

Planning with Confidence: A Live Disability Benefits Q & A

June 15, 2026

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00:00:06 SHELBY NIELSEN

Welcome, everybody. Thank you so much for joining us today. My name is Shelby Nielsen. I'm here on behalf of Kessler Foundation to welcome you all for our wonderful presentation today, Planning with Confidence, A Lot of Disability Benefits Q & A. I'm joined today by two phenomenal individuals, Jonathan Gudima and Gabriel Herman. I will pass the mic over to Jonathan, who will be our host for today. So without further ado, here you go, Jonathan.

00:00:33 JONATHAN GUDEMA

Okay, great. Thank you, Shelby, and thank you, Kessler Foundation. So many of you may have been on a previous presentation I gave about a month and a half ago, and that was basically about planning issues. That's really more of my specialty, estates and trusts and how to protect benefits and also do some estate planning. But based on that popularity, that talk, I had spoken to Gabriel, and I'll introduce Gabriel as how many years, 30 years experience in disability law. And as an attorney, one of the things we learn is we find other attorneys who really know their stuff. So I felt that let's bring us all together and let's have an open Q & A. And I believe we'll probably run up against our time period. So I really want to get going and started. But just so you know that this is, number one, this is being recorded. Number two, you'll get... You'll get the summaries and you'll want to listen to the recording. And number three, the contact info for myself and for Gabriel, you can reach out to us if there are open questions, something you heard on this, anything you really want, you can reach out to us and we will get back to you. So I do want to ask Shelby, we had one poll question, just one poll question. So let's see if we can do the poll question. I'm going to read the answers out loud to everybody. 47 people, 100 % of the people actually on the call took the poll. Thank you, everybody. 23 % have not started the process. So that's important for us to know. And 15 % has just getting started. So that's basically 38%, 39%, 38 % in the beginnings. And then another 10. The point of this, Paul, and I want Gabriel to hear this, is that we do have a spectrum of people. Our first question, and I think, Gabriel, you can sort of elaborate a little more on sort of the beginning stages, but people did submit some of the questions in advance, and I do want to try to get to those handful of questions. So somebody asked a question. I understand it is very difficult. to establish eligibility to receive SSDI. One aspect I heard was that you can expect to be denied several times before they may approve the benefits. And I'm also wondering about the advisability of working with an attorney who specializes in this area. Should you begin with an attorney or after you've been denied? And you could also elaborate on some of the initial challenges people face in getting started.

00:03:18 GABRIEL HERMANN

Okay. With regards to the claim, There are a lot of different programs that fall under the Social Security Disability umbrella. The two most relevant are Social Security Disability and Supplemental Security Income. That's SSD or SSI, also known as Title II and Title 16. Title II benefits, which is SSDI, if you will, is the benefits that an individual is entitled to. If they have paid into the system, if they have earnings in the system, depending on age, depending on how much, I mean, those are all factors that have to also be taken into consideration. But the standard is that you paid into the system can no longer work for whatever reason, whether it's a physical impairment, a problem you develop just because of who you are, as it were, mental issues, cancer, stroke. neuromuscular disorders, speaking specifically to the Kessler audience, those are the kinds of benefits that could be obtained under SSDI. The same benefits are available to somebody under SSI, Title 16, which is the need -based program,

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but that program is one that actually has a requirement that the resources be under \$2,000 total for an individual. I think it's about 3,000 for somebody that's married. So those are the two kinds of programs that are out there. Answering the easy part of the question of whether somebody should start on their own or with counsel. Selfishly, I'm going to say with counsel, but not because of the reason that people might think. The selfishness is more along the lines of if I'm controlling the process from the beginning, there is a greater likelihood of resolution favorably. If at all possible, early in the process. But if somebody comes to me after they've already filed and have already made mistakes, it's more difficult to correct the mistakes that were made. And there are a lot of pitfalls in the Social Security process that people need to be aware of that over almost 30 years, I've seen and dealt with innumerable times. So from a preliminary perspective, how does one start a claim? Person fails. It's really that simple. At this point, the government has leapt into the late 2000s. And so finally, claims can be filed online. And again, it's a process as anything else is. Once you file, you get a lot of communications and a lot of correspondence. And Social Security has started to the point where they're providing updated information. They'll send you a text and say, we are at point three of five in the process, or your claim is 75 and a half or 78 % finished. Those words are all meaningless to me. In my view, a claim is binary. You're either a claim is decided or it's not decided. It's very arbitrary what these percentages are. I don't even know what they mean. All I know is that if a client calls me and says, I got a text saying that my claim is four out of five percent or four out of five steps done, I know that maybe a decision will be made tomorrow and maybe a decision will be made in a month or two. So that's just something the audience may have seen in if they have started the claim. In my experience, and just for background again, the typical Social Security claims process is an application is filed, an initial determination is made. If that determination is a denial, then we request reconsideration. Reconsideration can be approved, partially approved, or denied. And then the next step is the hearing step. At the hearing level, the claimant gets an opportunity to present their case to the decision maker, who is an administrative law judge appointed by the commissioner of social security. Essentially, it's an administrative law judge. And then that person, the claimant has an opportunity to present the case, answering the judge's questions. And it's also at that point that with counsel, there is the greatest likelihood of all of the records being collected and presented. At the initial steps of the claim, a claim can be approved, certainly. And if it's a full-on physical claim, the government started a pilot program where they're not even viewed by a medical source or by the agency's medical reviewer, but the non-medical reviewer is empowered to make a physical determination only, which actually is fast-track cases. I've seen a few cases decided a little bit more quickly because the medical reviewers Based on experience, but not based on anything else. A lot of times these cases are denied by the medical reviewer for reasons that are completely beyond me. Very arbitrarily. Most people, and I'm going to comfortably say most people are denied at the initial and reconsideration level. I will give the cynical reason because the government wants to deny them and see if they're going to appeal. And if they appeal. great, then they'll be processed again and maybe they'll be approved. But I would say numerically, significantly left people end up at a hearing, then file an initial claim, either because they've been denied and said, okay, the government says I'm not disabled, so okay, I'm not disabled, or they get frustrated by the process and give up, or they're approved in the rare occasion that they're approved. But if you want to put a number to me,

00:09:33

GABRIEL HERMANN

probably 60 to 70 percent of people are denied at the initial two stages. And at the hearing level, I can only speak

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from my own experience. My clients win, I want to say, 85 to 95 percent of the cases. And the denials could either be because a person isn't as disabled as they think they are. Information that I got, was not backed up by the records, or you got a judge who, for whatever reason, just didn't see the case the way I see the case. So even in those cases, we can appeal to the appeals counsel. Sometimes those cases get reversed and remanded for another hearing. If the appeals counsel declines to review the case, select cases, I should say, we'll go to U.S. District Court, we'll file an appeal in district court, literally suing the government. So generally, if I'm taking it to district court, we will get it reversed and get another hearing. And you go up and down the line enough times in the cases more often than not are approved. So what I would say the takeaway is being denied is not the end of the process.

00:10:45 JONATHAN GUDEMA

Well, I have a follow-up question because I haven't done that type of work ever. Approximate cost. I mean, I just can't speak for other attorneys, but you're talking, you know, how much are you talking here in terms of getting attorney at least initial stages or have to go? A general overview of the fee structure,

00:11:01 GABRIEL HERMANN

general overview of the fee structure, and this is a national, excuse me, a nationally accepted, is the fee is up to 25 % of past due benefits. And past due benefits are anything that a claimant is entitled to from six months after their alleged onset date, or 12 months before their application, depending on the timing of the application, up until the date of a Social Security determination. But that 25 % is further reduced, as it were, if a claim is approved at or before a first hearing decision. And I'm saying it that way because there are some judges that mandate more than one hearing, but it's the first decision. If it's approved at or before a first decision, I will cap my fee at no more than \$9,200, which means the lesser of 25 % or \$9,200. What that means is using an easy math, a lump sum of \$60,000. Somebody is owed \$60,000 because their monthly benefit, let's say, is \$4,000 a month and it took 15 months for the decision. That is the potential back due benefit. Not a typical situation, but I'm just giving it this way because of the math. And they win after that hearing, after that first hearing, or even after an initial application. My fee could be, mathematically, 25 % would be \$15,000, but I keep my fee capped at \$9,200. If, on the other hand, we have a denial, we go to the appeals council, it goes back down the line, that same \$60,000 could result in a fee of \$15,000. So that's the fee structure. Taking it to district court isn't going to cost more, but it will potentially have a filing fee. \$405 currently is the filing fee. Generally, federal court cases are... paid for from a special program called Equal Access to Justice. It's complicated how that all comes into play, so I don't really want to focus on that part of it, of fees and really things in general, but it's very case-by-case dependent because that's at the district court level. But that stands to the question. The fee structure is 25 % with a fee cap of \$9,200 if a claim is resolved at the at or before that first hearing decision. A couple more questions that were submitted in advance and then we'll start doing the questions that are coming in on the Q & A.

00:13:39 JONATHAN GUDEMA

couple more questions that were submitted in advance and then we'll start doing the questions that are coming in on the Q & A. I have a question here. A woman had, her husband had been disabled. So he was receiving SSDI transitioned, receiving SSDI transitions from SSDI to the retirement age. Is there any paperwork that needs to be

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completed to make that seamless? Does the monthly payment change? Again, moving into retirement age. And then there's a multi-part question.

00:14:11 GABRIEL HERMANN

Let's break it up into one part of the time. Okay, first question, it's an easy answer. No paperwork. A person that is disabled magically becomes retired on their full retirement age, which depending on how old they are, but most people at this point, full retirement age is 67. Won't go higher than 67 at the moment. That's the full retirement age. So if the individual is 62, they'll continue getting benefits until 67 at social security rate. And social security rate is retirement rate. So there's no increase. There's no decrease. The benefit stays what it was. Nothing needs to be done. And in fact, I will even note a disabled person who becomes a retired person no longer has any earnings restrictions. So once they are at full retirement age, if they have the ability to work or if they've been working and keeping an eye on their earnings, that cap goes away. You can earn as much as you want and be retired.

00:15:15 JONATHAN GUDEMA

The follow-up question really has to do with the spouse. So the spouse in this question really doesn't have a lot of retirement, mainly because she had to change her career to be able to be more of a caretaker. What happens to the spouses? How does it affect a spouse in terms of, yeah.

00:15:36 GABRIEL HERMANN

So if the spouse is at full retirement age as well, the spouse can collect whatever the rate is that that spouse would be collecting off of his or her fabled now retired spouse.

00:15:48 JONATHAN GUDEMA

Her question was also, is there an advantage of getting divorced? Sometimes there might be some financial advantage for being divorced. Maybe not. And I don't know the answer to that.

00:15:58 GABRIEL HERMANN

That is conflating SSD and SSI. That is the need-based program and the non-need-based program. I've never really advised people to get a divorce. There's a lot of other expenses and a lot of other complications associated with that that are so far outside my wheelhouse. I don't want to go there. But what I will say is that if an individual is on straight disability or straight retirement, There is no benefit to being divorced. The benefit is going to be the same as a retired divorced spouse or disabled divorced spouse or retired. In all of these permutations, there's no benefit to being divorced. Again, you're not getting more. You're not getting less.

00:16:50 JONATHAN GUDEMA

Okay. Yeah, the same person had a question. We have to go into it about the accessing 401k IRAs. I actually know the answer to this question was that if they're really disabled, they do have access to at least the IRA money prior to 59 and a half without a penalty. But the 401k, I believe it depends on the plan. I think if you show anybody a statement of disability, if you have a social security determination of disabled.

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00:17:11 GABRIEL HERMANN

think if you show anybody a statement of disability, if you have a social security determination of disabled. It kind of takes away all of the rules about penalties and whatnot for people. They can tap it. Doesn't mean that it's going to be tax -free. They're going to have the same tax consequences, but they're going to be able to tap retirement funds without penalties as long as there is a determination from social security, the federal social security of disability.

00:17:44 JONATHAN GUDEMA

Yeah, yeah. Next question. She wrote, I need therapy. One, I need therapy. Two, I need transportation to go to therapy. Three, I need a wheelchair that will permit me to stand as I sit too long.

00:17:58 JONATHAN GUDEMA

I sit too long. Four, I need to know what organizations will help a person whose wheelchair bounds. I don't know if that's, I think this is a little bit beyond this. I don't know if you can answer that question.

00:18:09 GABRIEL HERMANN

I can answer it kind of around the band, as it were. An individual. I mean, these are all service provider questions. If somebody is disabled and on SSI, and this is the need -based program, then they're also eligible for Medicaid. And counterintuitively, Medicaid is a lot more generous with these kinds of durable, good things, such as a wheelchair. Although Medicare will also provide a wheelchair. A lot of times FSI is better about providing that and reimbursing things like that, you know, for those kinds of circumstances. As far as who's going to provide and accommodate, some jobs will accommodate people in need of a wheelchair. Some won't. And if the questioner is in a permanent state of needing to be in a wheelchair because they're unable to stand and walk on their own, as I say, jobs will hire them. but only with accommodations. And then, of course, the question would be, what other problems exist? From my perspective, if somebody is restricted to being in a wheelchair and it's medically necessary and it's documented, I think I probably could win that case, but it would really depend on the medical records.

00:19:36 JONATHAN GUDEMA

Okay, great. Thank you. Another question had been pre -submitted. I was in an accident when I was 19 that left me permanently disabled. My question is partially paralyzed. My question is that I did win a settlement from my accident case that went into a trust. I wanted to ask if I was still eligible to apply for disability or SSDI. So there's money put into a trust.

00:20:02 GABRIEL HERMANN

Okay. So that is a multi -pronged question. Jonathan, some of it might be more in your wheelhouse relating to the types of trusts that could potentially be there. So the questioner is saying funds were awarded for an accident that occurred when she was 19. These are all magic numbers. These are all important information. Number one, the question I would have is what kind of trust is it? or a special needs trust, those are different words for it, then the funds are as if they do not belong to the questioner for purposes of Medicaid and for purposes of SSI. Now,

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assuming all that is there, but even forgetting about it, if the person is 19 and had the fortune of a couple of years of work, they're potentially entitled to benefits on their own earnings. Alternatively,

00:21:06 GABRIEL HERMANN

If the incident occurred before age 22 and the questioner has a parent who is disabled, retired, or deceased, then the person could potentially be entitled to Social Security disability as an adult disabled child. That falls under the Title II, but it is a separate category of Title II. As some of you may be aware, individuals who are entitled to... retirement benefits or disability benefits and have children under 18, those children get auxiliary benefits at about half again what the primary beneficiary is collecting. At age 18 or 19, if they didn't yet finish high school, those benefits go away unless the individual is or became disabled before age 22. So this person who became disabled at 19 in an accident, He or she has a parent who is disabled, retired, or deceased, who had earnings, obviously, who had a work history, but potentially be entitled to benefits independent of their resources. But if they don't have a parent in that category, then they could still be eligible for supplemental security income, which is very restrictive. I mean, and it's not a whole lot of money, but it is still a worthwhile exercise. Depending, obviously, again, on disability, because the questioner said, I am disabled since age 19. Disability is a very, very much, in our conversation, a legal term. And as the government loves to say, it's a determination that is reserved for the commissioner, which means you and I can think somebody's disabled, but it's just a word. Hate to say it, but it's a word that requires context.

00:22:58 JONATHAN GUDEMA

If the parent has pre -deceased, did have earnings, and you fit that under -22 category, you get that parent's payment, right? I mean, you have to apply, but yes. Actually, the person who introduced me to you, she was trying to figure out why her sister was getting her father's payments. She actually had fit into those categories, and she got pretty significant whatever the father had been entitled to that was going to the disabled.

00:23:26 GABRIEL HERMANN

Different type of disability. But anyway, she got that. Obviously, there's caveats to it. It depends on the parent. It depends on whether there's a spouse. It depends on if there's siblings under 18 who are collecting. But at the end of the day, if everybody ages out and the questioner is still disabled and the questioner ends up with everything. So this is what I do. And this is the kind of thing I can deal with easily.

00:23:47 JONATHAN GUDEMA

A question about wanting to work. I have a lot of time in my hands after 10 years of disability and need to find a new purpose. I would love to write a book or try to monetize and grow a blog or sell digital things. Health has some certifications. I was told if I do this, since you can't prove, this is not permanent job type stuff. We can make some money here and there. You can't prove how long you work and the money is inconsistent. It could cause you to lose disability. Is that true? I looked into the back to work program, but it seems like such a risk. What if you make money, lose your disability and medical insurance, and then your startup business fails, then you have nothing. So any short advice on that? Yes.

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00:24:34 GABRIEL HERMANN

Okay. So first of all, many people that are disabled are offered Ticket to Work. I don't trust it. The Ticket to Work is essentially a vocational rehabilitation program that is offered by Social Security. through contractors, all sorts of companies. The only thing Social Security promises is that returning to work or engaging in work activity will not trigger a medical review. That's a very small, almost worthless promise to me.

00:25:17 GABRIEL HERMANN

With regards to the specific question, an individual in 2026 can earn up to \$1 ,690 before they trigger substantial gainful activity. Now, if you want to go even deeper, an individual who is collecting Social Security disability has a nine -month period in which they can earn anything without losing their Social Security benefit. But every month that they earn over \$1 ,210, different from the \$1 ,690, Any month in which they are in over 1210 is a month that is. By that, I mean it's a trial work month. And you get nine of those months, not consecutive, cumulative. They could be consecutive, but they could also be two and then nothing and then four and then nothing and then three. And then when you hit month nine. If you go over my first number, which is 1690 or whatever in a given year, if you go over that amount, you are over your permissible or permitted earnings. And if you do that for 36 consecutive months, after the nine months, you'll lose your benefits. If you do it for 35 months and then you stop working, your benefits continue. Alternatively, in that 36 -month period, if you earn over \$1 ,690 in any month, you are ineligible. If you're at \$1 ,650 or \$1 ,500, you continue to be eligible. So that's part one. Part two, self -employment is treated as cumulative divided by 12. So if somebody has \$1 ,500 a month in one month and \$4 ,000 the next month, and zero the following month, and all in their annual is \$20 ,000. The government takes the 20, divides it by 12, and then there's no month that they're over substantial gainful activity.

00:27:32 GABRIEL HERMANN

It's risky.

00:27:34 JONATHAN GUDEMA

Right.

00:27:35 GABRIEL HERMANN

It is risky. I prefer to see both numbers. And then there's another little wrinkle is called impairment related work expenses. If the questioner has medical expenses, pays for medication, has some kind of psychiatric care that they are getting that the doctor or the therapist doesn't take insurance. Those are all impairment related work expenses. As are, I don't want to say commuting expenses or travel expenses, but. Adapting your car, for example. Not sure whether or not buying a special vehicle that is an adoptive vehicle falls within that. It certainly isn't going to last beyond that one year of a deduction. But those are all ways to cut your earnings down. So, you know, often I will ask and the government will ask when they're generating these forms inquiring about post -disability earnings. they're going to be asking about, did you have any medical expenses that were not reimbursed? I don't mean co -pay, or rather, I don't mean premiums, but I do mean co -pays.

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00:28:52 JONATHAN GUDEMA

Okay. If I were in that situation, I would say, if someone's talking, I would say, I've talked to an attorney and planned this out very carefully. Absolutely. And you said a lot, I couldn't even keep track of everything you said there, but you really would want to plan out how are you going to work,

00:29:06 JONATHAN GUDEMA

really would want to plan out how are you going to work, how much you can make.

00:29:10 GABRIEL HERMANN

And agreed.

00:29:11 JONATHAN GUDEMA

Question. I'm concerned about my daughter's long -term care and financial security following a car accident in 2019. Which of her physicians is best suited to write a formal letter regarding her disability? She currently receives care. She has primary, she has a neurologist, she has an orthopedist and a neuropsychologist. And the condition has some significant short -term memory impairment. and also a physical issue on her leg. And a prior 11 -level spinal fusion of severe scoliosis, given the complexity of neurology and physical changes, you want to make sure that the letter is as comprehensive as possible. I guess there's one letter. Who would be that?

00:29:59 GABRIEL HERMANN

All of them. All of them.

00:30:00 JONATHAN GUDEMA

Okay.

00:30:01 GABRIEL HERMANN

I would say that in a situation like that where there are so many... comorbid conditions, and potential complications, all of them. And the reason is very simple. The spine surgeon,

00:30:15 GABRIEL HERMANN

if the doctor is willing, is an excellent source for talking about any difficulties that the claimant would have with standing and walking, lifting and carrying, pushing and pulling. You got to be careful because surgeons tend to think they fix the problems, but... A smart surgeon is going to recognize that sometimes a problem isn't fixable. Pain management doctors are great for giving restrictions. The neuropsych is going to be very important for the short -term memory on which the GP is going to have an opinion, the primary, because, you know, other than anecdotally. So summaries or narratives from all of these sources are critical. Having said that, stay away from the word disabled. This is just a rule of thumb. Again, remember in the beginning I said the government reserves that word for the commissioner? That's literally what I mean. Some decision makers will say, oh, well, the doctor says the patient is disabled. Well, that's a decision for the commissioner. No, you describe the restrictions. The patient is limited in sitting, standing, walking, lifting, carrying. The patient is unable to focus and concentrate.

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Give examples. Do all of that so that the logical conclusion that a reviewer or a decision maker is going to make is, well, this person can't work. Translate not into work activities, but into home activities. Patient is unable to focus on a TV program for more than 30 minutes at a time. Patient cannot sit through dinner. Patient is unable to go out on family gatherings because of chronic pain. Patient gets distracted by, you know, by discussions, whatever. It doesn't, I mean, I don't know anything about the case, but these are the kinds of things you want to make sure are noted and articulated. Further, it's valuable for the source to explain why. Patient is unable to straight leg raise because of problems with the lower back. Most decision makers recognize that a negative SLR or positive SLR, I should say, is a problem with sitting and standing. If a person has problems and needs to be reclined or have legs elevated, those are the kinds of things you want to deal with. Because at the end of the day, the government is looking at the person's capacity to perform work. And they use vocational consultants to opine about that. And that's... That's the long and the short of it.

00:33:01 JONATHAN GUDEMA

Okay. So, and the same questioner asked a question about types of trust to maintain benefits. And the answer is a special needs trust, supplemental needs trust. I do. There's estate planning that will protect. And if you do it in advance and money doesn't go directly to the individual, then they can't protect the assets. But I'm going to say reach out to me on that question. I don't want to bog us down on that today. This is all the pre-questions. Now we've got some online questions here. Somebody asked a question about filling out a disability update report and just being a little guidance on that. Is that something you're familiar with?

00:33:35 GABRIEL HERMANN

Yes. There are two kinds of forms. There is the disability update form, which is really the front and back page. And one of the questions there is, have you discussed disability with your doctor? What has the doctor said?

00:33:51 GABRIEL HERMANN

I'm surprised by the number of people that ask me that question instead of just calling their doctor and saying, you know what's wrong with me? Do you think I can work? And the doctor is going to say no. And then they can truthfully answer that question. I have discussed this with my doctor and my doctor says I can't work. And if the doctor says you can work, then the answer is I have discussed this with my doctor. Because the question doesn't actually ask for what did the doctor say, if I'm remembering the form correctly. Really, these forms are pretty straightforward. They're a precursor to a potential second form, which is a detailed questionnaire. And if you get that second form, then what you're being told is that the government is reviewing you. The first one is an update. They just want to make sure you're still active. And sometimes they do it only because in Social Security hearings, sometimes a judge will issue a decision that says, and I direct the agency to review the person's claim in 12, 24, 36 months. They shouldn't really do that. And I've seen people with incurable medical conditions being told that with proper care, maybe they'll get better. So review them. Sometimes it's true because, you know, when you get Medicare, you suddenly get your pick of the doctors and then you actually get good treatment. But I rarely see medical improvement in my clients. Sometimes, yes, but very rarely. But with regards to the specifics of this question. The second form, which is the detailed questionnaire, that one, you got to answer everything with an eye on you're being reviewed. And if you stop going to the doctor after your claim was approved, get back to

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the doctor because it's already bad enough that you haven't been going to the doctor to start treatment after you get a notice of termination is really a problem. And, you know, from my perspective as counsel. I tell my clients, keep going to your doctor. If they don't go to the doctor and they tell me they've stopped going to the doctor, I'm not so sure I'm going to take on a continuing disability review claim for them because I'm starting from underground. I'm not even starting at a fair, you know, even level. And that's the problem. So hopefully the questioner has been going to the doctor and is actively in care and is able to truthfully say active in care. And on the backside of that first simple form, there are who have you been going to? I don't even know if they want addresses, but what they want is type of doctor and when was the last time you went. So you fill that out if you've had counsel. I mean, certainly when I have clients that have that, I will, as a courtesy, review that form. For that matter, I'll review the other form as a courtesy also. And if they're terminated is when they would retain me for representation. Okay.

00:36:48 JONATHAN GUDEMA

An interesting question here from the live audience. Currently working and not experiencing any disability symptoms, however, I have MS and will most likely need to file at some point in the future. Is there anything I need to be doing right now or actively in advance?

00:37:05 GABRIEL HERMANN

Keep going to your doctor, which you're going to be doing anyway. Make sure when you're speaking to your doctor to reference the problems you're having and how you've overcome them or how you're compensating for them. If it's, I mean, there are so many things that could be MS. It could be the cognitive. It could be physical. It could be as simple as difficulties that you have tolerating changes in temperature. So you got to talk about all that. A good way to do it is reporting it to the doctor. Straightforward, I'm having this problem. Alternatively, in a formal question, Why am I having this trouble? Why am I finding that I'm forgetting things? I mean, however you do it, the point is to get it into the record. As there's a progressive decline, which unfortunately is, I don't want to say it's inevitable because it's not, but it could happen. You want to be able to point to that progressive decline in the medical records so that you get to a point where it's not like a sudden change in your situation that yesterday I was fine, today I'm not, and that's why I stopped working. Because then the government's going to look at the case and say, well, the person's had MS since 2000X. Why is it that only now is it that they're having problems? Better to show that there's been a progressive decline. I hope it doesn't happen, but if it does happen, I have done plenty of MS cases, and I will tell you that they kind of come in waves. And the government approves and denies them in waves, depending on, I don't know, what is the flavor of the day at Social Security.

00:38:52 JONATHAN GUDEMA

Thank you. How much can someone on SSDI make before it messes with your amount of SSDI?

00:38:59 GABRIEL HERMANN

It's not about the amount. Social Security benefits are binary. You're either getting them or you're not getting them. They're not reduced by how much you get. If you're getting SSI. And I'm only asking because that's where it sometimes comes up. If you earn a little bit, it will be a dollar for dollar reduction. But with Social Security dis-

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ability based on earnings, where your benefits and a rule of thumb, if you're making if you're getting more than twelve hundred dollars from Social Security, it's not likely that you're getting SSI. You're likely getting SSD based on your earnings history. So, again, if you go past the nine month trial work period and you earn over 1690. you can get zero. If you stay under \$16 .90 or you're below \$16 .90 with impairment -related work expenses, you can get all of your benefit. It's an all or nothing.

00:39:52 JONATHAN GUDEMA

Same thing. Plan this carefully. Correct. Question. I've been receiving SSDI since 2017. I was diagnosed with a traumatic brain injury since 2016. Will I receive SSDI for life? There's no cure for TBI. I have a caregiver 63 hours per week, and I receive Medicaid and Medicare.

00:40:15 GABRIEL HERMANN

My guess is that the Medicaid is potentially the state program, but it could be the federal Medicaid. The Social Security benefit could be relatively low, and that is why the individual may be getting both Social Security disability and Supplemental Security income. Circling back to what we referenced earlier, If the TBI occurred before age 22, there's an additional potential benefit from a parent that is disabled, retired, or deceased. But with regards to lifetime, there's no such thing as permanent disability in social security world. At the same time, if you continue to document ongoing problems without any medical improvement, it shouldn't be a problem. If you have a caregiver, that becomes part of the narrative. And it's part of the provable because you're not getting a caregiver unless you need it. And then you can document that, you know, because Medicaid, who's providing you with the caregiver, would have required some kind of reason for it, which means you have a treating source that seems to be able to articulate effectively your need for home care or wherever the care is being provided.

00:41:28 JONATHAN GUDEMA

A question here, is this applicable for kids whose both parents are working and may not qualify? From which age will they be eligible and how to file it?

00:41:39 GABRIEL HERMANN

So IEPs are, just for everybody else, they are educational plans, individual educational plan, literally IEP, for children that need something in school. Generally, it's through the public school system. It's not, number one, we don't know. what the long -term outcome is going to be for that person. Plenty of kids with IEPs end up becoming like Elon Musk, literally. The thing is, we don't know. It could be a physical reason that there's an IEP. The issue about SSI is a resource -based issue. There is child's SSI. To be honest with you, I don't handle children's SSI claims, not because they're not. good cases, but because they take a little additional specialization that I just never had the interest in taking on. Sometimes people that are good wage earners or make a living wage can get SSI for their children. Sometimes they can't because the resources are too high. Honestly, I don't know the whys and the hows. I have people that I can recommend that are more familiar with it. In all circumstances, my advice would be plan for not having your child have anything so that when they turn 18, they can file for Supplemental Security Income, SSI. And when I say have nothing, dig deep into the old bonds that their grandparents may have given them when they were born because the government knows about them. And,

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00:43:25 GABRIEL HERMANN

you know, I've had clients who have been approved at 18 and then at 30 when... The bond is unearthed by the government. They're suddenly overpaid 12 years. So you want to definitely be sure that there is truly and really nothing. If you want to make sure your child has something, put it into a trust or put it into an ABLE account. Well, ABLE account, you need a determination of disability, but put it into some form of a trust or just set it aside for yourself with your personal brain thing. I'm going to give it to my kid, but don't. Because at 18, they are adults and can get SSI if they have no resources.

00:44:11 JONATHAN GUDEMA

Great question. Great. And also, that's something also I can be, if you want to reach out to me on that question too, whoever asked that, in terms of some of the planning, possible planning options. Okay. My son is 19 and is receiving SSI. Once one of the parents receives their SS benefits, I think we answer this question. What is the application process? Once one of the parents starts getting their social security benefits, what is the son who obviously has a disability before the age of 22?

00:44:46 GABRIEL HERMANN

has a disability before the age of 22? First part of that is... When the parent is filing for retirement, whether it's retirement at 67 or retirement at 62 or in between, or God forbid dies or is disabled. In all of those circumstances, there is a line asking about the child. And so you mentioned, because the question is, do you have a child under 18 or a child who is disabled? is over 18 but disabled before age 22. And you want to disclose that. And then most of the time, the government will not process a child's application or an adult disabled child's application until a parent is determined to be disabled. But that doesn't apply the same way for retirement. So if somebody is 62 to 67 and decides to retire, they mention the child in the application. In the remarks section, and this is hot off the presses, this is something we just, they just changed the rule, include in the remarks section, I intend by this application to protectively file on behalf of my disabled child who is under age 22 in this case, because you have to have notice of intent, and the government just made that clear to us. But after a retirement application is filed, You use the child's application, but essentially it's an adult disabled child. It's a child's application for disability benefits where the wage earner is the parent and the claimant is the child. And that's how you start the process. Or you come to me and we do it. Is a person able to receive regular social security benefits if they're already 62 years old while they're going through SSDI process?

00:46:36 JONATHAN GUDEMA

to receive regular social security benefits if they're already 62 years old while they're going through SSDI process?

00:46:43 GABRIEL HERMANN

An individual could file for both. early retirement and disability concurrently at the same time. Or they can file for early retirement and then become disabled and then file for disability because they, you know, they retired at 62 because they had a good life. They are done working. They're tired. And then on their way home from filing their application for retirement or from their 62nd retirement birthday party, they have a horrific car accident

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and become disabled. And then you collect the early retirement until your disability is approved. And then they give you the difference between your early retirement benefit amount and the disability amount, which is probably a bad. That is the answer. But I will say this. If you decide to file for early retirement first, I wouldn't be able to help you file. because they would require you to actually file for the disability before they would let me into the process.

00:47:54 JONATHAN GUDEMA

Because we're not out of time, everybody. We have six more minutes, and so I just want to get a couple of these questions in. If we didn't answer your questions, again, you can always reach out to either one of us, and we will try to answer them. Or send an email.

00:48:07 GABRIEL HERMANN

And, you know, if it's a reasonable number of questions, I'll just send a response. I mean, send an email to me or send an email to Kessler Foundation and then that way it can get spread to everybody.

00:48:22 JONATHAN GUDEMA

Probably be our last question. It depends on how fast you answer this one. I am 58 years old and a paralegal and have been injured for 10 years. I've been working since I have been injured. I've never applied for SSDI. I could be losing my job. Would it be set when I was injured or when I stopped working? If approved, would that be full benefits?

00:48:44 GABRIEL HERMANN

If you are working, even though you were disabled and you can no longer work, I'm going to have to assume that your job accommodated you to some degree. And if you can't work, it's going to really be the date you stop working. Just realistically, because I've seen plenty of cases where somebody has, for example, a stroke, goes back to work and works another decade. And then when they file. They say my disability began when I had a stroke. And then the government asks for 10 years of explanation of their post-onset earnings, which it's because you were working. So and the cases get ugly and complicated. The easy answer is your disability onset date is the date you could no longer work because of your disability, which is obviously not the date you became a paraplegic, but the date you could no longer work, which is now or whenever you stop working. And I would say, ideally, see if you can. find a way to stop working because of your problem. Job, I don't know if, I mean, if it's applicable, company was bought, employer changed, requirements changed, whatever.

00:49:52 JONATHAN GUDEMA

There's another question asked, pretty much the same thing, had worked for eight years after the accident, but had to stop due to a pregnancy and then got too hard on the body. Can you still apply? Pregnancy is a very temporary situation.

00:50:04 GABRIEL HERMANN

That wasn't the visibility.

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00:50:06 JONATHAN GUDEMA
Disability must have been an accident.

00:50:09 GABRIEL HERMANN
No, no, I understand that. But if the condition recovers, if the physical recovers after the pregnancy ends, I mean, you got to be out or foreseeably out for 12 months before a disability eligibility is even going to be triggered. It's a complicated, really a nuanced case. I would say that yes. It is the same answer. That onset is when you stop working, not the date of the accident. But the case itself might be a little bit differently complicated.

00:50:39 JONATHAN GUDEMA
My son suffered a traumatic brain injury at age four that left him with physical and cognitive disabilities that continue today. He's 25 and he was able to graduate from college, but he's likely only able to work part time. We have all his medical records, but we do need to get an updated medical opinion in order to get a social security disability determination. That's a question mark. Do we need that? Should we seek insurance coverage through Medicaid or Medicare?

00:51:06 GABRIEL HERMANN
All right. So you're not getting Medicare without a Social Security determination. And you're not getting Medicare unless he has an earnings history. And or he is collecting the benefits as an adult disabled child. It's good that you have the records from age four, the last 21 years of records. Ideally, getting an opinion from a treating source. about his limitations and why he's not able to work more than part -time. If he graduated college, it's fabulous, but what accommodations, if any, did he benefit from while in college? Disability program or extended time or any of those kinds of things. And in short, yes, opinions from treating sources are important. Reference back to what I spoke about earlier, which is, how those opinions should be offered. Not patient is disabled, but these are the problems that patient has, which would impact on him or such restrictions as would lead any reasonable thinking person to conclude that this person couldn't do more than part -time work. But part -time work also depends on the earnings. Again, 1690 is a magic number.

00:52:19 JONATHAN GUDEMA
Okay. I want to get one more question here. My son is 20 years old. He has documentation from his psychiatrist and therapist stating he is autistic. He has definite mental challenges. He's on medication for it. He's currently taking college courses. I do not know after college ends whether he'll be employable or not. Autistic people who have documentation are able to go through the process and possibly receive SSI benefits.

00:52:56 GABRIEL HERMANN
autism spectrum disorder, because there's such a huge spectrum of what they're capable and not capable of, is very person -specific, very individual -specific. Additionally, it depends on what the doctors say, and it also depends on how proactively the parents have been working to help them navigate life. Sometimes people with ASD are surprisingly successful, but They have a parent in the background. I don't want to say pulling the strings,

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but finding them jobs, helping them do it, interacting for them, interceding, I should say, along the same lines. Sometimes people get jobs through job coaches, but the job coach is there. The job is really successful and really everything is great about the job, but it's with accommodations because the worker never interacts with the supervisor, only interacts with the professional who intercedes with the supervisor to deal with scheduling changes or attendance issues or performance issues. And that's why it's very, very case specific. There is potential. But again, there are two college courses. What accommodations is the person receiving? Because it's indicative of what the impairments are.

00:54:15 JONATHAN GUDEMA

We have to end this. I just want to make a note that number one, you will get a copy of the recording. There's so many other questions that came through. And number two, my email and Gabe's email will be sent out to everybody. So you will have that. If you want to reach out to either one of us, please feel free to do that. It's there on the screen, but Shelby, we will be, they will also receive an email, correct?

00:54:39 SHELBY NIELSEN

In a few business days, you'll receive an email direct from Zoom with the recording. It'll include the slide, which has both of Jonathan and Gabe's email addresses on it, as well as the transcript for the entire conversation. I know we had a lot of questions here that weren't able to be asked. A lot of questions about recordings and people having their hands raised. So if your question wasn't answered, I would take advantage of, you know, trying to put it in the Q & A now so we can, you know, take note of it. But if not, please reach out to Gabe and Jonathan. I know some folks had questions about legacy planning, creating wills, estate plans, which kind of go above and beyond the disability benefits Q & A of today. So Jonathan is definitely your guy when it comes to those sorts of questions. But in the meantime, if you guys have any questions at all, you can always just reply back to the emails that we send out and I can help direct them in the crapper direction. Without further ado, thank you, everybody.