

Social Security benefits for people with AIDS or ARC

Social Security and other public-benefit law is complex, and eligibility requirements are detailed and sometimes conflicting

BY BRADLEY J. WOODWORTH, Esq.

Note: No two legal situations are the same. This column discusses only general legal principles. For specific advice, consult a qualified attorney.

There are a variety of public benefits available to persons diagnosed with AIDS or AIDS-Related Complex (ARC). This column explains, in general terms, some of the potential benefits and their eligibility requirements.

Public agencies have dealt with AIDS and ARC claims for only a few years, so issues

Counsel

often come up for the first time. Agency procedures and requirements can change rapidly, in light of court rulings and lawsuits brought by applicants. One should consult a qualified person for up-to-date information on public-benefit programs. Unless one's lawyer is a specialist in Social Security and other public-benefit law — Legal Aid is a good source — one should check with specialized private agencies, such as the Cascade AIDS Project and Outside-In in Portland, that keep up to date on benefit information.

Disability

Any person with a medical diagnosis of AIDS automatically qualifies as "disabled" for purposes of receiving Social Security or Supplemental Security Income.

But if a person is diagnosed with ARC, or is only HIV-positive, the case will be reviewed on an individual basis. To qualify as "disabled," one must have a physical or mental condition that is disabling (prevents one from working) and is expected to prevent one from working for a minimum of twelve months.

Some ARC patients have successfully established a disability claim, but many ARC claims are denied and one must pursue the sometimes-lengthy appeals process and be able to produce a substantial amount of medical evidence and employment documentation to verify one's disabled status.

It is advisable to consult a qualified lawyer or community advocacy agency prior to applying for benefits. Such assistance can be useful in assembling the necessary information. Evidence that one is capable of working at one's present job or another job almost always results in a claim denial. If one's claim is denied and then appealed, the law provides that 25 percent of the retroactive benefits may be withheld to pay attorney fees. This provision is helpful because lawyers may take such cases on a contingency basis, getting paid a fee only if the claim is approved.

Social Security Disability Income

To be eligible for Social Security Disability Income, the applicant must have worked and paid into the Social Security system for 20 of the past 40 calendar quarters, and be disabled. Persons becoming disabled before reaching age 22 may qualify if their parents have paid into Social Security. Persons not having paid the minimum quarters still may be eligible for benefits and should inquire as to the requirements.

SSDI benefits range up to \$822 per month, depending on the amount paid in to the plan. The maximum benefit is given to persons who have paid the maximum amount of Social Security for 35 years.

There is a five-month waiting period from the time disability begins before benefits can be paid out, so claims should be filed as soon as

possible. Claims filed after the disability date may recognize the disability date retroactively for the waiting period (up to twelve months retroactive).

Supplemental Security Income

SSI is available to persons who qualify as "disabled" and have demonstrated "financial need." One does not have to have paid into the Social Security system to qualify for this benefit. There is no waiting period, but claims may take a long time to process. If the claim is approved, benefits range up to \$354 per month and will be paid retroactively to the date of filing the claim.

"Financial need" means that one has \$1,900 or less in assets after deducting exemptions such as the value of one's home, and one car, worth up to \$4,500 if it's needed for medical or employment reasons; there are also some other property exemptions. One may receive income up to a variable maximum depending on the number of one's dependents.

For example, a single person with no other income after qualifying for SSI could work and earn up to \$793 before losing all benefits. An income of more than \$300 at the time one applies for SSI, however, would prevent one from qualifying for benefits.

Medical benefits: Medicare and Medicaid

There are two kinds of medical benefits in the Social Security system. A person eligible for SSDI is eligible for Medicare, but there is a two-year waiting period from the date of the first Social Security payment before Medicare coverage starts. Currently there is a move to eliminate the waiting period for AIDS patients, but this change has not been finalized.

Medicaid benefits can begin immediately if the applicant meets the same disability and financial-need requirements to qualify for SSI. Persons who do not qualify as financially needy may still be eligible for Medicaid assistance if they have substantial medical bills.

Other programs

Veterans and their dependents, if they have a service-related disability, are eligible for a wide variety of benefits, including medical care and disability income.

Federally funded food-stamp programs are administered by the State Department of Social Services.

General-assistance or welfare programs are sometimes available, but single persons without minor dependents usually do not qualify.

If one is fired from employment, one may be able to collect unemployment benefits if one is able and available for work and has sufficient covered employment.

Private insurance programs vary widely in their coverage, so one should be sure to know what one's insurance covers. If one leaves one's employment, it may be possible to retain the group medical insurance, convert to individual coverage and pay the monthly insurance fees.

Summary

Social Security and other public-benefit law is complex, and eligibility requirements are detailed and sometimes conflicting. Persons who believe they may have a claim should consult a qualified lawyer who specializes in these areas or contact a community advocacy agency for assistance and referral to other qualified sources of advice.

Keep records of all claim activities and be prepared to pursue the claim through different levels of appeals if it is denied initially.

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