

Access to Justice – Supplemental Security Income

James Montero:

Hi. Welcome to Access to Justice, presented by Northwestern Legal Services. My name is James Montero and I am your program host. Our guest today is Administrative Judge Alma De Leon. She is the Chief Judge with the Office of Hearings and Appeals in Pittsburgh. Judge DeLeon was named Administrative Law Judge in July 1994, and has worked with the Office of Hearings and Appeals in Pittsburgh for the past ten years and has been the Chief Judge in that office since 2001. Prior to that, she served as General Jurisdiction Court Judge in Puerto Rico. She decided cases dealing with juveniles, domestic relations cases, criminal and civil law. She has also written several articles dealing with juvenile delinquency and it's relationship with learning disabilities. She is a member of the Puerto Rican Bar Association, the Pennsylvania Bar Association and the Federal Bar Association. She also has been very active in matter concerning social security claimants and problems which they face in dealing with the social security program. Judge DeLeon, welcome to our program.

Judge DeLeon:

And thanks a lot for having me on your program, and I am delighted to be here. And, I will be more than happy to answer any questions you may have about social security programs.

James Montero:

Thank you. The purpose of today's program is to present important information concerning social security programs, social security disability and supplemental security income, better known as SSI, are federal programs that provide monthly cash payments to persons in need. Social Security Disability and SSI are for persons who are 65 years old or older, as well as for blind or disabled persons of any age, including children. Judge DeLeon, what are the differences between Social Security Disability and Supplemental Security, better know as SSI?

Judge DeLeon:

Okay, Social Security Disability and SSI, both programs are administered by the Social Security Administration. For most people, the medical requirement for each program are the same and the person's disabilities determined by the same process. Although each program has some differences, for example, the social security disability is financed with social security taxes paid by workers, employers and self-employed persons. Also, workers must earn sufficient credits based on taxable work. Benefits are payable to disabled workers, disabled widows or widowers, or adults disabled since childhood who are otherwise eligible. The monthly disability benefit payment is based on the social security earnings record of the insured worker, on whose social security number the disability claim is filed. On the other hand, we have supplemental security income, and they are financed through general tax revenues. Benefits are payable to the age of 65 or older, adults or children who are disabled or blind, who have limited income or resources and who meet the living arrangement requirements and are otherwise qualified to receive them. The monthly payment varies up to the maximum federal benefit rate, which is standardized in all states. Not everyone gets the same amount because it may be supplemented by the state you live in or decreased by other countable income and resources.

James Montero:

Now, today we're going to speak mainly about SSI. Although both as you know, Social Security Disability benefits and SSI are both the same requirement, as far as the disability are concerned. But, what, who is eligible for SSI benefits?

Judge DeLeon:

Well, first of all, anyone who is age 65 or older, blind or disabled. The other requirements are to be a person of limited income, have limited resources, to be a U.S. citizen or one of thirteen territories of documented aliens, is a resident of one of the 50 states plus D.C., and Northern Marianna Islands. Must not be absent from the country for a full calendar month or more than 30 consecutive days. The person also must agree to apply for other cash benefits, such as a pension, for which he or she may be entitled.

James Montero:

Now, when we talk about disability, what is the definition for disability? What does the Social Security Administration or SSI look at in terms of disability?

Judge DeLeon:

As I told you before, SSI not only applies to adults, but also to children. So, let's start with the children's concept of disability. First of all, the child should have a physical or mental condition, or condition that can be medically proven and which results in marked and severe functional limitations. The conditions must have lasted or be expected to last at least 12 months or in death. For the adult, the law defines disability as the inability to engage in any substantial, gainful activity as a result of any medically determined physical or mental impairment, which can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months. I would like to emphasize that the duration requirement is very important for each case of disability with adult and child.

James Montero:

Okay, thank you. Now, there is also an issue of limited income, as far as SSI is concerned. Is that correct?

Judge DeLeon:

Yes.

James Montero:

And, what is, what does limited income include?

Judge DeLeon:

The amount of income you can have each month and still get SSI depends partly on where you live. You can contact the nearest social security office or call them at 1-800-772-1213 to find out the income limits in your state. Social Security does not count all of

your income when they decide if you can get SSI. For example, they do not count food stamps, or home energy assistance grants when determining eligibility. And, as the word says- supplemental – so we're supplementing besides what you may have, some sort of income.

James Montero:

That's correct. That's in addition. For example, a person may receive social security disability and yet be eligible to receive SSI. Because, as you just mentioned, it is the supplement to what other income you may have.

Judge DeLeon:

That's correct.

James Montero:

Okay, now there are also resources and there is a term we refer to as limited resources. What is, what are limited resources?

Judge DeLeon:

Resources include things such as cash bank accounts, land and personal property. A person, and we're talking about a single person, may be able to get SSI, if they have items worth no more than \$2,000. A couple may be able to get SSI if they have items worth no more than \$3000. If you own property or another resource that you are trying to sell, you may be able to get SSI while trying to sell it. Social Security does not count everything you own. For example, the home you live in and the land it is on, does not count. And your car usually does not count.

James Montero:

Okay, so this means that the last example that you gave means that if a person lives in the house that he owns, he is entitled. However, if he has a house that is rented to someone else, that income is counted and he will not be eligible to receive it, the value of the property.

Judge DeLeon:

Exactly.

James Montero:

Okay, now how do you go about applying for disability benefits for SSI or Social Security Disability? Because, as I understand, it's the same application.

Judge DeLeon:

Correct. Well, the first thing you have to do is visit your local social security office or call them at 1-800-772-1213 for an appointment with a social security representative, who will help you apply. You can also apply on-line at www.ssa.gov. Parents or guardians can apply for blind or disabled children under age 18.

James Montero:

Okay, and when will the individual be informed of the status of their application?

Judge DeLeon:

It generally takes longer to process things for disability benefits, then other types of social security claims. And, it's usually from 60-90 days.

James Montero:

And you, the person, has applied for disability benefits. And, if you are granted benefits, of course you will receive benefits. However, what does a person need to do if you are denied benefits?

Judge DeLeon:

If your claim is denied, or you disagree with any part of your decision, you may appeal the decision. The social security office will help you complete the paperwork. You may also get help from legal services if you qualify, a private attorney or any other representative that you choose to help you with your case. You have 60 days from the

time you receive the letter, to file an appeal, and this is very important. SSA assumes that you received the letter with their decision 5 days after the date on it unless you can show them that you received it later, so you have to be aware of those terms.

James Montero:

Okay, so you, we have a total of 60 days for the appeal period, 5 days mailing. So we have a total of 65 days. Okay, and what are the different levels of appeal that an individual can use, in order to follow up on his claim?

Judge DeLeon:

There are three levels of appeal. They are: a hearing by an administrative law judge, a review by the appeals council, and the last resort, a federal court review.

James Montero:

Okay, and would you tell us a little bit about the administrative law judge process?

Judge DeLeon:

With pleasure. The hearing will be conducted by an administrative law judge who had no part in the first decision regarding the case of the claimant. The hearing is usually held within 75 miles of the area. The claimant and you will, the person will be notified of the time and place of the hearing. The claimant and the representative may come to the hearing and explain the case in person or also through their via teleconference system, that right now social security is having available for claimants. So, you have two options. You can appear in person, or you can have your hearing by via teleconference. You may look at information in your file and also offer new medical evidence. The administrative law judge will question you or any witness the claimant can bring to the hearing, and also the attorney or representative will be able to examine the witnesses that will be at that hearing. Okay, it is also important that you will attend to the hearing, but also you have the right to waive if you do not want to attend the hearing. We can decide based on the medical evidence that we have in the file, but you have to put it in writing, so the

Administrative Law Judge will be assured that you understand the consequences of waiving your right to be present at the hearing.

James Montero:

Okay, now you mentioned briefly the video teleconferencing. What? How does..? What are the mechanics of that? How does that work?

Judge DeLeon:

Yeah, I'll give you a little bit of an explanation. For example, in my office – it's Pittsburgh – and I can hold a video teleconference here in Erie, because we have the same equipment in Pittsburgh. And we, there in Pittsburgh, with my vocational expert and you will be in Erie with your claimant and also the hearing monitor. And, it's like having, uh, watching TV, but we can see each other. We also have the hearing room equipped with a fax machine and you can submit documents the same day as the hearing. And we also have a scanner where you can review any part of the file if you need to. The file will be kept in the with the administrative law judge, but you will also have access because we will photocopy the file and send it to you before the hearing.

James Montero:

Now, is there any information that the individual or the claimant in this case you're referring to, need to consider in preparing for the hearing?

Judge DeLeon:

The first thing I would advise is to get an attorney or a representative as soon as possible. It's very important that the claimant know that he needs to give all the information to his or her representative to be ready for the hearing. He needs to give all the doctor's names and all the medical reports he might have available. It is very important that the representative knows what the case is all about. So, he or she needs to be prepared for that. It's also important that they call if they cannot have a private attorney. Call the local legal services for help, and also it's important that they should be on time with all the information in order to have the representative ready for the appeal.

James Montero:

Right. Now, that individual is represented or appears before the judge at the hearing, or the claimant then receives a decision where the benefits have been denied again. Now, the next step is what then? What recourse does he have at that point?

Judge DeLeon:

If the claimant disagrees with the hearing decision, he may ask for a review to the Social Security Appeals Council, and the SSA will help again in terms of the review, how he or she should apply. The appeals council looks at all requests for review, but it may deny a request if they believe that the hearing decision was correct. If the appeals council decides to review the case of the claimant, it will either decide itself or return it to the administrative law judge. If, by chance, the appeals council decides that the decision is correct and legally defensible, then you can also go to the district court and file an action in terms that you didn't agree with the appeals council's decision.

James Montero:

Now, when we're talking about the Social Security Appeals Council, the claimant, does the claimant get to appear before this council?

Judge DeLeon:

It's based just on the written documents and also the attorney or the representative will indicate what were the errors committed at the level of the administrative law judge, and that should be getting to the appeals council, and they will review the whole file, the decision, and they also might include about the notes of the administrative law judge. They will have a full review of the file and also the tape. They will listen to the tape and they will determine if the decision was made according to the social security regulations.

James Montero:

Okay, and that is why it's very important, I assume, for the individual to be as well prepared at the hearing level, because the evidence that's presented there is very important in the appeals council reviewing the case.

Judge DeLeon:

I think it is very critical that the claimant know his or her case. By that, I mean that they should state all the conditions they think that limit them from working. It's very important that they give a detailed description of their symptoms, and also all the treatment they have received as a consequence of the impairment they are alleging. That's critical. If they are credible, that's something that should be taken into consideration by the administrative law judge. And also by the appeals council, and that will take a great weight on the decision.

James Montero:

Now, if the individual receives an unfavorable decision from the social security appeals council, then of course, you had said, that federal court is the next step. How does that appeal work?

Judge DeLeon

In terms of having the federal district court reviewing?

James Montero

Yes.

Judge DeLeon

It might take 2 courses, or the court will decide also that it will return that to the administrative law judge or give instructions to the appeals council in terms. Sometimes the appeals council will voluntarily remand the case back to the administrative law judge, because sometimes we can have new medical evidence that was not present at the hearing and it might be helpful at his time. So there are certain issues that might be now pointed

out by the federal district court and the appeals council will intervene, or if not, it will remand the case to the administrative law judge who entered that decision.

James Montero

Which brings to mind another issue regarding the appeals council. When the appeals council is making their decision, what alternative do they have? What choices do they have in making that decision?

Judge DeLeon

As I told you before, they can remand that case with some instructions to the administrative law judge or they can solve it on their own and that will be the final decision. And that's basically the two ways they have to decide on the case that has been appealed.

James Montero

So they can deny or decide on their own merits?

Judge DeLeon

Or decide on their own merits.

James Montero

Now we've spoken about the process, the requirements for SSI as far as the financial. Is there anything else that we need to cover, that we, or the individual, need to do? Other information that we need regarding SSI or Social Security disability benefits?

Judge DeLeon

They should have all the documents and at least present that from the very beginning of the application. The more documents they can have available for the person who is interviewing them will be the best way to address everything from the very beginning. Also, if we have information, medical information, that can even be helpful to decide on

the record it will be even possible for he or she doesn't have even to be present at the hearing and a decision on the record might be made.

James Montero

Okay, so it's very important to try to submit all the medial evidence as soon as possible to the office of hearings and appeals?

Judge DeLeon

It's correct. And also it's very important that they'll be very honest with the representative. If they have tried to, where they should inform that to the representative. If they have tried also to get more information, or more medical information and the doctor has given them certain trouble looking for that information, they should also notify the representative and also ask for help from the administrative law judge, because we can subpoena those records and make them available for the date of the hearing.

James Montero

Okay, so when all else fails, contact your office – by your office, I mean the judge's office.

Judge DeLeon

That's correct.

James Montero

If the individual is having problems with that.

Judge DeLeon

That's correct.

James Montero

What other advice Judge, would you give the claimants regarding SSI or social security disability applications?

Judge DeLeon

I think the important and critical issue here would be in terms of the hearing. I think the administrative law judge hearing is very important for them and they should be early, thirty minutes before the hearing, so they can review the file and see if everything is included. They should also tell the representative on time, that they have to be there. Because sometimes we can feel that if the hearing is scheduled at a certain hour and they come and they come a little bit late or something, it will be more difficult for them to review the file with the care that they should.

James Montero

Okay. Now if we - when we mentioned earlier the disability, the twelve month period, okay, what specific, can we add anything, any other information that would be beneficial to the individuals who apply? What does that 12 month period entail? That the person has to be disabled for 12 months consecutive?

Judge DeLeon

That's correct. Yeah.

James Montero

Or if the individual, let's say, was injured in an accident and if the doctor makes a determination or indicates that the individual will not be able to work for 12 months, is that also applicable?

Judge DeLeon

If the expectancy is that this person won't be able to be fully working during those 12 months, then that is a possibility. But we have to document that with, like you say, with doctor's certification and basically explain why this should last twelve months. For example, the car accident. This person might have to have some surgical interventions that may take longer. The period of rehabilitation. So that's something that has to be taken into consideration.

James Montero

Okay. Judge, we've spoken about other issues. Is there anything else we have ...you mentioned about being nervous, being prepared for the hearing. Is there something else we should cover?

Judge DeLeon

In that sense, the claimant should be relaxed and should be aware that the hearing will be conducted with respect, and that we really value their testimony. There's no way that a claimant should be feeling scared or nervous because the administrative law judge has the responsibility to treat that claimant with courtesy and to be sensitive to any need the claimant may have. The administrative law judge should also be aware that being in front of a judge can be a scary thing. I might think so too. And I think it's important they even express if they feel a little bit nervous. Let us know if that is the situation and we'll try to make the process a little bit easier, because this is an informal hearing, so they really don't need to be aware of technicalities because that's not the purpose of this hearing.

James Montero

Okay, but by the same token, it's all the more important for those individuals in front of you to be prepared, because this is their one and only opportunity to present the evidence to the judge.

Judge DeLeon:

That's correct.

James Montero:

Well, Judge DeLeon, I think we have covered the basic issues and points of SSI and Social Security Disability. We greatly appreciate your taking the time to be with us from your busy schedule today and share important information on an issue that is so important to our community. With Access to Justice, I am James Montero and see you next time.