

Unlocking the Mysteries of SSDI and Medicare

Last Updated: 12/11/2008

At the National Academy of Elder Law Attorneys' 2008 Advanced Elder Law Institute, ASNP members [Patricia E. Kefalas Dudek](#) and [Sanford J. Mall](#), along with the Center for Medicare Advocacy's Vicki Gottlich and Alfred Chiplin, teamed up for a two-part presentation titled *After Your Client Has SSDI, What About Medicare?* In the first part, attorneys Dudek and Mall focused on the basics of Social Security Disability Income (SSDI) applications, benefits and appeals. Gottlich and Chiplin then discussed Medicare issues.

Dudek and Mall began by reviewing the qualifications for SSDI and the limits that the Social Security Administration (SSA) places on substantial gainful activity (SGA) by beneficiaries.

Dudek pointed out that the SSA should make deductions from its SGA calculation in order to allow a beneficiary to remain on SSDI. She said that advocates have to "track to see how close to SGA you are getting, and then you really need to see if [there are] any of the subsidies or work-related expenses. . . ." Common impairment-related work expenses include supported employment, job training, driving time and gas. In addition, several trial work programs allow a beneficiary to begin a transfer to work without losing benefits immediately.

Adult children seeking to qualify for SSDI on a parent's work record must have developed their disability before turning 22. This can be hard to prove for some older beneficiaries. It may be easier to apply for SSI and work on proving an SSDI claim later. Unfortunately, if an applicant is denied the appeals process often lasts years. For those who need insurance immediately and who qualify, the state Medicaid application is much quicker and often establishes evidence of disability that will speed the SSA's screening process.

Many beneficiaries assume that the SSA is monitoring their case and will cut off benefits when they exceed the SGA limit. In fact, the beneficiary typically continues to receive SSDI for a long time, and when the SSA does discover the problem, it sends an enormous bill for the overpayment. In these situations, the beneficiary can request a reconsideration or a waiver of the overpayment. Mall explained that "the waiver consideration [is] like hardship. If [the beneficiary] wasn't able to understand, if she really did take all of the necessary steps or reasonable steps based on her ability, she really shouldn't have this penalty imputed against her."

Dudek concluded with a brief discussion of an issue that continues to confound attorneys and the beneficiaries' families -- the SSA's refusal to accept properly executed durable powers of attorney, or sometimes even duly appointed guardians. In both cases, Dudek thinks that there is a winning argument using the 10th Amendment to the Constitution, which gives the states primacy in all areas of the law not preempted by the federal Constitution.

Dudek described a case in which the SSA refused to honor her appointment as conservator of a beneficiary and accept her as a representative payee. She "had a petition brought in front of the probate court judge who appointed me, and I noticed up our Social Security Office and said you need to come in and show cause why you should not be held in contempt of court for ignoring the order of the court with exclusive jurisdiction to make this decision." Before the hearing was held, the SSA backed down and allowed the appointment to proceed.

In the session's second half, Gottlich and Chiplin picked up the Medicare part of the story. They explained that under normal circumstances, an SSDI beneficiary becomes eligible for Medicare beginning in the 24th month after being eligible for SSDI. If an SSDI beneficiary loses SSDI and engages in a trial work

period, the law gives him the potential for 78 months of extended Medicare coverage. Chiplin pointed out that if a beneficiary participates in the voluntary Ticket to Work program, "you can get up to 93 months of Medicare coverage."

Medicare beneficiaries who are also eligible for Medicaid are automatically enrolled in Medicare Part D for their prescription drug coverage, even though in many states this means a reduction in benefits. The automatic enrollment in Part D also cancels the often better coverage beneficiaries were initially receiving. In these cases, a beneficiary can opt out of the Part D plan and retain their private coverage, Gottlich and Chiplin said.

Because the Medicare start date relates back to the start of SSDI, beneficiaries often obtain Medicare coverage without any delay if they get more than 24 months of retroactive SSDI coverage. For beneficiaries who don't fit this profile, Gottlich and Chiplin suggested applying for Medicaid, if possible, to cover the two-year waiting period. They also emphasized that other state and community programs may provide important benefits before Medicare coverage begins. Certain categories of beneficiaries, including people with ALS, do not have to wait the full two years before gaining Medicare eligibility.

Those who are eligible for Medicare Part B but who delay enrollment face a 10 percent late penalty added to their premium for each full year of delay. Chiplin explained that "the penalty starts running after each 12-month period, so you get a bit of a grace period there, but if you mess around for a whole year, then those years start adding up." SSDI beneficiaries who were enrolled in Medicare while under age 65 get a new enrollment period and lose any previous penalties once they reach 65.

Many Medicare programs require cost sharing and monthly premiums. Gottlich and Chiplin addressed several ways to help meet these costs, focusing on the Medicare savings programs for low income beneficiaries -- QMB (Qualified Medicare Beneficiary Program), SLMB (Specified Low Income Medicare Beneficiary Program) and QI (Qualified Individual Program). These programs pay Part B premiums, and the QMB program pays for Part B cost sharing. Gottlich pointed out that "you apply for these programs through the state Medicaid office. If you do a state Medicaid application, in theory they are supposed to check you out for these programs as well." Medigap policies are also available for some beneficiaries, but federal law only mandates that these plans be available to those over age 65. In some states, insurance companies may offer plans for people with disabilities under age 65, but they are not required to do so.

Gottlich and Chiplin closed with a discussion of the interaction between employer-sponsored coverage and Medicare. If a beneficiary works for an employer who has fewer than 100 employees, Medicare will be his primary coverage until he reaches age 65, at which point the employer-provided coverage becomes primary. At this point, beneficiaries can often drop their Medicare Part B coverage (avoiding the premium costs) since their employer-sponsored plan will provide many of the Part B services. When the employee loses employer-sponsored coverage, he can go back to Part B without penalty if he enrolls within the proper time frame.

Published: Academy of Special Needs Planners

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