

Social Security Disability

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What do I need to know when applying for Social Security Disability?

The best source of information for Social Security Disability can be found at the Social Security Administration (SSA) website: www.ssa.gov. This site is user-friendly and provides online options for applying for benefits, calculating estimated benefits, and getting answers to commonly asked questions. If the claimant prefers not to apply online, he can call 1-800-772-1213 to apply over the phone, or he can go to the local Social Security office. In any case, it is important that the claimant always be truthful; he should never exaggerate or minimize a disability. And he should always give as much detail as possible, including providers' names, addresses, dates of treatment, tests, medications, and any limitations assigned.

Usually, the older a claimant is, the easier it will be to get approved. For example, if the claimant is over age 55 and cannot do any of the jobs they have done in the past 15 years, they should definitely apply. Similarly, if the claimant is over age 50 and has a severe impairment that keeps them from doing all but the easiest jobs, they also should apply. But a claimant does not have to be completely incapacitated to qualify, even if they are younger than age 50. Nevertheless, being unable to work and being found "disabled" by the SSA are two different things.

The Social Security Administration determines disability in a five-step process:

1. First the SSA asks whether the claimant is earning enough income to count as Substantial Gainful Activity (SGA). If they are, the claimant is not disabled. Once the claimant has been off work or below SGA for five months, they may be eligible for benefits.

2. Next, the SSA asks whether the claimant has a severe impairment that will last 12 months or more, or result in death. Many conditions, or combinations of conditions, will count; but the severity is specifically defined by the Social Security rules and regulations. Questions about severity should be addressed with the claimant's provider, an SSA representative, or an attorney.
3. If the claimant has a severe condition that meets the time requirements above, the SSA will ask whether the condition "meets or equals" the Listing of Impairments definition of "disabling." If the condition does meet or equal the Listing, the inquiry ends and the claimant is considered disabled. But these rules are very specific and it can be difficult to succeed at this step without an expert medical opinion.
4. If the claimant's condition is severe, but does not meet or equal the listing, the SSA will ask whether the claimant can do any of the jobs they has done in the past 15 years. If they can (working 8 hours per day, 5 days per week on a regular and consistent basis), they will not be found disabled.
5. If they cannot do any of their past work, the SSA finally asks whether the claimant can do any other jobs that are substantially available in their community. These last two steps generally involve the opinion of a vocational expert, who will consider the claimant's age, education, experience, and limitations (mental, physical, postural, and environmental) to find what work, if any, the claimant can do.

Once the claimant has applied, they should not forget to appeal any denials. Be careful not miss deadlines. A missed deadline usually means the claimant has to start over with a new application which can result in lost back benefits. So it is important to appeal all denials within 60 days. Prompt appeals can also shorten the time it takes to get approved.

What is Social Security Disability Insurance (SSDI) and how does it differ from Supplemental Security Income (SSI)?

Remember that there are two different Social Security disability programs, both administered by the SSA. While many people often lump these two programs and their respective benefits together, they are very different in coverage and eligibility. The first program, authorized under Title II of the Social Security Act, is Social Security Disability Insurance (SSDI) – it is just that, a federal disability insurance program. The other program is Supplemental Security Income (SSI), authorized under Title XVI of the Act, which provides a low-income supplement for those who meet the income and asset restrictions.

While a claimant can apply for both programs at the same time, the eligibility for each is different. SSDI eligibility requires the claimant to be disabled (as defined by the SSA) and that the disability began when the claimant was insured. In order to be “insured” under the program, a claimant over age 31 must have worked enough (and paid in Social Security or FICA taxes) to have earned 20 qualifying quarters in the past 40 total quarters. In other words, they must have worked at least 5 of the last 10 years before disability. This is why, as a general rule, claimants are only insured for a maximum of five years following the date they stop working due to disability. In 2018, a claimant must earn \$1,320 to earn one qualifying quarter, or \$5,200 to get the maximum of four covered quarters in a year. The rules are different for claimants under the age of 31.

Like SSDI, eligibility for SSI is first dependent upon a determination of disability. Next, the SSA determines whether the claimant has less income and fewer resources than the annual maximum, which can change periodically. For example, in 2018, the federal benefit rate is \$750, so the claimant’s countable income would need to be below this amount to be eligible for SSI, but the SSA does not count the first \$65 of earned income and half of the earnings over \$65, or the first \$20 of unearned income. There are also some other specific exclusions. In addition, in 2018, the asset limit for an individual is \$2,000 and the asset limit for a couple is \$3,000, but certain assets may also be excluded from consideration. The SSA can give specific information about eligibility and computation.

How is SGA determined?

Substantial Gainful Activity (SGA) is defined in the Code of Federal Regulations (CFRs), sections 404.1572 and 416.972, as work that “involves doing significant physical or mental activities” and that, in the case of employees, “is the kind of work usually done for pay” In 2018, the substantial gainful activity (SGA) limit is

\$1,180 for non-blind individuals and \$1,970 for blind individuals. In order to be considered disabled, a claimant's income must be below the appropriate threshold.

For disability benefits, the SSA only counts income the claimant earns; it does not count income unrelated to productivity such as paid time off, vacation pay, or Christmas bonuses. Similarly, if an employer pays the claimant more than an average person doing the same work, the work may be considered to be "subsidized." If work is subsidized, the SSA will subtract the value of the subsidy from the person's gross earnings to find the countable earnings for SGA.

If a claimant is self-employed or receives payment for a business's profits, rather than working, a different test is used. The SSA looks to the individual's activities and their value to their business. For example, a claimant's services may help build up capital assets without any profit evident, or they may reduce losses during temporary down times by not taking a paycheck. On the other hand, a person who is incapable of rendering valuable services may receive a large income solely because of their capital investment and not because of any actual service given to the business. For this reason, the SSA looks more closely at the economic value of the individual's services, rather than the income received.

There are 3 tests to decide whether one's self-employment does or should result in SGA. They are summarized as follows:

Test One: Significant Services and Substantial Income

The individual's work activity is SGA if they render services that are significant to the operation of the business and if they receive a substantial income from the business.

The SSA counts only the amount of income associated with the claimant's own productivity, then deducts impairment-related work expenses and any "unpaid help furnished to the claimant by a spouse, children or others." The rest is the "countable income" for SGA.

Tests Two and Three: Comparability of Work and Worth of Work.

If the first test does not show any SGA for the self-employed claimant, then the SSA will look to the second and third tests. According to these tests, the individual will be engaged in SGA if evidence clearly demonstrates that:

- a. The individual's work activity, in terms of all relevant factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in the same community engaged in the same or similar businesses as their means of livelihood; or
- b. The individual's work activity, although not comparable to that of the unimpaired individuals as indicated above, is, nevertheless, clearly worth more than the amount shown for the particular calendar year in the SGA Earnings Guidelines when considered in terms of its value to the business, or when compared to the salary an owner would pay to an employee for such duties in that business setting.

What happens if the claimant receives income from sources other than work?

When a person is receiving Social Security Disability Insurance (SSDI) benefits, they can also receive income from non-work sources without any impact on their payments. For example, a claimant can receive income from investments, a trust, inheritance, and even a business. But the same is not true with SSI because of the asset and income limits (remember, SSI is a supplement for low income-recipients only).

Can the claimant still work and receive Social Security disability benefits?

Yes, but only if they meet the SGA limits. Once approved for SSDI benefits, a disabled person can continue to work. The substantial gainful activity (SGA) limit for 2018 is \$1,180 (non-blind individuals) and \$1,970 (blind individuals). If the claimant is below the SGA limit, they would still be considered disabled. But there are some caveats.

The SSA encourages volunteering because it can lead to employment, so they do not penalize claimants for doing volunteer work without pay. But be careful about

artificially restricting work. If it is clear that a claimant could work more and is not doing so just because they want to continue collecting disability, the SSA could not only terminate benefits but also pursue repayment of previously paid benefits. Also, in any month that a claimant earns \$780 or more, the claimant will trigger a "trial work period." If the claimant has nine or more such months in a 60-month period (not necessarily consecutive), the SSA can reevaluate and even terminate benefits.

What happens if the claimant is close to retirement age?

An age-eligible claimant may choose to collect early retirement during the time his disability claim is pending. But it is generally a good idea to still try to get approved for disability, as delaying collection of retirement benefits can improve the rate received after age 65. If approved for disability, once the claimant reaches age 65, the SSA will automatically change benefits from disability to retirement.

If the claimant needs an attorney, how is the attorney paid?

While attorney's fees can be paid hourly, almost all claimants prefer a "contingent fee," that is a fee paid only if the claimant wins his appeal. The usual fee is 25% of past due benefits up to \$6,000.00. Although the usual fee will not normally exceed \$6,000.00, appeals beyond the first administrative hearing are not subject to that limit. In any event, attorney fees are never paid out of current monthly benefits. All attorney fees are also subject to the approval of the SSA and the rate is set by federal law.

In addition to the fee, the claimant is always responsible for the expenses incurred in gathering medical records, obtaining medical opinion letters, paying experts for evaluations or testimony, and so forth. These expenses should be outlined and explained in the fee agreement with claimant's counsel.

What benefits can the claimant receive if disability is approved?

In addition to current monthly benefits, determined by the amount paid in during the claimant's working years, the claimant will be eligible for past-due benefits beginning in the sixth month after the claimant became disabled, but not more than a year before the application. The claimant will also be eligible for Medicare benefits beginning in the 25th month after the claimant's disability benefits began. Finally, if the disability benefit is under \$740 per month and the claimant meets other asset

and income limits, the claimant may also qualify for SSI, which could in turn trigger Medicaid eligibility.

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