

Scleroderma

SOCIAL SECURITY DISABILITY LAW

October 2, 2010

DEFINITIONS

Disability is an inability to engage in *all* substantial gainful activity (8-hour workday) by reason of a physical or mental impairment resulting from abnormal testing and clinical examination, which is expected to result in death or last 1 year.

Alcoholism, drug addiction + smoking. SS will not consider that impairment when an excessive intake of alcohol, drugs or smoking “materially contributes” worsens it. Since cigarette smoking materially contributes to breathing difficulties, a smoker’s breathing limitations will not be considered. Similarly, an alcoholic’s or drug addict’s limitations from psychological impairments will not be considered because their excessive drinking or taking illicit drugs worsens their depression.

BENEFITS

Title II disability claims are for workers who have worked enough to obtain insured status. A worker must have paid SS taxes in order to be “insured” just like paying premiums for private insurance. To receive disability benefits, a claimant will have to prove they were disabled while they were insured.

Title XVI (Supplemental Security Income or SSI) disability is a welfare program for the disabled who have not worked enough *and* meet the poverty level of \$2,000 considering all of their assets including spouse’s income, real estate, car, etc.

A claimants may receive both SS disability and SSI if SS benefits are low enough. Upon winning a claim, the payment of both past due benefits eventually disqualifies them from SSI, thereafter, only receiving disability benefits.

Children’s disability claims are more difficult to prove than adult disability as children must meet or equal one of The Listing of Impairments.

Disabled widow’s benefits are paid to disabled widows, widowers and surviving divorced spouses of deceased workers who are at least 50 years old.

ATTORNEY FEE. A lawyer is paid only if they win (contingent fee) and then their fee is limited to 25% of past-due compensation with a limit of \$6,000.

SEQUENTIAL EVALUATION

- 1) Not engaged in SGA. A claimant may earn under \$1,000/month for 2010 and still receive disability benefits.
- 2) Listing of Impairments. A claimant wins if they prove one of their conditions meets or equals in severity a section of the Listing of Impairments, which is a list of medical conditions deemed totally disabling.

§14.04 Systemic sclerosis (scleroderma) with:

- A. Involvement of 2 or more organs/body systems with:
 1. One of the organs involved to at least a moderate level of severity; and
 2. At least 2 of severe fatigue, fever, malaise or involuntary weight loss. Or
 - B. With one of the following:
 1. Toe contractures a foot resulting in the inability to walk effectively
 2. Finger contractures in both hands resulting in an inability to perform fine and gross movements
 3. Atrophy of a leg resulting in an inability to walk effectively
 4. Atrophy of an arm resulting in an inability to perform fine and gross movements. Or
 - C. Severe Raynaud's phenomena characterized by:
 1. Gangrene involving at least two extremities; or
 2. Ischemia with ulcerations of toes or fingers resulting in the inability to walk effectively or to perform fine and gross movements effectively. Or
 - D. Repeated manifestations of systemic sclerosis (scleroderma) with at least two of the constitutional symptoms or signs (severe fatigue, fever, malaise or involuntary weight loss) and one of the following at the marked level:
 1. Limitation of activities of daily living
 2. Limitation in maintaining social functioning
 3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence or pace
- 4) Unable to perform past work in last 15 years
 - 5) "The Grids" can turn a loser into a winner of a claimant 50 years-old if unable to perform past work, do not have skills transferable to sedentary work and are limited to sedentary work (lift 10-pounds, mostly sitting with use of hands).
i.e. 50 year old + HS + no transferable skills + sedentary RFC = disabled
A 55 year-old claimant with a similar work history can win even if they can perform light work (lift 20# frequently/10# occasionally; substantial walking/standing)
i.e. 55 year-old + HS + no transferable skills + light RFC = disabled
 - 6) Totally disabled. Unable to perform substantial gainful activity (lightest 8-hour/workday at sedentary level).

STAGES

1st level – Initial application at SS district office or on-line

2nd level – Reconsideration level at SS district office or on-line; I begin representation

3rd level – Hearing before a Judge and a vocational expert, and possibly a doctor

* the last stage the fact-finder *weighs* the evidence so you need to be prepared

4th level – Appeals Council – no hearing – “some evidence” rule is very hard to prove

Court appeal to U.S. Federal Court, Circuit Court of Appeals and Supreme Court

Respectfully submitted,

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