

Removing Barriers Faced by College Students with Disabilities Applying for or Receiving Social Security Benefits

Most Colleges are Now Physically and Academically Accessible

College students with disabilities face many academic challenges. However, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA) are steadily helping to eliminate these challenges. Assistive technology, online learning formats and classroom accommodations combine to make post-secondary education a realistic option for many students with disabilities. The U.S. Department of Education, National Center for Education Statistics (2012) reports that in 2007, 11% of college students identified themselves as having a disability. Institutions of higher education that receive federal funds must have an Office of Disability to insure that students with disabilities have access to the same education as their non-disabled peers.

“11% of college students identified as having a disability.”
NCES 2012

Financial Accessibility Can Be Challenging When a Social Security Benefit is Involved

Like most college students those with disabilities often face financial challenges, too. This report focuses on college students with disabilities that have or are seeking social security benefits such as Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). What are the barriers faced by college students with disabilities who receive or are seeking one of these benefits? Beneficiaries, in general, learn quickly that while a Social Security payment and health insurance may help their financial situation these benefits often do not provide them with sufficient income to afford life's essentials. In addition, navigating higher education while seeking or maintaining social security benefits can become a slippery slope with unintended consequences.

Work Incentives and Assistive Technology Make College Possible for College Students with Disabilities

In the 1990's the Social Security Administration (SSA) recognized the limitations of the available safety net. The SSA developed work incentives to encourage beneficiaries to seek employment either to supplement or replace their benefits. Many individuals are eager to move beyond this safety net and receive a college education that will provide access to more opportunities, higher earnings, and a more secure and comfortable living. After all, the

same assistive technologies and protections that are available to these individuals as college students await them as they enter higher level employment. This incentivizes these beneficiaries to strive for more than entry level work. As technology becomes more sophisticated, there is no foreseeable end to the creative ways physical, sensory, and cognitive challenges can be accommodated. SSA's Ticket to Work program is designed for those people who are able to consider leaving benefits behind to enter the workforce. Some of these individuals choose to go to college as an intermediate step. However, even with these many advances, moving from benefit entitlement to independence is not seamless. Barriers exist for those seeking benefits, receiving benefits or hoping to maintain them.

The Three Main Barriers to Social Security Entitlement and Going to College

1. Seeking a Benefit While Seeking an Education can pose a problem

When an individual tries to pursue an education while applying for or receiving a Social Security Disability benefit, there can be unintended complications. In several social security blog searches a common question is: "Will going to school (college, trade school, etc.) interfere with me applying for social security disability benefits?" In other words, is school activity comparable to work? The question is not only valid, but critically important since, in a disability claim, Social Security is trying to determine if the individual can work or perform Substantial Gainful Activity (SGA) despite their disability¹. So, going to school can create the impression that they can work. Therefore, the answer is "it depends".

For example, it depends on how many classes are taken and how they are scheduled. Disability Determination Services (DDS) examiners look closely at one's daily activities as indicators of capacity to sustain work across a typical 8-hour workday. A course load of 12 hours would translate to a nearly 40-hour work week when considering the usual two hours of study required per credit hour. A student can spread out classes and study periods and take breaks as needed, but the workload could still be seen by Social Security as comparable to full time work. Going to school part time would have a smaller impact, but when combined with other daily activities such as family care or house care, it could be perceived that the claimant can tolerate sustained activity over a full day. This is exactly the premise the individual is trying to disprove when seeking a disability benefit.

The same risk applies for someone undergoing a disability review. In this case, they must report to Social Security whether their condition has improved and whether they are working. Managing college work could imply medical improvement in the same way that working, even part-time, might suggest a person has improved.

¹See <https://www.socialsecurity.gov/oact/cola/sga.html> for an explanation of Substantial Gainful Activity (SGA) and the current limits.

Consider this story of a middle-aged man's attempt to start college classes:

Justin sustained a severe traumatic brain injury in a motor vehicle crash at the age of 16. Due to the severity of his injury, the SSI he was awarded as a child continued as an adult. He later married, and his benefit was terminated due to his wife's resources. When she died, he returned to SSA assuming that his benefit would be reinstated. However, he was told his eligibility would have to be re-determined. Now, 40 years of age, with a series of denials and a limited work history, he worried about supporting himself and began to envision ways he could be productive while awaiting his SSI or in the event he was denied. He decided to go to college part-time to become a motivational speaker despite severe dysarthria, cognitive, dexterity, and gait issues. This could be a wonderful lemons to lemonade story except for one dilemma. His social security advocate recommended he not work or go to college while pursuing his claim since those activities are often perceived as "demonstrating capacity for gainful employment" even when done on a part-time or accommodated basis. Another year would pass before Justin's social security case would be decided leaving him aimless as he awaited the outcome of his social security case. Justin decided to play it safe and avoid sending a mixed message to Social Security knowing that once he obtained benefits he could use the Social Security work incentives to test his ability to work or go to college.

One should also ask if the educational goal is inconsistent with the disability. Maggie's story demonstrates a variation on the problem of seeking an education while seeking benefits:

Maggie, a former teacher, lost her health, her husband, and her job at age 30. She was forced to return to her mother's home and to apply for social security disability to support herself. During the nearly 3-year application and appeal process, she considered ways to be productive within her limitations and to develop any remaining works skills, should she be denied and forced to return to work. She set her sights on returning to college and becoming a Rehabilitation Counselor.

How will her efforts be viewed by the social security disability examiner? The examiner will ask:

- Are the mental demands of her college work inconsistent with her statements of pain and fatigue?
- Is her goal of highly skilled work unrealistic given her statements of declining health?

In determining a case, Social Security looks for inconsistencies in information and decides if the individual is credible. Pursuing a career field, possibly beyond her capacity, sets up a possible credibility issue: are you disabled or are you college bound? In reality, given Maggie's financial dilemma, she was forced to pursue both

options, even though one jeopardized the other. In the end, fortunately, she was awarded benefits and is free now to pursue continued education.

How does Social Security Make the Decision Whether a Person is Disabled?

Social security considers a person's age, education, and work history, in addition to medical and vocational evidence, when deciding if someone is disabled. Regarding age, Social Security defines anyone under age 50 as a "younger individual". Younger individuals have to prove that they cannot sustain any work, including unskilled, semi-skilled, or highly skilled work. Though Maggie's medical evidence supported her being disabled, her vocational evidence gave the impression she was still seeking skilled work and was considering a challenging college program to achieve it.

In reality, working or going to school, while pursuing a disability benefit, even in a limited or accommodated way, may create the impression that the applicant can tolerate full time or gainful employment, potentially undermining a case for disability.

This example demonstrates that if a beneficiary does not know how the rules work then they do not know how to plan their "return to work" using college as a stepping stone. Lack of knowledge can be a significant barrier.

Things The Student Can Do:

1. Carefully consider how going to college may impact the decision on whether you are disabled according to Social Security. Consider postponing work or education until after a benefits is approved and when work incentives can be used safely.
2. Avoid Social Security making false assumptions about your disability: If you decide to pursue college while applying for or appealing a disability claim (or undergoing a review) be sure to carefully explain the number of hours each day dedicated to this effort and how you manage this effort around your disability. Document any accommodations used while in college and the specific limits placed on your college load. For example, "I take one class at a time and study at night when my pain levels are under better control. I take frequent breaks and my family helps with household tasks. Often I have to get extensions on my work."
3. Review the following dLVCV publications at www.dLVCV.org:

Considering Applying For a Social Security Benefit?

TIPS When Applying for Social Security Disability or Supplemental Security Income

TIPS When Appealing Social Security Disability

What To Do to Keep Your Benefits In Place

4. One example of a post-secondary training program (even those held on college campuses) that may not pose this perceptual problem is a certificate bearing program which fosters work behaviors and pre-vocational skills. However, even these programs can prepare you successfully for gainful work which may affect a future social security disability or SSI claim.

2. Students Unaware of Social Security's Work Incentives

Social Security created special rules to make it possible for people with disabilities who receive Social Security or Supplemental Security Income (SSI) to work and still receive monthly payments as well as Medicare or Medicaid. These rules are called "work incentives" because they encourage people to attempt work. Social Security has set up a nationwide system of Work Incentive Planning and Assistance (WIPA) centers whose staff are experts in SSA's disability programs and other federal public benefits. WIPA's provide the single most effective method for communicating correct information to help beneficiaries overcome fears or misinformation about going to college or working.

The Little Known "Section 301" Provision

One of the least used but most effective incentives is Social Security's "Section 301" provision for young adults receiving a Social Security or Supplemental Security Income benefit.

Section 301 provides continued payments for young adults (age 18-25) who are participating in a vocational rehabilitation or similar program but who no longer qualify for Social Security benefits.

Individuals on SSI during their childhood must be re-determined around age 18 based on the adult rules of disability. Often, SSA determines that the individual is no longer disabled and benefits will end unless they meet the criteria for Section 301.

Consider how Section 301 applied to Lyla:

Lyla's SSI came up for re-determination when she was 20 years old. By this time she was a full time college student. Her schooling was part of her Individualized Plan for Employment (IPE) as a client of the state vocational rehabilitation program. During this review her case was denied. Her ADHD and learning disabilities were not considered disabling according to the adult definition of disability and it was assumed by Social Security that she could perform some work. Certainly, going to college suggested she was capable of work. On appeal, the Section 301 provision was granted due to her active participation in vocational rehabilitation. Thus, Section 301 provided for the continuation of her SSI and Medicaid benefits. For Lyla, these benefits enabled her to afford her college program, her living expenses, and her health care. As designed, the 301 provision gave her a chance to boost her future earnings and reduce the likelihood of needing SSI in the future.

As illustrated in Lyla's case, youth in transition who are on SSI must be careful with their benefits and career planning. Many Social Security beneficiaries under review never claim Section 301. According to the Virginia Commonwealth University National Training Center, Social Security benefits issues for youth in transition are seldom considered during the formal

transition process. This is because most vocational rehabilitation (VR) counselors and special education personnel are unaware of the section 301 provision. In fact, even Social Security Field Offices and Disability Determination Services lack experience with this provision and do not always identify who may be eligible. Rarely do students or their parents know of this provision unless they are especially knowledgeable advocates. In Lyla's case, even the judge who ultimately decided her Age 18 Re-determination case uninformed until the advocate cited the rule. So, ignorance of a provision designed to help the beneficiary is often a barrier to maintaining one's benefits. This example highlights the need for Social Security benefits planning to be part of the transition planning process. Both schools and VR personnel must focus on this aspect and if their expertise is limited they should employ the Certified Work Incentive Counselors (CWIC's) in their locale.

The Student Earned Income Exclusion

Another useful work incentive is the "Student Earned Income Exclusion".

Student Earned Income Exclusion allows students in high school or college, and under the age of 22, to earn as much as \$1780/month or \$7,180 per year without it affecting their SSI cash benefit (as of 2015). As a college student, they must regularly attend school for at least 8 hours a week in order to qualify.

With this incentive a youth may work and earn above the SGA guideline and still be found eligible for SSI under the adult rules. Why is this important to a young person as they transition to adulthood and explore the world of work and higher education?

During the Age 18 Re-determination, discussed above, Social Security will determine if the individual is still disabled. As stated earlier, determination begins with the question: is the individual participating in Substantial Gainful Activity (SGA)¹? Normally, going to college and/or working would suggest to Social Security that the person is capable of working full time or at least "gainfully". However, the Substantial Gainful Activity step in the evaluation process does not apply to these disability redeterminations. Of course, the individual must meet all other criteria for a finding of disability in order for their benefits to continue under the adult rules. Taking advantage of the Student Earned Income Exclusion allows someone to work, study and possibly retain their benefits. If there Age 18 Redetermination case is ultimately denied they may still fall under the protection of Section 301 to continue their benefits. These are crucial work incentives that can ease students in transition to adulthood and can make college, and greater self-reliance, possible.

Other things to consider while in college: Loans and Grants

Student Social Security beneficiaries should also be aware of how their financial aid packages may affect their Social Security benefits. SSA will not count federal education loans (like Parent PLUS, Perkins or Stafford) or any other loan made under Title IV of the Higher Education Act as income or a resource because these are earmarked for tuition and fees. Other college loans, however, may count as a resource. Also, the Pell grant considers SSI benefits as income but once granted does not count as a resource as long as the grant is set aside for tuition and fees. A student could run into trouble if they do not document payment of their tuition, or they drop classes in such a way that they have to refund the government.

Also at issue, is whether a VR agency can require a financial contribution from an SSI recipient or their family in connection with their college expenses. VR agencies are required to exempt SSDI/SSI beneficiaries from participating in the financial costs of their vocational rehabilitation according to 34 CFR 361.54(b)(3)(ii). This should extend to excluding these benefits from the Expected Family Contribution (EFC) for the months the student is in attendance at a post-secondary institution. However, some state VR programs are out of compliance with this legal requirement.

Plan to Achieve Self-Support

The Plan to Achieve Self-Support (PASS) is another underused, but helpful, work incentive.

A PASS allows an individual to use their income and/or resources to reach a work goal. For example, the individual can set aside earnings from a job in order to go to college or to get specialized training for a job. SSA does not count the income or resources set aside under an approved PASS when deciding initial or continuing eligibility for SSI.

Having a PASS may help the student qualify for SSI, or may increase the amount of the SSI payment and their net income.

Things You Can Do

1. Become familiar with the work incentives that can be used while in college.
2. Discuss possible work incentives with your school case manager, your vocational transition counselor, a social security office, or a college Office of Disability.
3. Go to Social Security's work incentive website:
<https://www.socialsecurity.gov/disabilityresearch/wi/generalinfo.htm>
4. Go to this website for a list of Work Incentive Planning and Assistance Centers in Virginia to find assistance: <http://www.vaaccses.org/wipa/>

3. Fear of Work While Receiving Benefits Can Discourage Getting or Using a College Degree

In the disability community, it is widely believed that working can jeopardize disability benefits. National research has consistently demonstrated that many SSA disability beneficiaries hesitate to participate in return to work efforts due to the fear that paid employment will cause a loss of critical cash benefits and health insurance. The work incentives are complicated, and even when used properly often result in overpayments due to SSA error. Many individuals have horror stories where benefits ended without notice, despite beneficiaries following the rules. Additionally, in many instances they didn't understand the rules in order to follow them.

Consider how this man's fear of working impacted him:

Johnson was told by his Social Security disability attorney "once approved never, ever work or you'll lose your benefits". Johnson strictly followed his command. Even though Johnson was homeless, he imagined meaningful ways to spend his days. He decided that going to college would be the most interesting path for him and that available grants would make this possible.

He applied for services through the Virginia Department of Aging and Rehabilitative Services (DARS) and requested assistance to coordinate his college goals but when asked about his vocational goal, he replied "None, I will never, ever work". Of course, these public vocational services require the client with a disability to at least desire a vocational outcome. Johnson, in his mission to obey his attorney and ensure the safety of his benefits, was happy to be a perpetual student. In an effort to enlighten Johnson, DARS offered a Benefits Analysis so he could learn how to protect his benefits and earn supplementary income to lift him out of homelessness. Johnson, however, denied this service, and in turn, DARS closed his case. This closing possibly impacted his ability to go to college. Johnson's insistence on the status quo seemed like a safe choice, but it actually prevented him from accessing the many work incentives in place to protect and augment his social security benefit. It also prevented him from achieving his educational dream and prolonged his homelessness. Ironically, Johnson's fear associated with having the social security benefit was the barrier to going to college, not the benefit itself.

Consider how this woman's fear of working impacted her:

Janice, was afraid of the system, too, despite completing her college degree while on SSI. She has been on SSI since early adulthood. With a lot of hard work, assistive technology, and accommodations, she graduated from a 4-year college with a degree in English. Her hope was to be a librarian. Instead, she volunteers at several different places, including a library, a hospital, and a community center. She volunteers because she fears losing her benefits if she starts working. However, she could undergo a Benefits Analysis (BA). Armed with the results of a personalized BA, she may be convinced that earnings from work will not negatively impact her benefit. If she can replace fear with knowledge of the work incentives provided by SSA, she may be able to augment her income and her quality of life.

Things a Student Can Do

1. Understand how Benefits Analysis can help a working or college bound individual who receives a Social Security disability benefit. Refer to the dLVCV's following publications:

<http://dlcv.org/publications/special-education/>

<http://dlcv.org/publications/vocational-rehabilitation/>

2. Contact the Virginia Department of Aging and Rehabilitation Services (DARS) to obtain vocational rehabilitation services which may include Benefits Analysis.

By phone- 1-800-552-5019

By email: dars@dars.virginia.gov

By internet: <https://www.vadars.org/offices.aspx>

In conclusion, fear and/or lack of knowledge can prevent someone from pursuing higher education while receiving a social security benefit. Or, pursuing a higher education could undermine a disability claim or review.

If an individual chooses to apply for benefits OR is expecting a Continuing Disability Review and wants to simultaneously pursue college they should document the accommodations used while in college and the specific ways they limit their coursework because of their disability.

However, once benefits are in place, a person receiving a Social Security disability benefit can confidently consider work or college. SSA work incentives, in fact, when used properly, can help these efforts. The primary purpose of the national WIPA program is to assist SSA beneficiaries to transition from dependence on public benefits to paid employment which is especially important for youth in transition.

Sources:

The U.S. Department of Education, National Center for Education Statistics (2012)

Social Security 2013 Redbook

VCU National Training Center Article: Social Security Disability Benefit Issues Affecting Transition Age Youth, June 2014

SSA POMS (Procedural Operations Manual)- POMS DI 23570.020-Development and Evaluation of Childhood and Age 18 Disability Redeterminations

The disAbility Law Center of Virginia (dLCV) is Virginia's designated protection and advocacy agency. Individuals seeking clarification of work incentives and/or protecting their SSA benefits may call the disAbility Law Center of Virginia for assistance. *disAbility Law Center of Virginia, 1512 Willow Lawn Drive, Suite 100, Richmond, VA 23230, (804) 225-2042 (local and TTY) (800) 552-3962 (statewide)*

dLCV publications are available in alternate format, upon request.