

Everything you need to know about ...

Disability Benefits from Social Security

Introduction

There is probably no more controversial component of Social Security than the disability program. That's primarily because unlike other parts of Social Security, disability can be so subjective. Compare that to other Social Security programs. For example, the rules for qualifying for retirement benefits are pretty cut and dried. Show the Social Security Administration a birth certificate and provide a couple other documents proving you are eligible for benefits, and your retirement checks will start rolling in. The same is true for Social Security survivor's benefits. Provide a death certificate, proof of your relationship to the deceased, and your own birth certificate, and you'll soon be getting your monthly benefits.

But qualifying for disability benefits isn't so easy. Instead of simply proving your age or proving your relationship to a deceased family member, you have to prove you meet the legal definition of "disability" for Social Security purposes. And although, as we shall see in this fact sheet, the law defines "disability" in a few short and simple sentences, proving you are legally "disabled" is not at all a short and simple process.

Here is another way to think of the subjective nature of "disability." We've all known fellow workers who might call in sick if they have just a slight case of the sniffles. Yet we also know folks who would show up for work even if they had pneumonia! In other words, one person's disabling condition is another person's minor inconvenience.

Or let's look at that from yet another angle. There are some people who claim they can't work and would file for disability benefits with a relatively minor ailment like a bad back or sore knee. Yet there are other people with very obvious disabilities, like folks who are blind or paraplegics confined to wheelchairs, who work every day and who don't think of themselves as "disabled" and so would never consider applying for disability benefits. To reemphasize the point: what one person considers a disability may be vastly different from what another person considers a disability.

In addition to the subjective nature of disability, there is another reason the program is difficult to understand – and for that matter, to administer. Think of the hundreds of different kinds of possible disabling conditions: heart trouble; kidney disease; brain damage; cancer; nervous disorders; muscular and skeletal issues; mental health problems, etc. The list goes on and on. How do you decide how badly damaged a heart must be before someone can get disability? How dysfunctional must a kidney be to keep someone from working? How much pain must a person endure to make him or her unemployable and eligible for benefits? The Social Security Administration has established guidelines to help its disability claims evaluators make that decision for each potential condition. Yet no matter how much they try to objectify that process, the decision is still ultimately a subjective one.

Two disability programs

In addition to the problem of defining disability, confusion over the issue is further compounded by the fact that the Social Security Administration runs two separate disability programs that have vastly different criteria – for the non-medical eligibility factors.

Social Security disability

Social Security disability benefits were added to the Social Security program in 1956. A separate funding structure was established to pay for them. A small percentage of the Social Security payroll tax (currently 0.9 percent) is earmarked to fund the disability program. Those monies are collected and disbursed from the Disability Insurance Trust Fund that is managed separately from the retirement/survivors fund, known as the Old Age and Survivors Insurance Trust Fund. I make this funding point to disavow the commonly held belief that the number of people getting disability benefits is the primary reason why the retirement program faces long-range funding problems.

In addition to meeting the legal definition of disability, to qualify for Social Security disability benefits, you must have worked and paid Social Security taxes. How much work you need depends on your age at the time you become disabled. Just like the retirement program, most people need 40 Social Security credits to be eligible for disability benefits. Although younger people, generally those under the age of 30, need fewer credits.

But there is a little twist to this “insured status” requirement. In addition to having the required number of Social Security credits, the law stipulates that some of those credits must be earned in recent years. For most adults, that means you must have worked and paid Social Security taxes in five of the last ten years. For people under the age of 30, that “current work test” is lessened.

The amount of a Social Security disability benefit depends entirely on a person’s prior taxable earnings. Essentially, the more money you’ve made, the higher your benefit will be. A high monthly disability check today would be in the \$2,700 per month range. Average benefits might be around \$1,500 per month. And if a disabled person has dependents (such a minor children), those children could qualify for monthly benefits, too.

Supplemental Security Income disability

Many people mistakenly confuse Social Security disability with Supplemental Security Income (SSI) disability. They are totally different government programs. SSI, which began in 1973, is a federal welfare benefit payable to the elderly and to disabled people with low income and assets. It is funded by general income tax revenues, not Social Security taxes. Both programs just happen to be run by the same agency: the Social Security Administration.

In addition to meeting the legal definition of “disability,” to qualify for SSI a person must have limited income and assets. The rules are way too complicated to explain in this short fact sheet. But in a nutshell, a person must have assets (not counting a house and a car) of less than \$2,000 and must have less than about \$750 per month in income. That is a very simplistic

description of the eligibility criteria for SSI. To find out if you are eligible, you will need to talk to an SSI specialist at your local Social Security office.

Although the amount of an SSI check can vary from one state to another, generally the monthly benefit will not climb much above \$700. And no benefits are paid to the dependents of SSI recipients.

There is one other aspect that adds to the confusion between the Social Security and SSI disability programs. It doesn't help that SSA refers to one as SSDI (Social Security disability insurance) and to the other as SSID (Supplemental Security Income Disability)!

The definition of “disability”

For both programs, the law defines “disability” this way: it says that in order to qualify for benefits, you must have an impairment that is so severe that it is expected to keep you from doing ANY kind of work for at least 12 months. Or the condition must be so bad that it is considered terminal. (The definition uses the phrase “substantial gainful activity” instead of the simpler word, “work.” For more discussion of SGA, see the section on “Incentives to work” later in this fact sheet.)

In other words, the inability to work, and not just the impairment itself, is the key to qualifying for disability benefits from Social Security. Earlier, I mentioned people confined to a wheelchair who are still working. If you were to see such a person, you would probably say, “That person is disabled.” Yet they would not qualify for Social Security or SSI disability benefits because they are working. So in other words, they are not “disabled” for Social Security purposes.

Throughout the insurance and pension industry, this is known as a very strict definition of disability. Despite all the rumors that exist about “deadbeats” and “fakers” on the Social Security disability dole, the opposite is more often the case: there are lots of people who would be considered “disabled” and eligible for many other government and private disability plans who do not qualify for Social Security or SSI disability payments. (There is a section near the end of this fact sheet about reporting allegations of disability fraud.)

One final eligibility point: if you are over 66, you are not eligible for disability benefits. Or to put that another way, once you reach that age, there would be no difference between a Social Security disability payment and a retirement benefit. There is a section later in this fact sheet with advice for seniors between the ages of 62 and 66 who consider themselves disabled.

Tips on filing for disability benefits

So if you have an impairment that keeps you from working and if you meet the insured status requirement for Social Security disability or the poverty requirement for SSI disability, then you should file for benefits. Doing so requires filling out several forms. You can do it online at www.socialsecurity.gov. But I suggest filing a claim either in person or via the telephone. I think this one-on-one personal contact helps make your case. Or to put that another way, if the person interviewing you can observe your disability and listen to you describe its

impact on your ability to work, this can only help your chances of qualifying for benefits. You can start the personal interview process by calling SSA at 800-772-1213.

Here are five tips that you should find useful when you are applying for Social Security or SSI disability benefits.

Tip 1 - One of the first questions on the disability application form essentially asks this: “What is wrong with you and how does this impairment prevent you from working?” Answer this question as thoroughly as possible. Remember that the inability to work (not just the impairment itself) is the key to qualifying for benefits. You should describe in as much detail as possible how your impairment (or impairments – see Tip 2) impact your ability to do your job.

Tip 2 - List all the physical and mental problems you have, no matter how insignificant they seem. Don’t simply mention the condition that you consider your primary disability. It is frequently a combination of disabilities that qualifies someone for benefits.

Tip 3 - There is a big section of the disability questionnaire that seeks information about your medical sources. Thoroughly list the names, addresses, phone numbers, websites, etc. for all the doctors, hospitals, clinics, and other professionals who have treated you. The government needs medical records to help them decide if your condition is severe enough to qualify for benefits. And of course they get those records from the people you list on the application form. I can tell you from experience that nothing slows up a disability claim more than the inability to get records from medical sources.

Tip 4 – Frequently, Social Security needs more information than they can glean from your medical records to help decide if you are disabled. If they set you up for a medical examination with a “Social Security doctor,” don’t miss that appointment.

Tip 5 - The Social Security Administration actually contracts with a state agency (it is called the “Disability Determination Service” in most states) to make disability decisions. Shortly after you file, your claim will be sent to your state “DDS.” Call SSA and get the DDS phone number and then call them to find out the name of the analyst who has been assigned to your case. Make that person your new best friend! This is the person who is going to decide if you are disabled or not.

Do you need a lawyer?

You may have heard rumors similar to these. “Everyone who applies for disability benefits is turned down the first time around.” Or, “You have to hire a lawyer to have any chance of getting disability benefits.” The first rumor is simply wrong. The second rumor has some truth to it – but only at a certain point in the claims process.

The fact is that about 35 percent of first-time claims for disability benefits are approved. So that belies the rumor that all initial claims are automatically denied. And one reason a high number of claims (65 percent) are turned down the first time is because many people file for disability benefits essentially out of desperation. They are unemployed and in need of funds, but not really disabled. Lots of folks, especially the older they get, have some impairments (back

problems, high blood pressure, arthritis, etc.), and are usually working despite their medical limitations. If they become unemployed, they figure it can't hurt to try filing for disability benefits. Many of those claimants make up the 65 percent first claim denial rate.

But no matter what your medical condition is and your chances for approval are, do you need lawyer to get disability benefits? The answer to that question is "not right away, but maybe later." I will explain.

You certainly do not need a lawyer when you are filing your first claim for benefits. As explained above, this is simply a matter of completing some forms and then waiting for the government to make a decision. A lawyer generally can't change or speed up that process.

And if your claim is denied, and you disagree with that decision, the first appeal is usually an internal review (called a reconsideration) of your claim by SSA personnel. In about 15 percent of these review cases, SSA reverses its initial denial and approves the disability claim. Once again, a lawyer generally won't have much impact on that process.

But if this reconsideration is turned down, the next level of appeal is a hearing before a Social Security judge. And it is at this point where a lawyer can come in handy. In fact, statistics show that a high percentage (about 70 percent) of hearings in which a claimant is represented by a lawyer are approved. That's the good news. The bad news is that most lawyers will take 25 percent of whatever back pay benefits are awarded as their fee.

Senior citizens and Social Security disability

Baby boomers (like me) aren't just getting old; some of us are also getting frail. Our bodies are breaking down at a record pace! I'm probably a pretty good example. After a lifetime of essentially good health (I was once honored for using the fewest sick leave days by my former employer), in the past few years, I've had to deal with issues as severe as blood clots and as minor as a bum knee. I probably could file for Social Security disability benefits and have my claim approved. But frankly, I just don't have the gumption to do so. I'm content with my retirement benefits.

But judging from my emails, many seniors and near seniors are interested in filing for Social Security disability. Here is what they need to know.

If you are 66 or older, forget about it. Once you reach that age, disability benefits are no longer payable. Or to put that another way, a retirement benefit pays the same rate as a disability benefit for people over age 66.

If you are under age 66 and have never filed for any kind of Social Security, then you are ahead to file for Social Security disability. If you are over 62, the Social Security people will probably suggest you file for retirement and disability benefits at the same time. They can start your retirement payments right away. Then if your disability claim is eventually approved, they will switch you to the higher disability rate.

But if you are between age 62 and 66 and are already getting Social Security retirement benefits, you may or may not be eligible for disability payments. The closer you are to 66, the less likely you are to be eligible for such benefits. That's because your disability rate (normally equal to your full age 66 retirement benefit) must be reduced for every month you've already received a Social Security retirement check. And you will eventually reach a point where you simply gain nothing by filing for Social Security disability.

Here is a quick example of that. Sam filed for retirement benefits at age 62. His benefit was reduced roughly one-half of one percent for each month he was under 66. He is getting 75 percent of his full age 66 retirement rate. At 65, he had a heart attack. If he files for disability benefits and if his claim is approved, his regular disability rate, again equal to his full age 66 benefit, must be reduced by about one-half of one percent for each month he's received a retirement benefit. At age 65, he's already received 36 retirement checks, so his disability rate must be cut by about 18 percent. So instead of a 100 percent disability rate, he'd get about 82 percent. Sam would have to decide if it is worth all the hassle of filing for disability just to get bumped up from his current 75 percent rate to 82 percent.

When disabled seniors reach retirement age

Many senior citizens who are getting Social Security disability benefits wonder when they will be able to get "real Social Security." Well, disability benefits are "real" Social Security. They are just as real as retirement benefits. So you will never be switched from "unreal" Social Security to "real" Social Security.

But if you are getting Social Security disability and turn age 66, you will be automatically converted to the retirement program. The money amount stays the same (because a Social Security disability benefit pays the same rate as an age 66 retirement benefit), so the changeover will essentially be transparent to you. What happens is primarily an internal bookkeeping transaction for SSA. When you reach age 66, your benefits will start being funded from the Old Age and Survivors Insurance Trust Fund and not from the Disability Insurance Trust Fund.

Children and disability

Because of the work requirement for Social Security disability benefits outlined at the beginning of this fact sheet, few if any children will qualify for Social Security benefits on their own record. But many will qualify on a parent's Social Security account.

If a disabled child has a parent who is receiving Social Security retirement or disability benefits, or has a parent who has died, that child could get benefits on the parent's Social Security record. Actually, while children are under age 18, they qualify for benefits simply because they are minors. The fact that they may or may not be disabled isn't really an issue.

But once a child turns 18, benefits usually end. However, monthly checks can continue beyond that, and even into his or her adult years, if he or she is disabled. SSA calls these "disabled adult child" benefits.

If you are a parent of an adult disabled child and are filing for retirement or disability benefits after your son or daughter has turned age 18, then he or she will qualify for benefits if you can show that the child has been disabled since before age 22. The same is true if you are filing for benefits on behalf of an adult disabled child whose mother or father has died.

Some disabled children, especially those from lower income homes, will qualify for SSI disability benefits. Because the non-medical qualifying criteria are quite extensive, you will simply have to talk to someone at your local Social Security office to find out if your disabled child qualifies for SSI.

How other government programs may impact Social Security disability

With one major exception, most other public and private disability payments usually do not impact your eligibility for, or the amount of, your Social Security disability check. For example, if you get a VA disability check, you can also receive Social Security disability benefits. But please note that your eligibility for VA benefits does not mean you will automatically qualify for Social Security disability. VA awards degrees of disability payments. For example, you can get a 10 percent or 20 percent (or other percentage) VA check; whereas there is only one kind of Social Security disability – and that is 100 percent.

The one major exception to this “non impact” rule is worker’s compensation. There is a law that says the combination of your state worker’s compensation payment and your federal Social Security disability check cannot exceed 80 percent of your average monthly income before you became disabled. If the combined payments exceed that amount, one or the other must be reduced. Whether your worker’s compensation check or Social Security check is reduced varies from one state to another.

The above mentioned rules apply to the Social Security disability program. Because SSI is a welfare benefit, any income you receive from any source for any reason will usually reduce the amount of your SSI check.

Incentives to work

There are many incentives built into the Social Security and SSI disability programs that allow people to work a little and still maintain their eligibility for benefits. They are far too numerous and complicated to explain in this brief fact sheet. So if you are getting disability benefits and want to work, you should talk to someone at your local Social Security office about the rules that impact you.

In a nutshell, the rules get back to the basic definition of disability mentioned earlier in this fact sheet. I explained that the law says you must be unable to work in order to qualify for disability. What the law actually says is that you must be unable to “perform substantial gainful activity.”

So what is “SGA?” The dollar threshold changes every year, but currently the law says that if you are making \$1,070 or more per month, you are engaging in “substantial gainful activity.” In other words, if you are making more than that, then you simply are not eligible for disability benefits, no matter how severe your impairment might be.

But the converse of that does not always follow. That means if you are making \$1,070 or less per month, you will not automatically qualify for disability. Other factors are considered to determine if you are engaging in “SGA.”

If you are getting disability benefits and want to try working, the law authorizes you a “trial work period.” If you return to work, any month you make more than \$770 is considered a TWP month. Once you have worked nine TWP months, your benefits will stop if you are still working and making more than the SGA level mentioned above.

This brief discussion of SGA and TWP just barely scratches the surface of the work incentive provisions. Again, you will have to talk to someone at your local Social Security office to learn more.

Periodic disability reviews

The law says that every Social Security disability claim must be reviewed from time to time to make sure that the person getting monthly checks from the government still meets the legal definition of disability.

How often a claim gets reviewed depends on the severity of the impairment. In cases where the person’s medical condition is expected to improve, the rules say the claim must be re-examined every 6 to 18 months.

In situations where medical improvement is possible, but not probable, the claim should be reviewed every three years or so.

And even in cases where medical improvement is not expected, the law still requires that the case be reviewed once every five to seven years.

Reporting fraud

At the beginning of this fact sheet, I talked about the subjective nature of the disability program; e.g., exactly how disabled is too disabled to qualify for benefits? A by-product of that subjectivity is that conventional wisdom has it that the disability program is rife with fraud. I’m always puzzled why so many people simply assume that most folks getting disability benefits are pulling a fast one on the rest of us. They think that these men and women have figured out slick ways to beat the system and scam the government and taxpayers out of money they are not due.

As I pointed out earlier, the opposite is more often the case. There are many people who would qualify for other disability programs who cannot get Social Security or SSI disability

benefits. Yet, I can tell you from experience that everyone claims to know someone (an uncle, a neighbor, a sister-in-law, etc.) whom they believe is getting such benefits fraudulently.

If you know someone you believe is getting Social Security or SSI disability benefits they are not due, turn that person in. Call the Social Security fraud hotline at 800-269-0271. Or go online at www.socialsecurity.gov and click on “Report Fraud” under the “Contact us” link. Your report can be anonymous.

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