


**EXPERT
FINAL OPTIONS:
SOCIAL SECURITY
WORK INCENTIVES FOR
FUTURE EARNING CAPACITY**

BASICS OF INCENTIVES LITERACY

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LEARNING GOALS

- Understand Social Security Disability does not mean permanent unemployment
 - Vocational Expert summary of Social Security work incentives
 - Social Security “safety net” for disability beneficiaries
 - Impact on expert reports and testimony
 - Greater reduction of “total disability” claims
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VOCATIONAL EXPERT REFERRAL

- Most vocational experts are brought into a case to evaluate the earning capacity options of a person with a disability for purposes of plaintiff or defense litigation
- Plaintiff orientation is that the disabled individual can do nothing, is permanently and totally disabled, and therefore should be entitled to the maximum financial award

VOCATIONAL EXPERT REFERRAL

- Defense orientation is that the disabled individual chooses not to work in order to maximize secondary gain of a financial settlement in their litigation.
 - Argument is often between “dueling experts” trying to persuade the court their analysis is correct
 - Most reports do not address the option of the disabled individual utilizing vocational options available at the state or federal level
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CAN THE DISABLED INDIVIDUAL WORK?

- This is the fundamental question of vocational expert reports
- Often obligation of “defense” experts is to prove work options exist via labor market research or other market analysis of their ability to retrain
- Analysis relies on the “best case scenario” of the “motivated disabled person” and what they might theoretically achieve in job placement
- Often no actual rehabilitation services are contemplated or budgeted in such settlement negotiations with disabled individuals being primed to “take the money and settle” rather than actually become rehabilitated

CAN THE DISABLED INDIVIDUAL WORK?

- Few if any expert reports address the work incentives and supports available to individuals with disabilities when calculating future earning capacity
- By addressing availability of programs, the expert puts on notice that the individual's own motivation is a substantial factor in their potential for RTW or not.

IS A SOCIAL SECURITY DISABILITY AWARD THE END OF EMPLOYMENT?

- Social Security recognizes that an individual's disability may be temporary or may continue indefinitely
 - Social Security enacts a review process whereby “continuing disability reviews” establish whether the individual has made medical improvement such that they would be capable of an earning capacity equal to “Substantial Gainful Activity”
 - Private personal injury and worker's compensation litigation often do not address the question of medical improvement and the long-term effect on vocational earning capacity
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IS A SOCIAL SECURITY DISABILITY AWARD THE END OF EMPLOYMENT?


- The fundamental assumption is that the individual would fare no better and may in fact deteriorate in their functioning over time
- Disabled individuals internalize the message that they are “permanently and totally disabled” and set expectations for zero future employment



CHANGING EXPECTATIONS ABOUT FUTURE WORK

- While the disabled individual may be unable to return to past work, other work is framed in a matter that imposes participation on the individual without providing actual vocational support for achieving those goals
- Vocational expert reports can re-define the provision of services to include those provided by both state vocational rehabilitation offices as well as Social Security's Ticket To Work program.
- State VR (SVR) and Ticket To Work (TTW) offer support options at no cost to the individual and the financial effect of those supports should be part of the calculation of future loss of earnings.

CHANGING EXPECTATIONS ABOUT FUTURE WORK

- Vocational experts should have available a more comprehensive understanding of how to incorporate this information to their expert reports and testimony.
 - Greater emphasis on these options further empowers the disabled individual to be empowered by participation
 - Also enhances greater awareness that even Social Security does not recognize “permanent and total disability” as does private litigation.
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WHAT IS DISABILITY?

- **Private practice perspective:**
 - inability to engage in previous work
 - difficulty adjusting to new work
 - lack of relevant training or education
 - permanent barriers to re-employment
- **Social Security perspective:**
 - inability to engage in any work
 - No “permanent disability” is considered
 - Individual is encouraged to try work
 - Major Employment Networks (ENs) established by SSA to encourage work options for those with disabilities.

SOCIAL SECURITY DEFINITION OF DISABILITY:

The inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s), which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

For 2018, SGA = \$1,180/month

Source: <http://www.ssa.gov/disability/profesionals/bluebook/general-info.htm>

MINIMUM DISABILITY CRITERIA

Step 1: Off work **12 months** or will be off **12 months** due to **severe medically determinable impairments**

Step 2: Impairments are severe with medical evidence

Step 3: Impairment so severe or extreme it meets a listing

Step 4: Impairments prevent return to any work performed within last 15 years (past relevant work)

Step 5: Impairments prevent performing *any work in the economy*



TWO TYPES OF DISABILITY

TITLE 2:

SOCIAL SECURITY DISABILITY INSURANCE (SSDI)

Insurance benefits based on earnings record of worker/related earner

TITLE 16:

SUPPLEMENT SECURITY INCOME (SSI)

Uninsured individuals based on Federal Benefit Rate



ELIGIBILITY FOR TITLE 2 (SSDI, CDB, DWB)

Disabled Worker (SSDI) – Beneficiary who had recent and sufficient work in Social Security-covered employment or self-employment long enough to be insured prior to disability onset.

Spouse of disabled worker (SSDI) – 1) If taking care of a child entitled under the worker's record who is under age 16 or disabled, or 2) is disabled, is at least 50 years old, is married or was married to worker at least 10 years.

Child of disabled or deceased worker (CDB) – under 18, or between 18 and 19 and in primary or secondary school.

Disabled child of disabled or deceased worker (CDB) – age 18 or older experiencing disability beginning before age 22.


Aged widow(er) (DWB) – individual at least 60 years old.

Young widow(er) (DWB) – caring for worker's entitled child under 16.

Source: Virginia Commonwealth University, WIPA & Community Partner Work Incentives Counseling

ELIGIBILITY FOR TITLE 16 (SSI):

Supplemental Security Income (SSI)

- Age 65 or older, blind, or disabled.
 - Be a citizen or national of the U.S. or an alien who meets the application requirements for permanent residency in the U.S.
 - Have income and resources within specified limits (2015, \$2,000 or less).
 - Not be absent from the U.S. for a calendar month unless he/she is a child who is a U.S. citizen and lives outside the U.S. with a parent in the U.S. Armed Forces or is a student who is temporarily abroad for studies.
 - Not be a fugitive felon.
 - Not be violating a condition of parole or probation.
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ELIGIBILITY FOR TITLE 16 (SSI)

- Give SSA permission to contact any financial institution at any time and request any financial records that financial institution may have about the individual.
- Other people who are responsible for the individual's support must also give SSA their permission to contact any financial institution at any time and request financial records that financial institution may have about them, and file an application.

Source: Virginia Commonwealth University, WIPA & Community Partner Work Incentives Counseling

WORK INCENTIVES SOCIAL SECURITY PROVIDES?

- **Cash Benefits continue; easy re-instatement**
- **Health Insurance Benefits for 93 months min.**
- **Return-To-Work Assistance up to 60 months**
- **Disability Review Protection up to 60 months**

Beneficiaries are incentivized to attempt work on a trial basis by maintaining eligibility for monthly cash payments and continuing health insurance as well as ongoing employment support and protection from reviews.

QUESTION: DISABILITY = POVERTY?

What is considered “poverty income” for 2018?

(no googling)



2018 FEDERAL POVERTY GUIDELINES

Family size of 1 = \$1,011/month


Family size of 2 = \$1,371/month

Family size of 3 = \$1,731/month

ANSWER: YES, disability = poverty




SOCIAL SECURITY'S GOAL FOR WORK INCENTIVES:

- 1. Encourage improved financial outcomes for beneficiaries**
 - 2. Development independence from monthly cash benefits**
 - 3. Reduce poverty and cyclical program dependence**
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CASH BENEFITS: TITLE 2


SSDI, CDB, DWB

- Rate is based on worker's earnings record. Average in 2018 was \$1200/mo.
 - SSA counts calendar quarters in which a minimum amount of wages were taxed under SSA rules. 4 “quarters of coverage” (QCs)/yr. 1 QC = \$1220
 - If found disabled, amount of monthly benefit is calculated based on worker's earnings record. It can be obtained from the local SSA office or by registering at [SSA.gov](https://www.ssa.gov) for a “mysocialsecurity” account.
 - SSDI rate is different for each worker.
 - Disability insurance extends 5 years into the future from the last QC counted.
 - If awarded disability, worker can be paid for benefits retroactively to the date the worker is first entitled to disability benefits.
 - Waiting period of 5 full months after onset before entitlement.
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CASH BENEFITS: TITLE 16

- Benefits are set annually by the Federal Benefit Rate (FBR).

In 2018

- \$750/mo for an individual.
 - \$1125/mo for a disabled couple both on SSI.
 - \$495/mo for an individual – value of one-third reduction rule or VTR if being supported by another individual.
 - No waiting period for benefits once awarded.
 - No retroactivity of benefits.
 - SSI beneficiaries should file as soon as possible so as not to lose potential SSI payments.
 - Optional state supplements may apply to increase SSI rate.
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HOW LONG DO CASH BENEFITS LAST?

Cash benefits continue from date of entitlement until:

TITLE 2: SSDI/CDB/DWB:

- No longer disabled, or
- Will continue until *countable earnings* are above SGA level of \$1,180/mo *after a trial work period ends.*
- “All or nothing” benefit. You get the full amount if eligible; none if not eligible.

TITLE 16: SSI:

- No longer disabled, or
- *Countable earnings* exceed the applicable benefit rate.
- Benefit rate is adjusted/reduced *each month* by *countable earnings formula.*

HEALTH INSURANCE BENEFITS: TITLE 2

SSDI/CDB/DWB program beneficiaries:

- Medicare Part A


- Is automatic after waiting period of 24 months after date of entitlement.
 - Date of Entitlement is 5 full months after the onset of your disability.
 - Example: Became disabled 1/22/2015, DOE is 7/1/2015, Medicare eligible 7/1/2017.
- Can be premium-free if you qualify for low-income subsidy, otherwise \$120/mo.
- Is essential to preserve eligibility for full SSDI benefits after employment.

- Medicare Part B

- Is automatic when eligible for Part A; has separate premium (\$120/month in 2017);
- could be premium-free if low-income.

HEALTH INSURANCE BENEFITS: TITLE 16

MEDICAID:

- No waiting period; begins immediately after disability approval;
 - States where Medicaid coverage is automatic with SSI application: AL, AZ, AR, CA, CO, DE, DC, FL, GA, IN, IA, KY, LA, ME, MD, MA, MI, MS, MT, NJ, NM, NY, NC, PA, RI, SC, SD, TN, TX, VT, WA, WV, WI, WY.
 - States requiring application: AK, ID, KS, NE, NV, OR, UT.
 - States requiring application w/ special criteria: CT, IL, MN, NH, OH, VA, HI, IN, MI, ND, OK.
 - Most state Medicaid plans are operated by health insurers who contract with the state.
 - Basic coverage is premium-free.
 - Optional coverage for dental and vision may have additional premium.
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WORK INCENTIVES: SSDI

Ticket To Work:

- Assistance with preparing for, finding and maintaining employment with services of an Employment Network at no cost to beneficiary.
- Assistance provided for up to 5 years.
- Enrollment is voluntary and can be reassigned.
- Enrollment offers protection from Continuing Disability Reviews (CDRs), which determine medical eligibility.
- Timely progress requirement by SSA for active participation and making progress towards goal of employment in order to keep CDR protections.
- Earnings must also be reported to continue active status of ticket.
- www.chooseworkttw.net or www.ssa.gov to locate Employment Networks

WORK INCENTIVES: SSDI

Continuation of Medicare:

- Beneficiaries remain eligible for or to remain in Medicare even when they return to work
 - Eligibility for Medicare is for a minimum of 93 months and can extend longer
 - Medicare Part A remains premium-free
 - Medicare Part B and Part D are available for premium, reduced premium or premium-free based on income level
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WORK INCENTIVES: SSDI

- **Trial Work Period (TWP) of 9 months.**
 - Allows beneficiary to test ability to work
 - Can have unlimited earnings while keeping monthly full cash benefits during TWP.
 - SSA allows 9 TWP months within a rolling 60 month period
 - Months do not have to be consecutive.
 - Each month gross earnings > \$850 counts as TWP month.
 - Earnings check after final TWP month if earning over \$1180/mo.
 - Grace period of 3 months before cash benefits stop.


WORK INCENTIVES: SSDI

Impairment-Related Work Expenses (IRWE) and Blind Work Expenses (BWE):

- Expenses beneficiary pays out of pocket in order to work are deducted from the income that SSA counts when determining if the beneficiary has earnings over SGA and therefore is not entitled to a benefit check
- If gross earnings are over SGA but then fall below SGA when IRWE or BWE are deducted, beneficiary receives SSDI check


WORK INCENTIVES: SSDI

- **Extended Period of Eligibility (EPE)**

- Begins immediately following end of TWP
 - Cash benefits can be reinstated if earnings drop below SGA and remain in pay-status until earnings rise above SGA
 - No new application for disability or waiting period
 - Lasts for 36 months.
 - Continues eligibility for all SSDI benefits and incentives.
 - Medicare coverage continues even after cash benefits stop due to earnings.
 - Medicare can continue for 93 months or longer
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WORK INCENTIVES: SSDI

- **Expedited Reinstatement (EXR).**

- An important safety net to reinstate cash benefits if they were stopped because of work and then earnings drop below SGA (\$1180/mo).
 - Begins immediately following Extended Period of Eligibility (EPE) and protection continues for 60 months
 - Up to 6 months of provision benefits while SSA determines ongoing disability
 - Requires new Continuing Disability Review
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WORK INCENTIVES: SSI

Ticket To Work:

- Assistance with preparing for, finding and maintaining employment with services of an Employment Network at no cost to beneficiary.
 - Assistance provided for up to 5 years.
 - Enrollment is voluntary and can be reassigned.
 - Enrollment offers protection from Continuing Disability Reviews (CDRs), which determine medical eligibility.
 - Timely progress requirement by SSA for active participation and making progress towards goal of employment in order to keep CDR protections.
 - Earnings must also be reported to continue active status of ticket.
 - **There is no Trial Work Period for SSI beneficiaries**
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WORK INCENTIVES: SSI

Impairment-Related Work Expenses (IRWE) and Blind Work Expenses (BWE):

- Expenses beneficiary pays out of pocket in order to work are deducted from the income that SSA counts when determining if the beneficiary has earnings over SGA and therefore is not entitled to a benefit check
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WORK INCENTIVES: SSI

SSI Income Exclusions

- GIE – General income exclusion (\$20).
 - SEIE – Student Earned Income Exclusion (through age 22, excludes up to \$1780/mo up to \$7180/yr for full-time students).
 - EIE – Earned income exclusion (\$65).
 - 50% reduction – earned income less GIE, SEIE, EIE is then reduced by half.
 - PASS – Plan to Achieve Self Support.
 - IDA – Individual Development Accounts, creating savings.
 - 1619(b) status to continue Medicaid eligibility after SSI cash benefits stop due to countable income limits.
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WORK INCENTIVES: SSI

Continuation of Medicaid:

- Medicaid continues after beneficiary begins to have earnings
- Beneficiary can keep Medicaid under the provision of rule 1619B which allows working title 16 beneficiaries to retain full coverage.



SUMMARY

- Work incentives exist for SSA beneficiaries.
 - Beneficiaries can have employment supports through Ticket To Work and Employment Networks
 - SSDI Beneficiaries enjoy receiving full cash benefits for a total of 12 months (9 months of TWP plus 3 grace period months) while having unlimited earnings, keeping Medicare, and being protected from disability reviews
 - SSI beneficiaries enjoy increasing their income with ongoing benefits supplementing earnings, immediate and ongoing health coverage, and a variety of income exclusions to maximize eligibility
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CONSIDERATIONS FOR FORENSIC REPORTS

Example RAPEL Method – Dr. Roger Weed

REHABILITATION PLAN: Determine the rehabilitation plan based on the client's vocational and functional limitations, vocational strengths, emotional functioning, and cognitive capabilities. This may include testing, counseling, training fees, rehabilitation technology, job analysis, job coaching, placement, and other needs for increasing employment potential. Also consider reasonable accommodation. A life care plan may be needed for catastrophic injuries.

CONSIDERATIONS FOR FORENSIC REPORTS

Example RAPEL

PLACEABILITY: This represents the likelihood that the client could be successfully placed in a job. This is where the "rubber meets the road." Consider the employment statistics for people with disabilities, employment data for the specific medical condition (if available), economic situation of the community (may include a labor market survey), availability (not just existence) of jobs in chosen occupations. Note that, where appropriate, the client's or family's attitude, personality, and other factors will influence the ultimate outcome.

Reference: *Rehabilitation Consultant's Handbook, 4th Edition (2012)*



CONSIDERATIONS FOR FORENSIC REPORTS

Vocational And Rehabilitation Assessment Model (VRAM)

Dr. Rick Robinson

Employability: “addresses the issue of whether an evaluate is ready to work. Central employability issues involve selection of appropriate vocational goals that consider the evaluatee’s vocational readiness.”

Placeability: “Addresses the question of whether an individual meets the hiring requirements of actual employers within a specific geographical labor market. “

Dr. Robinson opines “To be considered a viable work opportunity, the concepts of vocational employability and placeability must be demonstrated.”

Foundations of Vocational Rehabilitation (2014)

SUGGESTIONS

Considerations for training in a forensic file:

- Individuals may not make the best decisions without a vocational rehabilitation evaluation/plan, thus not using their settlement wisely. Incorporate suggestions for training to help an individual maximize their wage earning capacity.
- They can use the recommendations in the evaluation to then use the Employment Network to provide support through training, and to help with placement following training.
- The individual may have set backs, medical problems that deter training, but the EN can encourage and support to help produce a successful outcome.

SOCIAL SECURITY HAS DEEMED ME DISABLED

A decision someone is disabled by SSA does not mean that is a permanent disability. Someone must have a disability lasting at least 12 months, however, reviews by SSA may later deem someone not disabled.



CONSIDERATIONS FOR TICKET TO WORK

The goal of Ticket to Work is to keep individuals out of poverty. An SSDI recipient will always earn more than they could received from SSA.



FIRST SAFETY NET

Consider Example A

- Individual receives an example \$1,600 SSDI check
- Individual works part time during training, earning \$700 a month, no penalty and does not count toward a trial work period (TWP) , as the individual must earn \$850 a month to start a trial work period.
- In this example, income rises from \$1,600-\$2,100
- Once their training is completed the individual is in placement, and returns to work.
- In the example case the individual returns to work earning \$3,000 a month, for 9 months they still receive their SSDI financial benefit, earning \$1,600 + the \$3,000.
- The trial work period is only if they earn \$850 a month, if less then it does not count toward the Nine Month Trial Work Period, it does not have to be continuous.
- TWP can be for up to 5 years, individuals could have multiple attempts to return to work not to exceed the nine months.

SECOND SAFETY NET

The nine month trial work period may occur anytime within 3 years once began. Following the 9 month trial work period, the individual has three extra months of benefits.

Next the title II financial benefits will cease , however any month below SGA (\$1180 for 2018) , for any reason, the individual is re-entitled to Title II benefit first without any reapplication. The employment network would complete an 821 work activity report form. This is turned into the field office and in 30 days, cash benefits turn begin and remain until the individual is earning SGA or higher.

This provides hope, the individual is protected for attempting a return to work



THIRD SAFETY NET

While participating in a trial work period, the individual is not subject to continuing disability reviews that non-ticket holders risk.

Social Security can case benefits retroactively, then the individual owes SSA money due to an overpayment .

FOURTH SAFETY NET

The TWP gives an individual control. Throughout the claims process or litigation process others are making decisions for you. If a workers compensation case you may have dictated to you medical providers, etc. In TWP you have the decision of what employment network (EN) you choose. Also if unhappy with the services you can change the EN.

There is more individualized attention that at State Vocational Rehabilitation , where an order of selection could mean long waits for benefits.

There is no waiting period if the individual receives Title II and is a ticket holder.



FIFTH SAFETY NET

SSDI is offset in a settlement. Returning to work protects the individual from decreased funds following the settlement and ongoing financial stability.



QUESTIONS?



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