

Documenting and Supporting SSI/SSDI Applications Involving Substance Use Disorders

Substance Abuse and Mental Health Services Administration
SAMHSA SOAR Technical Assistance Center
Policy Research Associates, Inc.

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Services Administration

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Dorrine Gross
PATH Program Coordinator, SOAR COR
Division of State and Community Systems Development
Center for Mental Health Services

Welcome!

Purpose and Objectives

- Understand SSA's Drug Addiction and Alcoholism (DAA) policy and the concept of "materiality."
- Apply strategies to writing effective substance use histories in the Medical Summary Report (MSR) when there is evidence of DAA.
- Learn about available tools to help you translate information learned from applicant interviews and medical records to demonstrate that DAA is not material to a finding of disability.

Agenda

Presenters

- Amanda Starkey, MA, Project Associate II, SAMHSA SOAR TA Center, Policy Research Associates, Troy, New York
- Natasha Gutierrez, Operations Manager, Division of Disability Determination Services (DDS), Albuquerque, New Mexico
- Laura “Bug” Carlson, MFA, SOAR Executive Director, Local Lead, Heading Home, Albuquerque, New Mexico
- Ashley Aragon, BSW, SOAR Program Director, Heading Home, Albuquerque, New Mexico
- Elisa, SOAR Beneficiary, Heading Home, Albuquerque, New Mexico

Questions and Answers

- Facilitated by the SAMHSA SOAR TA Center

Natasha M. Gutierrez, Operations Manager-New Mexico DDS

Adjudicating Claims Involving Drug Addiction and Alcoholism (DAA)

Drug Addiction and Alcoholism (DAA)

- SSA does not consider a claimant disabled if drug addiction or alcoholism (DAA) is a contributing material factor to the determination that the claimant is disabled.

What is a Substance Use Disorder?

- A substance use disorder (SUD) is defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5) as being a maladaptive or problematic pattern of substance use that leads to clinically significant impairment or distress.

What about medical marijuana?

- Addiction to or use of prescription medications is not considered an SUD.
- Conditions caused by substance use are not considered an SUD.

Conditions NOT considered to be an SUD

- Fetal Alcohol Syndrome
- Fetal Cocaine Exposure
- Addiction to or use of prescription medications (including methadone and suboxone)
- Nicotine Use Disorders
- Caffeine induced disorders
- Conditions caused by substance use (alcoholic cirrhosis, HIV acquired through drug use, or injuries suffered in an accident while under the influence of drugs or alcohol)

When DAA is Material

- DAA is material when the claimant would not be disabled if they were not using drugs/alcohol.
- When DAA is material, the claim will be denied.

When DAA is NOT Material

- DAA is NOT material when the claimant would still be disabled if they were not using drugs/alcohol.
- When DAA is NOT material, the claim will be allowed.

Making a DAA Materiality Determination

DAA materiality determination:

- Objective evidence from an acceptable medical source established a medically determinable impairment (MDI) of a SUD, **and**
- The claimant is found disabled considering all impairments, including the DA&A.

No DAA materiality determination:

- The claimant's only severe impairment is a SUD
- The claimant has a substance use disorder, and the other impairments are not severe.
- The claimant has a substance use disorder, and the other impairments are severe but not disabling.

Examples of when DAA is NOT Material

- The claimant has a disabling impairment independent of DAA.
- The claimant has acquired a separate disabling impairment while using substances.
- The claimant's DAA medically caused the other disabling impairment(s), but the resulting impairment(s) is irreversible or could not improve to the point of non-disability.

Decision Chart for Materiality Determination

Adjudicating Claims Involving Drug Addiction and Alcoholism (DAA)

Use the follow chart to decide if DAA materiality

1. Does the claimant have a medically determinable SUD?	a. No—No DAA Materiality Evaluation Needed b. Yes—Go to step 2.
2. Is the claimant disabled considering all impairments, including the SUD?	a. No—No DAA Materiality Evaluation Needed (Denial) b. Yes—Go to step 3.
3. Is the SUD the only impairment?	a. Yes—DAA material. (Denial) b. No—Go to step 4.
4. Although the claimant is dependent upon or abusing drugs or alcohol, is the other impairment(s) disabling by itself?	a. No—DAA material. (Denial) b. Yes—Go to step 5
5. Does the SUD cause or affect the claimant's medically determinable impairment(s)?	a. No—DAA not material. (Allowance) b. Yes, but the other impairment(s) is irreversible or could not improve to the point of non-disability—DAA not material. (Allowance) c. Yes, and DAA could be material—Go to step 6.
6. Would the other impairment(s) improve to the point of nondisability in the absence of the SUD?	a. Yes—DAA material. (Denial) b. No—DAA not material (Allowance)

Periods of Abstinence

- Evidence from a period of abstinence is the ideal evidence determining where a physical impairment would improve to the point of “non-disability”.
- This can be medical or functional evidence.
- SSA does not provide guidance on the length or number of periods of abstinence to demonstrate whether DAA is material in every case.

When There Are No Periods of Abstinence

- Consider providing an opinion from an acceptable medical source, e.g., MD, DO, Physician Assistant (PA), Advanced Psychiatric Nurse Practitioner (APRN), regarding where the claimant's impairment(s) would be severely limiting even if the claimant stopped abusing drugs and alcohol.

Reference Resources

- [DI 90070.041-Evaluating Cases Involving Drug Addiction and Alcoholism](#)
- [SSR 13-2p—Policy Interpretation](#)

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Natasha Gutierrez

natasha.gutierrez@ssa.gov

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Amanda Starkey, MA, Project Associate II, SAMHSA SOAR TA Center,
Policy Research Associates, Troy, New York

Documenting Substance Use History in the Medical Summary Report (MSR)

Key Concepts

- Review the definition of “materiality”
- Summarizing substance use history in the MSR
- Documenting materiality in the MSR
- Writing samples discussion

Reviewing the Definition of Materiality

- When a substance use disorder is documented in the medical evidence, disability examiners assess the applicant's disabling conditions and the substance use (whether the person is still using alcohol or drugs, or not)
- If DDS determines the applicant's remaining conditions are disabling, DDS will find that the applicant's substance use is not a contributing factor material to the determination of disability.

Documenting Substance Use

- Background information about initial use
- Progression of substance use over time
- Current status and context of substance use
 - Current substance use
 - Role of substance use in the applicant's life



Documenting Materiality

- Document periods of nonuse by citing negative toxicology screens
- Discuss the severity of symptoms during periods of documented nonuse
- Include quotes and citations from treatment records that describe symptoms during periods of nonuse






Writing Sample: Substance Use Overview

Julian explained that he and his older brother **started drinking when he was 13 years old, around the time the abuse from his father became more violent.** Once he entered high school, he turned to marijuana and eventually heroin but stopped using all non-prescribed substances during his senior year. He explained, “I still wanted to use every day, but I was on the football team and had to take drug tests. **Even though I wasn’t using, I was so depressed that I could barely get out of bed.** It was one of the hardest years of my life.” After high school, Julian began using again because “the depression and anxiety was just too much. **It was the only way I got relief from the thoughts in my head.**” Currently, Julian uses heroin, marijuana, and alcohol when he has some extra money. Julian estimates he uses substances one to two times per week, on average. He states, “I’m not proud to admit this, but **using drugs is the only way I can escape my symptoms for a little while.**”

Writing Sample: Addressing Materiality

From December 2020 through March 2021, Julian engaged in weekly urine screens and substance use treatment at *Grand Valley Treatment Center*. **From December 8 to March 26, Julian's urine screenings were negative for drugs and alcohol.** On December 8, 2020, his counselor, Destiny Powers noted "showed for tox screen and group therapy. **Quiet and suspicious. Muttering. Little interaction with staff. Refused group.**" On December 22, 2020, Destiny reported, "**clean screen from the previous week. Seemed very agitated and tearful.** Refused group but asked to speak to me one on one. Julian expressed recurring nightmares and trouble getting out of bed every morning." Later into the program, on March 26, 2021, Destiny stated, "**Negative urine screen... Julian sat away from the group during therapy and quietly cried.** Informed this writer that he is experiencing recurring thoughts of harming himself. We called the crisis intervention team to help arrange for an intake at our inpatient program." After this Julian was hospitalized for 10 days and did not return to *Grand Valley Treatment Center* after his hospitalization.

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Code Of Federal Regulations

DRUG ADDICTION AND ALCOHOLISM

§ 416.935. 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, unless we find that you are eligible for benefits because of your age or blindness.

(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 8151, Feb. 10, 1995]

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Amanda Starkey

astarkey@prainc.com

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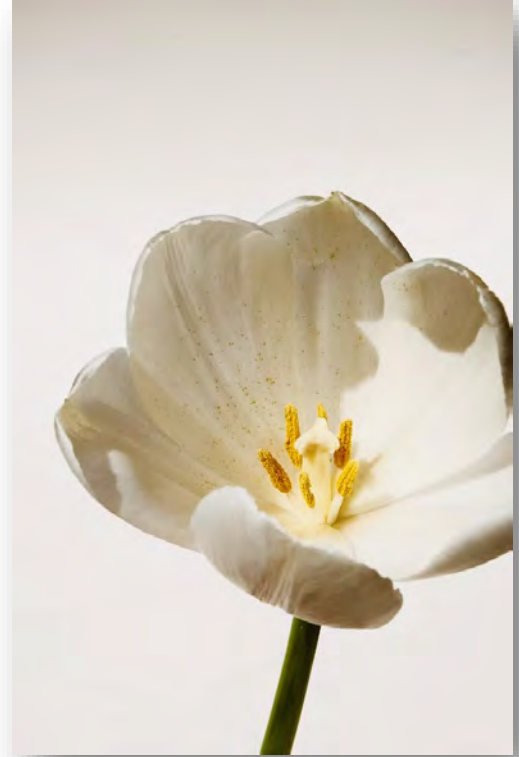
HEADING
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Laura “Bug” Carlson, MFA, SOAR Executive Director, Local Lead, Heading Home, Albuquerque, New Mexico

Making the Most of the MSR for Applicants with Substance Use Disorder (SUD) Histories

Review: The Purpose of an MSR

"Assist in the process of getting to a disability allowance by advocating for the person's personal experiences, presenting supporting medical evidence from the record, and obtaining collateral sources (3rd parties, etc.) in service of demonstrating the marked functional limitations experienced by the person with a disability that keeps them from performing work at Substantial Gainful Activity (SGA) levels and to provide an index to the wider lens of the application."



What Should the Substance Use Section Do?



Goal: Demonstrate that substance use is not material to the disability, i.e., take the substance use away, and the disability remains

How to do so:

- Document co-occurring illness
- Describe the context of their use
- Quote from the record when available
- Double check UAs (Urinalysis)
- Provide additional research/information

Examples: Ineffective Description (Edgar)

- Edgar's father is the historian of his son's substance use history, which is recorded in his many medical records.
- The medical records indicate that many of the Emergency Department (ED) visits were related to issues with substance disorientations.
- He says that Edgar started using around the age of 14, recorded in UNMH Medical Records (2/29/19):
 - “Started to experiment with benzodiazepine, Benadryl and Delsym. He enjoys the dissociative symptoms that he experiences with these medications.” Edgar admits to using “methamphetamine (meth) and heroin when he has money.”

Examples: Ineffective Description (Donald)

- Donald says he started using substances, specifically alcohol when he was in middle school. Before he dropped out of high school during his junior year, he says he got into a lot of trouble at school, had attendance issues, and his grades went down. “I had a lot of friends in high school who were like me, and we hung around together to get high.” “I continued to do all sorts of drugs for a long time, and there was a time for about seven years while I was driving trucks that I was not using alcohol or drugs.”
- Albuquerque Health Care for the Homeless, on 3/18/22, medical records show:
 - Donald says that “he has been drinking a fifth of whiskey daily since he was a kid”. He replied to the question, “How many times in the past year have you used an illegal drug or used a prescription for non-medical reasons?” He says he has been on “Tetrahydrocannabinol (THC), fentanyl, and methamphetamine (meth) too many times.”
 - Also includes reports of extensive history of opiate use, heroin, fentanyl, methamphetamine, alcohol, and marijuana use, last use 2 days ago. Occasional IV use, primarily inhaled use. History of 4 hospitalizations for detox from various substances, has had several withdrawal seizures – most recently in November 2021. History of going to Medication-Assisted Treatment (MAT) detox multiple times, was sent to Psychiatric Emergency Services (PES) to get medication, and then they wouldn’t transport him back.

Example: Neutral Description (Rose)

- Medical Documentation from Presbyterian Medical Center:
 - “Daily intake is about a fifth for shakes, headaches, seizures, including meth 2x a week, and cannabis”.
 - **Rose says she has always struggled with substance use, including the use of alcohol, beer, or a stronger drink, to alleviate body pain and headaches.**
 - Her mother is a better historian, she says that Rose grew up with “no substance or alcohol in the household.” She is adamant that Rose’s substance use situation started when she was in high school and continues today.
 - Rose’s explanation of substance use is, **“I use alcohol and other substances to help me with the body pains and headaches.”** She is also considering attending Substance Abuse Rehabilitation in the next few months.”

Example: Effective Description (Rachel)

- Rachel is diagnosed with substance use disorder, primarily methamphetamine with an alcohol use disorder in remission.
- Rachel states she was an “alcoholic” from the age of seven until her divorce from her first husband in 2008. She states she has used methamphetamine as an alternative to alcohol as she finds her behaviors are less severe than when she is using alcohol. She denies opioid use.
- When first interviewing Rachel, she admitted to smoking small amounts of methamphetamine, “Because of all my stress.” **Rachel states her continued use of substances is because it helps with her physical and emotional pain.**
- Her partner is a prominent pressuring factor for her use and encourages her use even using her chronic pain to manipulate her into using methamphetamine. Rachel states, “He will tell me that I am hurting, and I need more meth, but I tell him I don’t want to use meth anymore.” Rachel says about her partner, “I need to get away from that man. **He just causes me stress, and I am in so much pain because of the stress he causes.**” He continues to purchase methamphetamine even when she expresses her desire to quit.

Example: Substance Use Coercion (Rachel)

- Rachel's medical records repeatedly note a process known as "substance use coercion," which **"occurs when perpetrators of intimate partner violence undermine and control their partners through substance use related tactics, and actively keep them from meeting treatment and recovery goals"** (US Department of Health and Human Services, et al., Substance Use Coercion Policy Brief, 2020). One of the main mechanisms of substance use coercion is, "Sabotage their partner's recovery efforts by deliberately keeping substances around the home," and "Force, initiate, or pressure their partner to use substances."
- Street Connect Navigator, Josie R says, " Rachel only began using meth with this abusive partner." On March 25, 2022, during a visit with a psychiatrist, Dr. Tina Adams at Presbyterian, notes that Rachel reports she, "only smokes meth when he is around." **Dr. Adams also diagnosed Rachel with unspecified recurrent depressive disorder, severe as a co-occurring disorder to her substance use, not material to.** Rachel reports lifelong depression and previous suicide attempts during times when she was not using.

Example: Documented Periods of Nonuse (Rachel)

- As of this Writer's last interview with her in September 2022, **she was six weeks with nonuse. Now that she is not using alcohol or drugs, her chronic pain has worsened, and her depressed and anxious mood persists.**
- On August 31, 2022, Laura Wolf, PA-C notes that "Rachel's mood is anxious, fearful, and she exhibits flights of ideas, pressured speech, disheveled, disorganized, having difficulty sleeping, with poor insight and judgment."
- During this visit, Rachel was experiencing significant pain due to both having been assaulted only days before by her partner, as well as because, when asked how she is **coping with not using alcohol or drugs she states that she does have cravings but realizes that she can no longer live this way. She thinks that is why her hip hurts so severely.**
- She reports that she has been heavily using meth for the past 5 years and has not really felt anything. She admits that methamphetamine did help relieve her chronic pain, but also understands that continued use will have devastating effects to her already diminishing health.

Example: Neurological Impact (Rachel)

- When this Writer asked her case worker/navigator, if she believed Rachel's active methamphetamine use had to do with her inability to focus or concentrate, she said that she did not think so, but does believe **Rachel may suffer from a form of dementia from sustained alcohol use over the years.** Case worker is currently working on a referral for neuropsychological evaluation.
- Within three weeks of working with Rachel, **this Writer witnessed a decline in her methamphetamine use. It was very apparent that she was in extreme pain, as evidenced by her slow walking, and the grimacing of her face.** She only wants to take gabapentin for her pain as she does not like opioids. Her desire to stop using was evidenced by her strong efforts to abstain from methamphetamine use, even if it meant enduring pain.
- At the time of completing this summary, Ruth has had six weeks of not actively using. **She still experiences mental impairments that appear to be long-term neurological damage from decades of alcohol use disorder and methamphetamine disorder.**

Example: Another Effective Description (Paige)

- Paige struggles with a severe substance use disorder. She uses methamphetamine, cocaine, and barbiturates. **She had periods of nonuse concurrent with continued symptoms while incarcerated** at *Western New Mexico Correctional Facility* from 2010-2016 and *Metropolitan Detention Center* in Albuquerque. Regarding the relationship between her substance use and her psychiatric illnesses, a *Presbyterian* hospitalization record from October 20-22, 2016, notes, “My hope is that her psychiatric illness can be addressed once she returns to baseline from the methamphetamine and sedatives given here.”
- **Paige’s substance use is secondary to her psychiatric struggles, although some of her symptoms are worsened with methamphetamine use, including persistent delusions of parasitosis, in which she has a deeply held belief that she is covered in bugs and insect bites.** This is evidenced in her many ER visits for itching and frequent infections of itching sites. Despite medical professionals insisting there are no insects crawling on her, she says they have, “eaten my back up and are starting on my neck.” Paige genuinely believes these bugs are all over her and refuses psychiatric evaluation. She has stated she needs “intensive care for getting these bugs out of me” and has “refused to participate in any conversation other than those regarding infestation.” (*Lovelace Medical Center, 7/23/2020*). This record also notes that a psychiatric evaluation is needed.

Example: Persistent Symptoms (Paige)

- The locus of Paige’s psychiatric illnesses, e.g., her extreme rage, memory issues, and inability to care for herself, are all **connected to her post-traumatic stress disorder (PTSD), bipolar disorder, schizophrenia, and history of trauma.** The recurrent trauma of being a woman who is unhoused and vulnerable-to-exploitation with serious mental illness, experiencing regular sexual and physical assaults, paired with losing her children and experiencing homelessness at 15 years old, **led her to use substances to escape her symptoms.**
- While meth use can amplify violence and aggression, according to Karen Vernie, LMSW of Heading Home, *“Even when she appears to be functioning fairly well, she still goes from 0-100. I have not had experiences with her outside of her going from 0-100.”* **Paige’s extreme aggression, a symptom of both her bipolar disorder and PTSD is not only magnified by her substance use disorder but lasts beyond her use, as these are severe behavioral issues during periods of nonuse when she is incarcerated.**

Example: Brain Impact with Long-Term Use (Paige)

- Court and medical records indicate Paige has been using substances for at least 15-20 years. As Paige's substance use is long-term, it has inevitably altered Paige's brain in ways that will last beyond her substance use disorder.
- Intensive research on long-term meth use effect on the brain shows “structural and functional changes in areas of the brain associated with emotion and memory.” (*National Institute on Drug Abuse*). **Paige's brain has been altered due to her meth use in a manner that has aggravated her mental illnesses and her suspected developmental disabilities.**
- Long-term methamphetamine use leads to “damage and death to the cells of the prefrontal cortex of the brain, where a number of important functions, such as attention, planning, abstract thinking, judgment, etc., occur.” ([American Addiction Centers](#)). These effects are magnified with a history of traumatic brain injury, as we see in Paige.
- Even with long-term abstinence in the future, Paige may only ever be able to recover partially, **the effects on her brain and nervous system from prolonged meth use coupled with severe trauma, she will likely always function at a reduced capacity.**

Example: Competency to Stand Trial (Paige)

- Paige has been arrested dozens of times, but in the last few years, many of the charges against her were dropped due to competency concerns. Competency to stand trial requires two main tests: cognition and cooperation. For Paige to be found “competent,” she must be able to understand the nature of the proceedings being conducted and be able to cooperate with her attorneys to support her case. Paige has been found not competent to stand trial in multiple court cases, meaning she is found by a licensed psychiatrist with a forensic specialty that she is not able to understand the proceedings of the case and that she is not capable of cooperating with her own defense team.
- ***A competency evaluation does not refer to Paige’s mental state at the time the alleged crime was committed, but to her mental state at the time of proceedings, during which she is not actively using any illegal substances while she is held in jail.*** She has been deemed incompetent to cognitively understand, process, and assess court proceedings and be able to cooperate in them. Despite over forty criminal cases brought against Paige, she is now unable to stand trial for them due to her inability to understand anything related to the proceedings, including her own involvement. For a motion of competency to be heard, one must present evidence of psychiatric records, current treatment for mental illness, and/or diagnosis of disorders that affect cognition. **Dismissals of incompetency evaluate the present cognition of Paige but also her long history of mental illness and struggle with cognitive functioning.**
- **The scope and effect of Paige’ mental illness on her ability to understand is far beyond her substance use, which is secondary to her schizophrenia, PTSD, and bipolar disorder.**

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Laura "Bug" Carlson

laurac@headinghome.org

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A Conversation
with Elisa,
SOAR
Beneficiary
from Heading
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Questions and Answers



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Additional Resources

- [SOAR-MSR-Interview-Guide-and-Template \(samhsa.gov\)](https://www.samhsa.gov)
- [Sample Medical Summary Reports | Active Substance Use | SOAR Works! \(samhsa.gov\)](https://www.samhsa.gov)
- [Understanding and Documenting Opioid and Other Substance Use Disorders for SSI/SSDI Claims | SOAR Works! \(samhsa.gov\)](https://www.samhsa.gov)
- [Co-Occurring Substance Use: Material to Disability? | SOAR Works! \(samhsa.gov\)](https://www.samhsa.gov)
- [SSR 13-2p EVALUATING CASES INVOLVING DRUG ADDICTION AND ALCOHOLISM \(DAA\)\(ssa.gov\)](https://www.ssa.gov)
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