

# Social Security Disability Law Basics

May 25, 2022

# Agenda (part 1)



Benefit  
Programs



Disability  
Evaluation



Misc. Practical  
Information

# Two benefit programs

Title II – OASDI	Title XVI – SSI
Old Age Insurance Benefits (Retirement) Survivors Insurance Benefits Disability Insurance Benefits	Supplemental Security Income (SSI) for the aged, blind, disabled

# Titles II and XVI – at a glance

Title II – OASDI	Title XVI – SSI
Insurance program for qualifying individuals who worked long enough and recently enough and paid Social Security taxes on their earnings.	Needs-based program for qualifying individuals with limited income and resources.

*It is possible to qualify for both (“concurrent”).*

# Title II – Disability

- **Disability Insurance Benefits (DIB)** – Monthly cash payments for blind and disabled former workers.
  - Payment amount is based on covered earnings.
  - Medicare entitlement after two years.
- **Period of disability** – A continuous period of time during which an individual is disabled.
- **Other benefits based on disability** – disabled spouse of deceased wage earner; disabled adult child of deceased/retired/disabled wage earner

# DIB entitlement factors

- ☑ Under full retirement age
- ☑ File an application
- ☑ Satisfy the insured status requirement
- ☑ **Be “disabled” as defined in the Act**
- ☑ Complete a five-month waiting period

# Date last insured (DLI)

The claimant must prove that the disability began on or before the date his or her Title II insured status expired (i.e., the “**date last insured**”) in order to receive DIB.

*(Title II only - no similar requirement for Title XVI.)*

# Title XVI - SSI

Need-based cash assistance program:

- Aged = 65+
- Blind
- Disabled
  - Adult (same definition/analysis as Title II)
  - Individual under 18 (different definition/analysis)

# SSI eligibility factors

- ☑ U.S. citizen or legal resident
- ☑ Satisfy income and resource limitations
- ☑ Not a fleeing felon or in a public institution
- ☑ File an application (and file for other benefits for which eligible)
- ☑ Be blind or **disabled as defined in the Act**

# DIB versus SSI – major differences

<b>Title II – DIB</b>	<b>Title XVI – SSI</b>
Retroactive payments (12 months)	No retroactive payments
Five-month waiting period	No waiting period
Insured status requirement	No insured status requirement
No income/resource limitations	Must meet income and resource limits
Dependent/auxiliary benefits	No dependent/auxiliary benefits
Eligible for Medicare (generally 2 years)	No Medicare

# Disability defined

## The Social Security Act defines disability as:

the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

# Disability defined (cont'd)

**More specifically, the Social Security Act requires a showing that:**

physical or mental impairment or impairments are of such severity that [an individual] is not only unable to do [their] previous work, but cannot, considering [their] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy . . .

# In a nutshell

## **Disability means:**

- The inability to do any significant, productive work
- Due to medically documented impairments and limitations (physical or mental)
- Short-term/minor ailments do not qualify

Other agencies and programs may define disability differently.

# The claimant's burden

## **Social Security Act:**

An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Commissioner of Social Security may require.

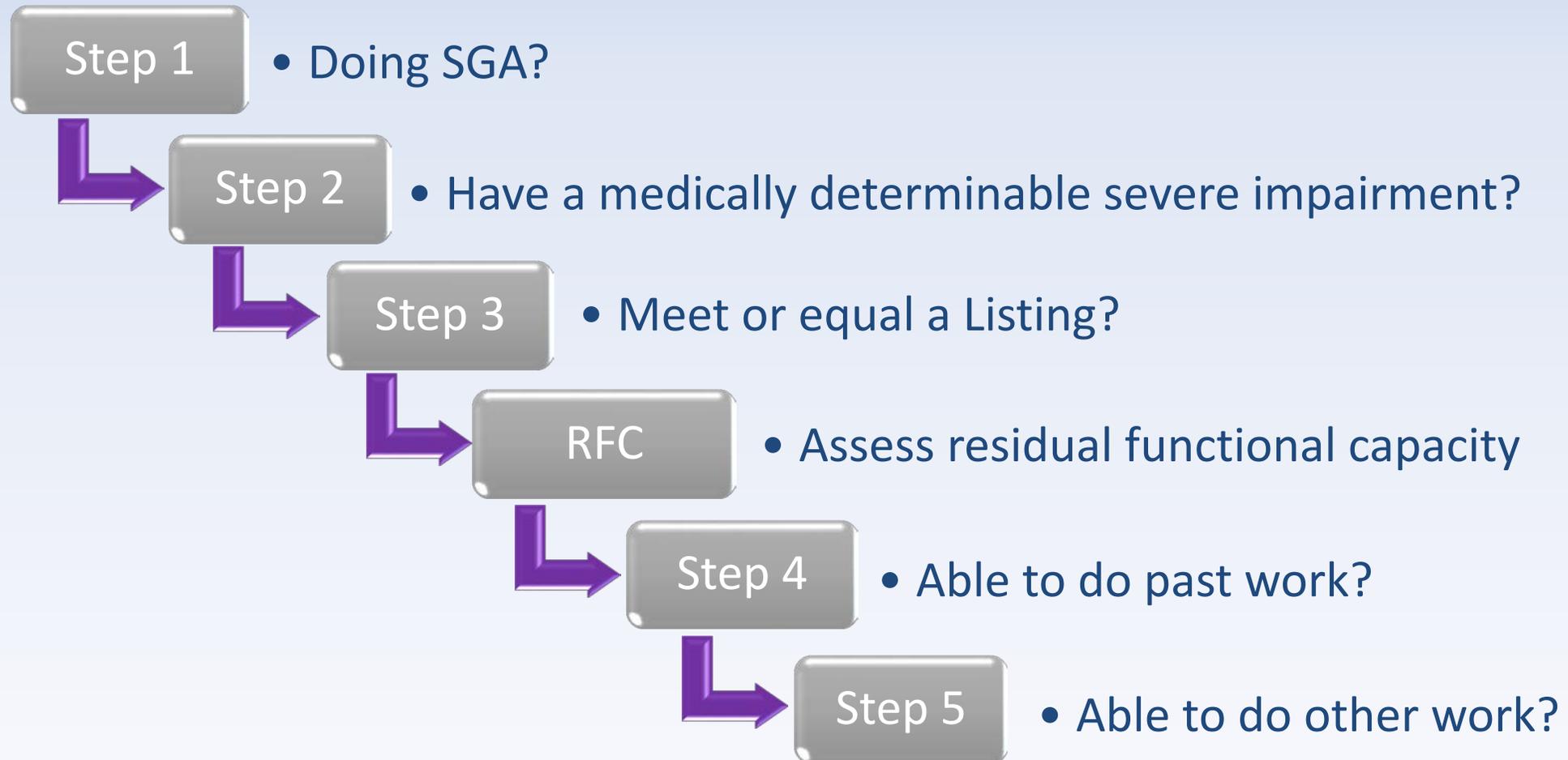
## **Regulations:**

In general, you have to prove to us that you are blind or disabled. You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled.

# Five-step sequential evaluation

- SSA follows a five-step process for evaluating adult disability claims (same for DIB and SSI)
- Steps must be followed in order
- As soon as a definitive answer on disability can be reached, the analysis ends

# Five-steps overview



# Step One: substantial gainful activity (SGA)

## Is the claimant performing substantial gainful activity?

- *If yes: The claimant is not disabled. Analysis ends.*
- *If no: Go to step two.*

**Substantial gainful activity:** Work that involves significant and productive physical or mental duties, and is done (or intended) for pay or profit.

Monthly earnings threshold for SGA is \$1,350/month in 2022.

# Step two: severe impairment(s)

**Does the claimant have a medically-determinable + severe impairment?**

- *If yes: Continue to step three.*
- *If no: The claimant is not disabled. Analysis ends.*

Step two is intended to weed out essentially groundless disability claims. Step two requires a showing of an impairment (or combination of impairments) that is **both**:

- 1) Medically determinable
- 2) Severe

## Step two: severe impairments

**“Medically determinable”** – Results from anatomical, physiological, or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques.

# Step two: severe impairments

**“Severe”:** Significantly limits a claimant’s ability to perform basic work activities.

Basic work activities are the abilities needed to do most jobs, such as:

- Physical functions like walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, handling
- Capacities for seeing, hearing and speaking
- Understanding, remembering, carrying out simple instructions; using judgment; responding appropriately to supervision; dealing with routine changes in a work setting

# Step three: the listings

**Does the claimant's impairment(s) meet or equal the criteria of a listing?**

- *If yes: The claimant is disabled. Analysis ends.*
- *If no: Continue to step four.*

The “listings” – set of medical criteria describing, for each body system, impairments considered severe enough to preclude gainful activity.

# Residual functional capacity

**Between steps three and four**, the ALJ makes a finding about the most the claimant can do despite impairments. This is the claimant's residual functional capacity (**RFC**).

*The RFC is then used to decide step four and step five.*

# Residual functional capacity

## An RFC Example:

“The undersigned finds that the claimant retains the residual functional capacity to lift up to 20 pounds occasionally and 10 pounds frequently. The claimant can stand and/or walk for six hours and sit for two hours in an eight-hour workday (with normal breaks). The claimant can occasionally reach and handle; should never be exposed to extreme temperatures; and can perform only simple, routine tasks.”

# Residual functional capacity

- RFC is the most an individual can do on a regular and continuing basis (5 days/8 hour or equivalent schedule).
  - Consider physical abilities/limitations; mental abilities/limitations; and other (vision, hearing, senses, environmental restrictions)
- RFC is assessed based on all of the relevant medical and other evidence.
- RFC considers all impairments in combination.

# Residual functional capacity

- “All relevant medical and other evidence” includes:
  - Objective medical evidence; other medical evidence; medical opinions; prior administrative medical findings; and evidence from non-medical sources (including the claimant)
- Special rules for evaluating:
  - Medical opinions
  - Subjective symptoms
  - Mental impairments

# Step four: past relevant work

**Does the claimant have the RFC to perform his or her past relevant work?**

- *If yes: The claimant is not disabled. Analysis ends.*
- *If no: Continue to step five.*

**“Past relevant work”:**

1. Performed in the last 15 years
2. Long enough for claimant to have learned it
3. SGA

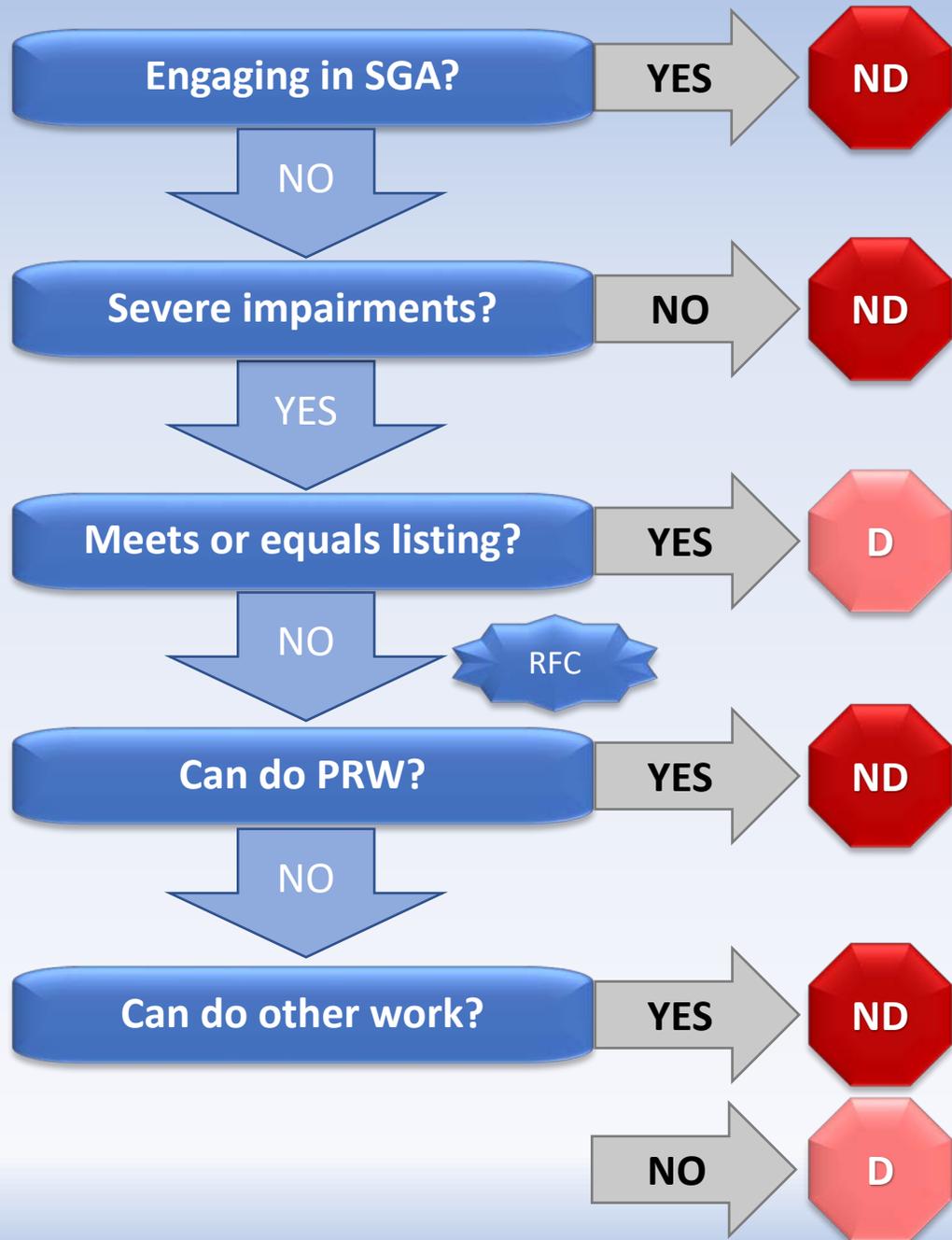
# Step five: other work

**Can the claimant perform other jobs existing in significant numbers in the national economy?**

*If yes: The claimant is not disabled. Analysis ends.*

*If no: The claimant is disabled. Analysis ends.*

- ALJ considers RFC, age, education, work experience
- ALJ may use a matrix in the regulations or vocational expert testimony to obtain job info
- Limited shift in burden of production



Recap:  
 five-step  
 sequential  
 evaluation

# Sources of law

- **The Social Security Act**
- **The Code of Federal Regulations**
  - 20 CFR 404.15\_\_ (DIB)
  - 20 CFR 416.9\_\_ (SSI)
- **Rulings**
  - Social Security Rulings (SSRs)
  - Acquiescence Rulings (ARs)
- **Other sources**
  - Program Operations Manual System (POMS)
  - Hearings, Appeals, and Litigation Law Manual (HALLEX)

# Complexities

- Reopening
- Title XVI – evaluation of disability in individuals under age 18
- Remote date last insured
- Continuing disability review

# Miscellaneous

- Representatives must be familiar with and follow SSA's rules of conduct for representatives
- SSA proceedings are non-adversarial

# Social Security Disability Hearing

## ▶ Process

# Office of Hearing Operations (OHO)

- ▶ Component of SSA responsible for holding hearings and issuing decisions for claims filed under titles II and XVI of the Social Security Act
- ▶ Consists of 10 regional offices, 164 hearings offices and 5 national hearing centers
- ▶ Currently over 1,200 ALJS which rendered over 500,000 decisions a year

# ALJ Hearings

## How to request a hearing



What to File

Request for Hearing



When to File

Within 60 Days after  
receiving a denial



How to File

Submit in writing or  
online

## Overview

- Claimant's opportunity to present their case
- Non-adversarial
- ALJ looks into the issues and accepts evidence
- ALJ issues decision following hearing

# Manner of Appearance

- ▶ COVID-19 Process
  - ▶ Claimants and representatives are primarily appearing by telephone and online video
    - ▶ Claimants and representatives must consent to online video or telephone hearings
    - ▶ They may consent by submitting a COVID-19 Remote Hearing Agreement Form, which we send to claimants and representatives, and which is also available online
  - ▶ Resuming limited in-person and VTC hearings
- ▶ Pre-Pandemic
  - ▶ Claimants and representatives generally appeared at the hearing in person or by video teleconferencing
  - ▶ In limited, extraordinary circumstances, claimants and representatives may have appeared by telephone

The Hearing  
Process

# Hearing Format

Introduction

Opening

Oath

Evidence

Oral testimony

Claimant or  
representative  
oral argument

Closing the  
Hearing

The role of the ALJ

# Post Hearing

Additional Evidence



Interrogatories



Proffer



Supplemental Hearing

# ALJ Decision

- ▶ Made in writing
- ▶ Identify the claimant, jurisdiction/procedural history, issues, applicable law, findings of fact, conclusions of law and final decisions
- ▶ Types of decisions



# Best Practices

- ▶ Review  
[www.ssa.gov/appeals/best\\_practices.html](http://www.ssa.gov/appeals/best_practices.html)
- ▶ Evidence Submission
- ▶ Pre-Hearing Brief
- ▶ COVID-19

Questions

