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SOCIAL SECURITY DISABILITY (SSD)

Social Security is a federal program that pays monthly benefits to aged, blind and disabled people. In some cases, other family members may also be eligible to get benefits off your Social Security account. Social Security benefits are administered by the Social Security Administration (SSA).

One type of benefit available from SSA, for those who qualify, is Social Security Disability. In order to be eligible, you must not only be able to prove you are disabled according to SSA's definition, but also that you have worked enough to earn it. One way of looking at it is that SSD is similar to an insurance plan, with your past earnings and Social Security deductions from your paychecks being like premiums that you've paid for that insurance coverage.

What does "disability" mean?

You must prove you are disabled in order to get SSD. The Social Security Administration, unlike some other programs such as the Veteran's Administration or Worker's Compensation, does not use categories like partially disabled, or temporarily disabled. They require that you be totally and permanently disabled in order to qualify for benefits.

SSA's definition of "disability" is:

- you are unable to do your former work or any other job
- your disability must have already lasted more than 12 months, or is expected to last more than 12 months, or is expected to result in death
- you must be unable to engage in what SSA calls "substantial gainful activity"

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How much must I have worked to get Social Security Disability (SSD) benefits?

To be eligible for SSD, you must meet the work requirements. You must have worked at jobs where you were paying into Social Security for at least 5 years (20 calendar quarters) out of the 10 years (40 calendar quarters) right before you became disabled.

How do I apply for SSD benefits?

- You can go to your local SSA Office (you may need a picture ID), or call SSA at 1-800-772-1213, or apply online at www.ssa.gov/.
- If you can't complete the forms and paperwork, the staff at SSA are required to help you fill them out. You should make an appointment for that. If you just walk into an SSA office, there may not be anyone available at that time, or you'll have to wait a long time.
- You have the right to apply. If you tell them you want to apply and they simply tell you that you wouldn't be eligible, you can still insist on completing an application. They are required to take your application and then give you a written decision, along with an explanation of your rights to appeal if you disagree with their decision.

How long will it take to get a decision on my application for SSD benefits?

There is no set amount of time for SSA to make a decision on your application for benefits. It may take anywhere from a month to more than a year. It depends on how complicated your situation is, how heavy the workload is for the local office, etc.

What do I need in order to prove I'm disabled?

You will need to give SSA copies of your medical records and any evaluations or assessments that help to show you are disabled. SSA will ask you to list your doctors, clinics, hospitals, prescription drugs, surgeries, therapy or rehabilitation treatments, education, types of work you've done, etc. The more evidence you can submit, the better your chances will be at having your claim approved.

Your medical provider may ask you to pay for their costs of copying your records before releasing them to you. They are allowed to do this, but the law says the cost must be reasonable. You should not have to pay more than 50 cents per page for the first 50 pages, and only 25 cents per page after that. (VA Code 32.1-127.1:03 and 8.01-413)

Will SSA make me see another doctor besides my own?

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SSA may require you to see a doctor of their choosing, in addition to getting all of your other medical records from your own doctors. They can do that, but it's at their expense. If you fail to go and do not have a good reason, your claim may be denied. If you can't make it to the appointment, contact SSA to explain why you can't make it, and ask to reschedule.

How much money will I get each month from SSD?

The amount of your monthly SSD benefit will be based on how much you paid into Social Security when you were working. So the amount varies for different people.

Can I get retroactive benefits?

You may be eligible for back benefits for SSD for up to one year before you applied, if you can prove your disability started that long ago. Your medical records need to show the "onset date" of your disability in order for you to prove when they should have started. If you disagree with the date that SSA says your disability began, you can appeal that decision. However, you may run the risk that SSA will review your entire case and decide that you're not disabled at all. You should get legal advice before deciding to do this.

What if I can't get Social Security Disability benefits?

If you haven't worked enough in the past (see above), you won't be eligible for SSD. However, you may still be able to get Supplemental Security Income (SSI) benefits. To get SSI benefits, you must be blind, disabled, or age 65 or older. In addition, the Social Security Administration sets income and asset limits in order to qualify you for SSI. The maximum monthly SSI benefit is \$733.

What is the difference between SSD and SSI?

The difference between SSD and SSI is that, in order to be eligible for SSD, you must prove that you have worked enough and paid enough into Social Security to be covered (insured). On the other hand, to get SSI, you don't have to prove you've paid into Social Security at all. You can get SSI even if you've never worked a job before.

You may be eligible for SSI if you are disabled, blind, or 65 or older. But to get SSI, you have to prove you are financially eligible. This means you must be low income and you can't have resources of more than \$2,000 (\$3,000 for a couple). On the other hand, you do not have to prove financial eligibility to get SSD.

Can I get SSD and SSI at the same time?

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It is possible to get both SSD and SSI at the same time. If you have enough past earnings and contributions to Social Security, you can get SSD. But if the monthly amount of your SSD is less than the maximum SSI monthly benefit, then you can get SSD plus enough SSI to bring you up to a total of \$753.

Can I work and still get SSD benefits?

As explained above, you must be able to prove you can't work in order to get SSD benefits. However, there are special rules that allow you to work for a limited time or for limited earnings even though you're getting SSD benefits. You need to carefully follow SSA's rules about this.

If you are working and earning too much, or for too long a time, SSA may decide you're not really disabled and will terminate your benefits. General rule: if you are working and earning more than \$1,130 per month, SSA will presume that you are able to engage in "substantial gainful activity" and thus are not disabled.

What if I disagree with SSA's decision about my SSD benefits?

You have the right to appeal any decision made by SSA that you disagree with. The appeal steps are:

1. Request for Reconsideration. This must be done within 60 days after you received the decision you are appealing from.
2. Request for Hearing before an Administrative Law Judge (ALJ). This must be done within 60 days after you received the decision on your Request for Reconsideration.
3. Request for review by the Appeals Council. This must be done within 60 days after you received the ALJ's decision.
4. Request for judicial review by the U.S. District Court. This must be done within 60 days after you received the Appeals Council's decision.

How do I appeal SSA's decision about my benefits if I disagree?

You can go to the local SSA office to fill out appeal forms, or you can file your appeal online at www.ssa.gov/disability/appeal. If you are unable to get to your local office or if you are unable to complete the appeal form online, you may call the SSA toll-free number, 1-800-772-1213, and ask them to send you the forms to fill out.

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If your deadline is coming up quickly, you should call the local office or the SSA toll-free number and tell them you want to appeal. Ask them to make a note in your file that you called and requested an appeal, so there will be a record of your intent to appeal. They will send you the paperwork to fill out and return by a certain date. Your request for appeal is not considered to be official until SSA gets your written request, so make sure you get the paperwork back by the time they set.

What happens if I miss my deadline for appealing SSA's decision?

You have 60 days to appeal a decision. It is important to not miss that deadline because, generally, you will lose your right to appeal and you'll have to start all over with a new application for benefits.

If you miss the deadline, you may be able to persuade SSA to accept your appeal if you have good cause for missing it. This means you will have to have a very good reason before they will accept your appeal.

What happens at each of the appeal steps?

1. Request for Reconsideration: Almost always, SSA is going to look only at the paperwork you've already submitted and make their new decision based on that alone. Sometimes, SSA will give you the chance to submit more information before deciding on your Request for Reconsideration. Most Requests for Reconsideration are denied.
2. ALJ Hearing: This is almost always the only opportunity at which you will have to actually present your evidence, give your own testimony, and maybe testimony from other people, before a judge. It is similar to a court trial, but not as long, and with not as many people involved. The ALJ will consider all the medical records that have been submitted to your SSA file so far, as well as any additional records you may have to present at the time of the hearing. You have a better chance of getting the denial of benefits overturned at this stage than at Reconsideration. Your chances improve if you have a lawyer or other qualified representative to represent you at the hearing.
3. Appeals Council review: This is a review of all the information that's been gathered in your file so far, including the ALJ's decision. This means that the Appeals Council looks only at the evidence that was considered at the ALJ hearing. That is why it is very important to get all your evidence into the record at, and before, the ALJ hearing stage. Sometimes it is possible to get in new evidence at this appeal stage, if you can show it's new evidence that wasn't available and couldn't have been discovered earlier. But this is rare.

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4. Judicial review by the U.S. District Court: This is also a review of what has been done so far. There is not a new trial, and no new evidence is presented. The Court will consider written legal arguments in briefs submitted by the attorneys.

How long will it take me to get a hearing before an administrative law judge (ALJ)?

The waiting time to actually get an ALJ hearing after you request it can be very long, sometimes up to a year or even more. Make sure you check the box on the Request for Hearing form saying that you want to appear at the hearing.

Do I need a lawyer to represent me in my appeal?

You do not need a lawyer to represent you in your appeals. But it's better if you can have a lawyer. There are many complicated issues and regulations to be dealt with. Statistics show that there is a better rate of success if you have someone assisting you.

Your representative does not have to be a lawyer. Paralegals and other non-lawyers are allowed to represent you in an appeal. But be careful who you have as a representative. Make sure they are qualified and experienced.

VLAS takes some Social Security cases, but we very rarely provide representation at the Appeals Council and Judicial Review stages if we were not involved in your case at the beginning stages of the appeal. If we are unable to take your case, we will provide you with a list of attorneys in our area who take Social Security cases. Or you may contact the National Organization of Social Security Claimants Representatives (NOSSCR) for a referral. Their number is 1-800-431-2804.

How much will a lawyer charge me for representing me?

VLAS does not charge fees for our services if we accept your case. A private lawyer is allowed to charge reasonable fees, and can charge up to 25% of a back award, with a maximum of \$6,000 total fees. All attorney fees must be approved by SSA.

Will SSA sometimes review my case after I start getting SSD benefits, to see if I'm still eligible?

SSA can review your case from time to time to see if you're still disabled. Sometimes this is done at random, or they may have gotten some indication you're no longer disabled. They need

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to tell you when they're reviewing your case. You have the right to submit recent medical reports and other evidence to show you're still disabled, even if SSA doesn't ask you for them.

If SSA sends you a notice that you're no longer disabled, you have the right to appeal that within 60 days. BUT make sure that you appeal it within 10 days and ask that your benefits be continued during your appeal. However, if you lose your appeal, you may be asked to repay those benefits you got while your appeal was pending.

What happens if I've been getting SSD benefits and now SSA says I should not have been getting them, and they tell me I have to repay them?

If SSA decides you've been getting benefits that you weren't entitled to, they will send you a written notice of overpayment. The notice will tell you that you must repay those benefits. If you disagree, you can appeal within 60 days.

Whether or not you appeal, you can still request that repayment (recoupment) be waived. There is no time limit within which you need to request a waiver, but if you do it within 30 days after you got the notice of overpayment, SSA will hold off on collecting the overpayment until the final decision on your request for waiver. In order to get repayment of the overpayment waived, you will need to show that you were without fault in causing the overpayment, and paying it back would cause you financial hardship or would be unfair for some other reason.

If you are still getting benefits when SSA tells you that you have to repay an overpayment, they can withhold your entire monthly benefits until it's all repaid. But you should negotiate with them for a repayment plan so you will have money each month to pay your living expenses and meet your needs. If you are getting SSI benefits, SSA will withhold 10% of your monthly benefits until it's all repaid. But you can negotiate for a lower payment. If you're no longer getting any SSA benefits, then SSA will still try to collect in some other way, such as intercepting your federal income tax refund or garnishing your wages. You can try to work out a repayment plan.

Can I reopen an old claim I filed, even though I was denied and didn't appeal it?

If you previously filed a claim for disability benefits, were denied, and did not appeal, and now you're applying again: SSA can reopen your old claim for any reason if it was denied within the past year. If your old claim was denied longer than one year ago, then you must show good cause why it should be reopened. Getting the old claim reopened may be important in terms of establishing the date you were first eligible for disability benefits. SSA may give back benefits for up to one year before your date of application, so that date is important.

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Can my family members get SSA benefits based on my account when I'm getting SSD benefits?

If you receive Social Security benefits, your spouse, divorced spouse, and children may be able to get benefits based on your account. There is a maximum amount of total benefits that a family can receive per month.

Spouse: may receive benefits on your account if they are 62 or older, or any age if they are caring for your child who is under 18 and receiving Social Security benefits. If your spouse is eligible for higher benefits on their own account, then they would receive benefits on their own account.

Divorced spouse: your ex-spouse may receive benefits on your account even if you've remarried. To qualify, your ex-spouse must have been married to you for at least 10 years, must be at least 62 years old, and be unmarried.

Children: if you qualify for disability benefits, your children may also qualify to receive benefits on your account. This may include an adopted child, a stepchild, and maybe a dependent grandchild. To be eligible, the child must be unmarried AND be under age 18, or 19 or younger if a full-time student no higher than grade 12, or 18 or older and have a disability that started before age 22.

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Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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