

APPLYING FOR SOCIAL SECURITY DISABILITY BENEFITS

Presentation to the ND Brain Injury Network + AHA Mission: Lifeline

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Navigating Social Security . . .



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These Are Benefits You Are Entitled To!

There is no shame in asking for help when you need it! These are benefits that all workers pay for and that all people in need are supposed to have access to.

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OUTLINE

 I. The two main Social Security disability programs

 II. The disability claims process

 III. The disability adjudication process

 V. Disability appeals in federal court

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THE TWO MAIN DISABILITY PROGRAMS: SSI vs. SSDI

- Supplemental security income
- **Not necessary to have previously worked (“safety net”)**
- **Means tested (generally less than \$3,000 in assets per couple and extremely limited household income)**
- **Benefit amount set by statute / regs (\$783 per individual for 2020)**
- Social security disability insurance
- **Must have sufficient work credits to qualify (truly is “insurance”)**
- **Can have unlimited assets, but must not be engaging in “substantial gainful activity”**
- **Benefit amount based on earnings from work**

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CONCEPT TO UNDERSTAND: “LAST DATE INSURED” (SSDI ONLY, NOT SSI)

- The date, on or before which, a claimant must prove that he or she became disabled.
- It’s an honest-to-goodness date, i.e., 12/31/19
- Car insurance as an example.

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THE DISABILITY CLAIMS PROCESS

• INITIAL APPLICATION

- Processed through local Social Security Administration field office and “State agencies” (i.e., Disability Determination Services).
- Claims can be filed in person, by phone, or online.
- About 33.33% of claims approved

• RECONSIDERATION

- Must be requested within 60 days after receiving initial denial
- Field office / DDS also considers recon, but it is not reviewed by the same examiner
- 13% of claims approved at reconsideration level

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THE DISABILITY CLAIMS PROCESS (CONT.)

• HEARING STAGE

- Request for hearing must be made within 60 days of receiving recon denial
- Hearing wait times vary (22 months in Rochester v. 8 months in Houston North hearing office). Fargo: 17.5.
- In-person hearing before SSA ALJ

• APPEALS COUNCIL

- Denied claim can be appealed with “request for review”
- Appeals Council can also review “fully favorable” decision on its own
- Looooonnnng wait time. Has ranged from 18 to 24 months. Anecdotally, about a year at present.

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NOTE ON APPEALS COUNCIL STAGE

- When you've submitted a "Request for Review" to the SSA Appeals Council, you may not submit a new application for benefits until the Appeals Council issues their decision.
- The only exception: if the claimant has evidence of a new critical or disabling condition with an onset date after the date of the ALJ hearing decision, then may request to file a new application.

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FOCUS: HEARING LEVEL

- Fact for consideration: U.S. GAO estimates that claimants with a representative were almost three times more likely to be awarded benefits.
- Reason? The adjudication process is complex and the definition of disability is strictly applied by ALJs.

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DEFINITION OF DISABILITY

- “The inability to engage in any **substantial gainful activity** by reason of any **medically determinable physical or mental impairment** 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.**”
- No “partial” or “short term” – though you can receive a “closed period” of benefits if impairment lasts longer than 12 months but does improve
- Social Security “assumes” that “working families have access to other resources to provide support during periods of short-term disability, including workers compensation, insurance, savings, and investments.”

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“FIVE-STEP SEQUENTIAL EVALUATION”

1. Work activity – is claimant engaging in “substantial gainful activity” ?
2. Consider severity of impairments
3. Consider whether any impairments meet or equal a “listing” (“the light switch”)
4. Consider claimant’s “residual functional capacity” and “past relevant work”
5. Consider whether claimant can adjust to other work considering “age, education, work experience”

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1. SUBSTANTIAL GAINFUL ACTIVITY

- SGA varies year by year: \$1260 in 2020 (for non-blind claimants)
- Essentially, if claimant is making, month to month, over the SGA amount, he or she is not disabled
- Exceptions:
 - **Unsuccessful work attempt:** work of 6 months or less if you stopped work or reduced work/earnings below SGA level because of your impairment or an accommodation
 - **Wage subsidy:** earnings are being subsidized (by employer, government, agency)

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2. SEVERITY OF CLAIMANT'S IMPAIRMENTS

- “ . . . An individual will be disabled only if it is shown that he has a severe medically determinable physical or mental impairment or impairments . . .” – Congress
- An impairment is considered severe if it significantly limits your physical or mental abilities to do basic work activities

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3. IMPAIRMENT THAT MEETS OR EQUALS A LISTING (“LIGHT SWITCH”)

- Listing of impairments that SSA will consider
- If a claimant’s impairment(s) meet or equal a listing, a finding of disabled is compelled without further inquiry
- An impairment is medically equivalent to a listed impairment if it is at least equal in severity and duration to the criteria of any listed impairment
 - Ex: Narcolepsy may medically equal the epilepsy listing
- Listing cases are very rare!

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4. RESIDUAL FUNCTIONAL CAPACITY

- RFC is a function-by-function assessment based upon all of the relevant evidence of an individual’s ability to do work-related activities
- Based on “all of the relevant evidence in the case record” – medical history, daily activities, lay evidence (spouse, coworker), medical source statements, effects of symptoms (pain, fatigue), evidence from attempts to work, etc.
- **Exertional Capacity:** sitting, standing, walking, lifting, carrying, pushing, pulling
- **Nonexertional Capacity:** Postural (stooping, climbing), manipulative (reaching, handling), visual (seeing), communicative (hearing, speaking), and mental (understanding and remembering instructions and responding appropriately to supervision). Also: environmental factors such as heat, cold, scents, machinery, heights, etc.

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4. RFC AND PAST RELEVANT WORK

- Whether claimant can perform past relevant work, based on RFC
- If you can still do the work you've done in the past, we will find that you are not disabled
- What is considered “past relevant work”? Work done within past 15 years, lasted long enough for the person to learn to do it and was substantial gainful activity
- You “can perform” past relevant work when:
 - You can perform the actual functional demands and job duties of a particular job, or
 - You can perform the job “as generally required” in the national economy

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4. BIG PICTURE CONSIDERATIONS

- Past relevant work is typically more important when a claimant is 50+ years old
- Younger individuals (under 50) generally need to be found incapable of performing unskilled, sedentary work at Step 5
- Note: determination is whether work can be performed on a **regular and continuing** basis (i.e., 8 hours a day, 5 days a week, or an equivalent schedule)

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5. WHETHER CLAIMANT CAN ADJUST TO OTHER WORK CONSIDERING “AGE, EDUCATION, AND WORK EXPERIENCE”

- This is what we call the grids, which looks at a claimant’s age, education level, and past relevant work – then calculates, based on that, if “other work” is an option
- This is particularly important for claimant’s 50+
- Consider: whether RFC limits to medium, light, or sedentary level work
- Ex: Advanced Age (55+) = disabled, even if RFC indicates claimant is capable of performing a full range of unskilled, light work (assuming no transferable skills)
 - Compare: Closely approaching advanced age (50-54) = not disabled under the same set of facts as above
- Ex: Closely approaching retirement age (60+) = disabled even if claimant can perform medium work (if marginal education, unskilled past work)

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[SSA](#)
[Grids](#)

Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s)

Rule	Age	Education	Previous work experience	Decision
201.01	Advanced age	Limited or less	Unskilled or none	Disabled
201.02	.....do	.....do	Skilled or semiskilled—skills not transferable ¹	Do.
201.03	.....do	.....do	Skilled or semiskilled—skills transferable ¹	Not disabled
201.04	.....do	High school graduate or more—does not provide for direct entry into skilled work ²	Unskilled or none	Disabled
201.05	.....do	High school graduate or more—provides for direct entry into skilled work ²	.....do	Not disabled
201.06	.....do	High school graduate or more—does not provide for direct entry into skilled work ²	Skilled or semiskilled—skills not transferable ¹	Disabled
201.07	.....do	.....do	Skilled or semiskilled—skills transferable ¹	Not disabled
201.08	.....do	High school graduate or more—provides for direct entry into skilled work ²	Skilled or semiskilled—skills not transferable ¹	Do.
201.09	Closely approaching advanced age	Limited or less	Unskilled or none	Disabled
201.10	.....do	.....do	Skilled or semiskilled—skills not transferable	Do.
201.11	.....do	.....do	Skilled or semiskilled—skills transferable	Not disabled
201.12	.....do	High school graduate or more—does not provide for direct entry into skilled work ³	Unskilled or none	Disabled
201.13	.....do	High school graduate or more—provides for direct entry into skilled work ³	.....do	Not disabled
201.14do	High school graduate or more—does not provide for direct entry into skilled work ³	Skilled or semiskilled—skills not transferable	Disabled

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5. “TRANSFERABLE SKILLS” (The Weeds!)

- At step 5, the burden is on SSA to prove that jobs **exist** in the **national economy** that a claimant is capable of performing
- Sometimes, this comes down to “**transferable skills**”
- **Skill** = knowledge of a work activity which requires exercise of significant judgment that goes beyond carrying out of simple job duties and is acquired through performance of an occupation which is above the unskilled level (requires more than 30 days to learn)”

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5. TRANSFERABLE SKILLS CONT.

- Short version: If SSA establishes that an individual has acquired skills that transfer to jobs he or she can physically and mentally perform, a finding of “not disabled” will be issued
- How to defeat this: 1) Establish job was not past relevant work (too remote, not SGA, not performed long enough); 2) Established through testimony that job was not skilled (regardless of job title); 3) Establish that RFC limitations would preclude transferability

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FEES AND COSTS ASSOCIATED WITH FILING FOR DISABILITY

- NO fee can be charged for representing an individual before SSA without the approval of SSA
- Generally, fee is 25% of past due benefits/capped at \$6,000 (until you get into federal court) and is contingent on approval of benefits
- Costs = mailing, postage, court filing, records, etc.

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FINAL SHOT: FEDERAL COURT

- Final decision of SSA Commissioner may be appealed to federal district court
- Standard: Showing that **Substantial Evidence on the Record** as a whole *does not* support the decision
- Federal court must consider all of the evidence on file, including anything filed after the administrative hearing decision
- Usually, find an error of the Judge (i.e. missed a specific diagnosis, failed to consider specific limitations, failed to consider doctor opinion, etc.)

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FINAL THOUGHTS

- Applying for disability can be overwhelming, but having a good attorney helps the process go smoothly. It doesn't guarantee a win, but it makes it SO much easier for claimants to understand and follow the process
- You can always call our firm with questions, even if you are not a client
- Don't always trust Social Security's answers if you call with questions . . . Even the Government gets it wrong sometimes! 😊

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