



# The Book on **Social Security Disability**

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The Book on  
**Social Security Disability**

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The Book on Social Security Disability  
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*The restatement of law in this book is current as of the time of writing, but Social Security Disability law is constantly changing. The information herein is not intended as legal advice. Check with an attorney or the Social Security Administration to be sure of the current status of the law.*

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Dedicated to helping Americans win Social Security Disability benefits

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## **Foreword**

### **Social Security Disability And The SSI Programs**

In 1956, President Dwight Eisenhower set up a safety net for people with disabilities through the Social Security Disability Act. A modification of President Roosevelt's New Deal, the purpose of the Act was to make sure that no American suffered the indignity of financial ruin if rendered unable to work by reason of disability. As many of our own brothers and sisters suffered from the tragedy of disability, Americans determined to meet the moral challenge of keeping people from going hungry on the streets due to inability to work.

In 1969, President Nixon added the Supplemental Security Income program (SSI). So there are now two programs for disabled Americans in place. The key difference between the two is that SSDI is for people who have contributed to the program and earned sufficient quarters of coverage to be insured. SSI is a welfare-based program for disabled persons irregardless of work history.

SSDI is one of the legally required deductions taken out of every American worker's paycheck. Worker's pay into the program and earn "credits" towards benefits. Generally, a person needs 20 credits to be eligible for benefits. Because it is the duty of workers to pay into the Social Security system, the system has a duty to pay benefits to workers who are legally entitled to them. The system has a responsibility to process claims fairly and efficiently, and to be consistent with the rules established by the Social Security Administration. Too often cases are wrongfully denied. In fact, only 52% of all applications are approved for benefits.

### **The Injustice Of Delay**

Depending on the region of the country in which a person lives, it takes on average 9-27 months after filing to receive a first check. Some people wait over 3 years to receive the benefits they are entitled to.

Most people are unprepared for the financial disaster that comes from an unexpected disabling condition. Since they can no longer work, people turn to using their life savings to pay their bills. They are forced to choose between medications and food, or paying the

water or heating bills. They sell their cars, and borrow from friends. Once their savings run out they are evicted, or lose their homes.

These people have paid into the system and are now in a time of need. The fact that the system takes so long and jeopardizes so many peoples' wellbeing is an injustice that desperately needs to be addressed.

### **Cause Of The Delay**

Under-funding is the root cause of the delay. Due to the aging of the baby boomer population, more claims are filed today than ever before, yet budget allocations to the SSA have been frozen for years. Staff levels are far below what is necessary to process the huge increase in new cases every year.

It is a myth that the SSA doesn't pay cases or delays the application process intentionally to reduce benefits payable to claimants. It is also a myth that judges or the SSA wrongly deny cases in order to save the government money. The simple truth is that Congress has not provided sufficient funds to properly staff the legal and administrative teams to process cases.

### **What Can Be Done To Fix The Problem**

Join in efforts to lobby your Congressmen and Senators to approve legislation to provide adequate funding to the Social Security Administration. Write to your local representatives, urging them to support bills that will help the Social Security Administration remedy the delay. We all need to make clear that fundamental decency and fairness require that we provide adequate means to keep our contract with people with disabilities.

### **What Can Be Done If You Have A Claim**

If you believe you have a legitimate claim for disability benefits, you should not delay in filing your application. Since the backlog continues to grow, filing at the earliest opportunity reduces the time you have to wait before receiving benefits.

Preparation is critical to getting a claim approved quickly. First, be meticulous in completing all of the required forms and supporting documents. Be sure you get treatment for your condition and get copies of the records every time you visit your health care provider. Then, be sure you submit all of your records promptly.

Getting your case approved is not an easy task and many people are not well enough to fight the system alone. According to Richard P. Morris, the former President of National Organization of Social Security Claimants' Representatives, getting legal representation improves your chances of winning by over 24%. Lawyers who specialize in this area know the details of the process and how to improve your chances of winning your case.

### **Disability Group, Inc.—Who We Are**

Disability Group is grounded on the principle of dignity and respect. We believe the true test of our success is the delivery of benefits to people with disabilities in a way that respects both their impairments and who they are as individuals.

We are a team of individuals who believe that it is morally wrong that disabled people are forced into homelessness. We believe it is morally wrong that those who fall ill due to injury or disease are denied health care because they have no money to pay for it. We believe it is morally wrong for children to go hungry because their parent is sick. We believe it is our obligation as Americans, and as human beings, to do our best to avoid the injustice of disability.

Ronald D. Miller  
Attorney at Law



I  
INTRODUCTION

## What is Social Security Disability?

The Social Security Administration (SSA) oversees two federal programs designed to help those not able to work due to long lasting or permanent disabilities: the Social Security Disability Insurance (SSDI) program, and the Supplemental Security Income (SSI) program.

### Some Definitions

**Disability** is defined as *the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.*

SSA defines **medically determinable** as *anatomical, physiological or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques and which are established by medical evidence consisting of signs, symptoms, and laboratory findings - not merely by the individual's statements of symptoms.*

**Substantial Gainful Activity** (SGA) describes a level of work activity and earnings. Work is **substantial** if it involves significant physical or mental activities, or a combination thereof. For work activity to be substantial, it does not need to be performed on a full-time basis. Work activity performed on a part-time basis may nonetheless be substantial gainful activity. **Gainful** work activity is performed for pay or profit, or is of a nature generally performed for pay or profit, or is intended for profit, whether or not a profit is realized.

The monthly SGA amount for statutorily blind individuals in 2008 is \$1,570. For non-blind individuals, the monthly SGA amount in 2008 is \$940. The amount is adjusted for cost of living each year. With few exceptions, if you earned \$940 per month for a sustained period you will not be eligible for benefits.

To be awarded benefits, your disability must last at least 12 months or result in death. This serves not only to enforce the "severity" requirement, but prevents those with minor injuries from adding to the already serious backlog of cases.

An applicant is at all times responsible for proving disability. You may not simply allege you are unable to work, but must prove it by submitting medically acceptable evidence. The development of the evidence is crucial to the presentation of your case.

SSA hires medical and vocational experts to prove you are able to work. The good news is you are entitled to have an attorney on your side. The even better news is your attorney does not get paid unless you win.

### **What are Some of the Differences Between SSDI and SSI Benefits?**

Social Security Disability Insurance is the program under which those who have paid into the Social Security trust fund can receive benefits, in a manner similar to those collecting retirement benefits. It is a form of insurance for those employed, generally contributed to through involuntary payroll deductions.

Supplemental Security Income (SSI) is a program for those with limited resources who have become disabled. It is a type of welfare program. There are work requirements for SSDI, but none for SSI. This is intended to fill the gap for disabled persons who cannot meet the work requirements. There are asset limits for SSI, but none for SSDI.

### **To Qualify for SSDI:**

- You must be a United States citizen or permanent resident;
- You must not yet be eligible to claim retirement benefits (younger than 65);
- You must have worked recently enough, and for enough time;
- You must be disabled (by SSA definition).

### **The Work Credit System**

To determine if you have worked enough to be covered, SSA applies the work credit system. To receive a “work credit” you must earn a certain amount of money in a year (in 2008 the amount is \$1,050). You can earn up to four work credits in any one year. If you earn \$4,200 in a year you earn four work credits for that year.

You are eligible for benefits if you have earned enough work credits. The number of work credits needed depends on your age when you become disabled. Generally, you need at least 20 credits in order to qualify, though younger workers may qualify with fewer credits.

The rules are as follows:

- **Before age 24**—You may qualify if you have 6 credits earned in the 3-year period ending when your disability starts.
- **Age 24 to 31**—You may qualify if you have credit for working half the time between age 21 and the time you become disabled. For example, if you become disabled at age 27, you would need credit for 3 years of work (12 credits) out of the past 6 years (between ages 21 and 27).
- **Age 31 or older**—In general, you need to have the number of work credits shown in the chart below. Unless you are blind, you must have earned at least 20 of the credits in the 10 years immediately before you became disabled.

Born after 1929, Became Disabled At Age	Number of Credits You Need
31 through 42	20
44	22
46	24
48	26
50	28
52	30
54	32
56	34
58	36
60	38
62 or older	40

It is not necessary for you to figure out how many work credits you have. SSA or your attorney can help you determine if you qualify.

SSDI benefits are based on income earned. So the more that you paid into the system, the more you will receive when you are awarded. SSA will often freeze your earnings so that if a fall in your income occurs due to your disability, it will not affect the amount of benefits you receive. When you are awarded benefits from SSA you will receive a letter informing you of how much you have been awarded.

### **To Qualify for SSI:**

- You must earn less than a specified income level;
- You must have limited resources;
- You must be a United States citizen (with few exceptions);
- You must meet the definition of disability.

### **The Income Limitation for SSI:**

The amount of income you receive in a month cannot exceed the Federal Benefit Rate (FBR). Where you live is also a factor, as most States have a higher allowed income than the FBR.

SSA *does not count* all of your income when deciding whether you qualify for SSI. Some examples include:

- The first \$20 a month of most income you receive;
- The first \$65 a month you earn from working and half the amount over \$65;
- Food stamps;
- Shelter you get from private nonprofit organizations;
- Most home energy assistance.

### **The Resource Limitation**

In order to qualify for SSI you must not exceed a set level of resources. A resource is any asset that can be converted to cash for support. Resources counted when deciding whether you qualify for SSI include real estate, bank accounts, cash, stocks and bonds.

You may be eligible for SSI if your resources are worth no more than \$2,000, for an individual, and \$3,000 per couple. If you own property you are trying to sell, you may be able to get SSI while trying to sell it.

Social Security does not count everything you own in deciding whether you have too many resources to qualify. Some examples of excluded resources include:

- The home you live in and the land it is on;
- Life insurance policies with a face value of \$1,500 or less;
- Your car (usually);
- Burial plots for you and members of your immediate family;
- Up to \$1,500 in burial funds for you and up to \$1,500 in burial funds for your spouse;
- Household goods totaling \$2,000 in value.

**Concurrent Entitlement:**  
*Those who qualify for both SSI and SSDI*

When applying for disability benefits it is possible (and a good idea) to apply for both SSI and SSDI benefits. A person who is able to receive benefits under both programs is said to have concurrent entitlement.

**II**  
**SOCIAL SECURITY DISABILITY MYTHS**

## **Social Security Disability Myths**

Applying for Social Security disability benefits can often be an intimidating and time-consuming process. Understanding how the system works can make the difference between winning or not winning the disability benefits and back pay to which you are entitled. Following are some common Social Security disability myths and misconceptions.

**Myth: The Social Security Administration denies everyone the first time they apply for disability.**

This is absolutely not true! SSA has no regulation, policy, or formula that influences the disability system in such a way that every first application for social security disability benefits is automatically denied. It is easy to see, however, why people would believe that such a policy exists. Nationwide, about seventy percent of all disability claims are denied on the first application filed.

**Myth: The Social Security Administration will deny you a certain number of times before you are approved.**

Also not true! Just as claims are not automatically denied on the first application, neither are they denied a certain number of times before they are approved. But with seventy percent of initial claims being denied, what can you do to improve the chances of getting approved? Many people simply file applications over and over again, hoping to be approved. This is not the answer. In fact, it could serve to harm your claim. Absent additional evidence, SSA will keep denying you if you continue to file new applications instead of an appeal.

**Myth: If denied, the best thing to do is to file a new application.**

No. In fact, filing a new claim is often the worst thing you can do. Why? Remember that almost seventy percent of initial applications are denied. *Most* (70 out of every 100) disability claimants *will be* denied on the initial application. Repeated new applications will most likely be denied, and for the same reasons.

Further, historically and statistically, if a disability case is not approved at the initial claim level, it will also be denied at the reconsideration level (in some States, the reconsideration step has been suspended as part of a test project) and eventually have to be heard by an



Administrative Law Judge. A disability claim, however, will never get that far if the claimant continually files new applications instead of filing an appeal.

Unless your attorney advises otherwise, always take advantage of your appeal rights upon denial. In short, to improve your chances of winning your disability case, you should:

- Use the appeals process;
- Obtain knowledgeable representation.

**Myth: Certain medical conditions or mental health problems can get you automatically approved for benefits.**

The answer to this is both yes and no. Certain impairments *are* singled out and specified in Social Security Regulations. Claimants who have *listed* medical problems *at the level specified* may be approved for benefits somewhat more easily than those who do not. A listings level impairment is a matter of medical fact, rather than medical opinion.

The disability evaluation process, however, even for listing level impairments, is never automatic. All claims are evaluated according to the medical evidence gathered first by the Disability Determination Services at the initial claim and reconsideration levels, and then by the claimant or attorney at the Administrative Law Judge (ALJ) level. Claims are decided on the information supplied by medical providers.

It is therefore important to remember that disability claimants should seek regular medical treatment throughout the entire time their claim is pending. This ensures proper documentation for evaluation purposes.

If you haven't been to the doctor in a year, the judge will naturally wonder whether your condition has improved. Cases in which medical evidence is scant and doctor visits are sporadic have little chance of approval. Conversely, claimants who get regular medical care will have more solid cases and a better chance of winning.

**Myth: You cannot get Social Security Disability if you have used drugs or alcohol.**

This is not necessarily true. It depends on the extent of the use and how recent the use is. More specifically, it depends upon whether the drug or alcohol use contributes to your present condition.

It is not possible to receive disability benefits based solely on addiction. Whether such use will affect a claimant's eligibility for benefits depends on materiality. If a claimant's drug or alcohol abuse is found to be *material*, the claim will not be awarded. The question is, if I were to stop using drugs or alcohol, would I still be disabled?

For example, a claimant applies for disability based on liver dysfunction and hepatitis. The claimant also has a history of alcohol abuse, some of it recent. Will the alcohol abuse harm the claimant's case? It depends on whether it is material to the case.

If the liver damage were so pronounced that ceasing alcohol use would make no difference to the claimant's medical condition, then alcohol abuse would be immaterial, or irrelevant to the case. Conversely, if ceasing alcohol use would result in medical improvement, then the alcohol abuse is material to the disability and the claim would be denied.

If a claimant alleges disability based on depression, and continues to use alcohol or other depressants, the claim will probably not be awarded. The key is this: has your doctor advised you to stop because it is affecting your condition? If so, it will be in your records.

Simply put, Social Security will not pay benefits to claimants whose disabling conditions are brought on or exacerbated by continued drug and alcohol abuse. Claimants who have a history of abuse but who are not currently using substances should carefully review their medical records before filing for disability. You may be surprised at what your doctors write about you.

Medical doctors and mental health professionals will often indicate "suspected use" or "alcohol on breath" in their treatment notes. Such indications, proven or not, can have a damaging effect on a disability case. Claimants whose disabling conditions are psychiatric in nature should especially heed this since mental cases are more likely to be denied when substance abuse is involved.

**Myth: Hiring an Attorney to help me with my claim is an unnecessary cost at a time when I am out of work.**

Social Security Attorneys work on a contingency basis, so they do not get paid unless you win your case. Further, federal law regulates what a Social Security Attorney can charge. Currently, an attorney only receives up to 25% of the back pay on benefits, to a maximum of \$5,300.

This means that if you win your case, your attorney will only receive a portion of what was due to you before you actually start receiving benefits, and will not get any of the money you are entitled to thereafter. This is very beneficial to clients pursuing benefits because retaining an attorney that specializes in Social Security Disability dramatically increases your chances of being approved.

III  
THE PROCESS OF A CLAIM

## The Initial Application

To begin the process, (whether SSI or SSDI), you must file an application. You can go into your local SSA field office, where an agent will assist you, you can communicate with SSA over the telephone, you can get a form from an SSA office and mail it in, or you can download the necessary paperwork from [www.ssa.gov](http://www.ssa.gov). Or, your attorney can do it for you. A phone call will preserve the filing date, but the SSA form *must* at some point be completed.

If you believe you may be eligible, you should file an application as soon as possible, to preserve your application date. SSDI benefits are only payable for one year prior to the date the application is filed. There is also a five-month waiting period.

In addition to locking in your filing date, filing an application will:

- Permit SSA to make a formal determination as to whether you are eligible to receive benefits;
- Assure that you receive benefits for any months you are eligible to receive payment;
- Give you the right to appeal if you disagree with the determination.

*Exceptions.* You need not file a new application if:

- You have been receiving benefits as an eligible spouse and are no longer living with your husband or wife;
- You have been receiving benefits as an eligible spouse of an eligible individual who has died;
- You have been receiving benefits because you are disabled or blind and you are 65 years old before the date you are no longer blind or disabled;
- A re-determination of your eligibility is being made and it is found that you were not eligible for benefits during any part of a period for which SSA is making a re-determination but you currently meet the requirements for eligibility;
- You are notified that your payments of SSI benefits will be stopped because you are no longer eligible and you again meet the requirements for eligibility before your appeal rights are exhausted.

When you go to file your claim it is important to have as much information as possible on hand so that your claim can be processed quickly. Types of information you will need are:

**Social security number and proof of age** – The SSA will need this information in order to help determine the kinds of benefits for which you are eligible.

**Medical records from all treating physicians** – You must submit appropriate medical records and test results. The general rule of thumb is the more evidence you can initially send to SSA, the faster your claim will be processed. If you require any special assistance obtaining records, contact SSA with your concerns. If you do not submit this information SSA will contact your doctors to obtain it.

This process can be *very* lengthy. You should submit as much relevant information as possible so a timely decision can be made. One of the primary reasons to acquire representation is for help in not just attaining, but more importantly, reviewing medical records. Regulations provide that you may submit whatever records you think will help SSA reach a decision in your case. Not all medical records help, and in fact, some are harmful. The rules are complex, and the help of a trained professional can be invaluable in developing your claim from the beginning.

**Employment information** – You will be asked about your employment history dating back 15 years. This information is critical to determining the benefits for which you are eligible. SSA will ask what sorts of tasks each of your various jobs entailed (i.e. heavy lifting, using machinery, supervising, skills used), as well as how your job was affected by your disability (i.e. shorter hours, reduction of duties, specialized equipment). This information can be vital not only to proving disability, but in determining the date of onset.

**Income and asset information** – This is acquired primarily to determine the benefits for which you qualify (SSDI or SSI). It includes information about savings and checking accounts as well as any liquid assets you have (i.e. a life insurance policy or stock certificates).

**Information about activities of daily life (ADLs)** – This is vital! The information supplied here may lead to denial of your claim. You will be asked what kind of things you do during the day, what kind of chores you can do, if you take care of any animals, and other questions related to daily activities. SSA will eventually read this information with work-related activities in mind, so while it might be true that you live with a dog, if you claim to take care of it exclusively, it will be construed by SSA as at least some evidence of your abilities. In a like manner, if you allege you do nothing but sit and watch TV all day, SSA

may construe it to mean that you are able to sit for six hours, and are therefore able to do sedentary work.

When answering these questions it is best to be very specific about what you can and cannot do, as well as how your disability affects your capabilities. Your attorney can provide invaluable assistance with this. Remember that your answers on these forms will be used against you later. You must have a very good reason to modify your answers later, or it will harm your credibility. And lack of credibility is a sufficient reason for a claim to be denied.

**Onset of Disability** – The application will ask what day you believe your disability began. This is important for SSDI, because benefits are payable as of the date of onset up to a year prior to the date of application. SSI benefits, on the other hand, are effective only as of the date of application.

It is important to remember that the application is just a first step. Many claimants are denied on initial application.

70 percent of initial applications are denied. SSA is a complicated bureaucracy and many legitimate disability claims have to be appealed all the way to an Administrative Law Judge before being awarded. Your best strategy is to ensure you have the most accurate and detailed medical information possible so your claim can be handled in a timely manner.

### **Disability Determination Services (DDS)**

After you have filed your initial application, and your local SSA field office agrees that you meet the non-medical qualifications for benefits, your application is then sent to the Disability Determination Services. These agencies are federally funded and mandated, however they are governed by individual States. The DDS will initially review and decide your claim.

When your file is transferred from the SSA field office to DDS, a Claims Examiner will be assigned to your case. This person is your liaison with SSA and your contact at DDS. However, this person is not a doctor, and is not authorized to make any medical judgments about your condition. Instead, the Claims Examiner is primarily concerned with acquiring any missing medical records and keeping you informed as to the status of your case. For the medical determination in your case, your file will be given to a Medical Consultant.

### **Medical Consultants:**

*What qualifications must a medical consultant have?*

A medical consultant must be an acceptable medical source, that is, a licensed physician, a licensed optometrist, a licensed podiatrist or a qualified speech-language pathologist. Medical consultants must meet any appropriate qualifications for their specialty.

Medical consultants who are not physicians are limited to evaluating the impairments for which they are qualified. They are also limited as to when they may serve as a member of a team that makes a disability determination.

For example, a speech-language pathologist in a State agency may be a member of a team that makes a disability determination in a claim only if a speech or language impairment is the sole impairment in the claim or if there is a combination of a speech/language impairment with another impairment but the speech/language impairment alone would justify a finding of disability. In all other cases, a physician will be a member of the team that makes a disability determination, except in mental cases, where this function is better performed by a psychological consultant.

### **What is a psychological consultant?**

A psychological consultant is a psychologist who has the same responsibilities as a medical consultant, but who can evaluate mental impairments.

### **What qualifications must a psychological consultant have?**

A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. For disability program purposes, a psychologist will not be considered qualified unless he or she:

Is licensed or certified as a psychologist at the independent practice level of psychology by the State in which he or she practices; and

- A) Possesses a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or
- B) Is listed in a national register of health service providers in psychology which the Commissioner of Social Security deems appropriate and possesses 2 years of supervised clinical experience as a psychologist in health service, at least 1 year of which is post-masters degree.



Psychological experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

**Are there any limitations on what a psychological consultant can evaluate?**

Psychological consultants are limited to the evaluation of mental impairments. Psychological consultants also are limited as to when they can serve as a member of a team that makes a disability determination. They may do so only when a mental impairment is the only impairment in the claim or when there is a combination of a mental impairment with another impairment but the mental impairment alone would justify a finding of disability.

For your claim to be awarded, you have to prove that you are blind or disabled. This means that you must furnish medical and other evidence that DDS and your Medical Consultant can use to reach conclusions about your medical impairment(s). If material to the determination as to whether you are blind or disabled, medical and other evidence must be furnished about the effects of your impairment(s) on your ability to work, or if you are a child, on your ability to functioning on a sustained basis. They will consider only impairment(s) you say you have or about which they receive evidence.

**The Process at DDS**

**What does SSA mean by evidence?**

Evidence is anything you or anyone else submits to the SSA / DDS, or that they obtain to help them decide your claim. This includes, but is not limited to:

- Objective medical signs and laboratory findings;
- Other evidence from medical sources, such as medical history, opinions, and statements about treatment you have received;
- Statements you or others make about your impairment(s), your restrictions, your daily activities, your efforts to work, or any other relevant statements you make to medical sources during the course of examination or treatment, or to SSA during interviews, on applications, in letters, and in testimony during administrative proceedings;
- Information from other sources;
- Decisions by any governmental or nongovernmental agency about whether you are disabled or blind;

- Findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical experts that the SSA consults.

### **Your Responsibility:**

You (or your attorney) must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information needed to decide your claim. If asked you must provide evidence about:

- Your age;
- Your education and training;
- Your work experience;
- Your daily activities both before and after the date you say that you became disabled;
- Your efforts to work;
- Any other factors showing how your impairment(s) affects your ability to work, or, if you are a child, your functioning.

### **Social Security's Responsibility:**

Before DDS makes a determination that you are not disabled, they will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. DDS will make every reasonable effort to help you get medical reports from your own medical sources when you give them permission to request the reports.

**Every reasonable effort** means DDS will make an initial request for evidence from your medical source and, at any time between 10 and 20 calendar days after the initial request, if the evidence has not been received, they will make one follow-up request to obtain the medical evidence necessary to make a determination. The medical source has a minimum of 10 calendar days from the date of the follow-up request to reply, unless experience with that source indicates a longer period is advisable in a particular case.

By **complete medical history**, SSA means the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. If you say that your disability began less than 12 months before you filed your application, SSA will develop your complete medical history beginning with the month you say your disability began unless DDS has reason to believe that your disability began earlier.

**Recontacting medical sources.** When the evidence received from your treating physician or psychologist or other medical source is inadequate to determine whether you are disabled, additional information will be needed to reach a determination or a decision. To obtain the information, DDS will take the following actions:

- 1) DDS will first recontact your treating physician or psychologist or other medical source to determine whether the additional information needed is readily available. DDS will seek additional evidence or clarification from your medical source when the report from your medical source contains a conflict or ambiguity that must be resolved, the report does not contain all the necessary information, or does not appear to be based on medically acceptable clinical and laboratory diagnostic techniques. DDS may do this by requesting copies of your medical source's records, a new report, or a more detailed report from your medical source, including your treating source, or by telephoning your medical source. In every instance where medical evidence is obtained over the telephone, the telephone report will be sent to the source for review, signature and return.
- 2) DDS may not seek additional evidence or clarification from a medical source when they know from past experience that the source either cannot or will not provide the information. However, the evidence in question may still be necessary **to win your claim**. That is why it is important that you or your attorney pursue your medical records.

#### **When will DDS decide that you need a Consultative Examination (CE)?**

If the information DDS needs is not readily available from the records of your medical providers, or if they are unable to seek clarification from your medical source, DDS will ask you to attend one or more consultative examinations at their expense. Generally, they will not request a consultative examination until they have made every reasonable effort to obtain evidence from your own medical sources.

However, in some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, DDS may

order a consultative examination while awaiting receipt of medical source evidence. They will not evaluate this evidence until they have made every reasonable effort to obtain evidence from your medical sources.

### **The Decision**

Once DDS has acquired a complete medical history, and a medical consultant has reviewed that history, your claim for benefits will be decided based either on the listings at step 3, or a medical-vocational determination based upon your Residual Functional Capacity (RFC), age, education and experience at step 5 of the sequential evaluation process.

### **If you are Approved**

Your claims examiner will sign off that you meet non-medical eligibility requirements and your medical consultant will sign off that you are medically disabled. Your paperwork is then sent back to the SSA office where any outstanding paperwork will be completed and your award amount will be determined. You will then receive a Notice of Award.

### **Denial**

If your claim is denied, your file will be returned to SSA where it will be held to give you a chance to file for reconsideration. At this time you can also ask that you (or your attorney) be allowed to review your file in order to understand why you were denied.

## **The Appeals Process**

After initial denial, there are several levels of appeal. There have been recent changes in the law such that some levels are being omitted or replaced. As for now, the appeals process in most areas is as follows:

- Request for Reconsideration;
- Administrative Law Judge Hearing;
- Appeals Council;
- Federal District Court.

### **Request for Reconsideration**

Claimants can appeal using a one-page form that asks a few brief questions. The claimant has the opportunity to submit any new medical information. A different member of the SSA/DDS staff will take a second look at your claim.

There is a 60-day time limit in which to file an appeal, plus 5 days for mailing, in effect giving you 65 days to file. Claimants who fail to request an appeal in timely fashion must show good cause for late filing or the case is dismissed.

*Examples of Good Cause include:*

- Hospitalization;
- Illness that prevented the ability to take care of daily business affairs;
- Disability-related reasons, such as inability to see, read or understand and having no assistance;
- Illness or death of a payee who usually took care of things;
- A move or other event that resulted in the claimant not getting their mail.

### **Administrative Law Judge Hearing**

If denied on reconsideration, you have 60 more days to file a request for hearing. A hearing represents your best chance of winning your case.

When the case is ready to be heard by a Judge, the claimant and/or attorney will receive a notice stating the date, time, and place of the hearing. This notice will also state whether there will be a Medical or Vocational expert present.

### ***What Happens At the Hearing***

#### **Overview**

You will have a face-to-face meeting with a judge who will hear your case *de novo*. The judge is not bound by the earlier decisions in your case. You and your witnesses (if any) and any expert witnesses the judge calls will give sworn testimony.

The hearing is closed to the public, and usually occurs in an informal, office-like setting. Sometimes hearings are held in banks or even hotels. The Judge will sit at the head of the table, possibly on an elevated platform. Claimant and attorney will sit together and, if present, experts will be seated next to the attorney and claimant.

The judge has an assistant who records the proceedings. A copy of the recording may be obtained should you need to appeal further. The Judge will introduce him/herself and everyone present. The Judge will have everyone giving testimony raise their hands and give an oath to tell the truth. The hearing will then proceed.

#### **Questioning**

At this point, the Judge may ask the claimant a series of questions, or the Judge will request that the attorney ask these questions. The questions are simple, basic ones, such as age, highest level of education and the reasons why the claimant cannot work.

The claimant will be asked to describe the work they've done during the last 15 years. The claimant should also be asked about exertional and non-exertional abilities. There are 7 exertional abilities that affect ability to work – sit, stand, walk, lift, carry, push and pull. Non-exertional limitations may affect postural abilities, such as kneeling and stooping, or senses and speech, breathing, or the environment in which one may work. This information will be used in determining your Residual Functional Capacity (RFC).

## Experts

The medical expert is a doctor, paid by SSA to review a claimant's file and analyze the records. The expert will list the disabilities documented in the claimant's file. The Judge will ask the medical expert if the claimant's disability meets or equals a listing.

If the expert responds that the claimant's impairment meets or equals one listed in *The Blue Book*, the claimant wins. However, if the medical expert testifies that the claimant's impairments do not meet or equal a listed condition, the Judge may ask the expert to offer an opinion as to RFC - what the claimant can still do despite impairments. The claimant's attorney then has an opportunity to cross-examine the medical expert.

If no listing is met or equaled, the Judge assesses an RFC and poses one or more hypothetical questions to a Vocational Expert. The VE has a background helping persons find jobs, and supposedly knows what jobs are available. The judge asks whether a hypothetical claimant with the assessed RFC can perform the claimant's past work or any other work.

The attorney then has the opportunity to question the Vocational Expert. The RFC the attorney uses is based on the claimant's testimony and statements by claimant's doctors about abilities and activities of daily living. Often, the RFC assessment comes directly from questionnaires the attorney requested and received from the claimant's treating physicians.

After the vocational expert is questioned, the attorney may or may not present a closing argument and the record is closed.

## Decisions

The Judge can make a decision on the record before a hearing, or on the bench at the hearing, but this is rare. Most often, it takes about 2 months to receive a written Notice of Decision in the mail. If the decision is partially favorable or unfavorable, the claimant has 60 days to appeal.

The majority of individuals applying for Social Security Disability have to appear before an Administrative Law Judge (ALJ) to win their case. Nationally, about 30 percent of claims are approved at the initial level and about 15 percent are approved at the reconsideration level. ALJ hearings have an approximately 50 percent approval rate.

While the rules governing Social Security disability cases are the same in every state, decision-making based on a human reading of a claimant's medical records is, inherently and unavoidably, a subjective process. It is critical, therefore, to understand what evidence judges are looking for and why they approve claims. There is no "one size fits all," but the following evidence, either singularly or in combination, can help improve the chances of having a claim approved at the hearing level.

### **A Solid Work Record**

Credibility is one of the most important aspects of your case. Judges base credibility determinations on work history, medical records, and doctors' opinions. Cases tend to be given more credibility when a person has a strong work history.

Each file for Social Security disability benefits has a work history report that shows a claimant's earnings over the course of their lifetime. It is strong, positive evidence in a claim when a person shows that they have worked gainfully and consistently right up until, due to medical conditions, he or she was no longer able to work. Judges look at work history closely to see if the individual applying for benefits has shown a history of wanting to work.

### **Note**

Every case is different and various factors go into how much weight a judge gives work history. For example, for those with chronic, life-long illnesses whose conditions worsen, poor work records may show the claimant has consistently tried to work despite his or her condition. In such a case, a poor work history may help a claim.

### **A Well Documented Case**

Proving a claimant is disabled is the product of many months or years of medical and vocational documentation. Prior to the hearing, judges expect your claim to be well documented with medical records and physician reports. This documentation should be obtained and submitted for review in advance of the hearing. This evidence will tell the judge what he or she wants to know before they ever see a claimant. Developing a case and having a strategy to win literally years prior to the hearing date is crucial.



## **Medical Records Consistent with the Hearing Testimony**

When your medical records are well documented and confirm the testimony at hearing, you should win your case. Disability can be based on any documented medical diagnosis that has a significant impact on your ability to function. Judges listen to your testimony at the hearing, but what they really want is to see the story reflected in the medical records.

Judges want evidence of:

- Proper diagnosis;
- Consistent treatment with physicians and/or specialists;
- Compliance with treatment recommendations;
- Confirmation of testimony regarding the frequency, severity, and duration of symptoms and why they limit your ability to function;
- Medications and any side effects.

Judges thoroughly review medical records to determine whether testimony regarding these issues is supported by the medical documentation.

## **Treating Physicians Support the Claim**

Federal law requires a judge to carefully consider a treating physician's opinion before making a decision. Prior to the hearing, judges want to see that doctors support a disability claim and usually expect to see written evidence in the form of treatment notes, narrative reports, and Residual Functional Capacity Questionnaires (RFCs). It is much more difficult to win a claim without a physician's support. Treating physician's opinions should be specific and set forth all physical and/or psychological limitations a claimant has in a work environment. Merely restating the diagnosis is not enough; the doctor needs to explain the limitations and how they affect ability to work.

While there is no one, specific way to win a disability claim at the hearing level, you can improve your chances of a favorable decision. Winning your case is a matter of perseverance, thorough documentation, diligent preparation and a thoughtful strategy.

## **Appeals Council**

Upon receiving an unfavorable or partially favorable decision, a claimant can appeal by filling out a one page “Request for Review by Appeals Council.”

If the Appeals Council finds there were errors, then the case is remanded (sent back) to the same Judge with an order stating what needs to be corrected.

The attorney appears with the client before the same Judge in order to make the corrections that the Appeals Council ordered. The average wait time to get a case reviewed by Appeals Council is 8 months to 2 years.

If the Appeals Council denies review, or in other words, agrees with the Judge’s original unfavorable or partially favorable decision, then the next level of appeal is the Federal District Court.

## **Federal District Court**

When appealing to the Federal District Court, the claimant has now stepped outside the Social Security system. This appeal requires an attorney who is familiar with Social Security law and the federal rules of civil procedure.

IV  
PROVING DISABILITY

## **Medical Evidence**

When trying to establish disability, medical evidence is crucial. Social Security regulations state that a disability must be medically determinable. This means there must be medical evidence to prove that a condition exists and that it impairs capacity to perform work-related activity.

### **Types of Evidence**

Evidence can come in many different forms. Medical records, x-rays, progress notes, witness testimony and, to some extent, even a claimant's own testimony as to disability is considered. But objective evidence is the most convincing.

Objective evidence takes the form of medical records that clearly prove a condition exists. MRI's, x-rays, pulmonary tests, and blood tests are very strong types of evidence. A condition evidenced by such clinically proven methods is a matter of fact, rather than opinion.

In some cases, however, there are no tests that prove a condition exists. For example, there is no blood test that can prove someone is diagnosed with Fibromyalgia or Depression. In such cases, progress notes from doctors or other treatment providers describing a condition and the ongoing treatment provided can help prove the case.

Though evidence in the form of testimony is considered, it is subjective, and it is typically not given as much weight as objective evidence.

### **How Evidence is Obtained**

Medical evidence that becomes part of your file is obtained by requests for records from your treating doctors. During the initial application phase, Social Security asks applicants which doctors they receive treatment from and obtains releases. Then, the Administration makes requests to these doctors for the applicant's records.

Applicants may enlist the services of an attorney early on to assist with medical evidence collection. The more supportive evidence that is collected, the better chance there is to obtain a fully favorable award. To ensure that appropriate evidence is available, it is necessary to receive regular treatment from medical professionals. In the event financial

reasons preclude doctor visits, try to obtain assistance and regular care at a free clinic or county clinic. Without evidence, there is no chance a Social Security decision maker will ever approve your claim.

### **Consultative Exam Evidence**

Aside from the records provided by your doctors, evidence can take the form of reports from Social Security's Consultative Examiners. Often, the Administration will not have enough medical evidence to make a decision in a case. More often, it seems, they just want the opinion of a doctor other than your own. In nearly all instances, a Consultative Exam is scheduled for the applicant. At this exam, an independent medical professional will make a determination about the applicant's condition and offer an opinion as to what work-related limitations the claimant may have.

### **Medical Source Statements**

Often, applicants don't understand why they have been denied benefits when their own doctors have stated that they are disabled. Such broad statements alone, even when they come from an applicant's treating doctor, are generally given little weight. It is important to understand that in order to be considered disabled under Social Security's standards, various rules and regulations apply.

The final decision as to whether an individual is disabled rests with the Commissioner. Therefore, it helps to obtain a statement from a treating doctor about the limitations that accompany a particular diagnosis. With that, the Judge can decide whether an applicant can work based on the cited limitations. If the limitations are significant, they will substantially interfere with many of the exertional and non-exertional abilities mentioned above. If the limitations are mild, however, it may direct a conclusion that there is still some work the claimant can do.

Documentation and statements from doctors should list all diagnoses and limitations. For example, certain conditions may preclude a person from prolonged sitting, standing, walking, lifting or carrying. Other conditions may preclude someone from working due to an inability to concentrate, excessive fatigue or an inability to be around the public or co-workers due to a psychological problem. A thorough description of a person's limitations provided by a treating doctor is one of the strongest forms of evidence.

## **Consultative Examinations (CE)**

The DDS Medical Consultant working on your case will often find that more evidence is needed to properly adjudicate your claim. If your medical sources cannot or will not give SSA sufficient information about your impairment to determine whether you are disabled, SSA may ask you to undergo one or more physical or mental examinations or tests.

The SSA will schedule and pay for these examinations. However, it will not pay for any medical examination arranged by you or your attorney without advance approval. If SSA arranges for the examination or test, reasonable notice of the date, time, and place of the examination or test will be provided. The SSA will supply the examiner with any background information necessary to render an opinion about the claimant's condition.

If the evidence provided by the claimant's own medical sources is inadequate to determine if he or she is disabled, additional medical information may be sought by recontacting the treating source for additional information or clarification or by arranging for a CE.

The treating source is the preferred source of purchased examinations when the treating source is qualified, equipped and willing to perform the additional examination or tests for the fee schedule payment and generally furnishes complete and timely reports. Even if only a supplemental test is required, the treating source is ordinarily the preferred source for this service.

SSA's rules provide for using an independent source (other than the treating source) for a CE or diagnostic study if:

- The treating source prefers not to perform the examination;
- There are conflicts or inconsistencies in the file that cannot be resolved by going back to the treating source;
- The claimant prefers another source and has a good reason for doing so; or
- Prior experience indicates that the treating source may not be a productive source.

The type of examination and/or test (s) purchased depends upon the specific additional evidence needed for adjudication. If an ancillary test (e.g., X-ray, PFS or EKG) will furnish the additional evidence needed for adjudication, the DDS will not request or

authorize a more comprehensive examination. If the examination indicates that additional testing may be warranted, the medical source must contact the DDS for approval before performing such testing.

Fees for CEs are set by each State and may vary from State to State. Each State agency is responsible for comprehensive oversight management of its CE program, but the claimant never pays the CE fees.

### **Selection of a Consultative Examination Source**

The DDS purchases consultative examinations only from qualified medical sources. The medical source may be the individual's own physician or psychologist, or another source. In the case of a child, the medical source may be a pediatrician.

*Qualified* means that the medical source must be currently licensed in the State and have the training and experience to perform the type of examination or test requested. Also, the medical source must not be barred from participation in DDS programs. The medical source must also have the equipment required to provide an adequate assessment and record of the existence and level of severity of the individual's alleged impairments.

Medical sources that perform CEs must have a good understanding of SSA's disability programs and evidence requirements. The medical source chosen may use support staff to help perform the consultative examination. Any such support staff (e.g., X-ray technician, nurse, etc.) must meet appropriate licensing or certification requirements of the State.

Generally, medical sources are selected based on appointment availability, distance from a claimant's home and ability to perform specific examinations and tests.

### **Consultative Examination Report Content**

The examination report should include the claim number and a physical description of the claimant to help ensure that the person being examined is the claimant. The detail and format for reporting the results of the medical history, physical examination, laboratory findings, and discussion of conclusions should follow the standard reporting principles for a complete medical examination.

The report should be complete enough to enable an independent reviewer to determine the nature, severity and duration of the impairment, and, in adults, the claimant's ability to perform basic work-related functions. The history and physical examination must be provided as a narrative of the findings. Conclusions in the report must be consistent with the objective clinical findings found on examination and the claimant's symptoms, laboratory studies, demonstrated response to treatment, and all available information. The report, for adults, should include a description, based on the medical source's own findings, of the individual's ability to do basic work-related activities. It should not include an opinion as to whether the claimant is disabled under the meaning of the law.

### **Signature Requirements**

All CE reports must be personally reviewed and signed by the medical source that actually performed the examination. The medical source doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided. The source's signature on a report annotated "not proofed" or "dictated but not read" is not acceptable. A rubber stamp signature or signature entered by another person, such as a nurse or secretary, is not acceptable.

### **How the DDS Reviews Consultative Examination Reports**

The DDS is obligated to review the CE report to determine whether the specific information requested has been furnished.

The CE report must:

- Provide evidence that serves as an adequate basis for disability decision-making in terms of the impairment it assesses;
- Be internally consistent. (Are all the diseases, impairments and complaints described in the history adequately assessed and reported in the clinical findings?);
- Reach conclusions that correlate to the medical history, the clinical examination and laboratory tests and explain all abnormalities;
- Be consistent with the other information available within the specialty of the examination requested;
- Mention important or relevant complaints noted in other evidence in the file (e.g., blindness in one eye, amputations, pain, alcoholism, depression).



- Be adequate as compared to the standards set out in the course of a medical education.
- Be properly signed.

If the report is inadequate or incomplete, the DDS will contact the medical source and ask the medical source to furnish the missing information or prepare a revised report. The CE opinion is otherwise treated the same as any other medical evidence in the file to help make the final disability determination.

V

THE FIVE STEP SEQUENTIAL EVALUATION PROCESS

## **The Five Step Sequential Evaluation Process**

When determining disability at any stage (initial application, reconsideration, hearing, etc.), SSA uses a five-step sequential evaluation process. This means that to decide the claim, SSA will ask five questions, in order. Only at questions 3 and 5 can you win your claim. If at any time during the process it is determined that a Claimant is or is not disabled, the evaluation stops – they do not advance to the next question. The questions are: (1) Are you working? (2) Do you have a severe impairment? (3) Do you meet or equal the listings? (4) Can you return to your past relevant work? (5) Can you do any other jobs that exist in significant numbers in the national economy, even though you have never done them before?

### **1) Are you working? *Work* is defined as *substantial gainful activity*.**

If you are working (the answer to this question is yes) SSA will find you are not disabled. They will not go on to question 2. *Substantial* means significant physical or mental activity. *Gainful* means done for profit, whether or not a profit is realized.

If you are not working, the SSA moves on to question 2.

### **2) Do you have a severe impairment, expected to last at least 12 months or result in death?**

A severe impairment is one that significantly affects capacity to do work-related activities. If your impairment is not severe (the answer to this question is no) then you will lose your claim right here.

If your impairment is considered severe then move on to question 3.

### **3) Does your impairment or combination of impairments meet or equal the listings that SSA maintains?**

SSA regulations list medical problems along with the clinical evidence required to prove disability. These regulations are known as ‘The Blue Book’ listings. If your disability is severe and meets the stringent conditions set forth in the Blue Book (the answer to this question is yes), then you will win your case here. They will not go on to question 4. It is *very* difficult to win a case at this stage.

## **The Blue Book**

SSA regulations describe very specific impairments and the necessary objective clinical findings needed to be found disabled. These listings are familiarly known as “The Blue Book,” because the book has a blue cover. You may ask for a copy at your local SSA office, or you may view the contents online at: <http://www.ssa.gov/disability/professionals/bluebook/listing-impairments.htm>

The categories cover 14 bodily systems:

- 1) Musculoskeletal System
- 2) Special Senses and Speech
- 3) Respiratory System
- 4) Cardiovascular System
- 5) Digestive
- 6) Genitourinary
- 7) Hematological
- 8) Skin
- 9) Endocrine
- 10) Impairments that affect multiple body systems
- 11) Neurological
- 12) Mental
- 13) Malignant neoplastic diseases
- 14) Immune system disorders

Each category contains several subcategories that describe specific conditions or diseases and the precise medical findings that allow for a determination of disability as a matter of medical fact, rather than medical opinion. Conditions must be documented to such a degree that any doctor could look at them and reach the same clinical conclusion.

To win at step 3 of the sequential evaluation process, a condition must meet or equal one of the listings. If your condition does not meet one of these listings, it does not mean that you cannot be awarded disability benefits. The evaluation process moves on to step 4.

### **3 ½) Determining Residual Functional Capacity**

As a preliminary matter, before moving to step 4, residual functional capacity must be assessed. This can get a little tricky, but with careful strategy and knowledgeable representation, you can still win.

## **Residual Functional Capacity (RFC)**

When your impairments do not meet or equal a listing at step 3 of the sequential evaluation process (the Blue Book listings), SSA must evaluate your RFC, or what you can still do despite your limitations.

During the course of the claim, SSA will ask you to fill out a questionnaire describing normal daily activities and your ability to do them. They ask whether you are able to cook, clean, do yard work, laundry, drive, mow the lawn, take trips, shop, watch movies, work on the computer, etc.

Your answers give some indication as to whether the things you do on a daily basis can be transferred to a work setting. So, for example, if you say “I do nothing but sit and watch TV for 8 hours per day,” that is some indication that you can sit for a full workday.

RFC comes into play at step 4 and, if necessary, at step 5 of the sequential evaluation process. At step 4, the question is whether you can return to any of the jobs you’ve had in the last 15 years. SSA will try to determine, based on your RFC, whether it’s possible for you to return to work.

Typically, a vocational expert determines whether you have the residual functional capacity to return to the work you have done in the past. If it is determined you can, the process stops, and a determination of “not disabled” is entered.

Given the relative unlikelihood of meeting a Blue Book listing, you must be prepared for this RFC assessment. You should get your doctors to fill out questionnaires tailored to your specific impairments. Your attorney should be able to provide you with these forms, or send them to your doctors on your behalf. The importance of such an assessment by a treating physician cannot be overestimated.

The typical questionnaire asks for an assessment of exertional and postural abilities, environmental limitations, problems with senses, manipulation, reaching and breathing. It also should estimate pain and its effect on ability to concentrate and maintain attention. Finally, it should estimate the number of unscheduled breaks you might be expected to take and how many days you might be absent from work.

## **Physical RFC Exertion Restrictions**

RFCs contain a wealth of information about your capabilities as a worker. One of the components of your RFC will be your exertional restrictions, meaning how you are physically limited because of your disability. This includes: lifting, carrying, standing, walking, sitting, pushing, and pulling.

SSA determines that a person can also do all the levels below their own exertional ability. Thus, a person who can do very heavy work can also do heavy, medium, light and sedentary work. A person who can do medium work can also do light and sedentary, and so on.

### **Categories of Exertional Abilities**

- **Very Heavy Work** – Able to lift objects weighing more than 100 pounds at a time. Frequently lift or carry objects weighing 50 pounds or more. Stand or walk for a total of 6 hours in an 8-hour workday.
- **Heavy Work** - Able to frequently lift or carry 50 pounds and occasionally lift or carry 100 pounds. Able to stand and walk for 6-8 hours a day. An RFC of heavy work is equivalent to a rating of no exertional restriction.
- **Medium Work** - Able to frequently lift or carry 25 pounds and occasionally lift or carry 50 pounds. Able to stand or walk for 6-8 hours a day.
- **Light Work**- Able to frequently lift or carry 10 pounds and occasionally lift or carry 20 pounds. Able to stand or walk 6-8 hours a day.
- **Sedentary Work**- Able to occasionally lift 10 pounds, stand or walk for 2 hours in a day, and sit 6 hours in an 8-hour day.

These categories relate to the medical-vocational guidelines ('the grids') for determining, as a presumptive manner, that significant jobs do or do not exist in the national economy. The grids represent SSA's attempt to unify the process. They take into account the vocational factors affecting your employability - age, education, transferable skills, and RFC – and render a finding of “disabled” or “not disabled,” with the latter meaning that a significant number of jobs exist that a claimant can still perform in spite of limitations.

## **Mental Residual Functional Capacity**

The determination of mental RFC involves the consideration of evidence such as:

- History, findings, and observations from medical sources (including psychological test results), regarding the presence, frequency, and intensity of hallucinations,

delusions or paranoid tendencies; depression or elation; confusion or disorientation; conversion symptoms or phobias; psycho physiological symptoms, withdrawn or bizarre behavior; anxiety or tension;

- Reports of the individual's activities of daily living and work activity, as well as testimony of third parties about the individual's performance and behavior;
- Reports from workshops, group homes or similar assistive entities.

When looking at the evidence above, SSA will rate your mental capabilities based on the following categories:

- Quality of daily activities, both in occupational and social spheres;
- Ability to sustain activities, interests, and relate to others *over a period of time*. The frequency, appropriateness and independence of the activities must also be considered;
- Level of intellectual functioning;
- Ability to function in a work-like situation.

Like a physical RFC, a mental RFC categorizes mental abilities according to what work-like activities you should still be able to do. The categories for Mental RFCs are:

- Skilled Work: Able to do many jobs based on your mental abilities;
- Semi Skilled Work: Work in which some higher-level skills are required (such as alertness, inspection, testing) but at a less intensive level than skilled work;
- Unskilled Work: Jobs that require little mental ability, and can be mastered in 30 days or less.

Because of the relative unlikelihood of being found unfit for performing simple repetitive tasks, a person with only a mental disability (i.e. no physical restrictions at all) has a tough row to hoe. More often, a mental disability coupled with a physical disability results in the claimant's award of benefits.

### **Who Assesses RFC?**

Ultimately, RFC assessment is the province of the SSA Commissioner. At a hearing, the judge assesses RFC. Ten treating surgeons who are specialists in their fields could all describe you as disabled, but it may not rise to the definition of disability for SSA purposes. The judge could still find you are not disabled per their regulations.

It is not so much the opinion that one is “disabled” that matters. In fact, such an opinion is entitled to very little weight. What matters most is the assessment of what a claimant is still able to do and not able to do. **Dis-ability is all about “abilities”.**

Social Security examiners, doctors, medical experts or your physicians can provide an RFC assessment. But the judge decides which ones matter. Typically, the RFC assessed by the claimant’s physician is given more weight because a treatment history has been established between the claimant and his or her own physician. However, the RFC the physician assesses must be supported by medical records from that doctor.

In the event that no RFC is assessed by your treating physician, you can testify as to your abilities to sit, stand, lift, carry etc. However, the RFC you assess yourself is not given as much weight as an RFC assessed by a medical doctor, and rightfully so. It would be very easy to tell the judge you can only walk a block or sit an hour at a time. Obviously, the judge cannot rely solely on such testimony with no medical findings to support it. Taxpayers cannot afford to pay everyone who alleges they are not able to work, without some discretion and guidance.

**One of the major benefits of representation is apparent at this stage.** Most attorneys can provide your treating doctors with detailed forms that ask the right questions to provide a meaningful RFC assessment. After all, judges are not doctors. You may have two degenerated discs in your back, or cardiac problems or affective disorder. But does it necessarily mean that with treatment, you cannot work at all? Stephen Hawking is paralyzed from the neck down, wheelchair bound, and cannot speak without an assistive device. But he works as one of the world’s most respected professors of mathematics at Cambridge University, so is not disabled by SSA standards.

Medical impairment must be translated into functional capacity. So, for example, the forms Disability Group, Inc. provide are meant to obtain a treating physician’s assessment of ability to perform exertional activities, as well as make assessments of non-exertional impairments that affect ability to perform sustained work.

SSA sends claimants to consultative examiners for the purpose of obtaining just such a report. These doctors usually conduct only a cursory examination and they are not on the claimant’s side. They typically find one is able to perform at least light or sedentary work. Without a statement from your own doctors in the file, these opinions go uncontraverted.



SSA has determined there are 1600 separate unskilled sedentary and light occupations in the national economy, most of which can be learned with a short demonstration in less than 30 days, and each represents hundreds of thousands of jobs across the nation. This represents a significant job base. Because SSA is required to give more weight to the opinion of your treating physician than to that of a doctor hired to write a report, it is very important that you be able to provide evidence to counter the findings of these consultative examiners.

Once RFC is determined, move on to question 4.

#### **4. Are you able to return to your Past Relevant Work (PRW)?**

Past relevant work is that performed in the previous 15 years. At this stage, RFC is already assessed to determine what past relevant work, if any, a claimant can do. More information about whether your past jobs were “relevant” is provided below.

If determined you are able to return to PRW then you lose at this point. But if your RFC indicates you are unable, because of your limitations, to return to any of the jobs you’ve held in the last 15 years, (the answer to this question is no), then move on to question 5.

#### **5. Considering your age, education, and work experience, are there any other jobs that exist in significant numbers in the national economy that you are able to do?**

This question is significant because for the first time the burden of proof shifts to the SSA. It is now their responsibility, using transferability of skills and Residual Function Capacity analyses, to prove that jobs exist in significant numbers in the national economy and that the claimant can perform them.

If such a job exists (the answer to this question is yes), then the SSA will find that you are not disabled.

If no such job exists then you are found disabled and win your case.

This five question structure is the basic structure used at every stage of the claims and appeals process in a disability benefits case. Because of the difficulty of winning claims at question three, it is important that you have a careful strategy when proceeding through the appeals process, and this is also a reason why many choose to seek representation.

## **Transferability of Skills**

If SSA determines that you are unable to return to any of your past jobs, the question of transferability of skills arises. In other words, SSA is saying you may be able to do other jobs even though you have never done them before. This is your only chance in the process to say “prove it.”

So at step 5, the burden of going forward with the evidence shifts to SSA to prove that you can do jobs other than those you’ve done in the past, and that such jobs exist in significant numbers in the national economy. To prove it, SSA typically calls upon a Vocational Expert (VE) contracted by SSA to help make decisions on what types of jobs you might still be able to do, and the number of jobs available considering your age, education, and experience. The VE looks at what skills you’ve acquired and whether they can be transferred to other work.

In 1979, SSA amended its regulations in an attempt to standardize step 5 of the evaluation process. In what became known as the medical-vocational guidelines, or “grids,” the regulations recognize the vocational factors of age, education and experience in conjunction with the medical factor of residual functional capacity divided into the exertional categories of sedentary, light, medium, heavy and very heavy.

This allows for resolving step 5 issues by taking administrative notice of the fact of disability. It is the presumption that for a person of a certain age, education and experience limited to a certain exertional level of physical activity, a significant number of jobs are or are not available. The grids conclusively determine whether the definition is met, and create an irrebuttable presumption – disabled or not. When a grid regulation applies, it must be used, and a Vocational Expert may not rebut the conclusion.

## The Medical-Vocational Guidelines

Table No. 1

Residual Functional Capacity: Maximum Sustained Work Capability Limited to  
Sedentary Work as a Result of Severe Medically Determinable Impairment(s)

<b>RULE</b>	<b>AGE</b>	<b>EDUCATION</b>	<b>PREVIOUS WORK EXPERIENCE</b>	<b>DECISION</b>
201.01	Advanced Age 56–60	Limited or less	Unskilled or none	Disabled
201.02	Advanced Age 56–60	Limited or less	Skilled or semiskilled <i>Skills not transferable</i>	Disabled
201.03	Advanced Age 56–60	Limited or less	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
201.04	Advanced Age 56–60	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Unskilled or none	Disabled
201.05	Advanced Age 56–60	High School Graduate or more <i>Provides for direct entry into skilled work</i>	Unskilled or none	Not Disabled
201.06	Advanced Age 56–60	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Disabled
201.07	Advanced Age 56–60	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
201.08	Advanced Age 56–60	High School Graduate or more <i>Provides for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
201.09	Closely Approaching Advanced Age 50–55	Limited or less	Unskilled or none	Disabled
201.10	Closely Approaching Advanced Age 50–55	Limited or less	Skilled or semiskilled <i>Skills not transferable</i>	Disabled
201.11	Closely Approaching Advanced Age 50–55	Limited or less	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
201.12	Closely Approaching Advanced Age 50–55	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Unskilled or none	Disabled

Table No. 1 (continued)

<b>RULE</b>	<b>AGE</b>	<b>EDUCATION</b>	<b>PREVIOUS WORK EXPERIENCE</b>	<b>DECISION</b>
201.13	Closely Approaching Advanced Age 50-55	High School Graduate or more <i>Provides for direct entry into skilled work</i>	Unskilled or none	Not Disabled
201.14	Closely Approaching Advanced Age 50-55	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Disabled
201.15	Closely Approaching Advanced Age 50-55	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
201.16	Closely Approaching Advanced Age 50-55	High School Graduate or more <i>Provides for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
201.17	Younger Individual Age 45-49	Illiterate or unable to communicate in English	Unskilled or none	Disabled
201.18	Younger Individual Age 45-49	Limited or less <i>At least literate and able to communicate in English</i>	Unskilled or none	Not Disabled
201.19	Younger Individual Age 45-49	Limited or less	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
201.20	Younger Individual Age 45-49	Limited or less	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
201.21	Younger Individual Age 45-49	High School graduate or more	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
201.22	Younger Individual Age 45-49	High School graduate or more	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
201.23	Younger Individual Age 18-44	Illiterate or unable to communicate in English	Unskilled or none	Not Disabled
201.24	Younger Individual Age 18-44	Limited or less <i>At least literate and able to communicate in English</i>	Unskilled or none	Not Disabled
201.25	Younger Individual Age 18-44	Limited or less	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled

Table No. 1 (continued)

<b>RULE</b>	<b>AGE</b>	<b>EDUCATION</b>	<b>PREVIOUS WORK EXPERIENCE</b>	<b>DECISION</b>
201.26	Younger Individual Age 18-44	Limited or less	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
201.27	Younger Individual Age 18-44	High School graduate or more	Unskilled or none	Not Disabled
201.28	Younger Individual Age 18-44	High School graduate or more	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
201.29	Younger Individual Age 18-44	High School graduate or more	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled

Table No. 2

Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s)

<b>RULE</b>	<b>AGE</b>	<b>EDUCATION</b>	<b>PREVIOUS WORK EXPERIENCE</b>	<b>DECISION</b>
202.01	Advanced Age	Limited or less	Unskilled or none	Disabled
202.02	Advanced Age	Limited or less	Skilled or semiskilled <i>Skills not transferable</i>	Disabled
202.03	Advanced Age	Limited or less	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
202.04	Advanced Age	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Unskilled or none	Disabled
202.05	Advanced Age	High School Graduate or more <i>Provides for direct entry into skilled work</i>	Unskilled or none	Not Disabled
202.06	Advanced Age	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Disabled

Table No. 2 (continued)

<b>RULE</b>	<b>AGE</b>	<b>EDUCATION</b>	<b>PREVIOUS WORK EXPERIENCE</b>	<b>DECISION</b>
202.07	Advanced Age	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
202.08	Advanced Age	High School Graduate or more <i>Provides for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
202.09	Closely Approaching Advanced Age	Illiterate or unable to communicate in English	Unskilled or none	Disabled
202.10	Closely Approaching Advanced Age	Limited or less <i>At least literate and able to communicate in English</i>	Unskilled or none	Not Disabled
202.11	Closely Approaching Advanced Age	Limited or less	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
202.12	Closely Approaching Advanced Age	Limited or less	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
202.13	Closely Approaching Advanced Age	High School Graduate or more	Unskilled or none	Not Disabled
202.14	Closely Approaching Advanced Age	High School Graduate or more	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
202.15	Closely Approaching Advanced Age	High School Graduate or more	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
202.16	Younger Individual	Illiterate or unable to communicate in English	Unskilled or none	Not Disabled
202.17	Younger Individual	Limited or less <i>At least literate and able to communicate in English</i>	Unskilled or none	Not Disabled
202.18	Younger Individual	Limited or less	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
202.19	Younger Individual	Limited or less	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled

Table No. 2 (continued)

<b>RULE</b>	<b>AGE</b>	<b>EDUCATION</b>	<b>PREVIOUS WORK EXPERIENCE</b>	<b>DECISION</b>
202.20	Younger Individual	High School Graduate or more	Unskilled or none	Not Disabled
202.21	Younger Individual	High School Graduate or more	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
202.22	Younger Individual	High School Graduate or more	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled

Table No. 3

Residual Functional Capacity: Maximum Sustained Work Capability Limited to Medium Work as a Result of Severe Medically Determinable Impairment(s)

<b>RULE</b>	<b>AGE</b>	<b>EDUCATION</b>	<b>PREVIOUS WORK EXPERIENCE</b>	<b>DECISION</b>
203.01	Closely Approaching Retirement Age 60 or Over	Marginal or none	Unskilled or none	Disabled
203.02	Closely Approaching Retirement Age 60 or Over	Limited or less	None	Disabled
203.03	Closely Approaching Retirement Age 60 or Over	Limited or less	Unskilled	Not Disabled
203.04	Closely Approaching Retirement Age 60 or Over	Limited or less	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
203.05	Closely Approaching Retirement Age 60 or Over	Limited or less	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
203.06	Closely Approaching Retirement Age 60 or Over	High School Graduate or more	Unskilled or none	Not Disabled
203.07	Closely Approaching Retirement Age 60 or Over	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled

Table No. 3 (continued)

<b>RULE</b>	<b>AGE</b>	<b>EDUCATION</b>	<b>PREVIOUS WORK EXPERIENCE</b>	<b>DECISION</b>
203.08	Closely Approaching Retirement Age 60 or Over	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
203.09	Closely Approaching Retirement Age 60 or Over	High School Graduate or more <i>Provides for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
203.10	Advanced Age	Limited or less	None	Disabled
203.11	Advanced Age	Limited or less	Unskilled	Not Disabled
203.12	Advanced Age	Limited or less	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
203.13	Advanced Age	Limited or less	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
203.14	Advanced Age	High School Graduate or more	Unskilled or none	Not Disabled
203.15	Advanced Age	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
203.16	Advanced Age	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
203.17	Advanced Age	High School Graduate or more <i>Provides for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
203.18	Closely Approaching Advanced Age	Limited or less	Unskilled or none	Not Disabled
203.19	Closely Approaching Advanced Age	Limited or less	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
203.20	Closely Approaching Advanced Age	Limited or less	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled



Table No. 3 (continued)

<b>RULE</b>	<b>AGE</b>	<b>EDUCATION</b>	<b>PREVIOUS WORK EXPERIENCE</b>	<b>DECISION</b>
203.21	Closely Approaching Advanced Age	High School Graduate or more	Unskilled or none	Not Disabled
203.22	Closely Approaching Advanced Age	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
203.23	Closely Approaching Advanced Age	High School Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
203.24	Closely Approaching Advanced Age	High School Graduate or more <i>Provides for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
203.25	Younger Individual	Limited or less	Unskilled or none	Not Disabled
203.26	Younger Individual	Limited or less	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
203.27	Younger Individual	Limited or less	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
203.28	Younger Individual	High School Graduate or more	Unskilled or none	Not Disabled
203.29	Younger Individual	High school Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled
203.30	Younger Individual	High school Graduate or more <i>Does not provide for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills transferable</i>	Not Disabled
203.31	Younger Individual	High School Graduate or more <i>Provides for direct entry into skilled work</i>	Skilled or semiskilled <i>Skills not transferable</i>	Not Disabled

## **Past Relevant Work**

Any analysis of transferability of skills includes analysis of your past relevant work. The issue becomes whether the jobs done in the past imparted skills that can be used in other occupations.

To determine whether past work is “relevant” to the question of transferability of skills, SSA looks at three criteria:

- Whether the employment consisted of substantial gainful activity (SGA), from a strictly monetary perspective;
- Whether the duration of the work was enough to allow you to learn the skills or techniques to be competitive in the workplace;
- Whether the work was done recently, which SSA has determined means within the past 15 years.

If a work experience does not pass all three tests, it is not Past Relevant Work, and is therefore immaterial to the question of transferability. In assessing skill levels, SSA looks to *The Dictionary of Occupational Titles* (DOT), published by the U.S. Department of Labor.

## **The Dictionary of Occupational Titles**

The DOT lists over 12,000 occupations performed across the nation. It includes a brief description of the job duties, and rates the skill and exertional levels.

This information may then be transferred to the grid regulations discussed above. When the grids do not squarely apply, the Vocational Expert is asked what jobs you should be able to do. At a hearing, you must get the expert to admit you cannot do any of the jobs he testifies you are able to do. This is where the help of someone knowledgeable in this analysis can be indispensable.

VI  
AFTER YOU HAVE WON BENEFITS

## Continuing Disability Review

Once you are receiving Social Security Disability benefits, the Social Security Administration will periodically review your case to make sure you are still disabled. This review is called a Continuing Disability Review (CDR).

### When can you expect a CDR?

How often a case is reviewed varies from case to case. When a claimant is found disabled, the disability determination specialist sets a date, or diary, for performing the next review. Most diaries are based on the expectation of recovery and are set for three or seven years, but they can be sooner:

- If medical improvement is **expected**, a case will normally be reviewed **within six to 18 months**;
- If medical improvement is **possible**, a case will normally be reviewed in **no sooner than three years**;
- If medical improvement is **not expected**, a case will normally be reviewed in **no sooner than seven years**.

The CDR is a medical review. SSA decides if your level of disability has improved to the point that you are able to return to work. The evidence SSA uses for the CDR is similar to that required for the initial claim.

SSA will have you fill out forms describing your current condition and list all the places where you have received treatment. SSA will also obtain copies of all recent medical records. If more information is needed about your condition, SSA may schedule a Consultative Exam.

If your condition has not improved since SSA last reviewed your case, then your Social Security benefits will continue. If your condition has improved, SSA will look to see if your condition meets the current disability requirements.

When you receive the CDR notice and forms it is important to fill them out and return them. If you receive the CDR mailer and misplace it, SSA will send a second notice. Continued failure to provide information that SSA asks for, or failure to attend an examination that it schedules, will result in termination of benefit payments. You may

need help answering the questions, especially if you are not certain what is being asked and why. This is where an attorney may help.

### **Continuing Disability Reviews for Children**

When a person is found to be disabled under childhood regulations, SSA will review the case when the person turns 18 to determine if the person is disabled under the adult regulations. The case is reviewed as if it were new. SSA checks to see how your disability affects your ability to work **as an adult**. Even if your condition has not improved, your benefits will cease if your condition does not meet the current adult rules.

### **Tips for a Continuing Disability Review**

SSA looks at the original status of your medical condition and compares it to the current status of your medical condition to decide if there has been significant medical improvement. For this reason, it is important that you continue to seek medical treatment for your condition. If you have not continued to seek medical treatment, SSA will likely order a Consultative Exam to assess your current condition. It is usually better for your case to have your own doctor provide information than to rely on a doctor hired by SSA who has never treated you and is not well acquainted with your condition.

Be honest and don't exaggerate the symptoms caused by your current medical condition. The opposite is also important: don't be brave and portray yourself as better than you truly are.

SSA is required to thoroughly evaluate any new medical conditions that have arisen since you were first awarded disability benefits. For this reason, it is important to tell your disability caseworker about any new conditions or treatment you have received.

If you receive notice that your benefits are being terminated, you are entitled to an interview with the person making the final decision on your case. If your benefits are still terminated after this interview, you can appeal the decision to an Administrative Law Judge. You may have an attorney represent you.

### **Going Back To Work**

The Social Security Administration tries to reward those who, despite their disability, try to return to work in pursuit of self-sufficiency. To this end there are numerous federal

programs designed to help someone already claiming benefits attempt to return to work without fear of losing their benefits.

When you initially try to go back to work, while receiving benefits, you are responsible for informing the Social Security Administration when:

- You return to work;
- You already reported to work, but your duties or pay have changed;
- You start paying for work expenses due to your disability.

### **When Will Your Benefits Stop?**

**If you are receiving SSDI benefits** and the Social Security Administration finds that your disability ceased due to work at the Substantial Gainful Activity (SGA) level, the decision is effective in the month shown by the evidence. SSA will pay SSDI benefits for the cessation month and the following two months. These 3 months are the grace period.

If SSA ceases your disability benefits due to work at the SGA level or medical improvement, your benefits may continue if you are participating in a program of vocational rehabilitation, or similar services, employment services or other support services.

**If you are receiving SSI benefits**, you are not eligible for benefits for the months you do not meet the non-disability related eligibility requirements, for example, the income and resources tests.

If SSA ceased your disability benefits due to medical improvement, SSI benefits may be continued if you are participating in a program of vocational rehabilitation or similar services, employment services, or other support services.

### **The Countable Income Test**

SSA will apply the countable income test if you have been entitled to and received SSDI benefits for at least 24 months. SSA will only use the countable income test to determinate whether you have engaged in SGA and if your disability has ended as a result of that SGA.

SSA will compare your countable earnings to the SGA earnings guidelines. If your monthly countable income averages more than \$940 (for 2008) they will determine that you have engaged in SGA unless there is evidence you are not rendering significant services. If your monthly countable income averages less than \$940 (for 2008) they will not consider you to have engaged in SGA.

### **The Ticket to Work Program**

If you are interested in working, the Ticket to Work Program is the key to unlocking vocational rehabilitation, training, job referrals, and other ongoing support and services to help you reach your employment goals. The program is available for people who are between the ages of 18 and 65 and receive Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits.

You can take your Ticket to any Employment Network (EN) or State Vocational Rehabilitation (VR) agency to request assistance in job training, preparing materials to use to find a job, locating employers, informing you about work incentives and other assistance in you may need to work.

#### *What are the advantages of using the Ticket and Work Incentives?*

While you are actively participating in the Ticket to Work program, you can get the help you need to find the job that is right for you and you can safely explore your work options without losing your benefits.

- You can easily return to benefits if you have to stop working (known as “expedited reinstatement of benefits”);
- You can continue to receive healthcare benefits;
- You will not receive a continuing disability review (CDR) while using your Ticket.

In addition, you will still be able to use other Social Security Administration programs and work incentives to help you transition into work.

First, you should know that if you go back to work, you will NOT automatically lose your disability benefits. The Ticket to Work and special work incentives allow you to keep your cash benefits and Medicare or Medicaid while you test your ability to work. For the SSDI program, there is a trial work period during which you can receive full

benefits regardless of how much you earn, as long as you report your work activity and continue to have a disabling impairment.

The trial work period continues until you accumulate nine months (not necessarily consecutive) in which you perform services within a rolling 60-month period. Work is considered *services* if you earn more than a certain amount, \$640 a month in 2007. For 2006, this amount was \$620.

After the trial work period ends, benefits will stop in those months when earnings are considered *substantial* — currently \$900 in 2007. For 2006, this amount was \$860. Different amounts apply to people who are disabled because of blindness.

For an additional 36 months after completing the trial work period, benefits can start again if your earnings fall below the *substantial* level and you continue to have a disabling impairment.

While participating in the Ticket to Work Program, you may be able to use a combination of other work incentives to maximize your income until you begin to earn enough to support yourself. Some of these work incentives include:

- A Trial Work Period (TWP);
- Expedited Reinstatement of Benefits (EXR);
- Deferral of continuing disability reviews (CDR);
- A plan for achieving self support (PASS).

To find out specifically how your participation in the Ticket to Work Program could affect your disability benefits, you may contact a Work Incentives Planning and Assistance (WIPA) project in your state. You can find a list of the WIPA projects by state using the Service Provider Directory available from SSA.

### *How does work affect my Medicare and/or Medicaid?*

Effective October 1, 2000, the law extended Medicare Part A (Hospital) premium-free coverage for 4.5 years beyond the current limit for disability beneficiaries who work. This means you can work and still potentially retain your Medicare, for FREE, for up to four and a half years.



If you are not on Medicare and are instead receiving Medicaid, there are provisions for you as well. Most States have the option of providing Medicaid coverage to more people between the ages of 16-64 with disabilities who work. To find out if this coverage is available in your State, call the State Medicaid office in your area.

VII  
THE BENEFITS OF REPRESENTATION

## Benefits of Representation

### Why Should You Hire a Social Security Disability Attorney?

For many people, filing for Social Security Disability benefits can be a complicated and confusing process. Many applicants wonder if they should hire an attorney to help guide them through that process. Social Security (SSA) does not require you to have an attorney, and, in fact, people have won their cases on their own. But, does having an attorney make a difference in whether an applicant wins or loses Social Security disability benefits? During Congressional testimony, California Congressman Robert T. Matsui stated:

“Professional representation is a valuable, and indeed vital, service. The disability determination process is complex. Claimants without professional representation appear to be far less likely to receive the benefits to which they are entitled. For example, in 2000, 64% of claimants represented by an attorney, but only 40% of those without one, were awarded benefits at the hearing level.”<sup>1</sup>

Simply put, at the hearing level, you can improve your odds of winning your Social Security Disability case dramatically if an attorney represents you. Many people have never hired an attorney before and the decision to hire one can be daunting. Naturally, you will have many questions. If you are considering hiring an attorney to help you with your Social Security Disability case, here is some basic information to help with that decision.

### How Can I Afford to Pay An Attorney?

Many people applying for SSA Disability benefits, especially those who have been denied at the initial application level, have not worked for a while. Therefore, the number one question on people’s minds is: *How can I afford to pay an attorney when I am not working?* The answer is simple: you only pay an attorney’s fee if you win your case. Generally, a disability attorney will represent clients on a contingency basis. That means you do not pay an attorney anything in advance and you do not pay an attorney fee if you do not win your case.

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<sup>1</sup> November 16, 2001 CONGRESSIONAL RECORD, Testimony of Robert T. Matsui of California, regarding the Attorney Fee Payment System Improvement Act 2001.

The SSA and federal law govern attorney's fees in disability cases. The standard fee agreement states that the attorney's fee is contingent upon winning your case. The fee is 25% of all past due benefits, up to a maximum of \$5,300, or whichever is less. Thus, depending on the amount of your past due benefits, attorney fees are usually only a small portion of the benefits you receive.

### **How Can A Disability Attorney Help Me?**

There are several ways a disability attorney can help you. The attorney will help you understand the SSA Disability process. Filing a claim is just the first step in what is often a long and frustrating process. There is a lot of paperwork, deadlines to meet, and documentation to compile. Claims are often denied because paperwork is not completed properly, a deadline missed, or evidence is not obtained or reviewed. A disability attorney will guide you through each step of the process.

A disability attorney will also help you develop a strategy to win your case. Many SSA Disability claimants file an application and then simply do whatever SSA tells them to. This is often not enough to be awarded benefits. It is important to understand what is necessary to prove your case and how you will go about winning it. The sooner you know this, the sooner you and your attorney can work together to execute the strategy and increase your chances of winning.

If you are contemplating filing a claim for SSA Disability benefits, it is wise to consult with an attorney. The consultation shouldn't cost you anything except your time. And, by understanding the SSA Disability benefits process and having a strategy, you can significantly improve the chances of winning your case.

### **Why You Should Avoid Changing Attorneys in the Middle of Your Disability Case**

An experienced attorney can be very helpful to you and your Social Security Disability case. Your attorney can evaluate your case and suggest a strategy to win your case. After handling hundreds of cases, most attorneys have a fairly good perspective as to what cases are winnable and what cases are not, and what it takes to win a case.

While an attorney's opinion is not a determination of how your case will end up, he can offer you the benefit of experience. More importantly, if you decide to hire an attorney,

he will make sure your case file is up-to-date with all medical records. Additionally, he will “translate” your medical problems into work limitations so that Social Security can evaluate your claim properly.

The disability process, however, is often quite long. Many people can wait almost two years for a hearing. Some claimants become frustrated with the slow pace of the disability adjudication process and think about hiring a new attorney. They become angry at how long it takes to even get a hearing and they think that their attorney should be doing more to move the process along.

Except in limited cases, it can be a bad idea to change attorneys in the middle of your case. First, you should realize that your attorney doesn't have any control at all over the long delays in the Social Security disability decision-making process. Social Security backlogs are at record highs across the country. Hearing offices are understaffed and judges have very little help. Over the past 10 years, claims have doubled while the number of judges has declined 10%. If there were anything your attorney could do to speed things along, he would be doing it. Most Social Security attorneys do not get paid unless they win the case, so there is no advantage to them in delaying the process.

The point is that your attorney cannot control Social Security's backlog, nor can you expect him to secure special treatment for you. If another disability attorney tells you that he has a secret way to move your case to the front of the line, you will probably be disappointed.

A second reason to stay with your current attorney relates to the fee application process. Social Security attorneys generally accept disability cases under a contingency fee contract. This process is simple. A “contingency fee” means that there is no legal fee due unless the attorney wins your case. An attorney's fee is typically 25% of any past due benefits collected for you, with a limit of \$5,300. The attorney does not have to file a detailed time and billing statement. Social Security will automatically withhold and pay the lawyer 25% of past due benefits up to \$5,300.

Almost every contingency fee agreement provides that if the client terminates the attorney, the attorney has the right to ask for fees representing work actually done. In this case, the attorney will file a detailed fee petition, and submit records of expenses and billable time. Legal services are not free. A contingency fee agreement is a trade-off. The client can retain an attorney without paying any money up-front, and the attorney takes the risk that the judge will not approve the case in exchange for a percentage of the recovery.

If, however, you choose to terminate the agreement before the case goes to hearing, your attorney can and will ask Social Security to approve a fee based on the time actually expended. When this happens, the fee application is no longer simple. Your attorney will itemize each and every action he performed on your behalf and present this petition to the judge for approval.

If you choose to change attorneys in the middle of your case, Social Security will require both attorneys to file a fee petition for work performed. Your new attorney will not be allowed to enter into a 25% fee agreement. He, too, will have to file a fee petition to have his fees approved. If you go through two or three attorneys, you may find that more than 25% of your past due benefits are being used to pay for legal services. If your prior attorney will waive any claim for fees, the new attorney can then use the contingency fee agreement process.

As a practical matter you should, therefore, avoid changing attorneys in the middle of your case. Choose your attorney carefully, and unless your attorney is clearly incompetent, ill, or dead, you should stick with your present attorney throughout the entire disability process.

VIII  
LONG TERM DISABILITY INSURANCE

## **Long Term Disability Insurance**

Often, Social Security Disability claimants are also eligible for, and can concurrently receive, Long Term Disability (LTD) insurance benefits.

Although it is less well known than life insurance, most experts agree that disability insurance is just as important. And while most people have insurance that covers their medical expenses in the event they become sick or injured, they are not prepared for the lost wages that accompany the inability to work.

Though the terms of each plan vary depending upon the policy, disability insurance is a contract-based program intended to protect future income in the event you become disabled or unable to perform the duties of your occupation.

There are generally two types: short-term disability, for injuries or illnesses lasting less than 6 months, and long-term disability. Many experts contend that long term disability (LTD) insurance is the most important insurance one can own.

Potential sources of such programs include employers, unions, banks and credit unions, credit cards, and other forms of insurance policies available through private brokers.

Typical LTD insurance replaces 50-70% of pre-disability earnings, usually with a monthly maximum that reduces the overall percentage of salary received. Some policies provide for up to 80% of monthly earnings. The payment amount is set at the time the policy is purchased.

As with any other form of insurance, insurance companies often try to get out of paying a claim. Many LTD litigators are of the opinion that some policy language is intentionally vague, and that certain categories of contention are built in. For example, mental illness, or certain conditions diagnosed by only subjective conditions, such as Fibromyalgia or chronic fatigue syndrome, may be points of contention.

Unlike the regulations that govern Social Security Disability findings, the opinion of a treating physician in an LTD case is afforded no special consideration.

Courts have ruled that reliance upon the opinion of an independent medical examiner is perfectly acceptable. Other arguable points may center around pre-existing medical



conditions, or injuries from dangerous activities, as these are usually excluded from coverage.

Most policies define disability in terms of *own occupation*, *any occupation*, or *partial disability*.

*Own occupation* provisions usually state that a person unable to perform his or her own occupation due to sickness, injury, or pregnancy may collect benefits for up to 2 years until able to return to work.

*Any occupation* policies usually contain language to the effect that you must return to work when able, even if not in the same capacity as before. In other words, you must be disabled from all occupations. The length of payout varies by policy, some for 5 to 10 years, and some up to age 65, with the latter being preferable.

A partial disability results if you are working at your own occupation but unable to earn more than the “own” or “any” levels.

Still another point of contention lies in the definition of *own occupation*, because many policies provide that it is not limited to a specific job with your employer, nor to even a specific area of specialization, interest or expertise within the general occupation. Instead they look to the essential tasks, skills, knowledge and abilities generally required to engage in a particular occupation.

There may be other provisions that affect benefit amounts. A person who works while disabled may still be entitled to benefits, but subject to offset. Most policies also provide for an offset for other forms of income.

If your claim is denied, you have certain appeal rights. The first thing to do is obtain copies of the plan details and all of the documents upon which your insurer relied in denying your claim. There are certain penalties if the plan administrator fails to provide the plan documents in a timely manner.

There are statutes of limitations which may differ according to State legislation, or expressed within the contract itself. Certain medical examinations may be required to overcome the denial decision. The terms of the policy can be complicated, especially to persons who have recently become disabled, and may not be in the best position to fight

for their rights. At these times a knowledgeable attorney is indispensable in developing the case and getting the denial reversed.

### *How do I know if I have LTD coverage?*

LTD insurance plans are typically purchased as part of a larger group insurance policy created for employees by some companies, however it is possible to independently purchase LTD coverage. LTD coverage is normally purchased along with life or health insurance policies. If you are unsure whether or not you had LTD coverage it is a good idea to either check your plan, or speak with whomever coordinated your insurance benefits. Disability Group, Inc. can also help you to determine if you were covered by LTD.

### *The Process of an LTD claim*

1. File Initial Benefits Application;
2. File Appeal of Decision;
3. Legal Action.

## **File Initial Benefits Application**

To obtain your LTD benefits you will first need to submit your initial LTD application. The application asks some general questions about your ability to work and includes a form to be filled out by your treating physician. Once you have completed this application and returned it to your insurer they will either begin your benefits or, more likely, deny them. If your benefits get denied then you must appeal that decision.

## **Filing an Appeal**

Before you take legal action against an insurer to claim your benefits, it is first necessary to exhaust administrative remedies. This means that you must finish the appeals process established by your LTD plan. While appeals can differ from plan to plan, this stage is very similar to Initial Application.

## **Legal Action**

Once you have exhausted administrative remedies you then have the option to bring a lawsuit against your insurer. This represents your best chance to win. This stage involves

filing suit and can lead to a trial by jury, however it is much more often the case that your insurer will settle if you have quality representation.

### **Insurance Company Tactics**

Insurance companies are highly motivated to deny your benefits. It hurts them financially every time that they have to pay out on a LTD plan. Insurance companies will therefore go to extraordinary lengths to deny your disability claim.

### **Surveillance**

One of the most common techniques used by insurers is video surveillance of claimants. While there have been instances when this surveillance has been found to violate privacy, typically an insurance company will get video footage of a claimant outside, or in a public setting in order to try to prove they are not disabled.

### **Independent Medical Examinations**

Most LTD policies reserve the right to an independent medical examination by the insurer. The doctors used for these examinations are hardly independent since the administering doctor is being paid by the insurer, so you should carefully check your plan before agreeing to such an examination.

### **Release of Confidential Information**

In order to investigate disability claims, insurance companies will often obtain authorization for the release of your confidential information in order to investigate your claim. Since these agreements can sometimes grant authorization far exceeding the scope of this investigation, it is important to have a thorough understanding of such an agreement before signing.

### **Representation**

An insurance company reviewing an LTD claim is in no way neutral. It is very much in their interest to not only deny your claim, but to make the process difficult so that you will give up trying to obtain benefits. Because of this it is in your best interest to hire an attorney to represent you.

### **At what stage should I contact an attorney?**

It is best to contact an attorney as early as possible. Not only so they can help you navigate through the application process and prepare you for the tactics of insurers, but so they can help you gather and prepare your medical records. It is often the case that only the information in your file at the time of appeal will later be admitted into any civil action against an insurer. This means that it is in your interest to ensure that your file is as complete as possible before this stage, and an attorney's office can help you tremendously with that effort.

## IX

### 10 WAYS YOU CAN HELP YOUR CLAIM

## **10 ways you can help your claim**

### **1. See a doctor regularly**

The best thing you can do for your case is keep your medical records consistent and up to date. When Social Security (or an Administrative Law Judge decides your claim these records are given great weight, so see your doctor often and keep them informed of your conditions.

### **2. Comply with your doctors' orders**

It is important that you comply with treatment your doctors prescribe for your conditions. If you refuse to take medications or follow other prescribed methods of recovery, Social Security is likely to think that your actions prevent your conditions from improving. By following all of your doctors' orders, you show Social Security that you are doing everything in your power to help your condition improve.

### **3. Make sure that DGI gets your medical records**

It is extremely important that you inform DGI when there are new records to collect. It is also important for us to know when you are going to the doctor, as we may have forms or questionnaires for your doctor to complete regarding your case.

### **4. Refrain from drug and alcohol abuse**

Social Security no longer pays benefits if drugs or alcohol are a contributing factor to a disability. If your medical records show drug or alcohol abuse, your claim may be denied by Social Security. If you have used drugs or alcohol in the past and have stopped, it is important that that fact be noted in your medical records.

### **5. Be detailed on your applications and paperwork**

On Social Security paperwork it is extremely important that you describe, in detail, how your disability affects your day to day activities. For example, you would not want to report "I watch TV all day," because Social Security may determine that if you can sit and watch TV for 8 hours a day, you can sit and answer phones at a job for 8 hours a day. Rather, you should explain how long you can sit in one place before having to readjust, stand up or lay down.

## **6. Keep in contact with DGI and the Social Security Administration**

Everyday Social Security denies applications for benefits because they are not able to find the applicant. If you move or change your phone number, it is important that we know how to get a hold of you, as we may have forms you need to complete or update information on your claim.

## **7. Comply with Social Security's requests**

Throughout the decision process, Social Security makes many requests of applicants. It is important that you fill out any paperwork and go to any exams they schedule. If you do not, you may be denied benefits for non-compliance.

## **8. Keep an eye on your earnings**

When you are applying for Social Security Disability Insurance, there is a limit as to how much you can earn from working. This limit is called SGA (Substantial Gainful Activity). For 2008 the limits are as follows: Non-Blind individual \$940, Blind Individual \$1,570. If you are applying for Supplemental Security Income benefits the amount differs depending on marital status and state of residency.

## **9. Write your local congressman**

This is a good time to call in the artillery. You elected them, now use them. Write your local congressman a letter outlining your situation and they may make an inquiry about your case to Social Security. While a letter from a congressman cannot influence the decision on your social security claim, it may speed up the process (especially in dire need situations).

## **10. Don't give up**

The process one must go through to be awarded social security benefits can be long and difficult. We are here to help you in your fight for benefits. Denial rates are high and the majority of cases will not be resolved until after an Administrative Law Judge hearing. Keep this in mind and trust that we are doing everything within our power to get you the benefits you deserve.

X

GLOSSARY OF SOCIAL SECURITY DISABILITY TERMS



## **Glossary of Social Security Disability Terms**

AC – Appeals Council  
ADL – Activities of Daily Living  
ALJ – Administrative Law Judge  
AOD – Alleged Onset Date  
CDB – Childhood Disability Benefits  
CFR. – Code of Federal Regulations  
COLA – Cost of Living Allowance  
DAA – Drug and Alcohol Abuse  
DDS – Disability Determination Service  
DIB – Disability Insurance Benefits  
DLI – Date Last Insured  
DOT – Dictionary of Occupational Titles  
DSM – Diagnostic & Statistical Manual of Mental Disorders  
HALLEX – Hearings, Appeals and Litigation Law  
ER- Earnings Record  
IA – Initial Application  
ME – Medical Expert  
MIQ- Mental Impairment Questionnaire  
MRFC – Mental Residual Functional Capacity  
NH – Number Holder (Wage earner)  
OASDI – Old Age, Survivor & Disability Insurance (Title II)  
ODAR – Office of Disability Adjudication and Review  
PAC – Physician’s Assistant Certified  
PIA – Primary Insurance Amount  
POMS – Programs Operations Manual System  
PRFC – Physical Residual Functional Capacity  
PRW- Past Relevant Work  
QC – Quarters of Coverage  
RFC – Residual Functional Capacity  
SDI – State Disability Insurance  
SGA – Substantial Gainful Activity  
SIB – Spouses Insurance Benefits  
SSA – Social Security Administration  
SSI – Supplemental Security Income, need based benefits, as opposed to DIB  
SSR – Social Security Ruling  
TWP – Trial Work Period

USC – United States Code

UWA – Unsuccessful Work Attempt

VE – Vocational Expert

WC – Workers' Compensation

WIB – Widow(ers) Insurance Benefits

## **More Information**

Here are the titles of other articles written by attorneys at Disability Group:

- Effect of Moving on Claim – August '08
- Preparing For Your Social Security Disability Hearing – July '08
- Work Credits – June '08
- How to Prove Pain in a Social Security Disability Case – May '08
- Why You Should Avoid Changing Lawyers – April '08
- Proving Inability to Work – March '08
- Benefits for Children With Disabilities – Feb '08
- Common Social Security Myths – Jan '08
- Expediting Process of Disability Claims – Dec '07
- Improving Chance of Approval at Hearing – Nov '07
- Continuing Disability Review – October '07
- SSA's Disability Service Improvement Process – Sept '07
- Hiring a Social Security Disability Attorney – Sept '07
- Hearing Backlog - Update – August '08
- Non-Citizen Claims For SSI – July '08
- Working While Claim Pending – June '08
- Social Security Survivor's Insurance – May '08
- Proposed Age Change in Grid Rule – April '08
- Income Tax and Social Security Benefits – March '08
- Effect of Income on a Claim for Supplemental Security Income – Feb '08
- Not Giving Up on Claim – Jan '08
- Effect of Drug or Alcohol Abuse on a Disability Claim – Dec '07
- Five-Month Wait Period for Terminally Ill – Nov '07
- Timely Enrollment in Medicare Part B – October '07
- Attorney Advisor Program – Sept '07
- Glossary of SS DIB Terms – August '08
- How Does Work Affect My Claim – July '08
- Long Term Disability Insurance – June '08
- Crossing the Vocational Expert – May '08
- Quick Disability Determination Process – April '08
- Determining Disability for Children – March '08
- Evaluating Severity of Mental Impairments – Feb '08
- Assessment of Credibility in Pain Cases – Jan '08

- Social Security Backlog – Dec '07
- Transferability of Skills – Nov '07
- Residual Functional Capacity (RFC) – October '07
- What Will Happen At My Hearing – Sept '07
- Role of ALJ in SS Backlog – August '08
- Medical Support For Your Disability Claim – July '08
- Current State of the DOT – June '08
- Ticket to Work Program – May '08
- Impending Depletion of Funds – April '08
- Introduction of Debit Card – March '08
- Increasing Backlog in DIB cases – Feb '08
- Pursuit of Social Security Benefits – Jan '08
- Compassionate Allowances – Dec '07
- Change in Digestive Listing Criteria – Nov '07
- How to Strengthen Your Fibromyalgia Case – October '07
- Military Personnel Receive Expedited Service – Sept '07

The background of the advertisement features a stylized American flag with large, semi-transparent stars on a blue field. To the right, the dome and upper portion of the United States Capitol building are visible, rendered in a light, sketch-like style. The overall color palette is muted, with blues, greys, and soft reds.

[www.socialsecuritylaw.com](http://www.socialsecuritylaw.com)

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