SMITH & GODIOS INC.
DISABILITY ATTORNEYS

eBook

Five Things You Should Know Before You File for Social Security Disability or SSI

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Chapter 1 | **What Programs Are Available?**

There are three major programs within the Social Security Administration. These are: ***Retirement benefits, Social Security Disability Insurance benefits, and Supplemental Security Income benefits***.

When you pay FICA taxes, either through your paycheck or self-employment taxes, you are paying for a retirement policy, a life insurance policy, and a long term disability policy.

When you reach retirement age, or choose a reduced benefit at age 62, you will receive retirement benefits. The amount will be based on the amount paid into the system while working.

At the time of your death, your widow or widower may be able to receive full benefits based on your account. Reduced widow or widower benefits can be received at age 60 or age 50 if the widow or widower is disabled and has not remarried. Your widow or widower will also receive a monthly check until your youngest child is 16 years old or disabled, if he or she is not employed and has not remarried. Your minor children (under 18 or 19 and have not graduated high school) can also receive benefits.

If you retire, become disabled, or are deceased and have a disabled child, he or she can receive benefits as long as they prove that they became disabled before the age of 22. In addition, if you have dependent parents, they can receive benefits if they are over 62 years of age.

You and your family can also receive benefits through Social Security if you become disabled. As long as you have worked 5 of the last 10 years and paid into the Social Security system, you may be eligible for Social Security Disability Insurance (DIB) benefits. You must become disabled prior to your "date last insured." Think of it like an insurance policy—once you stop making the premium payments, the insurance lapses. Social Security Disability Insurance benefits end if you do not become disabled within 5 years of when you last paid into the system.

Social Security (SSA) defines disability as being unable to perform substantial gainful work activity due to a medical condition or conditions, which will last at least 12 months or which is terminal.

If you have not worked 5 of the last 10 years, or if your monthly benefit would be less than $733.00 in 2016, you may be eligible for Supplemental Security Income (SSI) benefits. In order to be eligible for SSI benefits, however, a person must not only be medically disabled but must meet certain financial limitations. SSI benefits are also available for disabled children when they are disabled and the household income qualifies them for benefits.

Regardless of whether you are applying for DIB or SSI, you still need to prove that you are medically disabled.

Chapter 2 | **The Five Step Sequential Evaluation**

Introduction

The Social Security Administration determines whether or not an adult is disabled by following a five-step process. A person can be found disabled at either question 3 or question 5, but each question has to be addressed in order.

Question 1 Are You Working?

The first question is whether you are working. Work is defined as "engaging in substantial gainful activity." If you are earning over the level considered "work," SSA will not look at whether you have any medical conditions that may limit your activities. As with most things, there can be exceptions to this rule.

Substantial gainful activity generally means working for pay at a gross rate of $1,130 per month in 2016 (the amount changes each year). This is the amount SSA will look at to determine if you are working.

BE AWARE—Receiving unemployment benefits can also affect your eligibility. When you are receiving unemployment, you certify that you are ready, willing and able to work. When you apply for DIB or SSI, you are stating that you are unable to work.

Question 2 Do you have a Severe Impairment?

If you have not worked above the level considered "substantial gainful activity" since the date you claim to be disabled, SSA moves to question 2. Question 2 is whether you have a severe impairment. If you do not, the questions will end and you will not be found disabled.

A "severe impairment" is defined as a medical condition (either physical or mental) that has affected, or is expected to affect, your ability to work for at least one year. In practice, at this stage of the process, the term "severe" does not have its common meaning. Severe means that it limits your ability to perform your job. The example we use is that Debra has psoriasis on her hands. Sometimes, this limits her ability to type and write. She is being treated for the condition by a doctor (key). Even though this does not prevent her from working, this is a severe impairment.

Claims rarely fail at question 2 as long as you are receiving current medical care for your conditions.

Question 3

Do Your Problems Meet or Equal One of the Listing of Impairments?

If you have a severe impairment, the next question is whether your impairment meets or equals one of the Listings of Impairments.

The Listing of Impairments is a set of regulations setting out many medical conditions, the signs and symptoms of these conditions, and the severity needed to satisfy the "Listing."

Even though you may have a diagnosis of one of the medical conditions found in the Listing of Impairments, this does not mean that you are disabled. In addition to having the diagnosis, you also must meet the very specific criteria that follow the given condition. Social Security's listing of impairments can be found at http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm

To give you an example, here is the listing for spine disorders:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. ***Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);***

— OR —

B. ***Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;***

— OR —

C. ***Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.***

As you can see, it is not enough to have a spine disorder, a herniated disc, or degenerative disease. In addition to having one of these findings, you must meet the other criteria. For instance, you only satisfy Listing 1.04A if you have a herniated disc/degenerative disease and evidence (usually an MRI) showing compromise of the nerve root or the spinal cord. Additionally, you would also need to produce examination findings, from a doctor, where there is anatomic distribution of pain, limited range of motion, motor loss (or muscle weakness), sensory or reflex loss, and a positive straight leg raise (for the lower back).

Sometimes, it is possible to show that your overall health equals the Listings. This generally means that you have very similar problems to those in the Listing of Impairments and that those health problems cause a very similar effect on your ability to work. Usually, a medical expert is needed to find that someone equals a Listing.

If you meet or equal one of the Listings, then you will be found disabled at Question 3 of the process.

If your condition does not meet or equal a listed impairment, you move on. You proceed to question 4.

Question 4 Are You Able to Perform Any of Your Past Relevant Work?

If you are able to perform any past relevant work, you will not be found disabled. Past relevant work means a job that you performed on a sustained basis (long enough to learn the job—usually at least three or four months) at the level of "substantial gainful activity" (see question 2) within the last 15 years.

When making this decision, SSA will look at how you actually performed the job, and at how the job is generally performed within the national economy.

Be careful when completing forms for SSA that you do not exaggerate what you did. You need to be honest about the job you performed and how you performed it.

If SSA finds that you can perform your past relevant work, you will be found not disabled. If, on the other hand, SSA finds that you cannot perform any of your past relevant work, you move onto Question 5.

Question 5 Are There Any Other Jobs That Exist in the National Economy That a Person with Your Limitations Can Perform?

The question here is whether there are a significant number of jobs that exist in the national economy for a person with your health restrictions, work experience and age. This is usually done in the form of hypothetical questions to a vocational expert.

SSA will decide what these health restrictions are based on your medical records, your testimony, and any arguments made on your behalf by your attorney (see Chapter 5). At this question, it is irrelevant whether any of these jobs are actually available. The only question is whether these jobs exist. In other words, it does not matter whether anybody is hiring.

The hypothetical questions should include the effects of all your medical problems. It is important to have an attorney familiar with the process so he or she can make sure the proper questions are asked.

At this step in the process, your age can be a major factor.

If you are under age 50, the question is whether any jobs exist in significant numbers that you can perform. If yes, you will be found not disabled. Even if you have to alternate between sitting and standing, there will often be jobs that exist that you can perform. What is important is how your medical problems affect your ability to maintain attention, show up for work on a regular basis, and perform your job duties.

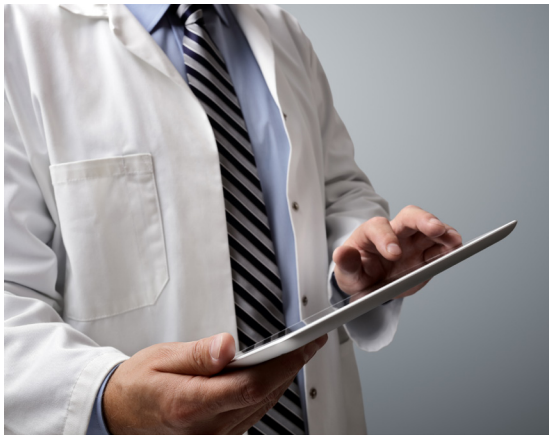
At age 50, the rules change. If you are over 50, unable to perform any of your past work, you have no transferable work skills, and you can only perform a sitting down job (lifting no more than 10 pounds and sitting 6 out of 8 hours per day); you can be found disabled.

At age 55, the rules change again. If you are over 55, unable to perform any of your past work you have no transferable skills, and you can only perform light work (lift 20 pounds occasionally, 10 pounds frequently, stand or walk 6 hours per day), you can be found disabled.

You cannot be found disabled if you have reached full retirement age.

Most disability claims are decided at this question. That is why it is so important to make sure that SSA or the Administrative Law Judge (ALJ) has all the information needed to ask the right hypothetical questions. You need to make sure you provide medical evidence of your disabling problems.

Chapter 3 | **Evidence**



Evidence is the key to any claim for disability. After all, if you claim to be disabled, you are stating that you have a medical condition that prevents you from working. Unless you have medical evidence of your disabling conditions, you will probably not be found disabled.

SSA will look at the following types of medical evidence to decide if you are disabled.

Medical Treatment Records

Treatment records are records of office visits that your doctors and psychologists keep. These records include physical examinations and mental status examinations. Also, this is where your doctor will note your complaints and symptoms.

When deciding whether your testimony is believable, a major factor will be how consistent your testimony is with the symptoms that have been reported to your doctors. That is why it is very important always to tell your doctors all your symptoms. Do not exaggerate and do not lie, but make sure your doctor knows how you feel.

Objective Medical Evidence

Objective evidence is evidence that is not based on your statements. Instead, objective evidence is medical tests. These tests include X-rays, MRIs, nerve conduction studies, CT scans, arterial studies, and echocardiograms.

SSA places great weight on objective evidence. This is probably because these objective studies do not lie or exaggerate. When serious problems are noted on objective tests, you are more likely to be believed when you testify about your symptoms. When objective evidence is not there (for example, only mild findings or no testing performed), it will be more difficult for you to prove that your medical problems are disabling.

Treating Source Opinions

A treating source opinion is a statement from one of your treating doctors that assesses how your medical condition limits you. A common example would be an opinion from an orthopedist explaining how much you can lift, how long you can stand, or how long you can sit. Another common example would be from a psychiatrist who explains how concentration, social functioning, or task completion would be affected by your mental health problems.

Usually your treating sources will only give these opinions when they are asked to do so. You will probably have to ask your doctor to complete a work assessment. Attorneys should have forms that they have created to assist a treating source in answering the most relevant questions pertaining to your claims for disability.

Consultative Evaluations

Sometimes SSA will send you to a physician or psychologist that has been hired to evaluate disability claims. If you are scheduled for one of these exams, you need to be honest and explain all your physical and mental problems.

SSA uses these consultative evaluations at all stages of the disability process.

State Agency Reviewing Doctor Opinions

Before you receive an initial decision or reconsideration decision, SSA will hire a doctor to review all the medical evidence in your record. After reviewing this evidence, this doctor (or often two doctors—a psychologist and a physician) will state what, if any, work-related limitations you have.

At the initial and reconsideration stages, SSA usually follows whatever these reviewing sources recommend. If these doctors find that you are disabled, you will usually be found disabled. If not, you will have to attend a hearing before an ALJ.

Remember, these doctors only look at the evidence in the file at the time they make their decision. The ALJ will have the opportunity to look at all your medical evidence and to hear you testify at your hearing.

Hearing Testimony

At most hearings, both you and a vocational expert will testify under oath. In some hearings, the ALJ will also call a medical expert to testify. In very rare cases, the ALJ will allow family members or other individuals to testify.

Everyone who testifies at a hearing will be placed under oath and is subject to the penalty of perjury.

You usually testify first, answering questions from the ALJ and your attorney. Topics can include background information, work history, types of treatment, medical problems, and your symptoms. You need to explain how your medical symptoms affect your ability to work and to perform your daily activities. You need to focus on your symptoms and not the names of your medical conditions.

If a medical expert is called to testify (usually by phone), he/she does so after you testify. Medical experts review the records and state their opinions concerning the listing of impairments (question 3) and any functional restrictions that they believe you may have. The ALJ makes the decision of whether a medical expert will be used in each case. You need to make sure that the doctor testifying is qualified to testify regarding your medical conditions.

The final person testifying at your hearing is the vocational expert. This person provides testimony about your past work and how that work is generally performed within the economy. The vocational expert will respond to questions from both the

ALJ and your attorney. These questions ask whether a significant number of jobs exist for an individual with various workplace restrictions. Typically, numerous sets of workplace restrictions will be described to the vocational expert (commonly called a hypothetical worker in the hearing). The vocational expert will usually identify jobs in response to some questions, and will sometimes identify no jobs in response to other questions. Afterwards, it is up to the ALJ to decide which set of restrictions (hypothetical worker) best describes you. If the ALJ decides that it was a hypothetical worker where the vocational expert identified jobs, then you will probably be found not disabled. If the ALJ decides that the claimant is best described by a hypothetical worker for which no jobs (or an insignificant number of jobs) were identified, then you will be found disabled.

Letters from Family, Friends, or Employers

Hearings are usually scheduled for about one hour; it is rare (and somewhat discouraged) for anyone else to testify. However, that does not mean your family and friends are unable to assist you with your claim for disability.

Letters from people who know you well and see you regularly can be helpful in proving disability. The best letters focus on observations of your symptoms. Letters that focus on the names of different diagnoses or on what you have told others are not as helpful.

Letters from prior employers are also helpful in proving disability. The best letters come from employers where you worked at the time you became disabled, or where you attempted to work after your disability began. These letters are helpful when they specifically describe how the employer noticed you struggling to perform your job at or around the time that you claim to have become disabled.

Conclusion

It is up to you to prove that you are disabled. The only way to do so is with supporting evidence. The most important evidence is within your medical records (treatment notes and objective testing). This is why it is so important that you see your doctors on a regular basis. Without this treatment, there will not be enough evidence for you to be found disabled.

Unfortunately, this is a Catch-22 as you may not have insurance and may not qualify for Medicaid. This is why we provide our clients with a list of Free Clinics where you can be treated for your conditions. It is very important that you take advantage of these and other resources so you have the evidence necessary to be found disabled.

Chapter 4 | **Know the Process**

Now you understand how you have to prove disability, but what is the process?

The first thing you have to do is file an application. Social Security has joined the digital age, and applications are usually filed over the internet. The date of your application is important as DIB benefits can only be paid for 12 months prior to the date of your application. Even if you became disabled several years ago, you can only receive monies for the past year. This is also important as you are not eligible for Medicare until you have been able to receive DIB benefits for 24 months. You also need to know that there is a 5 full month waiting period for DIB. For example, if you applied in January 2015 and are found disabled as of January 1, 2014, your benefits will begin June 2014, and you will be eligible for Medicare in June 2016. If you are found disabled January 2, 2014, your benefits will begin July 2014, and you will be eligible for Medicare in July 2016. If you are found disabled January 2008 and you apply in January 2015, your benefits will not begin until January 2014, and you will be eligible for Medicare in January 2016.

SSI benefits can only be paid as of the month following the date of your application. So, if you believe that you are disabled and unable to work, you need to file for SSI as soon as possible.

You can either go online yourself or you can contact a representative to help you file the application. Once you apply, the application is sent to your state Bureau of Disability Determination (BDD) for collection of medical evidence and a decision as to whether or not you are disabled. If you are found disabled, you will receive a Notice of Award and benefits will begin. If not, in most states, you file a Request for Reconsideration. Once again, your file is sent to BDD for a second evaluation. If you are denied again, or if your state does not include the reconsideration stage, you have to request a hearing. These two steps can take up to a year to complete.

When you request a hearing, your file is transferred to your local Office of Disability Adjudication and Review (ODAR). After approximately a year, your case will be set for a hearing before an Administrative Law Judge (ALJ). The ALJ will review your file and allow you to appear and testify at a hearing. If the ALJ finds you

are disabled, you will be eligible for benefits. If not, you can either file a Request for Review with the Appeals Council or file a new application. The Appeals Council can either grant benefits, remand the case for another hearing before an ALJ (usually the same ALJ), or deny your claim. If the Appeals Council denies your claim, you have to file a complaint in the appropriate United States District Court against the Social Security Administration.

Chapter 5 | **Do Not Do This Alone**

Social Security is a confusing and complicated process; the most important thing for you to remember is that you should not go through this process alone. You need to find an attorney who is familiar with the disability process and can help you navigate the system.

Be wary if you contact an attorney who states that they want a retainer. If you are granted benefits at the hearing level or earlier, attorney fees have been set as 25% of your past due benefits or $6000, whichever is less. This means that if you receive no past due benefits, there should be no fee. If the past due benefits are $10,000, the attorney fees will be $2500. If the past due benefits are $60,000, the attorney fees will be $6000.

You also need to ask any attorney you contact regarding the number of continuing legal education classes they attend each year to update themselves regarding Social Security. You also should ask how many Social Security hearings the attorney attends each month. Finally, you want to make sure that the attorney you contact is a member of the National Organization of Social Security Claimants' Representatives (NOSSCR). NOSSCR is the national organization of Social Security attorneys. We are pleased to state that Debra is a past president and Scott currently serves on the Board of Directors.

The answers to these questions will tell you whether or not you have contacted a knowledgeable attorney who can help you navigate the system and advocate on your behalf.

Good luck with your claim. Please call us if you would like our help.
Our goal is your success.

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