

Welcome

SVP 10: Responding to Hypotheticals



Donahue v. Barnhart, 279 F.3d 441, 446 (7th Cir. 2002)

The requirements of Federal Rules 702 (the testimony be based upon sufficient data; (2) the testimony satisfy the aspects of reliability; and (3) the expert applies the principles and methods reliably to the facts of the case), is **NOT** implemented in Social Security disability hearings which are a hybrid of the adversarial and the inquisitorial models.

However experts should use reliable methods and Social Security disability process requires a showing of substantial evidence...

"Evidence is not 'substantial' if vital testimony has been conjured out of whole cloth".



What is a Hypothetical?

- Set of facts that as close as possible relates to a hypothetical individual which is consistent with the claimant's limitations.
- Should be based on a medically determinable impairment when possible.
- Should be specific to the hypothetical individual.
Should be well constructed.
- What is a Skill? SSR 82-41, CFR 404.1568, 416.968
- A skill is knowledge of a work activity which requires the exercise of significant judgment that goes beyond the carrying out of simple job duties and is acquired through performance of an occupation which is above the unskilled level (requires more than 30 days to learn).
- It is practical and familiar knowledge of the principles and processes of an art, science or trade, combined with the ability to apply them in practice in a proper and approved manner. This includes activities like making precise measurements, reading blueprints, and setting up and operating complex machinery.
- It gives a person special advantage over unskilled workers in the labor market.



The VE's Role

- It is not your role to try to find jobs at every level of RFC
- It is your role to provide an opinion about the occupations and numbers of jobs if the hypothetical individual had limitations as defined by the hypothetical question.



Responding to the Hypothetical

- It is important to respond only to the information or limitations in the hypothetical.
- Other factors may have been presented during the hearing, but your responsibility is to respond only to the hypothetical given to you.
- Remember that you cannot look at accommodated work. Or, consider the ADA and its parameters, or requirements by the employer, when giving jobs or job numbers.
- Do not bring up to the Judge, information from the testimony information that not include in the hypothetical .



Responding to Hypotheticals

- The first hypothetical (step 4) : Can a person with hypothetical physical and mental limitations the ALJ specifies could do the claimant's PRW.
- Next hypothetical (step 5) Can the claimant can make an adjustment to other work that exists in the national economy, considering the claimant's age, education, work experience, and RFC. (The ALJ will specify what facts the SSVE is to assume).
- If yes, the SSVE will give examples of those occupations, Information about the numbers of jobs in each occupation both locally and nationally, and comments if the occupation is performed as listed in the DOT.



Physical and Mental Limitations

- The Judge, then representative, may offer exertional, non-exertional, and mental limitations for an individual matching the claimant's age, education, and prior work experience.
- Be sure that exertional demands of the job, (i.e., reaching, handling, etc.) are within the parameters set forth.
- Be sure that the non-exertional demands (i.e. vision, hearing, environmental, etc.) are within the parameters set forth.
- Be sure that the mental demands (i.e. concentration, persistence, pace, engaging with co-workers, supervisors, etc) are within the parameters set forth.



Sample Case: Mr. Martin

- Age 48
- 8th grade education - able to read but has problems comprehending what he has read. Able to make change and do simple math.
- Low back fusion, right shoulder surgery, left shoulder impingement; requires neck & back surgery
- Worked 20+ years as an order picker then fork truck driver in a food warehouse which distributes food to grocery stores.
- He must now regularly elevate his foot to relieve the discomfort and remove shoes periodically throughout the day.
- Currently has problems with sensation to hot and cold in his hands as well and has burned himself when attempting to shower because the water didn't seem hot when he felt it before he got in.
- Has diabetes - does not require insulin injections. Charcot foot syndrome.
- Right foot required significant surgical intervention after great deal of loss of sensation in both feet.
- Only knew there were problems with infection from the odor. After surgery had longstanding problems with gait. Eventually great toe removed.
- Standing/walking significantly limited.
- Wearing shoes for more than **A few hours per day increases** risk of infection.



Mr. Martin - Hypotheticals

Can you please identify the past relevant work in terms of description, skill level, and physical demands?

Assume the claimant's age, education, and prior work.



Mr. Martin - Hypotheticals

Hypothetical 1

- Light work with an at will sit stand option.
- No more than occasionally climbing stairs.
- Can understand and perform moderately complex (4-5 step) instructions.
- Are there any jobs with transferrable skills?
- Are there any other jobs?



Mr. Martin - Hypotheticals

Hypothetical 2

- Sedentary work with at will sit/stand option.
- Occasional pushing/pulling at the light level.
- No ladders, ropes, scaffolds, unprotected heights, and only occasional walking on uneven surfaces. 4-5 step instructions.
- Are there any jobs with transferrable skills?
- Are there any other jobs?



Mr. Martin - Hypotheticals

Hypothetical 3

- Sit/stand option with the need to use an assistive device when ambulating.
- Occasionally to frequently elevating leg during the day to relieve pain.
- Ability to remove shoes as needed throughout the day.
- Are there any jobs with transferrable skills?
- Are there any other jobs?



References

- SSR 82-41(4)(a)
https://www.ssa.gov/OP_Home/rulings/di/02/SSR82-41-di-02.html
- POMS DI 25015.017
- US Bureau of Labor Statistics:
- County Business Patterns (U.S. Census)
- Current Employment Statistics (State)
- Census of Employment and Wages (State)
- Local Employment Dynamics (U.S. Census/U.S. Department of Labor)
- Economic Census (U.S. Census)



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References Cont'd

- Occupational Employment Statistics (State/U.S. Bureau of Labor Statistics)
- Occupational Outlooks and Career Information (State/U.S. Bureau of Labor Statistics)
- Growth Occupations Lists (State/U.S. Bureau of Labor Statistics)
- Prevailing Wages Databases (State)
- Donahue v. Barnhart, 279 F.3d 441, 446 (7th Cir. 2002)



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