SOCIAL SECURITY DISABILITY: Get the basics down

Determine the Different types of disability cases -**30 mins**

There are at least five major types of Social Security disability benefits. Disability Insurance Benefits is the most important type of Social Security disability benefits. It goes to individuals who have worked in recent years (five out of the last 10 years in most cases with the required quarters of coverage) who are now disabled. Disabled Widow's and Widower's Benefits are paid to individuals who are at least 50 and become disabled within a certain amount of time after the death of their husband or wife. The late husband or wife must have worked enough under Social Security to be insured. Disabled Adult Child Benefits go to the children of persons who are deceased or who are drawing Social Security disability or retirement benefits. The child must have become disabled before age 22. For Disability Insurance Benefits, Disabled Widow's or Widower's Benefits and Disabled Adult Child benefits, it does not matter whether the disabled individual is rich or poor. Benefits are paid based upon a Social Security earnings record. Supplemental Security Income benefits, however, are paid to individuals who are poor and who are disabled. It does not matter for SSI whether an individual has worked in the past or not. SSI child's disability benefits are benefits paid to children under the age of 18 who are disabled. The way in which disability is determined is a bit different for children as compared to adults.

Grasp Important Definitions of Abbreviations and Acronyms

First we will provide you with a glossary of terms with the associated acronyms (in alphabetical order not order of importance or we would start with S for Scott Smith).

AC- Appeals Council-the branch in Falls Church Virginia where a claimant appeals an unfavorable ALJ decision

ALJ- Administrative Law Judge-the decision maker at the hearing level as to whether you win or lose

AOD- Alleged Onset Date- the date a claimant indicates that they first became unable to work (i.e. I have been unable to work since January 1, 2008)

CE- Consultative Examination- a doctor, physical or psychological, that Social Security may send your claimant to for an independent medical examination

DA&A- Drug Addiction and/or Alcoholism- If your client suffers from this and it is found material to their disability, they will receive no money even if found disabled

DAC- Disabled Adult Child- A child who is alleging disability and filing under parent's Social Security Number

DDS- Disability Determination Service- the state agency component to Social Security that evaluates disability at the initial and reconsideration level; Ohio's is called OBDD (Ohio Branch of Disability Determination)

DIB- Disability Insurance Benefits aka Title II benefits aka SSDI- these are benefits that are paid based on the claimant's work record

DLI- Date Last Insured- the date that your insured status runs out. AKA the date that you have to prove you are disabled by in order to qualify for cash benefits under DIB

DO- District Office- the local Social Security field office

DOB- Date of Birth- I told you we were going basic

EAJA- Equal Access to Justice Act- A means for which an attorney can get fees for work at the Federal level (United States District Court) must show Social Security position was not substantially justified.

EOD- Established Onset of Disability- like the AOD; this is the actual date that a claimant is found disabled. As you will learn AOD does not always equal EOD

HALLEX- Hearings, Appeals and Litigation Law- ODAR's policy manual

ME- Medical Expert- a doctor, physical or psychological, who appears at the hearing, allegedly impartial, to offer an opinion regarding the claimant's medical conditions and/or limitations

MRFC- Mental Residual Functional Capacity- the work related mental limitations which result from the claimant's psychological condition

ODAR- Office of Disability Adjudication and Review (formerly OHA- Office of Hearings and Appeals)- the office where a hearing is held before an ALJ

PIA- Primary Insurance Amount- base benefit rate for a DIB claimant (how much you will get a month if found disabled. I almost forgot about basic.)

POMS- Program Operations Manual System- Social Security Claims Manual

PRW- Past Relevant Work- any work a claimant has performed in the past 15 years. Typically needs to be performed at SGA and for longer than a month or two

RFC- Residual Functional Capacity- the work related physical limitations which result from the claimant's physical problems

SGA- Substantial Gainful Activity- The amount of money a claimant may earn a month (gross amount) and still be eligible for disability benefits

SSA- Social Security Administration- again with nothing is too basic motif

SSI- Supplemental Security Income- aka Title XVI- disability program where claimant can have no work activity or no insured status and still qualify for benefits if certain financial requirements are met

SSR- Social Security Ruling- rulings made by Social Security which cover a variety of topics and have the same effect as law

TWP- Trial Work Period- a nine non-consecutive month period a person can earn over SGA and still qualify for benefits

VE- Vocational Expert- a qualified (or not) vocational rehabilitation expert who appears at the hearing, allegedly impartial, to offer an opinion regarding the claimant's past relevant work and how an RFC and/or MRFC would impact available jobs in the national economy

THE FIVE STEP SEQUENTIAL EVALUATION – 30 mins

Step 1.

Social Security considers your work activity, if any. If you are doing substantial gainful activity, Social Security will find that you are not disabled.

Step 2.

Does the claimant have a severe impairment? A severe impairment is anything physical or mental that causes impairment in function. Under SSR 96-3p, to be considered a "non-severe" impairment, an impairment must be such a slight abnormality that it would have no more than a minimal effect on one's ability to perform basic work activities. If they do not have a severe medically determinable physical or mental impairment that meets the duration requirement (one year) in §

404.1509, or a combination of impairments that is severe and meets the duration requirement, Social Security will find that they are not disabled.

Step 3.

If a claimant has an impairment(s) that meets or equals one of the listings of impairments, Social Security will find that the claimant is disabled.

Step 4.

Can you perform your past relevant work? This is any work done for over a month at SGA levels in the past 15 years. Social Security considers a claimant's residual functional capacity and their past relevant work. If they can still do their past relevant work, they are not disabled.

Step 5.

Is there any other work in significant numbers that can be performed? Social Security considers a claimant's residual functional capacity and age, education, and work experience to see if the claimant can make an adjustment to other work. If they can make an adjustment to other work, they are not disabled. If they cannot make an adjustment to other work, Social Security will find that they are disabled.

Sort through Medical and Vocational Issues (including use of the GRIDS)

At step 5 of the sequential evaluation a claimant's age is a major factor. Claimants under age 50 usually have the most difficult time being found disabled.

For a claimant under age 50, if any job exists in significant numbers that they can perform, they will be found not disabled. Here, it is notable that the Administration will usually find that there are a significant number of jobs for an individual who can alternate between sitting and standing. Usually jobs will be found for an individual who cannot lift over 10 pounds. Jobs will also often be found if the individual's primary problem is that they can only stand or walk for a couple of minutes at a time. For claimant's under age 50, disability is often premised on findings that a claimant will be unproductive (off-task) too often, will need extra breaks during the day, will be absent from work too often, will need to lie down throughout a work-day, will have too many emotional outbursts, or will be unable to use their hands too often during a work-day.

At age 50 it becomes easier for a claimant to be found disabled. At age 50, the Administration will usually look to the Medical Vocational Guidelines (GRID Regulations) to determine whether a claimant with physical problems is disabled. See https://secure.ssa.gov/poms.nsf/lnx/0425025005

Typically, a claimant over age 50 who cannot perform their past relevant work will be found disabled if they are otherwise only able to perform sedentary jobs (jobs that typically do not involve lifting over 10 pounds, and for which employees are not normally on their feet more than two hours per day).

At age 55 it gets even easier for a claimant to be found disabled. At this age, a claimant who cannot perform their past relevant work will usually be found disabled if they are otherwise only able to perform light level jobs (jobs that typically involve being on one's feet most of the day and lifting between 10 and 20 pounds on a regular basis).

For individuals over age 60, with a very limited education and/or no work experience, disability can often be found even if they are capable of performing medium work (being on one's feet most of the day and regularly lifting between 25 and 50 pounds). Disability is not available for individuals who have reached full retirement age.

The above noted rules for claimants over age 50 might be found inapplicable if it is determined that a claimant has developed special work skills at their past work that transfer to less physically demanding jobs.

Tap into all the resources available to you -30 mins

Evidence is the key to any claim to disability. After all, disability generally implies that a claimant has a medical condition that prevents them from working. Without evidentiary proof of medical problems, a claim for disability will fail.

The following are common types of evidence that the Social Security Administration will analyze when determining whether or not a claimant is disabled.

Medical Treatment Records

Treatment records are records of office visits that a claimant's own medical sources (doctors, therapists, psychologists) keep in their ordinary course of business. These records often contain physical examinations and mental status examination. Also, these records commonly contain a claimant's report of their medical symptoms.

When evaluating whether a claimant's testimony is believable, a major factor will be how consistent that testimony is with the symptoms that have been reported to various treating sources. The more often a claimant complains of certain problems to their doctor, the more likely the claimant is to be believed by the Judge when he or she testifies about these problems in court. Accordingly, it is highly advisable for claimants to open up to their doctors and explain all of their symptoms every time they get the chance. This is of utmost importance in cases involving mental health disorders. Unfortunately, it is often those very same disorders that prevent a claimant from explaining his or her symptoms adequately to their doctor/therapist.

Objective Medical Evidence

Objective evidence is evidence that is not solely based on a claimant's statements. Instead, objective evidence is typically medical testing. Some examples of objective evidence include x-rays, MRIs, nerve conduction studies, CT scans, arterial studies, and echocardiograms.

The Social Security Administration places great weight on objective evidence. The reason for this is likely because these objective studies do not lie or exaggerate. When serious problems are noted on objective testing, claimants are much more likely to be believed in court when they testify about corresponding medical symptoms. When objective evidence is lacking (ex. only mild findings or no testing performed), it will usually be quite difficult for a claimant to prove that the given condition is disabling.

Treating Source Opinions

A treating source opinion is a statement from a treating doctor which assesses how a claimant's medical condition limits him or her. A common example would be an opinion from an orthopedist explaining how much a claimant can lift, how long he or she can stand, or how long he or she can sit. Another common example would come from a psychiatrist where this source explains how concentration, social functioning, or task completion would be affected by a claimant's mental health problems.

Typically treating sources only render these assessments when they are asked to do so. In most cases, a claimant will have to ask their doctor to complete one of these assessments. Attorneys usually have forms that they have created to assist a treating source in answering the most relevant questions pertaining to an individual's alleged disability.

According to Social Security Regulations, a treating source assessment is one of the most important forms of evidence. Treating source assessments cannot be rejected by the Administration unless the Administration provides a thorough and valid explanation of the reasons for such rejection . See SSR 96-2p.

Letters from friends and family

Because hearings are usually only scheduled for about one hour, it is rare (and somewhat discouraged) for individuals besides those mentioned above to testify in court. However, that does not mean that family and friends are unable to assist in a claim for disability.

Letters from individuals who know the claimant well and see the claimant regularly can be helpful in proving disability. The best letters focus on observations of a claimant's symptoms. Letters that focus on the names of different diagnoses or on what the claimant has told others are usually not so helpful.

Letters from employers are also helpful in proving disability. The best letters usually come from employers where the claimant worked at the time they became disabled, or where the claimant attempted to work after their disability began. These letters are helpful when they specifically describe how the employer noticed a claimant struggling to perform their job at or around the time that the alleged disability began.

We also look for ways to help a claimant obtain medical treatment.. Social Security judges look for consistent ongoing medical treatment for the problems that a person claims to be disabling. So when my client appears and has no medical treatment the first question I ask is why? Their answer more times than not is that they cannot afford medical treatment. It is about that time that I usually refer them to The Department of Job and Family Services and give them a free clinic last as well as assorted literature for medication. A lot of people have difficulty getting a medical card from the Department of Job and Family Services and we recognize that that is a problem. However, we like to be able to say that we have tried everything when we get to a hearing.

The free clinic list is also not the ideal way to go because it takes a long time to set up an initial appointment and the care is not as good as one would hope. However, any consistent treatment, even from a free clinic, is at least something to support the allegations made by the claimant. The best free clinics are usually those set up to deal with psychological problems.

When lack of treatment becomes an issue, we easily set a task up in our office to check with the claimant within 90 days to see whether not they have made any progress with treatment. If they have not made any appointments for any doctors for any type of treatment in 90 days, then we give them 90 additional days with a stern warning that if they are not receiving treatment by that time then we will likely withdraw as representative in the case. Sometimes that seems harsh, however, we must weigh the amount of time we spend on a case, the dedication of our claimant to get treatment, and the potential of success in the hearing in order to determine whether or not a case is worth going forward.

Medical and other essential evidence you must gather

Difference in Evaluation Mental vs. Physical Cases – 30 mins

The main difference is that psychological impairments tend to be more subjective in nature. Good physical cases usually have objective testing, such as X-rays, MRI's, or CT scans that show some abnormality i.e. herniated disc, arthritis, diabetes, etc. With psychological impairments we would like to have some sort of MRFC to provide evidence of specific limitations that would support disability.

When the claimant is alleging disability due to mainly physical problems the first thing I look for is objective findings which will support the complaints the claimant is making. Whether it is an x-ray, MRI, CT scan, or EMG, I look for anything that shows definitive abnormalities which give a basis for the claimant's complaints of pain and limitation. If the objective findings are present I look to see whether they are to the level of severity that would explain the claimant's complaints of pain. For instance, if the claimant is complaining of severe low back pain, with radicular symptoms down their legs, and they have an MRI which shows mild degenerative disc disease with no other findings, then I begin to question whether the claimant's complaints are out of proportion to the objective evidence. That is a problem that I will have to address at the hearing. However, if the claimant is complaining of severe low back pain with radicular symptoms down their legs and their MRI shows disc herniations with cord compression and severe stenosis then I know that their pain complaints are well founded. The easiest cases are the ones where the objective findings support the claimant's complaints of pain. The harder cases are obviously ones that don't. It is in those cases that I look to other things to support my arguments that the claimant is disabled despite a lack of objective findings. It is those situations for which I will primarily rely on the treatment notes over time from a consistent medical provider. I tie

a couple of those medical records with completed RFC form that supports a finding of disabled.

The treatment notes are often important if they address physical examinations and/or neurological deficits. Findings such as decreased sensation, reflex abnormality, positive straight leg raising, muscle weakness, atrophy, and other abnormalities are good evidence in the absence of MRI or X-ray findings. They are the icing on the cake when coupled with severe problems documented by this sort of objective testing. The good arguments often come from pointing to a record that shows multiple instances of neurological deficits that have been documented over time on a consistent basis. Consistent treatment and consistent complaints made by a claimant to a doctor along with a long-standing treatment relationship often supports the contention that a claimant's condition is disabling.

When the case involves psychological problems, objective findings are often unavailable due to the subjective nature of psychological complaints. I try to look for any testing that would be objective in nature such as MMPI test, IQ tests, Nelson-Denny reading test, etc. In most cases, the most important evidence from a psychological perspective would be descriptive treatment notes that document a long-term relationship between claimant and therapist. It is the absence of treatment that makes proving these cases difficult. Any long-term treatment with consistent diagnoses, consistent prescribed medication, and consistent abstinence from substance abuse all help immensely in proving the claimant is truly disabled due to their psychological condition. I look for the records to be detailed because it is one thing to say that the person is depressed and anxious and another to describe the hopelessness and helplessness that the claimant is going through on a day-to-day basis. This helps lend substance to otherwise generic complaints. In my purely psychological cases I find that GAF scores of 50 and lower have provided me with my best chance of winning. If a case comes before me with GAF scores consistently higher than 50 I make it a point to make sure that there is an MRFC form completed by treating physician in the file. It is my hope that the judge will understand that GAF scores are subjective and a snap shot and rely on the work-related impairments set forth by the physician instead.

In certain cases where I feel my client's IQ scores would fall in the mild mentally retarded range I will send them out for IQ testing myself and front the cost. I know that it may not seem logical to pay for testing for which I do not know what the results will be, but more times than not my suspicions will be confirmed and the IQ range will fall within the deficient level. This opens the door for a new argument at a hearing. I will also make attempts to obtain school records for my claimant when I believe that their

IQ is deficient. You would be surprised of the wealth of information that may come from school records even when your client has some learning disability which may not meet the levels satisfactory to show that they meet 12.05C. These records often show other deficiencies which may eliminate categories of work that would help in a grid finding of disabled.

When a client has both physical and psychological problems, I look to combine the two previous sections and get as much evidence as possible to support both physical and psychological disabilities. Never in my cases do I claim one disability and not the other. I claim everything that could possibly hinder any and all work performance under a simple theory; the claimant does not get to choose what problems they want to suffer from on any given day. For example, the claimant doesn't get to say "today would like to have back pain and tomorrow I'll suffer from depression". Life doesn't work that way and some days the pain may be severe and other days the depression may be severe. The claimant doesn't get to separate the conditions, therefore I will not at a hearing. I emphasize to my clients the importance of claiming everything. Telling the doctor everything that's going on with them, no matter how minor is very important. You never know what will be the evidence or the impairment that tips the scales in favor of your client.

In some of these cases it is not essential for me to have everything such as an RFC form regarding physical impairments and a MRFC form regarding psychological impairments. As long as one form supports a finding of disability that is usually sufficient. Don't get me wrong, I would love to have both but if I can only get one and it says what I want it to say I'm usually happy. As to developing a winning theory with these types of cases I usually push for two goals. First, I argue that the combination of a person's impairments is enough to equal a listed impairment. Second, I argue that the combination of impairments would render the claimant unable to complete competitive work on an ongoing sustained basis. Out of all the cases that I have won, these arguments have been consistently the most successful. When you think of it, they are the easiest arguments to make as well. You don't have to prove specific things such the lack of ability to lift 10 pounds or to be on ones feet two hours a day. All you have to prove is that the totality of all their problems, when lumped together with unpredictable symptoms that may all be exacerbated on a certain day, would keep them from working. You would be surprised how often and how easy it is for a judge or a medical expert to accept those types of arguments.

Supporting Documentation – 30 mins

We have found it appropriate to request medical records from the providers once every 6 to 8 months. We have found that any sooner creates ill will between the doctor's offices and our offices. We are specific in what we are asking for and the time frames which we want the records. We have found that specificity is appreciated by the doctor's offices and usually results in faster processing times. We have also offered to pick the records up ourselves if it will help the doctor's offices process the records faster. We have made arrangements for medical records to be sent through e-mail or to be faxed to our office or in any manner for which the doctor's office desires. It is the doctor's office that controls how fast we get our records so we will do anything in our power to make their job easier.

With school records we have found that it is easier to request them when school is in session. We also like to find out where the records are located before the request is sent out. All school districts are different. Some school districts keep the records in a centralized location others keep the records at the school that the student is attending. A simple phone call before the request is made will often eliminate the need for repeated requests to be issued, and will also prevent unnecessary confusion that could be experienced along the way.

We try to request records as soon as we know about a provider and to we try to submit them to Social Security in a prompt fashion. We have found that no judge likes multiple records submitted right before a hearing. When an occasion arises where we get records right before a hearing, we will typically give a courtesy call to the judge's unit and ask them how they would like the records submitted. Now with the invention of electronic files all records must be submitted electronically. But still, when staff knows that a bulk of records are coming in we still take the opportunity to give the judge a heads up. We have found that the judge is much more likely to be appreciative of our efforts, not continue the hearing, and deal with everybody on the day of the hearing in a pleasant and professional manner. By requesting records every 6 to 8 months we avoid getting large amounts of records to submit at one time. There are some exceptions to this namely the Veterans Administration and Metro Health which seem to arrive in voluminous records for each patient. As I said before, each is unique and at times must be dealt with individually, but overall these tips should help the bulk of your medical records problems.

We always try to obtain an RFC or MRFC from a treating source. We have certain specialized forms which have been tailored to specific conditions like MS, post cancer, CFS etc.

Obtain necessary reports and interrogatories

Evaluation of the work history and earnings record gives a practitioner the necessary background of the claimant in order to present to the judge evidence and arguments which will lead you to a successful disposition of your case. The work history is important so that everyone has an accurate idea of what past relevant work the claimant has performed. Accurate would be the key word when describing work history. Most claimants will have several jobs throughout their life where their job title does not always match what their job duties entailed. They have a sense of pride and want others to believe that they have accomplished something with their work career which may not necessarily be reflective of what their actual responsibilities were. In all of my cases I take a look at the detailed earnings query that comes with the file and go through that with my claimant before the hearing. I will ask them what their job title was and then what their job duties were to see how both matchup. So often a person who describes their past work as a manager will in reality only have performed the work of cashier or stocker. Two completely different jobs with different skills. I ask them to describe how long they were on their feet, how much they had to lift, any supervisory responsibilities, or any other fact that may describe the job accurately. The last thing any representative wants is to be at the hearing have the claimant describe their job and have it result in past relevant work that is not really what the claimant did. It can mean the creation of transferable skills which the claimant does not possess and will often result in a step five denial. This is why preparation before a hearing is so important. I use a prehearing conference to educate the claimant regarding issues such as accurate description of past relevant work in order to elicit testimony that will help them as opposed to hurt them. It is only through accurate descriptions of past relevant work and a thorough examination of their work history that you can lay the groundwork for successful arguments at step four and step five.

Evaluation of the earnings record is equally important. The goal is to establish what is and is not past relevant work. The earnings record will also clue you in to any earnings after an alleged onset date to allow you to make the proper argument as to whether it was an unsuccessful work attempt, a trial work period, vacation pay, sick pay, or long/short-term disability. You do not want to get bogged down spending a great deal

of time at the hearing arguing about work after onset date or what is past relevant work. It detracts from the real issues in a case and creates problems that could easily have been handled when one takes the time to analyze them before a hearing.

Your ultimate goal is to win your case. What has been presented here are tools which will help you gain information that you need to accurately establish the facts in your case so that what is presented before the judge describes the claimant completely. Each case is different and at times you will have issues that you may not be able to explain but when you know that ahead of time it saves you embarrassment that you may experience a hearing. Not all rules apply equally even those we have discussed today. The important thing is to be open-minded and allow yourself to adapt to anything which may occur while representing your claimant.

Analyze Social Security file documentation

This kind of bleeds into the above topics but I make sure to double check all of the documentation in a file to be sure that the information is accurate. I also look for comments made by Social Security of DDS employees that may support claimant's claims. Such as observations that the claimant had problems answering questions or that they seemed to be in a lot of pain and had to change positions throughout the interview.

How to file a claim

A claimant can file a claim with Social Security either online or in person. The online filing is one of the simplest ways to file a person's claim. It eliminates them going to a local office and waiting for a Social Security Employee. It also is way more convenient. We complete initial applications for our clients on a regular basis and have trained our staff to do so. We have found that this allows us to best control information so that it is accurate from the beginning.

Prepare clients to effectively testify

I always have a prehearing conference with my client before a hearing. I like them to meet with them so they know who is going to be handling their hearing. I will go over the procedures and players in the hearing so the claimant is comfortable with who will be there and what will be covered. It will also go through the medical record so the claimant knows what the doctors have reported, both good and bad. I find this especially helpful when I have some bad facts in the case so the claimant understands where some of the harmful evidence lies. I will even read them quotes from the record so they can see where their statements might conflict with the record.

I also discuss the claimant's work history with them so we clarify what the past relevant work actually is so we don't get tagged with skills that the claimant didn't really develop. I also go over the work history to help prevent my claimant from making claims that they would love to work and how much they would like to work when their work record does not really support these claims.

Tips for establishing the claim

There are a combination of different things I do to help establish the claim. The first is medical documentation . I want to make sure that we have all of the medical records from all possible medical sources. I also want to try to get medical source statements from all treating doctors to help establish the claim. I also like to prep the claimant so they are aware of my theory of the case and what my argument is going to be so we are all on the same page at the time of the hearing.

This all goes hand in hand with the pre-hearing brief to help point out the evidence that I think is important to establish the arguments for my claim.

Avoid mistakes with ready-to-use forms and letters

The only mistakes with ready to use forms are that more and more the ALJ is rejecting these form as simple "checklist" type forms that aren't supported by the treatment notes. I also am cautious with any type of medical source statement where the limitations are so extreme that they can't be supported by the record.

Questions and answers – 15 mins