

INFO CURRENT AS OF 5/26/06

STEPS FOR DETERMINING ELIGIBILITY FOR SOCIAL SECURITY DISABILITY BENEFITS

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QUESTION: I have some serious health problems that prevent me from working and I have been considering applying for disability benefits through the Social Security system. However, I do not know whether I would be eligible. How does the Social Security Administration decide who is disabled under their rules?

ANSWER: To be eligible for disability benefits, a claimant must have an impairment (or impairments) which cause an inability to perform any substantial work activity for a period of at least twelve consecutive months.

Social Security does not simply ask, "Are you disabled?" They utilize a complex system of rules involving a five step sequential evaluation. Every disability claim for adults proceeds through the same evaluation using the same set of rules. The rules are as follows:

Step One – Are you currently working and performing "substantial gainful activity"? If you are working and regularly earning over \$860 monthly, you will likely be found "not disabled." If you are not working or earning less than \$860 monthly, your case will proceed to step two.

Step Two – Do you have a severe impairment(s)? The language of "severe" is misleading. To meet the requirements of this step, you must only have health problems which cause a slight abnormality and cause more than a minimal effect on your work ability. Social Security will consider the combined impact of multiple impairments in evaluating whether you meet the criteria for this step. Step two is a threshold requirement to screen out claims that lack any merit. If you have a severe impairment, your case proceeds to step three.

Step Three – Do you meet or equal a Listed Impairment? Social Security will find you are disabled if you meet or equal the medical criteria specified in the rules called the "Listing of Impairments." The Listings include 43 of the more common disabling impairments. They reflect a very impaired level of functioning. If you meet a Listing, you should be found eligible for benefits. If you do not meet a Listing, your case proceeds to step four. Many disabled people do not win at step three.

Step Four – Can you return to your past relevant work? If you can regularly perform any of the jobs you have held over the last 15 years, you will likely be found "not disabled." Social Security will look closely at your past work. They will want to know details about type of work, physical and psychological demands, problems in job performance and reasons why you left the job. If you are unable to perform your past work or if you've never worked, the analysis moves to step five.

Step Five – Can you perform any other job available in the United States economy? To win, you must show that considering your age, education and past work experience, there are no jobs in the national economy that you can perform. If there are jobs, any jobs, that you can do, you lose. It does not matter whether Social Security identifies jobs you have never performed. The key question is whether you can handle the job on a regular and continuing basis.

Step five is a tricky business. Sometimes cases are decided by a framework called the Medical-Vocational Guidelines, also known as "the Grid." If you have a significant mental impairment, Social Security may use a vocational expert at your hearing to determine if there are jobs you can

perform. Cases can be quite complex and there are strategy questions about how you want to present your claim.

It is important to realize that it takes Social Security a long time to process claims. Typically, it may take one year from the time you file your claim until you get to a hearing. Do not be discouraged. The appeal process works and it is generally worthwhile to take your case to a hearing before an Administrative Law Judge.

For general advice, I want to offer caution for those who are considering pursuing their appeal without legal representation. There are traps for the unwary. Social Security may tell you that you do not need a lawyer. I would suggest otherwise. A knowledgeable Social Security lawyer can help you navigate the system, develop the evidence you need to win, and argue the legal points you need to make. If your case proceeds to a hearing before an Administrative Law Judge, I would urge you to retain counsel.

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