

Substantial Gainful Activity: How does Social Security determine whether a person is disabled and qualified to receive benefits?

*Disclaimer*

*This article is intended to present information on how Social Security evaluates whether a person is sufficiently disabled and therefore qualifies for Disability benefits.*

*The article is not intended to be a substitute for the advice of a competent attorney. For legal advice it is imperative to consult with an attorney or qualified legal advocate of your own choosing. Further, Social Security regulations and practice may change over time.*

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“Substantial Gainful Activity”

Social Security determines that a person is disabled if they are unable to perform “Substantial Gainful Activity” (SGA). SGA is defined as work that “involves significant physical and mental activities or a combination of both. For work activity to be substantial, it does not necessarily need to be performed on a full-time basis...

“Gainful work activity may include: Work performed for pay or profit; work of a nature generally performed for pay or profit; work intended for profit, whether or not profit is realized.”

Even if you don't get paid, the SSA may conclude that your work is gainful if it is an activity that people *usually* get paid to do.

Self-employment may involve substantial gainful activity.

Volunteer work if comparable to work considered substantial gainful activity may also be SGA. The SSA can consider volunteer activities as SGA if someone would normally be paid for these activities (though the agency will not consider hobbies or school attendance to be SGA).

How does Social Security determine if a person is capable of performing substantial gainful work activity?

How does Social Security measure whether a person cannot perform SGA work-related activity?

1) SGA is in substantial part measured by gross monthly employment income. If a person is making more than a certain amount of monthly income, they will be considered to be engaging in SGA -- and therefore not disabled. But income amount is not the only measure of a person's ability to perform SGA.

2) A person's ability to work is also determined by Social Security's evaluation of their ability to perform work-related activities. Social Security may determine each applicant's Residual Functional Capacity (RFC) -- that is, given their medical disability, at what level can they still perform various job-related tasks?

What is Social Security's process for determining if a person is disabled and entitled to benefits?

When a person submits their application Social Security first determines whether a person is working and their gross monthly earnings. In 2022 if a person's gross monthly earnings are \$1,350 or more, with some exceptions, they are considered not disabled, and there is no further evaluation of their claim. (Such an action is "rebuttable" when there are legal exceptions on countable income, including when a person's income is being subsidized.)

However, Impairment-Related-Work-Expenses, or work-related circumstances or subsidies, can be taken into account if they reduce a person's gross pay below \$1,350. This SGA figure changes annually.

If the person is working at the time of application and earning less than \$1,350, then Social Security will further assess whether they can perform SGA and

therefore whether they are disabled. As part of this process Social Security will evaluate the person's Residual Functional Capacity (RFC).

In fact, even if the person is earning less than \$1,350, Social Security might further consider that the person is not disabled. A person's recent work history can have a bearing on Social Security's further assessment of their ability to work.

Therefore, it is definitely better for the person not to be working while they are applying.

To be considered disabled the person's disabling medical impairment must have lasted or is expected to last at least 12 months. This is the "duration period". One experienced attorney emphasizes that a person should not be working during this duration period following their application. However any work before approval may be taken as evidence of the ability to perform substantial gainful activity and be the basis for denial. Therefore, it is best not to work at all until one is granted benefits. (If a person must work, then they probably should only work minimally with a gross income of perhaps less than \$800 a month in gross earnings at perhaps 8 hours a week or less. However, there is no sure way to know what earnings amount Social Security might take into account in evaluating a person's disability.)

One exception occurs when a person has attempted to work for 6 months or less and had to stop because of their medical disability. Social Security may consider this past employment a "failed work attempt" and therefore not substantial gainful activity. In this case the application will be further evaluated for disability. One Social Security expert explains that the closer one gets to the full 6 months of a past work attempt, the more Social Security may consider it SGA.

Generally, the Social Security evaluation process can take many months. However, if accepted, the person will likely accrue retroactive benefits. The acceptance process can be shortened if the applicant and their medical provider(s) present strong and well-documented medical evidence that the person has a severe medical impairment that prevents them from performing even minimal work tasks on any predictable basis.

Here is an opinion on this topic: *Working While Applying for Benefits*

<https://www.disabilitysecrets.com/page1-13.html>

“Keep in mind that the mere fact that you're working, even if you are making somewhat less than \$1,350 per month, may influence whether a disability claims examiner or a disability judge believes you're disabled, especially if you're working more than 15 or 20 hours a week. For this reason, many disability lawyers and representatives will advise their clients not to work while their case is pending. For more information, see our article on [whether you have to quit work when applying for disability benefits](#). Updated December 10, 2021”

### Residual Functional Capacity

RFC is the maximum amount of work that a person can perform according to their ability to meet the exertional and non-exertional requirements of various employments (jobs). A person's RFC is determined based only on a person's medical condition(s) which prevents them from carrying-out work-related tasks. The RFC is an evaluation by Social Security based on the person's remaining capacity to work after considering the disabling limitations imposed by their medical condition(s). RFC is a measure of their actual work capacity up to a maximum work schedule of 8 hours a day, five days a week.

The RFC evaluates a person's ability to perform various levels of work including sedentary work, light work, medium, heavy, and very heavy work. For each type of work level the RFC evaluates the person's ability to perform both the exertional and non-exertional work tasks associated with that type of work.

“Exertional factors” are those that require the ability to use physical energy in various activities, such as standing, lifting, walking, sitting, grasping, carrying, etc.

“Non-exertional factors” do not require physical energy and include the need to rest, lie down, follow directions, perform cognitive tasks, etc.

### The 5-step process in determining whether a person is disabled – that they are unable to perform SGA.

There is a 5-step process in determining whether a person's medical condition(s) is disabling. With ME/CFS and other similar illnesses which do not have a specific Social Security “medical listing”, the determination as to whether a person is found disabled occurs at steps 4 and 5.

#### Step 4 – Part-time previous work

At step 4 Social Security determines whether a person has worked less than full time during the past 15 years. This work is termed Past Relevant Work (PRW). If any of the claimant’s ongoing past part-time PRW is within their RFC (work capacity), and this capacity allows them to perform their past PRW as generally performed in the national economy (DI 22001.001), they will be found not disabled. However, there must be employment in their part-time past relevant work available in the national or regional economy that pays \$1,350 or more per month (in 2022) that would qualify as substantial gainful activity.

(See Social Security Ruling 96-8p, footnote 2: “The ability to work 8 hours a day for 5 days a week is not always required when evaluating an individual’s ability to do past relevant work at step 4 of the sequential evaluation process. Part-time work that was substantial gainful activity, performed in the last 15 years, and lasted long enough for the person to learn to do it constitutes past relevant work, and an individual who retains the RFC to perform such work must be found not disabled.”)

Social Security regulations state in regard to Step 4:

“If a claimant’s RFC reflects an inability to sustain a 40-hour workweek and he or she has part-time PRW, address in the file whether the claimant can sustain the part-time PRW. If a claimant’s RFC reflects an inability to sustain a 40-hour workweek and he or she has part time PRW, do a function-by-function comparison of the claimant’s RFC and the requirements of his or her relevant part-time work. The file must specifically address the number of hours the claimant performed the part-time PRW and the claimant’s ability to sustain the work as he or she describes it. For example, if the claimant worked 30 hours a week, 6 hours a day, the claimant’s ability to stand and/or walk in a 6-hour workday could be addressed in the narrative portion of the RFC.”

If Social Security determines that an applicant has had SGA qualifying past part-time relevant work, then the applicant should have their physician(s) document in detail their medical and functional limitations that now prevent them from doing this past work. See below for the relevant work task limitations that should be documented.

If at step 4, the person's RFC indicates they cannot do past relevant work, then the determination process moves on to step 5 to determine if the person is disabled.

Step 5 – If you were found at step 4 unable to do your past relevant work, Social Security will now determine at this step whether you are able to adjust to any other work.

At this step Social Security will use several additional factors to determine if a claimant is disabled. First, the standard for performing SGA will generally be whether or not they have a Residual Functional Capacity to work 8 hours a day, five days a week. At step 4 a person could be found not disabled if they could do past relevant work part-time. At step 5 a person usually would be found disabled if they cannot work full-time. *However, there may be instances where a person might be found not disabled even if they could work somewhat less than full-time, see below.*

At this step, Social Security takes into account a person's ability to adjust to any other work that exists in the national or regional economies after considering vocational factors of age, education, and work experience.

Also at this step the individual's RFC evaluation must be expressed in the exertional classifications of work in the economy: sedentary, light, medium, heavy and very heavy. The claims adjudicator must take these classifications into account when she or he determines if there is any other work the claimant can do. The individual must be "able to perform substantially all the exertional and non-exertional functions in work at that level." (SSR 96-8p)

For many ME/CFS patients, as well as patients with similar illnesses, the claimants' potential capacity for full time work would usually exist in the category of sedentary work (or possibly light work).

What are the exertional and non-exertional tasks in the range of sedentary work?

"Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

‘Occasionally’ means occurring from very little to one-third of the time, and would generally total no more than up to one-third of the time, and would generally total no more than two hours of an 8-hour workday. Sitting would generally total about 6 hours of an 8 hour workday.”

“Unskilled sedentary work also involves other activities, classified as ‘non-exertional,’ such as capacities for seeing, manipulation, and understanding, remembering, and carrying out simple instructions.” SSR 96-9p.

See below for the limitations of your exertional and non-exertional factors that your physician should document either on an RFC form or in a disability report.

Not only should your doctor list your limitations regarding these factors, but also for the daily time periods you can perform them. For instance, since the standard is what you can do in an 8 hour day, if you can sit for only two hours at a time or less, and then must lie down and rest for an hour or more, your doctor should note this in his/her report.

Your doctor should also document, given the limitations imposed by your illness, how often during a typical 8 hour day you would be “off-task” of your required work. Most employers would not be willing to keep an employee on if they were off-task 85% of their daily work time.

At the same time the doctor should document, given your medical limitations, how many days during the month you would not be able to go to work. Again, most employers would not likely tolerate a person being absent on a regular basis more than a few days per month.

At this last step, Social Security must find that there are jobs in the national or regional economies – termed the “occupational base” – that the applicant would be able to perform. The SGA general requirement at step 5 is the availability of a full-time job including sedentary work that a person could perform on an ongoing basis.

However, the Social Security Program Operations Manual, 2/12/21 DI 24510.057, “Sustainability and the Residual Functional Capacity Assessment” notes :

“However, if a claimant is unable to sustain a 40-hour work week because of a severe medically determinable impairment, the adjudicator or medical consultant must discuss the sustainability in the RFC...If the claimant cannot do PRW, proceed to step 5. An inability to sustain a 40 hour work week at step 5 would result in a significantly eroded occupational base at all exertional levels...see DI 24001.015B.”

The last sentence implies that if a less than full-time job were available in the national or regional economy (the “occupational base”), then Social Security might find the person capable of work.

“In other words, there would be few jobs, and few employers who would hire you with your limitations.” (Melissa Linebaugh in her article “*If I Continue to Work Part Time But Not Full Time, Can I Get Disability Benefits?*” Disability Secrets – NOLO).

SSR 96-9p states: “However, the mere inability to perform substantially all sedentary unskilled occupations does not equate with a finding of disability. There may be a number of occupations from the approximately 200 occupations administratively noticed, and jobs that exist in significant numbers that an individual may still be able to perform even with a sedentary occupational base that has been eroded.”

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Besides the issue of available jobs, there is the further issue of whether a person can do the full range of sedentary work tasks or less than a full range of these tasks that would be necessary for an available job.

Sedentary work would be based on exertional factors, including: standing, sitting, and walking for specified amounts of time; pushing and pulling; the ability to carry ten pounds, the ability to stoop, etc.

Also the ability to do sedentary work consists of non-exertional factors, including having to rest; seeing, speaking or hearing (visual and communicative restrictions); paying attention or concentrating; understanding or remembering detailed instructions; pain; effects of medications; short-term memory deficits; etc.



If a person can do most of the tasks within the full-range of sedentary work, but not all, and if there are full time jobs in the national or regional economy that they can do based on their age, education, previous experience, language ability, etc., then they may be judged able to work.

SSR 96-9 states: “An RFC for less than a full range of sedentary work reflects very serious limitations resulting from medical impairment(s) and is expected to be relatively rare...

“However, a finding that an individual has the ability to do less than a full range of sedentary work does not necessarily equate with the decision of ‘disabled’. If the performance of past relevant work is precluded by an RFC for less than the full range of sedentary work, consideration must be given to whether there is other work in the national economy that the individual is able to do, considering age, education and work experience.”

Therefore age is a factor considered in step 5.

Social Security draws a line between those over 50 and those under 50 in terms of the two different age groups’ ability to make an adjustment to other work.

A person 50 and over will generally be more easily found disabled since their ability to utilize previous skills, work experience and education in new work is more difficult. Also, there will often be fewer jobs available in the national and regional economies for persons over 50.

“For the majority of individuals who are age 50 or older and who are limited to the full range of sedentary work by their medical impairments, the rules and guidelines in appendix 2 require a conclusion of ‘disabled’.

“Nevertheless, the rules...take administrative notice that there are approximately 200 separate unskilled sedentary occupations... Therefore, even though sedentary work represents a significantly reduced range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity for all individuals.”

SSR 96-9p states: “The impact of an RFC for less than a full range of sedentary work is especially critical for individuals who have not yet attained age 50. Since

age, education, and work experience are not usually significant factors in limiting the ability of individuals under the age of 50 to adjust to other work, the conclusion that such individuals who are limited to less than the full range of sedentary work are disabled will depend primarily on the nature and extent of their functional limitations...”

Regulation 201.00 explains further: “For individuals who are under 45, age is a more advantageous factor in making an adjustment to other work...including an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English...Nevertheless, a decision may be appropriate for individuals under the age of 45...who do not have the ability to perform a full range of sedentary work...However the inability to perform a full range of sedentary work does not necessarily equate with a finding of disabled. Whether an individual can make an adjustment to other work requires adjudicative assessment of factors such as the type and extent of the individual’s limitations or restrictions...including the availability of sedentary unskilled occupations.”

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Part II: Providing Evidence that a claimant cannot do a full range or a mostly full range of part-time or near full-time sedentary work:

For those with ME/CFS and associated chronic medical illnesses it is essential that the claimant provide specific medical documentation from an MD or DO physician that they are unable to perform the various work functions required to do sedentary work as defined by Social Security.

Your doctors should document fully and in detail your inability to do sedentary work. Social Security takes into account both exertional and non-exertional factors in determining your Residual Functional Capacity.

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“Unskilled sedentary work also involves other activities, classified as ‘non-exertional,’ such as capacities for seeing, manipulation, and understanding, remembering, and carrying out simple instructions.” SSR 96-9p.

### The RFC form:

Social Security claims examiners and other personnel will assess your physical and mental residual functional capacity and will then fill-out the associated RFC forms.

It can be very helpful if your physician(s) also fill-out an RFC form and submit it at the time a person applies. The applicant can take the form to his/her doctor.

However, in filling-out the form, the doctor must describe in actual detail the physical and cognitive impairments of the patient rather than just “checking a box” without any further description(s) of your more specific and detailed limitations.

\*\*\*Additionally and very importantly the physician should fill-out the RFC form in direct conjunction with the Social Security Instructions “*Providing Medical Evidence for Individuals with Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS)*” <https://www.ssa.gov/disability/professionals/documents/64-063.pdf>

By providing this specific medical evidence of the person’s ME/CFS -- with the patient’s input on their work-related limitations -- the doctor will be in a much better position to fill-out the RFC form accurately. If the patient feels that a particular doctor would fill-out the RFC form too generally, it would probably be

better to have the physician write a disability report letter based on the patient's own description of their limitations. If the doctor is agreeable, the patient can draft a letter writing a detailed description of their limitations – see our Disability Handbook at <https://www.massmecfs.org/disability-handbook>

Moreover as described in an article below, the doctor filling-out and RFC form should know the patient and their limitations well. A doctor who has not seen the person over time and, does not know him or her well, could do more harm than good in filling-out the form in a cursory and unformed manner.

The RFC form should not replace a Physician Disability Letter which describes the person's inability to perform both work tasks and the activities of daily living. See our Disability Booklet at <https://www.massmecfs.org/disability-handbook>

See the following articles on the Residual Functional Capacity forms:

**Social Security Disability and the Doctor's Residual Functional Capacity Form (RFC)** . By [Nicole Moberg](#), Attorney [Social Security Disability and the Doctor's Residual Functional Capacity Form \(RFC\) | DisabilitySecrets](#)

**Residual Functional Capacity Forms: Download an RFC Form** By [Bethany K. Laurence](#), Attorney <https://www.disabilitysecrets.com/rfcdownloadhome.html>

Residual Functional Capacity Form:

[https://www.disabilitysecrets.com/sites/default/files/Residual\\_Functional\\_Capacity\\_Form.pdf](https://www.disabilitysecrets.com/sites/default/files/Residual_Functional_Capacity_Form.pdf)

Here are some articles which describe the limitations that a doctor should document:

From: *What Do I Need From My Doctor to Qualify for Disability Benefits? Your doctor's detailed opinion of your impairments and limitations are key in your Social Security claim* By [Melissa Linebaugh](#), <https://www.disabilitysecrets.com/resources/disability/filing-disability/what-do-i-need-from-my-docto>

“...Remember, though, that doctors' RFCs must be supported by objective medical evidence for the SSA to give them consideration; otherwise, the SSA can disregard them.

## **What Your Doctor Should Put in a Physical RFC**

Here are some examples of the things that a physical RFC should discuss:

- how much you can lift and how often
- how much you can carry and how often
- how long you can sit down (uninterrupted)
- how long you can stand (uninterrupted)
- how far you can walk
- any environmental restrictions (such as sensitivity to dust or temperature)
- any postural restrictions (such as inability to stoop, bend, kneel, or reach overhead), and
- sensory limitations (vision or hearing difficulties).

## **What Your Doctor Should Put in a Mental RFC**

Here are some things that a mental RFC should discuss:

- your ability to understand, remember, and carry out simple instructions
- your ability to interact with co-workers
- your ability to interact with the general public
- your memory
- whether you are reliable, and
- how your condition affects your ability to concentrate, focus, and complete tasks in a normal amount of time.

RFCs from your doctor should also contain a statement about how your illness is likely to affect your reliability and ability to attend work regularly, due to issues such as fatigue, pain, ongoing treatments, or frequent hospitalizations.”

How many days a month would you be likely to miss because of your illness – including exacerbation of symptoms, lack of sleep, illness flares, severe fatigue, and other symptoms. One benchmark of the inability to work at step 5 would be if a person would regularly miss more than 2-3 days of work per month.

The doctor should also discuss the number of hours daily at work when you would be “off work task” – having to rest or not be able to carry-out work functions during an eight hour day; or in previously held part-time work. A bench mark of disability would be if you had to be regularly off-task more than 15% of a workday.

Also the doctor should document your inability to stand or walk for more than a combined total of two hours a day; the need to rest or lie down as needed through the day; the significant inability to stoop or bend.

Other limitations that should be documented:

The inability to concentrate, read, and process cognitive information; and problems with short-term memory;

The inability to follow/carry-out normal instructions on a continuing and timely basis within a normal working environment.

The inability to work at your computer or perform other mental work tasks.

Also, the medical source providers should document the limitations the person has in carrying out normal daily functions in terms of activities of daily living – such as preparing meals, shopping, doing household chores, personal care, etc. These non-work difficulties can limit a person’s further ability to work.