

**LAW OFFICES OF DOROSHOW, PASQUALE, KRAWITZ & BHAYA**

**Social Security Disability Insurance/Supplemental Security Income:  
How These Benefits Can Help Your Patients**

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“I can’t work any more . . . What am I going to do for money? Who will pay my medical bills?” You may encounter this concern from your disabled patients. The solution may be Social Security Disability benefits/Supplemental Security Income. These valuable benefits can offer financial stability and continued medical treatment.

This portion of the seminar will provide the following:

- An overview of Social Security Disability Insurance benefits and Supplemental Security Income;
- The application process for Social Security benefits;
- Who should apply for Social Security disability benefits;
- The Medical Provider’s Role in the Social Security Process
  - Medical Records
  - Residual Functional Capacity Questionnaires (RFC); and
- How an attorney can help your patient with Social Security.

**I. Overview of Social Security Disability Insurance/Supplemental Security Income**

**Definition of Disability**

Social Security defines disability as an “inability to engage in any substantial gainful activity by reason of a medical impairment (or combination of impairments) which can be expected to last for a continuous period of not less than 12 [consecutive months] . . . [taking in account the individual’s age, education and work history].”<sup>1</sup>

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<sup>1</sup> 42 U.S.C. § 423 (d), 1382c(a)(3)(B) and 20 C.F.R. §404.1505, 416.905.

A person must show that they have not been able to work full-time any job for at least a year or is expected to be out of work from any full-time job for at least twelve months. Social Security will take in account a person's age, education and work history in determining what jobs a person could do.

### Types of Programs

There are two types of disability programs, Social Security Disability Insurance benefits (SSDI)<sup>2</sup> and Supplemental Security Income benefits (SSI)<sup>3</sup>. SSDI is an insurance program for workers and their dependents. To be fully insured under this program, a claimant must have worked twenty quarters and must have worked five out of the last ten years.<sup>4</sup> After 24 months of paid disability, the claimant would be eligible for Medicare. Having the medicare coverage will allow your patient to continue obtaining medical treatment.

SSI is a welfare program for indigent claimants who do not have a strong work history. To be eligible under this program, the claimant must be disabled and meet an income and resource test. The claimant would be likely eligible for Medicaid.

### **Sequential Evaluation: How Social Security determines disability**

Social Security utilizes a five step sequential evaluation to determine whether an adult individual is disabled under either SSDI or SSI<sup>5</sup>.

1. **Step One** – Is the claimant working and performing substantial gainful activity (SGA)?

Substantial gainful activity is any work activity that involves considerable physical or mental activities even if on a part-time basis that a claimant does for pay or profit.

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<sup>2</sup> 42 U.S.C. § 401 et seq. and 20 C.F.R. Part 404.

<sup>3</sup> 42 U.S.C. § 1381 et seq. and 20 C.F.R. Part 16.

<sup>4</sup> The requirements are different for claimants under the age of thirty-one.

Activities such as household chores, hobbies, therapy, taking care of personal needs, school attendance, and club activities are usually not considered SGA.<sup>6</sup> Currently, Social Security classifies substantial gainful activity as the ability to earn \$830.00 per month.<sup>7</sup> If a claimant is performing substantial gainful activity, he will be denied benefits at step one.

2. **Step Two** -- Does the claimant have a severe medical impairment?

A severe impairment is an impairment or combination of impairments, which significantly limits a claimant's physical and mental ability to do basic work activities. If a claimant does not have a severe impairment, then he will be denied at step two.

3. **Step Three** – Listing of Impairments

The listings are a list of common conditions for each major body system. Each listing describes the condition existing at a severe level. If a claimant can show an impairment which meets the twelve-month duration requirement, and which either meets or equals a listing found in 20 C.F.R Part 404 subpart P, Appendix 1, a claimant may be found automatically disabled at this step. Social Security does not consider the claimant's past work, age, and education at this step. If a claimant does not meet or equal a listing, then the evaluation moves to step four.

4. **Step Four** – Does the claimant have the ability to perform past relevant work (PRW)?

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<sup>5</sup> Children's disability claims are analyzed under a different sequential evaluation. See 20 C.F.R. § 416.926.

<sup>6</sup> 20 C.F.R. § 404.1572 and 20 C.F.R. § 416.972.

<sup>7</sup> 20 C.F.R. § 404.1574 (b) and § 416.974 (b).

If a claimant is found to have the ability to perform past relevant work despite his impairment, then he will be found not disabled at step four of the evaluation.<sup>8</sup> Past relevant work is defined as work that the claimant performed within the past fifteen years of the alleged onset date of disability.<sup>9</sup> In evaluating whether a claimant can perform his past relevant work, Social Security will assess the mental and physical demands of the past work, the claimant's mental and physical condition, and what the claimant can still do on a consistent basis despite his impairments. If the claimant cannot perform his past work, then the evaluation proceeds to step five.

5. **Step Five** – Does the claimant have the ability to perform other work that is available in significant numbers in the regional and national economy taking in account the claimant's age, education, work history, and residual functional capacity (RFC)<sup>10</sup>?

At step five, the burden shifts to Social Security to prove that there are jobs in the regional and national economy that the claimant is capable of performing. Social Security will consider the claimant's age, education, past work experience and residual functional capacity. Residual functional capacity is evaluated as sedentary, light, medium or heavy. To ascertain a claimant's RFC, a claimant's physical exertional levels for walking, sitting, standing, lifting, carrying, bending, stooping will be assessed.

There are two methods to determine whether there are a significant number of jobs that the claimant can perform, the Medical Vocational Guidelines (the GRIDS) or

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<sup>8</sup> 20 C.F.R. § 404.1520(e) and § 404.1560 (b) (e).

<sup>9</sup> 20 C.F.R. § 404.1565.

<sup>10</sup> 20 C.F.R. § 404.1520(f).

testimony from a vocational expert.<sup>11</sup> If a claimant suffers from only exertional impairments, i.e. only physical impairments, then the GRIDS must be applied to determine disability. On the other hand, if a claimant suffers from only non-exertional impairments, e.g. pain, anxiety, stress, impaired memory etc., the GRIDS are not used and testimony from a vocational expert will be obtained. If a claimant has both exertional and non-exertional impairments, the GRIDS will provide a basis for a disability, but cannot be relied upon completely to issue a final finding. Vocational Expert testimony will be obtained. If Social Security determines that there is no other work in the national economy that the claimant can perform, then the claimant will be found disabled.

### **Stages of Appeal**

A claimant files an initial application with Social Security either by mail, at the local Security office or by telephone. The claimant will be notified by mail whether or not he has been found disabled. If Social Security denies the claim, then the claimant will have sixty days to request a reconsideration of Social Security's decision.

Reconsideration is the second stage where the claimant has an opportunity to request Social Security to review his application again. If an unfavorable decision is issued again, the claimant may request a hearing before an administrative law judge (ALJ) within sixty days of the decision. An administrative law judge hearing is an informal and non-adversarial process. Both the judge and the attorney may question the claimant about his condition. The judge may also utilize vocational and medical experts and the claimant may also bring witnesses. If the decision

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<sup>11</sup> The GRIDS are a series of charts that determine disability based on a claimant's age, education, past work experience and RFC.

rendered by the ALJ is not favorable, then the claimant may appeal to the Appeals Council within sixty days of the ALJ decision.

### **Who should apply for Social Security disability benefits?**

Social Security disability claimants do not have to be completely debilitated to qualify for benefits. The claimant simply has to show that they are not able to do any type of work in the economy on a regular full-time basis. Many times we can also obtain Social Security benefits for an individual on a temporary basis or for a closed period. Examples of people who should be encouraged to apply include but are not limited to people who have the following:

- Multiple health problems, e.g. diabetes, high blood pressure, obesity, arthritis, cardiac problems, etc.;
- Had surgery and are likely to be in rehabilitation for more than 12 months, e.g., lumbar and cervical spine surgery, hip and knee replacements, heart surgery, etc.
- Mental disorders, e.g., PTSD, Bipolar disorder, Depression, ADD etc.
- Chronic conditions and diseases, e.g. multiple sclerosis, cancer, fibromyalgia etc.
- A worker's compensation injury and are likely to be out of work for more than 12 months.

### **The Medical Provider's Role in the Social Security Process**

Your medical records and reports are essential in proving Social Security claims. Requests from Social Security for medical records can be burdensome and time consuming. However, Social Security relies heavily upon your records. If Social Security does not receive the medical information timely, your patient will be sent to a Social Security doctor for an

evaluation. Often these evaluations are not favorable to your patient, which can create conflict for them. The following are some suggestions to streamline the process while helping your patient:

1. Document! Document! – Social Security often loses or misplaces medical records that you sent and will claim that you never sent them. Document that you sent the records by faxing the records and save the fax transmittal. You could also send the records with a return receipt. Hopefully, this documentation will avoid needing to send the records again.
2. Send a copy of the complete file to Social Security including labs and tests, etc. This may help to avoid a second request from Social Security.
3. Legible notes are a plus. Social Security will often deny your patient if they can't read the notes.
4. Residual Functional Capacity Evaluations (RFCs)/ Physician's Medical Opinion – the opinion of the patient's treating physician is very important in establishing their claim for benefits. Completing these evaluations early in the process will help with the patient obtaining an approval of his/her claim.

**An attorney can help your patient with Social Security process.**

It is likely that your patient will have a better chance of success if they are represented, particularly at the Administrative Law Judge hearing. Attorneys can help the claimant obtain the necessary medical records and act as a liaison between your office and Social Security. We will also work to obtain your medical opinion regarding your patient's ability to work. At the hearing, attorneys are also responsible for cross-examining the vocational expert and medical expert.

The attorneys at Doroshow, Pasquale would be more than happy to help your patients with their disability claims. We offer a free initial consultation and attorney's fees are paid on a contingency basis only. We only take a fee if we are successful in obtaining the patient's disability benefits.