Introduction to Social Security Benefits

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What are we going to talk about?

• Who I am and what I do
• Two types of Social Security disability benefits
• How Social Security determines disability
• The benefits application process
• Hiring a representative?
• Things to consider after getting benefits
• Question time (keep it general, please!)
A little about NOSSCR

• National Organization of Social Security Claimants’ Representatives
• Founded in 1979
• Over 3500 members: attorneys and non-attorneys in nonprofits and private firms
• Educational materials and conferences
• Represents representatives to SSA, Congress, the public, and more
• What I do for NOSSCR and what I did before
And now....Social Security!
SSI and SSDI are Different Programs

- SSI = Supplemental Security Income
- SSDI = Social Security Disability Insurance
- Similarities and differences
- They don’t always play well with each other!
SSI and SSDI are Different Programs

• They are both run by the Social Security Administration

• You can get SSI based on age or disability
• You can get SSDI based on age or disability (or as a auxiliary beneficiary)

• Some people get benefits from both programs
• Same definition of disability
Title II (aka SSDI, OASDI, RSDI)

- Worker can get benefits when disabled (with 5-month wait) or based on age (different amounts between 62 and 70)
- You have to be “insured”
  - Eligibility based on work credits
    - Different amount required for retirement v. disability
    - Different number of credits required for disabled people of different ages.
  - Not all jobs give work credits (off the books, some government, etc.)
  - Recency requirement for disability insured status
- Amount of benefit varies based on earnings history (can be reduced by a very few types of income, including government pensions and workers’ comp)
  - 2019 disabled worker average: $1235 a month
  - 2019 maximum: $2861 a month
- Some of worker’s relatives might be eligible for “auxiliary” benefits if worker dies, reaches retirement age, or becomes disabled
Title XVI (SSI)

- For older (65+) or disabled people who didn’t earn enough work credits for SSDI, or who qualify for a small amount of SSDI
  - 2019 maximum amount is $771 for single, $1157 for married couple both eligible
  - It’s possible to get both SSI and SSDI (2019 amount would be $791/month maximum)

- Asset limit of $2000 for singles, $3000 if married
  - Home you live in and one car, among other things, don’t count

- All types of income—earned, unearned, deemed from parent or spouse, in-kind (food and shelter) affect SSI in various ways
Differences

- Amount of benefits
- Need for insured status: SSDI only
- Auxiliary benefits: SSDI only
- Asset (aka “resource”) cap: SSI only
- How income is treated
- When you are eligible (age): 65 for SSI, as early as 62 for Retirement Insurance
- When you are eligible (disability): the month after you apply for SSI, as far back as a year from when you applied if SSDI, but there’s a five month wait from onset date
What does Social Security mean by “disability” for adults?

1. Are you doing “substantial gainful activity”?

2. Do you have a severe impairment that has lasted/is expected to last more than 12 months or is expected to result in death?

3. Do you meet/equal a listing?

4. Can you return to past relevant work (if any)?

5. Can you do other types of substantial gainful activity?

Note: kids have a different definition
Steps 1 and 2

• Substantial Gainful Activity
  – $1220 a month in 2019
  – More complicated than the amount on paycheck: subsidy, unearned income (accrued leave), UWAs

• Severe impairment
  – More than minimal limitation in activities of daily living
  – Lasting 12 months or more, or expected to be fatal
  – Combination of impairments
  – Side effects of treatment also count
What is a listing?

• A definition of an impairment so severe that if you meet or equal it and have passed the first two steps in the sequential evaluation process, you qualify for disability benefits.

• They’re in 20 CFR Part 404, Subpart P, Appendix 1
Adult Epilepsy Listing: 11.02

Documented by a detailed description of a typical seizure and characterized by A, B, C, or D:

- A. Generalized tonic-clonic seizures (see 11.00H1a), occurring at least once a month for at least 3 consecutive months (see 11.00H4) despite adherence to prescribed treatment (see 11.00C).

- B. Dyscognitive seizures (see 11.00H1b), occurring at least once a week for at least 3 consecutive months (see 11.00H4) despite adherence to prescribed treatment (see 11.00C).

- C. Generalized tonic-clonic seizures (see 11.00H1a), occurring at least once every 2 months for at least 4 consecutive months (see 11.00H4) despite adherence to prescribed treatment (see 11.00C); and a marked limitation in one of the following:
  - Physical functioning (see 11.00G3a); or
  - Understanding, remembering, or applying information (see 11.00G3b(i)); or
  - Interacting with others (see 11.00G3b(ii)); or
  - Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or
  - Adapting or managing oneself (see 11.00G3b(iv)).

- D. Dyscognitive seizures (see 11.00H1b), occurring at least once every 2 weeks for at least 3 consecutive months (see 11.00H4) despite adherence to prescribed treatment (see 11.00C); and a marked limitation in one of the [same five things listed in C.]
5.08 **Weight loss due to any digestive disorder** “despite continuing treatment as prescribed, with BMI of less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period.”

11.17 **Neurodegenerative disorders of the central nervous system:** “Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities.”

12.05 **Intellectual Disorder:** Onset must be before age 22. “Significantly subaverage general intellectual functioning evident in your cognitive inability to function at a level required to participate in standardized testing of intellectual functioning and significant deficits in adaptive functioning currently manifested by your dependence upon others for personal needs (for example, toileting, eating, dressing, or bathing) [or...] A full scale (or comparable) IQ score of 70 or below on an individually administered standardized test of general intelligence; or a full scale (or comparable) IQ score of 71-75 accompanied by a verbal or performance IQ score (or comparable part score) of 70 or below on an individually administered standardized test of general intelligence; and significant deficits in adaptive functioning currently manifested by extreme limitation of one, or marked limitation of two, of the following areas of mental functioning:

- Understand, remember, or apply information (see 12.00E1); or
- Interact with others (see 12.00E2); or
- Concentrate, persist, or maintain pace (see 12.00E3); or
- Adapt or manage oneself (see 12.00E4)
Child Epilepsy Listing: 111.02

Documented by a detailed description of a typical seizure and characterized by A or B:

- A. Generalized tonic-clonic seizures (see 111.00F1a), occurring at least once a month for at least 3 consecutive months (see 111.00F4) despite adherence to prescribed treatment (see 111.00C).

OR

- B. Dyscognitive seizures (see 111.00F1b) or absence seizures (see 111.00F1c), occurring at least once a week for at least 3 consecutive months (see 111.00F4) despite adherence to prescribed treatment (see 111.00C).
Steps 4 and 5

• For adults who got through steps 1 and 2, but didn’t meet a listing, the decisionmaker determines Residual Functional Capacity and uses it to answer two questions:

  • *Can the claimant go back to past relevant work?*
    – Within past 15 years, at SGA level, done long enough to learn how

  • *If not, is there other work this individual can do?*
    – “Grids” using RFC, age, education, and work experience
    – If not found disabled using grids, other exertional and non-extertional limitations are considered

• For kids, the decisionmaker uses “domains”
  – One extreme or two marked limitations.
  – Compared to other kids their age.
  – Extreme: bottom 0.15% (1-2 per thousand)
Kind of complicated, right? Here, take a break and enjoy this picture of my cat.

Any questions so far?

Now let’s talk about how people apply for Social Security disability benefits.
Initial and reconsideration stages

Decisions can take several months

- Several ways for SSDI, only in person for SSI
- Often a good idea to apply for SSI and SSDI
- Claimants and representatives can use this time to submit medical records and other evidence
- SSA contracts with state agencies to make decisions at these stages

Most people get denied at these stages

- This doesn’t always mean they have bad cases
- 60 (+5) days to appeal but good cause options
- Online or paper appeals allowed
- 10 states reintroducing reconsideration: AL, AK, CA (parts of LA only), CO, LA, MI, MO, NH, NY, PA
Hearings

- Online hearing requests are possible in most cases
- May ‘19 average processing time from hearing request to decision: 491 days (range 308-757)
- Opt-out form (HA-55) for video hearings
- Critical case “flag” available for TERI, 100% VA rating, wounded warrior, potentially violent, dire need
- Possible to request on the record decision
- First time you may get to talk to a decisionmaker
- Nonadversarial hearings, last about 20-90 minutes
- Administrative Law Judges
- Others in the room: VEs, MEs, hearing recorders
- Rare to get a decision at the hearing
- In 2019, 45% allowed, 21% dismissed, 35% denied
Appeals Council and Beyond

• Takes years

• Often must decide between Appeals Council and new application; possible to reapply while in federal court

• In 2014, 1% allowed and 10% remanded by Appeals Council

• 2% allowed and 48% remanded by federal court
Should I hire a representative?

• NOSSCR lawyer referral service: 845-682-1881 or nosscr.org
• Representatives can collect medical records and other evidence, help you complete forms, talk to SSA for you, write briefs and motions, question you and experts, counsel you after decision
• Lawyer or nonlawyer?
• Fees: in most cases, 25% of back benefits up to a limit of $6000, but it’s important to understand the agreement for your case
• Pick someone who makes you feel comfortable
More questions? (I don’t bite.)
Post-Eligibility Issues

• You got benefits! Great!

• But you’ve still got stuff to think about.
Medical Insurance and Social Security
A lot depends on your state!

• SSI: Income may be low enough for Medicaid (some states have Medicaid waiver programs where people whose household income would otherwise be too high for Medicaid can get it). At age 65, can also get Medicare. If getting Medicare and Medicaid, QMB may pay Medicare premium and provide other wraparound services.

• SSDI (or SSI and SSDI):
  • Under 65 and less than 29 months since disability onset date: Medicaid or exchange may be options.
  • After 29 months and/or over age 65: Medicare available, possibly with Medicaid or private options as well.
Continuing Disability Reviews and SSI Redeterminations

• At age 18, SSI recipients are generally re-assessed under the adult standard. However, there are complex rules around “transition-aged youth.” SSA has a brochure about the transition called “What You Need To Know About Your Supplemental Security Income (SSI) When You Turn 18” at https://www.ssa.gov/pubs/EN-05-11005.pdf. About 1/3 of child SSI recipients are terminated after this redetermination.

• Everyone receiving disability benefits is classified as Medical Improvement Not Expected, Medical Improvement Possible, and Medical Improvement Expected. The frequency and thoroughness (ranging from a postcard to a full medical review) of the continuing disability review varies by category and other factors.
  • Terminations of benefits after CDRs can be appealed, with benefits pending conclusion of the appeal.

• It is critical to keep your contact information updated with SSA and respond promptly to all of their requests for information by the deadline!
Work Incentives

SSI
• Ignore the first $20 of any month’s income
• Ignore $65 of earned income
• $1 reduction in SSI for every $2 of income after that.

SSDI
• Trial Work Period: 9 months in 5 years; triggered by $780 but earnings don’t affect benefits
• Extended Period of Eligibility: SGA cliff, with expedited reinstatement

Also: Concurrent beneficiaries, BOND, and ISM; VR, WIPAs, PASS, and more!
What is an overpayment

• Someone received more benefits than SSA now thinks s/he was eligible for

• **Common causes:**
  – **Work** (SSI and SSDI handle it differently)
  – Excess assets/unearned income/ISM in SSI cases
  – Being out of the US for more than 30 consecutive days
  – Extended hospitalization
  – Period of incarceration/ fleeing felon
  – Disability cessation
  – Change in marital status (deeming income from wife to husband or parent to child)
Overpayment Options

• **Pay it**
  – SSI recoupment: 10% of maximum benefit ($77)
  – $10/month repayment allowed if requested by full LIS recipient: [http://policy.ssa.gov/poms.nsf/lnx/0202210030](http://policy.ssa.gov/poms.nsf/lnx/0202210030)

• **Appeal**
  – **Request reconsideration** of the amount or existence of the overpayment
  – Follow deadlines to keep benefits pending and preserve appeal rights.

• **Request Waiver of the Overpayment**
  – The overpayment does exist, but
    • It’s not the beneficiary’s fault, and
    • The beneficiary cannot afford to repay the overpayment the way SSA wants.
    • Admin waiver for OPs $1000 or less, unless “indication of fault”
You did it! Questions?