

ACCIDENT INJURY LAW

.....YOUR RIGHT.....
..... to
SOCIAL SECURITY
DISABILITY
..... BENEFITS

PROVIDED AS A PUBLIC SERVICE BY:

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WHO SHOULD READ THIS BOOKLET?

You should, if you want to know more about the various kinds of disability benefits available from Social Security. This brochure will tell you who is eligible, how to apply and what you need to know once benefits start.

Social Security pays disability benefits under two programs: the Social Security disability insurance program (SSDI) and the Supplemental Security Income (SSI) program. The medical requirements for disability payments are the same under both programs and a person's disability is determined by the same process. While eligibility for Social Security disability is based on your prior work history, SSI disability payments are made on the basis of financial need. And there are other differences in the eligibility rules for the two programs.

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Part 1 Introduction To Disability And Social Security

Disability is something most people don't like to think about. But the chances of your becoming disabled are probably greater than you realize. In fact, studies show that one of four young workers will become disabled some time during his or her lifetime.

It's a fact that, while most people spend time working to succeed in their jobs and careers, few think about ensuring that they have a safety net to fall back on should the unthinkable happen. This is where Social Security comes in. Social Security pays cash benefits to people who are unable to work for a year or more because of a disability. Benefits continue until a person is able to work again on a regular basis, and a number of work incentives are available to ease the transition back to work.

THE DISABILITY PROCESS UNDER SOCIAL SECURITY

The Social Security Administration (SSA) has the responsibility to administer two disability programs, the Disability Insurance (SSDI) program (under title II) and the Supplemental Security Income (SSI) program (under title XVI).

Under title II, monthly benefits are payable to people under 65 who have worked long enough under Social Security. Every person who pays FICA tax contributes to the Social Security program. When a person gains **insured status** he/she is entitled to disability benefits if he/she becomes severely impaired and cannot work. Medicare coverage is available to those who have received disability benefits for 24 months.

SSI disability payments are made to needy people who are under 65 and have limited income and few resources. These payments are made from General

☛ *Social Security Benefits are for individuals who pay FICA tax and become insured*

☛ *Supplemental Social (SSI) Security Benefits are for Individuals based on needs and assets*

Revenue funds. Most SSI recipients qualify for Medicaid, a State-run medical assistance program.

Social Security and SSI disability programs provide cash payments and health care coverage when a worker or eligible needy individual is unable to work for at least a year due to a physical or mental impairment—payments which continue as long as the person is unable to work due to his/her impairment(s). The Social Security Administration also has a number of work incentives which provide continued benefits and health care coverage for disabled persons who want to return to work.

☛ *This Brochure is to provide an overview of the disability process used to obtain Social Security Benefits*

The process of determining disability begins when a person applies for SSDI or SSI disability payments at a Social Security Administration (SSA) field office, either in person or by phone. It involves a network of Federal, State and local agencies and services and input from many segments of the health community. It also involves substantial input from beneficiary/support groups, particularly in expanding opportunities for disabled beneficiaries/to return to work.

The purpose of this brochure is to provide an overview of the disability process for persons who are applying for benefits. It is also designed to acquaint health professionals (including physicians, psychologists, mental health workers, and advocacy groups) with how the process works and how they can assist those persons who apply for disability payments under Social Security.

DEFINITION OF DISABILITY

☛ *Disability requires severe impairment and inability to do substantial work for a period exceeding 12 months or death*

The statutory definition of disability is the same for both the SSDI and SSI programs and is as follows: the “inability to engage in *any* substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”

The term “SGA” generally is defined in terms of the amount of a person’s earnings. Generally, a person can earn up to \$1,000 a month (this amount usually

increases each year) without those earnings being considered SGA.

What SSA Means By “Disability”

It’s important that you understand how Social Security defines “disability.” That’s because other government and private programs have different bases for determining disability. Some programs may pay for partial disability or for short-term disability. Social Security does not.

Disability under Social Security is based on your inability to work. You will be considered disabled if you are unable to do any kind of work for which you are suited and your disability is expected to last for at least a year or to result in death.

This is a strict definition of disability. Social Security assumes that working families have access to other resources to provide support during periods of short-term disabilities, including workers’ compensation, insurance, savings and investments. The program is designed to provide a continuing income to you and your family when you are unable to do so. Benefits continue as long as you remain disabled.

THE APPLICATION PROCESS

Disability claims are processed through a network of local Social Security field offices, the central office, and 54 State agencies, generically known as Disability Determination Services (DDS). The case flow is as follows:

Social Security Field Office

An application for disability benefits is obtained by an SSA representative, either in person, by telephone or by mail. The application includes a description of impairment(s), names and addresses of your medical source(s), dates of treatment and other information that relates to the alleged disability.

The local SSA office then verifies non-medical eligibility requirements, which include earnings and coverage

Your local SSA office will handle all of the initial paperwork

information. The local office assists you to obtain evidence, to substantiate information related to your age, employment, and marital status, and if spouse's/children's benefits are involved. The local office may also assist you to develop medical or lay evidence in support of your claim. When the local office verifies that the non-medical eligibility criteria are met, the case is forwarded to the State agency.

State Disability Determination Services (DDS)

The DDSs, which are fully funded by the Federal Government, are the State agencies responsible for developing medical evidence sufficient to render a determination on whether you are disabled or blind under the law, and to determine when disability began and/or ended.

The DDS obtains, if possible, medical evidence from your medical sources. If that evidence is insufficient to render a determination, the DDSs will purchase a consultative examination from the treating source, or from a doctor selected by SSA.

The medical evidence is then reviewed by a team composed of a physician (in the case of mental impairments, a clinical psychologist may be used) and a disability examiner, and a disability determination is made. The State agency sends a determination notice to you. A determination is also made as to whether you are a candidate for vocational rehabilitation. If so, a referral to that State agency is made.

After the disability determination is made, the case is forwarded to one of SSA's field offices for further action.

Who Can Get Social Security Disability Benefits?

You can receive Social Security disability benefits at any age. If you are receiving disability benefits at age 65, they become retirement benefits, although the amount remains the same. Certain members of your family may

☛ *Your state agencies review the records collected by the local SSA office and determine if you are disabled*

☛ *You and/or your child can collect Social Security Benefits before age 65*

also qualify for benefits on your record. They include:

- Your unmarried son or daughter, including an adopted child, or, in some cases, a stepchild or grandchild. The child must be under age 18 or under age 19 if in high school full time.
- Your unmarried son or daughter, age 18 or older, if he or she has a disability that started before age 22. (If a disabled child under age 18 is receiving benefits as a dependent of a retired, deceased or disabled worker, someone should contact Social Security to have his or her checks continued at age 18 on the basis of disability.)
- Your spouse who is age 62 or older, or any age if he or she is caring for a child of yours who is under age 16 or disabled and also receiving checks.

Certain family members may qualify for disability benefits if you should die. They include:

Your disabled widow or widower age 50 or older. The disability must have started before your death or within seven years after your death.

How Much Work You Need

To qualify for Social Security disability benefits, you must have worked long enough and recently enough under Social Security. You earn up to a maximum of four credits per year. The amount of earnings required for a credit increases each year as general wage levels rise. Family members who qualify for benefits on your work record do not need work credits. The number of work credits needed for disability benefits depends on your age when you become disabled. Generally you need 20 credits earned in the last 10 years ending with the year you become disabled. However, younger workers may also qualify with fewer credits: The rules are as follows:

- **Before age 24**—You may qualify if you have six credits earned in the three-year period ending when your disability starts.

☛ *You need to work long enough to earn sufficient credits to qualify for SSDI benefits*

- **Age 24 to 31**—You may qualify if you have credit for having worked half the time between 21 and the time you become disabled. For example, if you become disabled at age 27 you would need credit for three years of work (12 credits) out of the past six years (between age 21 and age 27).
- **Age 31 or older**—In general, you will need to have the number of work credits shown in the chart shown below. Unless you are blind, at least 20 of the credits must have been earned in the 10 years immediately before you became disabled.

Born After 1929, Become Disabled At Age	Credits You Need
31 through 42	20
44	22
46	24
48	26
50	28
52	30
54	32
56	34
58	36
60	38
62 or older	40

Part 2 Signing Up For Disability

How To Apply

You should apply at any local Social Security office as soon as you become disabled. (You may file by phone, mail or by visiting the nearest office.)

How To Speed Up Your Claim

The claims process for disability benefits is generally from 60 to 90 days longer than for other types of Social Security benefits. It takes longer to obtain medical information and to assess the nature of the disability in terms of your ability to work. However, you can help shorten the process by bringing certain documents with you when you apply and helping SSA get any other medical evidence you need to show you are disabled. These include:

- the Social Security number and proof of age for each person applying for payments; (This includes your spouse and children, if they are applying for benefits.)
- names, addresses and phone numbers of doctors, hospitals, clinics and institutions that treated you and dates of treatment;
- names of all medications you are taking;
- medical records from your doctors, therapists, hospitals, clinics and caseworkers;
- laboratory and test results;
- a summary of where you worked in the past 15 years and the kind of work you did;
- dates of prior marriages if your spouse is applying.

☛ *You can speed up your claim for disability benefits by collecting required information for SSA*

☛ *Your state agencies decide if you are disabled based upon the records collected by your local SSA office*

Do not delay filing for benefits just because you do not have all of the information you need. The Social Security office will help you.

Who Decides If You Are Disabled?

After helping you complete your application, the Social Security office will review it to see if you are eligible to apply for disability benefits. SSA will consider such factors as whether you have worked long enough and recently enough to qualify for disability benefits, your age, and, if you are applying for benefits as a family member, your relationship to the worker. The office then will send your application to the Disability Determination Services (DDS) office in your state. There, a decision will be made as to whether you are disabled under the Social Security law.

In the DDS office, a team consisting of a physician (or psychologist) and a disability evaluation specialist will consider all the facts in your case and decide if you are disabled. They will use the medical evidence from your doctors and from hospitals, clinics or institutions where you have been treated. Again, the faster SSA gets the evidence, the faster your claim will be processed. This is why you should bring any copies of your medical reports you have with you. You also should be sure to contact the doctors and treatment facilities to let them know SSA will be requesting medical evidence in your case.

☛ *Medical reports from your health care providers are the most important information to provide to SSA*

On the medical report forms, your doctors or other sources are asked for a medical history of your condition: what is wrong with you; when it began; how it limits your activities; what the medical tests have shown; and what treatment has been provided. They are also asked for information about your ability to do work-related activities such as walking, sitting, lifting and carrying. They are not asked to decide whether you are disabled.

Additional medical information may be needed before the DDS team can decide your case. If, it is not available from your current medical sources, you may be asked to take a special examination called a “consultative examination.” Your doctor or the medical facility where you have been treated is the preferred source to

perform this examination. Social Security will pay for the examination or any other additional medical tests you may need, and for certain travel expenses related to it.

Social Security's rules for determining disability differ from those in other government and private programs. However, a decision made by another agency and the medical reports it obtains may be considered in determining whether you are disabled under Social Security rules.

Once a decision on your claim is reached, you will receive a written notice from the Social Security Administration. If your claim is approved, the notice will show the amount of your benefit and when payments start. If it is not approved, the notice will explain why.

Part 3 The Disability Determination Process

SSA's disability determination process relies on the participation of the medical community, both in providing the medical evidence used in determining disability, and in the actual decision making process. The process is described in the following sections.

Listing of Impairments

To ensure uniformity and consistency in the way disability determinations are made, Social Security has developed a set of medical evaluation criteria for all body systems, called the “**Listing of Impairments**” or, “**The Listings.**” The “Listings” describe over 100 of the most common diseases and disorders which are so serious or life-threatening that if you “meet” one of them and are not engaging in significant gainful activity, you are deemed to be disabled. If an individual has an impairment that does not meet the specific criteria described in the “Listings” but has an impairment(s) of equal severity to a listed impairment, and is

☛ *The “listings” are a collection of diseases that SSA has developed to evaluate your impairments*

☛ *An impairment(s) of equal severity to a listed impairment is also presumed to meet the definition of disability*

☛ *The Administrative Law Judge uses a five step sequential evaluation process to determine whether you are entitled to benefits*

not working at the SGA level, he or she is also presumed to meet the definition of disability.

The medical criteria in the Listings describe Impairments in terms of specific signs, symptoms and laboratory findings that are presumed severe enough to keep an individual from working a year or longer, or in the case of a child, performing age appropriate activities. The criteria are monitored and updated to reflect established procedures and practices in medicine.

How SSA Determines Disability

You should be familiar with the process SSA uses to determine if you are disabled. It's a step-by-step process involving five questions. They are:

- 1. Are you working?**
If you are working and your earnings average more than \$1,000 a month (this amount usually increases each year), you generally cannot be considered disabled.
- 2. Is your condition "severe"?**
Your impairments must interfere with basic work related activities for your claim to be considered.
- 3. Is your condition found in the list of disabling impairments?**
SSA maintains a list of impairments for each of the major body systems that are so severe they automatically mean you are disabled. If your condition is not on the list, SSA has to decide if it is of equal severity to an impairment on the list. If it is, your claim is approved. If it is not, SSA goes to the next step.
- 4. Can you do your past type of work?**
If your condition is severe, but not at the same or equal severity as an impairment on the list, then SSA must determine if it interferes with your ability to do the work you did in the last 15 years. If it does not, your claim will be denied. If it does, your claim will be considered further.

The fifth step is used to determine whether there is other work that you can perform, if you cannot do any of your past jobs during the last 15 years

5. **Can you do any other type of work?**
If you cannot do the work you did in the last 15 years, SSA then looks to see if you can do any other type of work. SSA considers your age, education, past work experience and transferable skills, and SSA reviews the job demands of occupations as determined by the Department of Labor. If you cannot do any other kind of work, your claim will be approved. If you can, your claim will be denied.

Sequential Evaluation

At this final step of the sequential evaluation process, SSA determines if you can do other work. SSA considers your remaining ability to perform work-related activities despite your impairment together with your age, education, and work experience (including any transferable skills) in determining if you can do “other work.”

If you are denied at any step of the process, you may appeal.

The sequential evaluation process is used for initial (new application) and reconsideration of initial cases only. Different procedures are required in evaluating, at a later time, whether disability continues.

Since children ordinarily cannot be evaluated based on their work ability, they are evaluated based on their ability to perform age-appropriate activities. A sequential evaluation process similar to the one applied to adults is used to evaluate a child’s disability.

Rules For Blind Persons

You are considered blind under Social Security rules if your vision cannot be corrected to better than 20/200 in your better eye, or if your visual field is 20 degrees or less, even with a corrective lens.

There are a number of special rules for persons who are blind. The rules recognize the severe impact of blindness on a person’s ability to work. For example, the earnings

limit for people who are blind is generally higher than the \$1,000 limit that applies to non-blind disabled workers. This figure changes annually.

If Your Claim Is Denied

If your claim is denied or if you disagree with any other decision SSA makes, you may appeal the decision. The Social Security office will help you complete the paperwork.

There are four levels of appeal. If you disagree with the decision at one level, you may appeal to the next level. You have **60 days** from the time you receive the decision to file an appeal to the next level. SSA assumes that you receive the decision five days after the date on it, unless you can show SSA that you received it later.

Part 4 When Your Claim Is Approved

Your Benefits Start

Once a decision is made that you are disabled, you will be paid your first Social Security benefits starting with the sixth full month from the date your disability began. (Social Security regulations require all applicants filing for disability benefits to wait five months before benefits start.)

How Much You Will Get From Social Security

The amount of your monthly disability benefits is based on lifetime average earnings covered by Social Security. If you would like an estimate of your disability benefit, all you have to do is call or visit Social Security and ask for it. SSA will send you a form you can use to get a Personal Earnings and Benefit Estimate Statement.

☛ *You have a right to appeal if your claim is denied*

☛ *If you are successful and win your claim there is a 5 month waiting period from onset date until you are eligible to collect benefits*

How Other Payments Affect Benefits

Eligibility for other government benefits can affect the amount of your Social Security disability benefits.

Other Disability Benefits

Social Security benefits may be affected if you are also eligible for workers' compensation (including black lung) or for disability benefits from certain federal, state and local government or civil service disability programs. Total combined payments to you and your family from Social Security and any of these other programs generally cannot exceed 80 percent of your average current earnings (ACE) before becoming disabled. (Note that for income tax purposes, your unreduced benefit is counted.) Other government benefit programs may affect your Social Security benefits.

Government Pension Offset

If you are a disabled widow or widower or the spouse of a disabled worker, a "government pension offset" may reduce your Social Security payment. The offset applies if you become eligible for a federal, state or local government pension based on your own work not covered by Social Security. The amount of your Social Security spouse's benefit may be reduced by two-thirds of the amount of your government pension. There are some exceptions when the offset would not apply.

Pension From Work Not Covered By Social Security

If you become disabled and entitled to a Social Security disability benefit and you also receive a monthly pension based on work not covered by Social Security, your disability payment will be smaller than normal. That's because SSA uses a different formula to figure the Social Security benefit of people who get other public pensions.

Benefits May Be Taxed

Some people have to pay federal income taxes on their Social Security benefits. This usually happens only if your total income is high. At the end of the year, you will receive a *Social Security Benefit Statement* (Form SSA-1099) showing the amount of benefits you received. The statement is to be used for completing your federal income tax return if any of your benefits are subject to tax.

You Can Get Medicare If You're Disabled

You will be eligible for Medicare two years after your disability (onset) date, which is determined by SSA.

Medicare has two parts—**hospital insurance** and **medical insurance**. Hospital insurance helps pay hospital bills and some follow-up care. The taxes you paid while you were working financed this coverage, so it's premium free if you're eligible. The other part of Medicare, medical insurance, helps pay doctors' bills and other services. You pay a monthly premium for this coverage if you want it. Most people have both parts of Medicare.

Help For Low-Income Medicare Beneficiaries

If you get Medicare and have low income and few resources, your state may pay your Medicare premiums and, in some cases, other "out-of-pocket" Medicare expenses, such as deductibles and coinsurance. Only your state can decide if you qualify. To find out if you do, contact your state or local welfare office or Medicaid agency.

REVIEWING YOUR DISABILITY

Your benefits will continue as long as you are disabled. However, your case will be reviewed periodically to see if you are still disabled. The frequency of the reviews depends on the expectation of recovery.

☛ *You become eligible for Medicare after two years from disability date*

☛ *SSA will periodically review your case to determine if you are still disabled*

- If medical improvement in “expected,” your case will normally be reviewed within six to 18 months.
- If medical improvement is “possible,” your case will normally be reviewed no sooner than three years.
- If medical improvement is “not expected,” your case may be reviewed no sooner than seven years.

Continuing Disability Reviews

A person’s disability benefits generally will continue unless there is strong evidence of both medical improvement and ability to work. There are some exceptions which apply in relatively few instances.

During a review, a treating physician/psychologist may be asked to provide current medical evidence. If an additional examination or test is needed, the DDS team may request that the treating physician/psychologist conduct it; or, the individual may be sent to an independent medical source.

A person who gets a notice that he or she is no longer disabled under the law, may appeal the determination; he/she has special rights not available to those denied upon initial application for disability benefits. The individual may meet face-to-face with the decision maker during the first level of appeal (reconsideration). **Benefits may be continued through the first two levels of appeal if this is requested within 10 days after a decision notice is received.**

What Can Cause Benefits To Stop?

There are two things that can cause SSA to decide that you are no longer disabled and to stop your benefits.

Your benefits will stop if you work at a level SSA considers “substantial.” Usually, average earnings of \$1,000 or more a month are considered substantial.

☛ *SSA will terminate your benefits if your health improves and you are no longer disabled*

☛ *If your benefits are terminated you must appeal within 10 days to continue your benefits*

Your disability benefits also would stop if SSA decides that your medical condition has improved to the point that you are no longer disabled.

You must promptly report any improvement in your condition, your return to work, and certain other events as long as you are receiving benefits. These responsibilities are explained in the booklet you will receive when benefits start.

Part 5 Going Back To Work

Benefits For Disabled Beneficiaries Who Work

Social Security disability programs contain a number of work incentives designed to help beneficiaries who attempt to return to work. SSA recognizes that a successful return to work is a progression of events beginning with the initial work attempt and ending with working on a full-time, regular basis.

Work incentive provisions make it possible for beneficiaries to test their ability to work without losing entitlement to cash payments and/or Medicare or Medicaid protection, until they can reasonably be expected to pay their own way and buy their own health insurance protection.

Some of the provisions are:

- **Nine months of trial work**, called a “**trial work period:**” (TWP) (not necessarily consecutive) during which a person may continue to receive benefits regardless of amount of earnings;
- **A 36-month extended period of eligibility** following the end of the 9-month TWP during which benefits may be paid for any month if earnings fall below the SGA level (up to \$1,000);

☛ *SSA allows trial work periods without loss of benefits*

- **Continuation of Medicare** for at least 39 months after the trial work period;
- **Deduction of impairment-related work expenses** in deciding if earnings constitute SGA. (These include wheelchairs and seeing-eye dogs.)
- **Continuation of monthly payments and Medicare or Medicaid** for a person whose impairment has shown medical improvement related to the ability to work, if the person is participating in an approved vocational rehabilitation program which is expected to result in allowing the individual to work and become self-supporting.

SSI RULES THAT HELP YOU WORK

Would you like to work? If so, you should know about special SSI rules. These rules can help you keep Medicaid and may help you keep getting some SSI even though you are working.


How Your SSI May Change If You Work

If you work full time or part time and make \$65 or less each month, your SSI will usually not change. As the money you earn from your job goes up, your SSI will go down. If you have no other income (money or support), you can earn up to \$1,000 a month (as of 2010) and still get SSI. In some States, this amount could be higher.

If you are a disabled or blind student under age 22, you can earn up to \$400 a month, but not more than \$1,620 a year, and your SSI will usually not change.

SSA Doesn't Count Some Of Your Expenses

The earnings you use for some of your working expenses may not count as income. For example, SSA sometimes doesn't count earnings used to pay for transportation to and from work. Also, SSA doesn't count the cost of special equipment that helps you to work.

 *SSA encourages trial work periods by continuing benefits*

If You Need Help Finding A Job

SSA can ask someone at your State vocational rehabilitation office to help you find a job or give you training.

What Happens To Your Medicaid When You Work?

If you get Medicaid, it will usually continue as long as you get SSI. If your SSI stops because you begin earning too much money, you can keep getting Medicaid as long as the following are true:

- You continue to be disabled or blind under our rules; and
- You can't pay your bills without Medicaid.

Part 6 The Role Of The Health Professional

It is important for the medical community to be aware of its role and the role of the medical evidence that health professionals provide in the disability process. Members of the medical community participate in the disability process in a variety of ways.

Treating Sources

Evidence from treating health care providers is extremely important to the Social Security disability determination process. In fact, nearly two-thirds of disability determinations are made based solely on medical evidence of record received from your medical health care providers. SSA guidelines emphasize the importance of the treating health care providers' evidence in the decision making process. SSA also considers the treating physician/psychologist as a potential source for a consultative examination.

Your health care provider's reports are important evidence in determining the severity of your medical condition

Consultative Examiners (CEs)

☛ *SSA hires health care providers, vocational experts, and other experts to examine you and review your records*

Approximately one-third of disability claims require use of CEs. In such cases, the individual is requested to have specific tests or examinations performed by the treating physician or other medical source. When needed, a physical and/or mental examination or test is purchased at federal government expense. CEs may be necessary to (1) obtain more detailed medical findings about the claimant's impairment(s); or, (2) obtain technical or specialized medical evidence which is not available in the claimant's current medical file.

The medical report submitted as a result of the CE should include a medical assessment (called a medical source statement) by the physician/psychologist of the individual's capability to function despite his/her impairment(s).

Program Physicians/Psychologists

☛ *Who makes the disability determination at DDS (your state agency)*

SSA employs a number of health professionals in the disability program at the national, regional and State levels. At the SSA national headquarters, physicians and psychologists help formulate and evaluate medical and operational research needs. Additionally, these professionals perform a nationwide quality assurance check.

In the DDS, each disability determination is made by a team consisting of a physician or psychologist and a disability examiner. The physician's or psychologist's primary role is to make a judgment as to the severity of the impairment, based on his or her review, analysis and interpretation of the significant clinical and laboratory findings and other tests and pathological studies. The examiner member of the team is trained in the medical, legal, administrative, and other program requirements. All disability determinations must be signed by both the physician or, in cases involving a mental impairment, the psychologist and the examiner who reviewed the claim.

Program physicians and psychologists in the regional offices serve as an important link between headquarters

and the various States. They perform a quality assurance review of the determinations made by the State agencies, answer questions on case-related issues, and consult with central office on medical policy issues.

Part 7 **Benefits For Children With Disabilities**

The Three Ways A Child Can Get Benefits From Social Security Or SSI

There are three ways a child might be eligible for benefits from Social Security or SSI. The three kinds of benefits are:

- 1) **SSI Benefits For Children**—These are benefits payable to **disabled children under age 18** who have limited income and resources, or who come from homes with limited income and resources.
- 2) **Social Security Dependents Benefits**—These are benefits payable to children under the age of 18 **on the record of a parent who is collecting retirement or disability benefits from Social Security**, or survivors benefits payable to children under the age of 18 on the record of a **parent who has died**.

Although children under age 18 who are eligible for these benefits might be disabled, SSA does not need to consider their disability to qualify them for benefits. **Note:** A child can continue receiving dependents or survivors benefits until age 19 if he or she is a full-time student in elementary or high school.

- 3) **Social Security Benefits For Adults Disabled Since Childhood**—The benefits explained in the previous section normally stop when a child reaches age 18 (or 19 if the child is a full-time student). However,

☛ *Social Security provides benefits to children in multiple ways*

those benefits can continue to be paid **into adulthood if the child is disabled**. To qualify for these benefits, an individual must be eligible as the child of someone who is getting Social Security retirement or disability benefits, or of someone who has died, and that child must have a disability that began prior to age 22.

Although most of the people getting these benefits are in their 20s and 30s (and some even older), the benefit is considered a “child’s” benefit because of the eligibility rules.

SSI BENEFITS FOR CHILDREN WITH DISABILITIES

Non-Medical Rules

SSI is a program that pays monthly benefits to people with low incomes and limited assets who are 65 or older, blind, or disabled. Children can qualify if they meet Social Security’s definition of disability and if their income and assets fall within the eligibility limits.

As its name implies, Supplemental Security Income **supplements** a person’s income up to a certain level. The level varies from one state to another and can go up every year based on cost-of-living increases. Check with your local Social Security office to find out more about the SSI benefit levels in your state.

Rules For Children Under 18

Most children do not have their own income and do not have many assets. However, when children under age 18 live at home (or are away at school but return home occasionally and are subject to parental control), **SSA considers the parent’s income and assets** when SSA decide’s if the child qualifies. SSA refers to this process as “deeming” of income and assets.

Check with your Social Security office for information about your child’s specific situation and for a full explanation of the “deeming” process.

☛ *“Deeming” of income results when you live with a relative and share expenses*

Rules For Children 18 And Older

When a child turns 18, SSA no longer considers the parent's income and assets when SSA decides if he or she can get SSI. A child who was not eligible for SSI before his or her 18th birthday because the parent's income or assets were too high may become eligible at 18.

On the other hand, if a child with a disability who is getting SSI turns 18 and continues to live with his or her parent(s), but does not pay for food or shelter, a lower payment rate may apply.

How SSA Decides If A Child Is Disabled For SSI

While your local Social Security office decides if your child's income and assets are within the SSI limits, all documents and evidence pertaining to the disability are sent to your state office, called the Disability Determination Service (DDS). There, a team, comprised of a disability evaluation specialist and a doctor, review your child's case to decide if he or she meets the definition of disability.

If the available records are not thorough enough for the DDS team to make a decision, you may be asked to take your child to a special examination that Social Security will pay for. It is very important that you do this, and that your child puts forth his or her best effort during the examination. The results of the examination will not be considered valid unless your child puts forth his or her best effort. Failure to attend the examination, or invalid results due to poor effort, could result in an unfavorable decision.

Deciding SSI Disability For Children Under 18

The law states that a child will be considered disabled if he or she has a physical or mental condition (or a combination of conditions) that results in **“marked and severe functional limitations.”** The condition must last or be expected to last at least 12 months or be expected

☛ *A child's disability must result in “marked and severe functional limitations”*

to result in the child's death. And, the child must not be working at a job that SSA considers to be substantial work.

To make this decision, the disability evaluation specialist first checks to see if the child's disability can be found in a special listing of impairments that is contained in Social Security's regulations, or if the condition is medically or functionally equal to an impairment that is on the list. These listings are descriptions of symptoms signs or laboratory findings of more than 100 physical and mental problems, such as cerebral palsy, mental retardation or muscular dystrophy, that are severe enough to disable a child, but the child's condition does not have to be one of the conditions on the list. If the symptoms, signs, or laboratory findings of the child's conditions are the same as, or medically equal in severity to the listing, the child is considered disabled for SSI purposes. He or she also will be considered disabled if the functional limitations from his or her condition or combination of conditions are the same as the disabling functional limitations of any listed impairment.

To determine whether the child's impairment causes "**marked and severe functional limitations**," the disability evaluation team obtains evidence from a wide variety of sources who have knowledge of your child's condition and how it affects his or her ability to function on a day-to-day basis and over time. These sources include, but are not limited to, the doctors and other health professionals who treat your child, teachers, counselors, therapists and social workers. A finding of disability will not be based solely on your statements or on the fact that your child is, or is not, enrolled in special education classes.

Special Message To Parents Of Children With Severe Disabilities

The disability evaluation process generally takes several months. But the law includes special provisions for people (including children) signing up for SSI disability

☛ *A condition may be so severe that a child is presumed disabled*

whose condition is so severe that they are presumed to be disabled. In these cases, SSI benefits are paid for up to six months while the formal disability decision is being made. (Of course, these payments can be made only if the child meets the other eligibility factors).

Following are some of the disability categories in which SSA can presume the child is disabled and make immediate SSI payments:

- HIV infection
- Blindness
- Deafness (in some cases)
- Cerebral palsy (in some cases)
- Down syndrome
- Muscular dystrophy (in some cases)
- Significant mental deficiency
- Diabetes (with amputation of one foot)
- Amputation of two limbs
- Amputation of leg at the hip

If SSA makes these special payments, and if SSA later decides that the child's disability is not severe enough to qualify for SSI, the benefits do **not** have to be paid back.

APPLYING FOR SOCIAL SECURITY OR SSI BENEFITS...AND HOW TO EXPEDITE THE PROCESS

You can apply for Social Security or SSI benefits for your child by calling or visiting your local Social Security office. You should have your child's Social Security number and birth certificate available when you apply. If you're signing up your child for SSI, you also will need to provide records that show your income and your assets, as well as those of the child.

The medical evaluation specialists at the DDS need thorough and detailed medical records to help them decide if your child is disabled. You can speed up the claims process by providing the medical records or helping SSA get them. When you file, you will be asked to provide names, addresses and telephone numbers of all

☛ *Certain diseases are presumed to create disability in children*

☛ *There are things you can do to speed up your claim*

doctors, hospitals, clinics and other specialists your child has visited.

In addition, if your child is under age 18 and applying for SSI, you will be asked to describe how your child's disability affects his or her ability to function on a day-to-day basis. Therefore, SSA may ask you to provide the names of teachers, day care providers and family members who can give information about how your child functions. If you have any school records, you should bring them with you to the interview, or have the entire school records mailed to SSA.

Please be as specific and thorough as possible when you answer these questions. This means that you should give SSA the dates of visits to doctors or hospitals, the account numbers and any other information that will help to get your child's medical records as soon as possible. If you do not have all of the information, tell the interviewer as much as you know.

In many communities, special arrangements have been made with medical providers, social service agencies and schools to provide the evidence needed to process your child's claim. Most DDSs have Professional Relations Officers who work directly with these organizations to facilitate this process. However, your additional cooperation in obtaining records and evidence will help decide your claim faster.

SOCIAL SECURITY BENEFITS FOR OLDER CHILDREN WITH DISABILITIES AND FOR ADULTS DISABLED SINCE CHILDHOOD

Non-Medical Rules

As indicated earlier, although children under 18 who are eligible for benefits might be disabled, SSA doesn't need to consider their disability when deciding if they qualify for Social Security dependent's or survivor's benefits.

☛ *School records may be invaluable evidence, where your child has been in special education classes*

☛ *Your child may qualify for dependent or survivor benefits based upon the parents status*

However, when a child who is getting a dependent's or survivor's benefit from Social Security reaches 18, those benefits generally stop unless one of the following conditions is met:

- The child is a full-time student in an elementary or high school. In this case, benefits continue until age 19; or
- The child is disabled. In this case benefits can continue as long as the child remains disabled, even into his or her adult years.

Many times, an individual doesn't become eligible for a disabled child's benefit from Social Security until later in life. Here's an example: John Jones starts collecting Social Security retirement benefits at the age of 62. He has a 38-year-old son, Ben, who has had cerebral palsy since birth. Ben will start collecting a disabled "child's" benefit on his father's Social Security record.

How SSA Decides If An "Adult Child" Is Disabled

SSA will evaluate the disability of an adult child (age 18 or older) who is applying for Social Security for the first time, or who is being converted from a Social Security dependent child's benefit, by using adult disability. An adult must have a physical or mental impairment, or combination of impairments, that is expected to keep him or her from doing any "substantial" work for at least a year or is expected to result in death. (Generally, a job that pays \$1,000 or more per month is considered substantial.)

The individual's condition is compared to a listing of impairments that are considered to be severe enough to prevent an individual from working and, if an impairment meets or is equal to a condition on the list, then he or she is considered disabled for Social Security purposes.

If SSA cannot match the person's impairment with one of the listings, then SSA assesses his or her ability to perform the same type of work he or she did in the past

(if any). If the person cannot do that work, or does not have any past work history, then SSA considers his or her ability to do any kind of work he or she are suited for (based on age, education and experience). If, considering all these factors, he or she are found to be unable to do any substantial work, then he or she would qualify for disability benefits from Social Security.

MEDICAID AND MEDICARE

☛ *Medicaid is a state run program for people with low income*

Medicaid is a health care program for people with low incomes and limited assets. In most states, children who get SSI benefits qualify for Medicaid. In many states, Medicaid comes automatically with SSI eligibility. In other states, you must sign up for it. And some children can get Medicaid coverage even if they don't qualify for SSI. Check with your local Social Security office or your state or county social services office for more information.

☛ *Medicare is a program for people who have paid taxes to SSA*

Medicare is a federal health insurance program for people 65 or older, and for people who have been getting Social Security disability benefits for two years. Because children, even those with disabilities, do not get Social Security disability benefits until they turn 18, no child can get Medicare coverage until he or she is 20 years old.

The only exception to this rule is for children with chronic renal disease who need a kidney transplant or maintenance dialysis. Children in such a situation can get Medicare if a parent is getting Social Security or has worked enough to be covered by Social Security.

OTHER HEALTH CARE SERVICES

☛ *Special programs for children*

If SSA decides a child is disabled and eligible for SSI, SSA will refer him or her for health care services under the Children with Special Health Care Needs (CSHCN) provisions of the Social Security Act. These programs are generally administered through state health agencies.

Although there are differences, most CSHCN programs help provide specialized services through arrangements with clinics, private offices, hospital-based out-patient and in-patient treatment centers or community agencies.

CSHCN programs are known in the states by a variety of names, including Children's Special Health Services, Children's Medical Services and Handicapped Children's Program. Even if your child is not eligible for SSI, a CSHCN program may be able to help you. Local health departments, social services offices or hospitals should be able to help you contact your CSHCN program.

Part 8 Resources


Resources are things you own that can turn into cash-like bank accounts, money, property, stocks, and bonds.

After 6 months, any money that's left over from your back payment check(s) will be counted with your other resources.

The Zebley Rule

Under the *Zebley* court case, after 6 months, any money that is left from this payment will count as your "resource" under the SSI program. The amount left will be added to other resources you have. If the total is more than \$2,000, or \$3,000 if you're married, you would not be eligible for SSI.

Because you're receiving a large payment which may later count as your resource, you should know more about the SSI rules on resources. This brochure explains what resources are, the dollar limit on resources you can own and still get SSI, and what things don't count against the resource limit. There is also a section that gives you some advice if you would like to return to work.

 *If you win back benefits will they be used to disqualify you from SSI benefits*

Why are resources important?

You cannot get SSI if the resources SSA counts are worth more than \$2,000 for an individual or \$3,000 for a couple. This is called the resource limit.

Things you and your parents (or wife or husband, if you are married) own may count toward the SSI resource limit. However, many things you own **don't** count toward the resource limit.

What about resources of a parent, stepparent, wife, or husband who is living in the same home with you?

If you are under age 18 and not married, some of the resources of your parents and stepparents may be counted as yours if they live with you. They are allowed to have resources up to the resource limit; any extra resources are counted as yours.

No matter what your age, if you're married, some of the resources of your wife or husband will be counted if he or she lives with you. The combined resources of both wife and husband cannot be more than \$3,000.

What things do not count toward the resource limit?

The following things generally **do not** count toward the resource limit:

- The **house** you live in and the land it's on, no matter what it's worth.
- Your **car**, if it's equipped for use by a handicapped person or if you need it for daily activities, to go to work, or to get regular medical treatment.
- Even if your **car** does not qualify for any of these reasons, SSA will not count it if it's worth \$4,500 or less. If it's worth more than \$4,500, SSA will count only the value over \$4,500. If you own more

☛ *“Deeming of Assets”*

☛ *Exempt assets that will not result in disqualification*

than one car, SSA will count the value of the second car at the price it can be sold for, less any money you may owe on it.

- **Life Insurance** policies you own with a face value of \$1,500 or less per person.
- **Household goods and personal effects** worth up to \$2,000.
- Certain Money or property set aside in **trusts** (see below).
- Certain money or property set aside under an approved **plan to become self-supporting** (see page 36).
- Some **property** you or your spouse use in a trade or business, or on your job if you work for someone else (see page 37).
- **Burial plots** or spaces for you or your immediate family that are already paid for.
- **Burial funds** up to a limit (see page 38).

Trusts

A trust is a legal arrangement where one person holds property for the benefit of another person. The rules for these arrangements are spelled out in State law.

A trust can contain cash or other things that can be sold for cash.

Can a trust be set up for an SSI recipient—adult or child?

Yes. A trust that may not count against the SSI resource limit is one in which:

- the SSI recipient does not have control over how the money is spent; and

☛ *Special needs trust may be created to protect assets that can be used for a disabled child*

- a person called a trustee manages the trust and decides the best way to spend the money for the recipient's needs.

Money or property in this type of trust for an SSI recipient (or person whose resources are available to an SSI recipient) does not count toward the SSI resource limits of \$2,000 for an individual or \$3,000 for a couple.

NOTE: Some trusts that don't count for SSI may affect your Medicaid eligibility. In these cases, your State will decide if you are eligible for Medicaid.

How does money from the trust affect SSI payments?

Money paid by the trustee directly to someone else for your food, clothing, or shelter reduces your SSI payments-but only up to a limit. No matter how much money is spent for these items in a particular month, no more than \$244.66 (effective 2010) is subtracted from your SSI payment.

Money paid by the trustee directly to someone else for items other than your food, clothing, and shelter **does not** reduce SSI payments. (Items that are not "food, clothing, or shelter" include medical care, telephone bills, transportation, education, and entertainment.) Money paid directly to you from the trust reduces your SSI payment.

How can you find out more about setting up a trust?

A lawyer or financial advisor can help you find out more about trusts.

Social Security cannot tell you how to set up a trust, but your local Social Security office has a list of groups that can find you a lawyer or give you free legal services if you qualify.

You may also contact the State or local bar association or the Legal Services Corporation (or any legal aid or legal services program) for help in setting up a trust.

A plan to become self-supporting

A plan to become self-supporting can help you reach a work goal. A plan lets you set aside money and/or things you own to pay for things you need to reach the goal. For example, you could set aside money to start a business or to go to school or to get training for a job.

SSA can write a plan for you or you can get someone to help you write one. But SSA must approve the plan before you can use it.

Who may have a plan to become self-supporting?

Any person who receives SSI because of a disability or blindness may have an approved plan to become self-supporting. In addition, a person who does not receive SSI because his or her income or resources are too high may use an approved plan to become eligible for SSI.

How does a plan to become self-supporting affect your SSI payment?

SSA doesn't count what you set aside when SSA figures your SSI. This can help keep you on SSI or help you get more SSI.

Money that is saved under a plan to become self-supporting will not count against your resource limit of \$2,000 (\$3,000 for a couple) while the plan is in effect—usually up to 36 months. (In certain situations it can be extended to 48 months.)

Property that you need for self-support

Some property that you own and use to support yourself never counts as a resource. Some examples are:

☛ *Exempt property that is not counted as an asset to disqualify you for SSI*

- Property that you own and use in a trade or business such as a gas station, farm, beauty parlor, or fishing boat
- Personal property that you use for work, such as tools, uniforms, or safety equipment
- Government permits or licenses that allow you to work to produce income, such as permits to catch fish or to grow tobacco, or licenses for certain other businesses

Some property may count as a resource, but often does not. For example:

- Property you use to produce goods or services that you need in your daily life, such as land or equipment to help you grow vegetables or raise live stock that you and your family eat
- Other property that produces income, such as land or real estate or equipment that you rent out (The income, though, may still count.)

Burial funds

A burial fund is money set aside to pay for burial expenses.

Generally, you (and your spouse) can set aside up to \$1,500 each to pay for burial expenses. In most cases, this money will not count as a resource for SSI.

If you (and your spouse) own life insurance policies or have other burial arrangements in addition to your \$1,500 burial funds, some of the money in the burial fund may count toward the resource limit of \$2,000 for an individual or \$3,000 for a couple.

Interest earned on your burial fund that is left in the fund does not count as a resource for SSI.

How can you set up a burial fund?

Any account that you set up must clearly show that the money is set aside to pay burial expenses. This can be done either by:

- Calling the account a burial fund; or
- signing a statement that tells:
 - how much money has been set aside;
 - for whose burial the money is set aside;
 - how the money has been set aside; and
 - the date you first considered the money set aside for burial expenses.

What happens if money is spent from a burial fund?

Spending money from a burial fund on items not needed for burial expenses could reduce your SSI payment.

Part 9 Appeal

Your right to question the decision Social Security makes on your case.


When SSA decides whether or not you are eligible for benefits, or that SSA will stop your benefits, or change the amount, SSA will send you a letter explaining its decision. If you do not agree with SSA's decision, you have the right to appeal it.

When you ask for an appeal, Social Security may review the entire decision, including those parts which were favorable to you.

FOUR APPEAL STEPS

There are four appeal steps:

1. **Reconsideration**—You may request a review of your case if you disagree with SSA's first decision. Then,

 *If your claim is denied what should you do?*

a person who did not make the first decision will decide your case again. SSA calls this a reconsideration.

2. **Hearing**—You may request a hearing before an Administrative Law Judge if you disagree with the reconsideration decision.
3. **Appeals Council Review**—You may request the Appeals Council to review your case if you disagree with the Administrative Law Judge’s action.
4. **Federal Court**—You may request an appeal through the United States Court system, starting with the United States District Court, if you disagree with the Appeals Council’s decision or denial of your request for review.

How To Request A Hearing Or Appeals Council Review


You may request a hearing by an Administrative Law Judge (ALJ), an independent official of the Office of Hearings and Appeals. If you think the Administrative Law Judge’s action is wrong, you may request a review by the Appeals Council, which is located within the SSA Office of Hearings and Appeals.

SSA can help you fill out the special form for either a hearing or an Appeals Council review at any Social Security office, or you can write SSA a letter. Your request must be in writing.

TIME LIMITS FOR APPEAL

Generally, you have **60 days** after you receive the notice of SSA decision to ask for any type of appeal.

- In counting the 60 days, SSA presumes that you receive the notice five days after SSA mails it unless you can show that you received it later.
- If you do not appeal on time, the Administrative Law Judge or the Appeals Council may dismiss your appeal.

 *You have 60 days to appeal a denial of your claim*

This means that you may not be eligible for the next step in the appeal process and that you may also lose your right to any further review.

- You must have a good reason if you wait more than 60 days to request an appeal. If you file an appeal after the deadline, you must explain the reason you are late and request that SSA extends the time limit. The people in the Social Security office can explain this further and help you file a written request to extend the time limit.

When And Where The Administrative Law Judge Hearing Is Held

After you request a hearing, your Social Security office sends your case file to the Administrative Law Judge's office. Although the Administrative Law Judge attempts to schedule all hearings promptly, there may be some delay if there are many requests ahead of yours. At least **20 days** before the hearing, the Administrative Law Judge will send you a notice telling you the date, time and place of the hearing.

The Administrative Law Judge usually holds the hearing within 75 miles of your home. However, your hearing may be farther away so several cases can be heard in one location. **If travel arrangements will present a problem for you, tell the Social Security office when you request a hearing or as soon as possible after that.** If you want to appear at a hearing but are unable to travel because of your health, submit a doctor's report with your request for hearing, explaining why you cannot travel.

ADMINISTRATIVE LAW JUDGE HEARING

Before the hearing:

- You and your representative, if you have one, can look at the evidence in your case file and submit new evidence.

☛ *The ALJ Hearing is similar to a trial*

☛ *What to expect at the hearing before the ALJ*

- It is very important that you submit as soon as possible any additional evidence you want the Administrative Law Judge to consider. If you have not done so, when you request a hearing, send it to the Administrative Law Judge as soon as you can.

At the hearing:

- The Administrative Law Judge explains the issues in your case and may question you and any witnesses you bring to the hearing.
- The Administrative Law Judge may ask other witnesses, such as a doctor or vocational expert, to come to the hearing.
- You and the witnesses answer questions under oath. The hearing is informal but is recorded.
- You and your representative, if you have one, may question any witnesses and submit evidence.

After the hearing:

- The Administrative Law Judge issues a written decision after studying all the evidence.
- The Administrative Law Judge sends you and your representative a copy of the decision or dismissal order.

If You Do Not Wish To Appear Or Cannot Appear At The Hearing

If you do not wish to appear in person at the hearing, you must let SSA know in writing when you request the hearing. Give your reasons, and ask the Administrative Law Judge to make a decision based on the evidence in your file, along with any new evidence. However, you should appear if you want to explain how your medical problems limit your activities and prevent you from working.

☛ *Frequently, the ALJ will have a vocational expert (VE) present to testify about your work abilities and whether there are jobs that you can perform.*

The Administrative Law Judge may decide that your presence at the hearing will be helpful, especially if only you can best explain certain facts. If so, he or she may schedule a hearing even if you asked not to be present.

You Should Go To A Scheduled Hearing

If the Administrative Law Judge schedules a hearing, you and your representative, if you have one, should attend. **It is very important that you attend a scheduled hearing.** If for any reason you cannot attend, contact the Administrative Law Judge as soon as possible **before the hearing** and state the reason.

The Administrative Law Judge will reschedule the hearing if you have provided a good reason. **If you do not go to a scheduled hearing and the Administrative Law Judge decides that you do not have a good reason for not going, your request for hearing may be dismissed.**

When SSA Pays Travel Expenses

If you must travel more than 75 miles from your home or office to attend the hearing, SSA can pay certain costs. Here are the rules that apply:

- SSA can pay your transportation expenses such as the cost of a bus ticket or expenses for driving your car.
- In certain circumstances, you may need meals, lodging, or taxicabs. The Administrative Law Judge must approve these special travel costs **before the hearing unless** the costs were unexpected and unavoidable.
- The Administrative Law Judge may also approve payment of similar travel expenses for your representative and any witnesses he or she determines are needed at the hearing.
- You must submit a written request for payment of travel expenses to the Administrative Law Judge at the time of the hearing or as soon as possible after

☛ *If the hearing is more than 75 miles from your home you have certain rights*

the hearing. List what you spent and include supporting receipts. If you requested a change in the scheduled location of the hearing to a location farther from your residence, SSA cannot pay you any **additional** travel expenses.

- If you need money for travel costs in advance, you should tell the Administrative Law Judge as soon as possible **before the hearing**. SSA can make an advance payment only if you show that without it you would not have the funds to travel to or from the hearing.
- If you receive travel money in advance, you must give the Administrative Law Judge an itemized list of your actual travel costs and receipts within 20 days after your hearing.
- If SSA gives you an advance payment that is more than the amount you are due for travel costs, you must pay back the difference within 20 days after SSA tells you how much you owe SSA.

APPEALS COUNCIL REVIEW

If you think the Administrative Law Judge's decision or dismissal order is wrong, you may ask the Appeals Council to review your case. When you make your written request, you should **submit any new evidence you have**.

The Appeals Council carefully examines your case and notifies you in writing of the action it takes. The Appeals Council may grant, deny, or dismiss your request for review. If the Appeals Council grants your request, it will either decide your case or return it to the Administrative Law Judge for further action (which could include another hearing and a new decision). If the Council decides a formal review would not change the Administrative Law Judge's decision or dismissal, it will deny your request.

FEDERAL COURT ACTION

If you do not agree with the Appeals Council's decision or denial of your request for review of the

You can have an administrative appeal if your claim is denied by the ALJ

Administrative Law Judge's decision, you may file a civil action in the United States District Court for the area where you live.

YOUR RIGHT TO REPRESENTATION

☛ *Your lawyers fees must be approved by Social Security*

You can choose to have a representative help you when you do business with Social Security. SSA will work with your representative, just as SSA would with you.

Your representative cannot charge or collect a fee from you without first getting written approval from the Social Security Administration, even if your claim is denied. However, your representative may accept money in advance as long as he or she holds it in a trust or escrow account.

Both you and your representative are responsible for providing Social Security with accurate information. It is wrong to knowingly and willingly furnish false information. Doing so may result in criminal prosecution.

What A Representative Can Do

☛ *What should your attorney do for you before the hearing*

Once appointed, your representative can act for you in most Social Security matters. For example, he or she can:

- get information from your Social Security file;
- help you get medical records or information to support your claim;
- come with you, or for you, to any interview, conference or hearing you have with SSA;
- request a reconsideration, hearing or Appeals Council review; and
- help you and your witnesses prepare for a hearing and question any witnesses.

Your representative also will receive a copy of the decision(s) SSA makes on your claim(s).

Choosing A Representative

☛ *How to choose an attorney*

You can choose an attorney or other qualified person to represent you. You also can have more than one representative.

Some organizations can help you find an attorney or give you free legal services if you qualify. Some attorneys don't charge unless you receive benefits. Your Social Security office has a list of organizations that can help you find a representative.

☛ *When choosing an attorney you should look for someone who specializes in these types of cases*

You can appoint one or more **persons** in a firm, corporation or other organization as your representative(s), but you **may not** appoint the firm, corporation or organization itself. You also may not appoint a person who has been suspended or disqualified from representing others before the Social Security Administration or who may not, by law, act as a representative.

Once you choose a representative, you must tell SSA **in writing** as soon as possible. To do this, you must file an *Appointment of Representative* form, with your Social Security office.

You must give the name of the person you are appointing and sign your name. If the person is **not** an attorney, he or she must, in writing, give his or her name; state that he or she accepts the appointment; and sign the form.

What Your Representative May Charge

To charge you a fee for his or her services, your representative first must file either a fee agreement or a fee petition with SSA. Your representative **cannot** charge you more than the fee amount SSA approved. If either you or your representative disagree with the fee SSA approved, you or your representative can ask SSA to look at it again.

A representative who charges or collects a fee without approval, or charges or collects too much, may be

suspended or disqualified from representing anyone before the Social Security Administration. He or she also may face criminal prosecution.

Filing A Fee Agreement

If you and your representative have a written fee agreement, your representative may ask SSA to approve it any time before SSA decides your claim. Usually, SSA will approve the agreement and tell you in writing how much your representative may charge as long as:

- you both signed the agreement;
- the fee you agreed on is no more than 25 percent of past-due benefits, or \$6,000, whichever is less; and
- your claim was approved and resulted in past-due benefits.

If SSA doesn't approve the fee agreement, SSA will tell you and your representative in writing that your representative must file a fee petition.

Filing A Fee Petition

Your representative may file a fee petition when he or she has finished working on your claim(s). This written request, accounting for the fee, describes in detail the amount of time spent on each service provided. Your representative must give you a copy of the fee petition and each attachment. If you disagree with the information shown, contact SSA within 20 days. SSA will consider the reasonable value of the services provided and tell you in writing the amount of the fee SSA approves.

How Much You Pay

The amount of the fee SSA decides your representative may charge is the most you owe him or her, except for out-of-pocket expenses. It might be different from the amount you agreed to pay.

☛ *Most attorneys charge 25% of back due benefits, with the fee not to exceed \$6,000.00*

☛ *An attorney may take a case and file a fee petition when there are no back benefits due*

☛ *How are your attorney's fees calculated by SSA*

If an attorney represents you, SSA usually withholds 25 percent of your past-due benefits to pay toward the fee for you. Later SSA pays the attorney's fee from this money and sends you any money left over. You must pay your representative directly:

- the rest you owe
 - if the amount of the fee is more than the amount of money SSA withheld and paid your attorney for you;
- all of the fee you owe
 - if SSA did not withhold past-due benefits; for example, when your representative is not an attorney or;
 - if SSA withheld, but later paid you the money because your attorney did not either ask for approval until after 60 days of the date of your notice of award or tell SSA on time that he or she planned to ask for a fee.

Also, you must pay directly for **out-of-pocket expenses** your representative incurs or expects to incur, such as the cost of getting your doctor's or hospital records. SSA approval is not needed for such expenses.


If Someone Else Pays Your Representative

Even when someone else will pay the fee for you (for example, an insurance company), SSA must approve the fee unless:

- it's a nonprofit organization or federal, state, county or city agency that will pay the fee and any expenses from government funds; or
- your representative gives SSA a written statement that you will not have to pay any fee or expenses.

If You Go Before A Federal Court

The court can allow a reasonable fee for your attorney. The fee usually will not exceed 25 percent of all

 *Out of pocket expenses are costs that an attorney incurs in putting your case together. This cost is separate from the fee*

past-due benefits which result from the court's decision. Your attorney cannot charge any additional fee for services before the court.

Finding the Right Lawyer

☛ *How do I find the right lawyer for me?*

Most social security attorneys represent clients on a "contingent fee basis." This means they are paid a fee only if they win your claim and you collect.

It is important that you hire a lawyer experienced in handling social security cases. Most lawyers will be interested in representing you if they think you have a good case, but how do you make the right choice?

As a first requirement, your lawyer should be a specialist whose practice primarily handles these cases. A lawyer who routinely handles criminal cases, divorces, wills, and other legal matters may not have the depth of experience needed to understand the complexity of a social security case.

☛ *Conclusion*

Every reasonable effort has been made to ensure that the information presented here is correct. It is impossible to address every conceivable fact situation in a brochure. No brochure can teach the legal analysis sometimes required in social security cases. Laws change and specific fact situations may require the application of a different rule of law. For this reason, you should consult an attorney if you have questions not answered here and to confirm your chosen course of action is correct.

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Ritchie

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