



WORKSHOP G.

# Moving Towards Civil Gideon

*2014 Legal Assistance  
Partnership Conference*

Hosted by:

The New York State Bar Association  
and The Committee on Legal Aid



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# **NEW YORK STATE BAR ASSOCIATION 2014 PARTNERSHIP CONFERENCE**

## **G. PROBLEMS PROVING VOCATIONAL ISSUES IN YOUNG ADULT DISABILITY CLAIMS**

### **AGENDA**

**September 12, 2014  
9:00 a.m. – 10:30 a.m.**

#### **1.5 Transitional CLE Credits in Skills.**

*Under New York's MCLE rule, this program has been approved for all attorneys,  
including newly admitted.*

#### **Panelists:**

**Ann Biddle, Esq.**, Deputy Director, Queens Legal Services  
**Tanya Douglas, Esq.**, Director, Disability Advocacy Project, Manhattan Legal Services  
**Ellen Rita Heidrick, Esq.**, Supervising Attorney, Legal Assistance of Western New York, Inc.  
**Peter Racette, Esq.**, Deputy Director, Legal Aid Society of Northeastern New York, Inc.

- |  |                                |
|--|--------------------------------|
| <b>I. Residual Functional Capacity (“RFC”) Evaluations</b> | <b>9:00 am – 9:15 am</b>       |
| a. RFC Overview  |                                |
| b. Mental RFCs   |                                |
| <br><b>II. Obtaining RFCs</b>                              | <br><b>9:15 am – 9:30 am</b>   |
| a. Relevant Sources  |                                |
| b. Barriers to Obtaining Assessment                        |                                |
| c. Creative Solutions/Alternatives                         |                                |
| <br><b>III. Using School Records</b>                       | <br><b>9:30 am – 9:45 am</b>   |
| <br><b>IV. Prior Exhibit Files</b>                         | <br><b>9:45 am – 9:50 am</b>   |
| <br><b>V. Other Considerations/Sources</b>                 | <br><b>9:50 am – 10:00 am</b>  |
| <br><b>VI. Cross Examining Vocational Experts (“VEs”)</b>  | <br><b>10:00 am – 10:30 am</b> |

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# **Substantive Outline**

## **G. PROBLEMS PROVING VOCATIONAL ISSUES IN YOUNG ADULT DISABILITY CLAIMS**

### **OUTLINE**

#### **INTRODUCTION**

Social Security's regulations mandate that children who are found disabled as children have their SSI claims reviewed under the adult disability criteria when they turn 18. If SSA determines that an 18 year old does not meet the adult criteria, his/her benefits will be discontinued, subject to appeal. On appeal, the claimant must demonstrate that s/he is unable to work, so vocational evidence is crucial to the claim. But vocational evidence typically presented in adult claims is difficult to obtain in young adult cases. Advocates face unique problems with obtaining Residual Functional Capacity (RFC) evaluations for young adults. But there may be creative alternatives, including strategies for obtaining testimony and evidence from non-medical sources. School records can be used to prove inability to work in these claims. Evidence from the claimant's childhood claim can be used proactively to prove disability, with reference to SSA's recent Social Security Ruling (SSR) on evaluation of young adult claims. And there are strategies for dealing with vocational testimony in these claims.

*A summary of a typical Age 18 Review case is attached as Appendix 1.*

#### **I. RESIDUAL FUNCTIONAL CAPACITY (RFC)**

##### **A. RFC Overview**

1. What a claimant can still do - eight hours a day, five days per week - despite the limitations imposed by his impairments and their symptoms
2. 20 C.F.R. §§404.1545 & 416.945
  - a. [(a)] *General*—(1) *Residual functional capacity assessment*. Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is the most you can still do despite your limitations. We will assess your residual functional capacity based on all the relevant evidence in your case record. (See § 416.946.)
3. SSR 96-9p – Determining Capability to Do Other Work – Implications of a Residual Functional Capacity For Less Than a Full Range of Sedentary Work
  - a. [http://www.socialsecurity.gov/OP\\_Home/rulings/di/01/SSR96-09-di-01.html](http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR96-09-di-01.html)

##### **B. Special considerations for Mental RFC**

1. Basic mental demands of work, such as understanding, remembering and carrying out instructions; responding appropriately to supervision, co-workers, and work pressure in a work setting.
  - a. 20 C.F.R. §416.945(c)
  - b. See also POMS DI 25020.010 – Mental Limitations  
<https://secure.ssa.gov/apps10/poms.nsf/lnx/0425020010>
2. SSR 85-15 – Capacity to Do Other Work – The Medical-Vocational Guidelines As a Framework for Evaluating Solely Nonexertional Impairments
  - a. [http://www.socialsecurity.gov/OP\\_Home/rulings/di/02/SSR85-15-di-02.html](http://www.socialsecurity.gov/OP_Home/rulings/di/02/SSR85-15-di-02.html)

3. SSR 85-16 – Residual Functional Capacity For Mental Impairments
  - a. Evidence to be considered in determining residual functional capacity:
    - i. Reports of the individual's activities of daily living and work activity, as well as testimony of third parties about the individual's performance and behavior; and
    - ii. Reports from workshops, group homes, or similar assistive entities
  - b. In analyzing the evidence, it is necessary to draw meaningful inferences and allow reasonable conclusions about the individual's strengths and weaknesses. Consideration should be given to factors such as:
    - i. Quality of daily activities, both in occupational and social spheres, as well as of the individual's actions with respect to a medical examination;
    - ii. Ability to sustain activities, interests, and relate to others over a period of time. (the frequency, appropriateness, and independence of the activities must also be considered);
    - iii. Level of intellectual functioning; and
    - iv. Ability to function in a work like situation.
  - c. [http://www.socialsecurity.gov/OP\\_Home/rulings/di/01/SSR85-16-di-01.html](http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR85-16-di-01.html)

## II. OBTAINING RFC ASSESSMENTS

### A. **NERD (SSA non-examining review physician) RFC in Exhibit File**

1. See 20 C.F.R. § 416.946(a)
2. [(a)] *Responsibility for assessing residual functional capacity at the State agency.* When a State agency medical or psychological consultant and a State agency disability examiner make the disability determination as provided in [§ 416.1015\(c\)\(1\)](#) of this part, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity. When a State agency disability examiner makes a disability determination alone as provided in [§ 416.1015\(c\)\(3\)](#), the disability examiner is responsible for assessing your residual functional capacity.
3. Check e-CAT for DDS RFC rationale
  - a. e-CAT 9.0 (to be released 8/14) may include Age-18 Reviews

### B. **Medical Source Statement (“MSS”) by SSA consultative examiner (“CE”)**

1. See 20 C.F.R. § 416.919(c)(6) – Elements of a complete consultative examination
2. “ A statement about what you can still do despite your impairment(s), unless the claim is based on statutory blindness. If you are an adult, this statement should describe the opinion of the medical source about your ability, despite your impairment(s), to do work-related activities, such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the opinion of the medical source about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers and work pressures in a work setting... Although we will ordinarily request, as part of the consultative examination process, a medical source statement about what you can still do

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despite your impairment(s), the absence of such a statement in a consultative examination report will not make the report incomplete. *See* § 416.927”

**C. Findings by DHO (Disability Hearing Officer)**

1. *See* 20 C.F.R. § 416.946(b)
2. “*Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under [§ 416.1414](#), a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under [§ 416.1418](#), the Associate Commissioner for the Office of Disability Determinations or his or her delegate is responsible for assessing your residual functional capacity.”

**D. Assessments from treating sources**

1. Sample questionnaires attached as Appendix #2

**E. Barriers to obtaining assessments**

1. Blanket refusals by mental health centers/providers
  - a. Consider meeting with providers?
2. Requirement for acceptable medical sources
  - a. **Diagnoses** must be made by “acceptable” medical source
    - i. 20 CFR 416.913(a)
      - a) *Sources who can provide evidence to establish an impairment.* We need evidence from acceptable medical sources to establish whether you have a medically determinable impairment(s). *See* [§ 416.908](#). Acceptable medical sources are—
        - 1) Licensed physicians (medical or osteopathic doctors);
        - 2) Licensed or certified psychologists. Included are school psychologists, or other licensed or certified individuals with other titles who perform the same function as a school psychologist in a school setting, for purposes of establishing mental retardation, learning disabilities, and borderline intellectual functioning only;
        - 3) Licensed optometrists, for purposes of establishing visual disorders only (except, in the U.S. Virgin Islands, licensed optometrists, for the measurement of visual acuity and visual fields only). (*See* paragraph (f) of this section for the evidence needed for statutory blindness);
        - 4) Licensed podiatrists, for purposes of establishing impairments of the foot, or foot and ankle only, depending on whether the State in which the podiatrist practices permits the practice of podiatry on the foot only, or the foot and ankle; and
        - 5) Qualified speech-language pathologists, for purposes of establishing speech or language impairments only. For this source, “qualified” means that the speech-language



pathologist must be licensed by the State professional licensing agency, or be fully certified by the State education agency in the State in which he or she practices, or holds a Certificate of Clinical Competence from the American-Speech-Language-Hearing Association.

3. Controlling weight only given to opinions of acceptable medical sources
  - a. 20 C.F.R. § 416.927(d)
  - b. SSR 96-2p
  - c. POMS DI 24515.002 to DI 24515.005
4. Opinion must be supported by treatment notes
  - a. *See, e.g., Lamond v. Astrue*, 2011 WL 4637437 (2d Cir. 2011 Oct. 7, 2011), holding that treating physician's opinion was inconsistent with his own treatment notes
  - b. *But see, Kohler v. Astrue*, 546 F.3d 260 (2d Cir. 2008), finding that ALJ erred in focusing in isolation on treating source's use of the word "stable"

**F. Creative solutions/alternatives**

1. **Assessments** from non-acceptable medical and non-medical sources should be given weight
  - a. 20 CFR 416.913(d)
    - i. *Other sources.* In addition to evidence from the acceptable medical sources listed in paragraph (a) of this section, we may also use evidence from other sources to show the severity of your impairment(s) and how it affects your ability to work or, if you are a child, how you typically function compared to children your age who do not have impairments. Other sources include, but are not limited to—
      - a) Medical sources not listed in paragraph (a) of this section (for example, nurse-practitioners, physicians' assistants, naturopaths, chiropractors, audiologists, and therapists);
      - b) Educational personnel (for example, school teachers, counselors, early intervention team members, developmental center workers, and daycare center workers);
      - c) Public and private social welfare agency personnel; and
      - d) Other non-medical sources (for example, spouses, parents and other caregivers, siblings, other relatives, friends, neighbors, and clergy).
  - b. *See also* SSR 06-3p – Considering Opinions and Other Evidence From Sources Who Are Not “Acceptable Medical Sources” in Disability Claims; Considering Decisions on Disability by Other Governmental and Nongovernmental Agencies
    - i. [http://www.socialsecurity.gov/OP\\_Home/rulings/di/01/SSR2006-03-di-01.html](http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR2006-03-di-01.html)
  - c. *See, e.g., Kohler v. Astrue*, 546 F.3d 260 (2d Cir. 2008) holding nurse practitioner's opinion entitled to some weight

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2. Testimony
3. Affidavits, transcriptions of phone interviews
  - a. Instructions for physicians
    - i. <http://www.nhchc.org/wp-content/uploads/2012/02/DocumentingDisability2007.pdf>
    - ii. <http://www.lsnjlaw.org/Disability/Documenting-Disability/Pages/default.aspx>
4. Lay witnesses
5. Former employers, co-workers
6. VESID/ACCES-VR records
  - a. Functional assessments
  - b. Psychological testing
  - c. Job coach, supported employment reports
7. Explore extent of loss of ability to meet mental demands of work, *supra*
  - a. “*Substantial loss*” of ability to meet any of the basic mental demand of work severely limits the potential occupational base and would thus justify a finding of inability to perform other work
  - b. POMS § DI 25020.010, A, 3, B
8. Broad domains of functioning used to evaluate a child’s impairment-related limitations may provide guidance for findings about a young adult’s RFC
  - a. *See infra* SSR 11-2p § IV.E.2.b
  - b. Descriptions of domains include work-related functions for adolescents

### **III. SCHOOL RECORDS**

#### **A. SSRs 11-2p**

1. SSR 11-2p provides that evidence from school programs, both secondary and post-secondary, may assist in evaluating the severity and impact of a young adult’s impairments
  - a. [http://www.socialsecurity.gov/OP\\_Home/rulings/di/01/SSR2011-02-di-01.html](http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR2011-02-di-01.html)
  - b. *See also*, Young Adult SSR Issued - <http://www.empirejustice.org/issue-areas/disability-benefits/rules--regulations/young-adult-ssr-issued.html>
2. SSR 11-2p also states that decision makers must remember that young adults “are more likely to have recent educational experience that provides for direct entry into skilled work, or provide them with skills they can use in skilled or semi-skilled work.”
3. SSR 11-2p provides that “[t]he abilities, skills, and behaviors that young adults use to do basic work activities are essentially the same as those that older adolescents use for age-appropriate activities.”
4. Non-exhaustive list of examples of school-related difficulties that “might indicate difficulty with work activities”
  - a. Difficulty in understanding, remembering, and carrying out simple instructions and work procedures during a school-sponsored work experience;

- b. Difficulty communicating spontaneously and appropriately in the classroom;
  - c. Difficulty with maintaining attention for extended periods in a classroom;
  - d. Difficulty relating to authority figures and responding appropriately to correction or criticism during school or a work-study experience;
  - e. Difficulty using motor skills to move from one classroom to another.
  - f. Per SSR 11-2p, above examples “do not necessarily establish that a young adult is disabled, only that the person may have limitations that affect what work he or she may be able to do.”
5. SSR 11-2p describes types of school evidence that may be considered:
- a. Special education records including Individualized Education Program (IEP) plans, Section 504 plans, and IEP transition plans
    - i. “The IEP transition plan describes a student's levels of functioning based on reasonable estimates by both the student and the special education team. It also identifies the kinds of vocational and living skills the young adult needs to develop in order to function independently as an adult.”
    - ii. SSR 11-2p also stresses that the goals set forth in an IEP “may be set at a level that the young adult can readily achieve to foster a sense of accomplishment and may be lower than what would be expected of a young adult without impairments.”
    - iii. SSR 11-2p, n. 21, provides that “[t]he information about IEPs applies equally to people age 18-22 who are still in special education.”
      - a) This footnote also provides that IEP evidence from prior to age 18 may also be relevant in the young adult assessment
      - b) “We may also consider IEPs from a period before the person attained age 18 (for example, senior year of high school) if they are relevant to the period we are considering in connection with an application, age-18 redetermination, or CDR.”
        - 1)Recent IEPs will frequently be relevant in age-18 redeterminations

#### IV. PRIOR EXHIBIT FILES

- A. **Evidence from Childhood SSI Approval can be highly relevant to the Age 18 Review**
- 1. Young adults - or even their parents or guardians - are often unaware of the medical or psychiatric basis of their childhood claims, particularly independent young adults who are unable to convey a meaningful medical history.
  - 2. If the childhood SSI file is not obtained and made part of the new exhibit file, the current adjudicator or representative might not know of this possible basis for concluding that the young adult is disabled within the meaning of the regulations.
    - a. Results of intellectual testing obtained after age 16, for example, could be outcome determinative to the age 18 redetermination

**B. Relevant school records, as discussed *supra*, may be available in the prior file**

**C. Per SSR 11-2p, prior determination**

1. SSR 11-2p § IV.E.1 – Young adult previously found disabled under a listing
  - a. Most Part B (Childhood Listings) have equivalent listing in Part A (Adults), with identical criteria that is intended to be of equal severity
  - b. A child's impairment that met a listing will often meet or equal an adult listing unless the impairments have medically improved, even though the MIRS is not used in age-18 redeterminations
2. SSR 11-2p § IV.E.2 – Young adult previously found disabled as a child based on functional equivalence
  - a. Aspects of domains of functioning used in assessing childhood impairments describe aspects of functioning relevant to evaluation of adult work-related limitations
  - b. For example, absent medical improvement or new evidence demonstrating the prior finding was in error, a child with marked or extreme limitations in the ability to concentrate, persist, or maintain pace or in the ability to attend and complete tasks is likely to have those limitations as an adult

**D. POMS DI 11070.010.B requires that Field Offices obtain or reconstruct the prior file in both childhood CDRs and age 18 reviews**

**E. New HALLEX I-2-1-13.B.2 emphasizes the significance of evidence that may be in a prior claim file. [http://ssa.gov/OP\\_Home/hallex/I-02/I-2-1-13.html](http://ssa.gov/OP_Home/hallex/I-02/I-2-1-13.html)**

1. Hearing Office staff must consult with an Administrative Law Judge (ALJ) about obtaining a prior claim(s) file when it may be necessary for a full adjudication of the issues before the ALJ. An ALJ will generally find that evidence in a prior claim(s) file is necessary for a full adjudication of the issues when the ALJ determines: there is a need to establish a longitudinal medical, educational, or vocational history; or the impairment is of a nature that evidence from a prior folder could make a difference in establishing whether disability is present in the current claim.
2. But new HALLEX I-2-6-58 continues to allow adjudicator to determine relevancy before admitting evidence from prior file into the current Exhibit File.  
[http://ssa.gov/OP\\_Home/hallex/I-02/I-2-6-58.html](http://ssa.gov/OP_Home/hallex/I-02/I-2-6-58.html)

**V. OTHER CONSIDERATIONS IN EVALUATING LIMITATIONS**

**A. Community Placements, Including Job Placements**

1. SSR 11-2p states that a young adult may receive services through a school, mental health agency, or vocational rehabilitation agency, which may include:
  - a. *Community-based instruction (CBI)*, or instruction in a natural, age-appropriate setting (for example, trips to the grocery store to develop math, sequencing, travel, and social skills)
  - b. *On-the-job training (OJT)*, or placement in various work sites in the community for vocational training and experience, frequently in an "enclave" (small group) of students with a job coach (for example, placement in an enclave in a motel to learn housekeeping tasks such as bed-making and vacuuming)

- c. *Work experience*, or supervised part-time or full-time employment to assist a young adult in acquiring job skills and good work attitudes and habits
- 2. SSR 11-2p provides that this information “can help [SSA] assess how the young adult functions.” The SSR identifies four factors that this evidence may address:
  - a. Ability to understand and remember instructions;
  - b. Ability to persist at work-related tasks;
  - c. Ability to respond appropriately to supervision; and
  - d. Whether special supports are needed in order to sustain work

**B. Psychosocial Supports and Highly Structured or Supportive Settings**

- 1. Per SSR 11-2p, “As for all adults, psychosocial supports and highly structured or supportive settings may reduce the demands on a young adult and help him or her function. However, the young adult's ability to function in settings that are less demanding, more structured, or more supportive than those in which people typically work does not necessarily show how the young adult will be able to function in a work setting. We will consider the kind and extent of support or assistance and the characteristics of any structured setting in which the young adult spends his or her time when we evaluate the effects of his or her impairment(s) on functioning.”
- 2. Provision does not define what is meant by a “highly structured or supportive setting.”
  - a. *See* 20 C.F.R. Part 404, Subpt. P, App. 1, § 12.00.F
    - i. Placement in a hospital, halfway house, board and care facility, or other environment (including one’s home) that provides similar structure in cases involving chronic mental disorders.
  - b. SSR 11-2p also does not clearly state how the effects of psychosocial supports and highly structured or supportive settings are to be considered.
  - c. The language quoted above suggests that a decision maker must evaluate how the young adult would function without such supports—“the young adult's ability to function in settings that are less demanding, more structured, or more supportive than those in which people typically work does not necessarily show how the young adult will be able to function in a work setting.”

**C. Extra Help**

- 1. SSR 11-2p provides that “[w]orking requires a person to be able to do the tasks of a job independently, appropriately, effectively, and on a sustained basis.”
- 2. SSA must consider how independently a young adult is able to function, including whether the young adult needs help from other people to perform day-to-day activities.
- 3. “If a young adult can function only if he or she receives more help than would generally be provided to people without medical impairments, we consider how well the young adult would function without the extra help. The more extra help or support of any kind that a young adult receives because of his or her impairment(s), the less independent he or she is in functioning, and the more severe we will find the limitation to be.”

**D. Accommodations**

1. Per SSR 11-2p, accommodations are described as “[p]ractices and procedures that allow a person to complete the same activity or task as other people. Accommodations can include a change in setting, timing, or scheduling, or an assistive or adaptive device.
2. Accommodations may be shown in educational programs in a young adult’s IEP or Section 504 plan.
  - a. Educational accommodations must be related to work-related function to be relevant to the disability determination.
3. Some accommodations may indicate an impairment(s) that meets or medically equals a listing.
  - a. SSR 11-2p points to the need for an augmentative or alternative communication or AAC device may indicate a speech impairment that meets listing 2.09 or an impairment that meets one of the neurological listings in Section 11.00
4. At step four of SSA’s Sequential Evaluation, SSA is allowed to consider a young adult’s accommodations in determining if a young adult could perform past relevant work only if the employer actually made the accommodation.
  - a. “This means that we cannot find that a young adult can do past relevant work with accommodations unless the young adult actually performed that work with those same accommodations and is still able to do so now.”
5. At step five, when SSA determines whether a young adult could do other work that exists in significant numbers in the national economy, it cannot consider whether the young adult could do jobs with accommodations, “even if an employer would be required to provide reasonable accommodations under the Americans with Disabilities Act of 1990
  - a. SSR 11-2p
  - b. SSR 00-1c
    - i. *Cleveland v. Policy Management Systems Corporation et al.*, 526 U.S. 795, 119 S.Ct. 1597 (1999)
    - ii. “Thus pursuit, and receipt, of SSDI benefits does not automatically estop the recipient from pursuing an ADA claim. Nor does the law erect a strong presumption against the recipient’s success under the ADA. Nonetheless, an ADA plaintiff cannot simply ignore her SSDI contention that she was too disabled to work. To survive a defendant’s motion for summary judgment, she must explain why that SSDI contention is consistent with her ADA claim that she could ‘perform the essential functions’ of her previous job, at least with ‘reasonable accommodation.’”

**E. Effects of Treatment, including Medications**

1. SSR 11-2p provides that the effects of treatment, including medications, may have both positive and detrimental impacts on a young adult’s ability to do function in a work setting.

2. Both must be considered when present. In particular, the side effects of medications must be considered in assessing the ability to function in a work setting.

**F. Work-Related Stress**

1. Per SSR 11-2p, “[w]orking involves many factors and demands that can be stressful. For example, some people may experience stress related to the demands of getting to work regularly, having work performance supervised, or remaining in the workplace for a full day, 5 days a week on a sustained basis. Moreover, one person's reaction to stress associated with the demands of work may be different from another's, even among people with the same impairments.”
2. See also SSR 85-15, *supra*, which also contains helpful language about the impact of stress on persons with mental impairments, mirroring substantially, the language about the impact of structured settings in the childhood disability regulation and the adult mental impairment listings
  - a. Stress and Mental Illness -- Since mental illness is defined and characterized by maladaptive behavior, it is not unusual that the mentally impaired have difficulty accommodating to the demands of work and work-like settings.
  - b. Individuals with mental disorders often adopt a highly restricted and/or inflexible lifestyle within which they appear to function will.
  - c. The reaction to the demands of work (stress) is highly individualized, and mental illness is characterized by adverse responses to seemingly trivial circumstances. Thus, the mentally impaired may have difficulty meeting the requirement of even so-called "low stress" jobs.
    - i. A mentally impaired individual may cease to function effectively when facing such demands as getting to work regularly, having his performance supervised, and remaining in the workplace for a full day.
    - ii. A person may become panicked and develop palpitations, shortness of breath, or feel faint while riding in an elevator; another may experience terror and begin to hallucinate when approached by a stranger asking a question.
  - d. Because response to the demands of work is highly individualized, the skill level of a position is not necessarily related to the difficulty an individual will have in meeting the demands of the job.
    - i. A claimant's condition may make performance of an unskilled job as difficult as an objectively more demanding job, for example, a busboy need only clear dishes from tables. But an individual with a severe mental disorder may find unmanageable the demand of making sure that he removes all the dishes, does not drop them, and gets the table cleared promptly for the waiter or waitress.
    - ii. Similarly, an individual who cannot tolerate being supervised may be not able to work even in the absence of close supervision; the *knowledge* that one's work is being judged and evaluated, even when the supervision is remote or indirect, can be intolerable for some mentally impaired persons.

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- iii. Any impairment-related limitations created by an individual's response to demands of work, however, must be reflected in the RFC assessment.
- 3. *See also* 20 C.F.R. Part 404, Subpt. P, App. 1, § 12.00.C.3
  - a. In discussing the “B” criteria of concentration, persistence, or pace, the listings state: We must exercise great care in reaching conclusions about your ability or inability to complete tasks under the stresses of employment during a normal workday or work week based on a time-limited mental status examination or psychological testing by a clinician, or based on your ability to complete tasks in other settings that are less demanding, highly structured, or more supportive.
  - b. We must assess your ability to complete tasks by evaluating all the evidence, with an emphasis on how independently, appropriately, and effectively you are able to complete tasks on a sustained basis.
- 4. *And see* 20 C.F.R. Part 404, Subpt. P, App. 1, § 12.00.D.2
  - a. The introduction to the mental impairment listings emphasize the need for longitudinal evidence, recognizing that a person’s level of functioning may vary considerably over time.
  - b. “Proper evaluation of your impairment(s) must take into account any variations in the level of your functioning in arriving at a determination of severity over time. Thus, it is vital to obtain evidence from relevant sources over a sufficiently long period prior to the date of adjudication to establish your impairment severity.”

**G. Failure to Follow Prescribed Treatment**

- 1. SSR 11-2p does not address a young adult’s failure to follow prescribed treatment.
- 2. *But see* 20 C.F.R. § 416.930(a)&(b)
  - a. Young adults “must follow treatment prescribed by [one’s] physician if this treatment can restore [one’s] ability to work.”
  - b. SSA will consider a claimant’s physical, mental, educational, and linguistic limitations when determining whether an individual has an acceptable reason for failure to follow prescribed treatment
- 3. *See also* SSR 82-59 – Failure to Follow Prescribed Treatment
  - a. [http://www.socialsecurity.gov/OP\\_Home/rulings/di/02/SSR82-59-di-02.html](http://www.socialsecurity.gov/OP_Home/rulings/di/02/SSR82-59-di-02.html)
  - b. SSA may make a determination that an individual has failed to follow prescribed treatment only where all of the following conditions exist:
    - i. The evidence establishes that the individual's impairment precludes engaging in any substantial gainful activity (SGA), and
    - ii. The impairment has lasted or is expected to last for 12 continuous months from onset of disability or is expected to result in death; and
    - iii. Treatment which is clearly expected to restore capacity to engage in any SGA (or gainful activity, as appropriate) has been prescribed by a treating source; and
    - iv. The evidence of record discloses that there has been refusal to follow prescribed treatment.
  - c. Where SSA makes a determination of "failure," a determination must also be made as to whether or not failure to follow prescribed treatment is justifiable.



## **VI. CROSS EXAMINATION OF VOCATIONAL EXPERTS (VEs)**

**A. SSA relies on Medical-Vocational Guidelines (the “grid”) at Pt. 404, Subpt. P, App.2 of 20 C.F.R. to satisfy its burden at Step five to demonstrate that a significant number of jobs exist in the economy that the claimant could perform in light of his/her vocational profile.**

1. 20 C.F.R. §§ 404.1569a & 417.869a

**B. Application of grid rules will NEVER result in a favorable decision in a young adult claim**

**C. When do/should the grid rules not apply?**

1. Claimant has solely nonexertional limitations
  - a. “In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in this appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.” 20 C.F.R. Pt. 404, Subpt. P, App.2 §200.00(e)(1)
  - b. Nonexertional limitations include those related to mental impairments, postural, visual environmental, pain, etc. 20 C.F.R. §§404.1569a(c) & 416.969a(c)
  - c. *See also* SSRs 83-10, 85-15, 96-4p, 96-9p
2. Claimant with combination of exertional and nonexertional limitations
  - a. 20 C.F.R. §§404.1569a(d) & 416.969a(d)
  - b. Grid rules may be used as a framework to support a finding of disability. 20 C.F.R. Pt. 404, Subpt. P, App.2 §200.00(e)(2)
  - c. *See also* SSRs 83-14
3. Claimant with RFC for less than full range of sedentary work
  - a. *See* SSR 96-9p
4. Claimant with RFC between ranges of work
  - a. *See* SSR 83-12

**D. Application of grid versus necessity for expert testimony must be determined on case-by-case basis. *Bapp v. Bowen*, 802 F.2d 601 (2d Cir. 1986)**

1. If claimant’s work capacity is significantly diminished beyond that caused by exertional limitations, application of grid is inappropriate
2. “Significantly diminish” means additional loss of work capacity beyond a negligible one that so narrows the possible range of work as to deprive claimant of a meaningful employment opportunity. *Id.* at 605-606
3. *See also* SSRs 83-12, 96-9p re significant erosion of occupational base

**E. What kinds of limitations are significant enough to warrant VE testimony?**

1. *See, e.g., Searles v. Astrue*, 2010 WL 2998676 (W.D.N.Y.) - ALJ erred in relying on guidelines in light of claimant’s problem with equilibrium, cognitive limitations, and fatigue

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2. *West v. Astrue*, 2008 WL 2561991 (W.D.N.Y.) – ALJ erred in failing to consider claimant’s anxiety, fatigue, shortness of breath, and drowsiness caused by medications as significant non-exertional limitations
  3. *Franklin v. Apfel*, 8 F.Supp. 2d 227 (W.D.N.Y. 1998) – ALJ erred in finding that claimant with no useful ability to deal with work stresses or maintain concentration and attention could perform the full range of work
  4. *See also, supra*, - SSRs 85-15, 85-16 – stress is highly individualized
    - a. *But see, Zabala v. Astrue*, 595 F.3d 402, 411 (2d Cir. 2010) – ALJ’s finding that claimant’s mental condition did not limit her ability to perform unskilled work, including carrying out simple instructions, dealing with work changes, and responding to supervision upheld
  5. *Antonetti v. Astrue*, 399 F.Supp.2d 199 (W.D.N.Y. 2005) – cognitive limitations (low IQ) non-exertional, and fact that claimant was considered to have moderate to marked limitations in 14 out of 20 categories on the MRFC *could* be significant enough to preclude use of grid
    - a. *But see, Calabrese v. Astrue*, 592 F.Supp.2d 379 (W.D.N.Y. 2009), *aff’d* 2009 WL 5031356 (2d Cir 2009) - finding that ALJ’s failure to include IQ scores in hypothetical question (HQ) was not error when HQ included the functional limits related to cognitive impairments
    - b. *And see, Kaminski v. Astrue*, 2012 WL 887468 (N.D.N.Y.) – IQ scores in 60s not significant per SSR 85-15, where claimant could understand and carry simple instructions under somewhat closer supervision
  6. Vocational testimony generally necessary if claimant needs to alternate sitting/standing, or has loss of use of upper extremity - SSR 83-12, SSR 96-9p
  7. Postural limits, such as balancing, *may* require vocational consultation, and would be particularly useful for claimants with only occasional ability to stoop – SSR 96-9p; *see also*, SSRs 85-15, 83-14
  8. Significant limitation of bi-lateral manual dexterity would result in significant erosion of sedentary base (but not the inability to feel size, shape, temperature) – SSRs 96-9p, 85-15, 83-14
  9. Visual limits such as inability to see small objects or avoid ordinary workplace hazards could be significant erosion of sedentary base – SSR 96-9p; loss of visual field will indicate significant erosion for light work – SSR 83-14
- F. What kinds of limitations are not considered significant?**
1. Environmental limitations will rarely erode base – SSRs 96-9p, 85-15
  2. Limitations in communication will rarely erode base, but there are situations where vocational consultation may be necessary – SSRs 96-9p, 85-15
  3. Ability to push, pull, or climb ladders ordinarily will not significantly erode base – SSRs 96-9p, 85-15, 83-14
  4. *See also, Buschle v. Astrue*, 2012 WL 463443 (N.D.N.Y.) – where seizure disorder that only affected ability to climb ladders did not preclude application of grid

**G. Remember that mere existence of non-exertional limitations will not mandate vocational testimony**

1. See, e.g., *Zedanovich v. Astrue*, 2010 WL 177257 (2d Cir. Feb. 23, 2010) holding that the mere existence of a non-exertional impairment does not alone trigger the need for vocational expert testimony; there must be *significant limitations* in the range of unskilled sedentary work
2. *Colon v. Commissioner*, 2012 WL 162304 (N.D.N.Y.) - inability to work with public is not a significant non-exertional limitation

**H. Who/what are VEs?**

1. Generally, a vocational expert should be someone who has both actual knowledge of the duties associated with a variety of jobs and experience in placing hard to place individuals who have mental and/or physical handicaps
  - a. See generally, 20 C.F.R. §§404.1560(b)(2), 404.1566(e) & 416.960(b)(2), 416.966(e); HALLEX I-2-5-48, et seq
  - b. But SSA gives no specific guidance re qualifications, although SSR 82-41 provides that evidence from vocational sources may be “based on expert personal knowledge or substantiation by information contained in the publications listed in regulations sections [404.1566\(d\)](#) and [416.966\(d\)](#).”
    - i. SSA’s *Handbook for Vocational Experts*
    - ii. <http://www.schnaufer.com/ODAR-VEHandBk-2011.pdf>

**I. Challenges to VE’s credentials?**

1. VE’s CV/professional qualifications should be included in Exhibit File – HALLEX I-2-5-55
2. VE *may* attend entire hearing, but this is not required – *Id.*
3. VE should be provided with *vocational* evidence of record – HALLEX I-2-5-54
  - a. But see, *Collins v. Astrue*, 2010 WL 877541 (N.D.N.Y.) – failure of ALJ to demonstrate full list of exhibits provided to VE not necessarily denial of due process
4. Is it a mistake to stipulate to credentials???
  - a. Better to object in writing prior to hearing to avoid confrontation with VE?
  - b. VE’s credentials are subject to *voir dire* at hearing – HALLEX I-2-5-55
  - c. See, *Brault v. Social Sec. Admin., Com’r*, 683 F.3d 443 (2d Cir. 2012), where the court implies that stipulation to VE’s credentials constituted waiver?

**J. On what issues do VEs testify?**

1. What was the exertional and skill level of PRW?
2. Does this individual have any skills and, if so, are they transferable to other work? If so, to what specific jobs? How many such jobs exist in the local economy and in the national economy?
3. VE should not be asked to consider what, if any, accommodations might be made that would enable the claimant to perform work. ["Reasonable accommodation" is a requirement under the Americans with Disabilities Act (ADA), to level the playing field for disabled individuals who seek entry into the competitive job market; it is not a

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requirement under the Social Security Act. *Weigel v. Target Stores*, 122 F.3d 461 (CA7 1997)] ; *see also*, SSR 00-1(c); SSR 11-2p

4. What is the impact of specific functional deficits on employability, e.g. loss of use a hand or arm; need to lie down during the day; need to take frequent trips to the bathroom; limited ability to concentrate, remember or follow even simple instructions; inability to accept supervision, instruction or criticism; problems getting along with co-workers or the public, difficulty keeping a regular schedule, etc.

**K. How does the VE testify?**

1. Either in testimony at a hearing, in person, by telephone, by video teleconference or in written responses to interrogatories – HALLEX I-2-5-50

a. Failure to provide information obtained from VE is a denial of due process – *see, e.g., Townley v. Heckler*, 748 F.2d 109 (2d Cir. 1986)

2. Testimony is taken from a VE by use of hypothetical questions that should assume characteristics of an individual identical to the claimant and should include all deficits, limitations and restrictions credibly supported by evidence of record, including claimant testimony

a. Remember that VE's opinion is not binding on ALJ - HALLEX I-2-5-48

**L. Principles of cross examination involving residual functional capacity and vocational capacity for work**

**M. Use of the Dictionary of Occupational Titles and Selected Characteristics evidence to conduct cross-examination**

1. *See* 20 C.F.R. § 416.966(d) – Administrative notice of job data

- a. *Dictionary of Occupational Titles*, published by the Department of Labor;
- b. *County Business Patterns*, published by the Bureau of the Census;
- c. *Census Reports*, also published by the Bureau of the Census;
- d. *Occupational Analyses* prepared for the Social Security Administration by various State employment agencies; and
- e. *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics.

2. *But see, Brault v. Comm'r*, 683 F.3d 443 (2d Cir.)

- a. Claimant challenged the VE's method of "extrapolating" from data to arrive at the numbers of available jobs in the economy
- b. ALJ neither required to allow inspection of VE's sources nor to explain expressly why he rejected plaintiff's objections
- c. But Court acknowledged that an ALJ need never question the reliability of VE testimony, and agreed that evidence cannot be "conjured out of whole cloth."

**N. Use of client testimony, lay evidence and medical evidence to conduct cross examination**

1. Use of claimant testimony, lay evidence, and medical evidence to conduct cross-examination

- a. Family members particularly significant?
- b. Issues of adaptive functioning?
  - i. *See* sample questionnaire

ii. *See* Appendix #3

**O. Special considerations in young adult claims**

1. *See, supra*, re use of school evidence
2. *See, supra*, re use of evidence from prior determination
  - a. SSR 11-2p § IV.E.2 – Young adult previously found disabled as a child based on functional equivalence
    - i. Aspects of domains of functioning used in assessing childhood impairments describe aspects of functioning relevant to evaluation of adult work-related limitations
    - ii. For example, absent medical improvement or new evidence demonstrating the prior finding was in error, a child with marked or extreme limitations in the ability to concentrate, persist, or maintain pace or in the ability to attend and complete tasks is likely to have those limitations as an adult

*The authors gratefully acknowledge the contributions of Linda Landry of the Disability Law Center, Boston, MA, and Thomas Yates of the AIDS Legal Council of Chicago to these materials.*

# **Appendix 1**

## **Young Adult Case Summary**

## **TYPICAL AGE-18 REVIEW CASE SUMMARY**

Justin Young was awarded SSI at the age of 14 and is now appealing the denial of his age-18 redetermination. His childhood featured domestic abuse and trauma. At age 5, he was thrown against a sink and witnessed his father choke his mother. When he was 12, he was diagnosed with major depressive disorder, recurrent with social phobia.

Justin entered junior high school but his performance suffered due to absences. At age 14, testing revealed full scale IQ of 99, difficulty with short-term memory, speed, and attention. Recommendations included small class size, extra time, separate test locations, and assistive devices such as tape recorders, charts and written instructions. He was awarded SSI at this time based on depression with social phobia, and a learning disorder.

By the 9<sup>th</sup> grade, Justin was experiencing extreme social phobia and refused to go to school. He attended 2 high schools before being transferred to a residential school. For that year and the 2 that followed, Justin re-enrolled in school but stopped attending after a few months because of anxiety. He was homeschooled for the remainder of each year.

By age 17, Justin's symptoms had increased. Treatment records for this time period note depressed mood, anhedonia, insomnia, appetite changes, and social phobia. He was prescribed Lexapro. He found his first job as a salesperson at a busy bakery, but he was fired after less than two months for taking too many breaks. He began experiencing an increase in anxiety-related symptoms, including being startled by noises. His diagnosis was major depressive disorder, mild but with recent onset of generalized anxiety disorder.

An IEP was issued recommending general education with special education teacher support services 3 periods per week. It found his behavior was not interfering with his education because although he suffered from social phobia, medications prescribed were only for insomnia.

At age 18, Justin re-enrolled in school but began skipping therapy, finding it a "waste of time." He was also using marijuana with frequency. His therapist contracted with him to enter a substance abuse program if he used during the week and continued to miss class. Justin ultimately dropped out of both school and therapy. He found a job at a clothing store, but the position ended after 2 months, following a disagreement with his boss. The following year, Justin was hospitalized for 5 days; he wasn't getting out of bed and reported suicidal ideation.

At age 20, Justin obtained a GED. He also found a job taking orders in a café, but he was fired for being too slow. His age-18 reconsideration is denied at this time.

At age 21, Justin resumed therapy, but attended only sporadically. His diagnoses included ADHD, major depressive disorder, mild with anxiety, learning disorder and cannabis abuse.

Justin is now 22 and working towards a bachelor's degree. Accommodations from the Office for Students with Disabilities include double time and special quiet room for tests. He also receives assistance from a program aimed to support "at risk" students with counseling and other supports. His grades ranged from B+ to F in the first year but now range from B- to A.

Justin is no longer in treatment because the clinic he was attending closed. He is ambivalent about finding a new therapist and about his claim for benefits. His mother reports that he sleeps all day and is able to achieve good grades because he has chosen easy classes in the afternoon.



# **Appendix 2**

## **Mental RFC Assessment**

## **MENTAL IMPAIRMENT QUESTIONNAIRE**

NAME: \_\_\_\_\_

SSN: \_\_\_\_\_

Please answer the following questions concerning your patient's impairments. *Attach relevant treatment notes and test results as appropriate.*

1. Frequency and length of contact: \_\_\_\_\_  
\_\_\_\_\_

2. DSM-IV Multiaxial Evaluation:

Axis I: \_\_\_\_\_

Axis IV: \_\_\_\_\_

Axis II: \_\_\_\_\_

Axis V: Current GAF: \_\_\_\_\_

Axis III: \_\_\_\_\_

Highest GAF Past year: \_\_\_\_\_

3. Treatment:

\_\_\_\_\_  
\_\_\_\_\_

4. Medications with notation of any side effects:

\_\_\_\_\_  
\_\_\_\_\_

5. Prognosis:

\_\_\_\_\_

6. Findings on mental status examination:

\_\_\_\_\_  
\_\_\_\_\_

7. Signs and Symptoms

\_\_\_\_\_  
\_\_\_\_\_

8. Does this individual have a medically/psychologically determinable impairment that produces symptoms that he/she describes to you?

YES ☐ NO ☐

9. The above-described conditions have existed to this degree of severity since at least

\_\_\_\_\_

10. Can the individual manage benefits in his or her own best interest?

YES ☐ NO ☐

**11. Degree to which mental conditions affect patient's ability to do work-related activities on a day-to-day basis in a competitive (8 hours per day – 5 days per week) work setting:**

**NONE/SLIGHT:** not significantly impaired

**MODERATE:** able to perform at 80-85% of normal expected productivity

**MODERATELY SEVERE:** able to perform at 60-80% of normal expected productivity

**SEVERE:** totally precluded

<b>Mental Abilities</b>		<b>None/Slight</b>	<b>Moderate</b>	<b>Moderately Severe</b>	<b>Severe</b>
A	remember locations and work like procedures				
B	understand, remember or carry out one-step instructions				
C	make simple work-related decisions				
D	ask simple questions or request assistance				
E	understand, remember, or carry out multi-step instructions				
F	maintain concentration and attention for extended periods.				
G	perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances				
H	sustain an ordinary routine without special supervision				
I	take public transportation				
J	work in coordination with or proximity to others without being unduly distracted by them				
K	complete a normal workday/week without interruptions from psychologically based symptoms				
L	perform at a consistent pace				
M	be aware of normal hazards and take appropriate precautions				
N	accept instructions and respond appropriately to criticism from supervisors				
O	get along with coworkers or peers without unduly distracting them or exhibiting behavioral extremes				
P	maintain socially appropriate behavior				
Q	meet basic standards of neatness and cleanliness				
R	respond appropriately to changes in a routine work setting				

12. Is this individual currently using drugs and/or alcohol?  
YES ☐ NO ☐

13. Would the restrictions persist if the individual stopped using?  
YES ☐ NO ☐

If yes, please explain:

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14. Does your patient have a low IQ or reduced intellectual functioning?  
YES ☐ NO ☐

\*Please explain (with reference to specific test results):

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15. Does the psychiatric condition exacerbate your patient's experience of pain or any other physical symptom?  
YES ☐ NO ☐

\*If yes, please explain: \_\_\_\_\_

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16. Do your patient's mental impairments ever cause intermittent symptoms or exacerbations severe enough that they would cause him/her to need to take unscheduled work breaks during a shift if he/she was at a full-time job?  
YES ☐ NO ☐

\*If yes, please explain: \_\_\_\_\_

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17. Do your patient's mental impairments ever cause intermittent symptoms or exacerbations severe enough that would cause him/her to take unscheduled days off work if they were at a full time job?  
YES ☐ NO ☐

If yes, then how many days per month would the patient be absent from work on average?

\_\_\_\_ 1 day \_\_\_\_ 2 days \_\_\_\_ 3 days \_\_\_\_ More than 3 days

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed/Typed Name

\_\_\_\_\_  
M.D. Signature

\_\_\_\_\_  
Printed/Typed Name

# **Appendix 3**

## **Adaptive Skills Questionnaire**

## Adaptive Skills Questionnaire

**This form is designed to gather information about how this client typically functions in their everyday life compared to non-disabled individuals who are the same age.**

Name of Client/Patient: \_\_\_\_\_ Client/Patient Age: \_\_\_\_\_

Name of Person Completing Form: \_\_\_\_\_

### Background on Person Completing Form

1. Your Relationship to Client/Patient: \_\_\_\_\_

2. How long have you known them? \_\_\_\_\_

3. In what all contexts/areas have you observed this person's behavior? (Please check all that apply)

☐ Classroom    ☐ Professional Office    ☐ Interacting peers their age

☐ In the home    ☐ In the workplace    ☐ Other: (describe)\_\_\_\_\_

4. Are you familiar with what types of things non-disabled individuals (the same age as this client/patient) usually can and cannot do? ☐ Yes    ☐ No

5. If yes, how do you know what types of things non-disabled individuals the same age as this client/patient usually can and can't do? (Please describe)

\_\_\_\_\_  
\_\_\_\_\_

6. If you are a service provider, do you (or have you) work(ed) with clients the same as this client who are non-disabled? ☐ Yes    ☐ No

**If you answered YES to Question #4, please answer the following questions. If you answered NO to Question #4, please skip to Question #19 now.**

7. Compared to non-disabled individuals of the same age, how would you rate this client's academic skills (e.g., reading level, understanding what they are reading, vocabulary level, writing skills, math skills)?

☐ Better/Higher    ☐ Same    ☐ Worse/Lower    ☐ Don't Know

Please describe your reason(s) for the answer you gave, including any specific examples of problems you have observed in this area:

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8. Compared to non-disabled individuals of the same age, how would you rate this client's academic achievement (e.g., class grades, yearly progression)?

☐ Better/Higher   ☐ Same   ☐ Worse/Lower   ☐ Don't Know

Please describe your reason(s) for the answer you gave, including any specific examples of problems you have observed in this area:

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9. Compared to non-disabled individuals of the same age, how would rate this client's social skills?

☐ Better/Higher   ☐ Same   ☐ Worse/Lower   ☐ Don't Know

Please describe your reason(s) for the answer you gave, including any specific examples of problems you have observed in this area:

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10. Compared to non-disabled individuals of the same age, how would you rate this client's communication skills (e.g., ability to clearly express themselves, to follow conversations and understand them, etc.)?

☐ Better/Higher   ☐ Same   ☐ Worse/Lower   ☐ Don't Know

Please describe your reason(s) for the answer you gave, including any specific examples of problems you have observed in this area:

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11. Compared to non-disabled individuals of the same age, how would you rate this client's personal hygiene skills (e.g., maintaining a neat/clean appearance, bathing, toileting, dental care, etc.)?

☐ Better/Higher   ☐ Same   ☐ Worse/Lower   ☐ Don't Know

Please describe your reason(s) for the answer you gave, including any specific examples of problems you have observed in this area:

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12. Compared to non-disabled individuals of the same age, how would you rate this client's ability to get along with other people (e.g., classmates, coworkers, other customers in a store, etc.)?

☐ Better/Higher   ☐ Same   ☐ Worse/Lower   ☐ Don't Know

Please describe your reason(s) for the answer you gave, including any specific examples of problems you have observed in this area:

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13. Compared to non-disabled individuals of the same age, how would you rate this client's ability to cope with stress/frustration/disappointment?

☐ Better/Higher   ☐ Same   ☐ Worse/Lower   ☐ Don't Know

Please describe your reason(s) for the answer you gave, including any specific examples of problems you have observed in this area:

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14. Compared to non-disabled individuals of the same age, how would you rate this client's ability to solve his/her own problems?

☐ Better/Higher   ☐ Same   ☐ Worse/Lower   ☐ Don't Know

Please describe your reason(s) for the answer you gave, including any specific examples of problems you have observed in this area:

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15. Compared to non-disabled individuals of the same age, how would you rate this client's ability to use appropriate nonverbal communication to interact with other people (e.g., knowing not to laugh when someone is crying or seriously injured, able to use pointing or gestures to express themselves)?

☐ Better/Higher   ☐ Same   ☐ Worse/Lower   ☐ Don't Know

Please describe your reason(s) for the answer you gave, including any specific examples of problems you have observed in this area:

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16. Compared to non-disabled individuals of the same age, how would you rate this client's ability to recognize safety concerns and to respond appropriately (e.g.,



noticing that there is smoke in the room and knowing what to do, knowing to look both ways before crossing the street and actually doing it before crossing, etc.)?

☐ Better/Higher   ☐ Same   ☐ Worse/Lower   ☐ Don't Know

Please describe your reason(s) for the answer you gave, including any specific examples of problems you have observed in this area:

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17. Compared to non-disabled individuals of the same age, how would you rate this client's ability to understand, remember, and follow a schedule or routine independently?

☐ Better/Higher   ☐ Same   ☐ Worse/Lower   ☐ Don't Know

Please describe your reason(s) for the answer you gave, including any specific examples of problems you have observed in this area:

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18. Compared to non-disabled individuals of the same age, how would you rate this client's ability to recognize medical issues and take appropriate action (e.g., applying basic first aid to a cut, knowing when to call 911, knowing when to call the doctor versus going to the hospital, etc.)?

☐ Better/Higher   ☐ Same   ☐ Worse/Lower   ☐ Don't Know

Please describe your reason(s) for the answer you gave, including any specific examples of problems you have observed in this area:

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**Please answer the following questions based on your knowledge of and/or observation of the client.**

19. Does the client typically start a task or project independently and follow it through to completion without outside assistance/supervision (e.g., reminders, prompts)?

☐ Yes   ☐ No   ☐ Don't Know

If NO, please describe:

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20. Does the client typically listen to, remember, and follow directions given to them without outside assistance or supervision (e.g., reminders, prompts)?

☐ Yes ☐ No ☐ Don't Know

If NO, please describe:

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21. Is the client typically able to break larger tasks or goals into smaller more manageable steps without outside assistance/supervision?

☐ Yes ☐ No ☐ Don't Know

If NO, please describe:

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22. Is the client typically able to sort through information, identify what is important and prioritize it (e.g., if they have 20 things to get done, are they typically able to determine what really needs to be done now and what can wait until a later time)?

☐ Yes ☐ No ☐ Don't Know

If NO, please describe:

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23. Did the client have special education services in high school?

☐ Yes ☐ No ☐ Don't Know

23a. If yes:

Did they have their own aide?

☐ Yes ☐ No ☐ Don't Know

Did they have speech/language therapy?

☐ Yes ☐ No ☐ Don't Know

24. Does the client know all of the steps to do their own laundry (without outside assistance or supervision)?

☐ Yes ☐ No ☐ Don't Know

If NO, please describe:

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25. Does the client know how to cook meals for themselves?

☐ Yes ☐ No ☐ Don't Know

25a. If yes:

Have they ever caught food (or the kitchen on fire)?

☐ Yes ☐ No ☐ Don't Know

Have they ever forgotten that they had food on the stove or in the oven?

☐ Yes ☐ No ☐ Don't Know

25b. If NO to Question #25, please describe:

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26. Does the client know if they have enough money to make purchases at a store (e.g., Can they estimate what their purchases cost before they are given the total by the cashier?)?

☐ Yes ☐ No ☐ Don't Know

27. Have they ever had to put items back in the store because they did not have enough money to pay for what they brought to the checkout?

☐ Yes ☐ No ☐ Don't Know

28. Are they able to calculate change on purchases (e.g., Do they know if they are getting the right amount of money back)?

☐ Yes ☐ No ☐ Don't Know

If NO, please describe:

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29. Do they understand the value of money (e.g., that \$100 is more valuable than \$5)?

☐ Yes ☐ No ☐ Don't Know

If NO, please describe:

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30. In an unfamiliar store/location, do they know how to get assistance in finding an item that they are looking for (e.g., a restroom, a certain item to purchase, etc.)?

☐ Yes ☐ No ☐ Don't Know

If NO, please describe:

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31. Is the client aware of safety issues in crowded public locations (e.g., the possibility of theft, knowing to stay alert)?

☐ Yes ☐ No ☐ Don't Know

If NO, please describe:

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32. Is the client easily manipulated or taken advantage of?

☐ Yes ☐ No ☐ Don't Know

If yes, please describe:

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33. Are there any other ways in which you think the client may lack the mental, academic, social, personal, conceptual, or practical skills that non-disabled individuals of the same age have? If so, please describe:

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# Biographies

**Ann Biddle** is the Deputy Director at Queens Legal Services NYC. Ann is a 1984 graduate of Emory University and she worked in the financial services sector before returning to school in 1990. She is a 1992 graduate, with honors, of Yeshiva University's Benjamin N. Cardozo School of Law, where she spent two years on the Cardozo Law Review and was fortunate enough to meet her fabulous husband. She has worked for various civil legal services organizations for the past 22 years, specializing in Social Security disability issues and issues affecting the elderly. She is admitted to practice law in the State of New York, in Federal District Courts (Eastern and Southern Districts of New York), and in the Courts of Appeals for the Second and the Federal Circuits.

**Tanya Douglas** is the Director of the Disability Advocacy Project (DAP) at Manhattan Legal Services. Tanya is also the Legal Services NYC DAP Task Force Coordinator. Tanya is a graduate of Cornell University and Cornell Law School. Tanya has spent her entire legal career as a public interest attorney with Legal Services NYC. During this time, she had represented clients in SSI/SSD claims at all levels (reconsideration, hearings, Appeals Council and Federal Court) as well as in education matters

**Ellen Rita Heidrick** is a supervising attorney at the Bath, New York, office of Legal Assistance of Western New York, Inc.<sup>®</sup> (LawNY<sup>®</sup>). She practices primarily in the field of Social Security Disability Benefits. She is admitted to practice in New York State and the United States District Court for the Western District of New York. Ellen earned her law degree from the University at Buffalo Law School. She is also a graduate of College Misericordia (currently known as Misericordia University).

Ellen is responsible for representing disabled individuals seeking Social Security Disability Insurance Benefits and Supplemental Security Income benefits at Administrative Law Judge hearings, at the Appeals Council, and in U.S. District Court. She also mentors other LawNY<sup>®</sup> advocates who work in the Disability Benefits field. In addition, Ellen participates actively in the Disability Advocacy Program Task Force facilitated by the Empire Justice Center.

Within LawNY<sup>®</sup>, Ellen co-directs the LawNY<sup>®</sup> Training, Leadership, and Diversity Committee and is the co-convener of the LawNY<sup>®</sup> SSI Workgroup. Ellen is also a member of the LawNY<sup>®</sup> Advocacy Workgroup. She has been a trainer and training coordinator for the LawNY<sup>®</sup> orientation for AmeriCorps paralegals. Also, Ellen has presented trainings on Social Security disability law to the Steuben County Bar and at the 2012 New York State Bar Association's Partnership Conference.

**Peter Racette** has been a Deputy Director of the Legal Aid Society of Northeastern New York since 2004. From 1988 until 2004, he was a staff attorney and then executive director at North Country Legal Services. He has represented more than a thousand clients in their claims for Social Security disability and SSI benefits and has often served as a trainer and panelists in disability-related training events. Mr. Racette is a graduate of Bennington College and Vermont Law School.