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WHEN DO I FILE A SOCIAL SECURITY DISABILITY APPLICATION FOR MY WORKERS' COMPENSATION CLIENT *(A primer for workers' compensation practitioners)*

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This article is intended for workers' compensation practitioners that have little to no experience handling Social Security Disability claims. This will be presented as a basic introduction on how a Social Security case interacts with workers' compensation. It will discuss how to IDENTIFY a Social Security case arising out of a Workers' Compensation claim and how the granting of Social Security benefits OFFSET Workers' Compensation benefits.

In order to IDENTIFY a potential Social Security case the reader must have a basic understanding of the five (5) step *sequential analysis* that the Social Security Administration (SSA) utilizes to evaluate every application for benefits. The five steps are as follows:

[Step one] It is determined whether the claimant is engaging in substantial gainful activity (SGA). 20 C.F.R. 416.920(b). SGA is defined as work activity that is both substantial and gainful. SSA sets SGA level for each year. For 2014 the levels are \$1800.00 per month for blind applicants and \$1070.00 per month for non-blind. Prior year levels can be found at <http://www.socialsecurity.gov/oact/COLA/sga.html>. If the claimant is engaged in SGA he/she is not disabled regardless of the severity of the impairment.

[Step two] It is determined whether or not the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 C.F.R. 416.920(c). 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 twelve (12) months.

[Step three] It is determined whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 C.F.R. 404, Subpart P, Appendix 1. 20 C.F.R. 416.920(d). Before moving on to the next step, the ALJ will determine the claimant's residual functional capacity. 20 C.F.R. 416.920(e). SSA separates the listings into fourteen (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
- 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

Two of the most common examples of Listings that will be seen in Workers' Compensation cases, under the Musculoskeletal Listing follow:

- **1.02 Major dysfunction of a joint(s) (due to any cause):** Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
 - A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;
 - OR
 - B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.
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- **1.04 Disorders of the spine** (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:
 - A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);
 - OR
 - B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;
 - or
 - C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b

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. More importantly the analysis is not limited to what is recognized in the claimant's Workers' Compensation case. All medical impairments will be considered.

[Step four] It is determined whether the claimant has the residual functional capacity to perform his or her past relevant work. 20 C.F.R. 416.920(f). At this step SSA will 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 the RFC to perform PRW the analysis ends and the claimant is found not disabled.
- If the claimant cannot perform PRW or has no PRW the analysis proceeds to the next, and last, step.

[Step five] The final step of the evaluation is a determination of whether the claimant is able to do any other work considering his or her residual functional capacity, age, education, and PRW experience. 20 C.F.R. 416.920(g).

- 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.

At step five the adjudicator will apply the Medical-Vocational Guidelines found at 20 CFR Part 404, Subpart P, appendix 2. These guidelines are referred to as the "Grids."

The Grids classify claimants as either "disabled" or "not disabled" based on age, education, PRW and transferable skills at the maximum sustained work capability limited to sedentary, light, medium and heavy (or very heavy) as a result of severe medically determinable impairment(s). Two (2) Grid Rule examples follow:

201.17 (Sedentary)

- Younger individual age 45-49
- Illiterate or unable to communicate in English
- Unskilled or none
- Disabled
- 201.18
-do
- Limited or less—at least literate and able to communicate in English
-do
- Not disabled

Compare:

201.09 (Sedentary)

- Closely approaching advanced age (50-54)
- Limited or less
- Unskilled or none
- Disabled
- 201.10
-do
-do
- Skilled or semiskilled—skills not transferable
- Do.
-do
- Not disabled

It is readily apparent how important age is to the analysis. The same individual who is not disabled at age 49 is found disabled at 50 given other criteria.

So by applying the five (5) step sequential analysis used by SSA it is possible to identify Workers' Compensation cases that are potential SS cases:

- : Clients on Permanent Total Disability
- : Clients on extended periods of Temporary Total Disability. Keep in mind that claimants are eligible to file for closed periods of SS disability if off or expected to be off for 12 months or more but later return to work.ⁱ
- : Clients with catastrophic injuries.
- : Clients on extended periods of wage loss.
- : Amputation cases.
- : Clients who have been determined to reach MMI.
- : Clients in Vocational Rehabilitation.

In addition to medical records it is imperative to obtain information regarding the claimant's PRW. Upon request SSA will provide a "Detailed Earnings Query (DEQY) and Certified Earnings Record. These will provide very detailed information on past work and earnings. These will also show trial computations and will contain information to determine what offsets there may be if both Workers' Compensation and SS benefits are granted.

- Social Security benefits will OFFSET Workers' Compensation benefits. Note also 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. Again, these numbers are available from SSA. Pursuant to 20 C.F.R. § 404.408(g):
- Workers' Compensation lump sum settlements are prorated to reflect the monthly rate that would have been paid had the settlement not been made in lump sum form. 20 CFR 404.408(g). The following benefits are not offset: ALL non disability benefits, VA

benefits, Needs-based benefits, Private pension benefits, Private disability insurance benefits, RR disability pensions, Part B black lung benefits.

As stated at the outset, this article is intended as an overview of the Social Security process and is directed at helping Workers' Compensation practitioners identify and develop SS claims arising out of their client's WC claims and to briefly discuss offset issues. All readers are encouraged to research further the various topics contained herein in greater detail prior to representation in SS claims.

ⁱ See January 2014 issue of OAJ Quarterly for discussion on Trial Work Periods and Unsuccessful Work Attempts