

# SSA Disability Determination Process: Where Medical Providers Go Wrong

**[Name], esq.**

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# Outline

- Overview of SSI and SSDI eligibility
- Sequential evaluation
- Appeals
- Where providers go wrong

# Social Security Disability Insurance

- **SSDI** (Title II of the Social Security Act) provides disability benefits for individuals who are “insured” under the Act by virtue of their contributions to the Social Security trust fund through a tax on their earnings, and to certain disabled dependents of insured individuals.

*See Documenting Disability: Simple Strategies  
for Medical Providers, p. 9.*



# Supplemental Security Income

- **SSI** (title XVI) provides for SSI payments to individuals, including children under age 18, who are disabled and have limited income and resources.

*See Documenting Disability: Simple Strategies  
for Medical Providers, p. 8.*

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# Non-Medical Eligibility Standards

## SSI

## SSDI

- **Categorical Eligibility** – Aged, Blind, or Disabled.
- **Low income** – Countable income less than the maximum payable to that individual.
- **Low Resources** – Countable resources < \$2000 for an individual, < \$3000 for a married couple.
- **U.S. resident** for 30 days
- **Citizen or “legal, qualified alien”**
- **Retired and/or disabled workers**
- **Recent work history** if under retirement age
- **Insured** – has worked and paid FICA taxes in specified number of past 40 calendar quarters, depending on age.
- **No income/asset limits**

# Special Eligibility Circumstances

- Fleeing felons **not eligible**.
- Undocumented **not eligible**.
- Lawful permanent residents **not eligible** for SSI if disabled after 8/22/96; may get SSDI if 40 credits + 5 yrs in U.S. (see next slide)
- Refugees, asylees, Cuban/Haitian Entrants, and persons granted withholding of removal **eligible** for 1<sup>st</sup> 7 yrs.
- Honorably discharged veterans and active duty armed services personnel who are “qualified aliens” (and dependents) are **eligible**.

*See Documenting Disability, pp. 39-42.*

# Medical Eligibility Standard

- Meets **SSA Definition of Disability**:
  - **Adult applying for SSDI or SSI**: “inability to engage in any **substantial gainful activity** by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or ... has lasted or can be expected to last for a continuous period of not less than 12 months.” (*Documenting Disability, p. 9*)
  - **Child < 18 yrs applying for SSI**: “has a medically determinable physical or mental impairment or combination of impairments that causes **marked and severe functional limitations**, and ... can be expected to cause death or ... has lasted or can be expected to last for a continuous period of not less than 12 months.

# Cash Benefits

## SSDI

- **Monthly cash benefit** – amount dependent upon work and wage history
- **Maximum benefit** paid in 2005:\$1,939 per month.
- **SSI supplement** if benefit amount is less than would be received under SSI.
- **Payable** after application is filed, beginning 5 months after “onset date,” but not > 1 year prior to date of application.

## SSI

- **Monthly cash benefit** –amount depending upon categorical status and living arrangement.
- **Maximum monthly payment** set each January by SSA: .
- **Earliest possible payment date:** first of the month after the month of application.

*(Documenting Disability, pp.8-9)*

# Health Benefits

## SSDI

- Medicare coverage – for disabled beneficiaries under retirement age in month 25 of cash receipt.
- May also be eligible for Medicaid (e.g., for coverage of premiums/cost sharing, prescription drugs, or other services), depending on the State plan.

## SSI

- Medicaid coverage –awarded automatically upon award of disability and payment status.

*(Documenting Disability, pp.8-9)*

# Two Types of Favorable Disability Determination (Allowances)

- **Medical**
  - Meets a Medical Listing
  - Functional impairment equivalent to a Listing
- **Medical/Vocational**
  - Based on Residual Functional Capacity, age, education, ability to communicate in English, past relevant work experience, and transferable skills.

*(Documenting Disability, p.12)*

# Sequential Analysis of Disability

1. Substantial gainful activity? If no, allow.
2. “Severe” impairment? If yes, go to Step 3. If no deny.
3. Meets or equals a Listing? If yes allow. If no, go to Step 4.
4. Can do prior relevant work? If yes, deny. If no, go to Step 5.
5. Can prior work skills be transferred to other jobs? If yes, deny. If no allow.

## AND

- Has impairment lasted or will last >12 months or expected to result in death? If no, deny. If yes, allow.

*(Documenting Disability, pp.14-17)*

# Step 1: Substantial Gainful Activity?

- **Substantial** = perform significant physical or mental duties productive in nature.
- **Gainful** = work usually done for pay or profit, whether or not it's realized, licit or illicit.
- **Significant duties** = have a degree of economic value.
- **Set by SSA, applied nationally, updated yearly:** gross monthly wages of \$830 if not blind, \$1380 if blind (2005).
- **Individuals working at Substantial Gainful Level (SGA) are “not disabled”.**

*(Documenting Disability, p.14)*



# Step 2: Severe Impairment?

- Impairment is considered “severe” if it substantially interferes with ability to perform basic work activities.
- If impairments are “severe” in combination, must consider all impairments together throughout analysis.
- Claimant must have “severe” impairment(s) to be considered “disabled.”

*(Documenting Disability, pp.14-15)*

# Step 3: Meets or Equals a Listing?

## What is a Medical Listing?

- **Impairment** listed in *Disability Evaluation Under Social Security* (“The Blue Book”)   
[www.socialsecurity.gov/disability/professionals/bluebook/index.htm](http://www.socialsecurity.gov/disability/professionals/bluebook/index.htm)
- **Listings** describe medical criteria for the most severe impairments in 14 body systems; separate Listings for adults and children.
- **Medical criteria** described presume functional limitations that prevent work.
- **Medical documentation** of these criteria can result in an allowance without consideration of the individual’s limitations – except for mental impairments.

*(Documenting Disability, pp.15-16, 22-24)*



## Step 4: Past Relevant Work?

- Compares individual's Residual Functional Capacity (RFC) with the functional requirements of past relevant work (PRW).
- PRW is generally work performed in the past 15 years.

*(Documenting Disability, pp.16, 26-27)*



# Residual Functional Capacity (RFC)

- RFC = Maximum ability to do sustained work-related physical and mental activities in a work setting, on a regular and continuing basis, despite limitations caused by impairment(s) and related symptoms
- “Regular and continuing basis” means 8 hours/day 5 days/week or equivalent.
- Consider total limiting effects of all impairments, even “non-severe” ones, and all relevant evidence in the record.

*(Documenting Disability, pp.17, 26-27)*



# Mental RFC

Mental RFC assesses individual's ability to:

- Understand, carry out, and remember simple instructions;
- Respond appropriately to supervision, co-workers, and usual work situations;
- Deal with changes in routine work setting and customary work pressures.

*(Documenting Disability, p.27)*



# Step 5: Other Work?

- Final step in the sequential analysis
- Considers whether individual can perform other work in the economy in light of his/her RFC and “vocational factors.”
- SSA uses “Grids” for exertional impairments
- Individual analysis required for others

*(Documenting Disability, pp.17, 26-27)*

# Exertional Levels

<b>Sedentary</b>	<b>Light</b>	<b>Medium</b>
<ul style="list-style-type: none"><li>• Sitting up to 6 hours a day</li><li>• Standing or walking up to 2 hours a day</li><li>• Lift 10 lbs</li><li>• Good manual dexterity (usually)</li></ul>	<ul style="list-style-type: none"><li>• Walk or stand 6 hours/day</li><li>• Lift frequently (2/3 day) up to 10 lbs, occasionally up to 20 lbs.</li><li>• Bend/stoop</li></ul>	<ul style="list-style-type: none"><li>• Walk/stand up to 6 hours/day</li><li>• Lift frequently up to 25 lbs., occasionally up to 50 lbs.</li><li>• Frequent bending/stooping</li></ul>

*(Documenting Disability, pp.26-27)*

# Medical-Vocational Guidelines

- Unskilled applicants unable to perform past work are likely to receive medical-vocational allowances if they are:
  - 50 to 54 and limited to sedentary work,
  - 55 to 59 and limited to light work, or
  - 60+ and limited to medium work.
- Generally, the less education/training and the more remote it is, the less able the individual is to perform work at a lower exertional level.

[http://www.ssa.gov/OP\\_Home/cfr20/404/404-ap11.htm](http://www.ssa.gov/OP_Home/cfr20/404/404-ap11.htm)

*(Documenting Disability, p.12-13)*

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# Adverse Profiles

- 35 years of arduous unskilled work
  - not working
  - severe impairment prevents prior work
  - 6<sup>th</sup> grade education or less
- No substantial work experience
  - severe impairment
  - over age 55
  - less than 11<sup>th</sup> grade education
  - no prior relevant work

People with adverse profiles and a “severe” impairment that would prohibit them from doing “medium” work are considered “disabled.”

*(Documenting Disability, p.38)*

# Evidence Issues in Disability Analysis

- **Medical findings** consist of symptoms, signs and laboratory findings.
- **Symptoms** alone cannot establish a physical or mental impairment.
- **Signs** must be shown by medically acceptable clinical diagnostic techniques.
- **Laboratory findings** must be shown by medically acceptable laboratory techniques.

*(Documenting Disability, pp.(9, 18)*

# Evidence Issues in Disability Analysis

- **Other evidence** is permitted and considered on the nature and severity of the impairment and its resulting functional limitations:
- **Evidence from non-doctor professional sources** is especially well received – from therapists, nurse practitioners, teachers, early intervention providers, counselors, rehabilitation specialists, shelter workers.
- **Lay sources:** family or friends
- **The Bottom Line:** All evidence should be considered. Weight given depends on credibility and support.

*(Documenting Disability, pp.18, 19)*

# Disability Analysis for Mental Impairments

- Complex and highly individualized process requires consideration of multiple issues.
- Need for longitudinal assessment of function
- Importance of lay evidence in completing assessment of functional limitations – but **MUST** be co-signed by treating source (MD, PhD)
- Consider effects of structured settings.

# Disability Analysis for DA&A

- **Step 1** – Is the claimant disabled, considering all impairments including those related to drug addiction and/or alcoholism (DA&A) ?
- **Step 2** – Is there medical evidence of DA&A ?
- **Step 3** – Is DA&A material to the disability determination – i.e., Would the claimant still be disabled without consideration of DA&A impairments and limitations?

*(Documenting Disability, pp.28-37)*

# Appeals Process

## Levels of appeal:

- **Reconsideration** –to appeal application decision (SSA has proposed eliminating this step.)
- **Administrative Law Judge (ALJ) Hearing** –to appeal Reconsideration (or Reviewing Official’s decision)
- **Appeals Council Review** – to appeal ALJ decision
- **Federal Court**
- **60-day deadline for filing appeals** at each level; SSA assumes notices received within 5 days of date on notice. Can file late for good cause.

Forms available at [www.ssa.gov/online/forms](http://www.ssa.gov/online/forms)

*(Documenting Disability, pp.11-12)*

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# Representative Payees

- For persons unable to manage funds
- Physician recommendation (at any time—may include in treating physician's letter)
- Patient is asked to name payee.
- Payee may keep a fee.
- Non-profit and social service agencies preferred; beware victimization.

*(Documenting Disability, p.35)*

# Work Incentives

- Once eligible for benefits, all recipients are eligible to take advantages of work incentives specific to the SSDI program as well as the Ticket to Work Program.
- No continuing disability review (CDR) while making progress on individual work plan through vocational rehab (VR) or employment network (EN) certified by SSA. Incentives for VRs and ENs.

[www.ssa.gov/work/ResourcesToolkit/legisregfact.html](http://www.ssa.gov/work/ResourcesToolkit/legisregfact.html)

# Where Clinicians Go Wrong in the Disability Determination Process

- Do not respond (timely or at all)
- Do not understand their role (not the decision maker)
- Do not understand SSA standard (e.g., say patient can do sedentary work without knowing SSA rules)
- Respond when they don't have enough knowledge (e.g., how pain affects daily life of patient)

*(Documenting Disability, pp.5-7)*

# Where Clinicians Go Wrong in the Disability Determination Process

- Respond as if to other clinicians and SSA doesn't fully understand the import of what is being said
- Say “patient doing well” without explaining the specific circumstances of patient
- Do not fully document symptoms such as pain or fatigue
- Do not document functional impairments