

HIV as a Disabling Condition: Accessing SSI & SSD Benefits Today

An Overview of Social Security Disability Programs

**Presented by:
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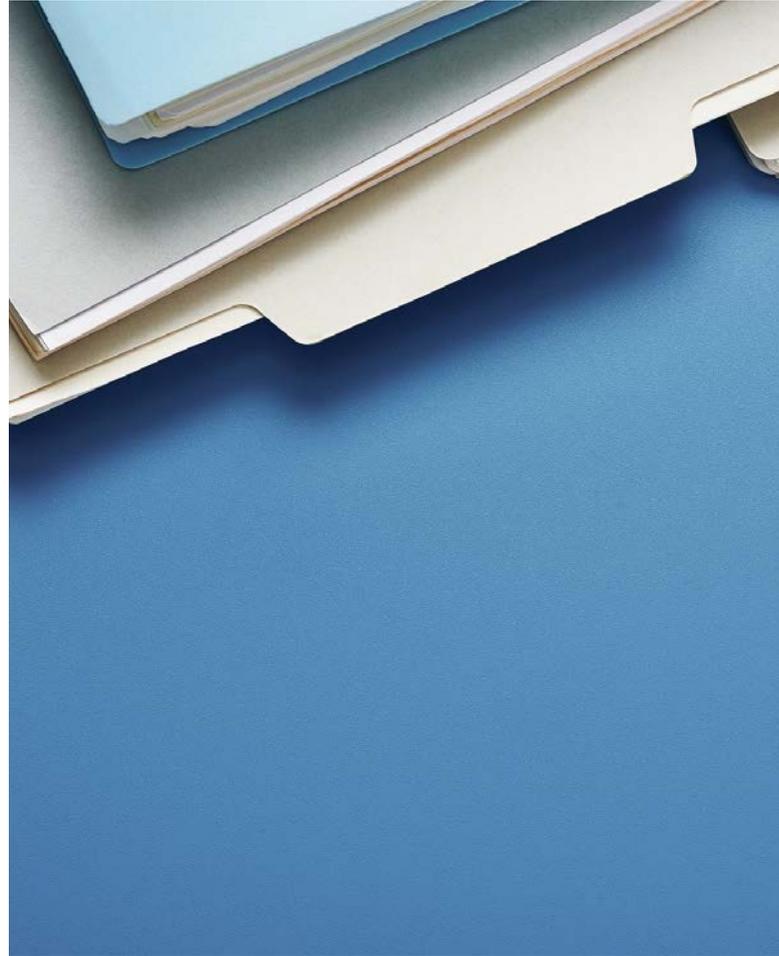
This webinar is presented as part of the AIDS Institute-funded initiative to provide information on a broad array of legal topics to HIV providers across New York State.

To view the training calendar for upcoming trainings, visit www.lac.org



Disability Benefits “How-to”

- Programs for disability through the Social Security Administration
- How Social Security determines disability
- How to apply for benefits



Supplemental Security Income (SSI) Program Overview

[Supplemental Security Overview](#)

www.ssa.gov

What is SSI?

- Supplemental Security Income – or Title XVI – is a needs-based benefits program for
 - Low-income adults who are disabled
 - Children under 18 who live in low-income households
 - Low-income adults over 65 (proof of disability is not required)
- Administered for the federal government by the Social Security Administration

SSI Monthly Benefit with State Supplement 2022*

Category	Federal Benefit for Individuals	State Benefit for Individuals	Total Benefit for Individuals	Federal Benefit for Couples	State Benefit for Couples	Total Benefit for Couples
Living Alone	\$841	\$87	\$928	\$1,261	\$104	\$1,365
Living with Others	\$841	\$23	\$864	\$1,261	\$46	\$1,307
Living in the Household of Another	\$560.67	\$23	\$583.67	\$840.67	\$46	\$886.67

*Link to complete chart: <https://opwdd.ny.gov/2022-ssissp-benefit-levels>

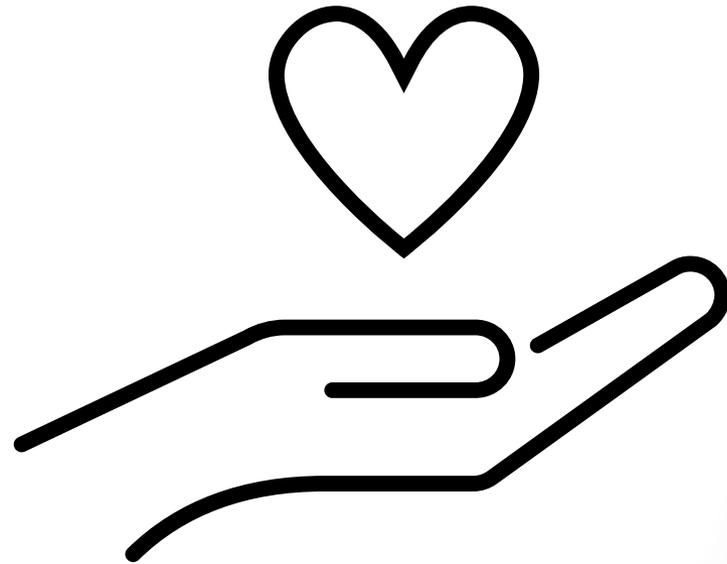
Social Security Disability Insurance (SSD) Program Overview



- Social Security Disability Insurance – or Title II– is an insurance program for individuals who can no longer work
- An individual is “insured” through contributions to the disability trust fund (FICA withholdings)
- An individual must have recent and sufficient earnings to be eligible for the program
- Social Security tracks your earnings and can tell you if you are insured and how much your monthly benefit will be if you are found disabled

SSD Auxiliary Benefits

- Benefits are also available for:
 - Minor children of a recipient and adult children of a recipient if the child can prove disability prior to age 22
 - Spouses of retired, disabled or deceased wage earners



SSD Benefit Levels

- SSD monthly benefits are based on past earnings / FICA deductions
 - Average 2022 monthly benefits = \$1,358
 - Maximum = \$3,345
 - Monthly Income v. Estimated Monthly Benefit
 - \$3,750 v. \$1,373
 - \$4,167 v. \$1,747
 - \$2,083 v. \$998

Health Insurance SSD v. SSI

- SSD recipients
 - Eligible for Medicare 24 months after the 1st DIB payment or 29 months from onset of disability, or at age 65
- SSI recipients
 - In 2/3 of states (including NY) eligible for Medicaid even if receiving only \$1 of SSI

SSI vs. Public Assistance

- Public Assistance (PA) is administered by the County Department of Human Services (DHS) also known as the Department of Social Services (DSS)
 - SNA (Safety Net Assistance) provides benefits for single adults or couples with limited income and resources
 - FA (Family Assistance) or TANF (Temporary Assistance to Needy Families) provides benefits to families with limited income and resources

SSI vs. PA, cont.

- PA recipients who allege disability – including children – are compelled by DHS to apply for SSI
 - DHS requires periodic employability statements from physicians
 - Claimants otherwise have Work Experience Program (WEP) requirements

Why SSD / SSI?

- Higher benefit rates than public assistance
- Health insurance included
- Fewer reporting requirements
- No WEP requirements
- More stable
- Retroactive awards
 - Interim assistance repaid to county DHS/DSS

How SSA Determines Disability

SSI Standard of Disability

“Inability to perform substantial gainful activity by reason of a medically determinable physical or mental impairment, or combination of impairments, which has lasted or is expected to last at least 12 consecutive months, or end in death, taking into account the individual’s age, education, and work history.” 42 U.S.C. §423(d); 20 C.F.R. §§404.1505 & 416.905

How Does SSA Determine Disability?

- **Step 1:** is the claimant performing substantial gainful activity (SGA): \$1350 in 2022, \$2260 for statutorily blind individuals
 - If yes, the claimant is not eligible for disability benefits
- **Step 2:** is the condition or combination of conditions “severe”
 - Does the impairment or combination of impairments have more than a minimal effect on an individual’s ability to perform basic work activities?
- **Step 3:** does condition “meet” or “equal” a listed impairment (“The Listings”)
- **Step 4:** is the claimant able to return to past relevant work
- **Step 5:** can the claimant perform any other work in the national or local economy

What are the Listings?

- See 20 C.F.R. 404. Subpart P, Appendix 1 A & B
 - [Listing of Impairments](#)

- Human immunodeficiency virus (HIV)
 - [Listing 14.11 Human immunodeficiency virus \(HIV\) infection](#)

Human immunodeficiency virus (HIV) infection (2017 Immune System Disorders Update)

With documentation as described in 14.00F1 and one of the following:

- A.** Multicentric Castleman disease affecting multiple groups of lymph nodes or organs containing lymphoid tissue OR
- B.** Primary central nervous system lymphoma OR
- C.** Primary effusion lymphoma OR
- D.** Progressive multifocal leukoencephalopathy OR
- E.** Pulmonary Kaposi sarcoma OR
- F.** Absolute CD4 count of 50 cells/mm³ or less (see 14.00F4) OR
- G.** Absolute CD4 count of less than 200 cells/mm³ or CD4 percentage of less than 14 percent, *and* one of the following (values do not have to be measured on the same date) (see 14.00F5):
 1. BMI measurement of less than 18.5; or
 2. Hemoglobin measurement of less than 8.0 grams per deciliter (g/dL)

Human immunodeficiency virus (HIV) listing, continued

With documentation as described in [14.00F1](#) and one of the following:

H. Complication(s) of HIV infection requiring at least three hospitalizations within a 12-month period and at least 30 days apart. Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization
OR

I. Repeated manifestations of HIV infection, or other manifestations resulting in significant, documented symptoms or signs (for example, but not limited to, fever, headaches, insomnia, involuntary weight loss, malaise, nausea, night sweats, pain, severe fatigue, or vomiting) 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.

Social Security Administration Medical Report HIV Infection

<https://www.ssa.gov/forms/ssa-4814.pdf>

Form SSA-4814 (01-2020) UF
Discontinue Prior Editions
Social Security Administration

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OMB NO. 0960-0500

MEDICAL REPORT ON ADULT WITH ALLEGATION OF HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTION

FO CODE:

The individual named below has filed an application for a period of disability and/or disability payments. If you complete this form, your patient may be able to receive early payments. (This is not a request for an examination, but for existing medical information.)

MEDICAL RELEASE INFORMATION

- Form SSA-827, "Authorization to Disclose Information to the Social Security Administration (SSA)," attached.
- I hereby authorize the medical source named below to release or disclose to the Social Security Administration or State agency any medical records or other information regarding my treatment for human immunodeficiency virus (HIV) infection.

CLAIMANT'S SIGNATURE (Required only if Form SSA-827 is NOT attached)

DATE

A. IDENTIFYING INFORMATION

CLAIMANT'S NAME	CLAIMANT'S SSN	CLAIMANT'S PHONE NUMBER
CLAIMANT'S ADDRESS	CLAIMANT'S DATE OF BIRTH	MEDICAL SOURCE'S NAME

B. HOW WAS HIV INFECTION DIAGNOSED?

- Laboratory testing confirming HIV infection
- Other clinical and laboratory findings, medical history, and diagnosis(es) indicated in the medical evidence

C. CONDITIONS RELATED TO HIV INFECTION: *Please check if applicable.*

ALL INFORMATION PROVIDED IN THIS SECTION MUST BE SUPPORTED BY DOCUMENTATION IN THE MEDICAL RECORD. We will request your patient's medical records as part of our case adjudication process.

<p>1. Multicentric (not localized or unicentric) Castleman disease</p> <p><input type="checkbox"/> Affecting multiple groups of lymph nodes</p> <p><input type="checkbox"/> Affecting organs containing lymphoid tissue</p> <p>2. <input type="checkbox"/> Primary central nervous system lymphoma</p> <p>3. <input type="checkbox"/> Primary effusion lymphoma</p> <p>4. <input type="checkbox"/> Progressive multifocal leukoencephalopathy</p> <p>5. <input type="checkbox"/> Pulmonary Kaposi sarcoma</p> <p>6. CD4 Count: Absolute CD4 count of 50 cells/mm³ or less <i>Please indicate measurement, date recorded, AND ordering provider</i></p>	<p>7. CD4 level and BMI or hemoglobin measurements (values do not have to be measured on the same date), with a and b.</p> <p>a. CD4 level</p> <p><input type="checkbox"/> Absolute CD4 count of 200 cells/mm³ or less</p> <p>OR</p> <p><input type="checkbox"/> CD4 percentage of less than 14 percent</p> <p><i>Please indicate measurement, date recorded, AND ordering provider</i></p> <p>AND</p> <p>b. BMI or hemoglobin</p> <p><input type="checkbox"/> BMI measurement of less than 18.5</p> <p>OR</p> <p><input type="checkbox"/> Hemoglobin measurement of less than 8.0 grams per deciliter</p> <p><i>Please indicate measurement, date recorded, AND ordering provider</i></p>
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Form SSA-4814 (01-2020) UF

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8. Complication(s) of HIV infection requiring at least three hospitalizations within a 12-month period and at least 30 days apart. Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization. Complications of HIV infection may include infections (common or opportunistic), cancers, and other conditions.

Complication of HIV Infection	Date of Hospitalization	Duration	Name of Hospital
Example: Diarrhea	Example: December 2, 2015	Example: 2 days	Example: Memorial Hospital

D. REMARKS: (Please use this space to provide any other comments you wish about your patient.)

E. MEDICAL SOURCE'S NAME AND ADDRESS (Print or type)	TELEPHONE NUMBER (Include Area Code)
	DATE

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge. I understand that anyone who knowingly gives a false statement about a material fact in this information, or causes someone else to do so, commits a crime and may be subject to a fine or imprisonment.

F. SIGNATURE AND TITLE (e.g., physician, R.N.) OF PERSON COMPLETING THIS FORM

- FIELD OFFICE DISPOSITION:
- DISABILITY DETERMINATION SERVICES DISPOSITION:

What about substance abuse and disability?

- Can your client be disabled by drug and alcohol addiction (DAA)?
 - Drug or alcohol addiction alone cannot be the basis of a disability determination; standard is “materiality”
 - “But for” the substance abuse, would the claimant still be disabled?

How to Apply for Benefits

How Do You Apply for SSI or SSD?

- You will need the client's name and address, telephone number, social security number; you must decide whether the application is for SSD or SSI or both

- Additional information you will need for the application:
 - SSD – work background and medical information (doctors, therapists, test results, medication)
 - SSI – information on the client's income, resources and medical information

Note: an application for SSI is automatically an application for BOTH disability programs, SSI and SSD, but an application for SSD is NOT automatically an application for SSI.

Disability Applications, cont.

- Visit your local Social Security office or call 1-800-772-1213 to make an appointment to file an application.
- SSD applications may be filed on-line at www.ssa.gov.
- If the applicant is unable to go to the Social Security office, the SSI application can be made by phone.

After you file the initial application...

- The case is sent to a state “Disability Analyst”
- Your client is examined by a consulting doctor, psychologist or speech pathologist
- You will be required to respond to requests for information from Social Security, provide complete and accurate information, and keep all appointments
- You should have a decision in 3-5 months
- If the application is denied, the claimant has **60 DAYS** to request an appeal. The request must be in writing.

How to Develop a Strong Claim



Don't Wait!

Show SSA the Evidence

Medical Evidence of Disability

- Records: office visits, mental health treatment notes, test results, physical therapy records
- Medical Opinions: SSA must consider opinions from all medical sources, but will find some opinions more persuasive based on several factors, including how the opinion compares to other medical evidence, whether the opinion is from a specialist, and/or the length of the treating relationship

“Other” Evidence of Disability

Get Creative!

Ask their social worker to write a statement recounting their interactions and observations of your client

Supervisors or co-workers can submit statements- especially helpful if the client receives informal accommodations on the job

Have family, friends, or neighbors submit statements of their observations of the individual’s ability to perform daily activities

If your client is already represented by someone else, how can you help?

- Ask doctors or therapists for letters detailing the claimant's condition and limitations
- Request reports and/or medical records if you have easy access to them
- Help your client keep a journal of their symptoms
- Gather letters from family, friends, and neighbors



If your client is in “dire need”

Social Security will approve or expedite a decision in several instances:

- If someone has a terminal illness – TERI cases
 - <https://secure.ssa.gov/poms.nsf/lnx/0423020045>
 - The application will be flagged for review when there is an allegation or diagnosis of acquired immune deficiency syndrome or acquired immunodeficiency syndrome (AIDS)
- Compassionate Allowance Applications
 - <https://www.ssa.gov/compassionateallowances/conditions.htm#H>
- Financial Emergencies – imminent homelessness or facing bankruptcy or foreclosure

If at first you don't succeed:
how to appeal when your client's
application is denied.

Reconsideration and ALJ Hearings

- The first level of appeal is called reconsideration
 - You have 60 days to appeal in writing
 - [Request for Reconsideration](#)
- If your client's reconsideration appeal is denied, you can request an ALJ hearing
 - You have 60 days to appeal in writing
 - [ALJ hearing request form and online portal](#)
- Your client has a right to be represented at the hearing. A skilled representative familiar with Social Security law and hearing procedures can be very helpful and greatly increases the likelihood of success.

The Appeals Council and Federal Court

- The Appeals Council
 - If the claimant disagrees with the hearing decision, they must ask for a review by Social Security's Appeals Council, in writing, within 60 days from the date the decision was received.
- Federal Court
 - If you disagree with the Appeals Council's decision or if the Appeals Council decides not to review the case, you may file a lawsuit in a federal district court.

Benefits May Continue During the Appeal(s)

- Your client can ask Social Security to keep paying their benefits while they appeal an unfavorable decision
 - This is only for clients whose benefits stopped because SSA determined they were no longer disabled
 - You must ask, in writing, within 10 days of the date of the unfavorable decision
 - Post-entitlement problems not discussed but the same appeal and submission of evidence deadlines may apply

Questions?



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