1305.5 Introduction

Earlier articles of FOM, Part I, delineated the eligibility requirements for benefits under the Railroad Retirement Act (RRA). In most types of benefits, one requirement which may qualify an applicant is disability. The purpose of this article is to describe the disability requirement, to provide instruction to field offices in developing disability claims and to describe continuance of disability.

The basic provisions of law for disability benefits for railroad workers and their families are contained in the RRA as follows:

- Disabled Employee - Sections 2(a)(1)(iv) and (v);
- Disabled Widow(er) - Section 2(d)(1)(i);
- Disabled Child - Section 2(d)(1)(iii);
- Disabled Surviving
- Divorced Wife - Section 2(d)(1)(v);
- Disabled Remarried Widow - Section 2(e)(l)(v).

1305.10 Occupational Disability Defined

An occupational disability is the inability to perform the duties of the regular occupation due to permanent physical or mental condition. Only the railroad employee can be considered for this type of disability (see FOM-I-310.5.1).

1305.10.1 Regular Railroad Occupation

An employee's regular railroad occupation is that railroad occupation in which he has been engaged in service for hire:

- In more calendar months than the calendar months in which they have been engaged in service for hire in any other occupation during the last preceding five calendar years, whether consecutive or not; OR
- In not less than one-half of all the months in which they have been engaged in service for hire during the last preceding 15 consecutive calendar years.

If an employee last worked as an officer or employee of a railway labor organization and if continuance in such employment is no longer available to them, the regular occupation shall be the position to which the employee holds seniority rights or which they left to work for a labor organization (See DCM 3.2.3).

For the above discussion, railroad occupation means an occupation that exists in the railroad industry. It also includes occupations or comparable occupations in other industries with similar duties and requirements. Other occupation means any occupation in any industry or business.

EXAMPLE: An employee leaves their position of conductor after 20 years to work full-time for the United Transportation Union as General Chairman. If they file for occupational disability, their regular occupation will be considered to be conductor.

It is also possible for an employee to work in self-employment and retain their current connection. In some instances, a significant lapse of time may expire between when the employee last worked for the railroad and when the employee files for an application for a disability annuity. In cases such as these disability claims examiners are to consider the occupation the employee has been engaged in railroad service for hire in more calendar months than they had been engaged in service for hire in any other occupation during the last preceding five calendar years, as their regular railroad occupation.

Disability claims examiners are to use the information provided on the G-251, Vocational Report, the G-251a, Job Information Report, - Job Description, and the G-251b, Job Information Report – General in determining the job duties performed.

For example, an employee works in the CSX railroad as a conductor from 1968 through July 1984. They then work as a locomotive engineer from August 1984 through July 1990. In August 1990, they then start their own business. In January 2006, this employee files a disability application with the RRB. It is determined that the work done for this business is self-employment and allows the employee to keep their current connection. Based on the information provided, the employee's regular railroad occupation would be a locomotive engineer.

NOTE: It is also possible for an employee to work in government service and retain their current connection. If an examiner receives a case (current connection due to government service) in which a significant lapse of time occurs between when the employee last worked for the railroad and when the employee files an application for a disability annuity, forward the case to Policy and Systems – RAC for a determination of the regular railroad occupation.

1305.10.2 Effect of Medical Disqualification by Employer

A. Disqualified by railroad employer - Information from the employer concerning the claimant's ability to perform the duties of the regular railroad occupation should be reviewed. If the employee is not allowed by their railroad employer to continue working in their regular railroad occupation, the disability claims examiner will consider the claimant disabled based on the G-3EMP and evidence in the file. If the employee claims disqualification by their employer, obtain evidence of the disqualification as prescribed in FOM-I-1325.10.3.

B. Not disqualified by railroad employer - If the employee has not been medically disqualified by their railroad employer for service in their regular railroad occupation, the RRA provides that the RRB shall determine if the employee is disabled for work in their regular railroad occupation.

1305.15 Total And Permanent Disability Defined

A total and permanent disability is the inability to engage in any regular employment due to permanent physical or mental condition. A determination of total and permanent disability is required to entitle an employee not eligible for occupational disability, as well as a widow(er), remarried widow(er), surviving divorced wife and a child to a disability benefit.

1305.15.1 Regular Employment

Regular employment means the regular performance of the substantial and material duties of any substantial and gainful employment in the usual and customary manner with any employer.

1305.15.2 Permanent Physical or Mental Condition

A physical or mental impairment that can be expected to either result in death or last for at least 12 consecutive months.

A. Determination that a Condition Exists - ~~The~~ Disability Benefits Division ~~Programs Section of the Bureau of Retirement Claims~~ determines if a condition exists and when it prevents the performance of work. Except as provided in FOM-I-1305.45.1, the reason for the existence of the condition is not considered.

B. Permanence of Condition - The condition must be expected to result in death or last at least a year. There are some conditions that can be expected to improve at some point in the future. However, this does not prevent a disability from being established. It can cause benefits to be terminated at that future time. Also, some conditions can, by prescribed treatment, be controlled to a level which would no longer prevent the performance of regular employment. Failure by the disabled person to obtain that treatment will not prevent the payment of an annuity, although it is considered for freeze termination purposes.

1305.20 Disability Freeze/Period Of Disability

While only the establishment of an occupational or total and permanent disability is necessary to pay an employee annuity under the RRA, additional benefits may result from the establishment of a period of disability or, as it is more commonly called, a disability freeze (DF). Provisions for the DF and for the additional benefits are based in the SS Act; therefore the requirements of that act must be met. Note that while an annuity under the RRA can be granted based solely on alcohol or drug addiction, without other medical impairments, that type of claim would be denied under the SS Act.

Therefore, effective with applications filed January 1, 2008 or later, even if the employee were receiving a total and permanent disability annuity, he would not be entitled to a DF. For a more detailed explanation, see DCM 4.8.4.

All employee applicants are considered for a disability freeze, regardless of whether total and permanent disability is alleged. An age and service employee applicant who claims to be totally and permanently disabled should consider filing a separate application for a "freeze only" determination (see FOM-I-1310.10).

However, the annuitant has the right to request that a disability freeze not be granted. This could occur for a number of reasons (e.g. employee and spouse would get better coverage under private insurance than under Medicare.) In such cases, obtain a signed statement from the employee that all of the advantages of the freeze (Medicare, O/M, possible tier 1 increase, tax advantage, possible survivor benefit increase) have been explained to them and that they still do not want to be rated for a disability freeze. Submit the statement to DBD with the application materials.

1305.20.1 Requirements

In order for a disability freeze to be granted, a disability requirement and an earnings requirement must be met.

A. Disability Requirement - The applicant must either be rated totally and permanently disabled as defined in FOM-I-1305.15, or be at least age 55 and unable, because of blindness, to perform substantial gainful employment previously performed with regularity over a period of time.

B. Earnings Requirement - This requirement differs depending upon the age of the employee at the time of disability onset. It need not be met by a blind person age 55 or older.

1. Disability began after age 30 - To be insured for a disability annuity, the applicant must have earned sufficient railroad retirement and/or social security credits that when combined would provide a fully insured status under the Social Security Act, AND must have earned credit in 20 calendar quarters of railroad or social security work during the 40 calendar quarter period ending in or after the quarter in which total and permanent disability began.

2. Disability began between ages of 24 and 31 - The employee must have earned railroad or social security work credits for half of the calendar quarters which elapsed between the quarter after age 21 and the quarter in which the total and permanent disability began.

   Before the l983 SS Act amendments, an employee who was disabled before age 31, who recovered and again became disabled after attaining age 31, had to meet the fully insured status and 20/40 quarter of coverage

requirements. For applications filed after 4-20-83, the requirements for disability before age 31 apply if the employee doesn't meet the 20/40 insured status requirements.

1305.20.2 Advantages of a Disability Freeze

A. Freezes the employee's earnings record - Years between onset of disability and normal retirement age will not be used in the computation of the PIAs unless they would cause an increase in benefits. This prevents the tier I AIME or AMW from being lowered by years of no or low earnings due to the disability. Even if this has no effect on the retirement annuity amount, usually the survivor benefit amount would be greater than without the freeze.

B. May permit the payment of the overall minimum (O/M) or guaranty provision - Because the DF is granted under the Social Security Act, the employee's family is entitled to receive at least as much in annuities as the family would have received in combined benefits under the SS Act. If the total SS benefits would have been higher, the employee's annuity will be increased to equal that higher amount.

C. May reduce the annuitant's tax liability - To reduce the taxability of tier I benefits, an annuitant has to meet the social security eligibility requirements. When a disability freeze is granted, all of the tier I is considered to be a social security equivalent benefit (SSEB) to be taxed under the more favorable "threshold" rules. Without a disability freeze, if the employee is under age 62, the entire tier I is considered to be a non-social security equivalent benefit (NSSEB) and taxed as a private pension.

D. May allow early Medicare coverage - Medicare coverage can begin in the later of the 30th month following onset of disability or the 25th month after disability benefits began to accrue. See FOM-I, Article 8 for more details.

E. May allow early payment of a vested dual benefit - If the employee also meets the earnings requirement using social security wages only, a DF rating will permit the payment of the vested dual benefit beginning with the later of the month disability benefits begin to accrue or 5 months after onset of disability.

1305.20.3 Authority to Make Disability Freeze Determinations

Amendments to the RR Act in 1958 gave the RRB legislative authority to independently determine and establish a DF for railroad employees who file appropriate applications. There are certain cases that are decided jointly with the Social Security Administration (SSA) in order to protect railroad employees and their families against any adverse effect caused by different decisions by the two agencies, and to avoid possible administrative problems for the agencies caused by uncoordinated decisions. A DF decision cannot be made until after 5 months after onset of disability, even though the DF may be effective retroactively to onset.

A. Joint freeze decisions - Joint freeze decisions are provided for in an agreement between the RRB and SSA. A joint decision is made when current or future social security benefits may be paid based on the railroad employee's record (i.e., insured or possible insured status, no current connection), and in cases involved in the financial interchange sample.

An RRB disability claims examiner makes an initial freeze decision based on RRB-developed medical evidence. The disability representative from SSA reviews for concurrence only decisions by the RRB to grant or deny a DF. Attempts are made to resolve disagreements; however, there are a few cases in which concurrence is not reached. In these cases the RRB will still award all benefits attendant to a DF (see FOM-I-1305.20.2) except early payment of the vested dual benefit.

In some joint freeze decision cases, the RRB releases notices to the employee annuitant from both the RRB and SSA; in others, separate notices are released by the respective agencies.

B. Single freeze decisions - Single freeze decisions are made solely by the RRB in cases not requiring a joint decision with SSA. Whenever possible, the disability claims examiner will decide on the DF at the same time he is deciding on the disability for annuity purposes. Otherwise, a decision on the annuity is made and the DF decision is deferred until after the annuity has been paid.

Single freeze decision notices are sent from the RRB only.

1305.20.4 Length of a Disability Freeze (Period of Disability)

A. Beginning date for DF - A period of disability can begin effective with the date that both the earnings requirement and disability requirements are met. Also a period of disability cannot begin after attainment of full retirement age (FRA).

B. Ending date for DF - A period of disability ends on the earliest of:

- Death of the railroad employee;
- Last day of the month preceding the month of attainment of FRA;
- Last day of the second month after the month in which disability ceases.

1305.25 Medical Recovery Defined

Cases referred to the disability rating unit because of work activity or alleged recovery by the annuitant will have a continuance of disability determination made. Based on evidence in file and/or requested by the disability claims examiner, a determination may be made that the annuitant no longer meets the disability requirement for an annuity, a DF or both.

1305.30 Nonmedical Factors Defined

The RRB will obtain and consider all evidence (medical and non-medical) that relates to an applicant's disability claim. Non-medical factors are items which are not purely medical in nature, but which can assist in the determination as to whether a physical or mental condition exists and if it prevents the performance of work. Examples of non-medical factors are: job duties, personal observations of the applicant, changes in non-work activities, applicant's description of how the condition has affected them, work experience, educational achievement, special training, etc. Vocational (Non-medical) factors are presented on Form G-251 for employees and widow(er)s. Other pertinent non-medical observations that could assist in the disability determination may have been noticed by the Field representative. The personal observations of the Field representative, if any, will be considered with other non-medical factors. (See FOM 1315.5 and DCM 5.1.7).

1305.35 Medical Evidence

1305.35.1 Definition

Medical evidence consists of such items of a clinical nature as reports of medical examination, X-ray or laboratory tests; hospital records; psychiatric or psychological tests; personal medical source records; etc. (See FOM1 1325.10)

Note: In order to have complete and accurate case records to make disability determination decisions, the RRB will obtain and consider all evidence that may or may not support the applicant's claimed impairment(s).

1305.35.2 Acceptable Medical Sources

- Licensed physicians, (including psychiatrists);
- Licensed osteopaths,
- Licensed optometrists (for impairments of visual disorders, or for the measurement of visual acuity and visual fields only, depending on the scope of practice in the state in which the optometrist practices),
- Licensed or certified clinical psychologists (see NOTE 1),
- Licensed or certified school psychologists, or other licensed or certified individuals with another title who performs the same function as a school psychologist in a school setting, for impairments of intellectual disability, learning disabilities, and borderline intellectual functioning only (see NOTE 1),
- Licensed podiatrists, for impairments of the foot or of the foot and ankle, depending on the scope of practice in the state in which the podiatrist practices,

- Qualified speech-language pathologists, for speech and language impairments only, and when either licensed by a state professional licensing agency, fully certified by a state education agency where the individual practices, or holding a Certificate of Clinical Competence in Speech-Language Pathology from the American Speech-Language-Hearing Association,

- Licensed audiologists, for impairments of hearing loss, auditory processing disorders, and balance disorders when such disorders are within the individual's licensed scope of practice,

- Licensed Advanced Practice Registered Nurses or other licensed advance practice nurses with another title, within the individual's scope of practice (this category includes, but is not limited to, Certified Nurse Midwives, Nurse Practitioners, Certified Registered Nurse Anesthetists, and Clinical Nurse Specialists),

- Photocopies of hospital or clinical records, or reports of same signed by a medical records librarian;

- Employer medical records;

- Social Security Administration (SSA) medical records;

- Worker's compensation, Office of Personnel Management or other government agency medical records.

- Persons authorized to furnish a copy or summary of medical records from a medical facility such as a hospital, clinic, sanitarium, mental institution, health care facility. Generally, the copy or summary should be certified as accurate by the custodian of records for the facility, or by an authorized employee of the RRB, the SSA, the department of Veterans Affairs (VA) or a state agency.

Note 1: consistent with SSA policy, psychologists are required to be licensed at an independent practice level to be considered an AMS, but school psychologists are not subject to this requirement.

A disability rating must be based upon medical evidence from or attributable to acceptable medical sources. Disability Benefits Division (DBD) claims examiners **must** also give due consideration to all reports from or attributable to those who are not considered acceptable medical sources in all disability ratings because those reports can provide an understanding how an impairment affects the ability to work. However, those reports can **only** be used to support medical evidence from or attributable to an acceptable source. Accordingly, field offices should continue to attempt to develop for and submit in a timely manner evidence from any medical source, even if it is from a source not listed above, if the claimant or annuitant wishes for that evidence to be considered. However, if the **only** medical-related evidence in the RRB claims file is

from or attributable to a source which is not an “acceptable” medical source, the medical portion of a disability rating cannot be based upon that evidence.

In the unlikely situation that the only medical-related evidence is from or attributable to a source which is not “acceptable,” DBD claims examiners will order a consultative examination or send an E-mail request to the servicing field office to further develop medical evidence from an “acceptable” source which was not listed in the application (or in the situation of a continuing disability review, Form G-254) but is shown in the evidence as treating the claimant or annuitant.

Field office personnel are advised to make no judgment as to the acceptability of the medical source. Submit all obtained reports of medical treatment regarding any initial disability claim for benefits or continuing disability review to DBD in a timely manner.

1305.35.3 Medical Examination

A medical examination should include the following:

- Medical History - the applicant's statement regarding their disability;
- Physical Examination - the examining medical source's findings when conducting the examination;
- Diagnostic Impression - the examining medical source's diagnosis after conducting the examination.

1305.35.4 Hospital or Clinical Records

Ideally, hospital or clinical records should consist of history obtained upon admission, initial impression, results of laboratory tests and x-rays, description and results of any surgery performed, final diagnosis and condition upon discharge. Discharge summaries alone are of little use in determining disability.

1305.35.5 Personal Medical Source Records

Information from the records of the personal medical source is usually presented on Form G-250, Report of Physical Condition, although photocopies of the medical source's records or a narrative report are acceptable provided they show history, diagnosis, laboratory and clinical findings, treatment and response to treatment.

NOTE: Medical source reports must be signed and dated to be acceptable.

1305.35.6 Electronic Medical Evidence

Due to advancements in technology many medical record copying services as well as individual medical sources no longer provide their medical records in paper form.

Rather the medical records are being transmitted in an electronic medium. The most common method of electronic transmission is done by CD.

Field office personnel are to forward the electronic medical evidence to headquarters. They should include with the electronic submission a note explaining from whom the records were received. It is not necessary for the field to make a paper copy of these records.

When forwarding to headquarters, the CD should be shipped in a secure manner such as registered mail or a private courier with tracking capabilities such as Federal Express.

1305.35.7 Other Medical Sources Evidence

Information from other non-acceptable medical sources (non-AMS) may help disability adjudicators understand how an impairment affects the claimant's ability to work. Non-AMS evidence can be useful toward reaching a determination about a claimant's residual functional capacity. Non-AMS are individuals who are licensed as healthcare workers by a State and are working within the scope of practice permitted under State or Federal law, other than acceptable medical sources. RRB staff should not reject the submission of evidence or decline to consider evidence submitted simply because it does not originate from an AMS.

1305.35.8 Non-Medical Sources

Information from other sources may also help the disability adjudicator understand how an impairment affects the claimant's ability to work. RRB staff should not reject the submission of evidence or decline to consider evidence submitted simply because it does not originate from an AMS or non-AMS. Other sources include—

(1) Public and private social welfare agency personnel;

(2) Family members, caregivers, friends, and neighbors of the claimant;

(3) Educational personnel such as teachers, counselors, and daycare center workers;

(4) Railroad and nonrailroad employers; and,

(5) The claimants themselves.

1305.40 Waiting Period For Benefits

1305.40.1 Benefits Under the RRA

The 1983 RR Act amendments added a waiting period requirement for all disabled employees and legal or de facto widow(er)s, who file an application 9-1-83 or later. The

annuity may not begin until the railroad retirement disability waiting period has expired. The waiting period for an employee or a legal or de facto widow(er) begins the first day of the month after the month in which disability began, and continues for 5 calendar months. If the disability began the first day of the month, the waiting period still begins the first day of the following month.

EXAMPLE: An employee became disabled on 11-1-83. The railroad retirement waiting period begins 12-1-83, and ends 4-30-84.

NOTE: The 5-month waiting period is not affected by an employee being carried on the railroad payroll (e.g., settlement, pay for time lost, etc.). Therefore, if the disability waiting period begins 6-1-91 (due to a disability onset date of 5-16-91), it would end 10-31-91 regardless of how long the employee is being carried on the payroll. However, if the employee is carried on the payroll past the end of the disability waiting period, the employee's ABD could be affected since the annuity cannot begin while the employee is carried on the railroad payroll.

A. Waiting period for surviving divorced spouse or remarried widow(er) - The waiting period requirement has always applied to disabled surviving divorced spouses and remarried widow(er)s. These applicants must meet the waiting period requirement as defined in the SS Act. The SS Act waiting period differs from the railroad retirement waiting period when disability begins on the first day of the month. Under the SS Act, that first month of disability onset is counted in the waiting period; under the RR Act, it is not.

   EXAMPLE: A surviving divorced spouse became disabled on 11-1-83. The SS Act waiting period begins 11-1-83 and ends 3-31-84.

B. Benefits that do NOT require a waiting period - Benefits to which a disabled child is entitled are not subject to a waiting period. This is true whether the child is an annuitant or included as part of the family group for the O/M computation.

C. Beginning date of waiting period - The waiting period (both RR and SS provisions) can begin no earlier than the later of the following dates:

   1. The first day of the 17th month before the month in which the application is filed. This allows for the 5-month waiting period and the 12-month application retroactivity; or

   2. In a survivor case, the first day of the fifth month before the month in which the prescribed period began (see FOM-I-4I0.10).

      Months before the employee's death, months before the disabled widow(er) attains age 50, or months before the termination of a previous mother's or father's annuity, may be included in the waiting period if the applicant was disabled in those months and the disability was continuous. Therefore, a DWIA may begin at age 50, or in the month of the employee's

death, if the applicant became disabled more than 5 months prior to that month.

D. Waiting period not required - A waiting period (both RR and SS Act provisions) may not be required when an applicant becomes disabled again after a previous disability annuity termination. A waiting period is not required if the applicant becomes disabled again within:

1. For an employee, 60 months of the month the previous disability annuity terminated;

2. For a survivor, 84 months of the month the previous disability annuity terminated. Also see FOM-I-410.50.

This rule applies even when a disabled annuitant was previously entitled before 9-1-83, when no waiting period was required.

If the applicant does not become reentitled within either 60 or 84 months, as applicable, the annuity may not begin until the end of the waiting period.

1305.40.2 Benefits Provided by RRB Under the SS Act

Certain benefits provided to railroad annuitants are founded in the SS Act (require a DF); that act requires a 5-month waiting period. Prior to 1973, the waiting period was 6 months. Since these benefits are based on SS Act rules, the 5-month waiting period under that act is in effect. The SS Act waiting period differs from the RR Act waiting period when the disability begins on the first day of the month. Under the SS Act, that first month of disability onset is counted in the waiting period; under the RR Act it is not.

A. Benefits that require a 5-month waiting period

1. Disabled employee annuitant:

- Benefits under the Overall Minimum (O/M) Guaranty;
- Early vested dual benefit based on DF;
- Early Medicare coverage (coverage begins with the 25th month after the end of the waiting period).

2. Disabled widow(er) annuitant - Early Medicare coverage (coverage begins with the 25th month after the end of the waiting period).

B. Benefits that do NOT require a 5-month waiting period - Benefits to which a disabled child is entitled are not subject to a waiting period. This is true whether the child is an annuitant or included as part of the family group for the O/M

computation. Early Medicare coverage begins with the 25th month after the date of entitlement.

C. Annuitant had a previous DF - If the annuitant had a previous DF that ended not more than 5 years before the current DF began, a new waiting period is not required.

1305.45 Effect Of Felony Conviction On Disability Benefits

1305.45.1 Effect on Definition of Disability

For the purposes of determining if a person is disabled to the extent required for a disability freeze (DF), the following items cannot be considered if the applicant has been convicted of a felony which was committed after October 19, 1980:

A. A physical or mental impairment which began in connection with the commission of the felony;

B. The extent to which an existing impairment grew worse in connection with the commission of the felony;

C. A physical or mental impairment which began while confined to a penal institution or correctional facility for conviction of a felony; this limitation applies only to benefits payable while the person is confined;

D. The extent to which an impairment grew worse as a result of confinement in a penal institution or correctional facility for conviction of a felony; this limitation also applies only to benefits payable while the person is confined.

The above exclusions apply only to benefits for employees, disabled surviving divorced spouses and disabled remarried widow(er)s which are based on SS Act provisions. No effect on pure Railroad Retirement Act benefits has been determined.

The disability application Forms AA-1d, AA-17b and AA-19a ask if the applicant was convicted of a felony which was committed after October 19, 1980. If that item is answered "Yes," determine if commission of the felony had any relation to the employee's disability. Submit a brief memorandum outlining the facts, including the date of the felony, the date of conviction, the date and place of confinement, the prisoner's identification number and if he is in a vocational rehabilitation program. The Prisoner Update Processing System (PUPS) may assist in the development of the information and the query results must be imaged. (See RCM 19.2.15).

1305.45.2 Effect on Payment of Disability Benefits

Tier 1 benefits are converted to all NSSEB effective with the month (including any part of the month) the beneficiary has been convicted of a criminal offense and is confined in an institution at public expense for more than 30 continuous days or is one of the

categories of individuals as defined in FOM1 150. See FOM1 150 for additional instructions on handling criminal activity cases.

1305.50 Variable Dropout Years

The 1980 amendments to the Social Security Act changed the rules for computing the tier I PIA on which the disability annuity is based. Usually, the change in computation yields a higher benefit rate.

1305.50.1 Based on Age

Effective for initial entitlements of July 1, 1980 (regardless of the DF onset date), the number of dropout years (years of lowest earnings eliminated from the PIA computation) in the PIA computation depends upon the age of the employee at the time of the disability onset.

Worker's Age	Dropout Years
Under 27	0
27-31	1
32-36	2
37-41	3
42-46	4
47 and over	5

Neither the beneficiary nor the field office needs to take any special action to entitle the employee to this more advantageous computation.

1305.50.2 Based on Child in Care

Effective July 1, 1981, a worker who was (a) under 37 in the earlier of the year of their disability ABD or disability onset, (b) was not employed in any computational year after 1950 and during that year was living in the same household with their spouse's child who was less than 3 years old, (c) has a disability ABD of 7-1-80 or later, or a DF date of 2-1-80 or later, and (d) had 2 or fewer dropout years, will get an additional dropout year for each such year, provided that the total number of dropout years does not exceed 3.

Initially, the district office does not need to take any special action. The AA-I asks a disability applicant if a child under age 3 lived with them after 1950. Headquarters will review these disability claims to determine if the age and the dropout years make the

applicant potentially entitled to this special provision. At that point, the module will send an assignment to the servicing field office to develop for proof of child in care for the specific year(s) in question.

1305.55 Applicant Is Incompetent Or Incapable Of Filing

In the absence of evidence to the contrary, presume that the applicant is competent. However, if there is an indication that the applicant is incompetent, follow the guidelines in FOM-I-1415 regarding investigation of competency and selection of a representative payee.

1305.55.1 Applicant Is Incompetent

If an applicant is determined to be incompetent, have the representative payee furnish the information for, and sign their own name on the application for benefits and other forms. It is also the representative payee's responsibility to furnish the required evidence. The benefit application and supporting evidence should be accompanied by the required application and documentation to act as representative payee called for in Article 14.

1305.55.2 Applicant Is Incapable

When the applicant is mentally competent to manage their affairs, but physically unable to sign their name, he usually would not require a representative payee. They can furnish the information for the application and other forms, and may sign by mark with two witnesses. The person's hand may be guided in making their mark.

Checks may be endorsed using the same procedure, but direct deposit may be a better alternative.

1305.60 Tracing On Disability Applications

It is important to consider the specific case factors as well as any available information, when responding to an inquiry on the status of a disability application. The Field Service response and decision whether to trace with DBD should depend upon the case and the information available.

The RRB customer service standard provides that an applicant for a disability annuity will receive a decision on that application within 100 days of the application filing date. Some cases, such as occupational disabilities, generally require a shorter processing time. Others, such as an application for a total and permanent disability or an application from a disabled child or widow may require a longer processing time, for instance, because of a lack of available medical evidence. Other factors affecting the time required to adjudicate an application may include the need to schedule medical examinations, or a delay in reply to a request for medical evidence.

In determining when to trace with DBD, field staff should consider the tracing schedule, the circumstances of the case, and any other information available. Regardless of these factors, however, field offices should not hesitate to trace with DBD on any case, especially where a dire need, terminally ill (TERI), or Compassionate Allowance (CAL) case is involved. (See FOM1 135.15 for field office tracing guidelines.) Before contacting DBD, field personnel should access some of the on-line systems available to them. (See FOM1 135.10)

REQUEST will show whether the case has been rated for disability and if so, whether it was an allowance or denial. REQUEST will also show the pay status of the claim. If the case is not rated, checking AFCS may provide an idea as to what action is being taken. For example, a case on an examiner's desk or in dormant would be an indicator as to whether it was being actively worked on or awaiting additional information. Please note it is important to check REQUEST before AFCS, since in most instances DBD will not send the folder to RBD for payment. The case may still be in DBD and have been rated for the initial disability and still being worked on for the disability freeze.