

The ALERT



The Legal Aid Society
of Cleveland
Since 1905

V. 32, NO. 1 SUMMER 2016

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SSDI AND SSI: What are these Social Security Benefits and Who Qualifies?

By Karen
Seawall

The Social Security Administration (SSA) provides two benefits based on disability or blindness: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). While they both provide benefits for people who are "disabled", SSDI and SSI differ in several ways.

To receive SSI or SSDI benefits, a person must have a "disability". Social Security defines disability as: 1) a medically-determined physical or mental impairment which has lasted, or is expected to last, for at least 12 months, or is expected to result in death, and 2) because of this impairment, a person is not able to work in any "substantial gainful activity" (SGA.) Social Security determines that a person is able to work in SGA, if the employment income the person receives is over a certain amount.

SSDI provides benefits to persons who: 1) are "disabled" and 2) are "insured" by the Social Security trust fund. To qualify as "insured," a person must have worked for a certain length of time, and while working, paid FICA (Federal Insurance Contribution Act) taxes. Eligibility for SSDI does not depend on a person's current income or resources.

SSI provides benefits to persons who: 1) are aged, blind or disabled (including children) and 2) have limited income and resources. A person is considered "aged" for SSI at the age of 65 years.

To be eligible for SSI, a person's current income and resources cannot be over the specific dollar amounts or limits set by Social Security. Some types of income and resources are not counted, such as food stamps, home energy assistance, tax refunds, or tuition scholarships, among others.

In some cases, a child may qualify for SSI. Social Security defines a "child" as a person who: 1) is either under age 18 or under age 22 and regularly attends school, and 2) is not married or head of a household. For a child to be eligible to receive SSI benefits: 1) a child must be either disabled or blind, and 2) a portion of the income and resources of the child's parents cannot be over a certain amount or limit.

Once a person qualifies to receive SSDI or SSI benefits, it is important to read notices from SSA and follow the program rules; otherwise, those benefits could be terminated. If benefits are terminated by SSA, the recipient can appeal the decision by following the directions on the notice or calling Legal Aid to apply for help at 1.888.817.3777.

Rights of People with Disabilities in Subsidized Housing

By Callie Dendrin

The Fair Housing Act (FHA), a federal law, protects people with disabilities from discrimination in housing. Landlords cannot treat tenants with disabilities worse than other tenants because of their disabilities. Also, tenants with mental or physical disabilities can ask for changes to make it easier to live in their units and follow the rules of their leases. These changes are called “reasonable accommodations.” The FHA requires most landlords to provide reasonable accommodations to tenants.

A reasonable accommodation can be any change to management rules, policies, practices or the way services are provided. The reason for the change must relate to the tenant’s disability. An example of an accommodation is permission to have a service animal in an apartment complex that does not allow pets. Another example is providing an assigned parking space for a disabled tenant who cannot walk very far. An accommodation can be requested for almost anything a tenant has to do as part of a lease.

Tenants in subsidized housing must follow many rules. For example, they must prove their income, pass background checks, turn in

paperwork, and attend appointments. Tenants with disabilities can request accommodations for any of these rules.

Some examples of accommodations tenants in subsidizing housing may request are:

- A chance to get back on a waiting list if removed for a reason related to a disability
- Mail-in recertification if a tenant cannot make it to any accessible locations
- Reminder letters or copies of letters sent to someone else if a disability makes it hard for a tenant to remember things
- Not getting evicted if the reason for the eviction is related to a disability

For more information, see <https://laslev.org/accommodations/>, or the John Marshall Law School Fair Housing Legal Support Center at <http://www.jmls.edu/clinics/fairhousing/resources.php>. If you receive a notice of termination, a 3-day notice or eviction complaint, call Legal Aid at 1-888-817-3777 to find out if you are eligible for assistance.

Understanding The Americans With Disabilities Act

By Davida Dodson

The Americans with Disabilities Act (ADA) is a law that guarantees everyone has the same opportunity to enjoy and participate in American life. A person with a disability under the law is someone who has a physical or mental impairment that substantially limits one or more life activities. Life activities include learning, working, self care, performing manual tasks, walking, hearing and many more. How long a person’s impairment lasts is a factor used to decide if a person is considered disabled under the ADA. Impairments that last only for a short period of time are typically not covered, although they may be covered if very severe. A person may be protected under this law based on an existing disability, a record of a disability, or because she is perceived by others as having a disability.

The ADA protects people with disabilities in the work place. An employer must provide a qualified applicant or employee with the full range of employment opportunities. For example, the employer must provide recruitment, hiring, promotion, training, pay, and the same social activities to all employees including those with disabilities. An employer is not permitted to ask about an individual’s disability, severity, and treatment. An employer may ask about an applicant’s ability to do specific job functions. An employer may be required under the ADA to accommodate

an employee who has a disability by modifying equipment or schedules. The ADA requires employers to post a notice that explains the law and its requirements.

The ADA protects people with disabilities in public accommodations. Examples of public accommodations include doctor’s offices, theaters, hotels, restaurants and retail stores. Existing facilities must ensure that individuals are not excluded so long as there is not an undue hardship on the owner. This is accomplished by modifying existing facilities, constructing additional facilities, or relocating to an accessible building. All new construction of places of public accommodations must be accessible. For example, public buildings should provide access for wheelchairs.

Additionally, the ADA protects people with disabilities when they use public transportation like buses or rapid transits. This law also requires the establishment of telephone relay services for individuals who use telecommunications devices for deaf persons (TDD’s).

For more information about the ADA, or to file a complaint if you feel there is a violation of the ADA, you may contact the Justice Department at www.ada.gov or 1-800-514-0301 (voice) 1-800-514-0383 (TTY).

Rights of Students with Disabilities in College

By Katie Feldman

College students with a disability have certain rights as they continue with their education after high school. It is important to know that if you had an IEP (Individualized Education Program) in high school, your IEP does not go with you to college. Instead of providing special education to students with disabilities, colleges must make sure that students with disabilities are treated fairly.

Colleges cannot discriminate against students with disabilities. There are federal and state laws that stop schools from doing this. These laws protect students with disabilities from being denied admission to a school because of a disability or being discriminated against by the school they attend.

Once a student with a disability starts college, these schools must provide academic accommodations and support based on the

student's needs. Some examples of this help may include books on tape, note takers, readers, extra time for tests, or special computer tools. However, these schools do not have to provide students with personal equipment such as wheelchairs.

The steps a student must take to get these services depends on the school. First, a student must tell the school about the disability if requesting services. Contact the school's office for students with disabilities, or ask an advisor where to start.

Students who experience discrimination because of a disability should contact the U.S. Department of Education's Office for Civil Rights. The phone number in Ohio is 216-522-4970. Complaints can also be filled out online at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.

Appealing Decisions in the Health Insurance Marketplace By Dennis Dobos

Are you unhappy with a health insurance decision that has been made for you in the Marketplace? If so, you may appeal the unfavorable decision. You must file the appeal within 90 days after receiving the notice from the Marketplace. Appeals can concern decisions related to:

- Eligibility to buy a Marketplace plan
- Enrolling in a Marketplace plan outside of open enrollment
- Eligibility for an advanced premium tax credit
- Eligibility for cost-sharing reductions
- Eligibility for Medicaid or the Children's Health Insurance Program (CHIP)
- Eligibility for exemption from the requirement to have health insurance

An appeal can be filed by visiting HealthCare.gov/marketplace-appeal. Download and complete an appeal request form. Mail the completed form, with supporting documentation, to the address listed on the form.

You can also write a letter explaining why you think the Marketplace decision was wrong. Always include supporting documentation. Mail the letter to the Health Insurance Marketplace, Attention Appeals, 465 Industrial Blvd., London KY 40750-0061. An appeal can also be faxed to 1-877-369-0129. Once your appeal is filed, the Marketplace Appeals Center may request more information or documentation from you.

It is important to keep proof of when your appeal was mailed and delivered. If using the U.S. postal service, send your appeal

via certified or registered mail with delivery confirmation. If faxing your appeal, remember to keep the fax confirmation. This proof will support the timeliness of your appeal.

If your health situation is urgent, you may request an expedited appeal on the appeal form. Explain why the time for a standard appeal would jeopardize your life, health, or your ability to attain, maintain, or regain maximum function.

You may obtain help to complete the forms. A trusted friend, family member or other person can act as your authorized representative to assist with the appeal. Complete and mail the form "Appoint an authorized representative for my appeal," available at HealthCare.gov/marketplace-appeals/getting-help/. The form can also be requested by calling the Marketplace Appeals Center at 1-855-231-1751. Interpreter services also are available at no cost to persons with limited English proficiency by calling the Marketplace Call Center at 1-800-318-2596.

You will receive notice of the informal resolution through the mail. If you agree, the matter shall be considered resolved. If you disagree or are not satisfied with the informal resolution, you may request a formal telephone hearing. A final decision will be sent to you within 90 days from when the appeal was received by the Marketplace Appeals Center.

To find help navigating the Marketplace, go to healthcare.gov and click on "Find local help."

Support in School for Students with Disabilities

By Danielle Gadowski Littleton

A pre-school, elementary or high school student with a disability may need extra support in school. Some disabilities keep students from participating in school in the same way as other students, like deafness or being unable to walk. Other disabilities, like dyslexia or low IQ, may keep a child from learning in the same way as other students. Disabilities such as Attention Deficit Hyperactivity Disorder (ADHD) or Oppositional Defiance Disorder may keep a child from controlling their behaviors. Children with disruptive behaviors may miss a lot of class time or have trouble paying attention in class.

If a student can learn the same way as other students, but is not succeeding in school, that student may need accommodations. Examples of accommodations are a wheelchair ramp, a sign language interpreter, and extra breaks for a student with ADHD. Accommodations should be recorded in a 504 Plan.

If a student is not learning in school, the school should try interventions. Interventions may include tutoring or a special

reading group. If interventions do not help, a student with a disability may need an Individualized Education Program (IEP). An IEP records the plan for helping a child meet goals specific to that student. Examples of IEP goals are learning math facts, improving speech skills, and developing coping skills.

Both a 504 Plan and IEP are legal documents created by a team at the school that must include the parent. If a school does not follow a 504 Plan or IEP, a parent can file a complaint.

A parent can request that a 504 Plan or IEP be created for a child by writing a letter to the school. Date the letter and state that the child has a disability which contributes to struggles in school. Give the letter to the school district office but be sure to keep an additional copy of the letter. If the school does not respond or denies the request, contact the Ohio Department of Education at 1-877-644-6338. For more information about requesting special education, see <https://lascleve.org/i-think-my-child-needs-special-education-classes-what-is-the-process/>.

The Right to a Court Appointed Attorney in Guardianship Proceedings and Review Hearings

By Deborah Dallmann

Sometimes mental health or physical illnesses make it difficult for a person to make decisions about their basic needs, finances, and medical issues. If you or someone you care about struggles to make these kinds of life decisions, a court can appoint someone else to make the decisions. This process is called "guardianship."

A guardianship starts with an application in Probate Court. Often, the application is filed by a family member or a social service agency. If someone applies to be a guardian for another person, that person has the right to be at all Court hearings. The Court will ask a doctor to evaluate the person, and the person has the right to ask for an independent expert evaluation (a second opinion from a different doctor). The person also has the right to have an attorney represent him or her. If the person cannot afford an attorney or independent expert evaluation, the court must pay these fees.

After the Court approves a guardianship, the person who struggles to make decisions is called a "ward" and the "guardian" must make decisions in his or her best interests. The guardian has to

talk with the ward when possible. If a ward later feels capable of making independent decisions, he or she can ask the Court for a "Guardianship Review Hearing." A review hearing can happen once a year; a request to modify or end the guardianship can be made anytime.

Before 2013, few Ohio probate courts appointed the ward an attorney in the Review Hearing. However, in January 2013, the Ohio Supreme Court decided that all Probate Courts must appoint an attorney if the ward could not afford one in the case *State ex rel. McQueen v. Cuyahoga County*. Now, Ohio law requires probate courts appoint an attorney to represent a ward at any hearing reviewing or challenging the guardianship, if the ward cannot afford counsel and requests an attorney.

For more information about guardianships, see Ohio Guardianship Guide at www.ohioattorneygeneral.gov/Files/Publications. Helpful forms and other information may also be found at Disability Rights Ohio, www.disabilityrightsohio.org.

FMLA – It's not just about extended leaves

By Wendy Horvath

Have you missed work in the past year due to your own medical condition or that of a family member? Even just a few days spread over time? If you have, your job may be protected under the Family and Medical Leave Act – or FMLA.

What is FMLA?

FMLA allows you to take up to 12 weeks of unpaid leave for certain family and/or medical reasons – or up to 26 weeks to care for a covered military service member – without the risk of losing your job. FMLA also protects your existing health insurance during your covered leave.

What Employers must follow FMLA?

All public agencies, public and private K-12 schools, and companies or organizations with more than 50 employees.

Who is eligible for FMLA?

Employees who have worked for a covered employer at least 12 months, and worked at least 1,250 hours over the past 12 months. However, if you work at a location that employs less than 50 employees, your employer may not be required to provide FMLA protection.

When can FMLA be used?

- For the birth and care of your newborn child (both parents are covered!)
- When a child is placed with you for adoption or foster care

- When you need to care for an immediate family member with a serious health condition
- When you are unable to work because of your own serious health condition

What is considered a serious health condition?

An illness, injury, impairment or physical or mental condition that results in a hospital stay or requires continuing treatment by a health care provider.

Does the leave have to be taken all at once?

No! In certain situations, you may take leave periodically, or even work a reduced schedule for a period of time.

How do I request FMLA?

You must notify your employer of your need to take FMLA at least 30 days before the start of your leave – unless the leave is unexpected. Your employer may request certification from a medical provider prior to confirming your leave qualifies as FMLA leave.

What can I do if my employer denies my FMLA request?

If you feel your rights under FMLA have been violated, or if you have questions regarding your FMLA rights, contact the Wage and Hour Division of the Department of Labor at 1-866-487-9243.

For more information, please visit <http://www.dol.gov/whd/fmla/employeeguide.pdf>



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LEGAL ADVICE

**2015 Brief Advice and Referral Clinics
Civil Matters Only (Not Criminal)**

Legal Aid provides services in the areas of consumer rights, disability, domestic violence, education, employment, family law, health, housing, foreclosure, immigration, public benefits, utilities, and tax.

First-come, first-served. Bring important papers with you! Questions? Call 216-687-1900 or visit www.lasclev.org for updated clinic listing.

WEDNESDAY, AUGUST 3 Special Clinic for U.S. Veterans, 2:30 – 4:00 PM Call 216-391-0264 for an appointment

THURSDAY, AUGUST 4 Expungement Clinic, By Appointment Only – Please Call 888-817-3777

WEDNESDAY, AUGUST 10 2:00 PM – 3:30 PM Catholic Charities Ashtabula, 4200 Park Avenue, Third Floor, Call 440-992-2121 for an appointment

SATURDAY, AUGUST 13 9:30 AM – 11:00 AM Cleveland Public Library – South Brooklyn Branch, 4303 Pearl Road

THURSDAY, AUGUST 18 2:00 PM – 3:30 PM Oberlin Community Services, 285 South Professor Street, Oberlin, Call 440-774-6579 for an appointment

FRIDAY, AUGUST 19 Pro Se Divorce Clinic – Cuyahoga County, Call 888-817-3777 for an appointment

SATURDAY, AUGUST 20 9:30 AM – 11:00 AM UH Otis Moss Jr. Health Center, 8819 Quincy Avenue, Cleveland

THURSDAY, SEPTEMBER 1 Expungement Clinic By Appointment Only – Please Call 888-817-3777

WEDNESDAY, SEPTEMBER 7 Special Clinic for U.S. Veterans, 2:30 – 4:00pm, Call 216-391-0264 for an appointment

SATURDAY, SEPTEMBER 10 9:30 AM – 11:00 AM Cleveland Public Library – Glenville Branch, 11900 St. Clair Avenue



The
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Since 1905

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RETURN SERVICE REQUESTED

Legal Aid has improved its intake system to better serve the Northeast Ohio community.
Please share this information with your constituents:

**If you need legal assistance,
you can contact Legal Aid any weekday for help.**

New intakes are processed via phone:
888-817-3777 (toll-free)
Monday, Wednesday, Friday: 9 a.m. – 4 p.m.
Tuesday, Thursday: 9 a.m. – 2 p.m.

If you prefer an in-person intake application, those are handled:
Tuesday, Thursday: 9 a.m. – 1 p.m.
at any of our four Northeast Ohio offices (Cleveland, Elyria, Jefferson & Painesville).

Visit www.lasclev.org for more information!



Legal Aid sometimes invites community members to give their opinion on different topics during a focus group. If you might like to participate in a focus group in the future, please send an email with your name and contact information to focusgroup@lasclev.org.

This newsletter is meant to give you general information and not to give you specific legal advice. This information cannot take the place of advice from a lawyer. Each case is different and needs individual legal advice. You should contact a lawyer if you need representation or if you have questions.

If you have a communications limitation, contact us through the Ohio Relay Service. Interpretation services are available so that anyone can communicate with us in his or her dominant and/or preferable language.

Publication of The Alert is made possible, in part, by a grant from the Ohio Department of Aging through the Western Reserve Area Agency on Aging and District XI Area Agency on Aging.