

**Back to The Basics: What is Social Security Disability Insurance?**

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Having spent the last year as Chair of the OAJ Social Security Section, I have had many opportunities to discuss Social Security Disability litigation with members of our OAJ group. If you are handling a personal injury case, a workers' compensation claim, or an employment issue, you are likely going to find that your client needs assistance with a Social Security Disability Claim. Since our field is so very niche and nuanced, I get asked the most basic of questions on a regular basis. So for my final article as Chair of the OAJ Social Security Section, I will take us back to the basics. Previously I discussed the intricacies of our practice, such as the new evidentiary burdens, compliance standards, and the relationship Social Security has with Unemployment Compensation. Today, I want to answer the most common question I receive: how do you qualify for Social Security Disability Insurance benefits ("SSD")?

Before I begin with this primer on SSD qualification, I would like to mention another program for our clients: Supplemental Security Income ("SSI"). Like SSD, SSI is also for individuals under a disability. Due to word-count restraints, I will only discuss SSD in detail because many OAJ members deal with clients who were recently engaged in work activity (i.e. BWC issues) and are insured for SSD, as discussed *infra*. Conversely, SSI is for individuals that do not have a consistent work history and are not presently insured for benefits. SSI is a needs-based program. One must have resources under a certain threshold and meet income tests in order to qualify. However, the balance of this article discussing the medical determination is applicable to both claims for SSD and SSI.

In order to qualify for SSD benefits, an individual must have worked in the past and have earned a sufficient amount to become insured for SSD benefits. As an individual works and pays Social Security taxes they are able to earn one quarter of coverage for every \$1,260 they earn in 2016, up to a maximum of four quarters of coverage per year for a total of \$5,040 per year. Normally, one needs to have worked five years out of the last ten to be currently insured and have accumulated a total of forty quarters of coverage. There are exceptions for younger individuals that have not had enough time to accumulate forty quarters of coverage which allows them to become insured with less.

An individual does not remain insured forever and eventually the insured status "expires." If they have been working full-time and cease work activity, they will usually remain insured for another five years. This is an extremely important point as to why someone should not hesitate to obtain appropriate medical treatment to document disabilities and to apply as soon as they think they are no longer able to remain employed full-time in any capacity, in order to increase the chances of proving disability while still insured. Why is this important? Because an individual must prove disability while still insured for benefits. If found disabled after the insured status expired, an individual cannot be entitled to SSD benefits, but may be entitled to SSI benefits! Remember, SSI does not have anything to do with work history.

In regard to what monthly benefits are available, if found disabled an individual is entitled to a monthly check that is based on how much they have earned over the working years. The monthly amount is called a Primary Insurance Amount (“PIA”). This amount can vary and we have personally represented clients with PIAs as low as a few hundred dollars to well over \$2,000 per month. Your client will also be entitled to Medicare health coverage. However, they are not eligible for coverage until 24 months have elapsed from the first month of entitlement.

To determine disability (for SSI and SSD), the Social Security Administration (“SSA”) follows a five-step sequential evaluation:

1. At the first step, SSA determines whether the applicant is engaging in substantial gainful activity (“SGA”). SSA has set the monthly threshold of **gross** earnings that disqualify an individual at \$1,130 in 2016. It is possible to have gross earnings reduced to below the SGA threshold if someone has impairment-related work expenses or to have the work excused if one of the work incentive rules apply. Different rules apply for Blind applicants. It gets even more complicated (often in a good way) for a Blind individual depending on whether they qualify for SSI or SSD as special rules apply for those Blind individuals that qualify for SSI when it comes to reducing gross earnings to be less than SGA.
2. At the second step, SSA determines whether an individual has a “severe” impairment which is defined as an impairment or combination of impairments that significantly limit physical or mental abilities to do basic work activities. This is a low threshold and most individuals are able to satisfy this requirement and move on to the other steps of the analysis. If SSA finds that they do not have a “severe” impairment, the analysis stops and you are denied benefits.
3. At the third step, SSA determines whether the condition meets or equals one of those set forth in the Listing of Impairments. The Listing of Impairments is exactly that – a long list of impairments found in the Code of Federal Regulations with certain findings required for each that SSA deems to automatically be disabling. This is a high threshold and it is difficult to satisfy the requirements of any of the Listings. If you do, the analysis stops there and the individual is found to be disabled.
- 4 & 5. If the person is not found disabled at Step 3, the analysis continues to the fourth and fifth steps at which SSA determines what is called the residual functional capacity (“RFC”) – what an individual retains the ability to do both physically and mentally – and whether or not it allows for them to return to past relevant work (full-time work you performed in the last fifteen years) and if not, if they could perform any other job in the national economy. If they can do either, the claim will be denied. If they cannot perform their past relevant work or any other job due to the limitations, SSA will find that you are disabled.

Overall, it has gotten much more difficult to obtain disability benefits and it is important that our clients keep current with medical treatment and that symptoms, exacerbations, etc. are appropriately documented. Navigating the turbulent waters of applying for disability benefits can be an arduous journey and I encourage all OAJ members to take to take advantage of reaching out to fellow members via the list serve or phone if questions arise.