

**HOW TO APPLY FOR
SOCIAL SECURITY DISABILITY BENEFITS
IF YOU HAVE
MYALGIC ENCEPHALOMYELITIS/
CHRONIC FATIGUE SYNDROME
(ME/CFS)**

With Additional Information on Applying for Benefits
If You Have Fibromyalgia

Copyright
Kenneth S. Casanova
Massachusetts ME/CFS & FM Association
2021

DISCLAIMER

The Massachusetts ME/CFS & FM Association serves as a clearinghouse for information about Fibromyalgia Syndrome (also known as Fibrositis).

This book is intended to give people ideas as to what is involved in qualifying for some programs which provide disability or other benefits. The book is not intended to cover all programs and is not intended to be a substitute for the advice of a competent attorney. This book reflects an accumulation of opinions and experiences of different individuals and advocates and nothing more. For legal advice it is imperative to consult with an attorney or qualified legal advocate of your own choosing. Further, the law is fluid and what applies in Massachusetts at a particular time may not apply elsewhere and visa-versa. Moreover, what is valid today in this booklet when it goes to press may not be valid after it is published. The Massachusetts ME/CFS&FM Association, Kenneth Casanova, and any and all persons who participated in authoring, contributing to, or producing this booklet assume no responsibility for any use of this booklet by its readers or for any results or consequences of such usage or further, for any other activity which occurs from the reading of the booklet or the application of its content

This document may be downloaded or reproduced without permission as long as copyright notice and attribution to the Massachusetts ME/CFS & FM Association is made, that no profits are generated from its distribution, and that this statement is also included. This document may not be distributed or sold by any organization, incorporated or unincorporated, other than the Massachusetts ME/CFS & FM Association.

HOW TO USE THIS BOOK

The book is very long because there are so many aspects of the Social Security Disability process, and each requires detailed discussion in order that you will be well-informed so that you can make the best decisions possible.

A sick individual will find it difficult to read through this booklet except during times when they are feeling better ; this book is meant to be read in steps according to what you need to know, according to what step of the Social Security process you are on.

Applying for Social Security Disability is often a long-haul process, so take it one step at a time, and learn what you need to at each stage. Just learn at your own pace – or if you have a family member or friend who can help you learn from this book, all the better.

Obviously this book is meant to be comprehensive – so as not to leave out anything that would give you the best chance to win your case.

The book is not meant to be read through entirely. You should use the Table of Contents to find the information you need as follows:

If you want to know if you are potentially eligible to apply, start by reading the Introduction.

If you decide to apply, then you must read the main body of the booklet after the Introduction, as well as Appendix I for ME/CFS; and Appendix III for fibromyalgia. ***Also you should absorb Appendix IV, since it gives you a wealth of information on how to document the illness.*** If you already have an up-to-date and well-documented ME/CFS diagnosis, you may want to skip the section on “Obtaining a ME/CFS Diagnosis.”

It is very important that everyone read, no matter what stage you’re involved in, Appendix I on the **2014 Social Security ME/CFS Ruling** because it’s so important. Also, you must read the Social Security Guidance for providing medical evidence: **“Providing Medical Evidence for Individuals with Myalgic Encephalomyelitis/Chronic Fatigue Syndrome”**, and make sure your physician(s) have a copy.

For Fibromyalgia sufferers many sections of this booklet apply generally to fibromyalgia disability applications. There are also sections that apply specifically to FM, particularly the **2012 Fibromyalgia Social Security Ruling** (see Appendix III.)

If you reached the Administrative Law Judge hearing stage for ME/CFS, turn to Appendix I, IV and V. If you’re getting reviewed when you are on Disability, turn to Appendix VIII.

If you are a lawyer and are looking for positive legal precedents for winning ME/CFS or FM Disability claims, see Appendix VII.

If you are applying for disability through your employer, read Appendix IX and Appendix IV. You should also look at the section on Long-Term Employer Disability on our website: <https://www.massmecfs.org/disability>.

Also, on our website we have an entire disability section with many important articles relating to many different aspects of needed assistance for those who lose employment because of the illnesses. The disability home page is at <https://www.massmecfs.org/disability>

Also, there is a specific section on Social Security disability with articles and information that are an important supplement to this Booklet. Applicants should check this section out at <https://www.massmecfs.org/social-security-disability>

Just to let you know. This booklet has been an ongoing project since the early 1990s. It contains the advice of lawyers, disability specialists, and the experience of many disability claimants. I can say, from the reports of patients with ME/CFS, that it has helped many. I hope it helps you.

Ken Casanova

Appendix III – Documenting Fibromyalgia to Social Security

Fibromyalgia may strike individuals as a separate illness. Or individuals may have FM combined with ME/CFS. The following is a medical definition of FM:

“What is Fibromyalgia” (from the Mass. ME/CFS&FM Association brochure), and **the 1990 American College of Rheumatologists diagnostic criteria.**

“Fibromyalgia means ‘soft tissue and muscle pain’. The soft tissues are tendons or ligaments. FM is a chronic pain syndrome often associated with ME/CFS, and sometimes confused with it. The pain can be severe enough to interfere with routine daily activities. The pain migrates, can be achy, throbbing, shooting, or stabbing, and is worse in areas used most, like the neck or back. FM is associated with “tender points” which are painful when pressure is applied to them. Individuals often say they awaken feeling as if they hadn’t slept. A sudden onset of profound fatigue can occur during or following exertion. Many other symptoms common to fibromyalgia, including stiffness on waking, memory, and concentration problems, excessive sensitivity of the senses, headaches, Temporomandibular Joint Syndrome (TMJ), irritable bowel, and bladder and muscle spasm.”

For a percentage of FM patients the illness is disabling to the extent people are unable to work. The illness is recognized by Social Security. In 2012 the Social Security Administration issued a Ruling setting forth the standards for finding an FM patient disabled.

Social Security SSR 12-2p: Evaluation of Fibromyalgia

The following is a discussion of the Social Security Ruling for the evaluation of Fibromyalgia disability claims:

In 2012 the Social Security Administration issued a **Policy Interpretation Ruling SSR 12-2p: Titles II and XVI: Evaluation of Fibromyalgia**

This Guidance, currently operable in 2021, establishes criteria for how Social Security Disability claims examiners and administrative law judges are to evaluate fibromyalgia disability claims – and the standards that must be met for the approval of these claims. This Ruling covers both FM SSDI and SSI disability claims.

This review of the Ruling will provide a basic understanding of the Ruling, but we urge those applying for an FM disability or those assisting them, including physicians or other providers, as well as advocates and attorneys, to read the full Ruling which includes diagrams of tender points. See the Ruling at: https://www.ssa.gov/OP_Home/rulings/di/01/SSR2012-02-di-01.html

Disclaimer: *This review and evaluation of the Ruling contains the opinions of the author as to how claimants, physicians, attorneys and others might utilize the policies and language in the Ruling in the effort to document FM disability claims.*

While these opinions are based on the language of the Ruling, as well as extensive experience with the Social Security disability process, there is no way to accurately know in what manner the Social Security Administration and associated agencies will, in practice, implement the new Ruling. The Ruling will likely not be applied or interpreted uniformly at all administrative levels or geographic areas of evaluation. Some elements of the Ruling are likely to be given more emphasis than others; nor is the Ruling expected to remain static in its application over time.

In regard to the documentation of medical signs, symptoms, medical tests and functional evaluation, it is only possible, at this time, to make reasonable inferences from the Ruling's language as to how FM claims might be evaluated; however, these inferences cannot be expected to predict how the different signs, symptoms and tests will actually be evaluated.

Therefore, Kenneth Casanova, other authors/contributors of this booklet, and the Massachusetts ME/CFS & FM Association assume no responsibility for any use of this document by its readers for any results or consequences of such usage or further, for any other activity which occurs from the reading of the document or the application of its content. This document is not intended to be a substitute of the advice of a competent attorney who is well-versed on the Ruling and the disability evaluation process. For legal advice it is imperative to consult with such an attorney or qualified legal advocate of the reader's own choosing.

The Introduction to the Ruling begins: "FM is a complex medical condition characterized by widespread pain in the joints, muscles, tendons or nearby soft tissues that has persisted for at least 3 months... When a person seeks disability benefits due in whole or in part to FM, we must properly consider a person's symptoms when we decide whether the person has an MDI of FM."

[Note: In order to obtain disability benefits an individual must first be diagnosed by a physician to have a medically determinable impairment (MDI) – that is an accepted medical illness or condition that is diagnosed according to medically defined criteria. Fibromyalgia is a medically determinable impairment.]

However, the Ruling further states: "As with any claim for disability benefits, before we find that a person with an MDI is disabled, we must ensure there is sufficient objective evidence to support a finding that the person's impairment(s) so limits the person's functional abilities that it precludes him or her from performing substantial gainful activity."

Here Social Security makes a critical distinction between a person's self-report of symptoms – sometimes called "subjective" evidence -- and objective evidence, that is, detailed evidence from medical and other sources. Because FM is largely an illness defined by symptoms and a person's self-report of the severity of symptoms, it is critical also to fully document such objective

evidence – these different types of objective evidence will be fully discussed below.

The Introduction also states that not only must the person be diagnosed with FM, but that it must be so disabling as to prevent the person from engaging in “substantial gainful activity.” The Ruling also states: “If the person with FM is doing substantial gainful activity, we [will] find that he or she is not disabled.”

Comment: “Substantial gainful activity” in relation to FM may be ill-defined. Based on our experience with scores of ME/CFS claims, and advice from a number of experienced attorneys, any patient working for an even limited number of hours at the time of application risks a finding of performing substantial gainful activity. We have no reason to believe that substantial gainful activity is defined differently in the case of FM. Limited part-time hours, say 8-10 hours a week may or may not be considered substantial gainful activity depending on the type of work and, to an extent, the claimant’s past work experience. Therefore, while applying, it is generally best not to be employed at all, based on our experience. If a person must work, it should be generally less than 8 hours per week, and at a job that requires very little effort. Still, to do so, may jeopardize a disability application. After an application is approved, there is some greater allowance for work.

The first step in making an FM claim is that the applicant must provide documentation from a physician that he or she has been properly diagnosed with the illness.

In establishing a diagnosis of FM, the Ruling reads: “Generally, a person can establish that he or she has an MDI of FM by providing evidence from an acceptable medical source. A licensed physician (a medical or osteopathic doctor) is the only medical source who can provide such evidence.”

First the physician must provide evidence that he or she has diagnosed the illness according to at least one of the two medically-accepted diagnostic criteria:

- 1) the 1990 American College of Rheumatology (ACR) Criteria for the Classification of Fibromyalgia; or
- 2) the 2010 ACR Preliminary Diagnostic Criteria

Importantly, the Ruling states a preference of the use of the 1990 Criteria: “...two sets of criteria for diagnosing FM, which we generally base on the 1990...(ACR) Criteria.”

Hence, the individual applying for disability should inform their physician to document the FM diagnosis according to, at the least, the 1990 Criteria. (This Criteria provides more substantial objective evidence: trigger points.)

How is a diagnosis made according to the 2 criteria?

A. “The 1990 ACR Criteria for the Classification of Fibromyalgia. Based on these criteria, we may find that a person has an MDI of FM if he or she has all three of the following:

1. A history of widespread pain—that is, pain in all quadrants of the body (the right and left sides of the body, both above and below the waist) and axial skeletal pain (the cervical spine, anterior chest, thoracic spine, or low back)—that has persisted (or that persisted) for at least 3 months. The pain may fluctuate in intensity and may not always be present.

2. At least 11 positive tender points on physical examination (see diagram below). The positive tender points must be found bilaterally (on the left and right sides of the body) and both above and below the waist.

a. The 18 tender point sites are located on each side of the body at the:

- Occiput (base of the skull);
- Low cervical spine (back and side of the neck); Trapezius muscle (shoulder);
- Supraspinatus muscle (near the shoulder blade); Second rib (top of the rib cage near the sternum or breast bone);
- Lateral epicondyle (outer aspect of the elbow);
- Gluteal (top of the buttock);
- Greater trochanter (below the hip); and
- Inner aspect of the knee.

b. In testing the tender-point sites,^[6] the physician should perform digital palpation with an approximate force of 9 pounds (approximately the amount of pressure needed to blanch the thumbnail of the examiner). The physician considers a tender point to be positive if the person experiences any pain when applying this amount of pressure to the site.

3. Evidence that other disorders that could cause the symptoms or signs were excluded. Other physical and mental disorders may have symptoms or signs that are the same or similar to those resulting from FM.^[7] Therefore, it is common in cases involving FM to find evidence of examinations and testing that rule out other disorders that could account for the person's symptoms and signs. Laboratory testing may include imaging and other laboratory tests (for example, complete blood counts, erythrocyte sedimentation rate, anti-nuclear antibody, thyroid function, and rheumatoid factor).”

By obtaining the Criteria at the Social Security website (see above) one can see diagrams of the tender points on the human body.

Note: Section 3 in the Criteria should not be ignored. *The doctor must provide medical documentation/evidence that other illnesses/conditions with signs and symptoms and symptoms similar or the same as FM have been ruled out. This constitutes objective evidence.*

“B. *The 2010 ACR Preliminary Diagnostic Criteria.* Based on these criteria, we may find that a person has an MDI of FM if he or she has all three of the following criteria^[8]:

1. A history of widespread pain (see section II.A.1.); [This refers to point 1 in the 1990 Criteria.]
2. Repeated manifestations of six or more FM symptoms, signs,^[9] or co-occurring conditions,^[10] especially manifestations of fatigue, cognitive or memory problems (“fibro fog”), waking unrefreshed,^[11] depression, anxiety disorder, or irritable bowel syndrome; and
3. Evidence that other disorders that could cause these repeated manifestations of symptoms, signs, or co-occurring conditions were excluded (see section II.A.3.).”

In number two: cognitive or memory problems might be objectively confirmed through neuropsychological testing. However, if performed by a tester who is ignorant of how to interpret the test with respect to FM, then the test results might indicate a psychological disorder rather than FM. Such a finding could jeopardize an FM claim. Hence, if one cannot find a tester with FM expertise, it would be better not to undertake such a test.

A sleep study could also confirm “unrefreshed sleep” – a sleep disorder. Again, finding a tester familiar with FM as a physiological illness who is competent to evaluate results consistent with FM is a must before undertaking the test.

Very important: It is not enough for the physician to simply state his or her diagnosis of FM. Documentation of how the physician reached the diagnosis must be provided: “The evidence must document that the physician reviewed the person’s medical history and conducted a physical exam. We will review the physician’s treatment notes to see if they are consistent with FM, determine whether the person’s symptoms have improved, worsened or remained stable over time, and establish the physician’s assessment of the person’s physical strength and functional abilities.” (This medical documentation is considered objective.)

Documenting the Diagnosed Fibromyalgia as severe and disabling:

It is not enough simply to document that the applicant has been diagnosed with an MDI of FM, the illness must also be found to be severe and disabling: “...we must ensure there is sufficient objective evidence to support a finding that the person’s impairment(s) so limits the person’s functional abilities that it precludes him or her from performing any substantial gainful activity.” The Ruling goes on to discuss the types of documentation required for the number of steps in determining not only whether the person has FM, but also whether the FM disables him or her from working.

“When a person alleges FM, longitudinal records reflecting ongoing medical treatment from acceptable medical sources are especially helpful in establishing both existence and severity of

the impairment... We will generally request evidence for the 12-month period before the date of application unless we have reason to believe that we need evidence from an earlier period, or unless the alleged onset of disability is less than 12 months before the date of application. In the latter case we may still request evidence from before the alleged onset date if we have reason to believe that it could be relevant to a finding about the existence, severity, or duration of the disorder, or to establish the onset of disability.”

Note: The date of disability is defined as the date a person becomes so disabled that he or she is unable to do any work on a predictable basis. A person with diagnosed FM becomes eligible for payments from the date of disability. Therefore, if they apply for disability after their date of disability – even if it occurred substantially before application, and if the chronology of the disability can be documented, then the person can claim any retroactive benefits.

“B. Other sources of evidence: 1. In addition to obtaining evidence from a physician, we may request evidence from other acceptable medical sources, such as psychologists, both to determine whether the person has another MDI(s) and to evaluate the severity and functional effects of FM or any of the person’s other impairments. We may also consider evidence from medical sources who are not ‘acceptable medical sources’ to evaluate the severity and functional effects of the impairment(s)”...

Issue of psychological misdiagnosis: If a person with FM is depressed or anxious, it is important for any psychologist, psychiatrist, or social worker to clearly note, if true, that the mental symptoms are a result of the chronic physical illness – and not an alternative diagnosis to the FM. The emotional symptoms are “secondary” to FM and would not be occurring if the FM was not present. Otherwise, Social Security could negate the MDI of FM and deny the claim. It is possible one could have FM and another separate emotional/mental illness – in this case the FM must be clearly and independently verified. If a person with FM is referred for a psychological evaluation, then the referral should be made to a professional familiar with FM. If depression and/or anxiety is secondary to FM, then there could be multiple MDIs which could add to the disability.

****Important Caution: If a patient is also on, or applying for, long-term disability insurance, he or she should carefully examine their disability policy. Different policies use different language relating to the effect of depression, anxiety, or other mental impairments on long-term disability eligibility.*

Some policies may state that if a mental impairment simply “contributes to” the physically-based FM disability, then the patient will be ineligible for long-term disability insurance or the benefits will be limited to a relatively short time period.

If this language is in the disability policy, then the physician documenting FM for Social Security should clearly note that the depression, anxiety, etc. does not, in any way, contribute to the disability – that the disability and the inability to work is entirely the result of the C.F.S.

For the patient who is applying for, or already receiving, both LTD and Social Security benefits, it is critical to utilize a single knowledgeable attorney who is familiar with FM, as well as being competent in representation for both Social Security and LTD benefits. As just discussed, how the person is represented for Social Security can have profound effects on their LTD eligibility. Having one attorney make sure the representation for both is coordinated is essential. The patient should not accept an insurance company's offer to provide an attorney to represent them before Social Security. Such representation can provide the insurance company with information that could affect eligibility for LTD benefits. If the insurance company offers to pay for an attorney of the claimant's choice, and such an attorney will not turn over the claimant's records to the insurance company, then the claimant might consider the company's offer.

One major symptom of many patients with FM is neurocognitive difficulty: including short-term memory loss, word-finding, information processing, visual-spatial difficulties, comprehension, concentration, speech, calculation, and other symptoms suggesting persistent neurocognitive impairment. Neurocognitive problems in FM could be identified by neuropsychological testing performed by a competent neuropsychologist familiar with FM. Presumably such testing could be objective medical evidence to confirm these symptoms. However, there are difficulties finding a qualified examiner: Neuropsychological testing will only be diagnostically helpful in the hands of an experienced tester familiar with FM. In the wrong and inexperienced hands such testing may falsely indicate a psychological disorder. Neuropsychological testing from an experienced FM tester is probably not easily available in many parts of the U.S. Such testing is also relatively expensive. Yet obtaining the proper neuropsychological testing may be one of the best ways, under these guidelines, to provide a positive laboratory finding.

2. "Under our regulations and SSR 06-3p information from nonmedical sources may also help us evaluate the severity and functional aspects of FM. This information may help us to assess the person's ability to function day-to-day and over time. It may also help us when we make findings about the credibility of the person's allegations about symptoms and their effects."

"Examples of non-medical sources include: neighbors, relatives, friends, clergy; past employers, rehabilitation counselors, and teachers; and Statements from SSA personnel who interviewed the person."

If the SSA determines there is insufficient evidence to determine an MDI of FM, or if the MDI is disabling, examiners may contact the person's treating physician or other sources, request additional records, or make a decision based on existing evidence. Additionally, SSA may arrange for a Consulting Examiner to determine if the person has FM or is disabled, or to assess the functional effects of the FM MDI or any other impairments, or also to determine if the duration requirement is met.

If a Consulting Examiner is utilized, "...it is important...[that] the CE has access to longitudinal

clinical information about the person...However, we may rely on the CE even if the person who conducts the CE did not have access to the longitudinal evidence if we determine the CE is the most probative evidence in the case record.”

Here it is important to note that if a person has been considering filing for disability to make sure they build a record that provides a physician’s longitudinal office notes that document the diagnosis of FM and the illnesses disabling effects on their activities of daily living and ability to carry out work and employment tasks.

We will next discuss the steps in which Social Security assesses the applicants credibility as to their statements about their symptoms, their intensity and persistence – including their pain.

Evaluation of a person’s statements about his or her symptoms and functional limitations:

This 2012 FM Ruling cites another SSA Ruling SSR-96-7p which establishes “Guidelines for the Evaluation of Symptoms in a Disability Claim” – particularly if objective medical evidence is sparse – and for the testing the credibility of an applicant’s statements about their symptoms.

This symptom Ruling was itself superseded in 2016 by SSR 16-3p entitled “Evaluation of Symptoms in Disability Claims”. The new Symptom Ruling is now most likely applied to the current 2012 FM Ruling being reviewed here. The 2016 “Evaluation of Symptoms in Disability Claims” is extensive and detailed and will certainly add to and elaborate the disability evaluation for FM.

The Ruling and its application to the FM disability evaluation will be summarized here. We will post a detailed review of the entire symptom Ruling.

The Ruling states: “We define a symptom as the individual’s own description of his or her physical or mental impairments... In determining disability all of the patient’s individual symptoms, including pain, and the extent to which the symptoms can reasonably be accepted as consistent with the objective medical and other evidence in the individual’s record.”

“Objective medical evidence”, as distinguished from symptoms, is defined as medical signs and laboratory tests.

“Signs are anatomical, physiological, or psychological abnormalities established by medically acceptable clinical diagnostic techniques that can be observed apart from an individual's symptoms.^[4]

“Laboratory findings are anatomical, physiological, or psychological phenomena, which can be shown by the use of medically acceptable laboratory diagnostic techniques.”

The Ruling requires that a person’s symptoms and their severity, persistence, and disabling effects on the ability to work should be reasonably consistent with objective medical evidence – however: there are times when the intensity or nature of the person’s symptoms may not be

entirely reflected in the objective medical evidence in the record. For instance, the pain a person experiences may be greater than indicated by medical signs or lab tests.

When such an inconsistency occurs, examiners must seek to clarify medical evidence, but also must take into account evidence in the record from other sources which may help to verify or detract from the level of symptoms.

Other sources of evidence include medical sources, non-medical sources, and other factors: Important information about symptoms recorded by medical sources and reported in the medical evidence may include, but is not limited to, the following:

- “Onset, description of the character and location of the symptoms, precipitating and aggravating factors, frequency and duration, change over a period of time (e.g., whether worsening, improving, or static), and daily activities. Very often, the individual has provided this information to the medical source, and the information may be compared with the individual's other statements in the case record. In addition, the evidence provided by a medical source may contain medical opinions about the individual's symptoms and their effects. Our adjudicators will consider such opinions by applying the factors in 20 CFR 404.1520c and 416.920c.^[15]
- A longitudinal record of any treatment and its success or failure, including any side effects of medication.
- Other sources may provide information from which we may draw inferences and conclusions about an individual's statements that would be helpful to us in assessing the intensity, persistence, and limiting effects of symptoms. Examples of such sources include public and private agencies, other practitioners, educational personnel, non-medical sources such as family and friends, and agency personnel. We will consider any statements in the record noted by agency personnel who previously interviewed the individual, whether in person or by telephone. The adjudicator will consider any personal observations of the individual in terms of how consistent those observations are with the individual's statements about his or her symptoms as well as with all of the evidence in the file.”

“d. Factors to Consider in Evaluating the Intensity, Persistence, and Limiting Effects of an Individual's Symptoms: In addition to using all of the evidence to evaluate the intensity, persistence, and limiting effects of an individual's symptoms, we will also use the factors set forth in 20 CFR 404.1529(c)(3) and 416.929(c)(3). These factors include:

1. Daily activities;
2. The location, duration, frequency, and intensity of pain or other symptoms;
3. Factors that precipitate and aggravate the symptoms;
4. The type, dosage, effectiveness, and side effects of any medication an individual takes or has taken to alleviate pain or other symptoms;
5. Treatment, other than medication, an individual receives or has received for relief of pain or other symptoms;

6. Any measures other than treatment an individual uses or has used to relieve pain or other symptoms (e.g., lying flat on his or her back, standing for 15 to 20 minutes every hour, or sleeping on a board); and
7. Any other factors concerning an individual's functional limitations and restrictions due to pain or other symptoms.”

The Symptom Ruling also states that Social Security examiners may evaluate a claimant’s behavior in attempting to treat their symptoms: “We will consider an individual's attempts to seek medical treatment for symptoms and to follow treatment once it is prescribed when evaluating whether symptom intensity and persistence affect the ability to perform work-related activities for an adult or the ability to function independently, appropriately, and effectively in an age- appropriate manner for a child with a title XVI disability claim. Persistent attempts to obtain relief of symptoms, such as increasing dosages and changing medications, trying a variety of treatments, referrals to specialists, or changing treatment sources may be an indication that an individual's symptoms are a source of distress and may show that they are intense and persistent.^[18]”

Lack of such “treatment behavior” may or may not affect Social Security’s evaluation of the presence and intensity of symptoms. For instance, failure to follow treatment programs or take medications may reflect negatively on a patient’s symptom report. On the other hand, the Ruling requires that possible reasons for such failure must be taken into account:

- “An individual may have structured his or her activities to minimize symptoms to a tolerable level by avoiding physical activities or mental stressors that aggravate his or her symptoms.
- An individual may receive periodic treatment or evaluation for refills of medications because his or her symptoms have reached a plateau.
- An individual may not agree to take prescription medications because the side effects are less tolerable than the symptoms.
- An individual may not be able to afford treatment and may not have access to free or low-cost medical services.
- A medical source may have advised the individual that there is no further effective treatment to prescribe or recommend that would benefit the individual.
- An individual's symptoms may not be severe enough to prompt him or her to seek treatment, or the symptoms may be relieved with over the counter medications.
- An individual's religious beliefs may prohibit prescribed treatment.
- Due to various limitations (such as language or mental limitations), an individual may not understand the appropriate treatment for or the need for consistent treatment of his or her impairment.

- Due to a mental impairment (for example, individuals with mental impairments that affect judgment, reality testing, or orientation), an individual may not be aware that he or she has a disorder that requires treatment.”

There are a number of important “take-aways” from the Symptom Ruling as it applies to FM. First an applicant, after MDI FM diagnosis, should gather as much objective medical evidence as possible to validate their symptoms and the severity, intensity and persistence of their symptoms. Besides any lab or other tests – including trigger points – medical signs might include: “The intensity, persistence, and limiting effects of many symptoms can be clinically observed and recorded in the medical evidence. Examples such as reduced joint motion, muscle spasm, sensory deficit, and motor disruption illustrate findings that may result from, or be associated with, the symptom of pain.^[10]”

Second, the person should gather as much other evidence from medical and non-medical sources to corroborate their symptoms and the limitations caused by them.

All of this information should be communicated to one’s treating physicians who may be able to evaluate it for his or her disability medical report. All of the documentation should be submitted to Social Security by the various non-medical sources. The claimant should also, as much as possible, be consistent in their report of symptoms, even if they vary. If the claimant must appeal, his or her attorney should be aware of the symptom Ruling. FM is an MDI that requires a greater evaluation of symptoms than many other illnesses.

The five step sequential evaluation process in determining if the FM patient is disabled:

Once the claimant has been found to have an MDI of FM, there is triggered the 5 step process. If the person is performing substantial gainful activity he or she is found not to be disabled (see above.)

Step 2 requires a finding that the person’s FM is “severe”.

“If we find that the person’s pain or other symptoms the person alleges, we will consider those symptom(s) in deciding whether the person’s impairment(s) is severe. If the person’s pain or other symptoms cause a limitation or restriction that has more than a minimal effect on the ability to perform basic work activities, we will find that person has a severe impairment(s).”

In Step 3 the SSA considers whether the person’s impairment is found on the Agency’s “Listing of Impairments” or has an equivalence in severity to any of the Criteria of an impairment on the List. FM is not on the Listing of Impairments, but could have equivalence, for example, to inflammatory arthritis. But in a majority of cases equivalence is not found, so the process must continue to Steps 4 and 5 which involve a *Residual Functional Capacity* assessment.

Residual Functional Capacity: “We consider the severity of the impairment...and whether the impairment prevents the person from doing his or her past relevant work or other work that exists

in the national economy.”

“We base our RFC assessment on all the relevant information in the case record. We consider all the effects of all the person’s medically-determinable impairments, including impairments that are ‘not severe’. For a person with FM , we will consider whenever possible because the symptoms of FM can wax and wane so that a person may have ‘bad and good days’”.

“We use our RFC assessment to determine whether the person is capable of doing any past relevant work (step 4) or any other work that exists in significant numbers in the national economy (step 5). If the person is able to do any past relevant work, we find that he or she is not disabled. If the person is not able to do any past relevant work or does not have such work experience, we determine whether he or she can do any other work.”

The Ruling recognizes “that widespread pain and other symptoms associated with FM, such as fatigue, may result in exertional limitations that prevent a person from doing the full range of unskilled work in one or more of the exertional categories...People with FM may also have non-exertional physical or mental limitations because of their pain or other symptoms.^[24] Some may have environmental restrictions, which are also non-exertional.”

Further, “Adjudicators must be alert to the possibility that there may be exertional or non-exertional (for example, postural or environmental) limitations that erode a person's occupational base sufficiently to preclude the use of a rule in appendix 2 to direct a decision.”

These latter two qualifiers recognize the further limitations on a person’s ability to work and should be documented by physicians or other qualified professionals.