



Social Security Disability: Understanding and Navigating This Medical-Legal Quagmire

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Disability Under Social Security

Social Security administers two programs for the disabled. Social Security Disability (SSD or DIB) is for people with a steady work history. Benefits are based on earnings over the person's work history and are payable regardless of assets or unearned income. Supplemental Security Income (SSI) is paid to people with limited assets and income. It is a form of Federal welfare. The medical standards are the same for both programs.

What is a Disability?

Social Security pays benefits to people who are unable to perform substantial gainful activity due to a condition or combination of conditions that has lasted or is expected to last at least one year. There are several steps in determining if a patient is "disabled."

1. The Listings of Impairments describe medical conditions that are considered so severe that they automatically classify the patient as disabled (see definition of visual disability). If a patient's condition (or combination of medical conditions) is not on this list, the agency will determine if the condition is as severe as a condition that is on the list. If the severity of the medical condition meets or equals that of a listed impairment, the patient will be considered disabled. If it does not, then the analysis continues.
2. Does the medical condition prevent the patient from being able to do the work performed in the past? Even if it does, the agency may decide that the patient is not disabled if he/she can perform other work.
3. If the patient cannot do the work done in the past, can he/she perform other work? Evaluation considers medical conditions, age, education, past work experience and any skills that could be used to do other work. If the patient cannot do other work, the agency will decide that the patient is disabled. Applications can take over a year to process! Patients should be encouraged to apply for benefits as soon as they become disabled and not to give up if denied initially. The disabling condition does not have to be permanent. If the patient's condition improves, he/she may still be entitled to back due benefits.

What is a Visual Disability?

Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual field. A loss of visual acuity limits the ability to distinguish detail, read, or perform fine work. A loss of visual field limits the ability to perceive visual stimuli in the peripheral extent of vision.

Statutory blindness is visual acuity of 20/200 or less in the better eye with the use of a correcting lens. Best-corrected visual acuity for distance in the better eye determines if this definition is met. An eye that has a visual field limitation such that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered as having visual acuity of 20/200 or less. A report of an eye examination that includes measurements of the best-corrected visual acuity or the extent of the visual field, as appropriate is needed to evaluate a visual disorder. If there is a loss of visual acuity or visual field, the cause of the loss must be documented. Best-corrected visual acuity should use Snellen methodology or any other testing methodology that is comparable to Snellen methodology. Visual field loss measurements should be obtained with an automated static threshold perimetry test performed on a perimeter, like the Humphrey Field Analyzer.

A cortical visual disorder is a disturbance of the posterior visual pathways or occipital lobes of the brain in which the visual system does not interpret what the eyes are seeing. It may

result from such causes as traumatic brain injury, stroke, cardiac arrest, near drowning, a central nervous system infection such as meningitis or encephalitis, a tumor, or surgery. It can be temporary or permanent, and the amount of visual loss can vary. It is possible to have a cortical visual disorder and not have any abnormalities observed in a standard eye examination. Therefore, a diagnosis of a cortical visual disorder must be confirmed by documentation of the cause of the brain lesion. If neuroimaging or visual evoked response (VER) testing was performed, a report or other medical evidence describing these findings is required.

The requirements for determining if a patient is visually disabled are very specific. For more information, refer to the website:

<http://www.ssa.gov/disability/professionals/bluebook/2.00-SpecialSensesandSpeech-Adult.htm>

Many patients with visual disorders will not meet these requirements. However, they may still be considered disabled if their visual condition is considered along with other impairments which are limiting the patients' ability to work.

Medical Records and Reports

Often a visual condition is contributing to the patient's inability to work. Of course, copies of the relevant medical records will be requested. However, it is also helpful to provide a report that includes a functional evaluation describing how the visual condition is limiting the patient's ability to return to work and perform activities of daily living. The functional assessment should consider the following:

- What objective/clinical findings support the diagnosis and limitations?
- Have the patient's impairments lasted or be expected to last 12 months or more?
- What is the impact of the visual condition on the patient's ability to work an 8-hr day?
- Does the visual condition cause your patient to suffer from symptoms such as double vision, headaches, pain, blur, eye strain, excessive tearing?
- In a typical 8-hr workday, will your patient require rest periods in addition to lunch and a morning and afternoon break period due to the visual impairment?
- Are environmental restrictions relevant, such as being around moving machinery, exposure to changes in temperature or humidity, exposure to dust fumes and gases, or driving automotive equipment?
- Does the patient have the visual skills necessary to write, type, work with coins, work with small parts, look up?
- Is the visual impairment constant or fluctuating? Can the patient be expected to have "good days" and "bad days?"
- Does the patient's physical impairment, medication or pain cause decreases in cognitive functions such as memory, concentration, and attention?

The Process

1. Application. The process begins with the completion of an application. After the application is received by the Social Security Administration, it usually takes 5-6 months to make an initial determination.
2. Hearing. If rejected (about 50-65% of all initial claims are rejected depending on the state), the claimant must appeal and request a hearing before an Administrative Law Judge. At the hearing the claimant will be given the opportunity to present evidence and cross-examine medical and vocational witnesses. Nationwide, approximately 55% of claimants who apply for hearings are approved, although these statistics are dramatically higher for those who are

represented by an attorney. Unfortunately, many worthy claimants give up after the initial denial

3. Appeal. If denied benefits at the hearing stage, an appeal can be made to the Appeals Council of the Social Security Administration. If the Appeals Council upholds the Judge's decision, the next level of appeal is to the Federal District Court. This Court cannot accept any new evidence; therefore many attorneys will appeal only if they are able to identify an error of law in the decision.
4. Approval. After approval of a case at any level, the Social Security Administration will calculate the benefits and the claimant will receive an explanatory letter (referred to as an Award Notice). The Award Notice should be reviewed by an attorney to insure that the benefits are accurate (mistakes are not uncommon).
5. Continuing Disability Reviews. Social Security has the right to review cases at any time, usually no more often than every 3 years.

The Attorney's Perspective

If the patient's visual impairment is disabling under the Listings of Impairments, the claim should be approved at the initial application. However, in many claims involving visual impairments, they are either the result of other conditions such as multiple sclerosis, traumatic brain injury or diabetes or secondary in severity to other impairments. However, the proper documentation noted above can insure a favorable determination. The functional limitations from a visual impairment can greatly reduce a claimant's vocational base, limiting the work he/she would otherwise be capable of performing. It can be the final piece of the puzzle.

Facilitating a Favorable Decision

- Encourage patients to apply for benefits as soon as they become disabled without regard to their financial status.
- Encourage patients to consider hiring an attorney with significant experience. Contact your local Bar Association to help find an attorney in your community.
- Speak with the attorney. The attorney is more familiar with the specific criteria that are necessary for a successful claim. Ask the attorney if he/she has a specific visual functional assessment for you to complete.
- Become familiar with the requirements for determining if a patient is visually disabled. Use these definitions and testing procedures to document a patient's visual status, even if the visual deficits are not this severe. It will allow the analysts and judges to better understand how the visual condition is contributing to the overall disability.
- Reports are as important to the approval process as medical records. Be sure to include a functional assessment that describes how the visual condition is limiting the patient's ability to work and perform activities of daily living.

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