



Employment Rights for PLWA and Work Incentives for People Receiving Disability Benefits

Sue Garten

Greater Hartford Legal Aid

July 30, 2010



Americans with Disabilities Act (ADA)

- ❑ Employers may not discriminate against a qualified individual with a disability in any aspect of employment.
- ❑ HIV/AIDS is a covered disability, even if it is asymptomatic.
- ❑ The ADA also protects people who are “regarded as” having HIV/AIDS but do not.



Can employers ask job applicants disability-related questions or require medical exams?

- No. At the “pre-offer” stage, employers cannot ask any questions that are likely to elicit information about a disability.

Employers cannot administer tests that yield information about an applicant’s physical or mental health.



When I'm **applying** for a job, can the employer:

- ❑ Require me to take a drug test?
- ❑ Ask whether I am taking prescription medications?
- ❑ Ask how many days I was absent from work at my last job?
- ❑ Ask me to demonstrate that I can do the job?



Can an employer ever ask medical questions or conduct medical tests?

- Yes. After making a job offer, the employer can require you to take medical tests and answer health and medical questions.
- But the employer cannot deny employment or health insurance to you based on the results of the medical tests (unless your medical condition poses a direct threat).



Do I ever have to tell my employer that I have HIV/AIDS?

- “Don’t ask, don’t tell” when applying for a job and while working.
- You may have to disclose health issues only when you need a “reasonable accommodation.”



Can the employer fire me if I get sicker and can't do my job?

- The employer can't fire you as long as you can do the “essential functions” of your job, with or without a “reasonable accommodation.”
- An “essential function” is a core duty that is the reason the job exists.



What is a “reasonable accommodation”?

- ❑ An accommodation is a change to the work environment, such as job restructuring, part-time or modified work schedules, or reassignment to a vacant position.
- ❑ An accommodation is “reasonable” if it does not cause undue hardship to the employer.



What is an “undue hardship?”

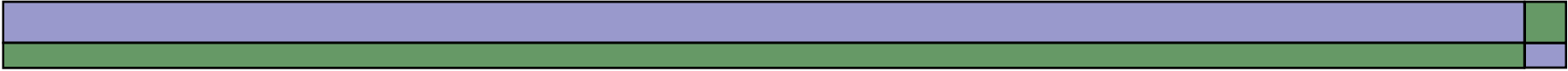
An “undue hardship” is a change that requires “significant difficulty or expense” considering the employer’s

- size
- resources
- nature of the business



What if I need to take extra sick days?

- That may not be a “reasonable accommodation” because your absence may be an “undue hardship” for the employer.
- But the Family and Medical Leave Act (FMLA) may allow you to take unpaid leave if you or a family member has a “serious health condition.”



What rights does the Family Medical Leave Act give me?

- ❑ You can take unpaid leave for at least 12 weeks and return to the same job.
- ❑ You can take “intermittent” leave.
- ❑ 50 employees/1,250 hours worked in prior year -> 12 weeks leave & continued health insurance by employer
- ❑ 75 employees/1,000 hours worked in prior year -> 16 weeks leave (CT FMLA)



HIV and insurance

- Group health and life through employer-
Must be treated like any other group member
- Individual health and life insurance policies-
Can deny based on health



Can I get disability benefits because I am HIV+ or have AIDS?

- ❑ Social Security will not pay benefits just because you are HIV+ even if your CD4 count is below 200 cells/mm³.
- ❑ You can get disability benefits if you develop certain opportunistic infections.
- ❑ You can get benefits if the combination of your physical and mental problems would prevent you from working full-time.



Can I get disability benefits if I am an active substance user?

You won't qualify if your mental health symptoms would improve enough for you to work if you stopped using drugs or alcohol.

- Social Security will appoint a representative payee for beneficiaries with a history of drug or alcohol abuse.



What is a work incentive program?

- A program designed to encourage people to work without losing:
- Medicaid (Title 19) or Medicare or
- SSI (Supplemental Security Income) or SSDI (Social Security Disability Insurance)



What are the work incentive rules?

The rules for Social Security's two disability programs are different.

You must know whether a client gets:

- ❑ SSI (Supplemental Security Income) or
- ❑ SSDI (Social Security Disability Insurance) or
- ❑ SSI and SSDI (“concurrent” benefits)



Who gets SSDI?

- Social Security Disability Insurance (SSDI) provides benefits to disabled or blind individuals who are "insured" by their contributions to the Social Security trust fund. These contributions are paid through FICA taxes on earnings.



Are all workers entitled to SSDI?

- ❑ Only workers who have worked long enough- and recently enough- can get SSDI. They must have the right number of “credits.”
- ❑ Workers can earn up to four “credits” each year, one for each calendar quarter.
- ❑ The number of required credits is different for younger and older workers.



How are work credits earned?

- A worker gets one work credit for each \$1,120 earned.
- A worker can earn up to four credits each year.
- Once a worker has earned \$4,480, she's earned her four credits for the year (2010).



How many credits do younger workers need for SSDI?

- Workers who become disabled between the ages of 24 and 31 must have credit for working half the time between age 21 and the age they became disabled.
- For example, someone who becomes disabled at age 27 needs credit for 3 years of work (12 credits) out of the past 6 years (between ages 21 and 27).



How many credits do older workers need for SSDI?

- Workers who become disabled at age 31 or older must have credit for working a specified number of quarters AND must have earned at least 20 of the credits in the 10 years immediately before they became disabled.
- For example, someone who becomes disabled at age 46 needs 24 credits, 20 of which must have been earned in the prior 10 years.



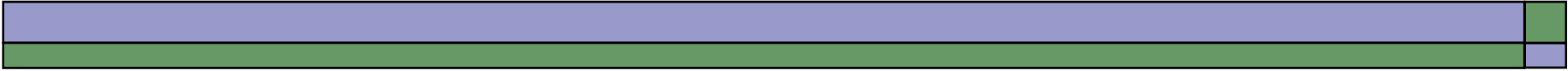
Who gets SSI?

- The Supplemental Security Income (SSI) program makes cash assistance payments to aged, blind, and disabled individuals who do not have enough or recent enough work credits to qualify for SSDI.
- They also must have less than \$674/month in countable income and less than \$2,000 in countable resources.



Who gets SSDI and SSI?

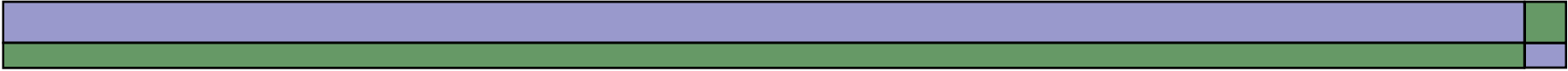
- “Concurrent” recipients have enough work credits to receive SSDI, but their monthly SSDI benefit is less than the regular SSI monthly benefit (\$674 in 2010).
- They receive their SSDI payment and an SSI payment to raise their total income to the SSI benefit (plus \$20).



When should a client get a job?

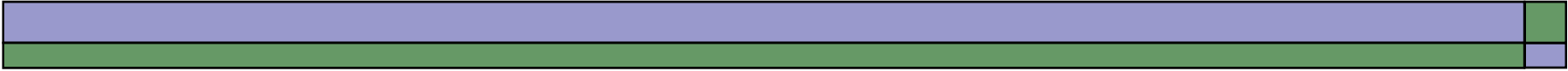
The client will NOT be found disabled by Social Security if she earns more than \$1,000 per month:

- ❑ In the first 5 months after the client says the disability began.
- ❑ In the 5-12 months after the client says the disability began if Social Security has not yet decided whether the client is disabled.



Is it safe to get a job more than 12 months after the disability began?

- ❑ Only if Social Security has already decided that the person is disabled.
- ❑ Going to work 13 months after the disability began will not automatically disqualify the person, but judges may use the fact that the person is working to decide that s/he is not disabled.



What are the income-protection rules for SSI?

- Recipients can exclude \$65 + \$20 plus half of earned income.
- Recipients can continue to receive SSI even when their earnings are greater than \$1,000/month (substantial gainful activity).



Example: SSI recipient earns
\$685/month in wages.

- $\$685 - \$65 - \$20 = \600
- $\$600 / 2 = \300 countable income
- $\$674$ (SSI) - $\$300 = \374 (SSI after wages)

- $\$685$ wages + $\$374$ SSI =
\$1,059 total income



Does work affect other benefits of an SSI recipient?

- The state cash supplement may be reduced slightly.
- State supplement is generally paid to people in the private housing market, but not to people who have housing subsidies.



State Supplement calculations:

- $\$685$ earnings - $\$65$ disregard = $\$620$
 $\$620 / 2 = \310 countable earned income

- $\$374$ SSI - $\$278$ unearned income disregard = $\$96$ countable unearned income

- $\$310 + \$96 = \$406$ total countable income

- $\$564$ need - $\$406$ income = $\$158$ state supp.
(Need is based on shelter allowance of $\$400 + \164 personal needs allowance).



Is it worth it?

- Before work:

$$\$674 \text{ SSI} + \$168 \text{ state supp} = \$842.$$

- After work:

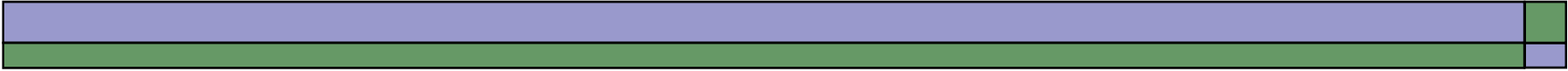
$$\$374 \text{ SSI} + \$685 \text{ wages} + \$158 \text{ state supp} = \$1,217.$$



What other benefits will be affected if the SSI or SSD recipient works?

- ❑ Rent will increase in subsidized housing
EXCEPT:
- ❑ 100% of earnings are disregarded in the first year
- ❑ 50% of earnings are disregarded in the second year.

(HOPWA, Section 8, federal public housing)



What are the income-protection rules for SSDI?

- Trial Work Period: recipients can earn any amount without affecting SSD benefits for 9 months within a 5 year period. Any month during which earnings are more than \$720 counts as a trial work month.
- After the trial work period, SSD benefits continue for 3 months and then stop if countable earnings are greater than \$1,000 per month.



What if the SSDI recipient's earnings decline after the end of the trial work period?

- The recipient can get her full SSDI benefit for any month that her countable earnings are \$1,000 or less for 3 years after the trial work period ends.



What are the Medicaid protection rules for SSI?

- ❑ Recipients retain eligibility for Medicaid coverage when earnings become too high to allow an SSI cash benefit. SSI cash ends when recipient earns \$1,433/month.
- ❑ Medicaid coverage continues until annual earnings exceed \$54,815.



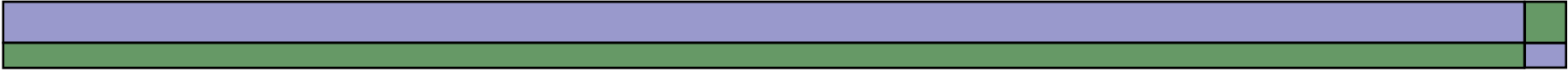
What are the Medicare/Medicaid protection rules for SSDI?

- Recipients are eligible for Medicare coverage for 8 3/4 years following a trial work period as long as medical disability continues.
- Recipients are eligible for Medicaid with no spenddown if they are employed, earn less than \$75,000 per year, and have less than \$10,000 in countable assets (\$15,000 if married). The state may charge a premium.



Will Social Security do a medical review if a recipient works?

- During a medical review, Social Security determines whether a recipient's medical condition has improved and whether the functional ability to work has improved.
- Social Security may conduct a medical review if the person has significant wages or at the end of the trial work period UNLESS the person is using a "Ticket."



What is a “Ticket”?

- As part of the “Ticket to Work” program, disability beneficiaries get a paper “ticket” which they can give to an “employment network” or the state Bureau of Rehabilitation Services for free services to help them go to work.



Will SSI or SSDI end after a medical review?

- ❑ Benefits will end if Social Security decides that the beneficiary's medical condition and work-related functioning have improved **UNLESS**
- ❑ The beneficiary is participating in a vocational rehabilitation program.



Will the recipient have to reapply if benefits are terminated?

- Recipients can request “expedited reinstatement” without a new application if they become disabled by the original medical condition within 5 years after their benefits terminate.



Where can I get more information?

- <http://www.socialsecurity.gov/redbook/eng/main.htm>: “A Summary Guide to Employment Support for Individuals with Disabilities Under the SSDI & SSI Programs.”