

## **IMPORTANT INFORMATION ABOUT WORK ACTIVITY AND WORK INCENTIVES FOR A CLAIMANT FOR SOCIAL SECURITY DISABILITY BENEFITS**

A claimant for Social Security Disability Benefits may work while a claim is pending for such benefits and not be disqualified for the receipt of such benefits so long as the claimant's earnings do not exceed the year's limit for substantial gainful activity (SGA). For the year 2011 (the same as 2010), earnings of \$1000 per month or more is considered SGA. Any full time job pays more than \$1000. So, this means that a claimant can't work more than part time and the value of the work can't exceed \$1000. However, attempts to work may tend to cause the person(s) evaluating the claim to consider the following:

- Is the claimant able to work more than the current amount of hours being worked---or is the claimant's current work earnings less than the allowable maximum (SGA) simply because those hours were reduced by either the claimant or the claimant's employer.
- If the claimant is filing for disability on the basis of a mental impairment, does the ability to maintain sustained employment, even if part time, detract from the position that the claimant is disabled according to Social Security Administration (SSA) rules. The SSA rules evaluate an individual's ability to engage in normal daily activities (going to work on a regular basis and performing specified job functions on a regular basis are fairly normal daily activities).

If a claimant does attempt to return to work, the work may be categorized as an unsuccessful work attempt if the work is for less than 6 months (usually it needs to be less than 3 months) and the work ends because of the claimant's medical condition that is the basis of the disability. Also, a claimant who has been disabled for 12 months or longer is entitled to a trial work period (TWP). However, there is a dispute as to whether the TWP is only permitted after the claimant has been found to be disabled. There is a good argument that so long as the disability has lasted for 12 months and the SSA is notified of the work attempt as a TWP that it should be treated as a TWP, but this argument is not always accepted by the SSA, the Administrative Law Judge or the federal court judge(s).

There is also an issue of overpayments that can arise if you attempt to work and it is not clear that the SSA has been notified of the work attempt in advance of the work activities. **It is therefore essential that the SSA be properly notified of any work attempt before it is made.**

Work activity may also prompt a continuing disability review (CDR) for a claimant once the claimant is found disabled.

The key SSA rules that encourage a return to work for disabled workers are the rules for a trial work period (TWP), an extended period of eligibility (EPE), Medicare continuation and vocational rehabilitation. These rules generally provide as follows:

- **TWP:** Your TWP protection begins with the month in which you become entitled to cash benefits. Under the TWP rules, you will receive your full benefits for you and your family for at least nine months, regardless of your earnings level. These nine months do not have to be consecutive, and SSA will ignore work you did more than five years ago when counting the nine months.

To count as one of the nine months, your earnings for the month must be at least \$720 (for 2011 and 2010, up from \$700 for 2009 and \$670 for 2008) gross wages (for employees) or \$720 net earnings (for the self-employed)(for 2011 and 2010, up from \$700 for 2009 and \$670 for 2008). A month also counts toward the TWP if the total time spent in the business exceeds 80 hours, even if the net earnings for the month are below \$720.

After the ninth month of trial work, and assuming your work continues, SSA pays benefits for the next three months, again regardless of your earnings level. This is called the

“grace period.” Once these grace benefits are paid, an important benefit protection remains: the “Extended Period of Eligibility” (EPE).

- **EPE.** The EPE is a period of 36 months beginning immediately after the ninth month of trial work. Benefits for you and your family are reinstated at the full amount during the EPE for any month in which your work activity either stops or fall below a level called “substantial gainful activity” (SGA).

Work is generally considered to be SGA if your gross wages from employment (or your net earnings from self employment) are \$1000 (for 2011 and 2010, up from \$980 for 2009 and \$940 for 2008) or more per month. When deciding if your work is SGA, SSA will deduct from your gross earnings the cost of any items and services you need in order to keep working despite your disability.

Note that benefits can resume and stop any number of times during the EPE. Once the EPE ends, cash benefits will continue indefinitely if you are not working at the SGA level. However, even **one month** of earnings over \$1000 after the EPE will cause your disability claim to terminate.

- **Medicare Continuation.** Medicare health insurance coverage for the disabled begins on the second anniversary of your cash benefits. After you complete the ninth month of your TWP, most people will remain eligible for low-premium Medicare for **at least** the following 93 months, **assuming your medical disability continues**, even if you are working at the SGA level. You may also be eligible to buy Medicare coverage after returning to work (sometimes with State assistance if you are low income and of limited resources) if you are not yet age 65, you continue to have a disabling impairment, and your Medicare stopped due to work.
- **Continuing Disability Reviews.** The three main work incentives (the TWP, the EPE and Medicare continuation) all depend on one added factor: SSA must agree that your medical impairments remain at the potentially disabling severity. SSA is required to review your continuing disability from time to time. If medical improvements allow you to resume work, your benefits may end even if you have not received the full advantage of the three work incentives.
- **Vocational Rehabilitation Protection.** If you participate in a Vocational Rehabilitation Program which is approved by SSA and you medically recover while in that program, your benefits will still continue until you complete the Program.

As you can see, the question of whether you should work part time while your claim is pending is not an easy one to answer. In many situations, claimants will have no choice but to do so to survive. However, there are risks to working and, fair or not, working may well impact how a claim is evaluated.

**SCHIFFMAN LAW OFFICE, P.C.**

**4506 N. 12<sup>th</sup> St.**

**Phoenix, AZ 85014**

**Tel.: 602-266-2667 Toll free: 800-545-7372**

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