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SOCIAL SECURITY PROGRAMS

SSDI

- Eligibility and amount of benefit based on earnings
- Medicare coverage after 2 years of benefits
- Retroactive one year
- Five month waiting period
- Date last insured

SSI

- Eligibility based on financial situation
- Federal Medical Assistance right away
- No retroactive benefits
- No waiting periods

SPECIAL CONSIDERATIONS FOR CHILDREN

- SSI financial criteria after age 18
- Adult Disabled Child claims

REDUCED WORK CAPACITY – WHEN DOES DISABILITY BEGIN?

- Substantial Gainful Activity (\$900 per month)
- Failed Work Attempts
- Protected Work
- Onset Date of Disability

DEFINITION OF DISABILITY

20 CFR 1505:

"The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment, which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy."

PROVING DISABILITY

Five Step Process

1. *Are you working?*

2. *Do you have a severe, medically determinable impairment?*

20 CFR 404.1508: - "Your impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by your statement of symptoms."

- Supportive Laboratory and Diagnostic Tests
- Neuropsychological testing
- Situational Depression
- Importance of Treating Physician Cooperation

3. *Do you meet a listing?*

4. *Can you do an old job that you used to do?*

5. *Can you do other work?*

- Grid Rules (old dogs, new tricks)
- Part-time only = Disabled
- Nonexertional impairments

SPECIAL ISSUES FOR CFS/CFIDS/FMS SUFFERERS IN PROVING DISABILITY

Medically Determinable Impairment – CFS/CFIDS

- SSR 99-2p on CFS
- Medical markers for CFS in the ruling

Medically Determinable Impairment – FMS

- SSR 99-2p – footnote 3
“There is considerable overlap of symptoms between CFS and Fibromyalgia Syndrome (FMS), but individuals with CFS who have tender points have a medically determinable impairment. Individuals with impairments that fulfill the American College of Rheumatology criteria for FMS (which includes a minimum number of tender points) may also fulfill the criteria for CFS. However, individuals with CFS who do not have the specified number of tender points to establish FMS, will still be found to have a medically determinable impairment.”

Mental Limitations

Date Last Insured

Reduced Work Capacity – When Does It Become Disability?

Substantial Gainful Activity

Trial Work Period – not applicable

Onset Date of Disability

Failed Work Attempts

Protected Work

LTD Policies

Working After Being Found Disabled

Trial Work Period

Earnings Guidelines

NONEXERTIONAL IMPAIRMENTS

How they are evaluated: “To evaluate symptoms such as pain, fatigue, shortness of breath, weakness or nervousness, the adjudicator must consider whether there is an underlying medically determinable physical or mental impairment that could reasonably be expected to produce the symptoms; adjudicator must evaluate the intensity, persistence and limiting effects of the symptoms to determine the extent to which the symptoms limit the individual's ability to do basic work related activities; and then the adjudicator must consider the impact of the symptoms on the persons ability to function.” (SSR 96-7p)

The Good News: "If a treating source's medical opinion on an issue of the nature and severity of an individual's impairment is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record, the adjudicator must give it controlling weight." (20 CFR 404.1527d and SSR 96-8p)

The Bad News: State agency medical consultants are non-examining sources, but opinions may not be ignored by adjudicator. Adjudicator must explain weight given to these opinions in their decisions. (SSR 96-6p)

The Bottom Line: *You need some objective evidence of dysfunction, a regular course of treatment showing steady complaints, a willingness to document mental limitations, and a doctor who is willing to go to bat for you.*

PROCEDURE

Initial Application

- Bureaucrats
- Pigeon Holes

Reconsideration

- More bureaucrats
- More pigeon holes

ALJ

- Keep appealing until you get here
- Fair Hearing before Federal Administrative Law Judge
- Not confined to pigeon holes

Appellate Procedures

Attorney's Fees

HEARINGS BEFORE ADMINISTRATIVE LAW JUDGE

Getting the Hearings

Get a Lawyer

Medical Reports are Critical

Your Testimony

Preparing to Testify

Vocational Expert Testimony