

Eligibility For Social Security And SSI Disability Benefits Based On Fibromyalgia

Barbara R. Silverstone, Staff Attorney
National Organization of Social Security
Claimants' Representatives (NOSSCR)

If you suffer from a chronic condition such as fibromyalgia that limits your ability to work, you may find that your financial situation is deteriorating while you must devote your energy towards your medical care and your health. If you are disabled and cannot work, you need more information about two disability benefits programs administered by the Social Security Administration (SSA).

If you have worked in jobs covered by Social Security, you may be eligible for **Social Security Disability** benefits; Medicare coverage is available 29 months after the onset date of disability, and additional benefits may be paid to your immediate family members. Even if you haven't worked outside of the home, you may be eligible for **Supplemental Security Income (SSI)** disability benefits if your income and resources are very limited; Medicaid eligibility begins immediately for SSI recipients. Many people receive benefits under both programs.

Benefits are also available if you are not married and your disability began prior to age 22 and continues until your parent is eligible for retirement or disability benefits, or until you are eligible for survivor's benefits. These Social Security Disability benefits are called **Childhood Disability Benefits** (formerly referred to as Disabled Adult Child's benefits or DAC) and can be used to support a disabled individual whose parents are no longer able to do so, even when that individual is no longer a child.

Determining Eligibility

Social Security disability benefits are available to claimants who meet two conditions: (1) they are disabled and can't work at any jobs, not just the jobs they held in the past; and (2) through their employment, they have contributed enough FICA payroll tax over the years to be covered. In general, workers who have worked at least five out of the ten years just before the disability began are covered; the rules are different for workers under age 30. Your wage history will determine your monthly benefit amount.

SSI benefits are available to disabled individuals whose income and resources are very limited. There is no work history requirement. Generally, to be eligible for SSI, an individual may have no more than \$2,000 in resources (\$3,000 for a couple) and income which is less than the SSI benefit amount. In 2006, this is \$603 per month for an individual and \$904 for a couple. The income levels change slightly each year. There are several items, such as a primary residence, car, and certain income that SSA will not count. Income and resources from a spouse or the parents of a minor child are deemed available to the claimant. If you are eligible for SSI, the amount of any other income you receive will reduce the amount of your SSI benefit.

Claimants who are eligible for Social Security Disability benefits but whose payment amount will be below the SSI benefit level may also be eligible for SSI benefits.

Who is "Disabled"?

Eligibility for disability benefits depends on the limitations you have as a result of both physical and mental impairments. Pain, fatigue, anxiety, and side effects of medication may make it impossible for you to work at a regular job. Coping with the effects of your condition often creates a mental strain or depression which can affect your ability to function in the workplace.

The SSA will evaluate your claim for disability by determining whether you have been, or expect to be, disabled for at least 12 months. First, the SSA will ask whether or not you are currently working. If you are not working, or are working below the established "Substantial gainful activity" level (earning less than \$830 per month in 2006), the SSA will ask whether you have a "medically determinable impairment." The SSA recognizes fibromyalgia as a medically determinable impairment if there are signs that are clinically established by the medical record that comply with the definition of the American College

of Rheumatology. If the SSA determines that your condition affects your ability to perform basic work activities, the SSA will then compare your condition to its criteria in the “Listings of Impairments.” There is no listing specifically for fibromyalgia, and usually symptoms related to fibromyalgia do not meet the criteria for another listing as required at this step. It is more likely that you will be required to show that your pain and fatigue prevent you from working.

Pain And Other Subjective Complaints

Because subjective complaints, such as pain, fatigue, or anxiety are the most common symptoms that will cause your disability, it is important that you keep a “pain diary” or provide other documentation (where you have described what you can do each day and how activity one day may affect you the following day) to the SSA for a proper evaluation of your symptoms. This will show that your pain and fatigue prevent you from doing the job that you held in the past, or any other job on a full-time basis.

The SSA will evaluate your claim by considering your vocational factors (age, educational background, and work history), along with your physical and mental residual functional capacities, to decide whether you are disabled or whether there are jobs that you can do. Keep in mind that you can base your disability claim on a combination of several impairments that may not be disabling when considered separately, but when evaluated together show that you cannot work. The SSA will consider both mental and physical impairments, which together could prevent you from working full-time.

In general, if you allege that you are disabled due to extreme pain, you must be able to provide evidence of an underlying medical condition and either (1) objective medical evidence that confirms the severity of the alleged pain arising from that condition, or (2) that the objectively determined medical condition is of such severity that it can reasonably be expected to cause the alleged pain. Social Security’s regulations (20 C.F.R. § 404.1529 and 416.929) and recent court cases utilize this analysis of pain to evaluate claims that lack some of the more objective tests available for other conditions. Once you have proved the existence of such a medical condition, the SSA will then evaluate the intensity and persistence of your symptoms and their impact on your ability to work.

The Social Security Administration has published a ruling, called SSR 99-2p, for evaluating cases involving chronic fatigue syndrome (CFS). Although

not specifically on point for fibromyalgia, you may be able to rely on certain sections of this ruling to prove your disability. The ruling notes “that there is considerable overlap of symptoms between CFS and Fibromyalgia Syndrome (FMS), but individuals with CFS who have tender points have a medically determinable impairment. Individuals with impairments that fulfill the American College of Rheumatology criteria for FMS (which includes a minimum number of tender points) may also fulfill the criteria for CFS.”

Due to the lack of objective tests to support a finding of fibromyalgia, the SSA is forced to consider subjective complaints of pain that you have reported to your doctor. It is important that you have proper, continuous medical treatment, preferably from a rheumatologist, who would best understand and explain the effects of fibromyalgia. In addition, the symptoms of fibromyalgia tend to vary in severity from one day to another. Therefore, the ability to engage in activities such as cooking and cleaning in your home does not necessarily show that you would be able to work on a continuous full-time basis. If performing such household chores causes pain, or prevents you from getting out of bed the following day, you are generally not able to work on a continuous basis.

Although many Administrative Law Judges (ALJs) continue to deny claims based on fibromyalgia, finding that the claimant is not credible, more and more courts over the past few years are allowing these claims despite the lack of some objective findings generally required to corroborate subjective complaints of pain. Federal judges are recognizing the American College of Rheumatology definition of fibromyalgia, which recognizes that, despite the tender point tests, there are no objective clinical tests that can determine the severity of fibromyalgia. It is important that you keep a detailed pain diary or record of what you are able to do, or how certain activities affect you.

In addition, you may be able to show that other impairments, such as anxiety, headaches, or cognitive problems caused by the side effects of medication can prevent you from working. SSA recognizes that the side effects of medication may cause additional impairments and will consider these additional impairments as part of the disability claim as well. If you are taking medication for pain, and that medication makes you drowsy or prevents you from driving or working around certain machinery, be sure to tell the SSA of the side effects of your medication.

Listing Of Impairments

If you suffer from another condition, such as arthritis, it may be more likely that you will be able to show that your condition meets or is equal in severity to a listed impairment mentioned earlier in this article. If so, you may be able to rely on the musculoskeletal listing to prove disability at this step. This listing (Section 1.02), “Major dysfunction of a joint(s) (due to any cause)” requires:

gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s).

In addition, one of the following must exist: Either involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in an inability to ambulate effectively, or involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in an inability to perform fine and gross movements effectively.

The “inability to ambulate effectively” means an extreme limitation of the ability to walk. If you are not able to walk long enough on your own to even carry out activities of daily living or to get to and from school or work, you are unable to ambulate effectively.

The “inability to perform fine and gross movements effectively” means an extreme loss of function of both upper extremities. This includes an impairment that interferes very seriously with your ability to independently initiate, sustain, or complete activities. If your inability to reach, push, pull, grasp or finger prevents you from performing basic activities of daily living, such as cooking, cleaning, or filing, then your impairment meets this criteria.

If you are relying on this listing to prove your disability, the SSA will consider your pain as contributing to your disability only if medical signs or laboratory findings show the existence of a medically determinable impairment(s) that could reasonably be expected to produce the pain or other symptoms. Generally, the SSA will not accept subjective complaints of pain that are not supported by objective tests if you are arguing that your impairment meets the requirements of this listing.

You must have received appropriate treatment for your condition to prove disability based on a listing. The physical examination must include a detailed description of the rheumatological, orthopedic, neurological, and other findings appropriate to the specific impairment being evaluated. The diagnosis and evaluation of musculoskeletal impairments must be supported by detailed descriptions of the joints, including ranges of motion, condition of the musculature (e.g., weakness, atrophy), sensory or reflex changes, circulatory deficits, and laboratory findings, including findings on x-ray or other appropriate medically acceptable imaging, such as CAT scans, and MRIs. To be found disabled at this step, these physical findings must be determined on the basis of objective observation during the examination and not simply a doctor’s report of your allegation of pain or weakness. Your allegations must be corroborated by tests, such as a seated, straight-leg raising test in addition to a supine, straight-leg raising test. Because abnormal physical findings may be intermittent, their presence over a period of time must be established by a record of ongoing management and evaluation. The SSA will also consider your daily activities and determine whether the reported examination findings are consistent with these activities.

When applying for disability benefits from the Social Security Administration, be sure to:



- Explain to your doctor the information that you need, which includes showing that your symptoms match those identified by the American College of Rheumatology.
- Get proper documentation from your doctor, including as many objective tests as possible.
- Keep a pain diary to document how fibromyalgia and side effects from medication you are taking affect you on a long-term basis.
- Do not be discouraged if the ALJ does not believe you when you describe your pain or fatigue. Appeal your case to court, if necessary.

Applying for Benefits

You can get application forms from the SSA by calling (800)772-1213. You can also apply online at www.socialsecurity.gov. Click on “Apply for disability benefits” under the heading “Disability and SSI.” You can apply for Social Security and SSI benefits at any Social Security office. You can locate the office closest to you on Social Security’s web page by scrolling down to the bottom and clicking on “Use your zip code to find our office.” It is important to complete the form with as much information as possible. Give the full names and addresses of your doctors and the dates of any hospitalizations and surgeries. Make a list of the medications you are taking or other treatments you use and their side effects, along with any medications and treatments you have tried but which no longer work for you. Describe your daily activities, including how long you can stand or walk, how often you must rest, and how your fibromyalgia affects your daily activities. It is often helpful to keep a log or diary to help you recall. Tell your doctors that you are applying for disability benefits, and ask for their help when SSA contacts them for more information on your medical condition.

The Application and Appeals Process

If your application is initially denied, there are several steps in the appeal process. Only about 30 percent of disability applications will be approved at the first step of the process. Many claimants who receive denials file appeals. Over half of the claimants who request a hearing before an Administrative Law Judge will receive favorable decisions awarding benefits. For those who are turned down again, the next steps of the appeals process are the SSA Appeals Council, and, if necessary, Federal Court. If you live in Massachusetts, Connecticut, Rhode Island, New Hampshire, or Maine, the appeals process will be slightly different, but the information you must show to prove your disability is the same. The amount of time and effort it takes to pursue an appeal is definitely daunting. Perseverance and persistence are crucially important. Although many ALJs continue to deny claims based on fibromyalgia because they find that the testimony about pain is not credible, over the past few years, more and more courts are allowing these claims. It is even more important, therefore, to continue your appeals through the federal court level, where you will have a better chance of an award of benefits.

How Long Will The Application Process Take?

It is not uncommon for a claimant to wait 3-4 months for a decision on an application for disability benefits. Claims which must be appealed administratively (to an Administrative Law Judge and the Appeals Council or to Federal Court) will take much longer. To give you some perspective on the program, consider that almost three million applications for disability benefits were filed last year. When a case is finally approved, benefits will usually be paid to cover the months since you applied and were waiting for a decision.

Once Approved, Can I Work and Continue to Receive Disability or SSI Benefits?

The SSA has many work incentive programs which allow recipients to work for a limited amount of time, or under special circumstances, without losing their benefits. Generally, if you are earning less than \$830 per month (in 2006), the SSA will consider that you are not engaging in “substantial gainful activity.” Most people who receive Social Security Disability benefits can earn up to \$620 per month (in 2006) for nine months while receiving their benefits. This is called a Trial Work Period. Individuals who are receiving SSI benefits may be able to earn up to \$622 per month and retain eligibility for Medicaid. Another work incentive is called the “Ticket to Work Program” which also permits a recipient to do some work while receiving benefits and continued Medicare coverage. The SSA’s web page has information on the Ticket to Work Program and other work incentives that are available. Look at www.socialsecurity.gov. Recipients who are considering trying to work should look at the SSA’s web page, and contact SSA at (800) 772-1213 or an attorney who is familiar with Social Security programs for specific guidance.

How Can I Get Help Or Additional Information?

Additional information can be obtained from the SSA by calling (800) 772-1213 or looking at their web page at www.ssa.gov. Although many people apply for benefits on their own, they often hire an attorney when pursuing an appeal. If you need legal representation to assist you in obtaining Social Security disability or SSI benefits, contact your local legal services program and your local bar association referral office. Or, you can get a referral to a private attorney in your area from the National Organization of Social Security Claimants’ Representatives by calling (800) 431-2804.

August 2006