



VIRGINIA
LEGAL AID
SOCIETY

SOCIAL SECURITY BENEFITS

Social Security is a federal program that pays monthly payments to aged, blind and disabled people. In some cases, dependents and survivors also get benefits. The Social Security Administration (SSA) runs the program. Unlike the Supplemental Security Income (SSI) program, Social Security is like an insurance program. You must have worked and paid enough Social Security taxes to get benefits.

How much must I have worked to get Social Security benefits?

To get retirement (old age) benefits, you must have worked for 40 calendar quarters. A calendar quarter is 3 months. This is called “fully insured.” To get disability benefits, you must have worked in 20 of the last 40 quarters before you apply. This is called “currently insured.”

How much are Social Security benefits?

This depends on how much you made while working. The more you made, the higher your benefit. This is called the “primary insurance amount.” SSA has a formula to set a minimum benefit.

SSA also sets a maximum benefit based on the number in your family. This is called the “family maximum.” You reach the family maximum when several people are paid on your account. Generally, this happens when more than three people get benefits off your account.

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What if I can't get Social Security benefits?

You may be able to get Supplemental Security Income (SSI) benefits. To get SSI benefits, you must be blind, disabled, or aged 65 or older. In addition, the Social Security Administration sets income and asset limits in order to qualify you for SSI.

When can I start drawing RETIREMENT benefits?

If you were born in 1937 or earlier you can draw full retirement benefits at age 65 and reduced benefits at age 62 if you are insured. If you were born after 1937 you will be eligible for full benefits sometime between your 65th and 67th birthday, depending on when you were born. You should check with SSA for your specific information.

Who can get Social Security SURVIVORS' benefits?

Your widow, widower, child, or parent can get survivors' benefits if you are insured at the time of your death. Survivors must show you were supporting them before your death.

Who can get Social Security DISABILITY benefits?

You can get disability benefits if you are disabled and currently insured. Usually, this means you stopped working less than five years before your disability began. Your disability can be physical or mental or both. You must show with medical evidence that your impairment(s) keeps you from working at your old job or any other job. You also must show your disability has lasted or will last for at least 12 months in a row, or is likely to result in death. You can apply for disability benefits at any age. It is harder for people under the age of 50 to get disability benefits unless they are very severely disabled.

Who can get Social Security DEPENDENTS' benefits?

Dependents can get benefits if you're eligible or if you die. This includes these people.

- Your spouse, if 62 or older.
- Your spouse, if caring for your minor or disabled child.
- A minor child, under age 18 or under age 19 and attending 12th grade or below.
- An adult disabled child, over age 18 and under a disability that began before age 22.
- Your widow or widower, if 60 or older.
- Your widow or widower, if 50 or older and under a disability.
- Your surviving divorced spouse, if married 10 years and could get widow's or widower's benefits.
- Your parents, if they depended on you for at least half of their support.

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APPLYING FOR BENEFITS

How do I apply for Social Security?

You can go into your local SSA Office (you may need a picture ID); call the SSA 800 number 1-800-772-1213 to request an application; or you may apply online at www.ssa.gov.

What if I can't fill out the forms by myself?

Representatives at the SSA office are required to assist you in completing forms if you need the help. You may have to wait for quite a while if you do not have an appointment in advance.

My doctor's office won't give me my medical records unless I pay them a large amount of money. What can I do?

Virginia law §32.1-127.1:03 says that medical personnel may only charge a "reasonable amount" for copying medical records for a patient. This generally means the actual cost of supplies and time. Lawyers are allowed to get medical records for 50 cents a page up to 50 pages, and 25 cents a page after that (VA Code §8.01-413). You should not have to pay more than that.

What if I contacted SSA and said I wanted to apply and they told me they checked and I would not qualify but they didn't take my application?

SSA is required to take your application and issue a written decision with appeal rights. You can go back to SSA and insist on completing an application.

What happens after I apply for Social Security benefits?

There are five steps in a Social Security case.

- **Initial decision.** This is a paper review of your medical evidence and work history. Most people are denied at this step.
- **Reconsideration.** This also is a paper review of your medical evidence and work history. Almost everyone is denied at this step.
- **Hearing before an Administrative Law Judge (ALJ).** This is your first and only chance for a face-to-face meeting with the person who will decide your case. About half of the people who get to this step are approved.

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- **Appeals Council.** This is a paper review of all the evidence and testimony before the ALJ. Almost everyone is denied at this step.
- **Federal court.** This also is a paper review of all the evidence and testimony before the ALJ. You have a better chance to win here than at the Appeals Council, but not as good a chance as before the ALJ.

Can I appeal a Social Security denial?

SSA will give you a written decision at each step. You may appeal a denial at each step. You must do this within 60 days of getting the decision. If you disagree with any decision on your Social Security case, you have 60 days to appeal in writing. You file your first three appeals with SSA. Your fourth appeal is filed with your local federal court. You need a lawyer to do this.

FILING AN APPEAL

How do I file an Appeal?

You can go to the local SSA office and fill out the appeal forms, or you can file your appeal online at www.socialsecurity.gov/disability/appeal. If you cannot get to your local office and you are not able to complete the appeal request online, you may call your local office or the SSA toll-free number, 1-800-772-1213, and ask them to send you the forms to fill out.

If your deadline to appeal is coming up very quickly, you should call the local office or the SSA toll-free number immediately and tell them you want to appeal. Ask them to make a note in your file that you called and requested an appeal. Ask them to mail you the forms right away. This should protect your deadline for appealing. The SSA office will send you the paperwork to fill out and send back by a certain deadline. Your request for appeal is not considered to be official until SSA gets your written request.

I missed the deadline to appeal. Is it too late?

SSA can accept a late appeal if there is good cause for the late filing. You will have to give a reason why you were late and SSA will have to determine if there was good cause.

I filed a claim a while ago and didn't appeal. I have just applied again. Can that old appeal be reopened?

SSA can reopen an old application for any reason if you are filing the new application within 1 year of the 1st denial on the last one. Otherwise there must be good cause and there are time limits for SSD and SSI. SSA can provide more information on that.

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What can I do if SSA says I got benefits I should not have gotten?

SSA may decide that you were paid benefits that you were not entitled to. This is called an “overpayment.” They may say that you got too much, or that you should not have been getting any benefits at all. They will send you a written notice telling you that you were overpaid, and they will tell you to make arrangements to pay it back. Here are some of the things you can do if you get such a notice:

First, if you disagree that you were overpaid, you should appeal SSA’s decision. The first step is to make a written Request for Reconsideration. You must make that request within 60 days after you received the notice of overpayment. If you are again denied, you can continue with the usual appeal process, as described above.

Second, even if it’s finally determined that you were overpaid, after you’ve appealed and lost, you can request waiver of recoupment of the overpayment. By doing so, you are asking SSA to not make you repay the overpaid benefits.

Your request for waiver of recoupment must be in writing. You must be able to show that you were without fault in getting the overpayment and that it would be an undue hardship for you to have to repay it. To show an undue hardship you generally need to be able to show that you would be unable to meet your necessary living expenses if you had to repay.

There is no time limit within which you need to request a waiver of recoupment. You can request it at any time. But if you request it within 30 days after you got the notice of overpayment, then SSA will hold off on any attempt to recoup until the waiver is dealt with.

SSA must give you the opportunity for an in-person or telephone conference before they make a decision on your waiver. They can’t proceed to recoup any money until they offer you that conference and rule on your waiver request.

Finally, if you’ve gone through the appeal and lost, and if you’ve requested and been denied a waiver, SSA will recover the money you owe. If you are still receiving Supplemental Security Income, they will withhold 10% of your ongoing monthly benefits until it’s all repaid. However, you can request that the amount be lowered if you can show you can’t meet your living expenses.

If you are receiving Social Security benefits other than SSI, then SSA is able to withhold your entire monthly check until the overpayment is repaid. But you can try to work out a plan with SSA to get that lowered so you would get at least part of your ongoing monthly benefits.

If you are no longer receiving benefits of any kind from SSA, then SSA will still try to recover the overpayment and will ask you to either pay it in full or make a plan for repayment. They

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may also intercept your federal income tax refund, or garnish your wages. If you go back on SSA benefits in the future and the overpayment has not been repaid, they may start withholding it from your benefits.

If the amount of the overpayment is \$1,000 or less, SSA may “administratively waive” repayment, but they’re not required to. This means they may excuse repayment even if you don’t request a waiver. Basically, SSA would be determining that “it’s not worth the effort and expense” for them to pursue repayment.

NEEDING AND GETTING A LAWYER

Do I need a lawyer to represent me in my case?

You do not have to have a lawyer to represent you in a case. However, it can be very beneficial especially if you are going to a hearing before an ALJ or your benefits are being terminated.

If I am not eligible for legal aid or if legal aid refers me to a private attorney on my disability application how will that attorney get paid?

Private attorneys may charge 25% of a back award with a maximum of \$6,000.00. All fees must be approved by SSA.

If I am not financially eligible for legal aid how do I find an attorney?

You can contact the Virginia Lawyer Referral Service at 1-800-552-7977. You can also contact the National Organization of Social Security Claimants Representatives (NOSSCR), 1- 800-431-2804. Both organizations can refer you to private attorneys that handle social security cases.

THIS INFORMATION IS NOT LEGAL ADVICE. Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.

Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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