

# CRS Report for Congress

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## Social Security Disability Insurance: The Five-Month Waiting Period for SSDI Benefits

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### Summary

Current law requires that a person wait five months from the onset of a qualifying disability before receiving Social Security benefits. This report explains the five-month waiting period and its legislative history. This report also provides information on other programs that provide income support during this waiting period. It also briefly describes legislation introduced in the 109<sup>th</sup> Congress that would reduce or eliminate the five-month Social Security Disability Insurance (SSDI) waiting period (H.R. 308, H.R. 2799, and S. 1199). This report will be updated to reflect legislative activity.

### The Five-Month Waiting Period for Disability Insurance Benefits

Title II of the Social Security Act (the act) provides that certain individuals may be entitled to Social Security Disability Insurance (SSDI) benefits under the federal Old Age, Survivors, and Disability Insurance (OASDI) program if they meet the following statutory requirements:<sup>1</sup>

- The individual's medical condition meets the definition of disability as specified in Section 216 of the act,<sup>2</sup> 42 U.S.C. 416;
- The individual has filed a claim for disability benefits;

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<sup>1</sup> For more information on the SSDI program, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)* by April Grady and Julie Whittaker. (Hereafter cited as CRS Report RL32279.)

<sup>2</sup> A person is disabled under the terms of the act if he or she is unable to engage in any substantial gainful activity (SGA, for 2005 earnings of \$830 per month for non-blind persons and \$1,380 per month for blind persons) because of a medically determinable physical or mental impairment. This impairment must be expected to result in the impaired person's death, or be expected to last at least 12 consecutive months. In addition, this impairment must prevent a person from engaging in their previous work or in any other work that exists in the national economy. The Supreme Court held in *Barnhart v. Thomas* 124 S. Ct. 376 (2003) that the previous work test does not require that an individual's prior job exist in the national economy.

- The individual is insured, generally requiring either a work history or the work history of a parent or spouse, as specified in Section 214 of the act,<sup>3</sup> 42 U.S.C. 414;
- The individual has not reached normal retirement age as provided in Section 216 of the act,<sup>4</sup> 42 U.S.C. 416; and
- The individual has completed a five-month waiting period.

**The Five-Month Waiting Period.** The waiting period for SSDI benefits consists of five consecutive calendar months beginning with the first full calendar month in which a covered individual satisfied the test of disability. If an individual's disabling condition began before he or she met the insurance requirements, the waiting period would begin with the first full calendar month after insured status was gained. During this waiting period SSDI benefits cannot be paid. It is important to note that this waiting period begins at the onset of the disabling condition and is not affected by the date a worker applies for SSDI benefits. Workers are encouraged by the Social Security Administration (SSA) to apply for benefits at the onset of their disability. The first month counted as part of the waiting period can be no more than 17 months before the month of application and thus, retroactive benefits are limited to 12 months from the date of application.

**Retroactive Benefits.** Section 223 of the act, 42 U.S.C. 423, provides for retroactive SSDI benefits when the onset of disability occurred before an application for benefits was filed. In such cases, a beneficiary is entitled to benefits retroactive to five months after the date of disability onset provided that this date is within one year of the date of application.

**Exception to the Five-Month Waiting Period.** Section 223 of the act, 42 U.S.C. 423, provides one exception to the five-month waiting period. A person who, in the five years immediately preceding the onset of a current disability, had either received SSDI benefits or had a disabling condition that met the requirements set forth in Section 216 of the act, 42 U.S.C. 416, is entitled to immediate benefits paid from the onset of disability. This exception was part of the Social Security Amendments of 1960, P.L. 86-778.

## Legislative History of the SSDI Waiting Period

A waiting period from the onset of disability to eligibility for benefits has been part of the SSDI program from its inception. The Social Security Amendments of 1954, P.L. 83-761, made the first provisions for loss of work due to disability and included language that exempted a period of disability from being counted when determining retirement benefits.<sup>5</sup> Two years later Congress passed the Social Security Amendments of 1956, P.L.

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<sup>3</sup> A detailed explanation of the insurance requirements can be found on the SSA website at [<http://www.ssa.gov/dibplan/dqualify3.htm>] and in CRS Report RL32279.

<sup>4</sup> A detailed explanation of the normal retirement age can be found on the SSA website at [<http://www.ssa.gov/OACT/ProgData/nra.html>] and in CRS Report RL32279.

<sup>5</sup> This measure found in the 1954 Amendments is commonly referred to as the "Disability Freeze." For more information, see Edward D. Berkowitz, "Supporting Disability: An Historical (continued...)"

84-880, which authorized the payment of SSDI benefits to persons over the age of 50 after a six-month waiting period. The age requirement was removed in 1960.

**Congressional Reasoning for the Waiting Period.** In 1955, the House Committee on Ways and Means Report recommending passage of the proposed Social Security Amendments discussed the rationale for a six-month waiting period between the onset of disability and eligibility for federal benefits. This report cited the unique nature of the federal definition of disability and called its requirement that a disabling condition be expected to result in either death or long duration “more exacting” than the disability definitions commonly used by commercial insurance carriers at the time, many of which had their own six-month waiting periods. In addition, the Committee felt that the six-month waiting period was “long enough to permit most temporary conditions to be corrected or to show definite signs of probably recovery” and would be of sufficient length to make it “unprofitable for a person who can work not to do so.”<sup>6</sup>

**Changes to the SSDI Waiting Period.** Two significant changes to the original six-month waiting period have been passed as part of the creation of the SSDI program. The first change, the Social Security Amendments of 1960, P.L. 86-778, eliminated the waiting period for disabled workers who were previous SSDI recipients or who had a previous disabling condition in the five years prior to the onset of their current disability. In order to be exempted from the waiting period the previous disabling condition must have met the statutory definition of disability as provided in Title II of the act.

In their reports to the House and Senate on the 1960 Amendments, the Ways and Means and Finance Committees saw the six-month waiting period for those with previous disabilities as a possible barrier to return to work efforts stating:

Most disability insurance beneficiaries who return to work do so despite severe impairments. Where a disabled person becomes employed without any improvement of his condition, a more or less slight change in his situation can result in the loss of his job and make him once again eligible for disability insurance benefits. Other disabled persons, whose medical conditions may improve sufficiently to require termination of benefits, may subsequently grow worse again and become reentitled to benefits. A new six-month qualifying period during which they receive neither earnings nor benefits imposes a hardship on them and their families, and may be a real bar to any further work attempts.<sup>7</sup>

The second change to the SSDI waiting period reduced the waiting period from six to five months as part of the Social Security Amendments of 1972, P.L. 92-603. The

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<sup>5</sup> (...continued)

Perspective,” *American Rehabilitation*, vol. 25, no. 1, (1999), pp. 2-8.

<sup>6</sup> U.S. Congress, House Committee on Ways and Means, *The Social Security Amendments of 1955*, report to accompany H.R. 7225, 84<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 1189 (Washington: GPO, 1995), pp. 5-6. The Senate Finance Committee did not include a provision for disability benefits in its report.

<sup>7</sup> U.S. Congress, House Committee on Ways and Means, *The Social Security Amendments of 1960*, report to accompany H.R. 12580, H.Rept. 1799 (Washington: GOP, 1960), pp. 13-14, and U.S. Congress, Senate Committee on Finance, *The Social Security Amendments of 1960*, report to accompany H.R. 12580, 86<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 1856 (Washington: GPO, 1960), p. 17.

intent of this change was to reduce the financial burden on applicants and in its report the Committee on Ways and Means wrote that “reducing the waiting period from six months to five months would diminish the financial hardships faced by those workers who have little or no savings or other resources to fall back on during the early months of long-term disability.”<sup>8</sup> The Senate Finance Committee went further than the House and recommended reducing the waiting period to four months.<sup>9</sup>

The SSA is in the process of implementing several demonstration projects that will alter the benefit structure of the SSDI program.<sup>10</sup> However, none of these demonstration projects will change the existing five-month waiting period between the onset of disability and eligibility for SSDI benefits.

## Potential Income Supports During the Five-Month Waiting Period

**Supplemental Security Income.** Title XVI of the act authorizes Supplemental Security Income (SSI) benefits for individuals that meet the statutory test of disability or are over the age of 65 and who fall below specific income and asset thresholds.<sup>11</sup> SSI beneficiaries need not have any prior work history or meet the insurance requirements of SSDI and there is no waiting period between the onset of a disability and eligibility for SSI benefits.<sup>12</sup> Thus, SSI can be used by some disabled workers to lessen the economic hardship faced by the lack of earnings and benefits during the SSDI waiting period. SSI benefits are not available to residents of Puerto Rico, Guam, or the U.S. Virgin Islands.<sup>13</sup>

All SSI beneficiaries, regardless of disability or state of residence, receive the standard benefit of \$579 for an individual and \$869 for a couple. Forty-four states and the District of Columbia add a supplement to this benefit for their residents. The amount of the federal benefit, plus any state supplement, may be reduced or offset by some earned and unearned income.<sup>14</sup> Thirty-nine states, the District of Columbia, and the

<sup>8</sup> U.S. Congress, House Committee on Ways and Means, *The Social Security Amendments of 1971*, report to accompany H.R. 1, 92<sup>nd</sup> Cong., 1<sup>st</sup> sess., H.Rept. 92-231 (Washington: GPO, 1971), p. 56.

<sup>9</sup> U.S. Congress, Senate Committee on Finance, *The Social Security Amendments of 1972*, report to accompany H.R. 1, 92<sup>nd</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 92-1230 (Washington: GPO, 1972).

<sup>10</sup> More information on these demonstration projects can be found on the SSA website at [<http://www.ssa.gov/disabilityresearch/demos.htm>].

<sup>11</sup> For more information, see CRS Report RL32279; the SSA publication, *Understanding Supplemental Security Income*, available on the SSA website at [<http://www.ssa.gov/notices/supplemental-security-income/text-understanding-ssi.htm>]; and 20 C.F.R. § 416.

<sup>12</sup> In 2003, 14% of disabled worker beneficiaries jointly received SSI and SSDI benefits. For more information, see Social Security Administration, *Annual Statistical Supplement, 2004*, vol. 3, no. 8., 2005.

<sup>13</sup> Residents of these jurisdictions are eligible to receive federal benefits from their commonwealth or territorial government under the provisions of Title XIV and Title XVI of the act. These benefits are administered by the Department of Health and Human Services.

<sup>14</sup> Not all income is counted by SSA when determining a monthly SSI benefit. For more information, see CRS Report RL32279; the SSA publication, *Understanding Supplemental* (continued...)

Commonwealth of the Northern Mariana Islands grant Medicaid eligibility to all SSI recipients or have Medicaid eligibility rules that are the same as those of the SSI program.<sup>15</sup>

**Temporary Disability Insurance.** California, Hawaii, New Jersey, New York, Puerto Rico, and Rhode Island currently administer Temporary Disability Insurance (TDI) programs that provide either state or private benefits to workers with disabilities who are not receiving SSDI benefits. In addition, employees of the railroad industry in all states are eligible for TDI benefits administered by the federal Railroad Retirement Board in accordance with provisions of the Railroad Unemployment Insurance Act. The seven TDI programs provide temporary benefits, with maximum durations of between 26 and 52 weeks, for those with an earnings history who are unable to work because of a disability and who are not receiving workers' compensation or SSDI benefits.<sup>16</sup>

**Workers' Compensation.** Workers' compensation systems in each state provide wage replacement and medical benefits to workers' unable to work because of an employment-related illness or injury and may be able to pay benefits during the SSDI waiting period. The federal government administers workers' compensation for its employees under the Federal Employee's Compensation Act and the Energy Employee's Occupational Illness Compensation Program. The federal government also administers workers' compensation systems for some private sector employees in the maritime, mining, and railroad industries through the Longshore and Harbor Workers Compensation Program, the Black Lung Benefits Program, and the Federal Employee's Liability Act.<sup>17</sup>

**Unemployment Compensation.** In each state, workers covered by state unemployment insurance systems may be eligible to receive partial wage replacement for up to 26 weeks in the event of a job separation. The states, however, require that those receiving unemployment compensation be able and willing to work, a condition that may exclude many waiting for SSDI eligibility. Unemployment benefits are administered by the states within federal guidelines under Title III of the act.<sup>18</sup>

**Private Disability Insurance.** Private disability insurance programs offered by employers can be used to provide wage replacement benefits during the five-month waiting period for SSDI benefits. In 2004, 38% of private sector workers were covered

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<sup>14</sup> (...continued)

*Security Income*; and 20 C.F.R. § 416.

<sup>15</sup> A complete list of these states can be found on the SSA website at [<http://www.ssa.gov/work/ResourcesToolkit/Health/medicaid.html>].

<sup>16</sup> For more information on TDI programs, see Social Security Administration, "Temporary Disability Insurance," *Social Security Bulletin*, vol. 64, no.3, (2003), p.56.

<sup>17</sup> For more information on state and federal workers' compensation programs, see Charles B. Lewis, *Workers' Compensation Law and Strategy Guide* (New York: Aspen Publishers, 2005).

<sup>18</sup> For more information on unemployment compensation, see CRS Report 95-742, *Unemployment Benefits: Legislative Issues in the 108<sup>th</sup> Congress*, by Julie Whittaker.

by some form of private temporary disability insurance<sup>19</sup> and it is estimated that up to 20% of SSDI beneficiaries received payments from private disability insurance policies before being eligible for federal benefits.<sup>20</sup>

## Impact of the Five-Month SSDI Waiting Period

The five-month waiting period between the onset of disability and eligibility for SSDI may have a negative impact on the income of those seeking to enter the program. During this waiting period, persons with disabilities are either not working, or earning less than SGA. In addition they are either not receiving monthly benefits to replace lost wages or are receiving only SSI benefits which are usually lower than SSDI benefits.

One impact that may not be as clear, however, is the role the waiting period plays in discouraging possible beneficiaries from applying for benefits. This waiting period, and its accompanying loss of income lessen the overall generosity of the SSDI benefit. One study estimates that eliminating the waiting period would have the same positive effect on the number of SSDI applications as a 10% increase in the level of benefits.<sup>21</sup>

## Legislative Activity for the 109<sup>th</sup> Congress

Three bills have been introduced in the 109<sup>th</sup> Congress that would alter or eliminate the current five-month SSDI waiting period:

- H.R. 308 would eliminate the five-month waiting period between the onset of disability and eligibility for SSDI benefits;
- H.R. 2799 would authorize the Social Security Commissioner to waive the five-month waiting period in cases where the Commissioner determines that the waiting period poses an undue financial hardship for terminally ill persons;
- S. 1199 would reduce the waiting period for persons with mesothelioma to 30 days and would require that the first month of the waiting period be no more than 13 months prior to the date of application.

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<sup>19</sup> Data taken from the Bureau of Labor Statistics Employee Benefit Survey and can be found on the Department of Labor website at [<http://www.bls.gov/ncs/ebs/sp/ebsm0002.pdf/>].

<sup>20</sup> Todd C. Honeycutt, "Program and Benefit Paths to the Social Security Disability Insurance Program," *Journal of Vocational Rehabilitation*, vol. 21, no.2, (2004), pp. 83-94.

<sup>21</sup> Brent Kreider, "Social Security Disability Insurance: Applications, Awards, and Lifetime Income Flows," *Journal of Labor Economics*, vol. 17, no.4, (1999), pp. 784-827.