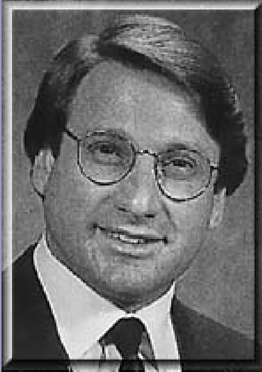
Column: Walkup Talks Disability

The History of Social Security Disability

- Michael Walkup, Attorney at Law



Michael Walkup is an experienced disability practitioner with over 25 years of experience in the disability law field. In 2001 he became disabled due to MCS, CFS, and FM. He is now providing a service to advise clients with potential disability claims who have MCS, CFS, and/or FM. As these programs and law are usually Federal, he is able to practice in all 50 states, so your location does not matter.

Michael is a long time Sustaining Member of the National Organization for Social Security Claimants' Representatives (NOSSCR), the only national body for disability representatives. He is also certified as a Federal Trial Lawyer and is admitted to the U.S. Court of Appeals for Veteran's Claims.

Michael would welcome the opportunity to try to help you with your legal claims. His web site may be found at www.MCSLegalHelp.com. , or he may be contacted at MJWalkup@Amertech.net , or at 866-880-HURT (4878).

When Congress originally passed the Social Security Act in the 1930's it did not provide any disability benefits, only retirement income for people over 65. In the 1960's it was amended to also allow for recovery of the same benefit amount that would be realized on retirement, if a wage earner became unable to continue to work prior to age 65 due to physical or mental impairments.

In the 1970's, provisions were added for payment of fees for people representing a claimant in a successful disability claim, to be limited to 25% of the total recovery in retroactive benefits. Attorneys were able to receive the fees directly from the government out of the client's retroactive benefit check, subject to approval of a fee petition itemizing the time spent on the claim.

In 1979 vocational rules were added to eliminate the need to have vocational experts at every hearing. I will go into more on this later.

In the 1980's the rules for mental impairments were changed which had the effect of making it a bit easier to win cases in which mental impairments were present.

In the 1990's, recovery was eliminated for persons whose disability was solely due to drug or alcohol addiction. Attorneys fees were also modified to allow an automatic payment not to exceed 25% of retroactive benefits provided that the attorney agreed to cap the fees at $4,000, which has since been raised to $5,300. Later, a "user fee" of $75 was attached to the direct payment option, to be deducted from the attorney's fee. .

More recently, non attorneys who have been certified by the Social Security Administration to function as representatives were allowed to be paid on the same basis as attorneys. Direct payment of fees was also now allowed on Supplemental Security Income (SSI) claims.

Procedures Used to Evaluate Disability

In order to be determined to be "disabled" under the Social Security Act for either "disability benefits (SSDI) or Supplemental Security Income benefits (SSI), a five step Sequential Evaluation procedure is employed.

Step One: Work

The first step is to determine if the claimant is performing what is called "Substantial Gainful Activity (SGA)". SGA is defined as work in "competitive employment" at which the individual is earning a certain minimum monthly amount in gross wages (before deductions). The current monthly amount is about $900.

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"Competitive employment" means employment that exists in the general employment marketplace and excludes "sympathetic employment" and employment in "vocational workshops." This may have particular application to MCS sufferers who require extensive special accommodations to work, or who are allowed to work from home.

If the claimant is "working" under this definition, he/she is not considered "disabled" and no benefits are payable.

Step Two: Severe Medically Determinable Impairment.

The second step is to determine if the claimant has a "severe impairment" and also to determine it that impairment is "medically determinable." The "severe" requirement was used at first to eliminate many claims but was later limited by the courts to be an initial screening device to weed out frivolous claims.

Pretty much anything that substantially limits your ability to work in a competitive job setting is considered to be "severe", and that is not usually a stumbling block, although I have seen some MCS cases denied at least initially on that basis.

The "medically determinable" requirement, however, is a real problem for MCS cases. I will be writing an article devoted to this topic for later. For now, just keep it in mind as, if you are found not to have an impairment which is "medically determinable", the entire case ends at this stage and you receive nothing no matter how severely you may be limited by your impairments.

Step Three: Listings of Impairments.

Social Security has promulgated a complex set of rules which are known as the "Listings of Impairments" or "Listings" for short. There are separate Listings for adults and children. These were written by medical doctors and are broken down into various body systems such as musculoskeletal, respiratory, endocrine, mental , etc.

There is no listing for MCS, and therefore this section does not directly apply to those cases. However, the mental impairment Listings are often used in MCS cases so if you are willing to go that route, this is an option.

If you are found to meet all of the criteria of a "Listing", you are automatically found to be 'disabled' and the case ends. You win.

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Step Four: Past Relevant Work

Assuming you survive the first two steps, and did not win automatically at Step Three, the next step is to look at what is called your "Past Relevant Work (PRW). PRW means any job that you have done in the past fifteen years, which was "competitive employment." It excludes jobs which were performed for four months or less and ended due to the impairment. These are classified as "unsuccessful work attempts" and do not count against you.

The thing to bear in mind here is that if you had a job in the more distant past but still within fifteen years of the date of your application for benefits which was less rigorous than the job you were doing just before you finally left work, it could be found that you could return to that job even if you can't do your more recent work. This is usually not a big issue in MCS cases but can be critical in FMS and/CFS claims or if your symptoms from the MCS include things like fatigue and/or restrictions on lifting, walking, standing, etc.

One unresolved issue in MCS cases is work from home. So far, work from home not considered to be "competitive employment". However, as time goes on and work from home becomes more frequent, that could change, which could dramatically affect MCS cases in particular.

Step Five: Vocational

Up to now, the claimant, (which is you) had the burden of proof to get past the first four steps. If the case is still alive at that point, the burden of proof shifts to the Social Security Administration (SSA) to prove that there are jobs that you could still do. (To be continued next month.)

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