

# **Virtual Mentor**

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## **HEALTH LAW**

### **A Physician's Guide to Social Security Disability Determinations**

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The pen is famously mightier than the sword [1]. For physicians—especially the non-sword-wielding sort—this appears to be true. The words doctors write with their pens can have far-reaching consequences, particularly legal ones, for their patients. Matters of competency, guardianship, and disability all hinge on physicians' diagnoses. Physicians may feel intimidated by the consequences their diagnoses can have in the courtroom, particularly if they are not aware of the wider legal frameworks in which their work plays a role. This article will help physicians better understand the power of diagnosis in one area where their counsel is often sought—social security disability determination. It will briefly review the history of social security benefits, explain how an individual qualifies for disability benefits, and explore the physician's role in this process.

### **Social Security Disability History in America**

The first full-fledged attempt at providing disability benefits began during the Civil War in response to the needs of hundreds of thousands of wounded soldiers [2]. This was followed up with a disability insurance program in 1954 which, in 1960, President Eisenhower expanded to cover all Americans with disabilities and their dependents [2]. In 1960, 559,000 people were receiving these benefits, with an average benefit being worth \$80 a month [2]. By 2009, the number had risen to 9.7 million [3].

### **The SSA Definition of Disability**

The Social Security Administration (SSA) defines disability as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months” [4]. Children are disabled if they have “any medically determinable physical or mental impairment or combination of impairments that caused marked and severe functional limitations, and that can be expected to last for a continuous period of not less than 12 months” [4].

There are two types of disability benefit programs in the United States. Social Security Disability Insurance (SSDI) recipients have worked a certain length of time and within a recent duration, and they receive Medicare benefits after they have received SSDI for 24 months [4]. Social Security Income (SSI) is intended for those adults and children who have limited resources and little or no (recent) work history. These individuals generally qualify for Medicaid [4].

## **How is a Disability Determined?**

Disability is determined by five criteria, many of which are medical.

- (1) The individual must not earn more than \$1,000 a month in wages [5].
- (2) The health condition must be “severe” and must interfere with “basic work-related activities” [5].
- (3) The individual must have either (a) a medical condition considered so severe that it is specifically listed in the Social Security Administration’s disability manual or (b) of equal severity to one of those conditions [6]. Only if the individual does not meet this third requirement, then
- (4) the individual must be unable to do work he or she did previously and
- (5) must also be unable to adjust to other types of work [6].

The SSA publishes a listing of impairments that automatically qualify as disabilities (and thus satisfy the third criterion). These may change over time, with new medical information. There are separate lists for adults (Part A) [7] and children (Part B) [8], each broken down by bodily system. Cystic fibrosis is one example. Listed under respiratory disorders in Part A, cystic fibrosis automatically qualifies an individual as disabled if he or she can prove one or more of the following, all of which deal with specific medical measures taken by a physician:

- (a) a forced expiratory volume (FEV) of a specific value dependent on height without shoes (with a chart provided), or (b) episodes of bronchitis or pneumonia or hemoptysis or respiratory failure, requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each inpatient hospitalization for longer than 24 hours for treatment counts as two episodes, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of episodes, or (c) persistent pulmonary infection accompanied by superimposed, recurrent, symptomatic episodes of increased bacterial infection occurring at least once every 6 months and requiring intravenous or nebulization antimicrobial therapy [9].

For a personality disorder, the individual must have both of the following.

- (a) Deeply ingrained, maladaptive patterns of behavior associated with one of the following: seclusiveness or autistic thinking; or pathologically inappropriate suspiciousness or hostility; or oddities of thought, perception, speech and behavior; or persistent disturbances of mood or affect; or pathological dependence, passivity, or aggressivity; or intense and unstable interpersonal relationships and impulsive and damaging behavior. (b) Resulting in at least two of the following: marked restriction of activities of daily living; or marked difficulties in maintaining social functioning; or marked difficulties in maintaining concentration, persistence, or pace; or repeated episodes of decompensation, each of extended duration [10].

Both examples show how heavily medical expertise, medical testing, and medical specialty factor into a determination of a disability.

Individuals who do not qualify because of the type or severity of their ailment might qualify if they are precluded from performing past jobs and other future jobs (the fourth and fifth criteria) [6]. The SSA looks to work the individual did in the last 15 years that involved significant for-profit mental or physical labor [11]. If the individual is deemed unable to perform past jobs, then the SSA determines whether other jobs are possible, factoring in such information as medical conditions and age, education, past work experience, and any transferable job skills [11]. The agency explores job availability through the national, rather than local, economy. For example, if an individual can no longer be a mechanic but can be a factory worker, then the individual is not disabled because the national economy has factory-worker jobs (even if the individual's local economy does not).

Certain diseases are deemed so severe that disability benefits can be expedited and the individual can bypass many of the usual steps in procuring payments. These "compassionate allowances" include most cancers, Lou Gehrig's disease, and a host of other conditions [12].

### **The Physician's Roles in Determining Disabilities**

Physicians may be involved in determination of SSI or SSDI eligibility on a number of levels. Foremost, those making the disability determination rely heavily on the medical chart and may even request that physicians write medical reports on the patients [4]. These reports should contain as much relevant objective evidence from the chart as possible, including medical history, clinical and laboratory findings, and diagnosis, treatment, and response to treatment [4]. Physicians should tailor the letter to the question of whether the patient can work or not, based on his or her condition. (Examples of sample reports are available [13, 14].) Physicians are paid a reasonable amount for medical reports to the SSA, which can be dictated by phone for convenience.

The treating physician's input is paramount in determining whether an individual is eligible for SSI or SSDI. Although an SSA-employed physician might examine the patient's chart, the treating physician alone performs an examination of the patient. If the SSA needs data the physician does not have, the physician can choose to perform the exam for a fee paid by SSA or can decline. If the physician does not have the resources or does not wish to provide the exam, the SSA can refer the patient for a "consultative examination" by another physician [4].

The SSA gives controlling weight to the physician's opinion on what work activities the individual can or cannot do as long as that opinion is "supported by clinical and laboratory findings and...not inconsistent with any other evidence in the patient's record" [4]. However, the determination of disability under the law ultimately depends on the SSA administration, after consideration of the physician's stance [4].

Physicians play other roles in SSA determinations besides being treating physicians. They may serve as independent consultants who perform examinations for SSI/SSDI determinations and may be members of state-based teams called disability determination services that hear and analyze disability cases [4].

Many physicians will become involved in SSA determinations at some level and some point in their careers. It is important that they understand and feel comfortable with the implications of diagnoses and other professional actions that have wider repercussions, particularly legal ones, for their patients.

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