Social Security Disability: Overview/Medical Aspects

AIDS/HIV & Cancer Clinic
Spring 2015

Disability Income

➢ Social Security Programs:
  ● Social Security Disability Income (“SSDI” “Title II”)
  ● Supplemental Security Income (“SSI” “Title XVI”)

➢ Private Disability Insurance
  ● - through employer/purchased
Social Security: Comparisons

- Both programs use same rules to determine whether claimant is disabled
- Different rules for financial eligibility
- Different payment amounts and period of back pay
- Both programs governed entirely by federal law
  - Federal Statutes and Regulations
  - SSA Agency Rulings ("Social Security Rulings")
  - SSA POMS (Program Operating Procedures)
  - SSA HALLEX (Hearing Office Rules)

-Social Security Disability Insurance ("SSDI") ("Title II")
- Monthly cash benefit to disabled persons and dependents
- Insurance – based on payroll taxes (FICA)
- Must have worked long enough and recently enough (5 out of last 10 years)
- Payment amount dependent on earnings history
Supplemental Security Income (SSI) (“Title XVI”)

- Monthly benefits to aged, blind or disabled persons
- Needs-based program, considers income and assets
- Payment amount supplements any other income up to a maximum
- Year 2015 maximum payment: $733/mo

The application process

- Initial application
  - Social Security office or online
  - Disability evaluation done at State Agency (Disability Determination Service)
  - Should take a couple months – often takes much longer
  - About one third approved.
- If denied: Request for Reconsideration
  - File within 60 days of denial (paper or online)
  - DDS again looks at whether claimant is disabled
  - This can take a couple months up to 4-6 months or more
  - About 10% approved
Further appeals

- Administrative Hearing (after denial of reconsideration)
  - Hearing before Administrative Law Judge (Raleigh, Wilmington, Fayetteville, Greensboro, Charlotte, etc.)
  - Wait for hearing about 12 months or more. (Was up to 2 years until recently).
  - Approval rate about 60%
- Appeals Council (2% approved; 22% remanded)
- Federal Court (5% reversed; 47% remanded)

Statutory Definition of Disability

- Severe mental or physical impairment
- Medically verifiable by lab tests, physical examination or other objective medical procedures
- has lasted, or is expected to last, at least twelve consecutive months or result in death
- renders claimant unable to engage in substantial gainful activity (“SGA”)
Why is it so hard to get SSA disability?

- *Could* client, given their limitations, experience, and education, do ANY job?
- SSA does not consider:
  - whether client could get job
  - whether job exists locally
  - transportation

Security camera monitor!
Three domains

- **Medical**
  - Impairments
    - Identifying them
    - Proving them with medical records, tests, labs, etc

- **Functional Capacity**
  - *Limitations* that result from impairments and/or treatments
  - What causes them?

- **Vocational**
  - Client’s vocational history
  - Job analysis
  - How the functional limitations affect work related activities

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Five-Step Sequential Evaluation

1. Is the claimant doing Substantial Gainful Activity (SGA)?
2. Does the claimant have a “severe” impairment?
3. Does the impairment meet or equal a listed impairment?
4. Can the claimant do past relevant work?
5. Can the claimant do any work existing in significant numbers in the national economy?
Sequential Evaluation
Step 1: Work

- Is the claimant engaged in substantial gainful activity (“SGA”)?
  - “Substantial” means work activity that involves significant physical or mental activities
  - For 2015, “gainful” means resulting in income of $1090/month (gross income minus impairment related work expenses)

Sequential Evaluation
Step 2: severe impairment
20 CFR § 404.1521

- Severe = significantly limits an individual's physical or mental abilities to do basic work activities
  - More than minimal effect
  - Duration = lasting at least 12 months or resulting in death (§ 404.1509)
- Generally, this is a low bar
Sequential Evaluation
Step 3: Listings

- Does the impairment, or combination of impairments, meet or equal a “listed impairment”?
  - Organized by body systems
  - Impairments presumed to prevent ability to engage in SGA
  - Each listing includes diagnosis as well as certain findings which must be included in medical records
  - Many listings include durational requirements and severity levels

Important Listings

- 14.08 – HIV Listings
- 12.00 -- Mental Disorders
  - 12.04 -- Affective Disorders (e.g. depression)
  - 12.05 – Mental Retardation
  - 12.06 – Anxiety Disorders
- 5.00 – Liver Disease (Hepatitis C, Cirrhosis)
HIV Listings

- **HIV Listing: 14.08**
  - Part of “Immune System Listing -- 14.00 series
  - Specifically begins at 14.08, but includes introductory material – which is very important
  - Requires a positive HIV test PLUS an “AIDS-defining” condition

The 14.08 A-J Listings

- A list of AIDS-defining conditions, including
  - A. Bacterial Infections
  - B. Fungal Infections
  - C. Protozoan or helminthic infections
  - D. Viral Infections
  - E. Malignant neoplasms
  - F. Conditions of skin or mucuous membranes
  - G. HIV encephalopathy
  - H. HIV wasting syndrome
  - I. Diarrhea
  - J. Other infections
14.08K:
Repeated Manifestations of HIV

- The kitchen sink
  - AIDS defining conditions that don’t meet A-J
  - Other HIV symptoms (fatigue, weakness, cognitive issues, depression)
  - Medication side effects
    - PLUS
  - Functional Limitations
    - Limitations in Activities of Daily Living
    - Limitations in Maintaining Social Functioning
    - Limitations in timely task completion due to deficiencies in concentration, persistence, or pace.

HIV as a disability

- No particular CD4 or Viral Load is required, and a low CD4 won’t guarantee approval
  Focus is on:
  - Medical evidence of impairment
  - Evidence of resulting deficiency in mental and/or physical functioning
    - Activities of daily living, social functioning, persistence, pace, ability to sustain activities
Medication Side Effects

- Listings acknowledge that sometimes it’s impossible to determine what’s a direct effect of HIV and what’s a medication side effect

- 14.00G(5)(a):
  - “The symptoms of HIV infection and the side effects of medication may be indistinguishable from each other. We will consider all of your functional limitations, whether they result from your symptoms or signs of HIV infection of the side effects of your treatment.”

Two important limitations

- **Substance Abuse:**
  - Claimant may not receive benefits if substance abuse “contributes materially” to the finding of disability (20 CFR 404.1535)

- **Compliance with treatment:**
  - No benefits if claimant fails to follow prescribed treatment that would restore ability to work. (20 CFR 404.1530)
  - Acceptable excuses: treatment contrary to religion, very risky; considers physical, mental, educational, and linguistic limitations
  - For HIV infected, common problem is medication adherence.
Steps 4 & 5

- **Step 4: Can claimant do Past Relevant Work (PRW)? What is claimant’s Residual Functional Capacity (RFC)?**
  - RFC: What can the claimant do in spite of her/his impairments?
  - Assess physical, mental limitations/restrictions

- **Step 5: Can claimant do any work?**
  - Consideration of all of client’s impairments, as well as age, education & work experience
  - Claimants 50+ more likely to be approved
  - Availability of jobs not considered

Proving Disability

- **Medical Records**
- **Affidavits from**
  - Doctors & other health care providers
  - Social Workers, Case Managers
  - The client
  - Employers, friends, family who are aware of limitations, other relevant facts

- **Other records, e.g.**
  - School Records
  - Work records