

SOAR Dialogue
Highlights 8/18/20

Brian Hogan- Senior Attorney at Legal Aid (special guest speaker)

See PDF entitled “Materials on SSA’s Policies for Evaluating Cases Involving Drug Addiction and Alcoholism (“DAA”) and Failure to Follow Prescribed Treatment: SSR 13-2p and SSR 18-3p” for additional information

Shared briefly re work of Legal Aid and encouraged SOAR caseworkers to refer clients in need
Legal Aid mostly handles disability claims at ALJ level and federal court level
866-219-LANC is the number for clients to call if needing help
All services free but must be living below 150% of the federal poverty line

For SSA law- 4 sources of law

Act of law itself

Code of federal regulations (administration’s official interpretation of the act of law)

Sub-regulatory guidance (POMS, emergency messages, memos, etc.)

Rulings (official opinion)

DDS analysts, ALJs, Appeals council ALJs have to follow all four (binding)

DAA (drug addiction and alcoholism)

Before 1996, DAA did not impact disability adjudication

New act retroactively took away benefits of recipients impacted by DAA

2013 SSA finally released interpretation of the act

Key factor is if they would still find the claimant disabled if they stopped using drugs or alcohol

If yes, DAA is NOT material

If no, DAA IS material

Must be documented evidence of “maladaptive pattern of behavior” for materiality to even come into question (a couple of toxicology screens are not enough)

Also see if DAA use is active during the period that is being evaluated, otherwise not relevant

Reference Flow chart (page 12 of attachment)

If they had a disabling condition since birth, materiality should not matter

If they acquired disabling condition while using DAA, materiality should not matter

If they have a disabling condition caused by DAA but it is not reversible, materiality should not matter

SSA looks at periods of abstinence relative to time period of adjudication

Jail and prison records are very helpful for establishing abstinence (and possible proof that mental health conditions have not improved)

Improvement while abstinent might NOT be proof of materiality but may be proof that they do well in a highly structured environment (e.g. inpatient, incarceration, other treatment facilities, etc.)

Failure to follow prescribed treatment

Effective 2018

Not entitled to benefits if claimant does not participate without good cause in treatment that SSA believes would improve their condition

It must be a medication or treatment prescribed by claimant's own treatment providers (not CEs)

Does not include lifestyle modifications (e.g. weight loss, smoking cessation, etc.)

Good cause can include:

Religion (must provide some evidence re religious membership and texts)

Cost (must demonstrate that health insurance will not pay or not available at free clinic)

Incapacity (not capable of understand consequences of not following treatment)

Medical disagreement (two of your providers disagree)

Fear of surgery (need documentation that the fear of surgery would be contraindicated by provider)

Prior history of surgery (at least one failed attempt)

High risk of loss of life or limb

Risk of addiction (treatment involves opioid treatment for example)

Next SOAR Dialogue Call will be on September 15, 2020 at 10 AM. Please register for the call here: <https://www.ncceh.org/events/1444/>