



Workers' Compensation Seminar

Social Security: Workers' Compensation Practical Tips

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SOCIAL SECURITY

WORKERS' COMPENSATION

PRACTICAL TIPS

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INTRODUCTION

- WHILE THIS IS AN ADVANCED WORKERS' COMPENSATION PROGRAM, THIS TOPIC WILL BE PRESENTED AS A BASIC INTRODUCTION ON HOW A SOCIAL SECURITY CASE INTERACTS WITH WORKERS' COMPENSATION.

THREE MAIN TOPICS

- 1) We will discuss how to **IDENTIFY** a social security case arising out of a workers' compensation claim.
- 2) We will discuss how to **DEVELOP** a social security case.
- 3) Finally we will discuss how the granting of social security benefits **OFFSETS** workers' compensation benefits.

Understanding the five (5) step
SEQUENTIAL ANALYSIS
required to evaluate whether a
claimant is disabled.

STEP ONE

- Determine whether the claimant is engaging in *SUBSTANTIAL GAINFUL ACTIVITY (SGA)*
- SGA is defined as work activity that is both substantial and gainful.
- SSA sets SGA levels for each year.

POMS Section DI10501.015

- **B. Policy Table 2 Nonblind Individuals Only**
- **For Month(s):**
- **Countable earnings of employees indicate SGA and countable income of the self-employed is substantial if the amount averages more per month than:**
- In calendar year 2012
- \$1010
- In calendar year 2011
- \$1000
- In calendar year 2010
- \$1000
- In calendar year 2009
- \$980
- In calendar year 2008
- \$940
- In calendar year 2007
- \$900
- In calendar year 2006
- \$860
- In calendar year 2005
- \$830

If the claimant is engaged in SGA, he/she is not disabled regardless of the severity of the impairment.

STEP TWO

- Determine whether the claimant has a *MEDICALLY DETERMINABLE IMPAIRMENT* that is severe or a combination of impairments that is severe.
 - An impairment is severe if it significantly limits an individual's ability to perform basic work activities.
 - Unless an impairment is expected to result in death, it must have lasted, *or be expected to last*, for a continuous period of 12 months.

STEP THREE

- Determine whether the claimant's impairment's or combination of impairment's *meets or medically equals* the criteria of an impairment listed in 20 CFR part 404, Subpart P, appendix 1.

THE LISTINGS

- SSA separates the listings into 14 categories grouped by body function:
- 1.00 MUSCULOSKELETAL
- 2.00 SPECIAL SENSES AND SPEECH
- 3.00 RESPIRATORY
- 4.00 CARDIOVASCULAR SYSTEM
- 5.00 DIGESTIVE SYSTEM
- 6.00 GENITOURINARY IMPAIRMENTS

LISTINGS CONTINUED

- 7.00 HEMATOLOGICAL DISORDERS
- 8.00 SKIN DISORDERS
- 9.00 ENDOCRINE DISORDERS
- 10.00 MULTIPLE BODY SYSTEMS
- 11.00 NEUROLOGICAL
- 12.00 MENTAL DISORDERS
- 13.00 MALIGNANT NEPLASTIC DISEASE
- 14.00 IMMUNE SYSTEM DISORDERS

STEP THREE CONTINUED

- If the claimant does not meet or equal a listing the adjudicator must determine the claimant's *Residual Functional Capacity (RFC)* before proceeding to the next step.
 - An individual's RFC is the ability to do physical and mental work activity on a sustained basis despite impairments.
 - The adjudicator must consider all impairments whether severe or not.

STEP FOUR

- Determine whether the claimant has the RFC to perform the requirements of *Past Relevant Work (PRW)*.
 - Social Security looks back 15 years and considers all work performed at the SGA level as PRW.
 - If the claimant has no PRW the analysis proceeds to the next, and last, step.

STEP FIVE

- Determine whether the claimant is able to do any other work considering the claimant's RFC, age, education and PRW.
 - Burden shifts at Step 5 to the Social Security Administration to offer proof that other jobs exist in significant numbers in the national economy.
 - At hearing, Vocational Expert testimony will most likely be produced to meet this burden.

STEP 5 CONTINUED

- Application of the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, appendix 2.

- **THE "GRIDS"**

The Grids

- [200.00](#) Introduction.
- [201.00](#) Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).
- [202.00](#) Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).
- [203.00](#) Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).
- [204.00](#) Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).

- Identify Workers' Compensation clients that are potential Social Security cases.
- Applying the 5-step Sequential Analysis.

Potential SS cases

- Permanent Total Disability
- Extended Periods of Temporary Total Disability
 - Eligible to file for closed period if expected to be off 12 months or more.
 - Closed period of Disability

- Catastrophic Injuries
- Wage Loss
- Amputation Cases
- MMI
- Voc Rehab

- DEVELOPING A SS CASE**
- File application online
- Gather relevant information
- Staff file application online

- Develop Medical record
- E-Filing (bar codes)
- Medical Updates
- BWC as source of information
- Providers to submit records without charge

- Review PRW

Request Detailed Earnings Query (DEQY) and Certified Earnings Record

- Hearing Preparation
 - Prehearing Conference
 - Prehearing Briefs
 - Record Requests

SSA/WC OFFSETS

- If the Injured worker (IW) is receiving Social Security Disability (SSD) and the IW's rate, when combined with SSD received at the time the IW is found PTD, is equal to or greater than the SAWW, the maximum rate of PTD will be 2/3 of the SAWW. Thus, Ohio is a *reverse offset* state, one of 14, which are allowed to offset workers' compensation with SSD benefits.

• Pursuant to 20 CFR § 404.408, a worker's monthly SS benefit plus workers' compensation benefit may not exceed the higher of either average current earnings (ACE) or the family's total SS benefit.

CONCLUSION

• This program will help the attendee to:

IDENTIFY a SS case arising from a WC case.
DEVELOP a SS case.
UNDERSTAND offset issues.
