

## The Other Social Security: Disability 101 for the DC

Most people think of Social Security in terms of benefits provided to the older, retired population. However, in 2003, about 6.8 million Americans under the age of 65 collected disability benefits from the Social Security Administration, commonly known as SSA.

Social Security disability programs play an integral role in providing a financial safety net for those who become unable to work due to severe injury or illness, and are too young to qualify for regular retirement benefits.

Musculoskeletal impairments lead to hundreds of thousands of SSA disability claims annually. Many of these claims are for spinal and other joint, nerve and soft-tissue "chiropractic" problems, such as herniated discs, neuropathy, radiculopathy, fibromyalgia, DJD and other arthritides. As a DC, you have the opportunity to help these patients not only with chiropractic treatment, but also with their quest to win government disability benefits that they badly need.

To become a helpful resource for your patients, you first need to understand basic premises within the complex Social Security disability system. The purpose of this article is to introduce you to some key SSA disability concepts that you can put to practical use; and to offer some specific tips to help your patients.

### Disability According to SSA

The first lesson to grasp is that disability means something very specific to Social Security. SSA defines disability as an 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 which has lasted, or can be expected to last, for a continuous period of not less than 12 months. This "official" definition can be broken down into three simple parts:

1. Substantial gainful activity (SGA). If your patient is earning more than a certain amount of money each month - or working at SGA level - he or she is not disabled. In 2005, the SGA for most people is \$830/month.
2. A physical or mental impairment must be "medically determined." This is a federal program (like Medicare) and unfortunately, Social Security does not consider chiropractors "acceptable medical sources" with regard to diagnosing impairment. SSA's acceptable sources include MDs, DOs, licensed or certified psychologists, optometrists and podiatrists.
3. The impairment has either lasted or is expected to last 12 months or longer, or to result in death. This criterion is known as the "duration requirement."

Notice that nowhere in the definition of disability does it say that the disability must be "permanent" or "total." These are terms you may use in chiropractic practice, but to Social Security, they are meaningless.

### SSDI and SSI - The Two Programs and Their Requirements

SSA grants disability benefits under two main programs: Social Security Disability Insurance

(SSDI) and Supplemental Security Income (SSI). Disability claimants in either program must be under age 65 and, generally speaking, U.S. citizens or legal aliens. Many claimants apply for both programs concurrently. Both SSDI and SSI have the same medical requirements. There is a five-step sequential evaluation that SSA uses to adjudicate each claim. The basic steps are as follows:

1. Is your patient (let's call him "Ben Badback") performing substantial gainful activity (SGA) - the \$830/month income limit? If the answer is no, he moves on to Step 2.
2. Does Ben have a severe impairment? To be considered severe, an impairment must meet the duration requirement, must be diagnosed by an "acceptable medical source," and must impair function to the degree that Ben's ability to work is compromised. If Ben's impairment qualifies as severe, he moves on to Step 3.
3. Does his impairment meet or equal SSA's medical listings? SSA has a list of impairments for all major body systems. If Ben's back condition meets or equals the criteria for the applicable listing, he will automatically be considered disabled and win benefits. He won't have to move on to the next step. For example, if Ben's back condition is caused by a herniated nucleus pulposus, the listings state that he would have to show evidence of nerve root compression characterized by neuroanatomic distribution of pain, limitation of spinal motion, motor loss, sensory or reflex loss, and positive SLR. If Ben doesn't have all these findings, his case progresses to Step 4.
4. Is Ben able to perform any type of work that he has previously done? SSA will look at all the jobs he has held during the past 15 years. If Ben can't return to his construction job since his disc injury, SSA may believe that he can return to a sedentary job he used to perform. If Ben can't do any of his past work, SSA looks at the last step.
5. Is Ben able to perform any other type of work that is generally available in the current economy? In this step, SSA looks at whether the claimant has the ability to work at all. For example, if Ben had never worked at a typical sedentary job, but is healthy enough to perform that type of work on a regular, full-time basis, SSA would say he is not disabled. If SSA judges Ben incapable of any work (perhaps because he cannot sit down long enough to meet any job requirements), his claim would be approved.

Factors such as age, education, and transferable skills play prominently in disability determinations. The older Ben is, and the less educated and less skilled his prior work has been, the more likely he will be granted benefits.

Although the medical requirements for SSDI and SSI are the same, both programs have very different nonmedical requirements, which must be met before becoming eligible for benefits. SSDI's nonmedical requirements are based on work history, while SSI uses income and resource requirements.

To be eligible for SSDI, Ben must have a reasonably steady past work history with an accumulation of "credits" from FICA deductions from his paycheck. There is no limit to the amount of income or financial resources the claimant may have. The amount of benefits received monthly depends on the amount of these credits. SSDI recipients also become eligible for Medicare two years after the onset of their disability payments.

On the other hand, SSI is a needs-based program. Ben would have to meet strict guidelines on resources and household income to be eligible. This program serves those who have never worked (including children) and those who did not work long enough to earn enough credits through FICA withholding. SSI pays a standard monthly amount, which is supplemented by some states. SSI beneficiaries become eligible for Medicaid immediately.

Stages of a Disability Claim

There are three primary steps in the life of a disability claim:

1. The Initial Application Stage. Applicants can now apply online for SSDI benefits (but not for SSI). They can also call their local Social Security office to schedule a phone or in-office appointment. A claims representative will send for medical documentation and send the case on to a state DDS (Disability Determination Service). This office makes the initial decision about the claim, after consulting with on-staff medical consultants and vocational specialists. It takes about three to five months to get an initial decision. In 2000, only 38 percent of claims were approved at the initial stage.
2. The Reconsideration Stage. This stage is being slowly phased out by SSA and is not being used in all or parts of 10 states. Only about 15 percent of claimants win at this level. The same DDS looks at the claimant's case, but a different decision-maker is used.
3. The Administrative Law Judge (ALJ) or Hearing Stage. This appeal to SSA's Office of Hearings & Appeals (known as OHA) is actually your patient's best chance of winning his or her case. In fact, 59 percent of claims were approved at the ALJ stage in 2000. An independent judge examines all of the medical and nonmedical information, listens to testimony from the claimant, any witnesses and medical/vocational experts, and uses his or her discretion to render a decision. It usually takes from eight to 12 months (or longer) to schedule an ALJ hearing.

Claimants can appeal even higher: to the Appeals Council or even to U.S. Federal District Court. However, the success rate is very low and representation by an experienced attorney is a necessity.

#### How You Can Help

So what can you do, as a doctor of chiropractic, to help your patients who are trying to navigate the SSA disability maze? Here are some tips:

- Make sure your patient submits an appeal within 60 days of receiving a denial notice. Failure to mail a timely appeal is a common "killer" of disability applications.
- Encourage your patient to appeal all the way to the ALJ or hearing stage. Perseverance is the key to winning Social Security disability benefits.
- Refer patients to specialists if warranted, such as psychiatrists or neurologists.
- Even though chiropractors are not considered "acceptable medical sources" under SSA regulations, your notes and reports (including X-ray or diagnostic test findings) will help your patient's case. They just won't be given as much weight. The more descriptive your documentation of the patient's signs, symptoms and limitations in both ADLs and work activities, the more helpful they will be. Make sure to document any swelling, muscle spasm or atrophy, loss of reflexes or sensation, loss of ROM, and the need for any assistive devices such as a cane. Note the frequency, severity and duration of symptoms.
- If your patient shows signs of depression, whether pain-related or not, have him or her evaluated by a psychologist or psychiatrist. Many claims ultimately win approval by demonstrating a combination of both physical and mental impairments.
- If your patient has a complicated case or has previously been denied, encourage him or her to hire a professional advocate. Both attorney and non-attorney representatives experience great success in winning Social Security disability cases. SSA must approve the fee for representation. Usually, no fee is charged unless the case is won.

For more information, the toll-free number for the U.S. Social Security Administration is (800) 772-1213; the applicable Web link is <http://ssa.gov/disability/>.

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