June 24, 2024

(OMB) Office of Management and Budget
Attn: Desk Officer for SSA

(SSA) Social Security Administration, OLCA
Attn: Reports Clearance Director
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Baltimore, MD 21235

Submitted via email to OR.Reports.Clearance@ssa.gov

RE: Agency Information Collection Activities: Medical Source Statement of Ability To Do Work Related Activities (Physical and Mental) [SSA-2024-0011]

To Whom It May Concern:

Thank you for the opportunity to provide feedback on the Medical Source Statement of Ability To Do Work Related Activities (Physical and Mental). We are submitting these comments on behalf of the Supplemental Security Income (SSI) Unit of Community Legal Services of Philadelphia (CLS). For nearly sixty years, CLS has assisted clients at every stage of the SSI application process, from initial applications to representation in appeals before the Pennsylvania Bureau of Disability Determination, the Social Security Office of Hearing Operations, and in federal court. More broadly, CLS advocates for policy changes within both Social Security and SSI programs, including by convening two national advocacy workgroups.

We are uniquely positioned to comment on the proposed changes to the HA-1151 and HA-1152 forms because we provide direct representation to claimants seeking SSI and SSDI benefits. Our clients often undergo consultative examinations (CE), and these forms are an important piece of evidence in their claims. We applaud SSA for continuously working to improve disability adjudications by evaluating each step of the process, including the medical source statements of ability to do work-related activities.

I. Recommendations for Both Medical Source Statements HA-1151 and HA-1152

We would like to offer general recommendations that apply to both HA-1151 and HA-1152 as follows:

- **Standardize Reporting on Exam Procedures**

There is significant variety in how exams are performed in different jurisdictions. To increase transparency and clarity about the basis for exam findings and MSS opinions, we suggest standardizing reporting about exam procedures in two areas:

1. In our experience, it is unclear how long the examiner spends with the claimant to complete the consultative examination. We recommend that both the HA-1151 and HA-1152 include a section that states the time the exam started and ended with the examining doctor. This additional information would be beneficial when analyzing the information contained in the forms and ensuring transparency around exam norms and procedures. Some CEs have noted that part of the examination time is spent with non-medical staff answering questions. We do not think that this time should be included in the "exam" time or should be noted separately.

2. Different jurisdictions have different rules and norms about how to disclose which, if any, evidence was reviewed as part of the exam. Each form should include a section where the consultative examiner acknowledges whether the examiner reviewed any forms completed by the claimant, any exhibits provided by the DDS, or any specific tests or laboratory results. In Pennsylvania, the claimants routinely complete forms with a full medical history, for example, and the consulting examiners rely on those forms to complete some reports but do not acknowledge that fact.

- **Burden Estimate**

We are concerned that SSA overestimates the burden related to MSS forms on the providers. Although we would like to think consultative examiners spent 30 minutes carefully evaluating claimants to complete the MSS given the impact these conclusions have on the case, we believe this is often not true. CLS (like many organizations) routinely surveys claimants after they attend CEs. One of the questions we always ask is the total length of time the CE spent with the claimant. Upon review of the surveys, none of the CEs spend 30 minutes with the claimant, which makes it unlikely they spent that much time completing this form. Our surveys show that examination times are often only 10-15 minutes at most.

- **Include Additional Questions About Work-Related Limitations**

MSS forms do not solicit information about some of the most commonly discussed work-related limitations that appear throughout SSA policy. Additional questions should be added to bring these forms up to date with current SSA policy and practice.

- **Pain**

SSR 16-3p provides that symptoms, including pain, must be considered when assessing work-related limitations in functioning. However, it is often unclear whether or how consultative examiners considered pain and other symptoms when reaching conclusions about work-related limitations. We suggest adding a question that asks whether and how pain and other symptoms contribute to the individual's functional limitations.

- **Time Off Task and Absences**

The mental abilities needed to perform any job include the ability to maintain concentration and attention for extended periods. (DI 25020.010). At the hearing level, vocational experts are frequently asked what amount of time off task and absenteeism employers tolerate in a competitive work setting. To bring the MSS forms fully up to date, they should include questions about these key functional limitations.

II. Recommendations for HA-1151 (Physical)

- **Add Questions About Assistive Devices**

The need for an assistive device is an important component in assessing work-related limitations in functioning, but the current HA-1151 only includes questions about the use of a cane. We recommend expanding this question to capture other relevant information by asking whether the person uses any assistive devices, such as a cane or walker. We recommend follow-up questions about which type of assistive device they use, and why they need it.

- **Remove Questions About Activities of Daily Living**

We recommend removing questions about activities of daily living. These questions are overly broad and do not provide sufficient information to reach any meaningful conclusion about an individual's limitation in functioning. The responses also do not allow for clarifications, for example that the person requires support or is only able to do the activities under certain circumstances. There are a variety of ways that many of these activities can be performed that could encompass a wide range of functioning.

For example, the form asks if the person "can perform activities like shopping." First, it is unclear what activities "like shopping" would be included in this category. Second, a person might be able to go shopping at a local corner store where staff know them and provide assistance, or with the help of an assistive device, or with a family member, or only on days when their symptoms are manageable. Shopping could also be interpreted to include online shopping, without giving the

claimant the opportunity to explain that they are limited to online shopping due to their impairments. As another example, the question "can the individual prepare a simple meal & feed himself/herself" also lacks sufficient specificity. A "simple meal" could be interpreted many different ways that would require different levels of functioning. Consider the differences in functioning required to pour cereal into a bowl as opposed to standing in front of the stove to fry an egg or cook pasta. Since meaningful functional information cannot be gleaned from most of these questions, they should be removed or replaced with more specific questions about the underlying functional abilities rather than broad categories of tasks that can be interpreted and performed in a variety of ways.

- **Clarify Standing and Walking**

We recommend clarifying that the assessment for how long a person can stand and walk is cumulative. Some evaluators may not realize that if they say a person can stand for two hours per day and walk for two hours per day that means they are capable of being on their feet for a total of four hours per day. We recommend adding a question to each section to ask how long a person can be on their feet, either standing or walking, at one time without interruption, and during an eight-hour workday.

- **Address Insufficient Clinical Support for Conclusions**

We propose conducting additional research and consulting medical professionals to address the lack of clinical support for certain conclusions in the MSS. For example, it is unclear how examiners determine how much an individual can lift and carry. The abilities to lift and carry are not directly tested on exam. The clinical support or process for reaching conclusions in the MSS form should be further researched and clarified.

III. Recommendations for HA-1152 (Mental)

We are very appreciative that SSA is taking a hard look at the Medical Source Statement of Ability to do Work Related Activities, Mental, HA-1152 form. We further appreciate being provided with the opportunity to give feedback on ways to revise the HA-1152 form.

- **Feedback on Section (1) Understand, remember, and carry out instructions.**

We would recommend restructuring Section (1) which pertains to analyzing the claimant's ability to understand, remember, and carry out instructions. In our experience, the way the categories are currently written presents them as confusing and duplicative. We suggest SSA combine the six categories into two: one regarding simple instructions and one regarding the complex instructions. For example, the simple instructions category could be listed as: can understand, carry out,

remember, and make judgments on simple-work-related instructions and decisions. For the complex instructions category could be listed as: can understand, carry out, remember, and make judgments on complex instructions and decisions. By combining these statements, it will ease confusion as the topics overlap with each other and make room for new categories of questions that can better flush out understanding, remembering, and carrying out instructions.

- **Feedback on the "Identifying Factors" in Section (1) and (2)**

In our experience, the portion of each Section (1) and (2) that states "identifying factors," which include "laboratory findings" or "particular medical signs," is often left blank or a diagnosis is scribbled at the bottom. Leaving it blank or reiterating a diagnosis found in the CE (or other medical records) is not helpful and renders this portion basically meaningless. As the CE's are performed there are no relevant laboratory findings to put down. We suggest placing specific questions with proposed answers which would require the examiner to write them down to avoid blank answers or writing a diagnosis. We proposed that SSA work with a team of medical professionals to see what additional medical tests could be done to better flush out a claimant's ability to understand, remember, and carry out instructions; interact with people; and concentrate, persist or maintain pace. Therefore, after the examiner performs the test, the reader of the HA-1152 form will understand what evidence supports their conclusions. Failure to provide a written explanation for your assessment of the severity of limitations renders this opinion void. We propose the medical professionals could create a hypothetical or perform more standardized tests. As of now, the CE usually only contains recalling three objections immediately and after a delay, serial 3s, and serial 7s. These tests are not indicative of a claimant's ability to understand, remember, and carry out simple and complex instructions; interact with people; and concentrate and maintain pace. Performing more standardize tests would not only create more reliable outcomes but be consistent as whole.

- **Feedback on comparing the HA-1152 to the CE**

Often the content in the CE does not match the information checked in the HA-1152 form. In a recent case, a claimant's FSIQ was found to be 53, and the examiner noted that the results of the FSIQ were valid and reliable. During the examination, the doctor noted that the claimant had difficulty completing the IMA forms, extensive difficulties completing simple calculations, such as "2x3," and recalling three objects after a delay. The examiner determined that she would not even administer the standard serial 3s and 7s when evaluating the claimant because the claimant struggled so much with basic calculations. However, when filling out the HA-1152 form, the examiner opined that the claimant was only marked in understanding, remembering, and carrying out complex instructions. The examiner in the HA-1152 form further opined that the claimant had no problems concentrating, persisting or maintaining pace which simply did not align with the contents of the CE. The "conclusions" in the HA-1152 form were not supported or consistent with

the findings in the examiner's CE. The administrative law judge, as well as claimant's representative, were left to guess as to why the CE and HA-1152 form do not align, because the examiner left the portion "identifying factors" blank. We recommend SSA putting in safeguards to ensure that the examiner must provide consistent information in the CE and the HA-1152 form. This could be achieved by adding an instruction at the top of the HA-1152 form stating the following: If the examiner leaves blank any portion of the form, it undermines the supportability of the factors identified in 20 C.F.R. 404.1527.

- **Feedback on Section (5) regarding alcohol and/or substance abuse**

We believe that Section (5) regarding alcohol and/or substance abuse should be eliminated. Mental disorders often have symptoms that overlap or mimic those of substance abuse, and it is well known many people with mental disorders have "self-medicated" with drugs to reduce their symptoms. Since the examiner is only meeting with a claimant for at most, one hour, we recommend that the examiner is not in any qualified position to determine if the condition would improve enough for the claimant to work if they stopped using drugs or alcohol or if the medical condition is worsened or caused by alcohol or drug use. To get an accurate picture of a claimant's sobriety or history of drug use, the medical record provided would provide a more accurate answer.

- **Address Insufficient Clinical Support for Conclusions About Cognitive Functioning**

The MSS forms request information about the ability to understand, remember, and carry out instructions, but the basis for these conclusions is not always clear. CEs that do not include any intelligence testing often include only a single line about cognitive functioning without any explanation about the basis for the assessment. For example, a report may simply state that cognitive functioning "appears borderline" or is "average." SSA should conduct additional research and consultations to clarify the clinical basis for conclusions about cognitive functioning and the ability to understand, remember, and carry out instructions.