Teen Transition - Social Security Disability Benefits and the Transition to Adulthood

Grand Rounds
UTHSC-SA, Department of Pediatrics
November 7, 2014

LEARNING OBJECTIVES
At the end of this presentation the participant will be able to:
• Discuss basic rights of applicants and recipients of Social Security disability benefits.
• Distinguish between Social Security eligibility criteria for children and adults.
• Conduct a functional capacity assessment using the Social Security Administration (SSA) definition of disabilities for children and adults.

GOVERNMENT BENEFITS GENERALLY
• Support of education: public schools and universities, scholarships, fellowships, graduate medical education, research
• Support of business development: tax incentives for businesses that meet public policy priorities, such as start ups in needed fields, location in underdeveloped areas
• Healthy families and children: cash assistance, nutritional benefits, health care benefits
• Support of people with disabilities: public disability insurance, payment of medical bills

DUE PROCESS RIGHTS
Definition of Due Process:
• Procedural and substantive rights of people against government actions that threaten the denial of life, liberty, or property.
• An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect her rights before a court (hearing officer or administrative law judge) having power to hear and determine the case.

SOCIAL SECURITY ADMINISTRATION DUE PROCESS RIGHTS
The right to apply for Social Security benefits without delay:
• The application only need have a name, signature, and date of application to preserve the date of application.
• The right to interpreter during application, appointments, and hearing.

DISCLOSURE
Reneé Treviño, J. D., has no relationships with commercial companies to disclose.
SOCIAL SECURITY ADMINISTRATION
DUE PROCESS RIGHTS

The right to notice if the Application is missing information:
- SSA must provide written notice about what information is missing from the application.
- SSA notice must state a specific amount of time to provide information required to complete application.

The right to receive a WRITTEN DECISION after application is made:
- SSA must provide written notice whether the application was GRANTED or DENIED.
- Notice must state reason for:
  - Denial of new application; or
  - Termination or Reduction of benefits if currently receiving benefits from SSA.

The right to APPEAL (challenge decision) if benefits erroneously denied:
- Notice of denial must provide instructions how to appeal denial/termination/reduction of benefits.
- A person generally has 60 DAYS to appeal the denial of an application for Social Security benefits.
- To continue benefits pending outcome of appeal, request must be made with appeal within 10 days of decision to terminate or reduce benefits.

The right to obtain a legal representative to assist in appeal:
- Medical Legal Assistance for Families provides free legal representation for low-income individuals.
- SSA does not have to provide a legal representative.
- Many private attorneys represent on contingency fee basis (new applications).
- SSA limits the amount of attorneys fees.

SSA decision is considered final and correct if not appealed in the required period of time.

Medical Legal Assistance for Families provides free legal representation for low-income individuals.

Pediatric Advocacy in SSA Process
- Provide Medical Records – the sooner the better
- Letter of Support On Your Letterhead which is Based Upon Medical Record
  - Dates of treatment and, if relevant, very brief history
  - Diagnoses and symptoms
  - Test results indicating severity of diagnoses (if relevant)
  - Medications and other treatments (and side effects)
  - Responsiveness to treatment
  - Prognosis & Functional Limitations
SSA -V- SOCIAL SECURITY DISABILITY INSURANCE

Supplemental Security Income (SSI)
• Must be disabled
• Need based benefit, therefore, must be low income & have very limited financial resources
• Medicaid
• 2015 Maximum benefit:
  – 3733 (individual)
  – $1,100 (couple)

Social Security Disability Insurance (Title 2)
• Must be disabled
• Must have “insured status” – Based upon work history of the 10 years prior to onset of disability, or – Child found disabled prior to age 22 with parent who receives SSDI or SSI Retirement
• Medicare (starts in 25th month of disability eligibility)
• Also called “DB” or “Title II” or “RSDI” or “SSDI”

SUPPLEMENTAL SECURITY INCOME (SSI)

• SSI is a “need based” program
• Eligibility is based upon 4 criteria:
  – Disability as defined by SSA;
  – Actual Residence in the United States in addition to:
    • Being citizen of U. S. or
    • Having acceptable legal immigration status
  – Income (includes both earned and unearned)
    • Spousal and parental “deeming” of income
  – Resources
    • Under $2,000 for individual - or - $3,000 for couple/2 parents
    • Homestead and one automobile exempt

SSA DISABILITY DENIALS

SSI
• Medical denials:
  – Not medically disabled
• Non-Medical Denials:
  – Earned Income (SGA)
  – Unearned Income
  – Financial Resources
  – Immigrants w/o required
    Quarters of Work History
• Overpayments

Title 2 Disability Insurance
• Medical denials:
  – Not medically disabled
• Non-Medical Denials
  – Earned Income (SGA)
  – No Insured Status
  • Quarters of Work History
• Overpayments

THE “LISTINGS” OF IMPAIRMENT

• Over 100 medical conditions or “Medically Determinable Impairments” which would ordinarily prevent an individual from engaging in any gainful activity.
• Purpose of the Listings is “to assure that determinations or decisions of disability have a sound medical basis”
• Found at:
  • 20 Code of Federal Regulations, Subpart P, Appendix 1
  http://www.ssa.gov/OF_Home/cfr20/404/404-app-p01.htm

SSA DEFINITION OF DISABILITY

• SSA considers whether a person has severe medical impairment(s) that is/are:
  ➢ Expected to last at least one year (12 months), or
  ➢ Expected to result in death.
• Each “impairment” or medical condition is defined by the Listings of Impairments
• Disability is either 100% or not disabled.
SSI – TRANSITIONING TO ADULTHOOD

- Low-income children with disabilities may be eligible for SSI
- Parental income and/or financial assets are “deemed” to child under age 18
  - A medically eligible child under age 18 may be financially ineligible for SSI because income & financial assets of parents are deemed to child
- At age 18, income & financial assets of parents are no longer deemed to “legal adult”

REDETERMINATIONS

- Youths initially eligible for SSI under the definition of disability for children must have their eligibility redetermined upon attaining age 18.
- Redeterminations for youths who receive SSI & reach age 18 utilize the adult program rules.
- At age 18, youths determined not disabled under the adult standard:
  - Lose monthly SSI benefits, AND
  - Medicaid.

SSI: CHILD TRANSITIONING TO ADULT
So What Is The Difference?

ADULT:
It is all about... Work & presumption of ability to work

CHILD:
It is all about... age appropriate development & performance

SSA EVALUATION OF CHILDREN UNDER AGE 18

Different disability determination process is used when a child reaches majority (age 18):

- Children under age 18 are evaluated under
  - The Children’s “Listings”; and
  - The “Domains of Functioning”
- “Redetermination” occurs at age 18
  - The Adult “Listings” are applied, and
  - A 5 Step Sequential Evaluation process is used
**CHILD DISABILITY**

- Prior to 1990
  - Child determined disabled under SSA rules only if child had impairment or combination of impairments that met or medically equaled the criteria of a Listing.
  - Different than adult rules that assessed overall functioning even if adult did not meet or equal a listing
- *Sullivan v. Zebley*, United States Supreme Court decision, resulted in a new standard of analyzing “functional equivalence” and the “whole child”

**DISABILITY DEFINED - CHILD**

A child is “disabled” if:
- Not engaged in substantial gainful activity; &
- Has medically determinable physical or mental impairment, or combination of impairments that meet or medical equal a “Listing”; &
- That result in marked and severe functional limitations.

**DISABILITY DEFINED - CHILD**

Physical and/or mental impairments must:
- Meet or medically equal a Listing; OR
- Functionally equal a Listing by
  - Resulting in “marked” limitations in 2 “Domains of Functioning”, or
  - An “extreme” limitation in 1 Domain of Functioning.

**DEGREES OF LIMITATION**

**Marked Limitation:**
- Impairment(s) interferes seriously with child’s ability to independently initiate, sustain, or complete domain-related activities.
- Functioning may be seriously limited when child’s impairment(s) limits only 1 activity or when the cumulative effects of the child’s impairment(s) limit several activities.
- Age 0 to 3 - Functioning at level that is more than half (>½) but not more than two-thirds (<2/3) of child’s chronological age
- Child of any age - Valid score on a comprehensive standardized test that is at least two (22), but less than three (<3), standard deviations or more below the mean.

**Extreme Limitation:**
- Impairment(s) interferes very seriously with child’s ability to independently initiate, sustain, or complete domain-related activities, but does not necessarily mean a total lack or loss of ability to function.
- Age 0 to 3 - Functioning at a level that is one-half of child’s chronological age or less (≤½) indicates an extreme limitation.
- Child of any age - Valid score that is three standard deviations or more (≥3) below mean on a comprehensive standardized test indicates an extreme limitation.

**CHILD DISABILITY**

SSA uses a Functional Capacity Assessment called the “Domains of Functioning” to:
- Consider the whole child, &
- Assess how the child’s impairment(s) affects:
  - His/her development, and
  - Performance of age-appropriate activities
- As compared with the children the same age who do not have impairments.
CHILD DISABILITY

Factors To Consider:
- Chronicity of illness, exacerbations, and remissions;
- Effects of treatment, including adverse and beneficial effects of medications and other treatments;
- Need for structured settings, adaptations, and extra help; and
- Combined effects of multiple impairments and the interactive and cumulative effects of an impairment(s) on child’s activities
- Ability to Work:
  - Sheltered/subsidized/therapeutic/volunteer not SGA

CHILD DISABILITY - DOMAIN OF FUNCTIONING 1
ACQUIRING AND USING INFORMATION

- Includes the ability to think, to acquire and use information, visual and verbal reasoning, problem solving, and idea development.
- Also includes perceptual, sensorimotor, language and memory processes necessary to learn.

CHILD DISABILITY - DOMAIN OF FUNCTIONING 2
ATTENDING AND COMPLETING TASKS

- Considers the child’s level of alertness, ability to work at an appropriate pace, allay impulses, and initiate, sustain and change focus.
- Includes the capacity to focus on certain stimuli and ignore others.

CHILD DISABILITY - DOMAINS OF FUNCTIONING 3
INTERACTING AND RELATING WITH OTHERS

- Assesses all aspects of social interaction and relationships with groups and individuals.
- Incorporates speech and language skills necessary to communicate effectively.
- Includes the ability to respond to emotional and behavioral cues and form intimate relationships.

CHILD DISABILITY - DOMAINS OF FUNCTIONING 4
MOVING ABOUT AND MANIPULATING OBJECTS

- Looks at the child’s ability to perform physical functions like sitting, standing, balancing, shifting weight, bending, crawling, running, and transferring.
- Includes the ability to hold, carry, and manipulate objects, as well as the capacity to plan, remember and execute movements.
- Considered are the child’s coordination, dexterity, and integration of sensory input.

CHILD DISABILITY - DOMAINS OF FUNCTIONING 5
CARING FOR SELF

- Measures the child’s ability to care for his or her physical needs and to maintain a healthy emotional state.
- Includes the ability to care for one’s own health and safety and to cooperate with others to meet one’s needs.
- Incorporates the child’s development of increasing sense of independence and competence.
CHILD DISABILITY - DOMAINS OF FUNCTIONING 6
HEALTH AND PHYSICAL WELL-BEING

• Looks at the cumulative physical effects of physical and/or mental impairments.
• Considers the effects of chronic illness, including shortness of breath, reduced stamina, pain and poor growth.
• Includes the impact of therapies, medications and periods of exacerbation and remission.

CHILD DISABILITY - DOMAINS OF FUNCTIONING 6
HEALTH AND PHYSICAL WELL-BEING (CONT.)

• "Marked" limitation may exist if child is frequently ill or has frequent exacerbations that result in significant, documented symptoms or signs.
  – "Frequent" means episodes or exacerbations that occur:
    • An average of 3 times per year, each lasting 2 weeks or more, or
    • More often than 3 times a year but not last for 2 weeks, or
    • Occur less often than 3 times a year but last longer than 2 weeks, if the overall effect is equivalent in severity.
• "Extreme" limitation may exist if child is ill or has frequent exacerbations that result in significant, documented symptoms or signs substantially in excess of requirements for showing a marked limitation.

CHILD DISABILITY – DOMAINS OF FUNCTIONING
1 ACTIVITY MAY REQUIRE ABILITIES IN >1 AREA OF FUNCTIONING

Tying Shoes
Typically Requires at Least 4 Domains

D1: Acquiring and Using Information
Learning & remembering sequence for tying

D2: Attending and Completing Tasks
Focusing on the task

D4: Moving About & Manipulating Objects
Using fingers and hands to do the task

D5: Caring For Self
Taking responsibility for dressing and appearance

CHILD DISABILITY – DOMAINS OF FUNCTIONING
1 ACTIVITY MAY REQUIRE ABILITIES IN >1 AREA OF FUNCTIONING

Riding a Bus Independently
Typically Requires 5 Domains

D1: Acquiring and Using Information
Knowing:
  • How, when, where to catch & get off bus
  • Which bus to take
  • Amount of fare & how to pay
  • Actually accomplishing these tasks

D2: Attending and Completing Tasks
Attending appropriately with driver and other passengers

D3: Interacting and Relating with Others
Being physically able to get on and off bus

D4: Moving About & Manipulating objects

D5: Caring For Self

CHILD DISABILITY – DOMAINS OF FUNCTIONING
1 IMPAIRMENT RATED IN MORE THAN 1 DOMAIN

Child with ADHD
May Be Rated in More Than One Domain

D1: Acquiring and Using Information
Reading class assignment
  • Repeatedly misses words
  • Misses entire line or column of words
  • Does not keep up with class
  • Ability to learn & thrive is partially dependent on how well he can read

D2: Attending and Completing Tasks
Following instructions
  • Only one or 2 of 3 step instructions
  • Cannot sustain focus, goes to unrelated activity
  • Make mistakes as instruction is too hard to follow
  • Needs constant verbal reminder of what is expected

D3: Interacting and Relating with Others
Playing with others
  • Unwilling to play with group of children
  • Creates conflicts with other children
  • Unable to relate w/others
  • Difficulty understanding social situation
  • Unable to use appropriate behaviors with others

D5: Caring For Self
Assisting others
  • Frequently off task
  • Frustrated when having to follow directions
  • Must be reminded of his safety
  • Must be reminded of his behavior

CHILD DISABILITY – DOMAINS OF FUNCTIONING
COMBINATION OF IMPAIRMENTS RATED IN MORE THAN 1 DOMAIN

Child with Borderline Intellectual Functioning & Depression
May Be Rated in More Than One Domain

D1: Acquiring and Using Information
11th grader in Special Education

D2: Attending and Completing Tasks
Maintained in elective courses

D3: Interacting & Relating with Others
Inattentive in class

D5: Caring For Self
Uncooperative

Abnormalities of dealing w/ difficulties
  • Difficulties
  • Does not complete assignments
  • Failure to complete assignments
  • Fails classes
  • Frequently absent
  • Often angry
  • Uncooperative
  • Often angry
  • Will not communicate w/others
  • About what is wrong
  • Frequently refusing to go to school
  • Sleeps > 12 hours often
  • Complains of headaches
  • Irritability
SSA EVALUATION OF ADULTS ≥ AGE 18

ADULT SEQUENTIAL EVALUATION

Step 1

Is Individual Engaging in Substantial Gainful Activity (SGA)?
- If individual is actually engaging in SGA or did so during any pertinent period, and there is no period of disability.
- Individual is not eligible for SSI if working at SGA level.
- SGA is based upon monthly earned income:
  - For 2015: *Non-blind = $1,090 *Blind = $1,920
- When Claimant is not (or was not) actually engaging in SGA, primary consideration is given to the severity of the individual’s impairment(s).

Step 2

Does Individual Have a Severe Impairment?
- Statutory requirement to be found “disabled”.
- Must have a medically determinable impairment "of such severity" that it precludes SGA
- Impairment is not severe if slight abnormality or combination of slight abnormalities which would have no more than a minimal effect on physical or mental ability to perform basic work activities.
- Multiple impairments:
  - Evaluated based upon the combined impact impairments on ability to function, rather than assessed separately.

Step 2 - CONTINUED

- It is all about the ability to work - The impairment severity requirement cannot be satisfied when medical evidence shows that the impairment(s) has a minimal effect on a person's ability(ies) to perform basic work activities, that is, when he or she has the abilities and aptitudes necessary to do most jobs.
- Examples of Residual Functioning Capacities (RFC):
  - Sitting, standing, walking, lifting, carrying, handling, reaching, pushing or pulling, seeing, hearing, and speaking;
  - Understanding, carrying out, and remembering simple instructions;
  - Use of judgment;
  - Responding appropriately to supervision, coworkers, and usual work situations; and
  - Dealing with changes in a routine work setting.

Step 3

Does the Individual Have Impairment(s) Which Meets or Equals the Listing?
- The level of severity described in the Listing is such that an individual is disabled if not engaging in SGA, and has an impairment or the equivalent of an impairment described in the Listing
- Impairment(s) must meet or equal a listed impairment for a favorable determination or decision to be based on medical considerations alone.

Step 4

Can Individual Perform Past Relevant Work?
- A finding of ability to engage in any SGA cannot be justified solely on the grounds that the impairment does not meet or equal the level of severity depicted by the Listings.
- “Careful consideration” of whether person can do Past Relevant Work (PRW) of 15 years prior to disability
ADULT SEQUENTIAL EVALUATION

Step 5

Can Claimant reasonably be expected to make a vocational adjustment to other work?

• When individual cannot meet the physical and/or mental demands of Past Relevant Work, consideration of all the facts of the case will lead to a finding of:
  - Not Disabled = Individual has the functional and vocational capacity for other work
  - Disabled = The extent of work that he/she can do, functionally and vocationally, is too narrow to sustain a finding of ability to engage in SGA.

USING THE 5 STEP SEQUENTIAL EVALUATION

Step 1

SGA?

• Earned Income per month (2015)
  - > $1,090 (non-blind), or
  - > $1,820 (blind) per month

Step 2

Severe Impairments?

a. Asthma (with 1 overnight hospital stay)

b. Major Depressive Disorder

Step 3

Listings Met or Equaled?

• 3.03B Asthma: Attacks in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year.
  - 1 hospitalization over 24 hours = 2 attacks
  - Prolonged symptomatic episodes lasting one or more days and requiring intensive treatment, such as intravenous bronchodilator or antibiotic administration or prolonged inhalational bronchodilator therapy in a hospital, emergency room or equivalent setting.

Listings Met or Equaled (Major Depressive Disorder)

A1. Medically documented persistence, either continuous or intermittent, of 1 of the following: Depressive syndrome characterized by at least 4 of the following:

a. Anhedonia or pervasive loss of interest in almost all activities; or
b. Appetite disturbance with change in weight; or
c. Sleep disturbance; or
d. Psychomotor agitation or retardation; or
e. Decreased energy; or
f. Feeling of guilt or worthlessness; or
g. Difficulty concentrating or thinking; or
h. Thoughts of suicide; or
i. Hallucinations, delusions, or paranoid thinking

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

Step 4

Able to Perform Past Relevant Work?

• 15 year look back period
• Work must meet earning & duration criteria
• If a youth transitioning to adulthood
  - Consider only work at SGA only (not sheltered, subsidized, therapeutic, volunteer settings)
  - Consider skill level, exention level, and required tasks
USING THE 5 STEP SEQUENTIAL EVALUATION

**STEP 5**

**Capable of Vocational Adjustment to Other Work?**
- Ability to OBTAIN and MAINTAIN employment
- Skill level (skilled, semi-skilled, unskilled)
- Exertion level (Heavy, Medium, Light, Sedentary)
- Jobs into which youth can transition
  - Examples: parts assemblers, fast food, ticket takers
- Age, Education, Literacy, Language
- Residual Functioning Capacities
  - Sitting, standing, walking, lifting, carrying, handling, reaching, pushing or pulling; seeing, hearing, and speaking;
  - Understanding, carrying out, and remembering simple instructions;
  - Use of judgment;
  - Responding appropriately to supervision, coworkers, and usual work situations; and
  - Dealing with changes in a routine work setting.

SIGNS THAT A REFERRAL TO MLAF IS NEEDED:
- Patient has a letter from the Social Security Administration or a Court document.
- Patient’s Social Security benefits or Medicaid denied, reduced, or terminated.

HOW TO REFER TO MLAF: **OUR OFFICES**

Children’s Hospital of San Antonio
Goldsbury Center
3rd Floor

Fill out a referral form with patient-family name and address and include a brief description of the problem.

If you do not have referral form, use a sheet of paper.

STEPS TO REFER TO MLAF

Identify a legal problem during the social history.

Refer families with problems involving housing, education, public benefits, and/or guardianship.

FIRST WAY TO REFER

Fax the paperwork to MLAF at 704-8743 and direct the family to the MLAF offices near the exit of the General Pediatrics Clinic on the Children’s Hospital of San Antonio campus.
SECOND WAY TO REFER

Give the family a fact sheet about MLAF with the phone number to call: 704-8730.

FEEDBACK FOR MEDICAL PROFESSIONALS

- With patient/client’s consent
- Feedback about your patient referred to MLAF

Please call us if you have questions about your patient. If we have consent, we will be happy to talk with you.

704-8730 (MLAF main number)

PRESENTED BY:

Reneé Treviño, Attorney
Texas RioGrande Legal Aid, Inc.

1111 North Main Avenue, San Antonio, Texas 78212
Direct Telephone: 210-212-3732
rtrevino@trla.org
www.TRLA.org