

Column: *Walkup Talks Disability*

Social Security Disability Re-Opening Denied Claims & SSI

- *Michael Walkup, Attorney at Law*



Michael Walkup is an experienced disability practitioner with over 25 years of experience in the disability law field. In 2001 he became disabled due to MCS, CFS, and FM. He is now providing a service to advise clients with potential disability claims who have MCS, CFS, and/or FM. As these programs and law are usually Federal, he is able to practice in all 50 states, so your location does not matter.

Michael is a long time Sustaining Member of the National Organization for Social Security Claimants' Representatives (NOSSCR), the only national body for disability representatives. He is also certified as a Federal Trial Lawyer and is admitted to the U.S. Court of Appeals for Veteran's Claims.

Michael would welcome the opportunity to try to help you with your legal claims. His web site may be found at www.MCSLegalHelp.com, or he may be contacted at MJWalkup@Amertech.net, or at 866-880-HURT (4878).

Re-Opening

Many MCS sufferers have older disability applications that they did not appeal, or they tried to return to work and dropped their claims. In some circumstances, these earlier applications can be reopened. If you file a new application for benefits that is considered to be a constructive request to re-open any prior claims. If you re-file within one year of the Initial Denial decision, the claim is automatically reopened. The prior claims can also be re-opened if a new application is filed within four years of the Initial Denial and you submit new and material evidence that was not available at the time of the original application or was not obtained and used in the decision. You can also re-open at any time if there is a severe mental impairment which prevented you from acting in your own behalf.

The advantage of re-opening is that all of the benefits which had accrued during the original application can be obtained if you are successful, not just the ones that accrue after filing the new application. This can mean a fairly large award can be obtained.

Bear in mind that the time is calcu-

lated from the first denial letter you received on your claim, not the ALJ decision or Appeals Council decision.

SSI

In addition to or instead of benefits under SSDI or Title II of the Social Security Act, you may be entitled to Supplementary Security Income benefits, or SSI.

SSI is basically a welfare program and allows people who are disabled and also are poor enough to fall under the federal poverty guidelines, to receive benefits if they are unable to work. People over 65 who do not have other income or resources automatically get SSI.

An important difference between the SSI benefits and the SSDI program is that for SSI you do not have to have enough "current credits" in covered employment or to ever have had a work history. This can be an advantage to those people who may only have worked a short time, were homemakers for many years before becoming disabled, or who did a lot of part time work or work in which they were paid in cash or were self employed and did not pay taxes.

However, to get SSI benefits you have to also be poor enough, which tends to preclude people who are married with working spouses. Also, if you are receiving “in kind” support, such as having your rent covered by a friend or relative, it will reduce the amount you may receive.

Another advantage of the SSI benefits is that there is no “waiting period” between the time you became disabled and first month in which benefits can be paid. However, there is also no payment for retroactive benefits prior

to the month in which the SSI application is made, whereas with SSDI you can get retroactive benefits for up to a year before the month in which you applied.

Medicaid is available if you are approved for SSI, but not Medicare.

If your SSDI monthly payment is less than the current SSI monthly amount, you can receive enough SSI in combination with the SSDI to bring you up to the SSI payment amount if you otherwise qualify.

