

# THE BASICS OF SOCIAL SECURITY DISABILITY BENEFITS

**What you need to know to apply for, appeal and keep your  
benefits**

## **The Arc Webinar Series**

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# OASDI

## Old Age, Survivors, Disability Insurance

- Eligibility criteria for each category
- Based on work history
- Disabled person must have sufficient quarters of coverage
- Example: For a person over 30 years of age, they must accumulate 20 quarters of coverage over the prior 40 quarters of work or the equivalent of 5 out of the past 10 years
- Current quarter of coverage in 2020 is \$1,360
- Recipient is eligible for Medicare 24 months after eligibility for payment

# Supplemental Security Income (SSI)

- Needs-based program, based on income and living situation; not an insurance program
  - Federal program with a state supplement, which varies state-to-state
    - New Jersey's supplement: \$31.25
  - Categories
    - Aged person – 65 years or older
    - Blind
    - Disabled
- Spouse, children and survivors do not receive benefits
- Medicaid - no waiting period

# Definition of Disability for Adults

“The inability to engage in any substantial gainful activity by reason of any medically determinable, physical or mental impairment which can be expected to result in death or last for a continuous period of not less than 12 months.”

## 5 Step Sequential Evaluation

1. Is the claimant working? If yes, is it substantial gainful activity?
2. Is the impairment severe?
3. Does the impairment meet or equal a listing?
4. Can the claimant return to his/her past work?
5. Is there any other work that the claimant can do?



**§ 404.1572. What we mean by substantial gainful activity.**

Substantial gainful activity is work activity that is both substantial and gainful:

(a) *Substantial work activity.* Substantial work activity is work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before.

(b) *Gainful work activity.* Gainful work activity is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(c) *Some other activities.* Generally, we do not consider activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

# Listing of Impairments

- Each body system-musculoskeletal, cardiovascular, neurological, mental health-has a list of criteria that needs to be met in order to be found disabled.
- Listings can be found at <https://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>
- *There is a separate listing for adults and children*
- *Claimant can present a combination of impairments that may meet a listed impairment*
- *Claimant may not meet or equal an impairment but they may lack the residual functional capacity to perform substantial gainful activity.*

# EXAMPLE:

- 12.05 Intellectual disorder, satisfied by A or B

## A. Satisfied by 1,2, and 3

1. Significantly subaverage general intellectual functioning evident in your cognitive inability to function at a level required to participate in standardized testing of intellectual functioning; and
2. Significant deficits in adaptive functioning currently manifested by your dependence upon others for personal needs (for example, toileting, eating, dressing or bathing); and
3. The evidence about your current intellectual and adaptive functioning and about the history of your disorder demonstrates or supports the conclusion that the disorder began prior to your attainment of age 22.

OR

B. Satisfied by 1,2, and 3

1. Significantly subaverage general intellectual functioning evidence by a or b:

a. A full scale (or comparable) IQ score of 70 or below on an individually administered standardized test of general intelligence: or

b. A full scale (or comparable) IQ score of 71-75 accompanied by a verbal or performance IQ score (or comparable part score) of 70 or below on an individually administered standardized test of general intelligence; and

## Cont.

2. Significant deficits in adaptive functioning currently manifested by extreme limitation of one, or marked limitation of two, of the following areas of mental functioning:
  - a. Understand, remember or apply information
  - b. Interact with others
  - c. Concentrate, persist, or maintain pace
  - d. Adapt or manage oneself
  
3. The evidence about your current intellectual and adaptive functioning and about the history of your disorder demonstrates or supports the conclusion that the disorder began prior to your attainment of age 22

# Reasons for Denial

- Insufficient quarters of coverage (SSD only)
- Not disabled before onset date (SSD only)
- Not financially eligible due to income or resources (SSI only)
- Not disabled before onset date
- Non-cooperation
- Lack of treatment
- Insufficient medical evidence
- Evidence doesn't address issues of limitations

# Application and Appeals

- Apply in person at a local office, by phone (800) 772-1213 or online at [www.ssa.gov](http://www.ssa.gov)
- For SSI, an application can be started on-line but the claimant must go in to the office for proof of financial eligibility

## Appeals

- Request for Reconsideration
- Request for Hearing
- Request Review by the Appeals Council
- File for a Federal Court Review

60 days to file appeals / Good Cause for Late Filing

10 days on cessation cases to continue benefits

# Information needed

- Updated medical information

Note: Don't just provide information regarding what you think is the main disability, provide all information regarding all impairments including day programs, case management services and home health aides

- Changes in medication
- Changes in daily living activities
- Notify changes in address, living situation, income and resources

# Representation

- Representation is not required at any level but is recommended for a hearing before an Administrative Law Judge
- Representatives can only collect a fee if the claimant wins a favorable decision

Community Health Law Project <http://www.chlp.org>

National Organization of Social Security Claimants' Representatives (NOSSCR) 1-800-431-2804

SSI Project of Legal Services of New Jersey 1-877-576-5774

Your county Lawyers' Referral Service



# Post Eligibility Issues

- Overpayments
- Cessations
  - Due to Work
  - Continuing Disability Review - Medical Improvement
- SSI Suspensions
  - Excess resources, income
  - Hospitalization/ Incarceration

Any change in benefits can be appealed. For non-disability issues, can request formal or informal conference, case review or hearing.

Note: Usually, claimant must appeal in 10 days in order to get continuing or unreduced benefits.

# INCARCERATION AND DISABILITY BENEFITS

## Social Security Disability

“No monthly benefits will be paid to any individual for any month any part of which the individual is confined in a jail, prison, or other penal institution for conviction of a felony”

- Benefits discontinued after the person remains confined in the correctional facility for more than 30 continuous days. The time period starts with the sentencing date which may be different from the conviction date.
- Benefits will be reinstated the month after the month the person is released. They must go in to the Social Security office with official discharge papers. Just showing up is not sufficient proof!

- Benefits will continue for spouses or dependents while the person is incarcerated
- Medicare Part A continues during incarceration. Medicare Part B will only continue if premiums are paid continuously.
- If Medicare Part B is reinstated after release, there will be a penalty on the monthly premium.
- **FLEEING FELON**  
Convicted felons who flee or escape are not entitled to benefits.

# SSI and incarceration

- SSI benefits will terminate after the person has been incarcerated for 30 days
- Benefits will resume as of the day the person is released. Again, they must go to Social Security to provide proof of release.
- Medicaid benefits start and stop with the receipt of cash benefits
- If a person is suspended for 12 months, then benefits are automatically terminated. The person will have to reapply once they are released from jail