

Social Security and Disability

We thank attorney Frank W. Levin for his assistance in this chapter.

Understanding what it takes to be eligible for Social Security disability can be confusing. This chapter will try to help sort through some of the confusion. It is intended for general information and should not be taken as legal advice about your specific situation. Your right to benefits depends on all of the facts and circumstances of your particular claim. For convenience sake, all of the varied forms of autonomic dysfunction will simply be referred to as POTS.

This chapter gives general information and not specific legal advice.

The Social Security Administration (SSA) administers two disability benefit programs. Each of these programs provides cash benefits and health insurance coverage. One program is called SSDI and the other is called SSI.

SSDI stands for Social Security Disability Insurance and is also referred to as RSDI (Retirement Survivors and Disability Insurance), as DIB (Disability Insurance Benefits) and as Title II.

SSI stands for Supplemental Security Income. It is also known as Title XVI. Sometimes you can be eligible for benefits under both programs. This is called a “concurrent eligibility.” SSDI and SSI both have “medical” and “non-medical” (economic) eligibility requirements. In general, the medical requirements are the same. We’ll get to them later.

For now we’re only going to talk about some of the “non-medical” requirements.

The word “Insurance” in SSDI’s name tells you that it is something like an insurance policy. In order to be eligible, you not only have to be disabled, you have to be “insured” at the time you became disabled. In order to be insured, you must have paid certain minimum amounts into Social Security during your lifetime and in the ten years before you became disabled (like the “premium” you pay to be covered by car insurance). It is important to note that you need not be insured at the time you apply for benefits, only at the time you became disabled. SSI is basically for people who have not paid enough into Social Security to be insured for SSDI benefits.

SSDI benefits depend on how much you have earned and paid into Social Security. In the year 2000, the average monthly benefit is about \$750.00 with the maximum monthly benefit at about \$2,000.00. Minor children or a dependent spouse may be eligible for additional benefits of up to one-half of your benefit under SSDI.

In 2000, SSI's maximum monthly benefit is \$512.00. There are neither minor children nor dependent spouse benefits under SSI. (If a child is receiving SSI it is because he or she is disabled.) Some states pay an additional benefit to people who receive SSI.

Disabled people who apply for, and are awarded, SSDI benefits do not receive any payments for the first five months of their disability. But benefits can be paid retroactively for up to 12 months prior to the date on which you filed your claim if you have already been disabled for five months by then. SSI benefits cannot be paid any further back than the month after the month in which you filed your claim.

SSDI recipients are eligible for Medicare two years after the first month for which they receive a cash benefit. In SSDI, eligibility for Medicaid is dependent on financial criteria. SSI recipients are usually eligible for Medicaid.

Since SSDI is an insurance program, there is no limit on the amount of "unearned" income (such as interest, dividends, rent), you and your spouse may receive, the amount of "earned" income your spouse may receive or the amount of assets the two of you have. In contrast, since SSI is a "means-tested" program, there are limits on how much income and assets you and your spouse may have.

Under both SSDI and SSI, if you earn income at what SSA calls the "substantial gainful activity" (SGA) level, you are not eligible for benefits. SGA is currently

\$700.00 per month. You are not ineligible for SSDI or SSI just because you are earning a few hundred dollars per month despite your disability. However, it is not enough that you are earning less than \$700.00 per month; there must be medical evidence that you are not able to do so. In the SSI program, \$65.00 per month of earnings are disregarded; after that SSI payments are reduced \$1.00 for every \$2.00 earned.

The length of time and the amount of paperwork your claim will require depends on how far you have to appeal it. There are potentially four levels of decisions inside SSA:

1. Initial Decision
2. Reconsideration Decision
3. Administrative Law Judge (ALJ) Decision
4. Appeals Council Decision.

In addition, there are potentially three levels of appeal in the federal courts.

1. United States District Court
2. Circuit Court of Appeals
3. United States Supreme Court

Filing a new application is not the same as appealing a decision. You might lose some benefits, or not qualify for any benefits if you file a new application instead of appealing.

You start the application process by calling SSA's no-toll number, 1-800-772-1213. Tell them that you want to file a claim for disability. Explain that you want to do this by

phone rather than going to an SSA office. They will schedule a telephone conference for you. (We'll talk about the paperwork you'll need a couple of paragraphs from now.) If the operators tells you that you're ineligible because you're no longer insured, ask her what your "date last insured" (DLI) is. If you think you were already disabled by your DLI, tell her politely and firmly that you want to file a claim alleging that you were disabled before that date.

After filing an application for benefits, you will receive an initial decision. The initial decision is usually issued about 120 days after your application is received. If your claim is approved, you will get a Notice of Award. If it is denied, you will get a Notice of Disapproved Claim, which will tell you what you must do to appeal and how long you have to do it. Your first appeal is called a Request for Reconsideration.

The reconsideration decision is usually issued about 90 – 120 days after the request for reconsideration is filed. If your claim is approved, you'll get a Notice of Award, if not you'll get a Notice of Reconsideration. (About 85% of the claims are denied at the reconsideration level). Again, the notice will tell you how and when to appeal. Your next appeal is called a Request for Hearing.

There is more variation in how long it takes a case to come up for hearing than at the two previous levels. In some parts of the country, the hearing is held about 90 days after the request for hearing is filed. In other places it is 180 days or even longer. There is also a lot of

variation in how long after the hearing it takes to receive a written decision – anywhere from a few weeks to several months. If the claim is approved, you will receive a Notice of Decision – Fully (or Partially) Favorable and a Decision. Approximately 60% of the claims that are appealed to the hearing level are approved, although there is a significant difference from Judge to Judge. The Decision will only indicate whether you won or not. If you won, you will later get a Notice of Award that states the amount of your monthly benefit and past-due benefits. If you lose, you will receive a Notice of Decision – Unfavorable and a Decision. The Notice will again tell you how and when to appeal. Although further appeals are possible, that’s beyond the scope of this chapter.

In the application process, the first papers you will have to complete are an “Application” a “Disability Report” and medical authorizations. The Application for Disability Insurance Benefits (SSDI) and the Application for Supplemental Security Income (SSI) both give SSA biographical information, such as your name, Social Security number, and date of birth. Beyond that, the two Applications ask different kinds of questions since the “non-medical” eligibility requirements are different in the two programs.

The Disability Report is usually the most important single paper you will complete. It is your chance to tell SSA what your disabling condition is, when it became disabling, how it prevents you from working, and what activities you can and can’t do with your disability. It is

also your chance to tell SSA who your doctors have been. (If your insured status has expired, you may have to list doctors from years ago to establish that you were already disabled by that time.) Finally, it's your chance to tell SSA about your education and work experience, since these may determine whether there is still work you can do.

For the appeal process following a Notice of Disapproved Claim, you will have to complete a Request for Reconsideration and a Reconsideration Disability Report. If you want to appeal the reconsideration decision, you have to complete a Request for Hearing and a Claimant's Statement. Your answers on any of the forms can trigger a request for others forms, such as a Vocational Report, a Work Activity Report, and Activities of Daily Living Questionnaire or other papers SSA needs to decide your claim.

Every form you fill out must be taken very seriously.

SSA isn't just making "Small Talk" about your daily activities and your symptoms. It will use your answers to decide if you're disabled.

The actual rules SSA uses to decide whether you are disabled involve not only your physical and mental limitations, but your age, education, work experience and transferability of skills. This is because disability is a

medical and vocational concept under the Social Security Act.

SSA uses three sets of rules to apply the medical and vocational factors to the evaluation of disability. These rules are called the “five-part sequential analysis”, the “Listing” and the “Grids”. The sequence of questions works like this:

1. Is the claimant currently engaged in substantial gainful activity (SGA)? If “yes,” the claim is denied. If “No” go to Step 2.
2. Is the claimant’s impairment or combination of impairments severe enough to significantly limit the ability to do basic work activities? If “Yes,” go to Step 3. If “No,” the claim is denied.
3. Does the claimant have an impairment or combination of impairments, which meets or equals the Listings of Impairments? If “Yes,” the claim is approved. If “No,” go to Step 4. (We will use the disorder known as POTS as our example).
 - a.) There is no Listing for POTS. Therefore, a claimant with POTS can’t “meet” a Listing.
 - b.) Arguably, POTS may “equal” another Listing, for example, the syncope and near-syncope in POTS may be equivalent in duration and severity to a cardiovascular Listing for recurrent arrhythmias.
4. Does the claimant have an impairment or combination of impairments, which prevents previous relevant work? If “Yes,” go to Step 5. If “No,” the claim is denied.

5. Can the claimant, given her residual functional capacity and her age, education and past work experience perform any other work, which exists in substantial numbers in the national economy? If “Yes,” the claim is denied. If “No,” the claim is approved.
 - a) In order to determine whether the claimant can do other work, SSA first decides her/his maximum exertional (strength) level.
 - b) SSA then uses the “Grid” for that strength level (sedentary, light or medium).
 - c) The combined effect of the claimant’s strength, age, education, skill level and transferable skills determine whether she/he is presumably “disabled” or “not disabled”.
 - d) Finally, SSA considers the effect of non-strength limitations (fatigue, dizziness, nausea, etc.) on the ability to work.

Because there is, as yet, no listing for *POTS* or most *dysautonomias* and because much of the disability is invisible, many claimants with *POTS* will have to go all the way to an ALJ hearing. However, if you do a good job explaining your symptoms and their effect on your daily activities to your doctor, you stand an excellent chance of convincing SSA that you are disabled because you simply cannot work eight hours per day, five days per week on a sustained basis.

