

SOCIAL SECURITY  
DISABILITY APPEALS

-There are two federal programs available to claimants who meet the social security administration (SSA) definition of "disabled" and who cannot work

-Title II Social Security disability Insurance (SSDI)

-Title xvi Supplemental Security Income (SSI)

-Claimants covered by SSDI are also eligible for Medicare Coverage (Title XVIII) and individuals covered by SSI are also eligible for Medicaid and other "needs based" benefits.

Both programs provide benefits to individuals who are deemed "disabled" from "competitive employment". This decision is based, for the most part, on the claimant's medical records, vocational history, and, credibility at his hearing.

threshold requirements for  
Coverage under the ssdi program

The Claimant must have acquired sufficient quarters (credits) as a result of "covered employment", which is employment that resulted in the payment of FICA taxes either by the employer or the claimant, if self-employed.

A quarter (credit) is measured in 3-month increments. As a general rule, a quarter (credit) equals \$1,000 in wages. If the claimant has \$4,000 in wages in a year, he will be credited with 4 quarters for that year. If he has less than \$4,000 in wages, he will not receive credit for 4 quarters. If he has more than \$4,000 in wages, he will still only receive 4 quarters (credits).

As a general rule, in order to qualify for ssdi, the claimant must engage in "covered employment" for 20 quarters (5 years) out of the 40 quarters (10 years) before the date he alleges that he became disabled.

In other words, the claimant must have worked steadily and recently in order to qualify for ssdi.

The claimant's "insured status" will lapse if he stops working or fails to earn sufficient quarters of coverage (for example if the claimant goes to work for the state he will not earn quarters of coverage because no FICA taxes are paid on state wages).

If the claimant's "insured status" lapses long enough, he may find that he is ineligible for ssdi (although he may still be eligible for social security retirement benefits and possibly ssi depending on the circumstances).

The amount of ssdi paid depends on the length of time the claimant works at "covered" employment and the amount of wages he earns during his work life.

If the claimant fulfills the threshold requirements for coverage under the SSDI program, he must then prove that he is "disabled" as the term is defined by the Social Security Act.

#### Threshold requirements for coverage Under the SSI program

Unlike SSDI, the SSI program is a "needs based" program, which focuses first on the income and resources available to the claimant.

Accrual of sufficient quarters (credits) is not necessary. This means that claimants who have not worked or who have "spotty" work records can be covered under the SSI Program assuming they meet the applicable income and resource tests and they meet the definition of "disability" in the Social Security act, meaning that they are disabled from "competitive employment".

#### The Social Security Disability Claim Process

The claimant can apply for SSDI (1) on line at [www.ssa.gov](http://www.ssa.gov) (2) by calling social security and setting up an appointment for a telephone interview (800) 772-1213 or (3) by going in person to the anchorage field office at: 222 West 8<sup>th</sup> Avenue (corner of c street & 8<sup>th</sup> avenue).

The claimant can apply for SSI on the telephone or in person. He cannot apply for SSI on line.

Claimants can apply for both programs at the same time (and in some cases the claimant can receive benefits from both programs if approved).

The claimant will then be besieged by endless paperwork and repeated requests for the same paperwork/records that he has already submitted.

The Field Office takes the first "cut" on SSI applications to determine whether the claimant meets the income/resource requirements to qualify for the SSI program. If the claimant is "over resourced", the application will be rejected before a determination is made regarding "disability".

#### Evaluation by DDS

SSDI and qualifying SSI applications are sent to the Disability Determination Service (DDS), a state agency, which reviews the claim and decides whether the claimant is "disabled".

DDS is responsible for gathering the claimant's medical records and evaluating the records for medical evidence of "disability" as the term is defined by the Social Security Administration.

DDS has the authority to send a claimant for a Consultative Evaluation (CE) by a physician hired by Social Security. The quality of these evaluations varies from mediocre to poor.

DDS determinations can take several weeks to several months depending on the complexity of the claim.

#### The first denial

If DDS denies the claim, the claimant receives a "denial" letter, which states the reason(s) why the claim was denied and states that the claimant has **60 days** to appeal an adverse decision.

Generally, it is at this point that the claimant goes out and starts to look for a representative (non lawyers can handle social security cases as well) to help with the appeal.

My decision to represent or not represent the claimant is based on several factors, the most important being the medical records. I want to make sure that the medical records have evidence that substantiates a disability claim.

If I decide to represent the claimant, I file a form entitled "request for hearing by administrative law judge", which begins the administrative appeal process, which is handled by the Office of Disability Adjudication and Review (ODAR).

Alaska ODAR is located at 188 West Northern Lights. The telephone number is 271-6271. There are two full time ALJs and two full time staff attorneys in the Alaska ODAR office. The ALJs travel to Fairbanks, Juneau, Kodiak, and Ketchikan. ODAR will pay travel expenses for claimants outside of those areas who want to appear at their hearings in person. Hearings are also done telephonically.

60% of all claimants are unrepresented at hearing despite being informed that they are entitled to a lawyer. (If an unrepresented claimant shows up at his hearing, the ALJ will inform him that he has the right to be represented and continue the hearing for a few weeks if the claimant decides he wants representation. In General, the ALJ will only allow one continuance unless there are extraordinary circumstances.

Before the hearing, I write a pre-hearing brief, which summarizes the medical evidence and sets out my arguments regarding the claimant's inability to work.

If the claimant does not prevail at the administrative hearing level, he can appeal to the Appeals Council (AC) in Baltimore.

The AC will review the record and either affirm the ALJ or overrule the ALJ and remand the claim for another hearing.

Once the claimant exhausts his administrative remedies, he can appeal the claim to federal district court, which can affirm the alj or remand for another hearing.

The claimant can ultimately appeal an adverse decision to the ninth circuit.

The bottom line question: is the claimant Disabled from competitive employment?

Social security uses a five step process to determine whether the claimant is disabled:

1. *is the claimant working?* If the claimant works and makes more than \$1,000/month, he is not disabled and the claim is denied. If he is not working, the alj moves to step #2.
2. *Is the medical condition "severe"?* in other words, does the claimant's medical (physical and/or psychiatric) condition(s) significantly limit his ability to do basic work activities and has the condition lasted more than 12 months? If the claimant's medical condition is not "severe" the claim is denied. If it is "severe" the ALJ moves to step #3.
3. *Does the medical condition(s) meet the "list of Impairments" ?* (an arcane and largely unintelligible book published by social security). If the condition "meets the listing" the claimant is disabled. If the condition does not "meet the listing" the ALJ goes on to step # 4.

(but before moving to step #4 the ALJ considers the medical evidence in the record and determines the claimant's "residual functional capacity" (RFC) meaning the claimant's actual capacity to perform work activities such as walking, sitting, standing, lifting, etc. in mental impairments, the alJ looks at the medical evidence to determine, among other things, the ability to concentrate, remember, follow instructions, interact with other people, etc.)

4. *Can the claimant perform his past work?* once the ALJ determines RFC, he then reviews the physical and mental requirements of the claimant's past vocational expert usually the hearing) to determine whether the work (a testifies at whether the

claimant can perform  
the claim is denied.  
to Step # 5.

his past work. If so,  
If not, the ALJ moves

5. *Can the Claimant do any type of work?*

The ALJ then considers the Claimant's medical condition, rfc, age, work experience, and skills to determine whether the claimant can do any type of work. If the ALJ determines that the claimant can perform some type of work (regardless of how menial) he will find that the claimant is not disabled and the claim will be denied.

6. *Is the claimant's disability caused by substance abuse?*

If the claimant cannot perform any type or work, but has significant alcohol or drug problems, the alj then determines whether the substance abuse is a "material factor" in causing the disability. In other words, would the claimant be disable irrespective of substance abuse problems? If not, the claim will be denied.

More information

[www.ssa.gov](http://www.ssa.gov) (the general web site)

[www.ssa.gov/pubs/10041.html](http://www.ssa.gov/pubs/10041.html) (re the appeals process)

[www.ssa.gov/pubs/10072.html](http://www.ssa.gov/pubs/10072.html) (re quarters (credits) )

[www.ssa.gov/pubs/10029.html](http://www.ssa.gov/pubs/10029.html) (re disability benefits)

[www.ssa.gov/pubs/10090.html](http://www.ssa.gov/pubs/10090.html) (re the right to question a determination by SSA)

[www.ssa.gov/pubs/11008.html](http://www.ssa.gov/pubs/11008.html) (re the right to question the cessation of benefits)

[www.ssa.gov/ssi/links-to-spotlights.html](http://www.ssa.gov/ssi/links-to-spotlights.html) (re the SSI program)