

Social Security Disability: A Primer

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By its very nature, multiple sclerosis causes an individual to slowly develop symptoms over time, causing afflicted individuals to devote a greater amount of their free time to recuperation with each passing year. As these symptoms increase, many afflicted individuals find themselves physically unable to remain in the workforce. When a person can no longer perform their work, it may be time to consider a claim for disability benefits.¹

Disability benefits are not a cure for all of the problems caused by MS and its symptomatology. These benefits will never fully replace a person's prior earnings. They can, however, soften the transition from work and assist an individual's mental and physical recovery from the stressors of MS.

The following is intended to provide some basic information about disability benefits for individuals who are having MS-related difficulties remaining in the workforce, and are considering their options. Although general information will be provided, this information is intended to supplement, not replace, the personalized, one-on-one assistance of an attorney or your local disability office.

"Going on Disability" refers to several different programs sponsored by the government or insurers. For the purposes of this article, we will focus on two Social Security-based programs: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). Both programs compensate individuals who, due to a disabling condition or conditions, are no longer capable of participating in the workforce. Notably, SSI does not have a work history requirement, but does have a maximum asset requirement.²

To understand these disability programs, a few basic concepts must be understood. First, there is a distinction between "date of disability," "date of application" and "date of approval." A person's date of disability is when the person can no longer work due to his or her disability. A person's date of application is when they apply for disability. A person's date of approval is when their claim for disability is approved (if at all).

(1) Qualifying for Benefits

To qualify for SSDI, an individual must have a significant work history. This history is reviewed in "quarters," or three month periods. When a person earns approximately \$1200 in a quarter (or approximately \$400 a month for three months), this is a qualifying quarter.

To be eligible for benefits, a person typically must have worked five of the ten years immediately preceding their date of disability. Additionally, the individual must have accrued a certain

number of quarters over their lifetime. Although this requirement varies with age, a general rule of thumb is that a person who has worked regularly during their adult life will still qualify. For example, a mother of two who took a few years out of the workforce to raise each of her children, or an individual who has taken time out of work for education to change careers, will still qualify.³

An individual must also be able to show that the condition or conditions preventing them from remaining in the workforce have lasted or are expected to last at least one year. Needless to say, an individual afflicted with MS will satisfy this requirement.

A person with a qualifying work history must be able to show that they are unable to work, which is a two-step process. First, a person must show that they cannot now currently engage in the least demanding job that they have worked in the last 15 years.

Additionally, for both SSDI and SSI, the person must prove that they cannot do a generic job at a certain level of difficulty. Although there is an in-depth table of jobs duties the Administration considers, the following rules of thumb can often be applied. A person under 50 must not be able to do what is called “sedentary work.” This is best envisioned as a sit-down receptionist job, with duties including answering the phone, taking messages and sorting mail. For a person between 50 and 60, inability to engage in light duty work must be shown. Assembly line work, involving a significant amount of standing and twisting, but no heavy lifting, is an example of light duty work. Finally, a person over 60 must only show that they cannot do heavy duty work. This is a job in which a person must lift 50 pounds, and stand or walk six hours per day. Clearly, this graduated test favors older individuals, who have presumably paid more into the system and will spend less time on disability before converting to retirement benefits.

Please note that the above has condensed numerous intricate regulations and rulings – literally thousands of pages – into a few paragraphs. These are best considered rules of thumb or general guidelines, and not concrete rules. Additionally, even a person who believes that they fit the requirements may be denied benefits. Different judges may interpret the same claimant’s testimony and medical records differently.

(2) Benefits

A person whose disability application is approved is eligible for several benefits. These include regular payments, Medicaid eligibility, and eligibility for their dependents. Please note that there are waiting periods for these benefits based upon the date of disability. This waiting period is five full calendar months after the date of disability for regular payments and two years after the date of disability for Medicaid benefit eligibility.

The amount of monthly payments varies as much as work histories. To determine the amount of your benefit eligibility, refer to the green form mailed to you by the Administration approximately three months before your birthday, which reports your earnings for every year of your life. On this form, your eligible benefits are listed. You can also contact the administration and request your eligibility.⁴ Please note, however, that these benefits may be reduced if you

receive a government pension, workers' compensation or other benefits.

(3) The Application Process and Timeline

The timeline for disability claims varies by the region of the country a person lives in.⁵ Below are estimates for eastern Pennsylvania, whose response times are considered average to above-average.

Typically, a person who applies for disability can expect to have a final resolution of their claim within two years.⁶ The actual time period may be shorter depending on what stage in the review process a person's claim is approved.

Approximately one-third of individuals who are approved for disability benefits are approved at the initial Administrative Review. Here, a reviewer receives an applicant's medical records and any background information that has been submitted (including work history). Without ever seeing the claimant, the reviewer approves or denies the claim. Typically, this process will take three to six months.⁷

If a person is denied at the Administrative Review stage, they may appeal and request a hearing. Notably, there is a strictly enforced appeal period. It is suggested that you closely review your decision and/or talk to an attorney or the Administration to ensure that any appeal is filed within the necessary deadline. Failure to file before the deadline may forfeit your right to appeal.

Generally, six to nine months pass between when an appeal is filed and when a hearing is scheduled. It is strongly suggested that, if you did not have an attorney represent you at the initial filing, you obtain an attorney for the hearing. The claimant's testimony is taken at this stage, and the record is effectively closed at the end of the hearing. The hearing is the claimant's best opportunity for approval of benefits.

Should you be denied at the hearing level, there are additional appeals available, all the way to the Supreme Court. At these later stages, the courts must find a serious error in the prior decision to overturn the earlier denial. Again, appeals must be filed in a timely fashion.

(4) Conclusion

The above information is a legal snapshot to provide a person 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.

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1. Many individuals face this difficult decision, however, as the Administration itself reports that a 20-year-old worker has a 3 in 10 chance of becoming disabled before retirement. See Mike Chalmers, "Social Security Disability Claims Denied More Often in Delaware," *The News Journal*, Nov. 22, 2009, available at <http://www.delawareonline.com/article/20091122/NEWS02/911220366/Social-Security-disability-claims-denied-more-often-in-Delaware>.
 2. See <http://www.ssa.gov/ssi/text-resources-ussi.htm>. To qualify for SSI, an individual must have less than \$2,000.00 in assets, not including an individual's home, household goods, personal effects or first motor vehicle. For married couples, the limit is \$3,000.00. Unlike SSDI, SSI has no work history requirements.
 3. For example, a 38-year old will typically have to show five years of work to qualify for disability benefits. See <http://www.ssa.gov/pubs/10029.html>.
 4. The Administration has an online calculator that provides a rough estimate of disability benefits. See <http://www.ssa.gov/OACT/quickcalc/index.html>.
 5. See Barbara Basler, "Backlog of Claims Leaves Social Security Disability Applicants Waiting," *AARP Bulletin Today*, November 2007, available at http://bulletin.aarp.org/yourmoney/socialsecurity/articles/sick_of_waiting.html. Ms. Basler reports that the wait for a hearing averages 520 days nationally, but is approximately 900 days in Atlanta, Georgia.
 6. See "Social Security Hearings Backlog Down for First Time in Decade," News Release," Social Security Administration, available at <http://www.socialsecurity.gov/pressoffice/pr/hearings-backlog-pr.htm>. This release states that the average processing period for a claim in fiscal year 2009 was 491 days.
 7. See "Frequently Asked Questions," *SSA.gov*. Available at http://ssa-custhelp.ssa.gov/cgi-bin/ssa.cfg/php/enduser/std_adp.php?p_faqid=159&p_created=955633298&p_sid=x_Akl4Sj&p_accessibility=0&p_redirect=&p_lva=&p_sp=cF9zcmNoPSZwX3NvcnRfYnk9JnBfZ3JpZHNvcnQ9JnBfcm93X2NudD01Miw1MiZwX3Byb2RzPSZwX2NhdHM9MTA1JnBfcHY9JnBfY3Y9MS4xMDUmcF9zZWYyY2hfdHlwZT1hbnN3ZXJzLnNlYXJjaF9ubCZwX3BhZ2U9MQ**&p_li=&p_topview=1. Although the Administration provides an estimate of 3-5 months, I have found 3-6 months is more accurate.