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Working with the Social Security Administration:

Appeals, Overpayments and ISM Charges

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Working with the Social Security Administration: Appeals, Overpayments, and ISM Charges

I. INTRODUCTION

As attorneys who draft or administer special needs trusts, we often work closely with individuals receiving (or attempting to receive) disability benefits from the Social Security Administration. Working with the Social Security Administration can be confusing and sometimes overwhelming for our clients. This paper addresses three common issues that individuals with disabilities must confront in order to receive and maximize their SSI or SSDI payments: (1) applications and appeals; (2) overpayments; and (3) in-kind support and maintenance (ISM) charges. It is the authors' hope that this paper will provide a clearer understanding of the Social Security policies and procedures related to these issues so that we may better assist our clients, trust beneficiaries and loved ones with special needs.

II. OVERVIEW OF SOCIAL SECURITY DISABILITY BENEFITS

The Social Security Administration (SSA) administers disability benefits under Title II and Title XVI of the Social Security Act. The most common Title II benefits are Social Security Disability Insurance (SSDI), Survivor's/Dependent's benefits and Childhood Disability Benefits (CDB), also known as Social Security Disabled Adult Child (SSDAC) benefits or simply "DAC." Title XVI benefits include Supplemental Security Income (SSI) and Children's SSI. The primary difference between the two broad categories of benefits is that Title II benefits are insurance benefits and Title XVI benefits are "needs-based" benefits. A worker must pay into the system (or rely on the work record of another person who paid into the system) to be eligible to receive benefits under Title II. Title XVI benefits, on the other hand, are only available to individuals who meet certain financial criteria in addition to proving a disability.

III. SOCIAL SECURITY DISABILITY INSURANCE

To be eligible for Social Security Disability Insurance (SSDI) benefits, an individual must have a qualifying determination of disability, be earning less than $1,470 per month at the time of application (with exceptions),[1] and have worked and paid enough FICA taxes to have "disability insured status."

A. Determination of Disability for Children

A child under age 18 is considered to be disabled if he or she has "a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected

[1] A person who earns more than a certain monthly amount is considered to be engaging in substantial gainful activity (SGA). The national average wage index is used to set the income limit that determines SGA each year. In 2023, the SGA amount for disabled applicants is $1,470 and $2,460 for blind applicants. Gifts, sick pay, vacation, and passive income are not considered SGA.

to last for a continuous period of not less than 12 months."[2] The child's impairments are analyzed to determine if he or she meets a medical "listing" as specified in SSA's Program Operations Manual System (POMS),[3] or "functionally equal" a listing based on how the child functions at home, at school, and in the community. To functionally equal a listing, an impairment must result in an "extreme" limitation in one, or "marked" limitation in two, of the following domains: (i) Acquiring and using information; (ii) Attending and completing tasks; (iii) Interacting and relating with others; (iv) Moving about and manipulating objects; (v) Caring for yourself; and (vi) Health and physical well-being.[4]

B. Determination of Disability for Adults

An adult is considered to be disabled if he or she is "unable to engage in any substantial gainful activity because of a 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."[5] SSA uses the following "five-step sequential evaluation process"[6] to determine an adult's disability:

1) **Is the claimant working?**
   It is possible to work and still be determined to be disabled, but SSA will consider the claimant to be engaging in substantial gainful activity (SGA) if he or she earns $1,470 or more (gross earnings) per month—or $2,460 for blind applicants. SSA will also examine whether the claimant works less than 20 hours per week or is given any job-related accommodations. A claimant who works an SGA amount is not considered to be disabled.

2) **Is the medical condition "severe"?**
   To be severe, an impairment must limit the claimant's ability to work and complete basic work activities such as sitting, standing, and remembering. The impairment must last for 12 months or longer. A claimant who does not have a severe impairment or combination of impairments is not considered disabled.

3) **Does the medical condition meet or medically equal a listing?**
   SSA has a list of impairments with specific criteria that qualify an individual as disabled. If a "listing" is met, the claimant is disabled. If the claimant's medical condition does not meet or medically equal a listing, the evaluation of disability advances to step four.

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[2] 20 C.F.R. § 416.906.

[3] https://secure.ssa.gov/apps10/poms.nsf/lnx/0434000000. SSA employees use the POMS to reference current impairment listings and process claims for Social Security benefits. A public version can also be accessed at https://secure.ssa.gov/apps10/poms.nsf/home!readform. The POMS includes details about Title II disability benefits, Title XVI SSI, Retirement and Survivors Benefits, Veterans Benefits, Health Insurance, and General Information regarding topics such as overpayments and the appeals process.

[4] 20 C.F.R. § 416.926a(a).

[5] 42 U.S.C. § 1382c(a)(3)(A); 20 C.F.R. § 416.905.

[6] *See* 20 C.F.R. § 404.1520.

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