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# The Intersection Of Social Security Disability And Estate Planning: What Every Estate Attorney Must Know About Social Security Disability Benefits

*This article is based on Attorney Andrew November's presentation at the Cleveland Metropolitan Bar Association's 51st Annual Estate Planning Institute held on Wednesday, October 16, 2024.*

## Introduction

My favorite phrase as a lawyer is, "You don't know what you don't know." It's a concept that can be daunting—navigating client needs often feels like walking through a minefield of unknowns. But it's also a rallying call for lifelong learning, one of the reasons many of us became lawyers in the first place, right?

Most people don't think about Social Security, especially for disability-related issues, until it's too late—until a medical issue prevents them from working. At that point, they may face concerns about job security, uncertainty about their next paycheck, and the overwhelming task of managing a severe physical or mental impairment or even multiple conditions.

With this article, I aim to offer a Social Security Disability 101. Not only will you gain an understanding of the essentials of what it means to be "disabled" under Social Security law, but you'll also learn how, as a lawyer working with families and their estates, you can protect your clients' benefits—even if they didn't realize they needed that protection.

Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) provide financial support (primarily in the form of monthly disability payments) to individuals with disabilities. Yet, these benefits come with eligibility requirements that can affect estate planning decisions. This article explores the foundational laws behind SSDI and SSI, essential eligibility criteria, and practical strategies for estate planners to optimize benefits for clients with disabilities.

## Social Security Disability: The Legal Framework

While this article is not intended to break down each set of rules governing Social Security Disability, a practitioner should know how to navigate these bodies of rules effectively. Each resource plays a distinct role and has specific uses depending on where and how you're advocating for your client.

For example, consulting the Program Operations Manual System (POMS) and relevant regulations is essential for working with a local Social Security Field Office. Field Office employees typically rely on these resources and are unlikely to reference the HALLEX or case law. POMS is the primary internal guide for SSA employees in handling claims, providing valuable insights into how the Field Office might interpret specific procedures using helpful examples.

On the other hand, if you're representing a client before an Administrative Law Judge (ALJ), mastery of the HALLEX (Hearings, Appeals, and Litigation Manual) is indispensable. HALLEX is the closest equivalent to the Rules of Civil Procedure

and Evidence for SSA proceedings, outlining procedural requirements and interpretation at the hearing and appeals levels. Additionally, familiarity with case law and Social Security Rulings (SSRs) is essential for ALJ hearings, as these decisions help guide interpretation and provide persuasive authority on nuanced issues, from assessing work activity to evaluating specific medical conditions.

Overall, SSDI and SSI are governed by a comprehensive legal framework that includes statutes, regulations, and various guidance manuals:

- The foundational statutes come from the Social Security Act ([42 U.S.C.A. §§ 301 et seq.](#)).
- Federal regulations, specifically 20 C.F.R. § 404 for SSDI and 20 C.F.R. § 416 for SSI.
- POMS is an internal SSA resource, while HALLEX and SSRs are more relevant in higher adjudication levels, such as ALJ hearings.
- Finally, case law and Acquiescence Rulings can provide direction, particularly when judicial decisions diverge from national SSA policies.

Understanding how and when to utilize each source is critical to effective advocacy. It allows practitioners to tailor their approach based on each case's unique procedural context.

### **The Social Security Disability Definitions: Adults and Children**

When dealing with disability claims, the Social Security Administration applies distinct approaches for adults and children, utilizing a medical-vocational analysis for adults and a medical-functional analysis for children.

For adults, SSA defines disability as the inability to engage in substantial gainful activity (SGA) due to a medically determinable impairment that is expected to last at least 12 months.<sup>1</sup> This medical-vocational analysis considers medical limitations and vocational factors, such as age, education, and work experience, to determine if the individual can perform any work in the national economy. The SSA determines whether the impairments fully preclude substantial work activity by evaluating the claimant's "residual functional capacity" (RFC). We will discuss the RFC a bit later in this article.

For children, however, the SSA evaluates disability based on marked and severe functional limitations, focusing primarily on medical and developmental impacts without consideration of vocational factors. Since children generally lack a work history, the analysis centers on how their impairments affect their ability to engage in age-appropriate activities. The SSA reviews six functional domains to assess whether the child's impairment severely limits their ability to function at home, in school, or other settings:<sup>2</sup>

1. **Acquiring and Using Information**—Learning, understanding, and using information.
2. **Attending and Completing Tasks**—The ability to focus, maintain attention, and finish activities appropriately.
3. **Interacting and Relating with Others**—The ability to initiate and maintain social interactions, relationships, and friendships.
4. **Moving About and Manipulating Objects**—The ability to move and engage physically, including motor skills.
5. **Caring for Yourself**—The ability to manage self-care tasks and develop independence.
6. **Health and Physical Well-Being**—The overall impact of physical and mental health on the child's daily functioning.

Understanding the SSA's distinct approaches—the medical-vocational analysis for adults and the medical-functional analysis for children—guides practitioners in effectively tailoring their evidence and arguments for each type of claim.

### **Types of Social Security Disability Benefits**

Understanding and discussing Social Security programs accurately is essential, as many clients—and even some professionals—may misunderstand or conflate the programs. For instance, people often say they’re getting “SSA” when referring to benefits, but SSA is the Social Security Administration, the agency that administers the programs. Others may say they’re receiving “disability,” assuming it means cash benefits, but might not realize the distinction between Social Security Disability Insurance and Supplemental Security Income. These distinctions matter greatly, as each program serves different populations and comes with specific requirements, limitations, and benefits that impact estate planning.

### **Social Security Disability Insurance (SSDI)**

SSDI benefits are available to individuals with a sufficient work history, following what is often called the “20/40 rule.”<sup>3</sup> This rule requires claimants to earn 20 work credits within the last 40 quarters (or 10 years) before becoming disabled. In practical terms, an individual must have worked at least five of the last 10 years in a job covered by Social Security. Each year, up to four credits can be earned based on a person’s income, with the income amount required to earn one credit adjusted annually.<sup>4</sup>

For younger individuals, however, the work credit requirements are less stringent, as they may not have had enough time to accumulate 20 credits. For example, claimants under age 24 generally need only six credits within the three years before their disability onset, and those between ages 24 and 31 may need credits covering half of the time between age 21 and the onset of their disability. These adjusted requirements aim to account for different stages of life and work experience, making SSDI more accessible to younger workers who face unexpected disabilities early in their careers.

SSDI recipients become eligible for Medicare after 24 months of benefits.<sup>5</sup> However, with the expansion of Medicaid in Ohio under the Affordable Care Act, residents now have broader healthcare options. This expansion has opened access to treatment options previously unavailable to many Ohioans, providing a valuable alternative or supplement to Medicare.

SSDI also has no limit on unearned income, making it advantageous for clients receiving inheritance or trust disbursements. In addition, SSDI can extend dependent benefits to children under 18 or disabled adult children, which is discussed momentarily.

### **Supplemental Security Income (SSI)**

SSI is for individuals with limited resources and a limited work history, providing a federal payment standard that, as of 2025, is set at \$967 monthly.<sup>6</sup> Because SSI is means-tested, beneficiaries face strict resource limits of \$2,000 for singles and \$3,000 for married couples, with exemptions for a primary home, one vehicle, and certain life insurance policies.<sup>7</sup> SSI eligibility affects estate planning strategies directly, as inheriting assets or receiving large disbursements can disqualify a recipient. Every estate lawyer should carefully examine their client’s family dynamics to identify any children who may qualify for SSI benefits. Identifying potential beneficiaries early allows the attorney to structure assets and inheritances in a way that preserves SSI eligibility.

### **Disabled Adult Child (DAC) Benefits**

Estate attorneys should prioritize identifying eligibility for Disabled Adult Child (DAC) benefits when structuring lifetime financial plans for clients. Unlike SSDI & SSI, DAC benefits are based on *the parent’s* Social Security record. They can provide a significantly higher monthly benefit amount than SSI, up to 50% of a living parent’s Primary Insurance Amount (PIA) or 75% if the parent is deceased. Moreover, because DAC benefits do not have strict asset limits like SSI, clients can receive these funds without jeopardizing other assets or requiring extensive asset protection strategies. For estate planners, recognizing DAC eligibility is crucial, as it offers greater financial security and stability for disabled adult children without the restrictive eligibility concerns that come with SSI.<sup>8</sup>

### **The Disability Determination Process**

SSA evaluates disability claims through a five-step process.<sup>9</sup> The first step determines if the claimant engages in SGA, with income thresholds set at \$1,620 monthly in 2025. The second step assesses the severity of the claimant’s impairment. In step three, the SSA examines whether the claimant’s impairment matches any listed impairments under [20 CFR, Part 404, Subpart P, Appendix 1](#). If the claim proceeds, step four evaluates the claimant’s ability to perform past relevant work, and step five considers other work possibilities given the claimant’s residual functional capacity (RFC).

### Key Estate Planning Tools

I'm presenting these next protection tools because you're already familiar with them—Special Needs Trusts, Pooled Trusts, and Achieving a Better Life Experience (ABLE) Accounts. I'm not here to teach you the details of setting up trusts or the intricacies of each tool; instead, I'm flagging them specifically in the context of my practice area. The goal is to highlight how these tools can help clients receiving disability benefits navigate complex eligibility requirements.

This crossover is exactly why every estate lawyer should have a disability lawyer in their network—and why every disability lawyer should know an estate lawyer. Together, we can ensure that clients benefit from a coordinated approach that protects their assets and eligibility for essential public benefits.

### Special Needs Trusts (SNTs)

An SNT is invaluable for SSDI and SSI beneficiaries, preserving eligibility while improving quality of life. Funds in an SNT are not counted toward SSI resource limits, and they are intended to supplement—not replace—SSI benefits. However, disbursements are subject to strict rules, particularly in first-party SNTs, which require Medicaid payback provisions upon the beneficiary's death.

### Pooled Trusts

Administered by nonprofit organizations, pooled trusts provide a collective approach to preserving SSI eligibility. They allow beneficiaries to retain their benefits while receiving financial support, making them a flexible choice for families who want to provide financial security without risking SSI qualification.

### Achieving a Better Life Experience (ABLE) Accounts<sup>10</sup>

The ABLE Act<sup>11</sup> offers an alternative savings option for individuals whose disability began before age 26. ABLE accounts allow beneficiaries to save up to \$100,000 without affecting SSI eligibility. This can be an attractive option for individuals managing daily expenses, as funds in ABLE accounts provide the disabled individual greater control while keeping SSI benefits intact.

### Conclusion

Estate planning for Social Security disability beneficiaries requires a nuanced approach that balances legal compliance with practical needs. By understanding SSA rules, structuring trusts wisely, and utilizing tools like ABLE accounts, estate attorneys can protect clients' financial security and improve their quality of life. At the intersection of Social Security and estate planning, the right strategies can empower individuals with disabilities and provide peace of mind to their families. For any questions, please feel free to contact me at 216-282-1773 or by email at [anovember@linerlegal.com](mailto:anovember@linerlegal.com).



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### Footnotes

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1 [20 C.F.R. § 404.1505](#), [20 C.F.R. § 416.905](#) (defining disability for adults under Social Security Disability Insurance and Supplemental Security Income regulations).

- 2 See [20 C.F.R. § 416.926a\(b\)\(1\)](#) (listing the six functional domains used to evaluate disability for children under Supplemental Security Income).
- 3 See [20 C.F.R. § 404.130](#) (outlining work credit requirements for Social Security Disability Insurance eligibility).
- 4 See [20 C.F.R. §§ 404.140, 404.143, 404.144](#) (explaining the annual earning requirements to earn Social Security credits and adjustments to the income threshold).
- 5 *Note:* SSDI recipients must also complete a five-month waiting period before benefits begin. See [20 C.F.R. § 404.315\(a\)\(4\)](#) (detailing the waiting period requirement for SSDI eligibility).
- 6 See <https://www.ssa.gov/oact/cola/SSI.html>.
- 7 See [20 C.F.R. § 416.1205](#) (detailing SSI resource eligibility requirements).
- 8 See [20 C.F.R. § 404.350\(a\)\(5\)](#) (outlining eligibility requirements for Disabled Adult Child benefits and benefit amounts based on a parent's Social Security status).
- 9 See  [20 C.F.R. §§ 404.1520, 416.920](#) (detailing the sequential evaluation process for determining disability for SSDI and SSI claims).
- 10  [I.R.C. § 529A; R.C. 113.50 et seq.](#)
- 11 [Pub. L. No. 113-295](#).

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