

Common Client Questions



The purpose of our Common Qs Report is to help novice disability advocates to better understand the Social Security disability process from the standpoint of the disability applicant. This information provides insights into the Social Security program and is useful in creating customer oriented brochures and other marketing materials.

Q:_ What is the definition of disability used by Social Security?

Under the Social Security Act, "disability" means "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 has lasted or can be expected to last for a continuous period of not less than 12 months."

Q:_ How many different types of Social Security disability benefits are there?

There are at least five major types of Social Security disability benefits. Disability Insurance Benefits (SSDI) 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) and 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 (SSI) 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 a variety of SSI 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.

Q:_ How do I apply for Social Security disability benefits?

The best, surest way to file a Social Security disability claim is to go to the nearest Social Security office in person and wait (often for a few hours) to see someone to file the claim in person. Alternatively, a person may contact Social Security by telephone and arrange for a telephone interview to file the claim._ If you have a representative, he or she can also be on the phone when you apply._ It is best to review your case with a representative before you apply._ This will allow the representative time to create a strategic approach to your case.

Q:_ I am disabled, but I have plenty of money in the bank. Do I have to wait until this money is gone before I apply for Social Security disability benefits?

No. If you have worked in recent years or if you are applying for Disabled Widow's or Widower's benefits or Disabled Adult Child benefits, it does not matter how much money you have in the bank. There is no reason to wait to file the claim.

Q: _ I used to work but lately I have been staying home taking care of the kids. I have now become sick. Can I get Social Security disability benefits?

Possibly. If you have worked five out of the 10 years under Social Security before becoming disabled, you will have enough earnings in to potentially qualify for Social Security disability benefits. For individuals 31 or less, the requirements are a little different, since such individuals have not had such a long time to work. Unless a person has been staying home and taking care of their children for quite a long time, however, it is very possible that they will qualify for Social Security disability benefits based upon their own earnings. Also a homemaker, if poor enough, can qualify for Supplemental Security Income (SSI) whether she has worked in the past or not.

Q: _ How long do I have to wait after becoming disabled before I can file for Social Security disability benefits?

Not even one day. You can file for Social Security disability benefits on the very same day that you become disabled. Many individuals make the mistake of waiting months and even years after becoming disabled before filing a Social Security disability claim. There is no reason to file a Social Security disability claim if one has only a minor illness or one that is unlikely to last a year or more. However, an individual who suffers serious illness or injury and expects to be out of work for a year or more should not delay in filing a claim for Social Security disability benefits.

Q: _ I am still on sick leave from my employer. Can I file for Social Security disability now or do I have to wait until the sick leave is exhausted?

No, you do not have to wait until the sick leave is exhausted. You should file for Social Security disability benefits now, if you believe that you will be out of work for a year or more.

Q: _ I got hurt on the job. I am drawing worker's compensation benefits. Can I file a claim for Social Security disability benefits now or should I wait until the worker's compensation ends?

You do not have to wait until the worker's compensation ends and you should not wait that long. An individual can file a claim for Social Security disability benefits while receiving worker's compensation benefits. It is best to file the Social Security disability claim as soon as possible because otherwise there may be a gap between the time the worker's compensation ends and the Social Security disability benefits begin.

Q: _ Can I get both worker's compensation and Social Security disability benefits?

Yes. There is an offset, which reduces Social Security disability benefits because of worker's compensation benefits paid, but in virtually all cases, there are still some Social Security disability benefits to be paid. In a few states the offset works the other way - - worker's compensation benefits are reduced because of Social Security disability benefits.

Q: _ How can I tell if I will be found disabled by Social Security?

Unless your disability is catastrophic (such as terminal cancer, a heart condition so bad that you are on a heart transplant waiting list, total paralysis of both legs, etc.), there is no easy way for you to tell whether you will be found disabled by Social Security. In the end, the

decision of whether or not to apply for Social Security disability benefits should not be based upon whether or not the person feels that Social Security will find them disabled.

Attorneys who specialize in Social Security and professional Disability Advocates familiar with Social Security disability can make predictions about who will win and who will lose, but even they can seldom be sure. An individual should make the decision about whether or not to file for Social Security disability based upon their own belief about their condition. If the individual feels that he or she is disabled and is not going to be able to return to work in the near future, the individual should file for Social Security disability benefits. If denied, the individual should consult with an attorney familiar with Social Security disability to get an opinion as to the chances of success on appeal.

Q:_ Can you receive Social Security disability benefits for any serious impairment?__

In almost every case, no matter what the disease is, the answer is the same - "Maybe_". An affirmative disability decision depends upon how badly you are affected by the disease. One example might be cancer. The word "cancer" is scary to anyone, but there are many cancers that can be treated and cured very quickly, with little or no lasting effect. On the other hand, of course, there are cancers which cause great suffering and ultimately death. The question in each individual case is "How sick is this particular individual with cancer and how long is this person going to remain sick?"

Skin diseases are another example._ The vast majority of skin diseases, while annoying, would not be considered to be disabling. On the other hand, there are some uncommon and severe skin problems that are clearly disabling. In extreme cases, psoriasis, which is not rare, may be disabling. Thus, almost without exception, the mere fact that an individual has a disease with a certain name does not guarantee that the individual either will or will not be found disabled. It all depends upon how sick the person is.

Q:_ Do you have to be permanently disabled to get Social Security disability benefits?

No. You have to have been disabled for at least a year or be expected to be disabled for at least a year or have a condition that can be expected to result in death within a year.

Q:_ I have several health problems, but no one of them disables me. It is the combination that disables me. Can I get Social Security disability benefits?

Social Security is supposed to consider the combination of impairments that an individual suffers in determining disability. Many, perhaps most claimants for Social Security disability benefits have more than one health problem and the combined effects of all of the health problems must be considered.

Q:_ I got hurt in an automobile accident. I am disabled now, but I expect that I will be able to return to work after I recover. Should I file for Social Security disability benefits?

If you expect to be out of work for a year or more on account of illness or injury, you should file for Social Security disability benefits.

Q:_ How does Social Security determine if I am disabled?

Social Security is supposed to gather your medical records and carefully consider all of your health problems, as well as your age, education, and work experience. In general, Social Security is supposed to decide whether you are able to do your past work. If Social Security decides that you are unable to do your past work, they are supposed to consider whether there is any other work which you can do considering your health problems and your age,

education, and work experience.

Q:_ Who decides if I am disabled?

After an individual files a Social Security disability claim, the case is sent to a disability examiner at the Disability Determination agency in your state. The disability examiner_ working with a doctor, makes the initial decision on the claim. If the claim is denied and the individual requests reconsideration, the case is then sent to another disability examiner at the Disability Determination agency, where it goes through much the same process. If a claim is denied at reconsideration, the claimant may then request a hearing. At this point, the case is sent to an Administrative Law Judge who works for Social Security. The Administrative Law Judge makes an independent decision upon the claim. This is the only level at which the claimant and the decision maker get to see each other.

Q:_ Why does Social Security consider my age in determining whether I am disabled?

Social Security has to consider age, because that is what the Social Security Act requires. As people get older, they become less adaptable, less able to switch to different jobs to cope with health problems. A severe leg injury that might cause a 30y/o to switch to a job in which he or she can sit down most of the time, might completely disable a 60y/o with the same condition. A 60 y/o is less capable of making an adjustment to a different type of work.

Q:_ Is there a list of illnesses that Social Security considers disabling?

Not really. Because most types of illness can vary from minor to severe, there is no one simple list of illnesses that Social Security considers to be disabling._ However, if an illness has reached a very severe level with certain medical hallmarks, Social Security will award benefits on the basis of medical considerations alone.

Q:_ What can I do to improve my chances of winning my Social Security disability claim?

Be honest and complete in giving information to Social Security or your representative about what is disabling you. Many claimants, for instance, fail to mention their psychiatric problems to Social Security because they are embarrassed about them. In almost all cases, individuals who were slow learners in school fail to mention this fact to Social Security, even though it can have a good deal to do with whether or not the Social Security disability claim is approved.

Beyond being honest and complete with Social Security, the most important thing that you can do is hire an attorney or non-attorney representative who specializes in Social Security. It is also important to appeal because most claims are denied at the initial level, but may be approved at higher levels of review.

It is important to hire an experienced person to represent you because most people do not understand the way Social Security works. This includes many attorneys who claim expertise in this field. Statistically, claimants who employ an a professional representative to represent them are much more likely to win than those who go through the process alone.

Q:_ If I am approved for Social Security disability benefits, how much will I get?

For disability insurance benefits, it all depends upon how much you have worked and earned in the past. For disabled widow's or widower's benefits, it depends upon how much the late husband or wife worked and earned. For disabled adult child benefits, it all depends upon how much the parent worked and earned. For all types of SSI benefits, there is a base amount that an individual with no other income receives. Other income that an individual has

reduces the amount of SSI that an individual can receive.

Q:_ How far back will they pay benefits if I am found disabled?

For Disability Insurance Benefits and for Disabled Widow's and Widower's Benefits, the benefits cannot begin until five months have passed after the person becomes disabled. In addition, benefits cannot be paid more than one year prior to the date of the claim. For a Disabled Adult Child, there is no five-month waiting period before benefits begin, but benefits cannot be paid more than six months prior to the date of the claim. SSI benefits cannot be paid prior to the start of the month following the date of the claim.

Q:_ What do I do if Social Security denies my claim for Social Security disability benefits?

First, do not be surprised. Only about 20% or so of Social Security disability claims are approved at the initial level. If you are denied at the initial level, unless you have already returned to work or expect to return to work in the near future, you should appeal. That is, file a request for reconsideration. You should also consider employing a professional representative to represent you.

Q:_ Why does Social Security turn down so many claims for disability benefits?

There is no simple answer to this question. One reason is that there is no simple way to determine whether an individual is disabled. Most people who are disabled suffer from pain. There is no way of determining whether or not an individual is really in pain, much less how much pain they are in._ A second reason is that Social Security over the years has been more concerned with making sure that everyone who is receiving Social Security disability benefits is "truly" disabled. An underlying reason is that Congress has always believed that, given a chance, many people will "fake" disability in order to get benefits.

Q:_ I only want to get back the money I put in Social Security. Why do they make it so hard for me to get my own money back?

Actually, when you file a Social Security disability claim, you are not trying to just get "your own money" back. The money that an individual may have paid into Social Security over the years would not last very long if that was all that an individual could draw from Social Security.

Q:_ What is "reconsideration"?

When a claim for Social Security disability benefits is denied at the initial level, the claimant may then request "reconsideration" of that decision case is then sent to a different disability examiner for a new decision. Unfortunately, about 80% of the time the reconsideration decision is the same as the initial decision.

Q:_ Who makes the reconsideration determination?

A disability examiner at the Disability Determination Section makes the reconsideration determination._ Most of the time, the claimant does not see the disability examiner or even know his or her name.

Q:_ What are my chances of winning at reconsideration?

Statistically, about 20 -30% of the time a claimant wins at reconsideration. This win rate varies greatly from state to state.

Q:_ Do I have to go through reconsideration?

If you want to appeal a denial of Social Security disability benefits, you have to go through reconsideration. There is no way to avoid it.

Q:_ How long does it take to get a hearing on a Social Security disability claim?
There is much variation around the country. In a few areas of the country the wait is only three months. In other areas of the country the wait is more than a year.

Q:_ What is the Social Security hearing like?
The hearings are fairly informal. The only people likely to be there are the judge, a secretary operating a tape recorder, the claimant, the claimant's representative, and anyone else the claimant has brought with him or her. In some cases, the Administrative Law Judge has a medical doctor or vocational expert present to testify at the hearing. There is no jury or spectators at the hearing. There is no attorney at the hearing representing Social Security trying to get the judge to deny the disability claim.

Q:_ What are my chances of winning at a hearing?
Statistically, over half of the claimants who have a Social Security disability hearing win.

Q:_ If the Administrative Law Judge denies my claim, can I appeal?
Yes. You can appeal to the Appeals Council that is still within Social Security. At this stage, you may want to hire an attorney.

Q:_ What is the Appeals Council?
The Appeals Council exists to review Administrative Law Judge decisions. The Appeals Council is located in Falls Church, Virginia, and neither the claimant nor the representative sees the people at the Appeals Council who are working on the case.

Q:_ Can I appeal a case beyond Social Security to the Federal Courts?
Yes. After being denied by the Appeals Council, it is possible for a claimant to file a civil action in the United States District Court, requesting review of Social Security's decision. A Social Security disability claim can go all the way to the Supreme Court. Perhaps once every year or two, the United States Supreme Court actually hears an appeal about a Social Security disability case. A disability advocate is not qualified to represent a case at this level. An attorney would obviously be required to appeal at this level. The chances of winning at this level are slim.

Q:_ If I get on Social Security disability benefits and begin to feel better and want to return to work, can I return to work?
Yes, you can return to work. Social Security wants individuals drawing disability benefits to return to work and gives them every encouragement to do so. For persons receiving Disability Insurance Benefits, Disabled Widow's and Widower's Benefits, and Disabled Adult Child Benefits, full benefits may continue for a year after an individual returns to work. Even thereafter, an individual who has to stop work in the following three years can get back on Social Security disability benefits immediately without having to file a new claim. In SSI cases, things work a differently, but there is still a strong encouragement to return to work.

Q:_ Do I really have to hire a lawyer to represent me in my Social Security disability claim?
No. You can go through all of the levels of review on your own if you wish, or you can hire a

professional disability advocate. Statistically claimants who are represented by a disability advocate win a good deal more often than those who are not represented.

Q:_ How do attorneys and non-attorney disability representatives get paid?

In almost all cases, the attorneys and non-attorneys both receive one-quarter of the back benefits if the claimant wins and no fee if the claimant loses.

Q:_ Is there an advantage to hiring a disability advocate?

Yes._ Disability advocates use techniques and tools not available to most attorneys._ This allows advocates to complete cases faster and with the same high level of wins as that seen by attorneys.

Q:_ Can alcoholics and drug addicts really get Social Security disability benefits?

No. There never were all that many people getting Social Security disability benefits on account of alcoholism or drug addiction, but Congress has now prohibited Social Security from paying disability benefits on the basis of alcoholism or drug addiction._ However, alcoholics and drug addicts have heart attacks, get cancer or get sick in other ways just like everyone else._ Alcoholics and drug addicts who become disabled apart from their alcoholism or drug addiction can become eligible for Social Security disability benefits.

Q:_ I know someone who is on Social Security disability and he does not look a bit disabled. Why do they put all of these freeloaders on benefits?

When it comes to disability, looks can be very deceiving. There are many people who look quite healthy but who are quite disabled by anyone's standard. For instance, many individuals who suffer from very severe psychiatric illness are physically healthy and able to do things such as mow the lawn.

Q:_ I am disabled, but I have never worked at public work. Can I get Social Security disability benefits?

If you are poor enough, you can qualify for Supplemental Security Income (SSI) if you are disabled, even if you have never worked in the past. It is also possible to qualify for Disabled Adult Child Benefits on the account of a parent if you became disabled before age 22 or for disabled widows or widower's benefits on the account of a late husband or wife.

Q:_ I am a widow. I have not worked in public work in many years. I am disabled. Can I get Social Security disability benefits?

If you are over 50 and became disabled within seven years after your husband or wife died or within seven years after you last drew mother's or father's benefits from Social Security, you can get Disabled Widow's or Widower's Benefits. Perhaps more important, if you are poor, you can draw Supplemental Security Income benefits no matter what age you are or when you became disabled.

Q:_ I have a daughter who has been disabled by cerebral palsy since birth and has never been able to work. Can she get disability benefits from Social Security?

Possibly. If the child is under 18 and you are poor enough, the child may be able to qualify for SSI child's disability benefits. If the child is over 18, she may be able to qualify for SSI disability benefits without regard to the income of her parents. If her father or mother is drawing Social Security benefits of some type or is deceased, the child may be eligible for

disabled adult child benefits.

Q:_ I am already on Social Security disability benefits, but I am worried that my benefits will be stopped in the future. What are the chances of this happening?

Social Security is not supposed to cut off disability benefits for an individual unless his or her medical condition has improved. When Social Security reviews a case of someone already on Social Security disability benefits, they continue benefits in the vast majority of cases. In recent years, Social Security has been doing few reviews to determine whether or not individuals already on Social Security disability benefits are still disabled. This is changing and Social Security should be doing far more reviews in the next few years. However, the vast majority of individuals who are reviewed will see their Social Security disability benefits continued.

Q:_ If Social Security tries to cut off my disability benefits, what can I do?

You should appeal immediately. If you appeal within 10 days after being notified that your disability benefits are being ceased, you can ask that your disability benefits continue while you appeal the decision cutting off your benefits. You may also want to talk with a representative for advice, but you should file the appeal immediately.

Q:_ My doctor says I am disabled so why is Social Security denying my Social Security disability claim?

Social Security's position is that it is not up to your doctor to determine whether or not you are disabled. It is up to Social Security and they will make their own decision regardless of what your doctor thinks.

Q:_ VA says I am disabled, so why is Social Security denying my Social Security disability claim?

It is Social Security's position that VA decisions are not binding upon them. Social Security and VA have very different standards for approving disability claims.

Q:_ I am 50% disabled. Do I get 50% of my Social Security disability benefits?

No. There are no percentages of disability in Social Security disability determination. For purposes of Social Security disability benefits, you are either disabled or not disabled. There are no percentages of disability, nor any percentages of disability benefits.

Q:_ I am disabled by mental illness. Can mental illness serve as the basis for a Social Security disability claim?

Yes. Mental illness is a frequent basis for awarding Social Security disability benefits.

Q:_ Will it help if I ask my Congressional Representative to help me get Social Security disability benefits?

Many Social Security disability claimants become frustrated with claim delays and eventually ask their U.S. Representative or Senator to help. The local Congressional office typically will have staffers who are experienced with Social Security procedures and personnel. A

Congressional Inquiry, as it is called at Social Security, may help to get a stalled process moving again. However, the inquiry will have no impact on how Social Security decides the outcome of the case.

Q:_ How long does it take before Social Security makes a decision once I file a claim for Social Security disability benefits? In most cases Social Security makes the first decision within three to five months.

Q:_ How long does it take for Social Security to make a reconsideration determination on my Social Security disability claim?
In most case Social Security makes the reconsideration determination within three months.

Q:_ I am disabled. I need help with medical bills even more than I need a cash income. How do I get help with medical bills?

Getting help with medical bills is usually tied up with getting cash benefits. That is, you don't start getting help with medical bills until after you start getting cash benefit. So, you have to be found disabled before you can get help with medical bills.

Q:_ What is the difference between Medicare and Medicaid?

The short answer is that Medicaid is a poverty program and Medicare isn't. Many disabled people who get Medicaid get it because they are on Supplemental Security Income (SSI). This is called "categorical" Medicaid eligibility. To get SSI and thereby get Medicaid you have to be poor and disabled. Medicaid pays doctors at very low rates. People who have only Medicaid can have a hard time finding doctors willing to take them on as patients.

Medicaid does pay for prescription medications. Medicaid can go back up to three months prior to the date of a Medicaid claim. Note that it is possible to apply for Medicaid directly - through a local Medicaid office - without having a companion claim for SSI.

For Medicare it does not matter whether you are rich or poor. If you have been on Disability Insurance Benefits, Disabled Widows or Widowers Benefits or Disabled Adult Child Benefits for 24 months you qualify for Medicare. The good thing about Medicare is that it pays doctors at a higher rate than Medicaid. Almost all doctors are happy to take Medicare patients. The bad things about Medicare are that it doesn't begin until after a person has been on cash benefits for two years._ It also doesn't usually pay for prescription medications._ Blame Congress, they have been sitting on the prescription drug measure for years.

Q:_ If I get Social Security disability benefits will I get Medicare?

If you are approved for any kind of Social Security disability benefit other than SSI you will get Medicare after you have been entitled to Social Security disability benefits for two years.

Q:_ If I get Social Security disability benefits will I get Medicaid?

If you are approved for SSI, you will also receive Medicaid benefits_ If you are found disabled under the SSDI program, you will receive Medicare benefits two years after the established onset date. It is possible to get both Medicare and Medicaid benefits if you are simultaneously entitled to both SSI and SSDI.