

# HEARING PREPARATION, PREHEARING BRIEFS AND PRESERVING THE RECORD

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- ▶ 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 SOCIAL SECURITY DISABILITY PROGRAMS

- ▶ 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

# DISABILITY INSURANCE BENEFITS

- ▶ 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

- ▶ 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

## SUPPLEMENTAL SECURITY INCOME

- ▶ 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)

# WHAT IS THE DEFINITION OF DISABILITY

- ▶ Initial application:
  - ▶ Can apply either over the phone or on-line ([www.socialsecurity.gov](http://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

## THE ADMINISTRATIVE PROCESS

- ▶ 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



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

SSI FOR CHILDREN

- ▶ 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

# FUNCTIONAL EQUIVALENCE

- ▶ 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?

# THE 5-STEP SEQUENTIAL EVALUATION

- ▶ 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 1: SUBSTANTIAL GAINFUL ACTIVITY

- ▶ 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 2: SEVERE IMPAIRMENT

- ▶ For the listings go to [www.socialsecurity.gov](http://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 3: LISTED IMPAIRMENTS

- ▶ 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 4: PAST RELEVANT 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

## STEP 5: PERFORMANCE OF OTHER WORK



- ▶ 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

## DRUG ABUSE AND ALCOHOL

- ▶ 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)

## SPECIAL GRID RULES

- ▶ Important to explain the 5-step sequential analysis to the claimant so that they have an understanding of where the ALJ is coming from
- ▶ Best to do the pre-hearing conference at least 2 weeks prior to the hearing in case there are complications
- ▶ Inform the claimant that this is a Court proceeding and explain proper attire
- ▶ Discuss with the claimant if applicable an amended onset date in line with the Grid rules or the evidence
- ▶ Set up expectations for the hearing
- ▶ If need be, do not be afraid to discuss withdrawal of the Request for Hearing
- ▶ Important things to check with the claimant:
  - ▶ Are they working or have they worked since the alleged onset date?
  - ▶ What treatment have they received and where?
  - ▶ What are their current medications?
  - ▶ What are their daily activities?

# PRE-HEARING CONFERENCES

- ▶ Provide your claimants with directions to the hearing office to ensure that they arrive at the right place (not the Federal Building) and the right time (Advise them to be there 30 minutes early so they are more likely to be on time and there is time to discuss any last minute problems/questions). Also, tell them to bring a photo ID and that they will go through security.
- ▶ Review the File – on line access to file.
- ▶ Prepare a Prehearing Memorandum – short and sweet setting forth your theory of the case and a summary of the evidence that supports your client being found disabled.

## BEFORE THE HEARING

- ▶ If it is a video teleconference hearing, the judge will be at a different location
- ▶ The hearing is a closed proceeding; the only individuals present at the hearing will be the ALJ, a monitor, the claimant, yourself, and possibly a medical and/or vocational expert
- ▶ The only copy of the hearing is an audio CD (even for a video teleconference hearing). Make sure that the claimant speaks loudly and clearly, and answers verbally (i.e. does not shake his/her head yes or no or point to body parts)

## AT THE HEARING

- ▶ Either the judge or the attorney will ask questions that fall into the following basic categories: age, education, living situation, work performed in the last 15 years, impairments that prevent claimant from working, exertional and non-exertional limitations, medications and their side effects, and activities of daily living.
- ▶ Essentially, these questions fit into the framework that Social Security uses to evaluate a disability case.
- ▶ Preserve and Protect the record

- ▶ Use Social Security Rulings and the POMS to argue for your claimant
- ▶ Social Security's web site has a Table of Contents for Social Security Rulings and Acquiescence Rulings -  
[https://www.ssa.gov/OP\\_Home/rulings/rulings-toc.html](https://www.ssa.gov/OP_Home/rulings/rulings-toc.html)
- ▶ Know the Grids
- ▶ Check the answers of the vocational witness

## SOCIAL SECURITY TOOLS



QUESTIONS??

