

DRUGS, ALCOHOL, AND SOCIAL SECURITY DISABILITY

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The conventional wisdom is that if you have drug and alcohol problems you cannot get Social Security disability benefits. As with almost everything regarding Social Security disability, the conventional wisdom is wrong. The reality is that you can get disability benefits even if you suffer from drug and alcohol problems.

In 1996 Congress passed legislation prohibiting the award of Social Security disability or SSI benefits on the basis of drug and alcohol abuse. SSA interpreted this new legislation as prohibiting an award of disability benefits only where the person's inability to work resulted from continuing drug or alcohol abuse. What this means is that you cannot get disability benefits because you continue to abuse drugs or alcohol. In other words, if you are disabled without considering your drug and alcohol abuse, you can still get benefits.

What many people do not know, including many lawyers and judges, is what happens when it is impossible to determine if you would be disabled if you stopped abusing drugs or alcohol. Few people know that Social Security's official policy is that benefits must be awarded in such situations. Many of the judges who decide these cases have a fundamental misunderstanding on this point. They often believe that they are required to deny benefits in such situations. They are wrong. It is Social Security's own policy that on the issue of drug and alcohol abuse the benefit of the doubt goes to the person seeking benefits.

Now that we know what the law is, what can be done when you have to deal with an adjudicator or judge who does not know the law? This is when it is important to have a knowledgeable Social Security disability attorney who can write a compelling brief correctly stating the law. Just as importantly, if the judge still rules incorrectly, you will need an experienced attorney who is willing to litigate in federal court (which many Social Security disability attorneys do not do).

The bottom line is that just because you have a drug or alcohol problem does not mean that you are precluded from receiving disability benefits from Social Security disability. Do not believe it if someone tells you otherwise. At the same time, if you have a history of drug and alcohol use, it would be wise to get an experienced attorney involved in your case early.

