

# Social Security Disability Mental Impairment Claims

By

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# Listing 12.00 Mental Disorders - Adult

## Introduction:

- The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s), consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work, and consideration of whether these limitations have lasted or are expected to last for a continuous period of at least 12 months.

# Mental Impairment Categories

- The listings for mental disorders are arranged into nine diagnostic categories:
  1. Organic mental disorders (12.02);
  2. Schizophrenic, paranoid and other psychotic disorders (12.03);
  3. Affective disorders (12.04);
  4. Intellectual disability (12.05);
  5. Anxiety-related disorders (12.06);
  6. Somatoform disorders (12.07);
  7. Personality disorders (12.08);
  8. Substance addiction disorders (12.09);
  9. Autistic disorder and other pervasive developmental disorders (12.10).
- Each listing, except 12.05 and 12.09, consists of a 1) statement describing the disorder(s) addressed by the listing, 2) paragraph A criteria (a set of medical findings), and 3) paragraph B criteria (a set of impairment-related functional limitations).

# Listing 12.05 Intellectual Disability

- **Intellectual Disability (formerly “Mental Retardation”):**
  - Intellectual disability refers to significantly sub-average general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

# Structure of Listing 12.05

- The structure of the listing for intellectual disability (12.05) is different from that of the other mental disorders listings. Listing 12.05 contains an introductory paragraph with the diagnostic description for intellectual disability. It also contains four sets of criteria (paragraphs A through D).
  - If your impairment satisfies the diagnostic description in the introductory paragraph and any one of the four sets of criteria, SSA will find that your impairment meets the listing.
  - Paragraphs A and B contain criteria that describe disorders we consider severe enough to prevent your doing any gainful activity without any additional assessment of functional limitations.
  - For paragraph C, SSA will assess the degree of functional limitation the additional impairment(s) imposes to determine if it significantly limits your physical or mental ability to do basic work activities, i.e., is a "severe" impairment(s), as defined in 404.1520(c) and 416.920(c). If the additional impairment(s) does not cause limitations that are "severe" as defined in 404.1520(c) and 416.920(c), we will not find that the additional impairment(s) imposes "an additional and significant work-related limitation of function," even if you are unable to do your past work because of the unique features of that work.
  - Paragraph D contains the same functional criteria that are required under paragraph B of the other mental disorders listings.

# Specifics of Listing 12.05

- The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by **dependence upon others for personal needs** (e.g., toileting, eating, dressing, or bathing) and **inability to follow directions**, such that the use of standardized measures of intellectual functioning is precluded; OR

B. A valid verbal, performance, or full scale **IQ of 59 or less**; OR

C. A valid verbal, performance, or full **scale IQ of 60 through 70** and a physical or other mental impairment imposing an additional and significant work-related limitation of function; OR

D. A valid verbal, performance, or full scale **IQ of 60 through 70, 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.

# ARE LOW IQ SCORES ALONE ENOUGH TO WIN?

See *Talavera v. Astrue*, 697 F.3d 145, 148 (2d Cir. 2012)

- “Capsule definition” in the introductory paragraph to Listing 12.05 requires a separate showing of deficits in “*adaptive functioning arising from the claimant’s cognitive limitations*”
- This requirement is in addition to the required IQ scores
  - “**Adaptive functioning**” is “the individual’s progress in acquiring mental, academic, social and personal skills as compared with other unimpaired individuals of his/her same age. Indicators of adaptive behavior include ... educational and social achievements.”
    - POMS DI 24515.056D2, “Evaluation of Specific Issues – Mental Disorders – Determining Medical Equivalence”

Note that listing 12.05 does not require a complete lack of adaptive functioning.

- See *Ali v. Astrue*, 2010 WL 889550 (E.D.N.Y. Mar. 8, 2010)
  - “The claimant need not demonstrate that he is completely helpless or totally disabled.”

# Listing 12.08 Personality Disorders

- A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

# Requirements of Listing 12.08

- The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. **Deeply ingrained, maladaptive patterns of behavior** associated with one of the following:

1. Seclusiveness or autistic thinking; or
2. Pathologically inappropriate suspiciousness or hostility; or
3. Oddities of thought, perception, speech and behavior; or
4. Persistent disturbances of mood or affect; or
5. Pathological dependence, passivity, or aggressivity; or
6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

**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.

# Social Security Disability Questions?

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