

Social Security Disability:  
Overview

AIDS Clinic  
2012

---

---

---

---

---

---

---

---

Disability Income

- Social Security Programs:
  - Social Security Disability Income (“SSDI” “Title II”)
  - Supplemental Security Income (“SSI” “Title XVI”)
- Private Disability Insurance
  - Short Term Disability
  - Long Term Disability

---

---

---

---

---

---

---

---

- Social Security Disability Insurance (“SSDI”) (“Title II”)
  - Monthly cash benefit to disabled persons and dependents
  - Insurance – based on payroll taxes (FICA)
  - Must have worked long enough and recently enough (5 out of last 10 years)
  - Payment amount dependent on earnings history

---

---

---

---

---

---

---

---

## Supplemental Security Income (SSI) ("Title XVI")

- Monthly benefits to aged, blind or disabled persons
- Needs-based program, considers income and assets
- Payment amount supplements any other income up to a maximum
- Year 2010 maximum payment: \$674 per month (no increase from 2009)

---

---

---

---

---

---

---

---

## Social Security: Comparisons

- Both programs use the same rules to determine whether claimant is disabled
- Different rules for financial eligibility
- Both programs governed entirely by federal law
  - Statute
  - Regulations
  - Agency Rulings ("Social Security Rulings")
  - POMS (Program Operating Procedures)
  - HALLEX (Hearing Office Rules)

---

---

---

---

---

---

---

---

## Statutory Definition of Disability

- Severe mental or physical impairment
- Medically verifiable by lab tests, physical examination or other objective medical procedures
- has lasted, or is expected to last, at least twelve consecutive months or result in death
- renders claimant unable to engage in substantial gainful activity ("SGA")

---

---

---

---

---

---

---

---

## Three domains

- Medical
  - Impairments
    - Identifying them
    - Proving them with medical records, tests, labs, etc
- Functional Capacity
  - **Limitations** that result from impairments and/or treatments
  - What causes them?
- Vocational
  - Client's vocational history
  - Job analysis
  - How the functional limitations affect work related activities

---

---

---

---

---

---

---

---

## HIV as a disability

- Requires a positive HIV test, but HIV+ alone is not enough
- No particular CD4 or Viral Load is required, and a low CD4 won't guarantee approval
- Focus is on:
  - Medical evidence of impairment
  - Evidence of resulting deficiency in mental and/or physical functioning
    - Activities of daily living, social functioning, persistence, pace, ability to sustain activities

---

---

---

---

---

---

---

---

## The application process

- Initial application
  - Filed at local Social Security office or online
  - Disability evaluation done at State Agency (Disability Determination Service)
  - Should take a couple months – often takes much longer
  - Approval rate in 2008: 34%
- If denied: Request for Reconsideration
  - File within 60 days of denial (paper or online)
  - DDS again looks at whether claimant is disabled
  - This can take a couple months up to 4-6 months or more
  - Approval Rate in 2008: 14%

---

---

---

---

---

---

---

---

## Further appeals

- Administrative Hearing (after denial of reconsideration)
  - Hearing before Administrative Law Judge (Raleigh, Wilmington, Lumberton, Greensboro, Charlotte, etc.)
  - Wait for hearing about 12 months or more. (Was up to 2 years until recently).
  - Approval rate in 2008: 63%
- Appeals Council (2% approved; 22% remanded)
- Federal Court (5% reversed; 47% remanded)

---

---

---

---

---

---

---

---

## Two important limitations

- **Substance Abuse:**
  - Claimant may not receive benefits if substance abuse "contributes materially" to the finding of disability (20 CFR 404.1535)
- **Compliance with treatment:**
  - No benefits if claimant fails to follow prescribed treatment that would restore ability to work. (20 CFR 404.1530)
  - Acceptable excuses: treatment contrary to religion, very risky; considers physical, mental, educational, and linguistic limitations
  - For HIV infected, common problem is medication adherence.

---

---

---

---

---

---

---

---

## Five-Step Sequential Evaluation

1. Is the claimant doing Substantial Gainful Activity (SGA)?
2. Does the claimant have a "severe" impairment?
3. Does the impairment meet or equal a listed impairment?
4. Can the claimant do past relevant work?
5. Can the claimant do any work existing in significant numbers in the national economy?

---

---

---

---

---

---

---

---

## Sequential Evaluation Step 1: Work

- Is the claimant engaged in substantial gainful activity (“SGA”)?
  - “Substantial” means work activity that involves significant physical or mental activities
  - For 2011, “gainful” means resulting in income of \$1000/month (gross income minus impairment related work expenses)

---

---

---

---

---

---

---

---

## Sequential Evaluation Step 3: Listings

- Does the impairment, or combination of impairments, meet or equal a “listed impairment”?
  - Organized by body systems
  - Impairments presumed to prevent the ability to engage in SGA
  - Each listing includes a diagnosis as well as certain findings which must be included in medical records
  - many listings include durational requirements and severity levels

---

---

---

---

---

---

---

---

## Important Listings

- 14.08 – HIV Listings
- 12.00 -- Mental Disorders
  - 12.04 -- Affective Disorders (e.g. depression)
  - 12.05 – Mental Retardation
  - 12.06 – Anxiety Disorders
- 5.00 – Liver Disease (Hepatitis C, Cirrhosis)

---

---

---

---

---

---

---

---

## Steps 4 & 5

### ➤ Residual functional capacity (“RFC”)

- What can the claimant do in spite of her/his impairments?
- Assess physical, mental
  - Strength, manipulative limitations, environmental restrictions, etc.
  - Ability to sit, stand, walk, lift, carry, etc.
- Strength classifications
  - Heavy, Medium, Light, Sedentary
- RFC is what the claimant can sustain on a full-time basis, 5 days/week, 8 hrs/day or equivalent

---

---

---

---

---

---

---

---

## Step 4

### ➤ Step 4: Past RELEVANT Work

- Work done at the SGA level within the past 15 years, long enough to have learned the job
- You have to find out about all the client’s past jobs
  - Job title, tasks performed, physical demands, skills/tools used
  - Full time/part time
  - Pay rate

---

---

---

---

---

---

---

---

## Step 5

### ➤ Step 5: Any work

- Consideration of vocational factors
  - Client’s age, education, work experience
  - Claimants over age 50 considered to have less ability to adjust to new work, so easier to be approved
- Jobs
  - Jobs considered are those listed in the Department of Labor’s Dictionary of Occupational Titles
  - Doesn’t matter whether there are available jobs or whether claimant could get the job

---

---

---

---

---

---

---

---

## Step 5

- ALJ may have vocational expert testify at hearing
- Medical-vocational guidelines – (“Grids”)
  - Direct an outcome based on client’s profile
    - Strength: heavy, medium, light, sedentary
    - Age
    - Education
    - Skill level of past work
  - Grids don’t take into consideration limitations other than strength, e.g., mental, manipulative (“non-exertional limitations”)

---

---

---

---

---

---

---

---

## Proving Disability

- Medical Records
- Affidavits from
  - Doctors & other health care providers
  - Social Workers, Case Managers
  - The client
  - Employers, friends, family who are aware of limitations, other relevant facts
- Other records, e.g.
  - School Records
  - Work records

---

---

---

---

---

---

---

---