

DAP BASICS:

Step Four – Past Relevant Work

Kate Callery
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SEQUENTIAL EVALUATION

- Step 1: IS CLAIMANT PERFORMING SUBSTANTIAL GAINFUL ACTIVITY
- Step 2: IS CONDITION (OR COMBINATION OF CONDITIONS) "SEVERE,"
- Step 3: DOES CONDITION "MEET" OR "EQUAL" A LISTED IMPAIRMENT
- Step 4: IS CLAIMANT ABLE TO RETURN TO PAST RELEVANT WORK
- Step 5: CAN CLAIMANT PERFORM ANY OTHER WORK IN THE NATIONAL OR LOCAL ECONOMY

PRW

- Past Relevant Work is any work the claimant performed, on or off the books, within the 15 years prior to the date disability is alleged to have begun
- SSA relies upon job information available in the Dictionary of Occupational Titles (DOT) to determine the physical and mental demands of past relevant work.
 - See <https://occupationalinfo.org/>
- Claimant's RFC is compared to demands of PRW

RFC

- Residual Functional Capacity (RFC) is what the claimant can still do (physically and/or mentally) on a sustained daily basis despite his or her impairment-related limitations.
- To assess an RFC, compare the physical and/or mental demands of a claimant's PRW with his/her current physical and/or mental limitations
 - 20 CFR 404.1560 & 416.960
 - POMS DI 25005.010-050

SKIPPING STEP 4

- Adjudicators may skip Step four if vocational evidence is insufficient to evaluate PRW
 - POMS DI 25005.005
 - See also 76 Fed. Reg. 56357 (Sept. 13, 2011) – proposed regulations
- But allowance cannot be made at Step five if no Step four finding

WHAT WORK IS RELEVANT?

- What work is relevant?
 - POMS DI 25005.015
 - Has it been performed during the relevant 15-year period?
 - Was it SGA?
 - Did it last long enough for claimant to learn it?
- What work is not relevant?
 - Volunteer work, unsuccessful work attempts, illegal work (even if it resulted in SGA), work within a closed period, or CDR, or previous period of disability, etc.

MUST PAST WORK BE SGA?

- Yes, per POMS DI 25005.015.C?
 - Substantial gainful activity (SGA) set yearly by Congress
 - Earnings of \$1,350 [2022], to increase to \$1,470 [2023], per month gross or more presumed to be SGA
- Part time/seasonal work might be relevant if at SGA level and done long enough to learn it
 - POMS DI 25005.015F
- “Workfare” might be considered SGA
 - Melville v. Apfel, 198 F.3d 45 (2d Cir. 1999)
 - Were duties *de minimis*?
 - Was entitlement to a welfare check dependent on productivity?

FACTORS NOT CONSIDERED?

- POMS DI 25005.001C
 - Claimant's age, education, or skills
 - Whether PRW exists in significant numbers
 - Barnhart v. Thomas, 124 S. Ct 376 (2003)
 - Whether PRW was performed in a foreign country
 - Quang Van Han v. Bowen, 882 F.2d 1453 (9th Cir. 1989), upholding SSR 82-40
 - Whether claimant has necessary licensure or qualifications
 - Whether accommodations are still available
 - Whether the claimant would be hired, there are job openings, or only available on a part-time basis

PRW AS ACTUALLY PERFORMED?

- PRW as actually or generally performed?
 - *Jasinski v. Barnhart*, 341 F.3d 182 (2d Cir. 2003)
 - Teacher's aide = sed-light, per DOT
 - *Jasinski* rarely had to pick up anything heavy
 - Could return to job as actually performed even though limited to sedentary RFC
 - See POMS 25005.020

REMEMBER!

- For PRW, it does not matter
 - whether the claimant would be hired to do the work. *Keith v. Heckler*, 732 F.2d 1089 (2d Cir. 1984)
 - or if the job is obsolete (*Barnhart v. Thomas*, 124 S.Ct 376 (2003))
- A claim cannot be won at Step 4, but it can be lost at Step 4
- See Working Your Way Through the Sequential Evaluation – Sept. 2021
 - Available at <https://empirejustice.org/training/>