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<b><u>Issue</u></b>	<b><u>Social Security Disability Insurance</u></b>	<b><u>Supplemental Security Income</u></b>
Resource limitations	None	\$2,000 - does not include home or one vehicle - spend down
Income limitation	None	Yes - \$700 for an individual (approx.)
Waiting Period	No benefits for first five full months from onset of disability	No waiting period
Retroactive Benefits	Can receive retroactive benefits up to one year before date of filing	No retroactive benefits
Reopening Old Applications	Within one year for any reason. Within four years for “good cause,” usually new and material evidence.	Within one year for any reason. Within four years for “good cause,” usually new and material evidence.
Proof of Disability	Required – same rules as SSI	Required – same rules as SSDI
Quarters	Required - 10/20 rule - Date Last Insured issues	None required
Effect of receiving another Social Security benefit	Can collect SSI up to SSI limit if SSDI amount is under SSI income limit	Same
Health Insurance Benefit	Medicare after two years - gap filling based on need - COBRA extension to fill the gap - MHIP to fill the gap - Relying on private coverage	Medical Assistance right away
Effect of Workers’ Compensation	SSDI reduces itself so that total SSDI + WCC = 80% of “Average Current Earnings,” not counting COLAs. ACE usually is your best year in the five years before becoming disabled.	Reduced dollar for dollar
Effect of State or Local Government Disability Pension	No reduction.	Reduced dollar for dollar
Effect of Federal Disability (OPM, FERS)	a. For the first 12 months- 60% of the high 3 average salary minus 100% of social security benefits for any month in which you are entitled to social security disability benefits. b. After the first 12 months- 40% of the high-3 average minus 60% of your social security benefit for any month in which you are entitled to social security disability benefits	Reduced dollar for dollar

## **SSDI – DATE LAST INSURED**

1. Severe penalty for the tardy
2. Statutory Rule – no way around it
3. Basic Rule – You must become disabled within five years of when you last work
4. Examples
  - Lanning
  - Paula

## PROCEDURE

<u>Phase</u>	<u>Features and Issues</u>
<i>Filing</i>	Scheduling an Appointment In person/Telephone Online Filing Recommend counsel
<i>State Agency Review</i>	Feeding medical records Daily Activities Form Work History Form Medical Consultative Examinations The deciding doctors Hard to get file
<i>Reconsideration</i>	Must do within 60d of denial Still not meaningful – goes back to State Agency
<i>Hearing</i>	Must do within 60d Need an attorney Shortcutting <ul style="list-style-type: none"> <li>- ODAR attorney review</li> <li>- Remand to State Agency</li> <li>- dire need Congressional attention</li> </ul>
<i>Appeals Council</i>	Must do within 60d Usually file new claim at same time
<i>U.S. District Court</i>	Must do within 60d

## **PROVING DISABILITY**

### **Five Step Process**

**1. *Are you working?***

**2. *Do you have a severe, medically determinable impairment?***

20 CFR 404.1508: - "Your impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by your statement of symptoms."

- Supportive Laboratory and Diagnostic Tests
- Neuropsychological testing
- Situational Depression
- Importance of Treating Physician Cooperation

**3. *Do you meet a listing?***

**4. *Can you do an old job that you used to do?***

**5. *Can you do other work?***

- Grid Rules (old dogs, new tricks)
- Part-time only = Disabled
- Nonexertional impairments

## CFS/CFIDS – MEDICALLY DETERMINABLE IMPAIRMENT

*From SSR 99-2p:*

### **Examples of medical signs that establish the existence of a medically determinable impairment**

For purposes of Social Security disability evaluation, one or more of the following medical signs clinically documented over a period of at least 6 consecutive months establishes the existence of a medically determinable impairment for individuals with CFS:

- Palpably swollen or tender lymph nodes on physical examination;
- Nonexudative pharyngitis;
- Persistent, reproducible muscle tenderness on repeated examinations, including the presence of positive tender points;<sup>[3]</sup> or,
- Any other medical signs that are consistent with medically accepted clinical practice and are consistent with the other evidence in the case record.

### **Examples of laboratory findings that establish the existence of a medically determinable impairment**

....

- An elevated antibody titer to Epstein-Barr virus (EBV) capsid antigen equal to or greater than 1:5120, or early antigen equal to or greater than 1:640;
- An abnormal magnetic resonance imaging (MRI) brain scan;
- Neurally mediated hypotension as shown by tilt table testing or another clinically accepted form of testing; or,
- Any other laboratory findings that are consistent with medically accepted clinical practice and are consistent with the other evidence in the case record; for example, an abnormal exercise stress test or abnormal sleep studies, appropriately evaluated and consistent with the other evidence in the case record.

### **Mental findings that establish the existence of a medically determinable impairment**

Some individuals with CFS report ongoing problems with short-term memory, information processing, visual-spatial difficulties, comprehension, concentration, speech, word-finding, calculation, and other symptoms suggesting persistent neurocognitive impairment. When ongoing deficits in these areas have been documented by mental status examination or psychological testing, such findings constitute medical signs or (in the case of psychological testing) laboratory findings that establish the presence of a medically determinable impairment.

Individuals with CFS may also exhibit medical signs, such as anxiety or depression, indicative of the existence of a mental disorder. When such medical signs are present and appropriately documented, the existence of a medically determinable impairment is established.

## **FMS – MEDICALLY DETERMINABLE IMPAIRMENT**

### ***From SSR 99-2p, fn. 3:***

“There is considerable overlap of symptoms between CFS and Fibromyalgia Syndrome (FMS), but individuals with CFS who have tender points have a medically determinable impairment. Individuals with impairments that fulfill the American College of Rheumatology criteria for FMS (which includes a minimum number of tender points) may also fulfill the criteria for CFS. However, individuals with CFS who do not have the specified number of tender points to establish FMS, will still be found to have a medically determinable impairment.”

### ***From SSR 12-2p***

We will find that a person has a medically determinable impairment if [he/she meets one of ] two sets of criteria for diagnosing FM, which we generally base on the 1990 American College of Rheumatology (ACR) Criteria for the Classification of Fibromyalgia (the criteria in section II.A.), or the 2010 ACR Preliminary Diagnostic Criteria (the criteria in section II.B.).

#### *A. The 1990 ACR Criteria for the Classification of Fibromyalgia.*

Based on these criteria, we may find that a person has an MDI of FM if he or she has all three of the following:

1. A history of widespread pain ...
2. At least 11 positive tender points on physical examination (see diagram below). The positive tender points must be found bilaterally (on the left and right sides of the body) and both above and below the waist.

#### *The 2010 ACR Preliminary Diagnostic Criteria.*

Based on these criteria, we may find that a person has an MDI of FM if he or she has all three of the following criteria:

1. A history of widespread pain (see section II.A.1.);
2. Repeated manifestations of six or more FM symptoms, signs, or co-occurring conditions, especially manifestations of fatigue, cognitive or memory problems (“fibro fog”), waking unrefreshed, depression, anxiety disorder, or irritable bowel syndrome

## **WORKING WHILE DISABLED**

### ***Employees:***

Generally speaking, if your gross earnings are under \$740 per month, you will not encounter any issues. If your gross earnings go over that amount per month, then you will start using up months of your trial work period. The trial work period is a period of nine (9) months during which you can work and still get Social Security benefits regardless of how much you are making.

If your gross earnings go over \$1,040 per month and you have used up your trial work period months, then you will be treated as working.

If you go over \$1,000 per month but for less than three months, you likely can argue successfully that you had an unsuccessful work attempt

In addition to work rules, if you are getting Supplemental Security Income (SSI), which is a needs based program, amounts that you earn will reduce the amounts that you can get from SSI. Generally, they reduce your monthly benefit by \$1 for every \$2 that you earn over a certain threshold.

### ***Self-employed persons***

The test is whether you are engaged in “substantial services.” This is a very difficult test to meet. Self-employment almost always is problematic.



## LONG TERM DISABILITY

Typical provisions:

- For two years, “own occupation” standard, then “any occupation” standard
- Two year cutoff for mental or nervous condition
- Payback of Social Security benefits

Nasty provisions:

- exclusions for chronic fatigue syndrome (symptom based diagnoses, etc.)

### **WARNING:**

- The LTD carrier wants to pick your Social Security representative

## **MYTHS ABOUT SOCIAL SECURITY DISABILITY CLAIMS**

***"Social Security disability is only for people who won't be able to work for the rest of their lives"***

Not true. Social Security disability is for persons who have been or are expected to be disabled for a year or more. Benefits can be awarded for a closed period if you successfully return to work.

***"It's o.k. to wait and see how my condition does before deciding to apply"***

Bad idea. You only are entitled to SSDI benefits for the one year period preceding your filing date. SSI benefits are only owed from the date of application. Waiting could mean lost benefits.

***"I'll apply on my own and see if I get denied before getting an attorney"***

Bad idea. What you say on your application as to your disabling conditions and how they prevent you from working is extremely important. Very soon after you apply, you are asked to fill out a detailed Daily Activities Form, which disability examiners will leap to use as proving that you are active enough to do some kind of work. Once those things are written down, they are hard to counter. An ounce of prevention is worth many pounds of cure.

***"To apply, I'll have to go to a local Social Security office and wait for hours"***

You don't have to. You can obtain a scheduled time to be interviewed.

***"There's no point in trying because I've already been denied"***

Social Security is well known for initially denying meritorious claims that later are approved by an Administrative Law Judge. Don't let a bureaucrat determine your future. Keep appealing until you get a judge.

***"I've appealed once and lost, so there's no point in appealing again"***

Social Security disability claims have to be appealed twice in order to get to an Administrative Law Judge. The first appeal is decided only by another bureaucrat. Keep appealing until you get a judge.

***"I can't afford to pay a lawyer to help me"***

Wrong. Lawyers are not allowed to charge up front for Social Security disability claims. Under federal regulations, a lawyer is not owed any fee unless you win. If you do win, then the government pays your lawyer 25% of the money that it owes you for past due benefits, up to a maximum of \$6,000.

***"I don't need a lawyer because the government is helping me with my claim"***

Don't be fooled. The government will not act to protect your rights as a lawyer will. Social Security regulations are hundreds of pages long and there are hundreds of agency and court decisions interpreting them. Often, you must attend a hearing before a judge where evidence is presented. You need someone looking out for you.

***"The government will get all of the medical records needed for my claim"***

Don't count on it. Doctors prepare records for the purposes of diagnosis and treatment and certainly are not thinking of Social Security regulations. Often, claims can't be won without getting supplemental reports from doctors addressing the specific issues raised under the regulations.

***"I'll win because my doctor says I'm disabled"***

Bad bet. While this makes sense, Social Security does not accept a doctor's opinion as to whether someone can work. Instead, Social Security only accepts a doctor's opinion as to a patient's restrictions - for example, how much they can lift. Employability is determined by vocational expert testimony. At your hearing before an Administrative Law Judge, a vocational expert likely will be present to give testimony. Cross-examination of this expert can be critical, and this is another good reason for having an attorney.

***"As long as I'm earning any money, I don't qualify "***

Not necessarily. You can earn up to \$750 per month and still be regarded as disabled. Periods when you earned more than that can, under certain circumstances, be regarded as trial work periods or unsuccessful work attempts for which you are entitled to benefits.

***"If I draw benefits now, then I'll get less at retirement age"***

Wrong.

***"Social Security disability doesn't cover psychological problems"***

Not true. The law wisely has recognized that these types of problems can be just as devastating as physical problems, if not more so.

***"Social Security will do nothing to help me with my health insurance problem"***

Not necessarily. A person approved for SSDI benefits is eligible for Medicare coverage once they have been eligible for disability benefits for 2 years. This is the same coverage that persons age 65 and older get. Persons approved for SSI get Medical Assistance immediately.