



SOCIAL SECURITY

What You Need to Know as a Family Law Attorney

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Social Security Retirement

- Full Retirement Age
 - 1943 to 1954 – age 66
 - 1960 and later – age 67
- Early Retirement Benefits
 - At age 62, benefits reduced by 30%
 - Spouse's benefits reduced 35%
- Spouse Benefits
 - 50% of wage earner at normal retirement age
 - Marriage requirements

Types of Social Security Disability Programs

- There are several programs regarding disability benefits:
 - Disability Insurance Benefits (DIB)
 - Widow or Widower
 - Auxiliary
 - Supplemental Security Income (SSI)
 - SSI for Children
 - Disabled Adult Children (CDB)

Types of Disability Insurance Benefits

- Workers who have paid into the system
 - Need 20 out of 40 quarters which have been paid into the system five out of the last ten years
 - Five full month waiting period after the date you are found disabled
 - Earliest can be paid is either the last date you worked or one year prior to your application date
 - Will receive Medicare benefits 24 months after benefits begin

- Disabled Adult Children's Benefits
 - Must prove disability prior to age 22
 - Must be the child of an insured person
 - Never engaged in substantial gainful activity
 - Not married at time of application unless married to another disabled person
- Widows Benefits
 - Generally must have been married for at least 9 months
 - Must be between the ages of 50-60
 - The criteria for disability are the same as for an insured worker
 - The disability must have occurred within 7 years from the date of death of the spouse or the date when the household last received benefits

Supplemental Security Income

- This program is similar to a welfare type program
- Program available for both adults and children
- Are allowed to own a house and one car
- There are resource limitations
 - Limitation for an individual is \$2,000/a couple is \$3,000
 - Any income coming into your household may reduce monthly benefit
 - For Children's cases, income of parents is taken into consideration
 - Resources can include Workers' Compensation, PERS benefits, Long-term disability benefits, and VA benefits
 - Earliest benefits may start is the month after the application date

What is the Definition of Disability

- Disability is the inability to perform substantial gainful activity by reason of a medically determinable physical or mental impairment which can last for a continuous period of 12 months or which can result in death (20 CFR 404.1505)
 - Definition is the same for both DIB and SSI (children's definition is different)

The 5-Step Sequential Evaluation

- 1: Are you working?
- 2: Do you have a severe impairment?
- 3: Do your severe impairment(s) meet or equal a listed impairment?
- 4: Can you perform any work you have done in the past 15 years?
- 5: Can you perform any other jobs?

Step 1: Substantial Gainful Activity

- Is the claimant working? Does the work rise to the level of substantial gainful activity (SGA)?
 - If someone is working above SGA levels, then he or she is not disabled regardless of his or her medical condition
 - SGA for 2018 is \$1,180.00/month gross
 - If there are impairment related work expenses such as certain items and/or services necessary because of the impairments which are needed to enable someone to work, they are deducted from the monthly income when determining SGA

Step 2: Severe Impairment

- A severe impairment is a physical and/or mental condition that limits a person's ability to perform basic work activities
- If there is no severe impairment, then the claimant will be denied
- A "de minimus" standard is applied

Step 3: Listed impairments

- For the listings go to www.socialsecurity.gov and search “listings of impairment” (20 CFR Part 404, Subpart P, Appendix 1)
- If the claimant meets the requirements of the impairment then they are disabled
- A claimant may equal the listings when a medical expert finds that the claimant’s impairment(s) are equal in severity to a listed impairment based upon the medical evidence

Step 4: Past Relevant Work

- If the claimant is able to perform a job that is considered past relevant work (performed in the last 15 years), then he or she is not disabled
- If the judge determines that a claimant cannot perform any past relevant work then the burden of proof shifts to the government to show that there are jobs in the economy in substantial numbers that the claimant can perform

Step 5: Performance of Other Work

- A judge may rely on the medical-vocational grid rules at this step or on the testimony of a vocational expert
- The judge and attorney compose hypothetical questions to ask the vocational expert based on the claimant's age, education, work background and residual functional capacity
- The medical-vocational grid rules are found at 20 CFR Appendix 2 to Subpart P of Part 404 and are affectionately referred to as the "grids"
- There is an advantage to claimants over the ages of 50 and 55

Special Grid Rules

- If the claimant is illiterate or unable to communicate in English, then you subtract 5 years off the claimant's age to have the Grids apply (i.e. claimant is 45, illiterate, limited to sedentary, unskilled work, then the Grids direct a finding of disability)
- If the claimant is over the age of 60, has a marginal education, and only unskilled PRW, then they are disabled pursuant to the Grids
- If the claimant has only a marginal education and has done arduous work for over 35 years and they cannot perform their PRW, then they are disabled
- If the age is borderline, the ALJ has discretion in deciding to apply the next higher age bracket (up to six months)

Drug Abuse and Alcohol

- A claimant must be found disabled
- Is their drug abuse and alcohol addiction a material factor in their disability
- Would they still be disabled if they stopped using drugs and/or alcohol
- Burden of proof is on the claimant

DIB and Divorce

- Spousal Support
- Division of Property

SSI and Divorce

- Spousal Support – dollar for dollar reduction
- Division of Property

SSI for Children

- Are you working?
- Do you have a severe impairment?
- Do the severe impairments meet, equal or functionally equal a Listing?

Functional Equivalence

- Acquiring and Using Information
- Interacting and Relating to Others
- Attending and Completing Tasks
- Moving About and Manipulating Objects
- Caring for Self
- Health and Well Being

Child Support

- Has no effect on parent's DIB or SSI
- Will reduce amount received from SSI for the child

Special Accounts

- Dedicated Account
- Special Needs Trust
- STABLE Accounts
 - www.stableaccount.com

The Administrative Process

- Initial application:
 - Can apply either over the phone or on-line (www.socialsecurity.gov)
 - Application is taken in by the local office and sent to the Disability Determination Services for processing (for Ohio, it is in Columbus)
 - May send clients to consultative examinations
 - Gather evidence to support the claim

- Request for Reconsideration
 - Have 60 days to file appeal
 - Similar process as the initial level
- Request for Hearing
 - Have 60 days to file appeal
 - Decision is made by an Administrative Law Judge (ALJ)
- Appeals Council
 - Have 60 days to file appeal
 - Reviews the ALJ decision to see if supported by substantial evidence



QUESTIONS??

