

# **Social Security Disability: Change & Confusion**

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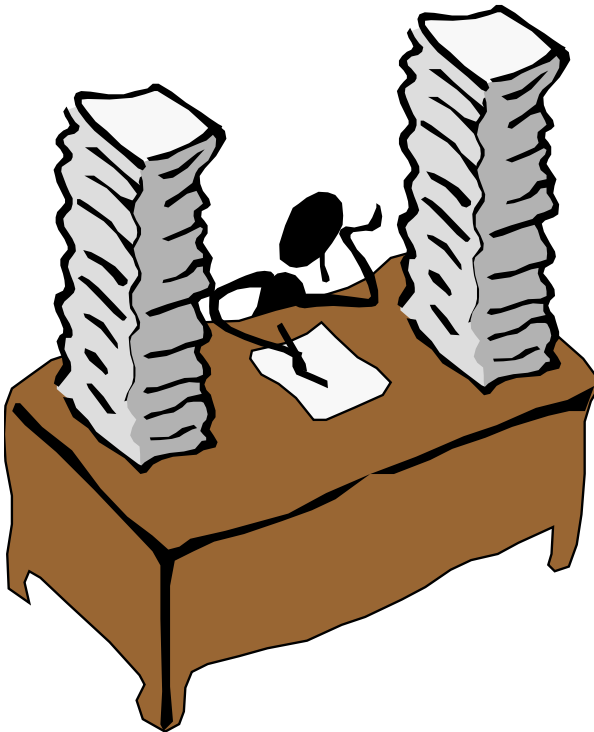
# Introduction

- General Law.
- The Programs: Title II, SSI.
- The analysis: How to analyze disability claims.
- How to apply, appeal and not make mistakes.
- Recent law changes -- a program under attack.
- Returning to work and protecting your rights.

# Being Totally Disabled Means:

- Unable to perform any Substantial Gainful Activity
- By reason of a medically determinable impairment
- That has lasted, or is expected to last, at least one year, or result in death.

# The focus is on “function”



How do the symptoms related to these medical problems affect the ability to work?

# The Programs - Social Security Disability

- Title II (SSDI) - Two Tests:
  - *Must be totally disabled;*
  - *Worked and paid FICA taxes for at least 20 quarters of the 40 before onset of disability;*
  - *Monthly benefits to claimant and eligible dependents;*
  - *Annual COLAs;*
  - *Medicare eligibility 29 months after onset date;*
  - *Protects Retirement Account.*
  - *Trial Work Period.*

# Supplemental Security Income (Title XVI)

- SSI also has two tests:
  - *You must be totally disabled;*
  - *must be indigent - single individual can not have more than \$2,000.00 in non-exempt resources;*
  - *2015 benefit is \$733/mth;*
  - *Spouse's assets and income are deemed;*
  - *Medicaid and food stamps;*
  - *May need Supplemental Needs Trust.*

# The Analysis (how to climb the SSA ladder)

- Compassionate Allowance?
- Involved in SGA?
- Severe Impairment?
- Meet or Equal the Listings?
- Able to perform Past Relevant Work?
- Other jobs considering age, education, work skills and Residual Functional Capacity?

# Lupus – Sect. 14.02

- Diagnosis with blood tests, clinical records.
- Document “constitutional symptoms and signs” i.e., fatigue, fever, malaise, weight loss, others.
- Are other organ/system Listings met (joint, cardiovascular, etc.)?
- Involvement of two organ/body systems (at least one moderately) with severe fatigue, fever, malaise and weight loss.



# Step 5: Ability to function at other work.

- Focus is on Residual Functional Capacity -- what activities can be performed despite the impairments?
- Issue is ability to work 5 days/wk; 8 hours/day.
- Side effects of treatment?... pain, fatigue, depression?
- Medical records must document symptoms.

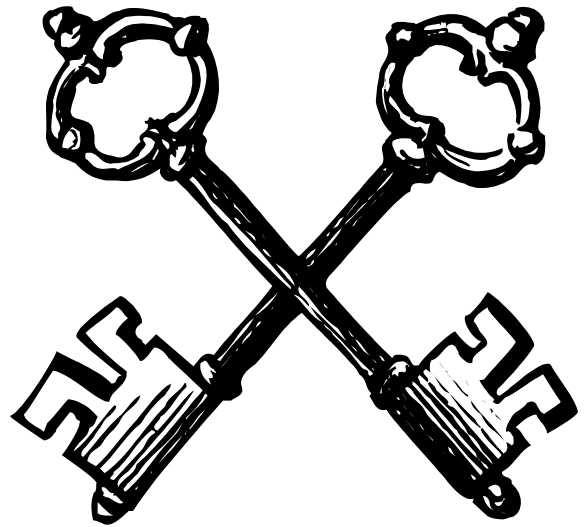
# These claims can be won!



- Must be seeing doctors regularly.
- Must be describing symptoms.
- Seek mental health counseling if needed.
- Persevere!

# Clinical records are the focus in all “subjective symptom claims.”

- “Sustaining activity” – fatigue, pain.
- Medical charts must note symptoms.
- Medical Reports - Doc must be supportive.
- Objective v. Subjective symptoms.



# HOW TO APPLY FOR BENEFITS

- Initial application
- Reconsideration
- Administrative Law Judge Hearing
- Appeals Council
- United States District Court
- United States Court of Appeals

# Cutting through the red tape!

- File/Appeal online – avoid telephone.
- Send all mail certified, return receipt requested.
- File all appeals **AS SOON AS POSSIBLE.**
- Keep SSA advised of address changes, medical condition.
- Keep copies of all paperwork.

# CONTINUING DISABILITY REVIEWS (CDRS)

- Issue is “medical improvement sufficient to allow return to work”
- Millions to be reviewed.
- More SSA surveillance



# Returning to work: Title II (SSDI) rules

- Trial Work Period
  - Can be paid for work and still collect benefit check
  - Allowed 9 months out of any 60 month block of time
  - \$780.00 gross/mth is a TWP month in 2015 (was \$770 in 2014).
  - Will increase annually with Cost of Living.
  - Obligation to report to SSA

# Additional Protection after Trial Work Period



- **EXTENDED PERIOD OF ELIGIBILITY**
  - Lasts for 36 months after TWP.
  - If less than \$1090/month in 2015, (\$1070 in 2014) benefits continue.

**Extended  
Medicare.**



# Supplemental Security Income (Title 16) rules

- Work income offsets benefits
- After \$85.00 exclusion SSI grant is reduced by \$1.00 for every \$2.00 earned.
- Additional exclusions for impairment-related work expenses.
- PASS programs can be set up with local office.
- Avoid overpayments: Report to SSA.

# RECENT UPDATES

- [www.RabinSSlaw.com](http://www.RabinSSlaw.com) - all you need to know!
- “Like” us on Facebook and follow on Twitter – @RabinSSlawyers
- Sequestration is a problem.
- [www.ssa.gov](http://www.ssa.gov) – apply/appeal online.
- Join “My Social Security” on SSA website – check your earnings record.
- New Crystal Lake office!

# **WE ARE HERE TO HELP!**

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