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QUALIFYING FOR SOCIAL SECURITY DISABILITY

What is SSD

Social Security Disability, known as SSD, is a federal disability insurance program that you pay into every time you draw a paycheck. This means that if you become disabled from working before reaching retirement age, you can apply to get your social security early on the basis of disability. The program is insurance-based, not welfare-based like the SSI program. It does not matter what your other income or assets happen to be. There is no minimum age limit. To receive SSD benefits, you have to apply during the time that you are insured. If you qualify for SSD, you get a monthly disability check from the U S Treasury and Medicare coverage.

Who can get SSD

There are 4 main categories of people who can receive SSD due to a disability:

- A disabled worker who is under the age of 65;
- The disabled spouse of a deceased worker who is under the age of 65;
- An under age 22 disabled child of a retired, deceased, or disabled worker;
- The parent of a deceased worker who was dependent on support from the deceased worker.

In all of these categories, it is assumed that the worker is insured under Social Security. If you have been paying Social Security taxes with each paycheck and have been working for several years, chances are you are insured for Social Security Disability. You have to have a minimum of 6 credits and a maximum of 40 credits to be insured. The older you are, the more work credits you need. You earn a credit for each quarter that you work. You have to make a minimum amount in each quarter to get the credit. The minimum amount you have to earn per quarter has risen through time. In the year 2003, the minimum amount was \$890 per quarter. This is adjusted upward every year. However, in the past it has been much lower. You only have to have met the minimum that was applicable during each quarter that you worked. Your local Social Security office can determine if you are covered after looking at your earnings record. If you are insured and you stop working for any reason, you are generally going to continue to be insured for only about a five-year period. You have to prove with medical records that you were disabled within the five-year period of coverage.

What you have to prove to get SSD

Generally speaking, disability under the meaning of the Social Security Act means 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 a year or more. Social Security does not recognize partial disability.

Consequently, if you broke your arm and it healed in 4 to 6 months, that broken arm will not meet the test. However, if you continue to need multiple reconstructive surgeries and that arm has not come back to full use for a year or more, the disability definition might then be met.

There are five questions that Social Security uses to determine disability:

1. Are you working? If you are working and making over \$800 per month, then you do not qualify. If you pass this question, they go to the next question.
2. Do you have a severe impairment that is medically determinable? Ninety percent of the battle here is, have you been going in for treatment and is your condition and treatment well documented in medical records? If your impairment is severe, then they go to the next question.
3. Do any of your severe impairments meet a Social Security Listing? A listing is a definition that Social Security gives to a specific impairment. For example, Social Security considers a low back condition to be disabling, by definition, if you have a herniated disk, with muscle weakness, pain, numbness and loss of control of a leg. If a condition clearly meets the definition, it can also equal it. If your impairment meets or equals a listing, then you are disabled. If it does meet or equal a listing, they go to the next question.
4. Can you go back and do the kind of work you had been doing roughly in the past 15 years? This is what is called past relevant work. If you can, you are not disabled. If you cannot, they go to the next question.
5. Is there any other kind of work you can do? For example, if somebody has been a ticket taker requiring them to be on their feet and, due to a leg problem, they can no longer stand up more than 4 hours a day, can they do some other kind of work using their hands that might have a sit/stand option? If the answer is yes, then the person is not disabled. If there is nothing else the person can do with their physical limitations, then they will be disabled under the meaning of the Social Security Act.

How much can you get in SSD

The amount of your monthly disability check depends on how much your earnings were while you were working. The higher your earnings were, and the longer you worked, the more your check will be.

For example, if your 2003 and before earnings averaged about \$20,000, your monthly check will be about \$833.00. If your 2003 and before earnings averaged \$72,600 and over, your monthly check would be about \$1,741.00. Of course, both amounts are increased if you are married and additionally increased for each child you have under age 18. To get an estimate of what your disability check might be call the SSA at 1.800.772.1213 and ask for a social security statement.

How to apply for SSD and/or what you will need

To apply for Social Security Disability, call 1.800.772.1213 and they will take your application by phone. They will send you some forms to fill out and they will later ask you to come by their office in your area to be interviewed. After you have made your telephone application, you should call us immediately to see if we can help you with your application. Call us at 713.526.9966.

When you go in for the interview you should take the following with you:

- Your Social Security Card or number;
- Your birth certificate;
- Your children's birth certificates if you have children;
- Proof of U. S. Citizenship or lawful alien status;
- Your spouse's birth certificate and Social Security Number if you are married;
- Your marriage certificate if applicable;
- Your military discharge paper if you were in the service;
- Your most recent W-2 and tax return

Bringing these documents to the first interview will help speed the process. Make sure to specifically state that you want to apply for Social Security Disability. I can't tell you how many clients have come to our office, eligible for SSD, who were handed an SSI application instead. SSI is a disability welfare-based program that pays much, much less and, if you own too much, you are disqualified. If you have less than \$2000 of non-homestead property and do not have much income, you can file a concurrent application for both SSD and SSI.

Qualifying for Supplemental Security Income

What is SSI?

Supplemental Security Income, known as SSI, is a welfare-based disability program. You can get SSI based on retirement age or the basis of disability. If you become disabled from working before reaching retirement age, you can apply for SSI on the basis of disability. The program is welfare-based, not insurance-based like SSD. If you are going to apply for SSI this means you either don't qualify for SSD because you or your deceased spouse did not have enough work credits, or because you are so close to poverty level that you filed both and SSD and an SSI application. The benefit is much lower than SSD. SSD pays on the basis of your income before becoming disabled. SSI is more like a welfare check. If you qualify for SSI, you get a monthly disability check and Medicaid coverage.

Who can get SSI?

There are three main categories of people who can receive SSI:

- Disabled people;
- Persons 65 or older;
- Blind individuals;
- To qualify, a person must be a U.S. Citizen. Some categories of lawfully admitted U.S. residents may qualify.

There is also an income and asset test. In Texas, if you are married and the money you have coming into your household, on a monthly basis, exceeds \$829.00 you will be disqualified. If you are married and your assets, not including your home, personal property, and car exceed \$3000, this can also disqualify you. If you are single and your monthly basis exceeds \$552, you will probably be disqualified. If you are applying for SSD, on the other hand, the money you have coming in or what your property is does not matter. If you want to apply on the basis of disability, you should go back to the main menu and click on "What you have to prove to get SSI."

What you have to prove to get SSI

If you are applying for SSI, you have to prove that you are disabled. Generally speaking, disability under the meaning of the Social Security Act means 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 a year or more. Social Security does not recognize partial disability.

So if you broke your arm and it healed in 4 to 6 months, that broken arm will not meet the test. However, if you continue to need multiple reconstructive surgeries and that arm has not come back to full use for a year or more, the disability definition might then be met.

There are five questions that Social Security uses to determine disability:

1. Are you working? If you are working and making over \$800 per month, then you do not qualify. If you pass this question, they go to the next question.
2. Do you have a severe impairment that is medically determinable? Ninety percent of the battle here is, have you been going in for treatment and is your condition and treatment well documented in medical records? If your impairment is severe, then they go to the next question.
3. Do any of your severe impairments meet a Social Security Listing? A listing is a definition that Social Security gives to a specific impairment. For example, Social Security considers a low back condition to be disabling, by definition, if you have a herniated disk, with muscle weakness, pain, numbness and loss of control of a leg. If a condition sort of meets the definition it can also equal it. If your impairment meets or equals a listing, then you are disabled. If it does meet or equal a listing, they go to the next question.
4. Can you go back and do the kind of work you had been doing roughly in the past 15 years? This is what is called past relevant work. If you can, you are not disabled. If you cannot, they go to the next question.
5. Is there any other kind of work you can do? For example if somebody has been a ticket taker requiring them to be on their feet and due to a leg problem they can't stand up more than 4 hours a day now, can they do some other kind of work using their hands that might have a sit/stand option? If the answer is yes, then the person is not disabled.

If there is nothing else the person can do with their physical limitations, then they will be disabled under the meaning of the Social Security Act.

You also have to show that your household has less than the income and asset amounts discussed in the "Who can get SSI." To read that section click back to see "Who Can Get SSI."

How much you can get in SSI?

The basic monthly check in most states is about \$579.00 for a single person and \$869.00 per couple. Most people who qualify for SSI will also qualify for food stamps and Medicaid. To get an estimate of what your disability check might be, you should call the SSA at 1.800.772.1213.

How to apply for SSI and what you will need.

To apply for Supplemental Security Income, you should call 1.800.772.1213 and they will take your application by phone. They will send you some forms to fill out and they will later ask you to come by their office in your area to be interviewed. After you have made your telephone application, you should call us immediately to see if we can help you with your application. Please call us at 713.526.9966.

When you go in for the interview, you should take the following with you:

- Your Social Security Card or number;
- Your birth certificate;
- Your children's birth certificates, if you have children;
- Proof of U. S. Citizenship or lawful alien status;
- Your spouse's birth certificate and Social Security Number if you are married;
- Your marriage certificate if applicable;
- Your military discharge paper if you were in the service;
- Information, which you may need to answer questions about your assets and income.

Retirement, Survivor, Divorced Spouse, Children, and Parents Benefits

Retirement benefits

Benefits to survivors of deceased workers

Benefits for Divorced Spouses

Benefits for Children

Benefits for Parents

Retirement, Surviving Spouse, Divorced Spouse, Children,
and Parents Benefits

Retirement benefits

If you are at least 65, and have worked and got Social Security credit for at least 40 quarters of work, and you are a U S Citizen or lawfully admitted as a resident, you are entitled to receive retirement benefits. However, prior to the normal retirement age of 65, you can take early retirement at age 62. If you do that, your monthly retirement check will generally be about 20% less. Furthermore, the retirement age is expected to gradually increase to age 67 after the year 2002.

Retirement Insurance Benefits are generally between \$700 and \$900 per month. If you are 65 now, had steady earnings at around \$20,000 per year and you retire now, your monthly check will approximate \$895.00 per month. If your earnings were \$72,600 or more, your monthly check will approximate \$1,741. If you are married, the monthly checks in both of these examples are \$769.00 and \$2,149. These benefits end in the month prior to the month of your death. However, with a few exceptions, your survivors will be entitled to continued benefits. If you want an estimate as to how much you or your survivors would receive in retirement benefits, call Social Security at 1.800.772.1213 and ask for a Social Security Statement.

Benefits to surviving spouse of deceased workers

If a worker dies, survivor benefits are payable to:

- The surviving spouse who is 60 or older;
- The surviving spouse who is 50 or older and disabled;
- The surviving spouse at any age if caring for a child under 16 or for a child who is disabled and getting social security benefits;

Survivors will usually receive from 75% to 100% each. However there is a limit per family called the family maximum, which will generally be between 150% to 180% of the workers benefit rate.

Benefits for Divorced Spouses

If you are divorced from a deceased worker you can receive benefits on your ex spouse's record. To qualify you must:

- Be at least 60 years old or 50 if disabled or at any age if caring for an eligible child;
- Have been married to the deceased worker for at least 10 years;
- You can't be eligible to get an equal or higher benefit on your own Social Security record;
- You can't be currently married unless you are over 60 or over 50 and disabled.

Survivors will usually receive from 75% to 100% each of the workers benefit. However there is a limit per family called the family maximum, which will generally be between 150% to 180% of the workers benefit rate.

Benefits for Surviving Children

Children of deceased workers can receive survivor benefits if they are:

- Unmarried;
- Under age 18;
- Under age 19 but still in elementary or secondary school as a fulltime student;
- or 18 and older and disabled. The child's disability must have started before age 22.

Survivors will usually receive from 75% to 100% each of the workers benefit. However, there is a limit per family called the family maximum, which will generally be between 150% to 180% of the workers benefit rate.

Benefits for Surviving Parents

Parents of deceased workers can receive survivor benefits if they are:

- At least 62;
- Not entitled to an equal or higher Social Security Benefit based on their own Social Security record;
- Was receiving at least half of their support from the deceased worker before the worker died;
- The parent has not remarried since the workers death.

Survivors will usually receive from 75% to 100% each of the workers benefit. However, there is a limit per family called the family maximum, which will generally be between 150% to 180% of the workers benefit rate.

Appealing a denial of benefits

If you file an application for Social Security benefits and you are turned down, do not get discouraged. You should hire counsel immediately. You should even consider hiring counsel right after you file. There are basically 4 rules, appeal, appeal, appeal, and appeal. Most people, especially those who file requesting disability benefits are turned down. The folks who appeal are the ones who will fall in the greatest majority of winning their claim.

As you may have guessed, there are four levels of appeal and each one must be done within 60 days of the last denial.

If your application for benefits is denied, you must file a Request for Reconsideration with the district office that denied the claim. You must file it within 60 days of receiving your denial letter.

If your Reconsideration request is denied, you should file a Request for Hearing with an Administrative Law Judge within 60 days of the Reconsideration denial. It usually takes about 12 - 18 months to get a hearing. All of your medical records should be gathered because you can't totally depend on Social Security to do it for you. In many cases one or more medical experts and a vocational expert might testify. You have the right to present evidence and cross-examine the witnesses. At this point, it is extremely precarious to proceed by yourself. Our federal appeals court has ruled that any issue not presented to the ALJ cannot be used to appeal later. However, most people who have had to appeal their decision win at the ALJ hearing level.

If you are denied by the ALJ, you have 60 days to appeal to the Appeals Council, which is located in the state of Virginia. The appeal is usually done in writing and it is advisable to file a Brief stating your legal position and why you think the ALJ made a legal mistake in not granting you benefits. All appeals from all ALJ decisions go there and the waiting time is long, sometimes as long as 18 - 24 months. Only a very small percentage of cases are reversed at this level.

If the Appeals Council fails to reverse the ALJ denial, you can file suit in federal court to appeal your case within 60 days. You will most definitely need counsel at this stage. Up until now, there has been no opposing lawyer for Social Security. At Federal Court level, however, the U. S. Attorney's office represents the Social Security Administration. Briefs again are filed stating the positions of each side and usually oral hearings are not held. The courts will usually resolve Social Security cases faster than the ALJ hearing level and the Appeals Council level.

A fair amount of reversals are granted at Federal Court level too. After this level, you can appeal to the federal Circuit Court of Appeals and the last level is to the United States Supreme Court.

Relatively few cases will go beyond the Court of Appeals and Supreme Court.

Attorneys fees for handling SS cases

Attorney's fees on Social Security cases are usually charged on the back pay, which will become due if your case is won. For example, if you are found to be disabled as of January 1, 2000 and you won your case 18 months later on June 30, 2001, your attorney will get paid 25% of the checks due for that 18 month period. No percentage is charged on the front or future pay. The total of that 25% cannot go over \$5300 unless the case went to federal court, then its 25% of the total past due benefits with no \$5300 cap.

Sometimes there are no back pay type cases. This might be if Social Security is trying to stop your payments because they think you have gotten better or other types of situations involving disputes over who is the surviving spouse or who the children are, etc. In these types of cases usually a retainer of some kind is charged and the matter is handled on an hourly basis.

Whether it is a percentage case or an hourly case, attorney's fees generally have to be approved by Social Security Administration.

Medicare/Medicaid

What is Medicare and how to get it

What is Medicaid and how to get it

Medicare/Medicaid

What is Medicare and how to get it

If you receive Social Security retirement you automatically will be enrolled in Medicare.

If you receive Social Security Disability Benefits you will be automatically enrolled in Medicare after you have been receiving benefits for 24 months. There are two parts to Medicare, part A and B.

Medicare hospital insurance Part A helps pay for:

- Inpatient hospital care;
- Skilled nursing care;
- Home health care;
- Hospice care

Medicare medical insurance Part B helps pay for:

- Doctors' services;
 - Outpatient hospital services;
 - Home health visits;
 - Diagnostic x-ray, lab and other tests;
- Ambulance, medical services and supplies.

Medicare does not pay for:

- Custodial care;
- Dentures and routine dental work;
- Eyeglasses, hearing aids and exams for these;
- Nursing home care;

- Outpatient prescription medication;
- Routine checkups, physicals and tests.

What is Medicaid and how to get it

Medicaid is a vendor payment program that makes direct payment to providers of health care services generally for those people receiving SSI. SSI helps pay for inpatient hospital services and medications, outpatient hospital services, lab and x-ray services, nursing facility services, home health care services, family planning services, early and periodic screening, doctors' services, prescription drugs and other medical expenses. To get medicaid you have to be either receiving SSI, or fall into a low-income family with children category, or low-income pregnant women, children, and infants who fall below the poverty level.