

# **Social Security Disability: Change & Confusion**

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*Planning Council*

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# Introduction

- General Law.
- The Programs: Title II, SSI.
- The analysis: How to analyze disability claims.
- The 3 keys to application approval.
- How to apply, appeal and not make mistakes.
- Returning to work and protecting your rights.

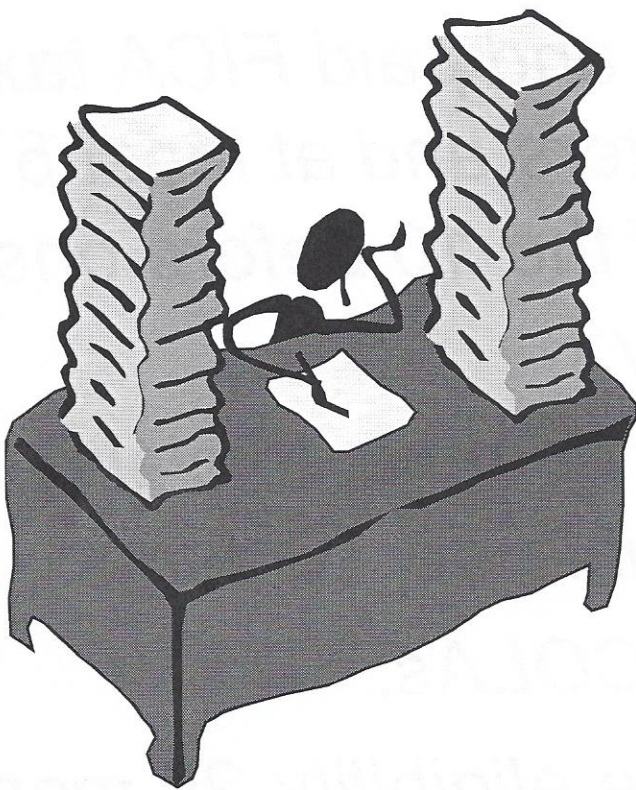
# What's been happening since Covid???

- Cases at initial are just stuck – 8 months to begin processing.
- Cases at reconsideration are almost as bad
- Understaffed by 100+ adjudicators in Region 5.
- ALJ Hearings are on MS Teams and phone and are going faster – with more denials.
- Make appointments to go to the District Offices.

# Being Totally Disabled Means:

- Unable to perform any Substantial Gainful Activity
- By reason of a medically determinable impairment
- That has lasted, or is expected to last, at least one year, or result in death.
- Covid Disease disabling for “long haulers” only.

# The focus is on “function”



How do the symptoms related to these medical problems affect the ability to work?

# The Programs - Social Security Disability

- Title II (SSDI) - Two Tests:
  - *Must be totally disabled;*
  - *Worked and paid FICA taxes 40 quarters and at least 5 years of the 10 before onset of disability;*
  - *Monthly benefits to claimant and eligible dependents;*
  - *Annual COLAs;*
  - *Medicare eligibility 29 months after onset date;*
  - *Protects Retirement Account.*

# Supplemental Security Income (Title XVI)

- SSI also has two tests:
  - *You must be totally disabled;*
  - *must be indigent - single individual less than \$2,000.00 in non-exempt resources;*
  - *(\$943/mth in 2024 \$914/mth in 2023) plus Medicaid and food stamps;*
  - *Spouse's assets and income are deemed;*
  - *May need Supplemental Needs Trust/ABLE Account.*

# Disabled Adult Child Applications

- Must have a parent on SSDI, SSA retirement, or who passed away fully insured for SS benefits;
- Must prove onset of total disability prior to age 22;
- Is an SSDI program so not means tested and can get Medicare;
- Can not marry unless spouse is a DAC beneficiary.



# Climbing the Adult “Analysis Ladder”

- Compassionate Allowance?
- Involved in SGA?
- Severe Impairment?
- Meet or Equal the Listings?
- Able to perform Past Relevant Work?
- Other jobs considering age, education, work skills and Residual Functional Capacity?

# Remember that SSA is “Function Driven”

- Focus now on how work activities are impaired on a sustained basis;
- Daily activities are barely considered but focus is on what causes the problems.
- Exacerbations and decompensations can be used in determining “sustaining activity.”

# Rating B Criteria finally defined

- Most Listings require at least two B Criteria at “Marked” or one “Extreme.”
- These are defined as “Mild, Moderate, Marked and Severe.”
- “Marked” means a ***serious limitation*** in the ability to function independently, appropriately and effectively on a sustained basis in this area.
- “Extreme” means ability to function in this area independently, appropriately and effectively on a sustained basis ***is precluded*** by mental health symptoms.
- Most common is: “Moderate” meaning a fair ability to sustain activity.

# The 4 Functional issues – Where the Rubber Meets the Road!

*These are now 4 issues in every mental health, and in many physical impairment claims: focus on functional limitations in the ability to:*

1. Understand, Remember or Apply Information
2. Interact with Others
3. Concentrate, Persist or Maintain Pace
4. Adapt or Manage Oneself

# Substance Abuse and SSDI/SSI

- Congress eliminated SA as a basis for disability in 1996. Listing removed Jan 2017.
- If SA is a “material factor” benefits can not be awarded:
  - Would the Claimant be totally disabled if they stopped drugs or alcohol?
  - Does the SA inhibit other treatments (mental health meds)
  - Prefer at least 6 months documented clean time.

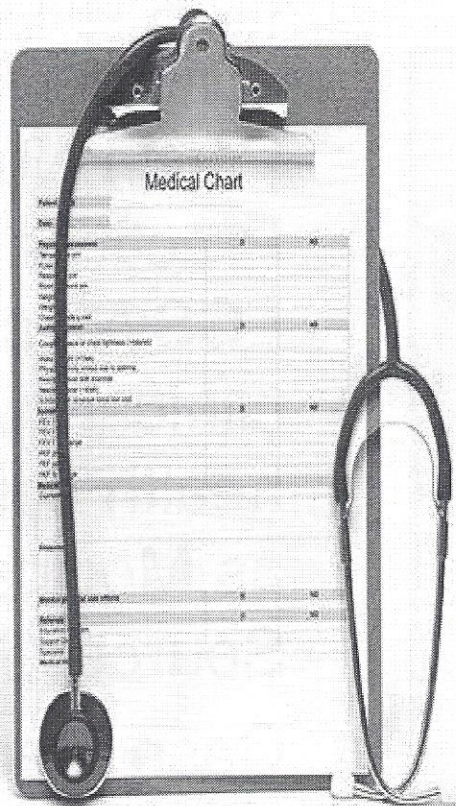
# These claims can be won!



## 3 Key Rules:

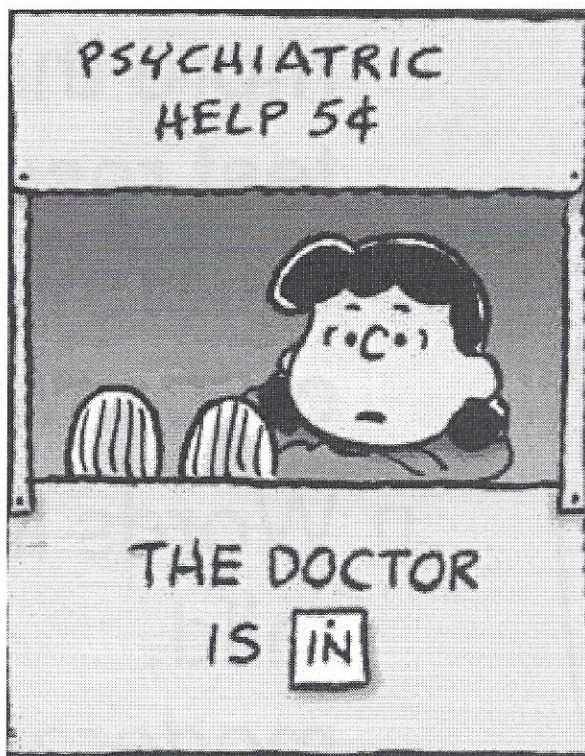
- Must be seeing doctors regularly.
- Must be describing symptoms.
- Must be treating with the right medical specialists.

# It's all about the Charts, 'bout the Charts



- Clinical charts, even more than test results, determine outcome;
- Words like mild, moderate, stable, all matter.

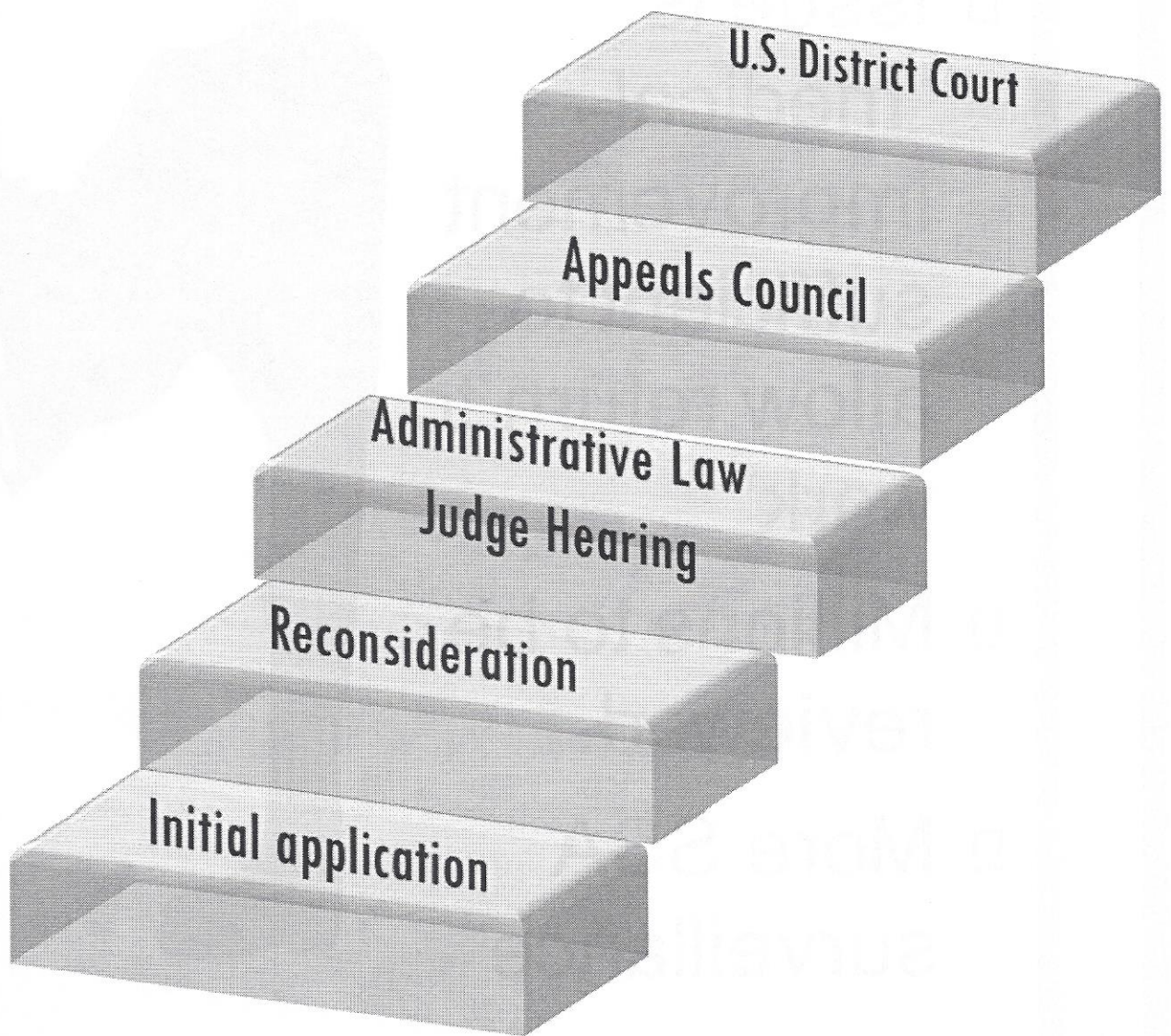
# “Evidence” Expanded!



- Longitudinal evidence is key.
- SSA will now consider P.A.s, Psych Nurse Practitioners, LCSWs and clinical mental health counselors as Medical Sources.
- Case Managers, social workers, shelter staff, friends all relevant.

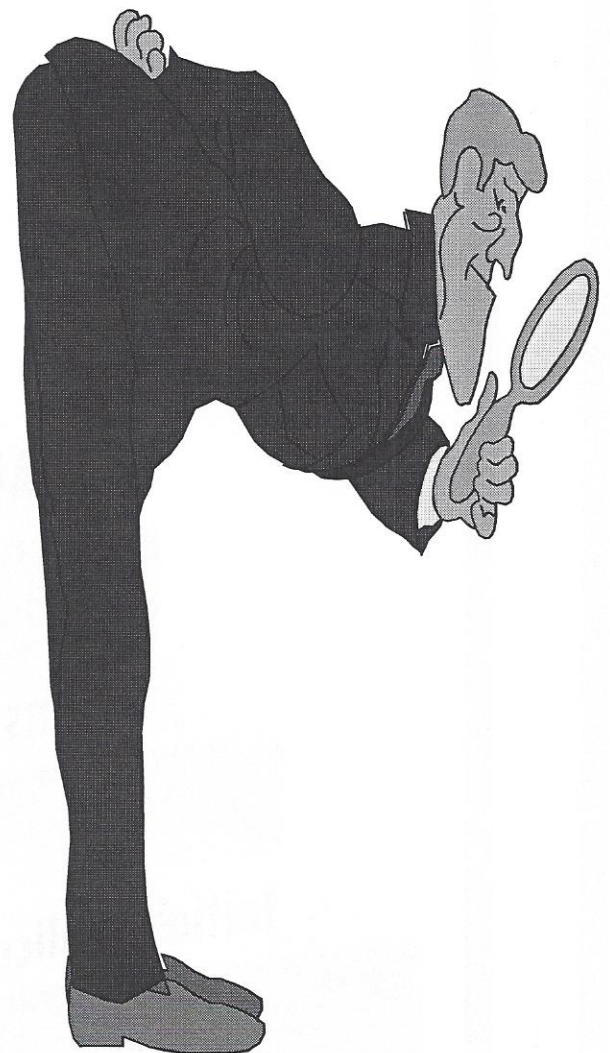


# Apply and Appeal Process



# CONTINUING DISABILITY REVIEWS (CDRS)

- Issue is “medical improvement sufficient to allow return to work”
- Millions to be reviewed.
- More SSA surveillance



# Returning to work: Title II (SSDI) rules

- Trial Work Period
  - Can be paid for work and still collect benefit check
  - Allowed 9 months out of any 60-month block of time
  - \$1,110.00 gross/mth is a TWP month in 2024 (\$1,050 in 2023)
  - Will increase annually with Cost of Living.
  - Obligation to report to SSA!

# Additional Protection after Trial Work Period



## **EXTENDED PERIOD OF ELIGIBILITY**

- Lasts for 36 months after TWP.
- If less than \$1550/mth in 2024 (\$1470/mth in 2023) benefits continue.

## **EXTENDED MEDICARE**

# Supplemental Security Income (Title 16) rules

- Work income offsets benefits
- After \$85.00 exclusion SSI grant is reduced by \$1.00 for every \$2.00 earned.
- Additional exclusions for impairment-related work expenses.
- PASS programs can be set up with local office.
- Avoid overpayments: Report to SSA.

# Thank you and recent updates

- Thanks to Nimisha Patel for putting this together!
- Current Executive Director of NAMI CCNS: Past Chairperson of Board of NAMI DuPage.
- Past Chair of Alliance to End Homelessness in Suburban Cook County.
- Emma Drozdowski - Chairperson of TN Bar Assoc. SSD committee.
- Join “My Social Security” on SSA website.

# WE ARE HERE TO HELP!

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(We are working with new referrals via  
Zoom, MS Teams or phone.)