

Title Slide: Children's SSI Project

Slide 1: SSI Eligibility

1. Categorical Eligibility
2. Residence
3. Citizenship or Qualified Alien Status
4. Resource Eligibility
5. Income Eligibility

Slide 2: Disability Standard

1. under the age of 18;
2. medically determinable physical or mental impairment(s);
3. which results in marked and severe functional limitations; and
4. which can be expected to result in death or which has lasted or is expected to last for at least 12 months

Slide 3: Sequential Evaluation for Children

Step 1: Is the child working (engaging in substantial gainful activity)?

If yes, denied.

If no, go to Step 2

Slide 4: Sequential Evaluation for Children

Step 1:

SSA presumes substantial gainful activity if claimant is earning more than \$900/mo.

Slide 5: Sequential Evaluation for Children

Step 2: Does the child have a medically determinable impairment or combination of impairments that is severe?

If no, denied.

If yes, go to Step 3.

Slide 6: Sequential Evaluation for Children

“Severe” = “more than a slight abnormality or a combination of slight abnormalities that cause more than minimal limitation in a child’s ability to function independently, appropriately, and effectively in an age appropriate manner”

20 C.F.R. 416.924(c)

Slide 7: Sequential Evaluation for Children

This step is used to filter out children who either (a) do not have any medically determinable impairment, or (b) have medically determinable impairment, but those impairments do not impose more than minimum functional limitations.

Slide 8: Sequential Evaluation for Children

Step 3: Does the child’s impairment(s)

(a) meet,

- (b) medically equal, or
 - (c) functionally equal any condition described in the Listing of Impairments?
- If no, denied.
If yes, granted.

Slide 9: Sequential Evaluation for Children

“Listing of Impairments“ = describes, for each of the major body systems, impairments that are of sufficient severity that they are presumed to cause marked and severe functional limitations.

Slide 10: Sequential Evaluation for Children

Example 1: 103.03 *Asthma*. With:

B. Attacks (as defined in 3.00C), in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each inpatient hospitalization for longer than 24 hours for control of asthma counts as two attacks, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks; Or

Slide 11: Sequential Evaluation for Children

Example 1: 103.03 *Asthma*. With:

C. Persistent low-grade wheezing between acute attacks or absence of extended symptom-free periods requiring daytime and nocturnal use of sympathomimetic bronchodilators with one of the following:

1. Persistent prolonged expiration with radiographic or other appropriate imaging techniques evidence of pulmonary hyperinflation or peribronchial disease; or
2. Short courses of corticosteroids that average more than 5 days per month for at least 3 months during a 12-month period;

Slide 12: Sequential Evaluation for Children

Example 2: 112.11 *Attention Deficit Hyperactivity Disorder*:

Manifested by developmentally inappropriate degrees of inattention, impulsiveness, and hyperactivity.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of all three of the following:

1. Marked inattention; and
2. Marked impulsiveness; and
3. Marked hyperactivity; AND

Slide 13: Sequential Evaluation for Children

Example 2: 112.11 *Attention Deficit Hyperactivity Disorder*

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

Slide 14: Sequential Evaluation for Children

“(a) Meet” = SSA will find a child disabled if his/her medical findings are identical to the criteria for the medical impairment contained in the appropriate Listing.

Slide 15: Sequential Evaluation for Children

“(b) Medically equal the listing” = If a child’s medical impairment(s) do not meet the listings, SSA next determines if the impairment or combination of impairments is medically equivalent to a listed impairment.

Slide 16: Sequential Evaluation for Children

“(b) Medically equal the listing” =

A medical impairment or combination of impairments is medically equivalent if the medical findings are at least equal in severity and duration to a listed impairment.

Slide 17: Sequential Evaluation for Children

“(b) Medically equal the listing” = This usually requires a written opinion from a doctor specifically stating that the child’s impairment(s) are medically equivalent to a listing.

Slide 18: Sequential Evaluation for Children

“(c) Functionally equal” = Functional equivalence is shown when an impairment or combination of impairments causes the same disabling functional limitations as those of a listed impairment.

Slide 19: Sequential Evaluation for Children

“(c) Functionally equal” = Functional equivalence is determined by looking at the child’s limitations in each of 6 “functional domains.”

Slide 20: Sequential Evaluation for Children

“(c) Functionally equal” = For a finding of functional equivalence to be made, the child must have a “marked” degree of impairment in at least 2 of the 6 domains or an “extreme” degree of impairment in at least 1 of the 6 domains.

Slide 21: Sequential Evaluation for Children

“(c) Functionally equal” =

“marked” limitation = “an impairment(s) that interferes seriously with the child’s ability to independently initiate, sustain, or complete activities”

Slide 22: Sequential Evaluation for Children

“(c) Functionally equal” =

“marked” limitation = also means a limitation that is “more than moderate” but “less than extreme”

Slide 23: Sequential Evaluation for Children

“(c) Functionally equal” =

“marked” limitation = Also defined as standardized test scores that are at least 2 but less than 3 standard deviations below the mean.

Slide 24: Sequential Evaluation for Children

“(c) Functionally equal” =

“marked” limitation = For children between the ages of 0 and 3, marked is also defined as functioning at a level that is more than 1/2 but not more than 2/3 of the child’s chronological age.

Slide 25: Sequential Evaluation for Children

“(c) Functionally equal” =

“marked” limitation = Under the “Health and Physical Well-being” domain, marked also means episodes or exacerbation of illness that occur on the average of 3 x/year or once every 4 months each lasting 2 weeks or more.

Slide 26: Sequential Evaluation for Children

“(c) Functionally equal” =

“extreme” limitation = “interferes very seriously with these abilities. ”

Slide 27: Sequential Evaluation for Children

“(c) Functionally equal” =

“extreme” limitation = extreme also means having standardized test scores that are at least 3 standard deviations below the mean.

Slide 28: Sequential Evaluation for Children

“(c) Functionally equal” =

“extreme” limitation = for children between the ages of 0 and 3, extreme also means functioning at a level that is 1/2 or less of the child’s chronological age.

Slide 29: Sequential Evaluation for Children

“(c) Functionally equal” =

“extreme” limitation = for the “Health and Physical Well-being” domain, extreme is also defined as episodes or exacerbation of impairments that are more frequent than the frequency required for a marked impairment in this domain.

Slide 30: Six Functional Domains

1. Acquiring & Using Information
2. Attending & Completing Tasks
3. Interacting & Relating with Others
4. Moving About & Manipulating Objects
5. Caring for Yourself
6. Health & Physical Well-being

Slide 31: Six Functional Domains

1. Acquiring & Using Information

Child’s ability to learn in age-appropriate manner

This domain includes IQ scores and achievement test scores.

This domain also includes any impairments in the child’s ability to communicate.

Slide 32: Six Functional Domains

2. Attending & Completing Tasks

Child's ability to maintain attention and concentration necessary to complete tasks in a timely manner

Slide 33: Six Functional Domains

3. Interacting & Relating with Others

Child's ability to interact appropriately with peers, parents, and other authority figures.

Marked or extreme limitations may be present when a child has severe behavior problems or when a child is extremely shy or socially isolated.

Slide 34: Six Functional Domains

4. Moving About & Manipulating Objects

Includes an assessment of the child's fine and gross motor skills.

Fine motor skills include the mechanics of writing, using scissors, and buttoning.

Gross motor skills include walking, running, and other sports skills.

Slide 35: Six Functional Domains

5. Caring for Yourself

Includes dressing, bathing, brushing teeth and hair, and using utensils appropriately.

Also includes the ability to avoid dangerous situations or behaviors.

Six Functional Domains:

6. Health & Physical Well-being

Includes situations where child has a chronic impairment that has periods of exacerbation that result in inability to attend school or to leave home.

Evidence

Acceptable medical sources of evidence that a child has a medically determinable impairment include

- licensed physicians
- licensed or certified psychologists
- licensed optometrists
- qualified speech-language pathologists
- physical, occupational, and rehabilitation therapists

Sources of evidence for determining how the impairment impacts functioning compared to children of the same age who do not have impairments include

- parents and caregivers
- early intervention and preschool programs
- educators

- Public and private social welfare agency personnel
- Daycare workers
- friends and neighbors

Critically important educational records include

- Ages 0-3: Individualized Family Service Plan (IFSP) –
For children eligible for early intervention services
- Ages 3-18: Individualized Education Program (IEP) -
For children eligible for special education
- Ages 14-18: Plan for transition services -
For adolescents, the IEP includes a plan for transition from school to post-secondary education, work and community living.

Other important school records include

- Report cards
- Special education evaluation reports
- School behavior records such as detention or suspension notices
- Attendance records for children with chronic illnesses
- Standardized test scores

- Advocates can and should attempt to obtain “opinion” evidence from the child’s doctors, teachers, and therapists.
- This “opinion” evidence may be obtained through the use of forms that allow the doctor, teacher, or therapist to give their opinion as to the child’s degree of impairment in each of the 6 functional domains.
- Examples of these types of forms are provided in the Appendix to this presentation.

Advocates may submit any relevant evidence. The formal rules of evidence followed in court proceedings do not apply in SSA administrative proceedings.

SSA regulations provide some guidance on the types of evidence most likely to be indicative of childhood disability. Certainly, a child must show medical evidence of an impairment to be found disabled.

However, other types of evidence are crucial to show how a child's medical impairments impact on his/her development and/or functioning. Even a parent's diary or a letter from neighbor will be accepted at the decisionmaker's discretion as long as it is relevant to the case.

Factors Relevant to the Childhood Disability Determination

How a Child's Functioning Is To Be Evaluated

Compare the child's day-to-day activities to the activities of children the child's age who do not have medical impairments.

Look at whether the child does the things that other children his age typically do or whether he has limitations and restrictions because of his medically determinable impairments.

Look at how well the child does the activities and how much help he needs from his family, teachers, and others.

Standards Used by the Person Who Gave Us the Information

Did the source of information compare a child's functioning to the functioning of other children the same age who do not have impairments?

For example, when a special education teacher says a child is "doing well," ask if she means doing well compared to children in a regular class, rather than compared to her expectations for the child, or compared to other children in the special education class.

Extra Help

Consider the help a child needs to be "extra" only to the extent that it is more help than a child of the same age without an impairment would be expected to need.

Both the extent of extra help and the response to it are important factors to consider.

If the assistance required is significant, this may indicate the presence of a marked and extreme limitation.

Assess how a child would function without the extra help.

Adaptations

Assistive devices and appliances, ranging from eyeglasses and hearing aids to orthotic devices to devices for self-care activities, such as bathing, feeding, toileting, and dressing.

Consider the degree to which the adaptation enables the child to function compared to other children of the same age who do not have impairments

Consider the child's ability to use the adaptation on a sustained basis.

Consider any functional limitations that nevertheless persist.

Structured or Supportive Settings

- Child's home in which family members or other people (visiting nurses or home health workers) make adjustments to accommodate the child's impairment(s);
- Child's classroom at school, whether it is a regular classroom in which the child is accommodated or a special classroom; and
- A residential facility or school whether the child lives for a period of time.

Does the child spend some or all of his time in a structured or supportive setting beyond what a child without such an impairment(s) normally requires?

Consider how the child would function without that structured or supportive setting, even if a child's symptoms or signs are controlled or reduced in a structured setting.

Unusual Settings

SSA recognizes that children may function differently in unfamiliar or one-to-one settings than they do in their usual settings at home, at school, in childcare or in the community. Child may appear more or less impaired on a single exemption than indicated by the information covering a longer period. To minimize potential inconsistencies, the CE provider must be furnished with background information prior to CE.

Early Intervention and School Programs

In assessing disability, SSA should consider...

- Ages 0-3: Individualized Family Service Plan (IFSP) –
For children eligible for early intervention services
- Ages 3-18: Individualized Education Program (IEP) -

- For children eligible for special education
- Ages 14-18: Plan for transition services -
- For adolescents, the IEP includes a plan for transition from school to post-secondary education, work and community living.

Impact Of Chronic Illness And Limitations That Interfere With Activities Over Time

SSA should consider limitations that interfere with a child's activities over time (e.g., child's ability to attend school or participate in school activities) that are caused by chronic illnesses.

SSA should also consider the frequency of severity of a child's episodes of exacerbation

Medications

Even if a child's symptoms or signs are reduced by medications, SSA must still consider whether:

- Any of the functional limitations that persist, even if there is improvement from the medications;
- The medications create side effects that cause or contribute to the child's functional limitations;
- The frequency of need for the medications;
- Changes in the amount of medication or the way it is prescribed; and
- Any evidence over time of how such medications help or do not help the child to function when compared to other children of the same age without impairment.

Treatments

Treatment includes occupational, physical, speech, and language therapy, psychotherapy and psychosocial counseling.

- The frequency of therapy;
- How long the child has received therapy or will need it;
- Whether the therapy interferes with the child's participation in activities typical of children of that age without impairments, such as attending school or classes or socializing with peers; and
- the length and frequency of hospitalizations

Appeal Process

Initial Application

Initial application is filed at local Social Security office or by phone. Individuals can call the nationwide SSA number (1-800-772-1213) to obtain information about the application process.

Adjudicators, with assistance of doctors, at state Bureaus of Disability Determination Services (DDS) make the initial decision in new application.

Adjudicators are required to develop all evidence relevant to disability determination and consider that evidence – both medical and non-medical – in making the disability decision. However, claimant is ultimately responsible for submitting all relevant evidence. Therefore, claimants and advocates should not rely solely on SSA to obtain relevant evidence.

Adjudicators often send applicants to free medical examinations conducted by private physicians and clinics. These exams are known as consultative examinations (CE).

Request for Reconsideration

Claimant has 65 days from date on decision to file request for reconsideration. It is 60 days plus 5 days (SSA assumes that it will take 5 days for the letter of decision to arrive at the claimant's address).

Request for Reconsideration is filed at local Social Security office.

Claimant may submit additional evidence.

Case is sent back to the DDS and assigned to another adjudicator. Adjudicator may send the child to more CEs.

ALJ Hearing

Claimant has 65 days from date on decision to file request for hearing. It is 60 days plus 5 days (SSA assumes that it will take 5 days for the letter of decision to arrive at the claimant's address).

Request for Hearing is filed at local Social Security office.
Claimant may submit additional evidence.

An Administrative Law Judge (ALJ) makes a de novo decision based on his/her review of all evidence in the record and testimony presented at hearing.

ALJ can hear testimony from the child, parent, or other witnesses, such as medical experts and child's teachers. Witnesses may submit written statements in lieu of testimony.

ALJ has the right to issue subpoenas for records or witnesses. However, ALJ has no power to enforce these subpoenas.

SSA is not represented by attorney or advocate at these hearings.

Rules of evidence do not apply at these hearings.

In almost all cases, the hearing notice will indicate that the child must be present at the hearing. In my opinion, children of all ages are extremely unreliable witnesses, and therefore I never call the child as a witness. However, ALJ can and often does question children who are beyond the age of 2 to 3.

ALJ Hearing Preparation

As with any type of evidentiary hearing, it is critically important to practice questions that may be asked by you as the advocate or the ALJ prior to the hearing.

It is also important to prepare and submit a pre-hearing letter brief outlining your legal argument and why the documentary evidence supports a finding of disability.

Appeals Council

Claimant has 65 days from date on decision to file request for Appeals Council review. It is 60 days plus 5 days (SSA assumes that it will take 5 days for the letter of decision to arrive at the claimant's address).

Request for Appeals Council review may be filed by completing the appropriate form at the SSA field office, or by submitting a written request for review directly to the Appeals Council.

The Appeals Council (AC) does not make de novo decisions. Instead, it first decides whether or not to review the ALJ's decision.

Appeals Council

If the AC decides to review the case, it may do the following: affirm the ALJ decision; reverse the ALJ decision; or remand the matter to the ALJ for further action.

The AC will review if: (a) there appears to be an abuse of discretion by the ALJ; (b) there is an error of law; (c) the ALJ decision is not supported by substantial evidence; or (d) there is a broad policy or procedural issue that may affect the public interest.

The AC will review evidence submitted by the claimant only if it is new, material, and relates to the period on or before the date of the ALJ decision.

Federal Court Review

Lawsuit must be filed within 60 days of date of final decision issued by the Appeals Council denying benefits, either in whole or in part.

A lawsuit must be filed in federal district court for the district in which the claimant lives.

Federal Court Review

Two types of review

1. The court will review the final decision of the Commissioner to see if it is supported by substantial evidence and applies proper legal standards; and
2. The court will remand the action to SSA for further review if new evidence is submitted to it that is relevant and for which there is good cause for not submitting to SSA in the administrative proceedings.

Payment of SSI Benefits While Cessation Appeal Is Pending

SSI payments may continue to be paid while a child's claim is being reviewed under the continuing disability review (CR) process. The continued benefits are available at the reconsideration and ALJ levels.

Claimant must request appeal and elect continuation of benefits within 10 days of the date that they receive the SSA notice finding that the child is not disabled. SSA presumes that its notice is received within 5 days of the date on the notice. Thus, a claimant files the appeal within 15 days of the date on the SSA notice denying disability.

Collection of overpayment - If claimant loses appeal, s/he will be asked to pay the money back, including all checks after his/her period of disability ended (2 months after the cessation date), through the month such benefits were received.

Payment of SSI Benefits While Cessation Appeal Is Pending

Request for waiver - Claimant has the right to ask that s/he not have to pay the money back. SSA will waive the overpayment if it decides that the claimant's appeal was in good faith and that the claimant needs his/her income and resources for ordinary and necessary living expenses or that other factors apply. SSA will assume that the appeal was filed in good faith if the child attends all scheduled CEs and hearings or if the child has good cause for missing any of these appointments.

Claimant will not be asked to pay back any Medicaid benefits he/she received while she/he was appealing.

Payment of SSI Benefits While Cessation Appeal Is Pending

If a request for payment of continued benefits is not made within 10 days of receipt of the SSA notice denying disability, they can start at a later date under two different circumstances:

A child can begin receiving continuing payments while the reconsideration or ALJ request is pending if she or he can show good cause for not filing within 10 days; and

Even if continuing benefits are declined at the reconsideration level, benefits can be reinstated effective with the month of the reconsideration determination (or the month of election, if later), if continuing benefits are requested (and request for ALJ hearing is filed) within 10 days after an adverse reconsideration decision is issued.

Good Causes For Late Filing

Children and parents who fail to file appeals within the 60 day limit, or fail to appeal and request that SSI benefits be continued within 10 days may be allowed to file appeals after the deadline if they can show "good cause" for the late filing. A request must be made in writing and give the reasons why the appeal or request for continuing SSI benefits was not made within the time limits.

Good Causes For Late Filing

SSA considers the following:

What circumstances kept the child (or parent or caregiver) from making the request on time;

Whether the child (or parent or caregiver) was misled by SSA's actions;

Whether the child (or parent or caregiver) did not understand the requirements of Social Security law;

Whether the child (or parent or caregiver) had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented the child (or parent or caregiver) from filing a timely request.

What Advocates Should Do Interviewing the Child's Parent/Caregiver

Procedural status of the child's case

- What level of the administrative appeal process
- Whether any hearing dates have been set
- Denial date and the deadline for appeal

Child's medically determinable impairments and what medical care he/she has received

- Preparation of a detailed list of whether the child has received medical care.

Interviewing the Child's Parent/Caregiver

Child's early intervention, preschool, and school status

- Academic performance
- Standardized test results
- Disciplinary reports
- Special education assessment and placement information
- Medical records

Interviewing the Child's Parent/Caregiver

Reasons given for denying the child's SSI claim in SSI denial decisions issued prior to the interview;

Any functional limitations that the child has based on a domain-by-domain review based on the caregiver and documents

Reviewing the SSA Administrative Casefile

SSA maintains an administrative file for all claims that includes completed SSA forms regarding the child's claim and other relevant medical and nonmedical evidence.

These files are available to claimants, their representative payees, and their legal representatives.

Advocates should certainly obtain a copy of the administrative file from SSA to compare what is in the SSA file with what the parent/caregiver identified in the interview, and with what the parent/caregiver reported to SSA.

Obtaining Medical and School Records

After the advocate has interviewed the parent and reviewed the administrative casefile, the advocate needs to obtain missing evidence needed to prove the child's disability claim.

Advocate should send letters to medical care providers, schools, and other sources to obtain needed information.

In addition, advocates may want to obtain more specific statements from, e.g., treating doctors and teachers.