

Who May Receive Benefits?

Members of the claimant's family may qualify for benefits based on the claimant's earnings record, including children under the age of 18, or 19 if in high school full time, unmarried children 18 or older if disabled prior to age 22, or a spouse, age 62 or older. Disability benefits to children are made under SSI.

SSI pays benefits to disabled needy individuals of any age, including children. Under SSI, children are considered disabled if they have a physical or mental condition which is so severe that it results in marked and severe functional limitation. As with an adult, the child's condition must last or be expected to last at least twelve (12) months, or be expected to result in the child's death. The amount of SSI for which a claimant is entitled depends on what the claimant owns and how much income he or she has. If a claimant is married, the Social Security Administration will also consider the income and property of the claimant's spouse in making a determination of entitlement to SSI.

What Is The Earnings Requirement for SSDI?

To qualify for Social Security Disability Insurance (SSDI) benefits, the claimant must have received credits for working a specific amount of time and earning a specific dollar amount during the ten year period immediately preceding the onset of disability. The Social Security Administration keeps a record of all amounts reported by employers on each workers' Social Security number or account over the course of each worker's work life. From this record, the Administration calculates whether a claimant has earned sufficient credits to qualify for SSDI. A credit is equivalent to a calendar quarter. In order to earn a credit for having worked a calendar quarter a claimant must have earned a minimum dollar amount (to be discussed below) during that calendar quarter. Even if that minimum dollar amount was earned during a brief, two week period in that calendar quarter, following which the claimant did no work at all during the remaining portion of the calendar quarter, credit for the entire quarter is earned. Generally, in order to be eligible for SSDI, a claimant must have received credits for at least 20 calendar quarters (five years worth of calendar quarters) out of the last 40 calendar quarters (ten years worth of calendar quarters) ending with the year the claimant became disabled. The requirement of having earned credits for 20 out of the last 40 calendar quarters roughly equates to having worked five years worth of quarters out of the last ten years worth of quarters; however, it should be emphasized that the quarters need not have been worked together or in sequence. Thus, if a claimant was out of work every other quarter over a ten year period of time ending with his disability, he would have just barely earned sufficient credits to qualify for SSDI benefits. Since there are only four calendar quarters in a year, a claimant cannot earn more than four credits for a year of work. For example, if a claimant worked in 1997, he received one social security credit for each calendar quarter in which he received at least \$670 in earnings. The minimum amount of earnings required during a calendar quarter in order to earn a credit increases each year.

The Application Process

If you believe you may be entitled to Social Security disability benefits, you may apply in person at your local Social Security office or by phone or mail. Due to inherent weaknesses in any bureaucracy handling large volumes of paper work, it is highly recommended that if at all possible you file your papers in person and save copies and receipts for everything. Initial processing of claims usually takes at least 60 to 90 days. The states, in cooperation with the Social Security Administration, assist in the handling of Social Security Disability claims by establishing an office called the Disability Determination Service (DDS) to evaluate and process the claims. Your claim will be sent to the Disability Determination Service office in your state. There, a decision will be made as to whether you are disabled under the Social Security law, based upon a review of your medical evidence, and possibly even a consultative exam which the DDS office schedules. At this level of the proceedings no hearing is held.

As a result of the lack of a hearing at the initial stage of a Social Security disability claim, as well as the difficulty of deciding claims based solely on a review of papers, it is not uncommon for errors to be made in the preliminary stages of Social Security disability claims. The denial of claims is frequently reversed on appeal. A claimant should not be surprised at the denial of his/her claim and certainly should not hesitate to appeal an adverse determination.

Once a decision is made, the claimant will receive written notice from the Social Security Administration. If approved, the claimant will receive a notice showing the amount of benefits he/she will receive and when the payments will begin. Disability benefits do not begin until the sixth full month of disability from the date the Social Security Administration decides the claimant's disability began. Disability benefits can be paid retroactively for up to twelve months prior to the date the claim was filed, not including a five month waiting period which the law requires before a Social Security application may even be filed. On the issue of retroactivity, it should be noted that SSI cannot start before the date of the application.

How Much Are The Benefits?

The law provides that the receipt of certain types of other benefits will result in a reduction of Social Security benefits. Taking into account other benefits which a claimant may be receiving, such as workers' compensation or federal, state or local government disability, a claimant's total combined payments cannot exceed 80% of his/her average current earnings.

Levels of Appeal

If the claim is denied, a notice will explain why (in a totally unsatisfactory way) and advise that the claimant may request a reconsideration no later than sixty days from the denial. It is important to file this Request for Reconsideration in a timely fashion. As with the initial application, a Request for Reconsideration may be filed at a local Social Security Office. If the claimant fails to file for

reconsideration and later decides to reapply for benefits, he/she may lose some benefits, or may not qualify for any benefits at all. Therefore, it is crucial to file for reconsideration. If the claimant does file for reconsideration, the claim will again be sent to Disability Determination Services for review. It will be reviewed by a physician and disability examiner who will evaluate the evidence previously submitted, as well as any additional medical evidence since the original decision. Again, the claimant will receive written notice of the decision, without the benefit of a hearing. Not surprisingly, few denials are reversed at the Reconsideration stage of Social Security proceedings, so be prepared for another denial and for taking the next step in the appeal process.

If denied on reconsideration, the claimant may then file a Request for Hearing of the decision by the Office of Hearings and Appeals. The applicant must request the hearing in writing within sixty days of the date of the reconsideration denial notice. The form is actually called a Request for Hearing and may be obtained from the local Social Security office. It is important to file the Request for Hearing in a timely fashion, and to save the receipt to prove it was filed on time.

If a hearing is requested, the case will be assigned to an Administrative Law Judge (ALJ), who, while not a "judge" in the technical sense of sitting in a court of law, is the person charged with "judging" your case at the hearing level. By all means, call the ALJ "Your Honor". The hearing proceedings are somewhat informal and give the claimant the opportunity to explain why he/she disagrees with the decision made in the case, to present additional evidence and to have witnesses testify in his/her favor. Administrative Law Judges are usually better versed in the law than the individuals who decided the claim at the lower levels in the application process. They are also independent of the Disability Determination Service, and, when a case is properly presented to them, frequently reverse earlier denials of benefits. At this stage of the case it is highly recommended that the claimant retain an attorney experienced in the handling of Social Security Disability claims. The attorney fee in a Social Security Disability claim is generally structured so that even those with little in the way of resources can afford an experienced attorney.

How The Determination of Disability is Made

The Social Security Administration regulations require the Administrative Law Judge to follow what is called a sequential evaluation process in order to determine whether a claimant is disabled. The first step is to determine whether the claimant is doing any work at all. If the claimant is working and his/her earnings average more than \$500.00 per month, he/she cannot be considered disabled. The second step is to determine if the medical condition of the claimant is severe, or, the impairments interfere with basic work-related activities. Step three decides whether the condition is found in a list contained in the regulations of disabling impairments that are considered so severe they automatically qualify as a disablement. If the condition is not on that list, the judge determines if the condition is of equal severity to an impairment on the list. If the condition is severe, but not at the same or equal severity as an impairment on the list, step four determines if it interferes with the claimant's ability to do the work he/she did in the last fifteen years. If the claimant is found unable

to do the work he/she did in the last fifteen years, step five takes into account the claimant's age, education, past work experience and transferable skills to determine if there are jobs he/she can perform in the national economy.

Appealing An Administrative Law Judge's Decision

If the claimant is denied benefits by the Administrative Law Judge, an appeal can be taken to what is called the Appeals Council. No hearing is held at this level, but the decision of the Administrative Law Judge is reviewed for error. The appeal to the Appeals Council must be filed within sixty days of the decision by the Administrative Law Judge. A further appeal can be taken from a denial by the Appeals Council to the United States District Court, which also must be filed within sixty days of the denial by the Appeals Council. No hearing is held at this level either.

Periodic Review of Claims Where Finding of Disability Has Been Made

Once approved for benefits, a claimant's case will be reviewed periodically to make sure the claimant is still disabled. How often a case is reviewed depends upon the severity of the claimant's condition and the likelihood of improvement, which can range anywhere from six months to as long as seven years. In order to terminate a claimant's disability benefits the burden is on the Social Security Administration to produce evidence that the claimant's condition has improved. Even if a claimant's treating physician has indicated nothing further can be done to help the claimant's medical condition, if the condition has not improved it will be helpful to periodically return to see the doctor to document the physical complaints and the lack of improvement.

After a claimant has been receiving disability benefits for two years he/she is automatically enrolled in Medicare.

Additional information can be obtained on-line from the Social Security Handbook or from the Social Security Administration's Office of Disability Homepage.

The Law Offices of Ron Johnson handle Social Security Disability claims in Texas, and we'd be glad to review your claim. Please contact us by email or give us a call by telephone.