOT an autoimmune disorder but a genetic disorder.
- ◆ EDS affects collagen and impacts your skin, blood vessel walls and joints.
- ◆ Can result in hypermobility and overly flexible joints results in dislocation or joint movement beyond normal range of motion.

Ehlers Danlos Syndrome (EDS) and what SSD does not understand



- ◆ EDS diagnosis is made using the Brighton score test and the nature of your symptoms
- ◆ Symptoms include hypermobility of joints and subluxations with pain or injury caused by subluxations.



EDS and a Listing

- ◆ No listing
- ◆ Listing 1.18 Abnormality of major joints in any extremity
- ◆ Listing 2.02/2.04 Vision Loss
- ◆ Listing 4.10 Aneurysm of the aorta
- ◆ Listing 5.02 Gastrointestinal bleeding requiring a blood transfusion
- ◆ Listing 8.04 Chronic infections of the skin.
- ◆ Listing 14 for Connective Tissue Disorder (Not immune Listing)



Key to Winning EDS Claim

- ◆ Diagnostic testing and Brighton score
- ◆ Family history of EDS
- ◆ Development of symptoms in medical records
- ◆ Examples of dislocation in medical records
- ◆ Family or friend statements
- ◆ Photos or video

Questions?



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