

**LEGAL BASICS FOR MEDICAL PROVIDERS WITH
PATIENTS INVOLVED IN SOCIAL SECURITY
DISABILITY CLAIMS**

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I. WHAT ARE SOCIAL SECURITY DISABILITY AND SUPPLEMENTAL SECURITY INCOME BENEFITS? HOW ARE THEY DIFFERENT?

Social Security Disability (SSDI) and Supplemental Security Income (SSI) are two federal social safety net programs that provide income and medical benefits to individuals with disabilities. Both SSDI and SSI require proof of “disability,” as defined below. SSDI requires “coverage” as well, meaning that the disabled individual must have worked and paid federal taxes of a sufficient quantity and within a certain time period of becoming disabled. SSI benefits do not require “coverage.” However, SSI benefits do have a “means” test which requires the recipient to have very few financial assets or means of support. SSDI benefits do not have a “means” requirement.

An individual who qualifies for SSDI benefits receives monthly payments from the federal government that continue throughout the period of disability or until the individual reaches retirement age. Successful SSDI applicants also receive Medicare benefits. An individual who qualifies for SSI benefits receives smaller monthly payments from the federal government, but receives Medicaid rather than Medicare.

II. HOW IS “DISABILITY” DEFINED UNDER THESE PROGRAMS?

The Social Security Administration uses complex regulations to determine if you are eligible for disability insurance benefits (SSDI) or supplemental security income benefits (SSI). However, in its simplest formulation, “disability” means that the claimant is unable to engage in “substantial gainful activity” on a regular and sustained basis due to either a single or combination of medical impairments, also taking into consideration the claimant’s age, education, and work experience. “Substantial gainful activity” refers to any work in which the claimant is able to earn at least \$1,000 per month. This means that if an individual is able to perform any job that exists in the national economy in reasonable numbers making at least \$1,000 per month, even if it is not a job they have previously performed, they do not qualify for disability. However, if the individual is only able to perform such a job for limited periods, but is not able to sustain the job due to flareups in the symptoms of a medical condition, they do qualify for disability. Generally speaking, an individual must be able to work 8 hours per day, 5 days per week or an equivalent work schedule to be employable. If this level of sustained work is not possible, then the individual is likely disabled.

Social Security’s consideration of age, education, and work experience means that requirements for qualifying for disability are more relaxed for individuals who are over the age of 50, and who have limited education, or limited work experience.

The way Social Security performs its analysis is by assessing the claimant’s exertional limitations (i.e. ability to perform various physical tasks) and non-exertional limitations (i.e. the ability to engage in potential work activities that involve either mental processes or persistence and pace). Once Social Security determines a claimant’s exertional and non-exertional limitations, it cross-references these limitations against a database of job titles and job requirements. If Social Security can locate jobs within this database which the claimant is

theoretically able to get, taking into consideration age, education, and work experience, then the claimant is not disabled. If Social Security cannot identify such jobs, the claimant should be declared disabled.

Multiple sclerosis can produce both exertional and non-exertional limitations. Limb paralysis, weakness, and tremors, obviously produce significant exertional limitations. Cognitive problems, visual disturbances, and fatigue produce significant non-exertional limitations. It is through the documentation of these limitations that multiple sclerosis patients are able to obtain approval for disability benefits.

There is a second, much less user-friendly, method for proving disability as well. The Social Security Administration has promulgated something called the Social Security Listings. The "Listings" is a list of medical conditions and symptoms. If a claimant has a "listed" medical condition of the stated severity, the claimant, in theory automatically qualifies for benefits. In practice, the listings are rarely applied properly by Social Security adjudicators. This is due in large part to the listings being complicated and requiring qualitative judgment calls about the severity of particular symptoms. As a result, for most individuals, the listings are not particularly useful.

However, in the context of multiple sclerosis patients, the Social Security listings are somewhat more useful than for many other diseases. The listings show that either paralysis or significant limitation in the use of two or more limbs meets Social Security's criteria. Additionally, significant fatigue, if properly documented and reproducibly demonstrated, meets Social Security's criteria. Certain, visual, mental, and speech impairments also qualify.

III. PHYSICIAN INVOLVMENT IN SOCIAL SECURITY CLAIMS

So what can you, as medical providers, do to help multiple sclerosis patients with the disability process? The first thing you can do is to encourage patients in the proper circumstances to look into Social Security disability. Many people have a fairly limited understanding of Social Security Disability benefits, and will put off obtaining necessary information until later than they probably should. Multiple sclerosis is certainly not disabling in all cases. However, because it is a progressive disease, any individual with a diagnosis of MS should at least familiarize themselves with the Social Security Disability process so that if they start to become disabled, they are fully aware of their options. As an attorney, I frequently encounter patients who waited far too long to get information about Social Security and as a result, have harmed their chances of approval and the amount of recovery. If an individual stops working due to symptoms of multiple sclerosis but does not apply for Social Security Disability, they can lose "coverage" making the process of qualifying for benefits much more difficult.

One of the reasons it is especially important for potential claimants to understand the Social Security Disability process is because of how important medical records are to the process. Because most individuals in this country obtain their health insurance through their employment, the loss of a job can mean the loss of easy access to medical care. For an

individual who may end up losing their job due to worsening multiple sclerosis, the best time to develop supportive medical evidence is often before the job is lost while health insurance is still available.

Thus, when treating an individual with multiple sclerosis, if the individual indicates she is having increasing difficulty sustaining work, medical providers should suggest the individual look into Social Security. This is not to say that an individual having difficulty with work should immediately apply. After all, a successful applicant must have been, or be expected to be, disabled for a period of at least 12 months. Instead, the individual should become aware of the system, and should begin the process of documenting the limitations from the disease which are causing difficulty with sustained work. Then, should the condition become sufficiently severe to prevent work, the individual will have good medical documentation to support the claim. It is better to have this documentation developed in advance, and when possible, prior to the loss of health insurance that so often accompanies a lost job.

The second thing medical providers can do to help multiple sclerosis patients applying for disability is to provide supportive medical opinions on physical and mental limitations caused by the disease. The most important consideration in obtaining approval for disability benefits is supportive medical records from treating medical providers. Unlike in other areas of the legal system, medical professionals rarely interact directly with the adjudicators in charge of handling Social Security cases. Doctors are rarely, if ever, called to testify. Instead, everything is handled through the review of medical records and reports. Accordingly, thorough records which document limitations can be extremely helpful in getting claimants approved.

Supportive records from treating medical providers can take many forms. To support a patient, you do not have to declare them disabled in your medical records. Nor do you have to declare that any disability is permanent. While such declarations can be helpful, many Social Security judges are unimpressed with such statements unless specific physical and mental limitations are also described in detail. In truth, a statement that an individual with multiple sclerosis is “disabled” is really an opinion on an issue reserved to the judges. Instead, clearly documenting limitations either with or without a conclusory statement about disability is all that is needed.

For example:

- If an individual is suffering frequent flareups in MS symptoms, document the frequency of these flareups and if the flareups prevent the individual from working or maintaining regular attendance;
- If an individual suffers from significant weakness in an extremity, provide numerical lifting restrictions or standing and walking restrictions;
- If an individual suffers from significant fatigue, indicate whether the individual should be given the freedom to take breaks from work as needed or lay down throughout the day;
- If an individual suffers from cognitive impairment, discuss the effects of the cognitive impairment at length on abilities like following instructions, maintaining concentration and attention, or respond appropriately to changes in routine and getting along with

others.

If a multiple sclerosis patient has retained a legal representative for the Social Security application, they may bring various forms to you asking your opinions on various physical and mental limitations. Please take a moment to fill these forms out, as a work restrictions form can go a long way towards documenting a multiple sclerosis' patient's limitations in Social Security's own language. It will be even more helpful if the opinions expressed in these forms are consistent with the longitudinal medical records.

IV. WHAT TO DO IF YOU DO NOT SUPPORT A PATIENT FOR DISABILITY

There will be times when you are approached by a patient you do not believe is disabled. Dealing with such patients can be a delicate issue. While the person may simply not be disabled, there will also be times when the individual, while not disabled by MS, nonetheless suffers from other co-morbid conditions which you are not treating. These conditions, in combination with MS, may be disabling.

Thus, in dealing with individuals who you do not support for disability, please provide whatever restrictions you believe are appropriate, if any. Limited restrictions will still be helpful to the Social Security administration in making an informed decision, and also potentially to the claimant as well. If the claimant has other medical conditions, the limited restrictions you provide may, in combination with restrictions obtained from other doctors, help the claimant prove her case.

V. HELPING MULTIPLE SCLEROSIS PATIENTS WORK FOR LONGER

There are times, especially with young multiple sclerosis patients, where the individual needs to keep working and paying taxes to obtain "coverage" for Social Security Disability. In cases like this, it may be beneficial for patients to attempt to obtain "reasonable accommodations" to their jobs under the Americans with Disabilities Act (ADA). Please work with such patients to come up with restrictions and modifications to existing work to help patients keep working. Not only will continued work help patients develop coverage, but continued work is usually preferable to disability. At the same time, please be understanding if employers are unable to accommodate restrictions and provide supportive disability opinions if working with restrictions is not an option.

VI. CONCLUSION

The Social Security Disability system can be of great benefit to multiple sclerosis patients both in providing living expenses and in providing continued medical care. The opinions of medical providers are essential to this process. By encouraging proper patients to become informed about the system and by providing clear medical opinions regarding limitations caused by MS, you will be doing your patients a great service in helping them access this important social program.