

# Social Security Disability Basics

Presented by Kenneth L Todd IV, Esq.

# Common Terms and Abbreviations

- SGA (Substantial Gainful Activity): SSA's term for full-time work activity. Work activity exceeding \$1,350 dollars/month in earned, pre-tax income is SGA. Amount adjusted yearly for inflation.
- AOD (Alleged Onset Date): Date on which applicant claims disability began. May be tied to a medical diagnosis, a previous job ending, or injury date.
- PRW (Past Relevant Work): SSA's term for work activity that should be evaluated on a claim. Work must be performed in the last 15 years and income must exceed SGA for a period of time to be relevant
- PIA (Personal Insurance Amount): SSA's term for the amount of monthly benefit an individual is eligible for. Based on earnings history.
- DLI (Date Last Insured): For title 2/SSDI claims, this is the date which a Claimant must prove they became disabled on or before. Calculated based on work history and earned work credits.
- RFC (Residual Functional Capacity): What can the Claimant do in a work setting? Lifting restrictions, standing/walking/sitting limitations, non-exertional limitations

# What is Social Security Disability?

- Social Security Disability is a system of benefits available to persons that are unable to work due to medical impairments
- Benefits include a monthly monetary benefit and health insurance
- Disability must be proved by medical evidence
- There are two types of SSD: Social Security Disability Insurance (SSDI; also known as title 2) and Supplemental Security Income (SSI; also known as title 16)

# Types of Social Security Disability

- SSDI (or Title 2)
  - Eligibility based on working full-time and paying in taxes to earn work credits
  - Must have sufficient work credits to be eligible, calculated by quarter
  - Essentially, must have worked full-time and paid taxes 5 of last 10 years
  - For almost all Claimants, better monetary benefit than SSI
- SSI (or Title 16)
  - Eligibility based on assets and income
  - Must not exceed asset or income limit to be eligible for benefits
  - Asset limit: \$2,000 for individual and \$3,000 for married couple
  - Income limit: \$841/month in countable income
  - Countable income is wages earned by Claimant or spouse through work activity
  - Non-Countable Income includes SNAP benefits, income tax returns, utility assistance, loans that must be repaid, and other categories
  - No work history or tax requirements

# SSDI Benefit Summary

- SSDI grants a monthly monetary benefit based on the Claimant's past income
- Amount of benefit is calculated mechanically and cannot be negotiated or altered unless clear mistake can be shown
- SSDI comes with Medicare health insurance
- Back pay can be granted up to one year prior to application date
- Waiting periods
  - 5 month waiting period from onset date until monetary benefits begin
  - 2 years and 5 month waiting period until Medicare eligibility

# SSI Benefit Summary

- SSI benefits are typically lower than SSDI benefits
- Cannot draw both benefits at once: SSA will pay whichever benefit is higher
- Current amount is \$841 for an individual and \$1,261 for a married couple.  
No waiting period: eligibility begins when disability is established
- Back pay is limited to date of application
- Subject to offsets for in-kind income or earned income
  - In-kind income is food or shelter received below fair market price
- Successful Claimant also receives Medicaid health insurance, effective immediately on start of benefits

# General Process For An SSD Claim

- Initial Application: may be filed online, by phone, or in-person
  - Applicant will provide variety of background info as well as medical and work history
  - SSA will process the claim, collect medical evidence, and issue initial decision
  - Typically takes 6-8 months, but can be more
- Reconsideration Appeal: typically filed online
  - Claimant that received an initial denial asks SSA to reconsider
  - Claim is assigned to a new examiner who processes similar file
  - Usually also a denial: average processing time is 3-5 months
- Hearing Level: Hearings currently being conducted online, by phone, or in-person
  - Claimant appears in front of an administrative law judge and testifies under oath about medical problems and how they contribute to inability to work
  - Focus is on functional limitations: medical records not typically discussed in detail
  - Typical time from INI app. to hearing date is approximately 16-18 months

# How Do I Prove Disability?

- Below Sedentary RFC
  - Individual cannot perform any full-time job due to medical impairments
    - Claimant cannot tolerate 40-hour workweek, even at non-physical job
    - Claimant would be off-task for considerable period of day
    - Claimant would exhibit absenteeism at an unacceptable rate
- Claimant meets a listing
  - SSA maintains lists of medical conditions
  - Claimant must exactly meet listing or be determined equivalent by doctor
  - If Claimant meets a listing, considered disabled regardless of other factors
- Grid rules
  - Generally, only applicable to individuals age 50+
    - At 50-54, Claimant must prove they are limited to sedentary work
    - At 55+, Claimant must prove they are limited to light work
- All Claimants must prove they cannot return to past relevant work, unless they meet a listing



# Listings

- Listing 12.10: Autism Spectrum Disorder
- Claimant must prove both the A) and B) prongs of the listing
  - A) Medical documentation of both of the following:
    - Qualitative deficits in verbal communication, nonverbal communication, and social interaction
    - Significantly restricted, repetitive patterns of behavior, interests, or activities.
  - B) Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning:
    - Understand, remember, or apply information
    - Interact with others
    - Concentrate, persist, or maintain pace
    - Adapt or manage oneself
- Claimant may also be able to prove other listings on case by case basis

# Medical Evidence

- SSA will consider all available medical evidence
- Higher weight given to proper statements given by treating physicians
  - Must be in proper format giving specific limitations. Blanket statement that Claimant is disabled is not helpful
- SSA often misses evidence, especially for unrepresented Claimants
- Important types of evidence
  - Treatment notes- mental status examinations, regularity and consistency of Claimant symptom complaints
  - Imaging, intelligence/aptitude testing, and other specialized evidence
  - Consultative examinations (CEs), record reviews, and treating source statements
- ALJ must evaluate all evidence in combination to determine appropriate limitations

# How Can We Strengthen an SSD Claim?

- Regular Medical Treatment
  - Best if treating with a specialist
  - Judges vary widely on this issue. Some will almost certainly deny a Claimant who has no regular medical treatment.
  - Even regular attendance with PCP or walk-in clinic is better than nothing
- Obtain Treating Source Statement from qualified physician
  - Must be in correct format, providing specific limitations
  - More effective if physician has been treating Claimant for extended period of time and statement is recent
  - More effective if issued by an actual physician, as opposed to a NP or similar provider

# What To Expect From A Hearing

- Two Primary Purposes
  - ALJ speaks with Claimant and evaluates credibility. Basically, is Claimant an honest person that would only file for SSD if truly unable to work
  - Due Process concerns: Claimant has the ability to argue their case and testify as to medical impairments
- SSD hearings are not governed by rules of procedure or evidence
  - Judge and representative may ask any reasonable questions they have
  - No specific order in which things must be conducted, but judges do have some guidelines to follow
- SSD hearings are typically 40 minutes to 1 hour in length
  - They often start later than scheduled, so be prepared for a wait
  - Main topics of discussion will be medical problems, past injuries/surgeries, work history, and functional limitations
  - Judges also commonly ask questions about activities of daily living
    - Basically, everyday household chores/activities
    - Examples include: driving, shopping, basic housework, and leisure activity
    - Detail is important here

# SSD Decision Process

- ALJs typically do not directly tell Claimants what their decision will be at the hearing
  - Claimant will receive a written decision, typically 4-6 weeks after a hearing
  - Decision will be lengthy and often complicated. Most important is 1<sup>st</sup> page.
- If decision is favorable:
  - PERC interview conducted: SSA will call to confirm information
  - Claimant will next receive a notice of award detailing benefits
  - Typically takes 2-4 weeks from receipt of favorable decision
  - After receipt of notice of award, first payment typically within 2-4 weeks
  - Back pay may be split into installments

# Appealing An Unfavorable Decision

- If denied after a hearing, Claimant's next step is an appeal to the Appeals Council (AC)
  - National body, typically take 4-8 months to process claims
  - Harder standard at AC than at hearing level
    - Claimant must prove ALJ made mistake of law (very rare), or that the evidence in support of disability is overwhelming
    - AC will only consider evidence in existence at time of hearing
    - Outcomes: denial, remand, or reversal
- If denied at the AC, Claimant must appeal to appropriate Federal District Court
  - Even more difficult standard; success rates are low
  - Cases heard on motion, so no in-person interaction
  - Almost requires statement from treating physician to succeed
  - Time consuming and expensive

# When To Seek Representation

- **Prior to Filing Initial Application**
  - Good idea for Claimants that are not good with paperwork/phone calls
  - Ensures initial application will be filed correctly
  - Best chance of ensuring all medical evidence is considered
  - May end up paying unnecessary fee if claim is approved on initial application
- **Prior to Hearing Date**
  - Strongly suggested not to appear unrepresented
  - ALJ will give unrepresented Claimants one free postponement to find an attorney
- **Fee Structure**
  - Standardized by Statute
  - 25% of back pay, capped at a maximum of \$6,000. Increasing to \$7,200 in November 2022

# Traps, Red Flags, and Other Issues

- Work Activity- 2 concerns
  - If Claimant works above SGA (> \$1,350/month on sustained basis), no eligibility for benefits
  - Part-time Work while Claim is pending
    - Acceptable, but must not exceed SGA. Not a good idea for SSI-only claim
    - However, Claimant must have good explanation for limitation to part-time work
- Drug/Alcohol Abuse
  - Only relevant if ongoing use is causing disabling symptoms and the individual would be able to work if not using. Can also affect credibility of testimony.
- Windfall income
  - Most relevant to SSI only claim
  - Large source of one-time income (such as inheritance, settlement, etc.) may cause an individual to lose SSI eligibility and health insurance.
  - This can be avoided through use of trusts



# Question and Answer Session