Social Security Disability: Determination and Review Regarding TBI

Traumatic Brain Injury does not have a specific listing, as such, in the Social Security administration's impairment listing manual. However, TBI is given consideration under section 11.00 of the manual (neurological impairments) and, more specifically, is evaluated under the heading of cerebral trauma.

The actual listing for 11.18, cerebral trauma, is very short, and reads as follows: Evaluate under the provisions of 11.02, 11.03, 11.04, and 12.02, as applicable.

What does this single sentence say? Basically, that traumatic brain injury cases are evaluated primarily according to neurological criteria, and, partially, if applicable, according to the criteria set aside for organic mental disorders (section 12.00 of the manual is devoted to impairments of a mental nature).

Here are the various impairment listings referred to in the cerebral trauma listing (11.18):

11.02 Convulsive epilepsy, grand mal or psychomotor.

11.03 Nonconvulsive epilepsy, petit mal, psychomotor, or focal.

11.04 Cerebrovascular accident, or CVA, otherwise known as stroke.

12.02 Organic mental disorders (defined as psychological or behavioral abnormalities associated with a dysfunction of the brain, the etiology of which is tied to a specific organic factor).

It might seem strange to evaluate traumatic brain injury cases according to the criteria set aside for other impairments. However, SSA disability determinations are based on the concept of residual functional capacity, which can be paraphrased as "what a claimant is still able to do even after, or despite, the effects of their illness". Guided by this concept, disability claim processing tends to focus heavily on objective and measurable indications of functional restriction.

Cases involving traumatic brain injury are examined to determine whether or not a patient is suffering seizures. If seizures, or epilepsy, is present, the next step is to rate the severity of the seizure disorder according to the nature and frequency of seizure episodes.
What level of seizure activity warrants the determination that one is disabled? For convulsive epilepsy, documented seizures must occur more frequently than once a month, in spite of 3 months of prescribed treatment with either A. daytime episodes involving loss of consciousness and convulsions or B. nocturnal seizure episodes that have residuals that significantly interfere with daytime activities. For nonconvulsive epilepsy, there must be documentation of petit mal, psychomotor, or focal seizures occurring more than once weekly, in spite of at least 3 months of prescribed treatment (with altered or lost consciousness and manifestations of unconventional behavior or difficulty with daytime activities).

The deficits that apply to aneurysm, or stroke, are used to evaluate traumatic brain injury patients, since they may suffer from similar deficits. The stroke listing details the following criteria:

A. Sensory or motor aphasia that results in ineffective speech or communication; or

B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station.

Lastly, TBI claimants are also evaluated according the criteria set forth in listing 12.02, organic mental disorders. The criteria for this listing is in three parts, designated A, B, and C, and to meet the listing, a claimant must satisfy either the part C criteria or the criteria indicated in parts A and B.

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:

1. Disorientation to time and place; or
2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
4. Change in personality; or
5. Disturbance in mood; or
6. Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or
7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely...
impaired range on neuropsychological testing, e.g., Luria-Nebraska, Halstead-Reitan, etc;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic organic mental disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

An applicant's disability status will need to be proven before benefits can be awarded. And proving a case boils down to providing adequate and sufficient medical record documentation. Claimants should provide (on their disability application or disability appeal paperwork) a full and detailed disclosure of their sources of treatment, as well as the approximate dates for which treatment was received. Additionally, claimants may find it helpful to obtain and submit supportive statements from physicians who have provided treatment. Physician statements, of course, should be detailed and should explain why a patient is disabled---in other words, the doctor should indicate the patient's specific functional limitations and the degree to which these limitations exist.
Can I work part-time and be eligible for disability?

You can work while you apply for disability AND while you receive disability as long as your earnings do not exceed the SGA limit. SGA stands for substantial gainful activity and this amount varies year by year.

It also implies a concept: if you cannot earn more than this amount despite your limitations, you may be considered disabled, provided the medical evidence bears out. The SGA amount for 2011 is $1,000.

Basically, claimants have to do "what they have to do" to make it through the process. However, at the level of a hearing before an administrative law judge, you really have to consider how the judge may look at the fact that you are working.

In essence, if you can make it without working, don't. Of course, most people are getting into desperate financial straits by that time.

Will Social Security look at all my medical conditions when they evaluate my case?

Yes, the Social Security administration via the disability examiner at disability determination services (or the judge at the office of hearings and appeals if the case is at the hearing level), will examine the "total picture" by giving consideration to all of your medical conditions/impairments.

In fact, the examination of a claimant's various problems and limitations will include not only those impairments that a disability claimant lists on the application for SSD or SSI benefits, but any medical (including psychological or psychiatric) problems that are indicated in a claimant's medical records.

This occurs simply because Disability Determination Services and the disability examiners who work there are required to fully evaluate all aspects of a claimant's medical condition. This is a requirement that is effectively enforced via an in-house, as well as an external, quality control process.

For this very reason, if a claimant applies for disability due to crippling arthritis in one or more joints, but the medical records contain a mention of depression (which a primary care doctor may have noted simply as an observation during
an office visit), there is at least a fair chance that the examiner will be required to develop the claimant's case for depression.

In many instances, certainly, this will only equate with superficially addressing and acknowledging the "depression" treatment note (the examiner will do a writeup reflecting this and have the psychological consultant assigned to his or her unit sign off on a mental RFC to support this).

In other cases, though, a claimant who has never been treated specifically for depression (but whose medical records indicate that the condition may exist at the level of being a severe impairment), may actually be sent to a psychological mental status exam, or even a full psychiatric consultative examination.

Of course, many claimants who do not consider themselves "depressed" are often put off when they receive this sort of examination appointment letter. And such a reaction is understandable if the exam to which they are being sent regards a condition for which they have never formally sought treatment.

But this practice in the evaluation of disability claims exists for a valid reason: many disability claimants are not entirely or fully aware of what is wrong with them.

In general, the Social Security administration will make every attempt to secure all of a claimant's medical records and evaluate every medical condition a claimant has.

Disability claimants, however, must bear in mind, that records cannot be requested from medical sources that are not indicated on the disability application (so be sure to fill your application out completely).

Likewise, "new medical records" cannot be evaluated if a claimant does not act to notify the disability examiner working on a case that additional treatment has been obtained.

Put simply, disability claimants should endeavor to keep the individuals working on their claims updated, by contacting them directly, or via an attorney or non-attorney representative.
What type of disability review should I expect from social security?

The standard for taking someone off benefit receipt is this: the evidence must show that a recipient has experienced an improvement in their medical condition.

In most cases, this will be difficult to demonstrate, especially so if a claimant has not had regular medical treatment. In other words, if there are no records to verify that a claimant's condition has improved, they cannot be ceased at a review.

In fact, recon examiners will routinely bemoan the fact that CDRs (continuing disability reviews) are a waste of time since most recipients have their benefits continued. This is not to say, however, that individuals are not occasionally ceased. This does happen to a small percentage of individuals on disability.

Tip: if you have been going to the doctor, get a copy of the medical records yourself to see what your doc has written about you, since a cessation will be based on this, as well as on other records.

Cases of mental depression for Social Security Disability and SSI

Depression may be the most frequently cited mental impairment on Social Security Disability and SSI Disability applications. In cases where depression is alleged by a claimant, medical record documentation from mental health treatment sources will be of particular importance. Treatment sources falling into this category, of course, include a claimant's psychiatrist, psychologist, and any mental health treatment center a claimant may have been seen at such as a city or county department of mental health.

Unfortunately, many Social Security Disability claimants who include depression on an SSD or SSI application have only had occasional or sporadic treatment for depression (or any other mental disorder). Since all disability claims are evaluated chiefly on the strength of a claimant's records, this can certainly reduce a claimant's chances of winning benefits.

It goes without saying that, for any impairment that a claimant alleges, mental or physical, regular treatment should be maintained so adequate medical record documentation will be available to either a disability examiner or administrative law judge.