

HOW DO YOU WIN A CASE FOR SOCIAL SECURITY DISABILITY?

By David F. Chermol, Esquire

Most of our clients ask us this question at some point in the process. The answer is actually quite complex.

First, you have to be technically eligible for one of the disability benefit programs run by Social Security. The two principle programs are Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI). Roughly speaking, DIB is for people who have a good work history and have paid Social Security taxes. There is no citizenship requirement for DIB. To be covered you need to have worked at least 10 years in this country. In addition, you must have worked 5 of the past 10 years prior to the time you became disabled. These rules can vary somewhat, especially for younger people. One of the best ways to determine if you are technically eligible for DIB is to look at the yearly account statements Social Security sends out to everyone. It will tell you if you have enough credits to be covered by DIB. However, those statements can sometimes contain errors so it is best to consult with a lawyer.

Roughly speaking, SSI is generally for American citizens who have little or no work history and little or no assets. It is effectively a federal Welfare program. Therefore, the program includes a serious poverty requirement. Non-American citizens can potentially qualify as well. The three biggest exceptions that allow non-citizens to receive SSI are 1) refugee status; 2) asylum status; or 3) you legally resided in the United States before August 22, 1996. There is no gray area with these exceptions. Many people come to our office and say "I kind of have asylum status," or "I kind of have refugee status," or "I was allowed to reside in the US in 1996." None of that matters. You are either are or you are not. You either exactly fit an exception or you are out of luck. It's just that simple.

People ask whether they automatically fit into one or the other of the two programs. The sad truth is that there are many people who do not fall within either program. Consult with a lawyer or ask SSA to be sure. Assuming that you are technically eligible, what's next?

The second part of establishing entitlement to disability benefits from Social Security is showing that you are "disabled" in the eyes of the law. This is not easy. Of course everyone applying says they are disabled. So your subjective complaints of how bad your symptoms are just will not be enough. You need documentation from medical sources to back your claim. The more consistently you see medical personnel and report your symptoms,

the better the record is for establishing a claim of disability.

Many clients ask whether it is enough for their treating doctor to say they are disabled. The answer is: Definitely not! Unlike certain state Welfare programs, the disability programs run by the Social Security Administration (SSA) require a far more exacting level of proof. A mere statement from your doctor indicating that you are disabled will not by itself ever be enough. Again, a consistent treatment history helps. Just as important is having a lawyer representing you who knows what it takes to get a judge to agree that you are disabled. This means crafting a narrative out of your various medical records and advocating why that narrative places you in the range of disability. Often times winning is more art than science.

Knowing how to get to a finding of disability is the real element of expertise. For example, you can be declared disabled even if you retain the capacity to work full-time. It is amazing but true. Because of certain rules promulgated by SSA, some older individuals can be considered disabled even if it is acknowledged that they can perform some physically full-time work.

Another point is this: certain medical opinions which seem to indicate that an individual is not disabled are actually consistent with disability. Therefore, if a judge adopts that opinion as the basis for a denial of benefits, a good disability lawyer should be able to get you benefits on an appeal. Even better, a good lawyer might be able to explain to the judge that there is no choice but to defer to that medical opinion which requires a finding of disability. By contrast, some medical opinions which seem to indicate disability could actually destroy your case. Sometimes figuring out which side of that line the opinion falls on is very difficult.

One of the most important parts of proving disability is filling out paperwork properly. Unlike some firms who do this type of work, we accept clients at every stage of the administrative process and will even help you apply if you have not done so. We urge people to sign with us early because the paperwork can be filled with land mines that an inexperienced person will not even know are there. Sometimes people tell us that they will come back to us again if they get denied. If they filled out their paperwork wrong or allowed bad medical evidence into the record, it may already be too late to salvage the claim.

This article really doesn't even scratch the surface, but it gives you some idea of the complexities and challenges you face when applying for disability. Don't go through it alone. Hire someone from the beginning who really knows the system and can

guide you properly to the final destination. You may only get one chance for benefits, so you need to do it right.