

## **SOCIAL SECURITY DISABILITY**

- I. Disability is defined as: “inability to do substantial gainful activity by reason of physical or mental impairment which can be expected to result in death or last a continuous period of 12 months”.
  - a. Two types of Benefits may be available if disabled
    1. DIB - based on past earnings “Title II” If qualified, client gets benefits regardless of property or assets.
    2. SSI - need based “Title XVI”. Only qualified if low income.
  
- II. Process
  - a. Application with SSA
  - b. Reconsideration with SSA
  - c. ALJ (Administrative Law Judge) hearing
  - d. Appeals Council
  - e. Federal District Court
  
- III. 5 Step Evaluation
  - a. Is client engaging in SGA (Substantial Gainful Activity, presently earning \$1,040.00 per month or more)? If yes, no benefits.
    1. May be an exception if employer is making accommodations for disability, the work is short term or there are expenses to enable client to work which take the amount under SGA.
  - b. Does client have “severe impairment” (significantly impairs the ability of client to perform basic work activities)?
    1. See if meets or exceeds Listings published by SSA
    2. Must be based upon medical records, client testimony not enough.
  - c. If doesn't meet Listing, can client perform past relevant work?

1. Vocational Expert (VE) is used to address this question at the ALJ hearing.
- d. If not, does client have ability to perform jobs that are available in significant numbers in the national economy? If not, client is entitled to benefits.
1. Hypothetical questions are posed to VE.
  2. Need specific information from doctors or medical records - i.e., how long can claimant sit, stand, how much can they lift, etc.
  3. If claimant needs unscheduled breaks, or claimant will miss 4 days a month or more because of condition, will usually be found disabled.
- IV. Mental impairments: the following are rated ranging from none, mild, moderate, marked to extreme. Generally, must have 2 rated as "marked".
- a. Restrictions of activities of daily living
  - b. Difficulty in maintaining social functioning
  - c. Difficulties in maintaining concentration, persistence or pace
  - d. Repeated episodes of decompensation
- V. GAF (Global Assessment of Functioning) is frequently used by mental health professionals. A score of 50 or lower indicates severe problems. Over 50 is moderate, usually not severe enough for benefits.
- VI. Impairments must be supported by objective findings in medical records.
- a. Doctor's notes do not normally contain such information
  - b. We use questionnaires to get information needed - Social Security Disability Practice by James Publishing, Inc.
- VII. Miscellaneous
- a. Notation of drug or alcohol use in records is trouble if it materially contributes to condition - try to find period in medical records when you can establish no use with no improvement of impairment

- b. Non-compliance with doctors treatment is trouble - try to establish good reason, i.e., couldn't afford, couldn't tolerate drugs, etc.
- c. If have good questionnaire or medical records, ask for decision "on the record". You will usually get response in 30 - 45 days. If denied, you will still get a hearing in the normal time frame.

VIII. How does attorney get paid?

- a. Need written Appointment of Representative Form (SSA-1696) and fee agreement plus SSA-1699 and SSA-1695 forms.
- b. Can get both plus other forms, from website [www.ssa.gov](http://www.ssa.gov)
- c. Fees are limited by SSA to 25% of back award not to exceed \$6000
- d. Can do hourly rate, but then must do a fee petition and SSA will determine amount
- e. SSA must approve fee. If it does, SSA will deduct 25% from back award (less small administrative fee) and send directly to attorney.
- f. SSA will send fee approval letter, usually a few days after attorney receives the check

IX. Sources of Help

- a. National Organization of Social Security Claimant's Representatives ([www.nosscr.org](http://www.nosscr.org))
- b. Social Security Administration ([www.ssa.gov](http://www.ssa.gov))
- c. Social Security Disability Practice, by Thomas Bush, James Publishing
- d. Social Security Issues Annotated, by Bohr and Harrington, James Publishing
- e. Social Security Disability Advocate's Handbook, by Traver and Wilborn, James Publishing
- f. Social Security Disability Medical Tests, by David Morton, M.D., James Publishing