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The Role of Obesity in Federal Disability Determinations

Jody Schimmel Hyde

The obesity rate in the United States has grown dramatically over the last several decades (Ogden et al. 2014; Finkelstein et al. 2012). Despite signs that this growth has leveled off in recent years, rates of obesity among applicants for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) continue to rise (Schimmel Hyde et al. 2016). The combination of increased childhood obesity and its cumulative health effects suggest that the impact of obesity on disability programs could be felt for years to come. This brief describes how obesity is considered in disability determinations under current policy and how applicants with obesity fare as a result.[1]

How is obesity considered in SSA's disability determination process?

Obesity has long played a role in disability determinations, though its consideration has changed over time. Before October 25, 1999, obesity was a discrete adult listing in SSA's Listing of Impairments, and adjudicators were told to make an allowance for benefits from applicants on the basis of extreme obesity accompanied by at least one of five medical criteria (SSA 2002). However, as a result of regulations promulgated on October 25, 1999 (20 CFR, Subpart P, Appendix 1), adjudicators may no longer make an allowance based on obesity alone. Instead,

[1] The material in this brief is drawn from two papers on the role of obesity in SSA's disability determinations. See Stahl et al. (2016) and Schimmel Hyde et al. (2016) for more details about the study's population, methods, and findings.

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they may consider obesity to the extent that it worsens the severity of other listed impairments. Applicants with obesity may still meet the criteria of another non-obesity listing or may be approved based on SSA's medical-vocational guidelines.

The change in policy in 1999 was intended to reduce awards to applicants with obesity who were able to engage in substantial gainful activity (SGA). SSA noted in the August 24, 1999, issue of the *Federal Register* that the obesity listing criteria "did not represent a degree of functional limitation that would prevent an individual from engaging in any gainful activity…. We concluded that, because of the widely varying effects obesity and related impairments may have on an individual's functioning, the only way we could be confident that individuals would be disabled under the listings would be to require the other impairments to meet or equal the severity of their respective listings" (64 FR 163).[2]

So that adjudicators would continue to consider the effects of obesity on functioning, SSA added the following language to the Cardiovascular, Respiratory, and Musculoskeletal body system listings (20 CFR, Subpart P, Appendix 1):

- "Obesity is a medically determinable impairment that is often associated with system disorders—disturbance of these systems can be a major cause of disability in individuals with obesity;
- The combined effects of obesity with impairments can be greater than the effects of each of the impairments considered separately;
- When determining whether an individual with obesity has a listing-level impairment (or a medically equivalent combination), and when assessing residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity."

As described in the *Federal Register*, this language was meant to allay public concern that the regulatory change was intended to penalize applicants with obesity. Under the new regulations, there is no numerical threshold for severity; instead, the adjudicator must consider the effect of obesity along with other medical conditions on a person's ability to function (SSA 2002).

The 1999 regulatory change also included a significant change in how SSA measured obesity. Before October 1999, SSA defined obesity as body weight that was 100 percent above the desired level, where "desired" was determined by using height and weight tables. Since obesity was removed from the Listing of Impairments in 1999, SSA has measured obesity using body mass index (BMI), and, consistent with clinical guidelines, defined a BMI of 30 or higher as obese. To show the practical implications of this change, before 1999 SSA would have classified an applicant who was 5'5" tall and weighed 284 pounds or more as obese—equivalent to a BMI of 47.3. Such an applicant would have met the obesity listing. Since the regulatory change, an applicant of the same height would be considered obese at a weight of 180 pounds or more. For an applicant at this weight, adjudicators would consider the effect of obesity along

[2] Using this terminology, conditions which "meet" the listings are found on a set of conditions that SSA has determined to be significant enough to warrant a disability allowance; other conditions not on that list may still be found by reviewers to "equal" a listed impairment.

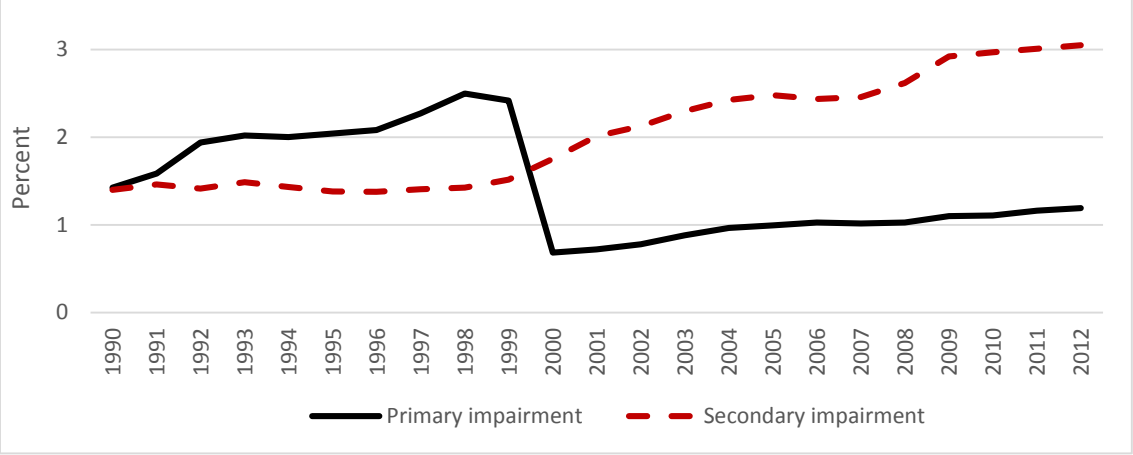
with other medical conditions on the person's ability to function, but they would not award benefits based on obesity alone, regardless of the applicant's BMI.

How did the 1999 regulatory change affect applicants with obesity?

Using SSA administrative data, Stahl et al. (2016) conducted an analysis of initial applications to SSDI and SSI were filed and had received a medical determination from 1990 through 2012. The authors identified all applications in which obesity was recorded as a primary or secondary impairment by the disability reviewer. In those cases, they noted the body system the reviewer recorded as most affected. The authors found that:[3]

- State disability examiners, who make the initial medical determinations, reported obesity as a primary or secondary impairment in a rising share of cases before the regulatory change in 1999. That share declined precipitously after the regulatory change, before steadily rising through 2012 (Figure 1). By 2004, the share of applications with obesity recorded as a primary or secondary impairment was as high as before the 1999 change.
- Before 1999, obesity was the primary impairment in the majority of applications that included the condition as an impairment, consistent with regulations that reviewers could make an allowances based on the obesity listing. After 1999, obesity was much more likely to appear as the secondary impairment.
- Before the regulatory change, 80 percent of applications with obesity recorded as an impairment that received an allowance at the initial level, received a benefit award because their impairment was found to meet or equal the listings. After the regulatory change, this share fell to 25 percent (Figure 2). The allowance rate for applications with obesity recorded as a primary or secondary impairment stayed about the same across the period, but the majority of post-1999 allowances were made under medical-vocational guidelines rather than because the applicant's impairments met or equaled the listings.

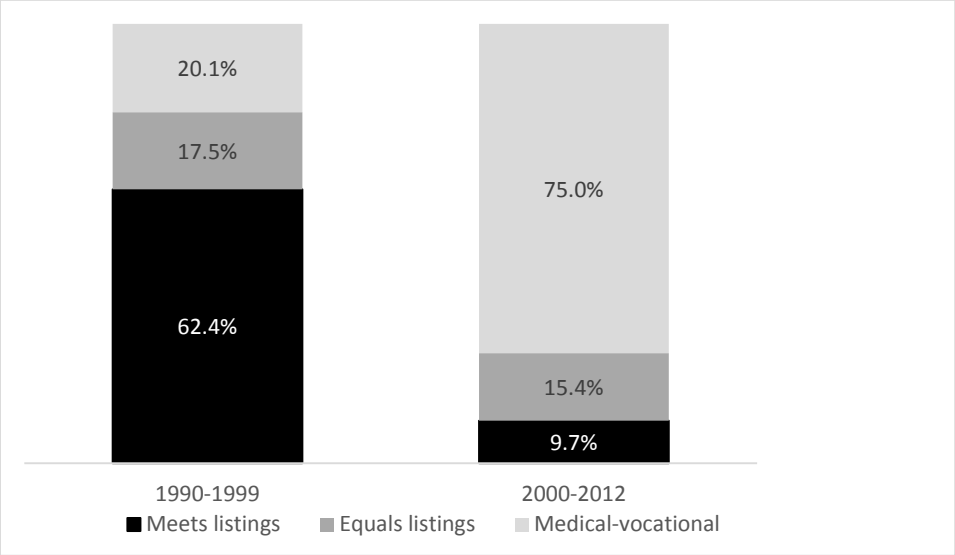
Figure 1. Share of SSDI applications with obesity recorded as an impairment



Source: Stahl et al. (2016).

[3] Figure 1 shows statistics for applications to SSDI; patterns for SSI were similar and are included in Stahl et al. (2016).

Figure 2. Basis of initial allowance among SSDI applications with obesity recorded as an impairment



It is impossible to disentangle the effects of removing obesity from the Listing of Impairments and the simultaneous change in the obesity definition on applications and allowance rates for applicants with obesity. The shift in the obesity standard—from "desired" weight to the lower BMI standard—implies that, in the absence of the delisting, SSA would have classified many more applicants as "obese" after 1999, all else equal, if adjudicators always reported obesity as a primary or secondary impairment for those with a BMI of 30 or more. The rise in applications with obesity recorded as an impairment might reflect the revised (and arguably more lenient, on strictly numeric terms) obesity definition, the growing prevalence of obesity among applicants, or disability reviewers' increased tendency to consider obesity (along with other medical conditions) in determining the severity of functional impairments.

How common is obesity among applicants under the BMI standard?

Many more applicants are obese than those who have a recorded obesity impairment. In recent years, around 4 percent of initial SSDI applicants have obesity recorded as an impairment (Figure 1), but about 40 percent of applicants meet a BMI-based obesity criterion (Schimmel Hyde et al. 2016). Although meeting the BMI standard of obesity does not necessarily imply functional impairments, it may mean the applicant has co-occurring impairments or that disability examiners may have to make complex assessments about the role of obesity in the person's functioning. Schimmel Hyde et al. (2016) considered the experience of applicants with obesity at several levels—the initial determination, reconsideration, and appeals with an administrative law judge (ALJ).

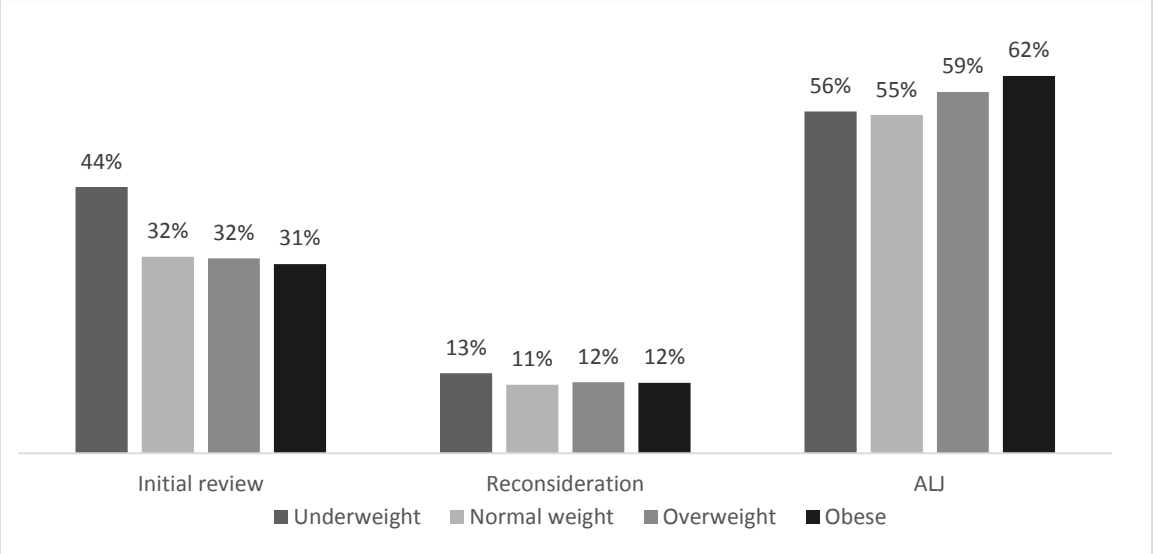
Under current regulations, how do allowance rates for applicants with obesity compare with those of their non-obese peers?

Comparing allowance rates at the initial and appellate levels suggests that obesity plays an important role in many cases that are initially denied but allowed after appeal. Among applications adjudicated in 2013, the initial allowance rates for applicants with obesity (based on

BMI standards) were slightly lower than for their normal-weight counterparts (Figure 3). At the initial level, allowances are much higher for underweight applicants than for others, possibly reflecting serious and often terminal medical conditions among those who are underweight. In states that reconsider initially denied applications, allowance rates for applicants with obesity were also about the same as for other BMI groups. This could reflect the fact that at the time of reconsideration, no additional information was available to the examiner than when the initial decision was made.

At the ALJ level, the findings are quite different: ALJs are much more likely to allow applications from those with obesity than other BMI groups (Figure 3).[4] This may be because ALJs have evidence about the relationship between obesity and the level of impairment that is not available at earlier levels of review. State adjudicators do not normally interact directly with applicants, whereas those who appeal to an ALJ usually have an in-person hearing before the judge. They are also more likely to be supported by a professional advocate. Hence, they may be able to provide information about the severity of their impairment that cannot be gleaned from the medical evidence available to the adjudicator at the state DDS office. This may make it easier for the ALJ to verify the combined effect of medical conditions (hypertension and diabetes, for example) and obesity on the severity of the applicant's impairment. The fact that an application was initially denied means that, in the state's opinion, the original medical record did not show that the applicant's condition met or equaled a medical listing. Thus, compared with DDS examiners, ALJs may be more focused on determining whether the applicant's medical condition, in combination with obesity, renders the person unable to engage in substantial work, given his or her age, education, and past work.

Figure 3. Share of disability determinations in 2013 resulting in an allowance, by level of review and BMI category of applicant



Source: Schimmel Hyde et al. (2016).

[4] Because these statistics are based on determinations made in 2013, these allowance rates do not represent the overall experience of a given cohort. Those who appealed to the ALJ in 2013 likely received their initial determination before 2013, given processing times.

Allowance rates at the initial and ALJ levels in 2013 suggest that, except for those with malignant neoplasms, applicants with obesity are likely to face higher levels of review before receiving an allowance than their lower-weight peers (Table 1). At the initial level, there is no strong uniform pattern of allowance rates for people with normal-through-obese BMIs within the impairment groups, except for a decline in allowance rates as BMI group increases for malignant neoplasms and an increase for musculoskeletal conditions. In contrast, at the ALJ level, applicants with obesity have the same or higher allowance rates than normal or overweight applicants in every impairment category, without exception. It is also worth noting that the positive relationship between obesity and initial allowance rates for musculoskeletal conditions is not repeated for respiratory or cardiovascular conditions, even though the listings for the latter, like those for musculoskeletal conditions, remind adjudicators to explicitly consider obesity when assessing the severity of an applicant's condition.

Table 1. Allowance rates in 2013, by body system and level of adjudication

	Underweight	Normal weight	Overweight	Obese
Initial Level	**43.6**	**32.2**	**31.9**	**31.0**
Musculoskeletal	23.5	22.9	26.9	29.6
Mental disorders	33.7	27.7	27.4	25.9
Neurological	54.2	42.5	44.1	41.3
Cardiovascular	40.3	37.3	36.7	36.3
Malignant neoplasm	89.9	82.6	77.4	71.4
Special/other	3.6	2.2	2.9	9.6
Respiratory	61.2	42.9	38.7	38.3
Endocrine	17.0	13.7	15.7	16.1
All other	49.5	37.6	38.9	39.4
ALJ Level	**56.3**	**55.6**	**59.4**	**62.1**
Musculoskeletal	75.3	74.5	77.6	78.0
Mental disorders	66.4	66.8	69.2	70.7
Neurological	76.3	76.7	78.5	81.0
Cardiovascular	80.6	77.8	79.1	80.8
Malignant neoplasm	91.4	89.6	90.0	90.1
Special/other	64.9	65.1	65.5	65.8
Respiratory	75.2	71.6	72.5	73.0
Endocrine	76.4	73.0	71.6	73.1
All other	77.6	75.7	77.1	79.7
Missing	3.2	2.3	2.0	2.1

Source: Schimmel Hyde et al. (2016)

Note: These conditions are not an exhaustive list, but were selected because they were the most prevalent among initial applicants in 2013. The body system recorded at the ALJ level may not necessarily align to those at the initial level due to differences in the review process. This is particularly evident in the share of applications at the ALJ level with a missing body system (nearly 20 percent in 2013), as described in more detail in the source article.

Implications for policy

Taken together, the study findings suggest that, at least in recent years, applicants with obesity are less likely to be awarded benefits based on meeting the medical listings, and a larger share are awarded benefits only after an appeal at the ALJ level. From SSA's perspective, that means devoting more resources to adjudicate claims from applicants with obesity. From the applicant's perspective, that means a longer wait for a final decision.

Although the 1999 regulation changes were meant to minimize awards to applicants with obesity who did not have significant functional limitations, it's unclear whether this goal was met. Because adjudicators must now consider the way in which obesity affects functioning—but do not have a set point at which it becomes severe or automatically results in an allowance (Stahl et al. 2015)—the regulatory changes might have increased the effort required to adjudicate such cases without reducing the number accepted. Thus, a state examiner may deny benefits to an applicant who is obese because his or her medical record doesn't fully explain the effect of obesity on the applicant's medical condition or residual functional capacity, but the applicant and the applicant's advisor may be able to demonstrate the consequences of obesity to an ALJ, resulting in an allowance.

In recent decades, obesity prevalence has been increasing at all ages. Over time, this may have a lasting effect on the functioning of working-age adults, especially as obese children grow up. SSA cannot readily change the profile of applicants applying for benefits, but it can change the way it considers obesity in its disability determinations. One option could be for SSA to establish minimum BMI standards in the listings for other conditions, which would make it easier for examiners to make an allowance on the basis of the listing if the person's BMI exceeds the standard. That would presumably increase initial allowances and reduce allowances after appeals, but it might also increase the number of total awards.

In a companion brief (Schimmel Hyde 2016), we discuss another approach that is likely to make it harder to adjudicate cases involving obesity but would reduce allowances to applicants with obesity: adopting a "material to disability" standard for obesity that would be conceptually similar to the agency's standard for drug and alcohol addiction. Under this model, applicants with obesity would receive a disability award only if adjudicators determine that the applicant could safely lose weight and would still qualify for benefits thereafter. However, our findings suggest that this type of determination could be very challenging for reviewers—likely requiring more effort for such applicants than the current process. It would also have negative consequences for applicants with obesity—lower allowance rates and longer waits for final decisions—unless they are induced to lose weight and can return to work, similar to effects found after the change in DAA policy (Moore 2015).

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