

**§ 404.1535**

(3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.

(4) The treatment because of its magnitude (e.g. open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for you; or

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

[45 FR 55584, Aug. 20, 1980, as amended at 59 FR 1635, Jan. 12, 1994]

**§ 404.1535 How we will determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability.**

(a) *General.* If we find that you are disabled and have medical evidence of your drug addiction or alcoholism, we must determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(b) *Process we will follow when we have medical evidence of your drug addiction or alcoholism.* (1) The key factor we will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether we would still find you disabled if you stopped using drugs or alcohol.

(2) In making this determination, we will evaluate which of your current physical and mental limitations, upon which we based our current disability determination, would remain if you stopped using drugs or alcohol and then determine whether any or all of your remaining limitations would be disabling.

(i) If we determine that your remaining limitations would not be disabling, we will find that your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(ii) If we determine that your remaining limitations are disabling, you are disabled independent of your drug addiction or alcoholism and we will find that your drug addiction or alcoholism is not a contributing factor material to the determination of disability.

[60 FR 8147, Feb. 10, 1995]

**20 CFR Ch. III (4-1-08 Edition)**

**§ 404.1536 Treatment required for individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability.**

(a) If we determine that you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535), you must avail yourself of appropriate treatment for your drug addiction or alcoholism at an institution or facility approved by us when this treatment is available and make progress in your treatment. Generally, you are not expected to pay for this treatment. You will not be paid benefits for any month after the month we have notified you in writing that—

(1) You did not comply with the terms, conditions and requirements of the treatment which has been made available to you; or

(2) You did not avail yourself of the treatment after you had been notified that it is available to you.

(b) If your benefits are suspended for failure to comply with treatment requirements, your benefits can be reinstated in accordance with the rules in § 404.470.

[60 FR 8147, Feb. 10, 1995]

**§ 404.1537 What we mean by appropriate treatment.**

By appropriate treatment, we mean treatment for drug addiction or alcoholism that serves the needs of the individual in the least restrictive setting possible consistent with your treatment plan. These settings range from outpatient counseling services through a variety of residential treatment settings including acute detoxification, short-term intensive residential treatment, long-term therapeutic residential treatment, and long-term recovery houses. Appropriate treatment is determined with the involvement of a State licensed or certified addiction professional on the basis of a detailed assessment of the individual's presenting symptomatology, psychosocial profile, and other relevant factors. This assessment may lead to a determination that more than one treatment modality is appropriate for the individual. The treatment will be provided or overseen by an approved institution or facility.

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This treatment may include (but is not limited to)—

- (a) Medical examination and medical management;
- (b) Detoxification;
- (c) Medication management to include substitution therapy (e.g., methadone);
- (d) Psychiatric, psychological, psychosocial, vocational, or other substance abuse counseling in a residential or outpatient treatment setting; or
- (e) Relapse prevention.

[60 FR 8148, Feb. 10, 1995]

### § 404.1538 What we mean by approved institutions or facilities.

Institutions or facilities that we may approve include—

- (a) An institution or facility that furnishes medically recognized treatment for drug addiction or alcoholism in conformity with applicable Federal or State laws and regulations;
- (b) An institution or facility used by or licensed by an appropriate State agency which is authorized to refer persons for treatment of drug addiction or alcoholism;
- (c) State licensed or certified care providers;
- (d) Programs accredited by the Commission on Accreditation for Rehabilitation Facilities (CARF) and/or the Joint Commission for the Accreditation of Healthcare Organizations (JCAHO) for the treatment of drug addiction or alcoholism;
- (e) Medicare or Medicaid certified care providers; or
- (f) Nationally recognized self-help drug addiction or alcoholism recovery programs (e.g., Alcoholics Anonymous or Narcotics Anonymous) when participation in these programs is specifically prescribed by a treatment professional at an institution or facility described in paragraphs (a) through (e) of this section as part of an individual's treatment plan.

[60 FR 8148, Feb. 10, 1995]

### § 404.1539 How we consider whether treatment is available.

Our determination about whether treatment is available to you for your drug addiction or your alcoholism will depend upon—

- (a) The capacity of an approved institution or facility to admit you for appropriate treatment;
- (b) The location of the approved institution or facility, or the place where treatment, services or resources could be provided to you;
- (c) The availability and cost of transportation for you to the place of treatment;
- (d) Your general health, including your ability to travel and capacity to understand and follow the prescribed treatment;
- (e) Your particular condition and circumstances; and
- (f) The treatment that is prescribed for your drug addiction or alcoholism.

[60 FR 8148, Feb. 10, 1995]

### § 404.1540 Evaluating compliance with the treatment requirements.

(a) *General.* Generally, we will consider information from the treatment institution or facility to evaluate your compliance with your treatment plan. The treatment institution or facility will:

- (1) Monitor your attendance at and participation in treatment sessions;
- (2) Provide reports of the results of any clinical testing (such as, hematological or urinalysis studies for individuals with drug addiction and hematological studies and breath analysis for individuals with alcoholism) when such tests are likely to yield important information;
- (3) Provide observational reports from the treatment professionals familiar with your individual case (subject to verification and Federal confidentiality requirements); or
- (4) Provide their assessment or views on your noncompliance with treatment requirements.

(b) *Measuring progress.* Generally, we will consider information from the treatment institution or facility to evaluate your progress in completing your treatment plan. Examples of milestones for measuring your progress with the treatment which has been prescribed for your drug addiction or alcoholism may include (but are not limited to)—

- (1) Abstinence from drug or alcohol use (initial progress may include significant reduction in use);