

## **Social Security Disability and Multiple Sclerosis: The Impact of the MS ‘Listing’**

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The path to social security disability benefits is almost invariably long and difficult. First, an individual’s disability must have progressed to the point where he or she can no longer engage in gainful employment. It is only at this point that an individual can submit his or her application for disability benefits. After this application is submitted, the decision process often takes up to two years. This is often the most difficult two years of the applicant’s life, when the transition from the workforce is complicated by the uncertainty of the pending application.

In a previous article, “Social Security Disability: A Primer,” I provided an outline of the Social Security Disability application process, from the standards involved to the decision making process and timeline. This article, previously published by the Consortium of Multiple Sclerosis Centers, can be found online at [www.mscares.org/cmssc/images/pdf/SocialSecurityDisability\\_APrimer.pdf](http://www.mscares.org/cmssc/images/pdf/SocialSecurityDisability_APrimer.pdf). The current article will focus on the ‘Listing’ the Social Security Administration has provided for Multiple Sclerosis, and how this impacts the decision-making process. Of course, this article is only a brief overview of a complicated legal standard, and further information should be sought from an attorney or the Social Security office before proceeding with a claim.

Generally, a disability applicant must prove that they have a condition that prevents them from engaging in gainful employment of a certain degree of difficulty. This age-based standard often makes it difficult for younger individuals to obtain benefits. For certain medically diagnosed conditions, however, the Social Security Administration has issued ‘listings’ which provide a secondary method of proving disability. One such listing, neurological listing 11.09, directly addresses multiple sclerosis.

To be considered under the multiple sclerosis listing, individuals must obtain clear diagnoses of multiple sclerosis from their treating physicians. Furthermore, claimants should discuss their applications with their treating physicians. The strongest advocates for successful claimants are often their treating physicians, and claimants should try to ensure that their treating physicians understand their symptoms and support their claims.

Under the MS listing, the Administration considers the following four factors in determining if a person is sufficiently disabled to qualify for Social Security Disability benefits: (1) fatigue, (2) disorganization of motor function, (3) visual impairment, (4) mental impairment. A sufficient showing under any of these four categories can qualify a claimant for benefits.

### **(1) Fatigue**

To qualify under fatigue, a person must show consistent and substantial MS-based muscle weakness as a result of repetitive activity. This would include individuals who

are capable of engaging in work-like physical activities for short bursts, but consistently fatigue well before an unaffected individual.

### (2) Disorganization of Motor Function

Disorganization of motor function is defined by the Administration as “significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station.” In short, this means that individuals will qualify if they can show that multiple sclerosis has caused significant difficulty in control of two or more limbs, specifically the loss of dexterity and/or restrictions in walking or standing.

Notably, the “Disorganization of Motor Function” standard is more focused on an individual’s ability to control limbs, and is not focused on a claimant’s ability to sustain effort. As such, tremors and numbness would fall under this category, but simple premature fatigue would fall under the fatigue category, discussed above.

### (3) Visual Impairment

Visual impairment is very specifically defined by the regulations. In general, a person qualifies under the visually impaired standard if either – as a result of MS – (a) their vision in their better eye with correction is 20/200 or less, or (b) their visual field is less than 20 degrees.

### (4) Mental Impairment

The mental impairment qualification is best described as a multi-part test. First, claimants must show that their MS has resulted in medically documented loss of memory, loss of time/place orientation, hallucinations, personality/mood disturbances, or a large reduction in IQ. Second, the person must also show either (a) that these symptoms have impacted their daily living or concentration, or (b) that there are repeated significant episodes of these conditions lasting for an extended duration.

Without showing the above, there are alternative methods of showing mental impairment, all of which require proving that the claimant has only a minimal ability to adjust to new situations or function without extensive support.

The existence of a listing is a notable advantage to multiple sclerosis patients who decide to apply for Social Security Disability. This will often ease the burden of proof required in disability claims, and changes the analysis to better approximate the symptoms typically experienced by multiple sclerosis patients.

The above information is a legal snapshot intended to provide a multiple sclerosis patient with the basics of whether disability is appropriate. It is meant to supplement, not replace, the advice of trained professionals, including representatives at your local Social Security office or an attorney.