

Navigating the early stages of a Social Security claim

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Social Security benefits can be a useful resource for seriously injured plaintiffs and can bridge the income gap when they are unable to work for a year or more.¹ There are two benefits programs: Social Security Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI), in which a severely injured person may be eligible to participate depending upon that individual's levels of work participation and payment of credits into the system.²

To be eligible for DIB, the injured person must have paid into the system a sufficient amount of quarters in earnings.³ The number of quarters needed depends on the person's age and when he or she last worked.⁴ If the claimant did not pay in enough quarters, he or she still may be eligible for benefits from the SSI program.⁵

It is possible for a claimant to receive both DIB and SSI even if the claimant does not have enough quarters paid in for full DIB benefits, so the claimant should file for both at the time of application. If the injured person is short on paid quarters, then SSI benefits can be paid to supplement DIB until the claimant reaches a minimum threshold of income security.⁶ Deductions are made to SSI based on income; the amount of SSI paid and deductions from SSI vary dependent on cost-of-living adjustments.⁷

You should also inform the claimant that SSI can be reduced based on earnings, spousal income, household income, insurance payments, royalties, dividends, rents received, and maintenance in cash or kind.⁸ DIB can also be precluded or reduced if the claimant earns what is considered substantial gainful income.⁹

In addition, you should make the



claimant aware that there is a five-month waiting period prior to any payment of benefits, and Social Security benefits are only payable if the person is anticipated to be out of work for at least twelve months.¹⁰ An application for DIB and SSI can be made at the claimant's local Social Security office, by mail, by phone, or online at <https://www.ssa.gov/applyfordisability/>.

Once it is obvious that the person will be out of work for a substantial time and after the individual receives enough treatment to form a basis for a Social Security Administration (SSA) analysis, an application, which provides SSA with available records, should be made. A local office will conduct the initial interview of the claimant, and there will be a medical and vocational review of the records to make a disability determination.¹¹

It is often useful to have as much objective testing as possible included with the initial submission. You should also submit any residual functional capacity forms completed by the treating physician if the person likely meets the disability listings contained in 20 C.F.R., Part 404, Subpart P, Appendix 1.¹²

If SSA denies the initial application, then the claimant may request a hearing with an administrative law judge (ALJ) within sixty days. Failure to make a timely request will require the claimant to begin the entire process again.¹³ If the claimant wants an ALJ review, he or she should continue to supplement the file with medical records prior to the hearing.¹⁴

When the hearing date draws closer, a brief outlining the issues and injured person's claims with citation to the mental and physical disabilities should be provided

along with all updated medical records and medications.

When reviewing a Social Security application, the ALJ uses a five-step sequential process to determine whether a claimant qualifies for disability benefits. The claimant has the burden of establishing the first four steps of the five-step sequential process by proving a severe impairment that prevents him or her from performing past relevant work.¹⁵ This five-step process determines:

1. whether the claimant is currently engaged in substantial gainful activity (since anyone engaging in substantial gainful activity will not be considered disabled, regardless of the medical findings);
2. whether the claimant has a severe impairment;
3. whether the claimant meets or equals a listed impairment in 20 C.F.R. Part 404, Subpart P, Appendix 1 (since someone who meets a listing will be considered

disabled without consideration of vocational factors);

4. whether the individual is capable of performing the work the individual did in the past (if he or she can, a finding of not disabled will be made); and,
5. if an individual's impairment precludes the individual from performing past work, other factors (including age, education, past work experience, and residual functional capacity) must be considered to determine if there is any work in the national economy that the individual can perform.¹⁶

The first step in determining whether there is substantial gainful activity is mainly asking if the person is still working at his or her job on a full-time basis. The substantial gainful activity earnings adjust annually, and you can find the monthly earnings amounts on the Social Security website, <https://www.ssa.gov/OACT/COLA/sga.html>.

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Once it is determined that the person cannot return to his or her prior occupation or achieve substantial gainful earnings due to a severe injury, the next analysis is to see if the person meets the listings of impairments in 20 C.F.R., Part 404, Subpart P, Appendix 1. The listings are directed primarily at objective findings. For example, X-rays, computerized axial tomography (CAT) scans, or magnetic resonance imaging (MRI) findings are considered for a musculoskeletal injury.

If the ALJ does not find that the person meets the impairment listings in Appendix 1, then a review of the “GRID” will be performed. The GRID is found in 20 C.F.R., Part 404, Subpart P, Appendix 2, and, as the name implies, it has a grid of whether the person is disabled based on past work experience, educational level, and age. The idea being that a younger, educated person with numerous job skills would be more suitable to retrain for a new job if he or she is incapable of returning to the prior position.

An example might be a welder who had supervisory functions and is deemed capable of holding an office or consultative position that would allow him or her to monitor jobs and avoid heavy- or medium-duty manual labor.

Only in the final stage is the burden on SSA to prove that there are transferable skills that would support a denial of benefits. Very often, a vocational expert is present at the hearing to listen to testimony and give opinions to hypothetical answers regarding work availability and transferable skills once the questioning of the claimant is complete and any supporting testimony is taken.

It is important that the claimant’s factual and supporting testimony be directed toward assessing the claimant’s daily functions, including personal health care, hygiene, typical activities performed in a day, and whether the individual receives any assistance in performing activities such as shopping, cleaning, and cooking. It is also important to ask about medications and their side effects, as well as the quality of sleep.

If the person who helps care for the claimant is available, it is usually helpful to call that person as a witness to corroborate

any of the injured person's claims since the factual testimony will be applied along with the medical documentation to determine the vocational capability.

After a hearing, the ALJ issues a decision. The ALJ is given broad discretion in factual determinations and needs only to support the decision on substantial evidence.¹⁷ The claimant can appeal an unfavorable decision to the Appeals Council, and if there is no remand or reversal from the Appeals Council, the decision is then final.

A claimant can also appeal to a United States district court, and that appeal can potentially move through the entire federal appeals process. In these cases, payment of attorney fees and costs can potentially be awarded pursuant to the Equal Access to Justice Act.¹⁸

If the claimant is successful, the award benefits will be issued from the date of onset of disability depending on the individual's credits in the system, outside means of support, work performed, and the other factual

findings. Because an award of benefits can go a long way in providing security and support for a seriously injured plaintiff, you should consider it when evaluating a case.

Endnotes

1. 42 U.S.C. § 423(d) – Definition of disability.
2. Social Security disability: 42 U.S.C. § 423; 20 C.F.R. § 404.1, *et seq.*; SSI: 42 U.S.C. § 1381, *et seq.*; 20 C.F.R. § 416.101, *et seq.*
3. For an explanation of quarters, you can check the Social Security website, <https://www.ssa.gov/OACT/COLA/QC.html>.
4. See 42 U.S.C. § 423(c)(1). You can also see the handout provided by SSA, <https://www.ssa.gov/pubs/EN-05-10029.pdf>.
5. 42 U.S.C. § 1381, *et seq.*; 20 C.F.R. § 416.101, *et seq.*
6. 42 U.S.C. § 1382; SSA provides a reference guide, <https://www.ssa.gov/pubs/EN-05-11000.pdf>.
7. To determine the cost-of-living adjustments, check <https://www.ssa.gov/OACT/COLA/colasummary.html>.



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8. *LaBeaux for LaBeaux v. Sullivan*, 760 F.Supp.761,763 (N.D. Iowa 1991).
9. *Campbell v. Barnhart*, 374 F.Supp. 2d 498, 502 (E.D.Tex. 2005), citing 42 U.S.C. § 423(d)(1)(A) and 20 C.F.R. § 404.1565.
10. *Sanchez v. Schweiker*, 656 F.2d 966 (5th Cir. 1981).
11. There is a helpful "Disability Starter Kit" available through the SSA website, https://www.ssa.gov/disability/disability_starter_kits_adult_eng.htm.
12. Applications after March 27, 2017, do not automatically give treating physicians controlling weight in disability determinations; see 20 C.F.R. § 1527 revised by 82 FR 5844.
13. 42 U.S.C. § 405(g); 20 C.F.R. § 416.1400; *Goins v. Harris*, 487 F. Supp. 1200 (N.D. Iowa 1980).
14. You can find a hearing and appeal explanation on the SSA website, https://www.ssa.gov/appeals/hearing_process.html.
15. 20 C.F.R. § 416.920; *Johnson v. Barnhart*, 285 F. Supp. 2d 899, 909 (S.D. Tex. 2003).
16. *Ibid.*; *Carey v. Apfel*, 230 F.3d 131 (5th Cir. 2000).
17. *Hardman v. Colvin*, 820 F.3d 142, 148 (5th Cir. 2016).
18. 28 U.S.C. § 2412.



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