A) What is “disability” as defined by Social Security?
   1) “The inability to work” due to a medically determinable physical or mental impairment or combination thereof.
   2) “Work” is defined as having the ability to earn $1090 per month GROSS on a consistent, reliable basis i.e. in a job that will last more than six months. This is called “Substantial Gainful Activity” or SGA.

B) Retirement Survivors & Disability Insurance (RSDI) vs. Supplemental Security Income
   1) Same rules to determine whether or not a person is disabled, but the FINANCIAL rules are different.
   2) SSI is the need based or “welfare” benefit. It is for people who are disabled, but did not work and pay into the Social Security system, did not work enough or in a recent enough time frame, or paid into a different program i.e. Federal Employees Retirement System (FERS), teachers union, railroad pension, etc.
      a) SSI is also the benefit paid to disabled children whose parents meet the financial rules
   3) RSDI is the same pool of money as Social Security retirement and it is currently self-sustaining. Most of us pay into this program and will hopefully collect on it when we retire at age 67. Those who file for disability are essentially asking for this money prior to reaching retirement age.
      a) Early retirement is usually a lesser amount than disability, which is a lesser amount than one’s full retirement.

C) Five steps to determine if a person is disabled:
   1) Is this person working?
   2) Does this person have a severe impairment or combination of impairments? A “severe” impairment must interfere to some degree with basic work-related activities. If so, then
   3) Does this person’s impairment “meet a listing”? If NOT, then
   4) With his/her mental and physical residual functional capacity (RFC), can this person return to past relevant work? If NOT, then
   5) With his/her RFC, is there any other work that exits in the national economy in statistically significant numbers that this person can do?

D) What is NOT disability?
   1) I cannot go back to my past job or any job in the town that I live.
   2) I cannot GET a job because the economy is bad and no one will hire me.
   3) I cannot get a job that pays as well as the job I can no longer do OR a job that pays a LIVING wage.
   4) I have 10 diagnoses and take a lot of medications. (It’s the SYMPTOMS and LIMITATIONS that make one disabled, NOT the diagnoses.)

1 For each of the major body systems, there is a list of medical conditions that are so severe they automatically mean that the claimant is disabled. If his/her condition is not on the list, SSA will have to decide if it is equal severity to a medical condition that is on the list. If it is, SSA will find him/her disabled. See SSA.gov.
E) What IS disability?

1) I am not able to work enough to make $1090 gross due to my impairments.
2) I am only able to work with a job coach or in a sheltered workshop.
3) Some days, I am a great worker. Nevertheless, I tend to have unpredictable absence two or more times per month due to my impairments.
4) I am able to get a job, and I usually start out OK. As work goes along, however, my anxiety, depression, chronic pain etc. increases and I begin to have issues with absences, tardiness, interpersonal difficulties etc. Thus, I can only hold a job for a few months at a time before things fall apart.
5) I need medication X in order to physically get through my day. When I take medication X, I am extremely fatigued, groggy, unable to concentrate, drowsy, in and out of the bathroom... in other words, not able to reliably be at my work station or on task when I am there.

F) The Process

1) Claims in Billings, Montana from start to finish generally take 24 months.
2) Claimant files a claim at Initial. It takes 4-6 months for a decision. Approximately 70% are denied.
3) Claimant files an appeal for Reconsideration. It takes 6-8 months for a decision. Approximately 85% are denied.
4) Claimant files a request for hearing. It takes 8-12 months to be scheduled. Approval rate is dependent on the Administrative Law Judge (ALJ) assigned to the case. Nationally, 56% of claims are denied at the ALJ level.
5) If a claimant chooses to appeal an ALJ denial, the wait time is 12 to 24 months. The Appeals Council will only reverse or remand approximately 15% of ALJ decisions. Once the Appeals Council makes their decision, a claimant then has a right to file a new claim. They may also pursue a Civil Action in Federal Court on their old claim.

G) Malingering and Social Security disability

1) Any evidence of malingering, exaggerating, or over-reporting is always considered by Social Security, usually to the detriment of the disability claimant. This is particularly true if suggested by multiple medical providers.
2) If a claimant does not have consistent, sufficient mental health treatment throughout the course of his/her case, Social Security may send the claimant to a “consultative examination” or CE.
   a) If indicated, the CE will be authorized to perform IQ and memory testing in addition to a mental status examination.
   b) Social Security will not purchase symptom validity testing as part of a CE. From the POMS “There is no test that, when passed or failed, conclusively determines the presence of inaccurate self-reporting.”
3) Nevertheless, when symptom validity testing is otherwise part of the medical evidence of record, Social Security DOES consider these results along with the rest of the relevant evidence of record.

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2 POMS DI 22510.006. The “POMS” is the operations manual for the Social Security Administration.
3 POMS DI 22510.006.