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Providing Trustee and Support Trust Services to Beneficiaries Nationwide

## WHAT IS THE DEFINITION OF DISABILITY THAT SOCIAL SECURITY USES AND WHAT DOES IT MEAN?

How often does the subject of disability come up in conversations with clients and professional circles and do you know what the Social Security Administration (SSA) means when they use the term “disability” with regard to public assistance benefits? While most people do not seriously think about short or mid-term disability, much less long-term, permanent and possibly life-shortening disability, the topic is vitally important for many professionals working with clients involved in med-mal, personal injury or mass tort settlements. The subject’s increasing importance is apparent in looking at current research that reveals a 20-year-old worker has a 3-in-10 chance of being disabled and unable to work during their productive years<sup>1</sup>.

So what is the working definition of disability use by SSA? There is a rather direct, tripartite test which SSA employs. From their administrative documents, here is how SSA defines disability:

*“Disability” under Social Security is based on your inability to work. We consider you disabled under Social Security rules if:*

- *You cannot do work that you did before;*
- *We decide that you cannot adjust to other work because of your medical condition(s); **and***
- *Your disability has lasted or is expected to last for at least one year or to result in death<sup>2</sup>.*

This definition is narrow in its interpretation and has a couple of ramifications. First, the disability cannot be short term (e.g. less than one year). For example, if one is undergoing chemotherapy treatment for cancer and because of complications from the medicine and a compromised immune system they cannot work regularly or at all, they would not qualify under SSA’s disability definition if the treatments and their side effects impacted someone for less than a year. Second, SSA *assumes* therefore that one has access to short term disability, worker’s compensation (if appropriate) or savings and investments for support during the

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<sup>1</sup> <http://www.socialsecurity.gov/pubs/EN-05-10029.pdf>

<sup>2</sup> <http://www.ssa.gov/dibplan/dqualify4.htm>

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period away from work. The later assumption requires that one carefully consider whether to purchase through an employer or broker a short term disability policy or making sure to sign up through one's employer during open enrollment for a short term disability.

## **Timing and Documentation Matters**

The biggest challenge for many disability applicants is SSA's case review and evaluation time. Disability applicants may apply two times to SSA for review of their case. Upon a second rejection, the case goes to a judge. Present wait times for SSA review are nearly a year – 316 days on average; down from 450 days in 2010<sup>3</sup>. With nearly three quarters of a million applicants who have cases awaiting hearings nationwide, wait times are not likely to lessen in the near future. Currently, there are roughly 2.9 million Americans receiving disability benefits.

While the approval process can be arduous for applicants, SSA does have a list of Compassionate Allowances Conditions (CALs) for acute and very problematic illness which receive faster consideration. That list of CALs evolves for SSA in their consultation with medical and advocacy professionals. The current list of CALs can be found on the SSA website (<http://www.ssa.gov/compassionateallowances/conditions.htm>).

## **How does one apply for disability benefits with SSA?**

The process is pretty straight forward and there is a wealth of information on the Social Security Administration's (SSA) webpage to assist potential beneficiaries. SSA does have different intake processes for individuals applying for disability who are under age 18 and those who are over 18 years of age<sup>4</sup>. SSA encourages the application for disability benefits *as soon as one becomes disabled*. As the determination process for one's eligibility for disability benefits can take three to five months once your application is submitted, it is important to keep accurate records and information in the lead up to your application. In their application guidelines, SSA provides an initial list of information and resources a would-be applicant will need to provide. That list of items includes:

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<sup>3</sup> <http://www.usatoday.com/story/news/nation/2012/12/01/applications-backlogged-disability-pay/1739327/>

<sup>4</sup> [http://www.ssa.gov/disability/disability\\_starter\\_kits\\_adult\\_factsheet.htm](http://www.ssa.gov/disability/disability_starter_kits_adult_factsheet.htm);  
[http://www.ssa.gov/disability/disability\\_starter\\_kits\\_child\\_eng.htm](http://www.ssa.gov/disability/disability_starter_kits_child_eng.htm)

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- *Social Security number;*
- *Birth or baptismal certificate;*
- *Names, addresses and phone numbers of the doctors, caseworkers, hospitals and clinics involved in care and dates of your visits;*
- *Names and dosage of all medicine;*
- *Medical records from doctors, therapists, hospitals, clinics and caseworkers;*
- *Laboratory and test results;*
- *Work history; and*
- *A copy of the most recent W-2 Form (Wage and Tax Statement) or, if self-employed, federal tax return for the past year<sup>5</sup>.*

There are special application procedures and considerations if one is blind. Information about application procedures and rules governing individuals who are blind or have low vision can be found in the SSA publication titled “*If You Are Blind Or Have Low Vision—How We Can Help*” (Publication No. 05-10052; <http://www.ssa.gov/pubs/EN-05-10052.pdf>).

## **Where to go from here?**

As a professional providing guidance to someone who has become disabled, making certain they are attending to their care and wellness is the first and most obvious priority. Preparation and planning is a close second if it appears their condition(s) would qualify to proceed with a disability claim through Social Security. The watch word is simple: document, document, document. Encourage them to retain copies of medical records, receipts for expenses, referrals and specialists reports. Any and all materials might be important as support in the event a case is submitted for review. Finally, encourage them to talk with their employer’s HR office or EAP. Make sure they know what programs are available and any supplemental disability or insurances coverage(s) are provided by the employer that would assist in paying for expenses or accessing services.

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<sup>5</sup> <http://www.socialsecurity.gov/pubs/EN-05-10029.pdf> - page 7