

TRAUMATIC BRAIN INJURY AND SOCIAL SECURITY DISABILITY

I am frequently asked whether someone with a Traumatic Brain Injury can get Social Security disability benefits. The answer is YES, depending on the specific facts of each case. Social Security disability benefits are not awarded based solely on a diagnosis. The key to getting these benefits is to prove that your limitations are severe enough to prevent you from working on a full-time basis.

Social Security has a very specific definition of disability. I talk to many clients who believe that because they are unable to return to their specific job they will automatically be found disabled by the Social Security Administration. This is not true.

The definition of disability that applies to Social Security claims is:

the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition you must have a severe impairment(s) that makes you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.
20 C.F.R. §404.1505

What does this really mean? Basically, your medical or psychiatric condition must be so severe that it keeps you from doing any type of work on a full-time basis and has already lasted for 12 months or longer, or *is expected* to last that long. The determination of disability is based on the information in your medical records, reports from your treating doctors about your physical and/or mental limitations, reports from any Consultative Examinations scheduled by the Social Security Administration and your testimony at the hearing before an administrative law judge. The Social Security administration will consider whether you are capable of returning to any of the jobs that you most recently held or *any other* type of work. This determination of disability does not consider whether you could earn the same amount of money in other types of jobs. This determination is based solely on your physical and/or mental capabilities.

I am also frequently asked whether Social Security has some type of “partial disability” award. The answer is NO. For Social Security purposes your condition must be totally disabling for at least 12 months. However, you can still receive benefits if your condition improves and you return to work. This is called a “closed period” and means that you were unable to work on a full time basis for at least 12 months but have now recovered and can return to work. For example, if you are injured in a serious car

accident you might require ongoing therapy for 18 months. After that period you may be able to return to work. You can still qualify for Social Security disability benefits for that 18 month period. You would not receive ongoing monthly benefits, however, once you can return to work.

Medical evidence of your physical and/or psychological limitations is the key to getting Social Security disability benefits. If you have been unable to work for at least 12 months or anticipate that you will be unable to work for that long you may qualify for Social Security disability. So, if this describes your situation you should apply right away.

Sharon Christie is a nurse and an attorney in Timonium, Maryland. She handles Social Security disability and serious personal injury cases. To receive a free copy of her Unofficial Guide to Social Security Disability Claims visit her website at www.SharonChristieLaw.com or call 410-823-8200.