



Topic for the Month:

Social Security Disability

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How is “Disability” Defined? Under the social security regulations, “disability” is defined as the inability to engage in any substantial gainful activity by reason of a 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. What does this mean? In general, if you have not been off of work for a **continuous period** of 12 months, you are not eligible for benefits. The word “continuous means” just that. If you are off of work for 11 months and then return to work, you are not eligible for SSDI benefits.

To support a claim for SSDI benefits, a physician would have to state that you have been or are expected to be unable to engage in any substantial gainful activity for a continuous period of at least 12 months.

Closed Period of Disability: You may be entitled to a *closed period of disability* even if you return to your regular job. For example, if you undergo two low back surgeries and are kept off of work for 13 months, and then return to work, you would be entitled to a *closed period* of disability. This potential benefit is often overlooked by many people. Remember, SSDI benefits are a form of insurance coverage. If you do not submit a claim, you will never receive any benefits.

Trial Work Attempt: The SS Administration has created an incentive for people on SSDI to return to work. The *trial work period* allows a disabled person to return to work for as many as 9 months (not necessarily consecutive) without affecting their right to SSDI benefits during the trial work period. If things go well and the person continues working after the 9 month period, the SSDI benefits will probably be lost, as the person’s “disability”, by definition, would have ceased. If things do not go well, the person remains entitled to SSDI benefits.

What if my SSDI claim is Denied? In many cases, an SSDI claim is denied at the first level. The next step is to file for Reconsideration. This must be done within 60 days of the denial. If you are denied at the Reconsideration level, the next step is to file for a Hearing. This must be done within 60 days of the denial at Reconsideration. The hearing is in front of an administrative law judge. There is no cost to file a claim or to proceed to a hearing.

Can I Hire an Attorney to Represent me at the Hearing? Yes. Before filing for a Hearing, you should consult with an attorney to discuss the merits of your claim. It is at this stage that attorneys can become involved with your case. The attorney fee is regulated by the SS administration and is either 25% of past due benefits or \$5,300, whichever is less. Attorney fees are limited to past due benefits and no fee is owed on future benefits. If the case is lost, no attorney fee is owed.

If I Win at the Hearing Stage, What am I entitled to and When Will I Receive My Benefits? If your case is won, you are entitled to a lump sum payment for past due benefits, less an attorney fee (if you hired an attorney). In addition, there is a 5 month waiting period on benefits. In other words, if your disability onset date is May 1, 1999, your past due disability benefits are calculated from November 1, 1999 through the hearing date. The amount of benefits awarded depends on how much money you have put into the system over the years. Any social security office can give you an idea of the amount of monthly disability benefits to expect, based on your past contributions to the system.

Knowledge is Power. The social security regulations are often technical and cumbersome. **Our firm has a Team of Attorneys with experience in handling social security disability claims. Give us a call.**