

Social Security Disability & SSI Benefits - The Very Basics

DEFINITION OF DISABILITY

The Social Security Act defines disability as follows:

The inability to engage in any substantial gainful activity by reason of a medically determinable impairment, physical or mental (or combination of impairments), 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 continuous months.

42 U.S.C. § 423(d)(1) & 20 C.F.R. § 404.1505; 20 C.F.R. §416.905

- The definition of disability is the same for both Title II (SSDI) and Title XVI (Supplemental Security Income) benefits.
- Disability is established based upon limitations caused by medically determinable impairments, not by diagnosis alone.

DISABILITY INSURANCE BENEFITS

- Title II, SSDI, DIB
- To be entitled to Disability Insurance Benefits, a claimant must have worked, and paid into the system, long enough to be fully insured to receive same.
- Depending on the claimant's age, usually a claimant must have worked at least 5 out of the last 10 years to be fully insured to receive benefits. (For SSI benefits there is no minimum work requirement.)
- Entitlement to Disability Insurance Benefits starts with the 6th month after the month in which a claimant is found to be disabled, or 12 months prior to the month of application, whichever of the two yields the less amount of benefits.
- After a claimant has been collecting DIB for two years, including any retroactive period of entitlement, the claimant is eligible to receive Medicare.

SEQUENTIAL EVALUATION PROCESS

In order to determine disability, in both Title II and Title XVI benefits, the Social Security Administration must go through a five step evaluation. 20 C.F.R. §§ 404.1520 & 416.920

- If the claimant is found disabled at any step, the evaluation stops.
- If not, the analysis continues to the next step.

STEP 1: is the claimant working and performing substantial gainful activity (SGA)?

- If the Social Security Administration determines that a claimant is performing SGA then the claimant is usually found not disabled.
- Substantial gainful activity is defined as work, performed either part time or full time, which is done for pay, or profit (even if profit is not made).
- Work is considered substantial, even if it is done on a part-time basis, if it involves doing significant physical or mental activities.
- The work may be substantial even if it is done on a part time basis, or if you do less, get paid less, or have less responsibility than when you worked before. 20 C.F.R. § 404.1572(a).
- Activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities, or social programs are not ordinarily considered substantial gainful activity. **Id** at (c).
- As of 2015, SSA defined substantial gainful activity as that work, wherein the claimant earns, gross, more than \$1090 per month. SGA is defined by the year when it was earned.
- There are special rules for self employed individuals. See 20 C.F.R. § 404.1575.
- The regulations regarding substantial gainful activity can be found in 20 C.F.R. §§ 404.1571 through 404.1576. A chart showing the SGA income levels is at <http://www.socialsecurity.gov/OACT/COLA/sga.html>.
 - Illegal Activity may be SGA, SSR 94-1c.

STEP 2: Does the claimant have a severe impairment?

- An impairment, or combination of impairments, is considered severe if it significantly limits your physical or mental abilities to do basic work activities. 20 C.F.R. § 404.1521.
- Social Security Ruling 96-3P provides that an impairment that is not severe must be a slight abnormality that has no more than a minimal effect on the ability to do basic work activities. Thus, anything that causes more than a mild limitation in a claimant's ability to perform work related activities is considered a severe impairment. See also *Stone v. Heckler*, 752 F.2d 1099, 1101 (5th Cir. 1985).
- A severe impairment must be one that has lasted for a period of at least twelve continuous months, or one that is expected to result in death.
- If SSA finds that a claimant does not have a severe impairment, then a finding of not disabled is made and the claim is denied at step 2.

STEP 3: Does the claimant have an impairment that meets or equals an impairment listed in

20 C.F.R. Part 404, Subpart P, Appendix 1 (a/k/a “The Listings”)?

- The listings are contained in Appendix 1, and are divided into two parts:
 - Part A contains criteria that applies to claimants over 18 years of age.
 - Part B contains criteria that applies to claimants under the age of 18.
 - Each part describes major body systems impairments considered severe enough to prevent an individual from doing any gainful activity, regardless of age, education, or work experience. 20 C.F.R. § 404.1525.
- Thus, if a claimant meets the medical requirements of a listed impairment, he/she is automatically found disabled.
- If a claimant’s impairment, does not specifically meet the requirements of a listed impairment, he/she can be found disabled if it medically equals the criteria of a listing. An impairment(s) is medically equivalent to a listed impairment in Appendix 1 if it is at least equal in severity and duration of the criteria of any listed impairment. 20 C.F.R. § 404.1526.
- Although the final decision as to whether a claimant equals a listing is made by the administration, the ALJ should call on the services of a medical advisor to evaluate the medical evidence. An ALJ cannot find that a claimant equals a listing without a medical opinions supporting the ALJ’s finding. Medical equivalence must be based on medical findings.
- When determining whether a listing is met, or equaled, the durational requirement still applies. That is, the medical impairment must have existed, at a listing level of severity, for at least one continuous year.

Step 4: Does the severity of the claimant’s impairment preclude him/her from performing his/her past relevant work?

- At the fourth step, if a claimant has the residual functional capacity (mental or physical) to perform his/her past relevant work, then a finding of not disabled is made, and the analysis stops here.
- Past relevant work is that work that was performed, at the substantial gainful activity level, for the 15 years prior to the date of adjudication, or when the disability insured status was last met (not from the onset date of disability). 20 C.F.R. § 404.1565.
- At this step, the claimant’s residual functional capacity must be determined.
- Residual functional capacity (RFC) is defined as the most a claimant can physically, or mentally, do despite his/her limitations. 20 C.F.R. § 404.1545.
- RFC is assessed based on all of the relevant medical and other evidence and it must take into consideration a claimant’s ability to meet the physical, mental, sensory and other requirements of work.
- RFC is classified as sedentary, light, medium, heavy, or very heavy. 20 C.F.R. 404.1567 and SSR 83–10.
- In order to determine whether a claimant can perform his/her past relevant work, SSA must first evaluate the physical and/or mental demands of the claimant’s past relevant work, as required by Social Security Ruling 82–62.
- SSA must then determine whether the claimant’s RFC is sufficient to meet such demands. If not, then a finding is made that the claimant cannot perform his/her past relevant work, as performed by the claimant (or as generally performed in the economy) and the claim proceeds to the fifth step.

- In assessing RFC the limiting effects of all impairments, even those that are found not to be severe, will be considered.
- Generally, the claimant carries the burden of proof that he/she does not have the RFC to perform past relevant work. Once this burden is met, then it shifts to the SSA to show, at step 5 of the sequential evaluation process, that there is other work that the claimant can perform.

Step 5: Based on his/her RFC, can the claimant perform other work, existing in significant numbers, in the regional or national economy?

- At this step, the burden shifts to the SSA to assess whether the claimant has the residual functional capacity to perform other work.
- At this stage, the claimant's age, education and past relevant work experience will be taken into account.
- Generally, two tools will be used in determining whether a claimant is disabled at this step:
 - The Medical-Vocational guidelines (GRIDS),
 - Vocational expert testimony
 - The GRIDS are found at 20 C.F.R. Part 404, Subpart P, Appendix 2.
 - They apply solely to claimants who have an impairment, or combination of impairments, which result solely in exertional limitations. These are limitations which affect only the strength requirements of jobs.
 - If the claimant has solely non-exertional limitations then the GRID rules can only be used as a framework in aiding the adjudicator in making a final decision. That is, if the strength limitations closely approach the factors of a particular rule, then the adjudicator has a frame of reference for considering the jobs or types of jobs precluded by other non-exertional limitations.
 - If a claimant has an impairment, or combination of impairments resulting in both strength limitations and non-exertional limitations, the GRID rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, then using the GRIDS as a framework, the adjudicator must consider how much the claimant's work capability is further diminished in terms of any types of jobs that would be contraindicated by the non-exertional limitations.
 - In making the assessment as to whether a claimant can perform other work, the adjudicator also has the option of calling on the services of a vocational expert.
 - The role of the vocational expert is twofold:
 - Describe and classify, in terms of skill and strength level, the claimant's past relevant work.
 - Determine, once presented with hypothetical questions reflecting an individual of the claimant's age, education, past relevant work experience and RFC, whether there is other work the claimant can perform.
 - A claimant's age is classified as follows:
 - 49 years old or younger = Younger individual
 - 50–54 years old = Individual closely approaching advanced age
 - 55–59 years old = Individual of advanced age
 - 60 + years old = Individual closely approaching retirement age
 - A claimant's past relevant work is classified taking into account its strength demands and required skill level. A skill is a knowledge of a work activity that requires the exercise of

significant judgment that goes beyond the carrying out of simple job duties. Skills are acquired in past relevant work that was not unskilled, and may also be learned in recent education that provides for direct entry into skilled work. Skill levels are classified as follows:

Unskilled— Simple, routine, repetitive work which can be learned in 30 days or less. No skills are gained by performing unskilled work. SVP 1–2

Semi-skilled— Work which needs some skills but does not require doing the more complex work duties. May require alertness and close attention to work process and may be applicable where coordination and dexterity are necessary. SVP 3–4

Skilled— Requires qualifications in which a person uses judgment, makes sophisticated adjustments, and deals with people, facts, figures or abstract ideas at a high level of complexity. SVP 5 or higher.
20 C.F.R. § 404.1568

- If a vocational expert finds that a claimant's skills can be transferred to other work, a finding of not disabled would apply.
- Skills can be transferred when:
 - The same or lesser degree of skill is required. The SVP is lower than the one related to the claimant's past relevant work.
 - The same or similar tools and machines are used.
 - The same or similar raw materials, products, processes, or services are involved.

A complete similarity of all three factors is not required for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting (such as mining, agriculture or fishing), they are considered not transferable.

SUPPLEMENTAL SECURITY INCOME BENEFITS

- Title XVI, SSI, or SSD
- A welfare based Social Security program based on financial need.
- Unlike Title II, SSI is not based on eligible quarters or how much a claimant worked.
- Must be financially eligible.
- Contributed to by federal and state funds, but not all states contribute and those that do contribute are not always the same.
- Unlike Title II, an application for Title XVI cannot be completed online and must be made by the claimant in person or over the telephone.
- Two-Prong Test—Must meet both prongs.

• Financial Eligibility

- Resources must be less than \$2000 for an individual and \$3000 for a married couple.
- The claimant's home and land home is on is excluded, as well as furnishings within the home.
- One car that of the household is excluded. Other cars in claimant's or spouses name will be counted as a resource.
- Cash value of all other assets, including investments and life insurance are counted as

resources.

- Income that is earned (wages) or unearned (worker's compensation payments, investment income, etc.) from the claimant or spouse will affect financial eligibility. Earned income and unearned income are treated differently. Income may also be defined as services received in lieu of payment.
- There are many items that can be excluded from countable income. This gets very technical.
- There is spouse to spouse deeming as well as parent to child deeming (until the child reaches age 18).
- **Age or Disabled Eligibility**
- Must either be age 65 or older, or
- Must be blind or disabled.
- Disability Eligibility is based on the same rules as in Title II.

- Entitlement to SSI benefits starts with the full month after the month in which a claimant is found to be disabled, or the date of the application, whichever of the two yields the less amount of benefits.
- Entitlement to SSI benefits also entitles the recipient to Medicaid. There is no waiting period for such benefits.
- Benefits can be paid to a disabled child (through his or her representative payee, usually the parent) under very specific rules about what constitutes a disability for a child.

*** Materials adapted from presentation of Robert Guiterrez, Esq. and Janna Lowenstein, Esq., at the National Organization of Social Security Claims Representatives Fall Conference, 2008.

