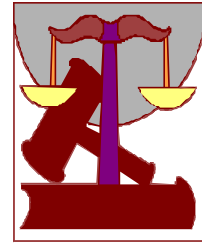


TBI Challenge! (Vol. 5, No. 5, 2001)
Ask the Lawyer:
**Social Security Disability Insurance (SSDI) and
the Supplemental Security Income (SSI)
Programs**
By Anne Parette, Esq.



QUESTION

My husband sustained a brain injury nearly two years ago. He fell headfirst from a ladder and sustained a severe frontal lobe injury. Although he does not appear to be disabled physically, he has cognitive impairments. Since the accident, my husband acts like a completely different person. His personality has changed and he exhibits major behavior problems. He has terrible short-term memory loss and often behaves inappropriately in public. My husband has applied for Social Security benefits three times and has been denied every time. He has worked hard all his life and now it seems the Federal Government has turned its back on him. How can I make the people at Social Security understand that my husband is disabled and cannot work? Also, I'm confused about the difference between "SSI" and "SSDI." Can you explain it to me in simple terms?

Introduction

Unfortunately, your husband is not alone. Navigating through the administrative maze of the Social Security Administration (SSA) can be daunting and frustrating for people with disabilities and their families. The process is even more difficult for people who have cognitive disabilities resulting from a brain injury. For people like your husband, writing a simple letter may be a difficult task. The rules for disability eligibility often are not logical, and certainly are not simple. In my answer, I will explain briefly the differences between the two disability programs administered by the SSA, the rules for disability benefits eligibility and what you should do when the SSA denies your application for disability benefits.

Under the Social Security Disability Insurance (SSDI) and Supplemental Security Insurance (SSI) programs, the word "disability" is not defined the way you or I would define it. It is important to understand how the SSA defines "disability" because it is a very strict definition. The SSA's definition of disability is different from other Federal programs. For example the Worker's Compensation program recognizes a person's "partial" disability, while the SSDI and SSI

programs do not. The SSA's decision about a person's disability is based strictly on the person's **ability to work**. The SSA's decision is a "legal conclusion" based on the SSA regulations and related court decisions. In reaching a decision about disability eligibility, the SSA does not recognize disability findings from other entities, such as other government agencies or insurance companies.

SSI versus SSDI

The SSDI and SSI programs are the largest of the Federal programs that provide assistance to people with disabilities. Generally, the medical requirements for disability eligibility are the same under SSDI and SSI programs, but the way these programs are funded differs. The SSDI program is funded by the Social Security taxes paid by employed individuals. Therefore, the SSDI program is based on a person's **work experience**. The SSI program is funded by general tax revenues and pays benefits to people with disabilities who have limited income and assets, and is based on a person's **financial need**.

Eligibility Under SSDI: Quarters of Coverage

To qualify for SSDI benefits, a person must be found to be "disabled" under the SSA definition of disability and a person must have worked long enough and recently enough under SSA rules. To put it another way, SSDI benefits are based on how much money a person has "paid into the system" by paying taxes. A working person earns what the SSA calls a "**quarter of coverage**" or "**QC**." A QC is the basic unit of social security coverage used in determining a worker's insured status under the SSDI program. To be eligible for SSDI benefits, a person must have earned a certain number of work credits within a recent time period. The number of work credits you need to be eligible for SSDI benefits depends on the age you were when you became disabled and on how recently you earned these credits. For example, younger workers may qualify for SSDI benefits with fewer work credits. The work credit rules are very complicated. The good news is that the SSA keeps track of how many work credits a person has earned so you do not have to worry about the calculations.

Eligibility under SSI: Financial Need

To qualify for SSI benefits, a person must have a low income and not own many assets. People who receive SSI benefits usually also receive food stamps and Medicaid. The amount of SSI money you are eligible to receive can increase every year based on cost of living adjustments.

The SSI benefit amount also varies from state to state. The SSA does not count all assets when considering a person's financial eligibility. For example, the SSA does not count income tax returns or loans made to you that you must repay.

Am I Disabled?

The SSA applies a five-step test to determine if a person is disabled under the SSDI or SSI programs, as follows:

1. Are you working (i.e., conducting "substantial gainful activity")?

If you are working and your earnings average more than \$740/month, you will not be eligible for benefits. If you are working and your monthly earnings do not exceed \$740/month, you may be eligible for benefits, but your case will be more difficult to prove. The SSA calls work "substantial gainful activity" or "SGA." It defines SGA as: "[a]ny significant and productive physical or mental activity that is done or intended for pay or profit." *If you are not engaged in SGA, go to step #2.*

2. Do you have a "severe impairment" or "combination of impairments" that is expected to last for at least 12 months or to result in death?

Your physical or mental condition(s) must be "severe" so that it interferes with basic work-related activities and it also must be expected to last for at least 12 months or to result in death. In the case of brain injury, it often is difficult to prove to the SSA that the road to recovery is a long one—certainly longer than 12 months in most cases. Additionally, it often is difficult to prove that a person has a cognitive disability resulting from a brain injury, especially since brain injury is "hidden." *If your condition meets these requirements, go to step #3.*

3. Is your condition found on the SSA's list of disabling impairments?

The SSA maintains a list of physical and mental impairments covering each of the major body systems called the "medical listings" or "listings." The impairments on this list entitle a person to an automatic finding of disability. If your impairment is not found on the list, you must prove that your condition "meets or equals" a listing. However,

the SSA rarely finds that a person automatically is disabled due to a listed impairment. The good news is that in August 2000, the SSA revised the medical criteria for evaluating brain injury and added Traumatic Brain Injury (TBI) to its list of impairments. The TBI impairment is listed under Section 11, the "Neurological" section. The SSA guidelines for evaluating "impairments caused by cerebral trauma" are contained in Listing 11.18. Listing 11.18 states that cerebral trauma is to be evaluated under sections 11.02, 11.03, 11.04, and 12.02, if applicable. *If your impairment is on the list or if it "meets or equals a listing", go to step #4.*

4. Can you do the work you did previously?

You must show that your condition interferes with your ability to do the work you did previously (i.e., the work you have performed in previous jobs). If your condition does not interfere with the work you did previously, your claim will be denied. *If you cannot do the work you did previously, go to step #5.*

5. Can you do any other type of work?

If you cannot do the work you did in the past, the SSA examiners will look to see if you can perform any other work "that exists in the national economy." The examiners might determine that, despite your disability, you are able to adjust to other work. This is the step that causes many disability denials. It is important to understand what the SSA means by "other work" and what is "irrelevant" under the SSA rules. For example, the SSA does not care if the work they think you can perform is below your training level, boring, less prestigious, not enjoyable or pays less money than the job you held in the past. A person who was trained as a medical doctor, for example, may be found able to work as a clerk in a mailroom. A construction worker may be found unable to perform heavy lifting, but may be found able to perform a desk job.

The SSA examiners will consider the following factors in determining whether you are able to adjust to different work:

- Your medical condition(s)
- Your age
- Your education
- Your prior job training
- Your daily activities before and after you sustained your disability

- Your attempts to work or do work activities (i.e., doing laundry, caring for young children) since you incurred your disability
- Your ability to perform certain job-related activities such as sitting, standing, stooping, carrying, lifting, pushing/pulling, hand manipulation, memory, judgment, seeing and hearing

After a Denial from the SSA

First, please know that **the majority of people filing for disability benefits will receive a denial of their initial application. You should think of your first denial as the BEGINNING of the disability claim process, not the end.** The biggest mistake people make when they receive a denial is either to give up, or to reapply for benefits instead of *appealing* the denial. Here is what to do.

When you receive a denial letter in the mail from the SSA, you should file your first appeal **immediately**. This first appeal is called a **“Request for Reconsideration.”** You have 60 days to file the Request for Reconsideration from the date you receive the denial letter. You can telephone the SSA and file a Request for Reconsideration or you can file it at your local Social Security office. If you do not file the Request for Reconsideration timely, your claim may be dismissed.

Some cases are approved at the Reconsideration level, but many are denied. When you receive your denial letter, you should file your second appeal **immediately**. This second appeal is called a **“Request for Hearing.”** You have 60 days to file a Request for Hearing from the date you received the denial letter. You can telephone the SSA and file a Request for Hearing or you can file it at your local Social Security office. If you do not file the Request for Hearing timely, your claim may be dismissed. Your hearing will be held in front of an Administrative Law Judge. The hearing is closed and private. Although it is held in courtroom, it is an informal proceeding. Your success at the hearing depends partly on any new or additional evidence you bring to the judge. You have a better chance of getting your disability benefits approved at the hearing level than you do at the “paper” level.

Representation by an Attorney or Advocate

Legally, you do not need to be represented at the hearing level or during any of the earlier stages of the disability claim process. Please know, however, that many disability claims are denied simply due to a

procedural or administrative problem (i.e., for reasons not even related to your disability). Some disability claims become lost due to the huge backlog of cases at the SSA. In many cases, your disability claim may not be complete or your paperwork may be inaccurate, resulting in the ongoing denial of your claim no matter how many times you apply. A qualified attorney or advocate can assist you with these administrative problems, as well as and can help you prepare a clear, concise and complete case for the SSA examiners, highlighting relevant regulations and rulings in your particular case. Remember that the disability application process takes a long time—months, if not years. It is important not to give up, no matter how frustrating the process becomes.

To Contact the SSA or the Social Security Office Nearest You:

By Phone:

The SSA has a toll-free number that operates from 7:00 am to 7:00 pm, Monday through Friday (**1-800-772-1213**). If you have a touch-tone phone, you can access recorded information 24-hours-a-day, including weekends and holidays. The SSA also has a toll-free TTY number that operates from 7:00 am to 7:00 pm, Monday through Friday: (**800-325-0778**).

Online:

You can reach the SSA online at: www.ssa.gov/disability/. On the SSA's disability web site, you can find the local office nearest you, obtain application forms and access the Social Security Handbook.

To find a Social Security Disability Attorney or Advocate:

Most states have a "lawyer referral" number serviced by the state bar association. You may also contact the National Organization of Social Security Claimant Representatives (NOSSCR) at: (800) 431-2804, or online at: www.nosscr.org.