

CHILDREN AND SOCIAL SECURITY DISABILITY

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Can children receive Social Security disability?

Yes.

There are three basic ways in which children can receive some type of disability benefits from Social Security. The first is by receiving disability benefits under the earnings record of their parents. In other words, if a child's parents become disabled or die, the child can collect disability benefits under the parents' earnings record. If you are applying for disability benefits and have any children under 18, it is very important to tell Social Security about your children. If your claim for disability is approved, your children will start receiving benefits automatically. As you can see, these types of benefits are dependent upon the health of the parent, not the health of the child. The concept behind these benefits is that there be some protection for children who have lost a parent's earnings power that would otherwise be providing for their financial well being.

The second type of child's benefit is related to the first. An adult child who can prove disability since before age 22 can receive disability benefits on the basis of their deceased, retired, or disabled parents' earnings records. Often the disabled child may be in their 30s or 40s by the time one of their parents become disabled, retire, or die. Very few people even know that such benefits exist. Proving such cases is very complicated and you should almost always seek legal representation even for what seems like an obvious case.

The third major way in which children can receive disability benefits is by being approved for supplemental security income or SSI. SSI is limited to only those with very little money or resources. It is a Welfare program. If you do not meet the resources test for SSI, no benefits can be awarded no matter how sick the child is. In performing this resource test, Social Security looks at the child's assets and the parents' assets. Because of the resource test, there are many, many families with sick children who cannot qualify for SSI.

Assuming you pass the resources test, the child must then prove disability. There was a great deal of litigation regarding child's cases in the 1980s and 1990s. Ultimately, the Supreme Court found the child disability standard to be unconstitutional.

As a result of that decision, Congress passed legislation setting a new standard for child disability under SSI. It is an

extremely strict definition. Due to that fact, it can often be very difficult to obtain SSI benefits. Children are assessed in 6 general areas of functioning. They must prove marked limitations in at least 2 of the 6 areas or 1 area of extreme limitation.

Many people who have problems with their children file for SSI claiming "ADD," "ADHD," or "ODD." These generic and overly diagnosed conditions are generally not sufficient to prove eligibility absent evidence of profound functional restrictions and constant medical care. In proving child's disability, it is absolutely essential to have the full support of a physician or physicians that the child sees on a very regular basis.

If you are considering pursuing child's disability benefits through SSI or if you seek disabled adult child benefits, it is important that you seek the assistance of an experienced lawyer.