

# How Social Security Determines Disability

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April, 2014

Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) are both available to persons under age 65 who are disabled.

But what is Disabled? Do I have to be homebound? Bed confined? Dying? Social Security has its own definition of disability and an applicant must meet that definition in order to be considered disabled.

## How Social Security Does NOT Decide Disability

First, let's be clear what Social Security does not do:

- They do not look at you and decide how "disabled" you look. In fact, the person that decides if you are disabled never sees you, although the interviewer at Social Security does fill out a form that asks about his/her impression of your abilities and appearance during the interview.
- They don't decide if you "deserve" the benefit. They are looking strictly at whether you are "medically disabled," not whether you are having such a rough time finding a job or paying or rent or "you really deserve it, you poor thing."
- They also don't decide based on "what's fair," either. They follow their rules and procedures, not what seems right or fair. They realize you have been paying into Social Security for years, but that's not the issue here.
- They really don't care whether your doctor thinks you are disabled. Many doctors will complete paperwork implying "I'm the doctor, and I say he/she's disabled, therefore he/she's disabled and that's that." It's your doctor's medical records, not opinion, that are important in getting approved. They will see, based on the records, whether you meet their definition of disability. However, if your doctor does not support your disability claim, approval will be very difficult. Make sure your doctor is willing to support and assist you before you start the process.

## Social Security Defines Total Disability

To qualify for disability benefits under Social Security, you must meet their definition of disability. Whether it is SSDI or SSI or any other Social Security benefit requiring disability, you are only eligible for disability benefits if you meet this definition:

"We consider you disabled under Social Security rules if:

1. You cannot do work that you did before and we decide that you cannot adjust to other work because of your medical condition(s);
2. If you do work, you are unable to earn over Substantial Gainful Activity (SGA) which is \$1,070/month in 2014; and;
3. Your disability must last or be expected to last for at least one year or to result in death."

# The Process of Disability Determination

In an attempt to make the process uniform throughout the nation, Social Security has developed a formal determination process which all offices must follow. The Disability Analyst looks at your age, work, and educational background, and limitations caused by your condition as well as the answers to five questions when determining whether or not you meet their disability standard.

The more you know about this process and where your medical condition fits into their review, the better you will be able to complete the forms and questionnaires, and the greater the chances of getting approved the first time around. It's smart to keep these five questions in mind as you prepare to submit your evidence.

To determine if you are disabled, a Disability Analyst will be assigned to your case, who will seek answers to the following questions. The Analyst is not going to sit down and ask you these questions one by one. This is the outline the Analyst will be following when he/she, reviews your medical records and the questionnaires you will complete for them.

The questions are:

## **Question #1: Are you working?**

Social Security talks about "substantial gainful activity" and gives the impression that if you're working a little bit, it won't affect their decision. That's just not the way it works in the real world.

In my experience and that of every other benefits counselor I've talked to, you should not be earning anything during the SSDI application process. No one says that you won't be approved if you do work three or four hours a week, but the amount of paperwork increases and your chances for approval are reduced.

### **Answer to Question #1:**

- If the answer is "**Yes**" there will be questions about how much you work, how much you earn, plus you will have to have medical records that clearly show you cannot work any more than you do. The result will either be a denial of your claim or move on to Question #2.
- If the answer is "**No**" then they move to Question #2.

## **Question #2: Is there a medical problem that affects your ability to work to any degree?**

Here they are simply establishing a connection between your medical condition and your ability to work. People who aren't working for reasons that aren't medical, or persons not under the care of a doctor would have their claims denied at this stage.

As you can see, this is pretty subjective, and it really doesn't weed out a lot of claims as long as there are some symptoms that interfere with work and some medical treatment.

## Answer to Question #2:

- If the answer is “**Yes**” then they move to Question #3.
- If the answer is “**No**” your claim is denied.

## Question #3: Is your condition found in the Listing of Impairments?

Note that a “**Yes**” answer to this question means your claim is quickly approved, but that must be documented in the medical record.

The book that contains the Listing of Impairments is called, “*Disability Evaluation Under Social Security*” or just, “*The Blue Book.*” (SSA Pub. No. 64-039). It can be ordered from Social Security or many local offices will stock it. The easiest way to see it is on-line at <http://www.ssa.gov/disability/professionals/bluebook/> .

Under the Adult Listings, Section 5.00 deals with the Digestive System. You should read the first part of that section. It will give you a lot of information of just what Social Security is looking for in reviewing the medical documentation. Section 5.05 is the listing that covers all types of chronic, active hepatitis. The listing states that the condition will result in an approval if the following criteria are met and are documented in the medical record:

### “5.05 Chronic liver disease, with:

**A.** Hemorrhaging from esophageal, gastric, or ectopic varices or from portal hypertensive gastropathy, demonstrated by endoscopy, x-ray, or other appropriate medically acceptable imaging, resulting in hemodynamic instability as defined in 5.00D5, and requiring hospitalization for transfusion of at least 2 units of blood. Consider under disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s).

OR

**B.** Ascites or hydrothorax not attributable to other causes, despite continuing treatment as prescribed, present on at least 2 evaluations at least 60 days apart within a consecutive 6-month period. Each evaluation must be documented by:

1. Paracentesis or thoracentesis; or
2. Appropriate medically acceptable imaging or physical examination and one of the following:
  - a. Serum albumin of 3.0 g/dL or less; or
  - b. International Normalized Ratio (INR) of at least 1.5.

OR

**C.** Spontaneous bacterial peritonitis with peritoneal fluid containing an absolute neutrophil count of at least 250 cells/mm<sup>3</sup>.

OR

**D.** Hepatorenal syndrome as described in 5.00D8, with one of the following:

1. Serum creatinine elevation of at least 2 mg/dL; or
2. Oliguria with 24-hour urine output less than 500 mL; or
3. Sodium retention with urine sodium less than 10 mEq per liter.

OR

**E.** Hepatopulmonary syndrome as described in 5.00D9, with:

1. Arterial oxygenation (PaO<sub>2</sub>) on room air of:
  - a. 60 mm Hg or less, at test sites less than 3000 feet above sea level, or
  - b. 55 mm Hg or less, at test sites from 3000 to 6000 feet, or

- c. 50 mm Hg or less, at test sites above 6000 feet; or
2. Documentation of intrapulmonary arteriovenous shunting by contrast-enhanced echocardiography or macroaggregated albumin lung perfusion scan.

OR

**F.** Hepatic encephalopathy as described in 5.00D10, with 1 and either 2 or 3:

1. Documentation of abnormal behavior, cognitive dysfunction, changes in mental status, or altered state of consciousness (for example, confusion, delirium, stupor, or coma), present on at least two evaluations at least 60 days apart within a consecutive 6-month period; and
2. History of transjugular intrahepatic portosystemic shunt (TIPS) or any surgical portosystemic shunt; or
3. One of the following occurring on at least two evaluations at least 60 days apart within the same consecutive 6-month period as in F1:
  - a. Asterixis or other fluctuating physical neurological abnormalities; or
  - b. Electroencephalogram (EEG) demonstrating triphasic slow wave activity; or
  - c. Serum albumin of 3.0 g/dL or less; or
  - d. International Normalized Ratio (INR) of 1.5 or greater.

OR

**G.** End stage liver disease with SSA CLD scores of 22 or greater calculated as described in 5.00D11. Consider under a disability from at least the date of the first score.”

It is strongly recommended that before applying for Social Security Disability, you **discuss this listing with your physician**. He/she can see exactly what tests must be administered to show the listing is met as well as what terminology they use in the record to describe the condition. There may be additional tests or documentation that can more clearly demonstrate that your condition does meet one of the listings.

If you **DON'T** meet one of the specific Listings, Social Security will then look to see if the symptoms you have are equally severe to one of the listings.

**Multiple Conditions:** It is possible that you do not meet any one listing but have enough symptoms from several listings that the combination is considered disabling.

### **Answer to Question #3:**

- If the answer is “**Yes**” then the Analyst stops processing the claim and sends it back to Social Security as “approved.”
- If the answer is “**No**” they move to Question #4.

### **Question #4 Can you do the work you did previously?**

Here, they compare the symptoms you have with the duties of your most recent job. How do your symptoms keep you from doing your job? Do they keep you from doing major parts of your job or just some minor tasks?

In this section, they are looking for functional problems that you have, not necessarily lab results or a specific diagnosis. This is where they will focus on the questionnaires

they asked you to complete, such as the Daily Activities Questionnaire and the Pain or Fatigue Questionnaires. This is also where they will consider the Third Party Testimony letters from your friends, family, co-workers and supervisor.

Here they will be looking for all the symptoms you have that hamper your ability to work, regardless of what is causing the symptoms, including side effects of treatment and medication.

**Answer to Question #4:**

- If the answer is “**Yes**” then your claim is denied.
- If the answer is “**No**” then they move to the final Question #5.

**Question #5 Can you do any other type of work?**

OK, so you can't do your old job, but is there something else you can do? This question is a real gray area and a difficult one to get past if your symptoms are mild or not well documented. They look at the types of jobs you have done in the past, and jobs that are similar in nature and skills.

They look at the possibility of retraining. They even consider your age. The younger you are the easier it is for them to find other jobs they believe you can do.

**Answer to Question #5:**

- If the answer is “**Yes**” then your claim is denied.
- If the answer is “**No**” then your claim is approved.

With this information and a careful review of your medical records with your doctor to make sure they show all that they should to support your claim of disability, your claim has a much better chance of being approved at the initial application.

If, by chance, your claim is not approved the first time, it is strongly recommended that you appeal through either Reconsideration or at an Administrative Hearing, depending on what level of appeal is next in your region. Appealing a denial will preserve the original filing date so that you do not lose any retrospective benefits when you are approved. If you didn't use one initially, you should consider an attorney or non-attorney advocate for any appeal.