



**McKELLAR & EASTER**  
—ATTORNEYS AT LAW—

## YOUR GUIDE TO SOCIAL SECURITY BENEFITS

### Applying for Benefits

Applying for Social Security Disability benefits can be a complex and confusing process. You may be starting the application on behalf of yourself or a loved one, but have no idea where to go from there. How long will it take before I start receiving benefits? How much will I receive each month in benefits? What happens if I get denied? This guide will help answer these as well as many other questions that you may be facing and provide some guidance throughout the disability claim process.

#### Which type of disability benefits should I apply for?

When you file an application there are two types of disability benefits that you may apply for — Social Security Disability Income (SSDI) and Supplemental Security Income (SSI). You are eligible for SSDI benefits if you worked and earned enough work credits before

becoming disabled. Work credits are earned for each quarter during the taxable year that you received wages for work that you performed. The amount of work credits necessary to be eligible to receive SSDI benefits depends on your age, but on average you will need to have at least earned 20 work credits within the last 10 years before you became unable to work. Or, to put it another way, you will need to have at least worked 5 out of the last 10 years if you wish to be eligible for SSDI benefits.



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## How does the Social Security Administration determine whether I am disabled?

The Social Security Administration goes through a 5-step process to determine whether you are eligible to receive disability benefits.

**STEP ONE** The first step is whether you have worked after the date that you claim to have become disabled. If you are working when you file your application or while your claim is pending you will be denied benefits. Therefore you generally cannot be working once you have submitted your application.

**STEP TWO:** The second step is whether you have a severe physical or mental impairment that affects your ability to work. If you do not suffer from a physical or mental condition that limits your ability to work, or if you have not received any medical treatment evidencing that you suffer from a physical or mental condition, you will not be eligible to receive disability benefits. If it is found that you have a severe physical or mental impairment, the Social Security Administration moves to the next step of the evaluation process.

SSI benefits are for individuals who are disabled but do not have enough work credits to be eligible to receive SSDI benefits. You are eligible to receive SSI benefits as long as your assets are less than \$2,000.00 if you live alone or \$3,000.00 if you are married and living with your spouse. You are allowed to have one piece of property and one vehicle not count as an asset, but any other vehicles, real property, and money either at home or deposited into a bank account will count as an asset. You may meet the criteria for both benefits and therefore should apply for both in order to potentially maximize your benefits.

**STEP THREE:** At the third step the Social Security Administration determines whether your condition meets one of its Listing of Impairments. These listings contain criteria for various physical and mental conditions to determine whether you are disabled. If your medical records adequately show that you meet one of the listings, you are automatically approved to receive disability benefits. These listings can be found on the Social Security Administration's website at [www.ssa.gov/disability/professionals/bluebook/AdultListings.htm](http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm).

**STEP FOUR:** If you do not meet one of these listings, the Social Security Administration will then determine the extent to which your physical and/or mental conditions limit your ability to perform any and all past work that you performed in the last 15 years before you became disabled. If it is determined that you can perform any of the past jobs that you performed, you are not disabled. If it is determined that you cannot perform any of your past work, then the Social Security Administration turns to the 5th and final step of the disability determination process.

**STEP FIVE:** At the last step the Social Security Administration will determine whether there are any other types of jobs that an individual with your age, educational background, and work background could perform despite your physical and/or mental limitations. If it is determined that there are no jobs that a person with your age, educational background, and work background could perform with your limitations you will be found to be disabled.

## When Should I Apply for Disability Benefits?

You should submit an application for disability benefits as soon as you become unable to work due to a physical or mental condition. In order to be eligible to receive SSDI benefits it has to be found that you became disabled within 5 years after you last worked, so do not delay in filing your application.

## How Are My Benefits Determined?

SSDI benefits are determined by how much you earned while receiving wages for any work that you performed prior to becoming disabled. To find out what your monthly benefits will be if you are approved, you may create an account on [www.ssa.gov](http://www.ssa.gov).

There is a cap as to how much you may receive if you are approved for SSI benefits. This cap generally increases at the beginning of each year as part of what is known as a cost of living adjustment (COLA). Because your eligibility for SSI benefits is determined by your assets, your monthly benefits may be decreased if you are receiving any financial assistance with food or shelter or if someone in your household is receiving additional income.

## How Long Does It Take Before I Am Approved For Benefits?

It can take anywhere between 3 months to 2 years before you are approved to receive either SSDI or SSI benefits. The reason is because there are generally three stages to a disability claim—the Initial Stage, the Reconsideration Stage, and the Hearing Stage.

When your application is first filed it will be sent to your state's Disability Determination Service (DDS). Once there it will be assigned to a disability examiner who will request your medical records, have you complete forms regarding your work history and daily activities, and possibly order you to attend a consultative examination if more information is needed regarding your physical or mental limitations. This process can take on average between 3 - 6 months before a decision is made on your claim.

If you are denied and timely file an appeal with the Social Security Administration your claim will then be sent back to DDS where a different disability examiner will request your updated medical records and possibly have you complete additional paperwork regarding your daily activities. You may also have to attend another consultative examination before they reach another decision. If you are denied a second time and you timely file an appeal your claim will then be sent to the Social Security Administration Office of Hearing Operations (OHO) where you will have an opportunity to testify at a hearing before an Administrative Law Judge. Once your claim is at the hearing stage it can take anywhere between 1 year to 18 months before your case will be heard.

## Will Receiving Other Benefits Affect My Disability Benefits?

Yes and no. You can receive short-term disability benefits or long-term disability benefits through a private insurance company without affecting your SSDI benefits. In fact, many private insurance companies will require you to apply for SSDI benefits as a condition for receiving short-term or long-term disability benefits. You may also receive VA Disability Compensation without it affecting your SSDI benefits.

Unemployment benefits and Worker's Compensation benefits, on the other hand, will affect your benefits. If you receive unemployment benefits after you stopped working you will not be able to claim that you became disabled until after you stopped receiving unemployment. This is because when you file for disability benefits you are telling the Social Security Administration that you are unable to work, while one of the requirements for filing for unemployment is that you are actively seeking work. As you can imagine this will cause the Social Security Administration to question whether you are really disabled and may create unnecessary complications down the road.

As for workers' compensation benefits, the Social Security Administration may deduct a certain amount from your monthly benefits for a period of time depending on the monetary amount you receive from your worker's compensation claim. It is therefore crucial to notify the Social Security Administration if you ever received workers' compensation benefits either before you filed a disability claim, while your disability claim is pending, or even after you are approved for benefits to ensure that you are not overpaid by the Social Security Administration.



## Will I Qualify For Health Insurance Once I Am Approved?

Yes. Once you are approved for SSDI benefits you will be eligible for Medicare health insurance benefits. If you are approved for SSI benefits you will be eligible for Medicaid health insurance benefits.

## If I am Denied, Why Should I Appeal? Why Not Just File Another Application?

As previously discussed, if you are denied you should immediately file an appeal with the Social Security Administration if you wish for your claim to proceed to the next stage of the disability claim process. You are only given 60 days to file an appeal, and unless good cause is shown you will have to file a new application if you do not file an appeal within this time period.

Filing a new application may not seem like a big deal on the outset, but every time you are denied and do not file an appeal the earliest date that you can claim to have been disabled on your next application is the day after your last denial. This will cause you to lose any back pay that you may be entitled to receive from your previous claim, and may cause you to only be eligible for SSI benefits if the date that you were last denied does not fall within 5 years after the date that you last worked. Lastly, a vast majority of people get approved at either the Reconsideration or Hearing stage of the disability claim process, so filing an application every time you are denied will dramatically reduce your chances of being successful on your claim.

## Do I Receive Back Pay For the Time I Am Waiting To Get Approved?

Yes. You will receive back pay for the months that you were waiting to get approved and were not paid benefits. This will come as a lump sum benefit once your monthly benefits are determined. If you applied for SSDI benefits your back pay will start accruing 5 months after the date that you became unable to work. This will even be the case if the date that you became unable to work was before the date that you filed your initial application. If you applied for SSI benefits your back pay will immediately start accruing from the date that you filed your application.

## Do I Need An Attorney When Applying for Benefits?

You can always file an application for benefits on your own, but having an attorney who knows the ins and outs of the disability claim process will provide you comfort and guidance as it can be a long and weary road if you do it alone. A competent attorney will assist you with filing your application and ensuring that your medical and work history are correct, assist you with completing essential paperwork that will be sent to you by the Social Security Administration, follow-up with your physicians to ensure that your medical records are being forwarded to the Social Security Administration, and file an appeal on your behalf if you are denied. Most importantly, if you have to go before an Administrative Law Judge you will have an attorney who has been fighting for you from the very beginning to ensure that you get the benefits that you deserve.

**Call Devin S. DeVore for a free consultation today.**

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Devin DeVore has assisted numerous clients throughout Tennessee and Florida in applying for and obtaining Social Security Disability benefits. At McKellar & Easter, Mr. DeVore continues to advocate for those throughout Eastern Tennessee entitled to disability benefits by providing the personal care and attention that each client's claim deserves.