

# Social Security Changes HIV Disability Rules and Institutes Periodic Reviews of HIV Claims



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## *Patients and their providers need to know how the Social Security Administration (SSA) determines disability and how to defend active claims*

The Social Security Administration (SSA) has released new “listings” or medical guidelines for HIV-based disability claims for the first time since 1991. SSA has also announced it will now conduct continuing disability reviews on HIV claims, as it does for most disability claims. Individuals applying for disability or whose claims are reviewed should have a clear understanding of how they and their doctors should document disability in order to qualify for Social Security benefits.

### Revised Listings

Under the old listings, patients qualified for Social Security disability if they had an AIDS defining condition (Pneumocystis pneumonia, various bacterial, viral, fungal infections, skin conditions, Kaposi Sarcoma, severe diarrhea and dehydration, etc.) or “repeated manifestations of HIV” resulting in functional limitations. As of January 1, 2017, the new listings move away from AIDS defining conditions and allow an award of disability when there is either a serious HIV-related condition, a qualifying CD4 count, repeated hospitalizations, or, as before, “repeated manifestations” of HIV. Individuals who do not qualify for HIV disability can still qualify by meeting the medical requirements for another physical or mental condition.

### Under the new listings, the following could qualify as a disabling condition:

- Serious HIV-related conditions, such as Multicentric Castleman disease, primary central nervous system or primary effusion lymphoma, progressive multifocal leukoencephalopathy, or pulmonary Kaposi sarcoma
- A low CD4 count (50 or less)
- CD4 of 200 or less (or CD4 percentage of less than 14), plus a low BMI or hemoglobin count
- Complications of HIV requiring hospitalization 3 times in a 12-month period
- Repeated manifestations of HIV that result in significant and documented symptoms coupled with functional limitations (your ability to sit, stand, walk or lift objects as you would in everyday life or at work)

An additional change in policy includes the rescission of an SSA policy which previously stated that HIV/AIDS cases did not have to prove the duration requirement (that a condition will last 12 months or more or result in death) because HIV/AIDS cases are no longer treated as terminal illness cases. It remains to be seen whether this policy change will greatly impact the amount or type of additional evidence applicants will be required to provide.

### Continuing Disability Reviews (CDRs)

The Social Security Administration conducts CDRs to determine if a person living with a disability has medically improved and is now able to work. In the past, Social Security generally did not review AIDS-related disability claims. **Effective March 1, 2017, Social Security will review HIV claims just as they do most others. However, Social Security says they have no intention of conducting wholesale reviews of existing claims.** HIV claims will now be subject to review unless the claim is based on Multicentric Castleman disease, primary central nervous system lymphoma, primary effusion lymphoma, progressive multifocal leukoencephalopathy), or pulmonary Kaposi sarcoma.

## All other reviews will be based on your condition when SSA made their decision that an applicant meets their definition of disability:

- If improvement is expected, a review could be done 6-18 months after their decision
- If improvement is possible but can't be predicted, review is about every 3 years
- If improvement is not expected, review is about every 7 years

A CDR may lead to the termination of benefits if there is a clear, documented improvement in the person's health condition(s). Thus, it is imperative that a person receiving SSA disability benefits continue to remain in care, attend regular medical appointments and take medication as prescribed.

## Documenting Disability

The Social Security Administration looks at medical records to determine disability. They request files from any doctors applicants tell them they have seen for their health condition(s). These may include medical records from HIV specialists, primary care doctors, psychiatrists, therapists, Emergency Room physicians and other providers who have treated their health condition(s). **Documentation is the key to qualifying for disability, appealing a denial or maintaining a disability claim.** Applicants must be sure that providers fill out SSA's forms and include clearly written notes. It is recommended that applicants keep a list of all providers they have seen or continue to see and hospitals and clinics where they have been seen.

If applicants fail to report symptoms to providers, then those symptoms cannot be considered in any disability claim(s) filed with SSA. For this reason, a series of uneventful visits with healthcare providers often fails to capture the severity of impairments. Additionally, if an applicant is prescribed medications, it is vital that the applicant take these medications regularly and as prescribed.

## Where to Get Help Filing or Defending a Disability Claim

Find a benefits counselor through an AIDS service organization or clinic if you are filing a new claim. If your claim is under review or has been denied, ask your service provider to help you find an attorney. Online searches will produce many sites that offer assistance, information or referrals to legal help.

There is a lot of information online for people filing Social Security Claims	
<b>Social Security's website</b>	Includes application forms, medical and mental health functional capacity forms, information for you and your doctors on providing medical and mental health evidence and more: <a href="http://www.ssa.gov/disabilityssi">www.ssa.gov/disabilityssi</a>
<b>Duke University Law School Health Justice Clinic</b>	Summarizes recent changes and other HIV Social Security related issues: <a href="https://law.duke.edu/healthjustice/resources">https://law.duke.edu/healthjustice/resources</a>
<b>Referrals to California HIV clinics, service providers, etc.</b>	CA Office of AIDS: (800) 367-2437 ( <a href="https://npin.cdc.gov/ca">https://npin.cdc.gov/ca</a> )
<b>For benefits counseling:</b>	APLA Health: (213) 201-1615 ( <a href="http://www.aplahealth.org">www.aplahealth.org</a> ) San Francisco AIDS Foundation: (415) 487-3000 ( <a href="http://www.sfaf.org">www.sfaf.org</a> ) Positive Resource Center: (415) 777-0333 ( <a href="http://www.positiveresource.org">www.positiveresource.org</a> )
<b>For legal assistance:</b>	Inner City Law Center in Los Angeles: (213) 891-2880 ( <a href="http://www.innercitylaw.org">www.innercitylaw.org</a> ) Los Angeles HIV Law & Policy Project: (310) 794-7367 ( <a href="http://www.thelahlpp.org">www.thelahlpp.org</a> ) AIDS Legal Referral Panel: (415) 701-1100 ( <a href="http://www.alrp.org">www.alrp.org</a> )
<b>For all SSA forms:</b>	Social Security Disability Facts: ( <a href="http://www.ssdfacts.com">www.ssdfacts.com</a> )

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