

DISABILITY INVOLVING DRUG OR ALCOHOL ADDICTION (“DAA”)

(Revised 3-7-2013)

The Social Security Act bars granting disability benefits to claimants whose only impairment is drug or alcohol addiction (DAA).¹

However, if a claimant has one or more **other** severe impairments, physical or mental, the Social Security Administration (SSA) sometimes grants disability benefits.

Where other severe impairments “co-occur” (happen together) with drug or alcohol addiction, Congress allows the Social Security Administration (SSA) to award benefits if SSA concludes that the other impairment(s) would remain disabling if the drug or alcohol addiction were not present.

Answering this hypothetical question is challenging. Therefore, claimants with drug or alcohol issues will benefit from having an experienced disability lawyer.

The Decision Process. SSA has a special process for deciding claims that involve drug or alcohol issues. SSA describes its decision making in DAA cases as a six-step process. All of the six steps are complicated.²

The process is legally and medically complex. Therefore, having an experienced disability lawyer and input from a medical or psychological professional is desirable.

When the Other Impairment is a Mental Impairment. Cases where mental impairments co-occur with drug or alcohol dependence are especially difficult. Some mental health professionals decline to evaluate a patient who is an active abuser of drugs or alcohol, and require a period of sobriety. Others believe they can diagnose accurately despite active drug or alcohol abuse.

Social Security does not require a claimant applying for benefits to be abstaining from drugs or alcohol when evaluated. However, as stated, mental health professionals may see it differently. Social Security recently requested comment from professionals whose work involves evaluating people who abuse drugs or alcohol on the importance of abstinence in accurate determination of co-occurring mental impairment. Responses varied widely:

Six Months to One Year Abstinence. "A six month to a one year period of abstinence could be considered when determining if DAA [drug or alcohol addiction] is material to a decision." Douglas Deibler, Pennsylvania Disability Determination Services

Three to Six Months Sobriety. "The only way to reliably determine the differential contribution of DAAs and other mental impairments to disability claims is to examine the patient at a time when his/her DAA is sufficiently controlled to exclude DAA as a contributor to the underlying psychiatric symptoms. In our opinion, it would be unlikely

that such a determination could be made without 3-6 months of sobriety documented by chemical dependence treatment attendance and verified by random urine drug screening." Michael T. Modic, M.D., FACR, Chairman, Neurological Institute, Cleveland Clinic.

Four Weeks Abstinence. "While it depends on a number of factors, many of the difficulties brought about by a substance-induced disorder will have resolved following approximately 4 weeks after the cessation of acute intoxication or withdrawal as noted in the DSM-IV-TR . . . However, some symptoms may remain for months after the use stops. There is no one specific time period that would account for all symptoms caused by all drugs in all individuals." Susan A. Smith, President, National Association of Disability Examiners (NADE)

Three to Seven Days. "The SSA should use a period of seven (7) days of nonuse or abstinence to determine whether DAA is material to a disability. Most detoxification occurs within three (3) to seven (7) days, so this time period should be adequate to determine whether DAA is material to disability." Virginia Trotter Betts, MSN, JD, RN, FAAN, Commissioner, Tennessee Department of Mental Health and Developmental Disabilities.

No Standard Period of Abstinence. ". . . there is no standard period of time of abstinence that can be applied to all claimants to appropriately determine functional limitations without DAA." Los Angeles County, CA, Department of Health Services

From more comments submitted in response to request for comment published in **Federal Register**, Vol. 75, No. 19, Friday, January 29, 2010, page 4900
<http://www.regulations.gov/#!searchResults;rpp=10;po=0;s=SSA%25E2%2580%25932009%25E2%2580%25930081>

Given the complexity of the analysis explained in Social Security Ruling (SSR) 13-2p, and the wide variation in opinions of mental health professionals, we think it wise for a claimant to get an experienced disability lawyer to help master both the legal and medical complexity.

NOTES

¹ Social Security Act, § 223(d)(2)(C) "An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled." http://www.ssa.gov/OP_Home/ssact/title02/0223.htm

² Social Security Administration (2013). ***Social Security Ruling (SSR)13-2p: Evaluating Cases Involving Drug Addiction and Alcoholism (DAA)***. [FR Doc. 2013-03751 Filed 2-19-13; 8:45 am] Accessed March 7, 2013. <http://www.gpo.gov/fdsys/pkg/FR-2013-02-20/pdf/2013-03751.pdf>