

THE LAW OFFICES OF

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Concentrating in Disability & Workers Compensation Law

A Guide To

SOCIAL SECURITY
DISABILITY

&

SUPPLEMENTAL
SECURITY INCOME



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WHAT ARE SOCIAL SECURITY DISABILITY (SSD) AND SUPPLEMENTAL SECURITY INCOME (SSI)?

SSD and SSI are disability programs created by the federal government to provide individuals with qualified disabilities a source of income while they are unable to work.

WHAT IS THE DIFFERENCE BETWEEN SSD AND SSI?

SSD is a benefit for which you qualify if you have worked long enough in the recent past and paid taxes on your income. It is the same benefit you would receive upon retiring at your normal retirement age. SSI is only available to adults and children who are blind, disabled or age 65 or older, if they meet certain income requirements. This program is meant to help those who do not have any substantial income or assets.

ARE THE RULES FOR PROVING DISABILITY DIFFERENT UNDER SSD AND SSI?

No. The same standard is used in determining disability under SSD and SSI.

CAN I RECEIVE BOTH SSD AND SSI AT THE SAME TIME?

Yes. There is no rule that prohibits a person from receiving both SSD and SSI at the same time. Whether you will be eligible to receive both benefits will depend on the amount of your SSD benefit and how much other income and assets you have.

HOW LONG MUST I WORK BEFORE I AM ELIGIBLE FOR SSD?

Social Security assigns credits for the amount of earnings you receive and pay taxes on during the year. Each year the amount of earnings needed to earn one credit changes. You can earn up to 4 credits per year. Normally, to qualify for SSD you need 40 credits during your lifetime (10 years) and 20 of those credits (5 years) must be earned within the last ten years before you become disabled. Special rules apply to younger workers and they may qualify for benefits with less credits.

HOW MUCH WILL I RECEIVE IN MONTHLY BENEFITS FROM SSD AND SSI?

The amount of your SSD benefit is based upon an average of your earnings over your lifetime; each person's benefit is different. SSI benefits are paid at a fixed rate. Depending on where you live your state may add money to your check. However, if you or your family have other income, your check may be less.

WHEN SHOULD I APPLY FOR SSD AND SSI?

You should apply for SSD and SSI when you have been out of work or are expected to be out of work for a period of twelve continuous months.

HOW DO I APPLY FOR SSD AND SSI?

You can apply for benefits over the phone, by mail, on the internet, or by going to the Social Security office that is nearest you.

CAN THE SOCIAL SECURITY ADMINISTRATION REFUSE TO TAKE MY APPLICATION FOR BENEFITS?

No. You have the right to file an application for benefits. If the Social Security Administration feels that you do not qualify for benefits it can deny your claim.

WHAT IF THE CLAIMS REPRESENTATIVE AT SOCIAL SECURITY TELLS ME THAT I DON'T HAVE A CHANCE OF RECEIVING BENEFITS?

File an application anyway. The claims representative is not the person who ultimately will make the determination as to whether you qualify for benefits.

WHO DECIDES IF I AM DISABLED?

The Social Security Administration which is a Federal agency governed by Federal Law.

WHAT INFORMATION IS USED IN DETERMINING DISABILITY?

Social Security will base its determination on information it receives about your condition from you, your doctors, your hospital records, and in some cases, on information it receives from doctors hired by Social Security.

HOW IS DISABILITY DETERMINED BY SOCIAL SECURITY?

Social Security uses a multi-step process for determining disability:

1. Have you been out of work or are you expected to be out of work for a period of 12 continuous months?
2. Are you engaging in substantial gainful activity?(SGA)
3. Do you have a severe impairment?
4. Are you capable of doing your past relevant work?
5. Does your condition meet one of Social Security's listed impairments?
6. What is your residual functional capacity?(RFC)
7. Considering your RFC, are there jobs which exist in significant numbers which you could do?

WHAT IS SUBSTANTIAL GAINFUL ACTIVITY?

Substantial gainful activity (SGA) is the level of earnings that Social Security feels is indicative of your ability to work. As of January 1, 2013, if you are earning more than \$1040 per month, you will be considered to be capable of working.

Note: The level of earnings used to determine SGA will change every January in accordance with a cost of living increase determined by the Social Security Administration.

HOW DOES SOCIAL SECURITY DETERMINE IF I AM ENGAGING IN SGA?

As stated above, SGA is determined by the level of your earnings. As of January 1, 2013, earnings over \$1040.00 a month will be considered SGA and will disqualify you from receiving further benefits. However, some expenses for items which you need in order to work can be deducted from the amount of your earnings when the SGA determination is made. These items are called Impairment Related Work Expenses (IRWE).

WHAT IS AN IRWE (IMPAIRMENT RELATED WORK EXPENSES)?

An IRWE is an item which you require as a result of your disability which you need in order to work. IRWEs can include the cost of medications, prosthetics, attendant care, special transportation, etc. One limitation on IRWEs is that you can only deduct the cost of items for which you yourself have paid. If the item was paid for by the insurance, you will not be able to claim the expense as an IRWE. Health insurance premiums are not considered to be an IRWE.

WHAT IS A SEVERE IMPAIRMENT?

A severe impairment is one which substantially interferes with your ability to do normal daily activities such as standing, walking, sitting, lifting, breathing, speaking, seeing, hearing, concentrating, etc.

WHAT IS PAST RELEVANT WORK?

Social Security considers the last 15 years of your work history to be relevant. Despite your impairments, if you are capable of doing any job that you held within the last 15 years you will not be disabled under Social Security's rules.

WHAT IS A LISTED IMPAIRMENT?

Social Security has attempted to organize and categorize different illnesses, diseases and impairments in what is called Listings. These Listings provide a textbook definition of the illness, disease or impairment. If you meet all the criteria set out in the Listing, you will be found to be disabled.

WHAT HAPPENS IF I DON'T MEET A LISTING?

If you do not meet a Listing, Social Security will then go on to the next stage of the evaluation process in order to determine if you are disabled. The next step in the process is to determine your residual functional capacity.(RFC)

WHAT IS RFC?

Residual Functional Capacity is what you are still capable of doing despite your impairments. Unless you are confined to a bed or a wheelchair, you still will be able to sit, stand, walk, lift, bend etc., even if it is for brief periods of time. The fact that you can do some or all of these activities does not mean you are not disabled.

HOW IS MY RESIDUAL FUNCTIONAL CAPACITY DETERMINED?

Your RFC is determined by medical reports and records provided by your doctors. In some cases, if the medical evidence in the case is insufficient the Social Security Administration may hire a doctor to examine you and give an opinion of your RFC.

ARE THERE A SIGNIFICANT NUMBER OF JOBS I COULD DO?

Once your RFC is determined the Social Security Administration looks at your age, education and prior work experience to determine if there are other jobs in the economy which you could perform. If there are very few jobs which you could perform in light of your impairments, you will be disabled under Social Security's rules.

WHAT IF THERE ARE JOBS WHICH EXIST BUT THERE ARE NONE AVAILABLE?

SSD and SSI are disability programs. Therefore, whether a job is actually available is irrelevant in the disability determination.

DOES SOCIAL SECURITY TAKE INTO CONSIDERATION HOW HARD IT WILL BE TO FIND A JOB ONCE AN EMPLOYER KNOWS ABOUT MY DISABILITY?

Social Security does not consider these types of factors in making a disability determination. It only considers whether you can perform the mental and physical requirements of a job.

Note: It is illegal for an employer to discriminate against you because you have a disability.

WHAT IF I AM DENIED BENEFITS?

If you are denied benefits, you have the right to file an appeal with the Social Security Administration either by mail, phone, internet. or in person at your local office.

WHAT ARE THE LEVELS OF APPEAL?

There are four levels of appeal. If you are denied benefits after your initial filing, the appeal is called a Reconsideration. The Reconsideration is reviewed by the same administrative agency that made the initial determination. If your Reconsideration is denied, the next step is a Request for Hearing by an administrative law judge. If you are denied benefits after a hearing with a judge, your next appeal is to the Appeals Council, which is also an administrative body within the Social Security Administration. If your appeal is denied by the Appeals Council and you then have the right to file an appeal in Federal Court.

CAN I SKIP THE OTHER APPEALS AND GO DIRECTLY TO THE FEDERAL COURT?

No. You must follow the appeal process outlined above. This is called exhausting your administrative remedies.

DO I HAVE THE RIGHT TO LEGAL REPRESENTATION?

Yes. You have the right to legal representation at all times. Although you do not need an attorney to file an application for benefits, it is strongly recommended that you consult with a lawyer in order to prepare your case in the most effective manner possible.

IF I AM APPROVED FOR BENEFITS WILL THEY START RIGHT AWAY?

There is a five month waiting period for SSD benefits. Therefore, you will not receive any SSD benefits until the sixth month of your disability. There is no waiting period for SSI; these benefits are payable immediately.

CAN I GET BENEFITS RETROACTIVELY?

You can receive SSD benefits one year prior to the date you filed your application, if you were disabled back to that time. However, the 5 month waiting period still applies. SSI benefits are only payable from the date you filed your application.

Example: Alex became disabled on June 13, 1994. She filed an application for SSD and SSI benefits on June 13, 1995. She was awarded benefits on January 1, 1996. Alex's SSD benefits would be retroactive to June 13, 1994, but the first month that SSD benefits would be payable to her would be December 1994. SSI benefits would begin on June 13, 1995, the date of her application.

AM I ENTITLED TO MEDICAL INSURANCE IF I AM FOUND TO BE DISABLED?

Yes. Medicare is provided to individuals who qualify for SSD. Medicaid is given to recipients of SSI.

IS THERE A WAITING PERIOD FOR MEDICAL INSURANCE?

There is no waiting period for Medicaid. There is a 29 month waiting period for Medicare.

DO I HAVE TO PAY A PREMIUM FOR MEDICAL INSURANCE?

There is no premium for Medicaid. There are four parts to Medicare, A, B, C, and D. Part A is free of charge and covers most hospital expenses. Part B, which is optional, covers most doctors visits and other medical services / supplies which are not covered under Part A. There is a monthly premium for Part B. If you have both Part A and B, you can join Part C, which allows you to join a Medicare Advantage plan. Part C takes the place of a Medigap policy to cover expenses not paid by Parts A and B. Anyone receiving coverage under Parts A, B, or C can purchase prescription drug coverage under Part D. Joining Part D is voluntary and requires you to pay an extra premium.

Note: if you are unable to pay your Medicare premiums or other medical costs, there may be help from your state.

IF I AM FOUND TO BE DISABLED WILL OTHER MEMBERS OF MY FAMILY BE ENTITLED TO BENEFITS?

If you qualify for SSD, other members of your family may be entitled to benefits. These would include (1) your spouse, if he or she is caring for a child under the age of 16 or a child over 16 who is disabled and receiving Social Security benefits, (2) your unmarried children who are either (a) under 18, (b) under the age of 19 if they are still enrolled in elementary or secondary school as a full-time student, (c) over 18 and disabled (the disability must have begun before the child reached age 22).

WHAT BENEFITS WILL MY FAMILY MEMBERS RECEIVE? Qualified family members will receive monthly cash benefits. However, medical coverage is not provided to family members unless they themselves are disabled.

HOW LONG CAN I RECEIVE BENEFITS?

You can receive benefits so long as you remain disabled and meet the other non-disability requirements, such as income limitations for SSI.

WILL I HAVE TO SUPPLY ADDITIONAL INFORMATION TO SOCIAL SECURITY IN ORDER TO CONTINUE RECEIVING BENEFITS?

Social Security can periodically review your case to determine whether you still meet the requirements for disability. This is called a Continuing Disability Review (CDR). You do have an obligation to provide Social Security with information about your condition. You should provide as much information as possible in order to insure that a proper determination is made.

WHAT IF SOCIAL SECURITY FINDS THAT I AM NO LONGER DISABLED?

If Social Security finds that you are no longer disabled after a CDR, you have the right to appeal that determination. The appeals process is the same as the one described above.

WILL MY BENEFITS STOP AFTER A CDR WHICH FINDS ME CAPABLE OF WORKING?

You have the option of receiving benefits during an appeal based on a CDR.

IF I RECEIVE SSD WILL I STILL BE ABLE TO COLLECT MY RETIREMENT AT MY NORMAL RETIREMENT AGE?

Receiving SSD does not disqualify you from receiving your retirement benefit at your normal retirement age. If you remain disabled until your normal retirement age, your SSD benefit will automatically switch over to retirement. Normally, this is only an administrative change and will not affect the amount you receive.

CAN I TRY TO RETURN TO WORK WHILE RECEIVING SSD OR SSI?

Social Security encourages people to try and return to work. In furtherance of this goal, SSD and SSI beneficiaries are entitled to a "Trial Work Period". The trial work period can last up to 9 months. During those 9 months you will be able to receive your full social security benefit regardless of the amount of your earnings.

WHAT IF MY EARNINGS FALL BELOW THE SGA LEVEL AFTER MY TRIAL WORK PERIOD ENDS?

You will be entitled to collect your monthly benefit for any month in which your earnings fall below the level determined to be SGA for 3 years following the completion of your trial work period.

WHAT HAPPENS TO MY MEDICARE INSURANCE IF I RETURN TO WORK?

If your monthly checks stop after your Trial Work Period ends you will still be entitled to Medicare Part A (Hospital Insurance), Part B (Supplemental Medical Insurance) if enrolled, and Part D (Prescription Drug Coverage), if purchased. This coverage will continue for at least 93 months (7 years) so long as you remain disabled under Social Security's rules.

Note: Even after 93 months you may still be eligible for Medicare Coverage. You should contact your local Social Security office to obtain more information. Assistance with premium payments may also be available thur your state Health and Human Services agency. Ask about Medicare Buy-in programs for Qualified Disabled and Working Individuals.

WILL MY MEDICARE CHANGE IF I RETURN TO WORK AND GET MEDICAL COVERAGE THROUGH MY EMPLOYER?

Medicare is usually the “secondary payer” when you have other health care coverage through your work. Make sure to tell your Medicare contractor right away when you get other health coverage to avoid any errors in payment for your health care services.



JULIANE SOPRANO

Since 1992 Attorney Soprano has concentrated her practice in the areas of Workers' Compensation and Social Security Disability Law. After spending five years as an associate with the law firm of Kistin, Babitsky, Latimer & Beitman, she entered solo practice in 1996.

She obtained her J.D. from Santa Clara University School of Law, Santa Clara, California in 1990. She has a Bachelor of Arts in Political Science from California State University Chico in 1986. She is admitted to the bar in both Massachusetts and California.

Attorney Soprano is a frequent speaker at legal clinics and informational seminars. She is on the lawyer referral panel for the National Organization of Social Security Claimants' Representatives, Barnstable County Bar Association, National Multiple Sclerosis Society, and Southeastern Massachusetts Fibromyalgia Support Group. She has worked with numerous unions and trade groups such as the Massachusetts Nursing Association, the IBEW and the Association of Professional Flight Attendants. She is a member of the Workers' Injury Law & Advocacy Group and the Massachusetts Association of Trial Attorneys. She is a former member of the board of the Cape Cod Council on Alcoholism and Drug Addiction, and Big Brothers & Big Sisters. In 2010 she was named one of Boston's Best Lawyers® in the area of Workers' Compensation and the Woman of Achievement by the Upper Cape Cod Business and Professional Women's Association.

Attorney Soprano credits much of her success to her highly trained support staff.

PAULA MCCONNELL

Ms. McConnell, office manager/senior paralegal has worked with Attorney Soprano since 1993. In addition to overseeing the administrative operations of the office, Ms. McConnell is in charge of the Worker's Compensation Division.

REBECCA PELLETIER

Ms. Pelleteir has been a legal secretary for 25 years. In 2000 she joined Attorney Soprano's office as a paralegal. In addition to managing the Social Security Division, Ms. Pelletier is responsible for the office's computer and technology services.

BETTY MOFFITT

Ms. Moffitt has worked with Attorney Soprano since 2006 in the capacity of legal secretary. She retired from a career in the banking industry where she was an Assistant Branch Manager for 20 years.

MARIA RESENDE

Ms. Resende joined the office in 2007 as an intern from the paralegal program at Cape Cod Community College. She has worked with Attorney Soprano as a paralegal since completing her certification in 2008.

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