LawHelp.org/DC

Protecting Your Disability Benefits from Creditors

Authored By: D.C. Bar Pro Bono Center

FAQ

Who is eligible for Social Security Benefits?

There are two kinds of Social Security Disability Benefits:

Social Security Disability Insurance (SSDI) - This is a benefit which could be paid to you or to certain members of your family if you have worked long enough and have paid enough Social Security taxes.

Supplemental Security Income (SSI) - These benefits are paid to disabled persons based upon financial need; there is no work or Social Security tax requirement to qualify for these benefits. These benefits are designed to assist the elderly, blind and disabled

If I am approved, will I begin receiving benefits right away?

No. There is a five-month waiting period between the begining of your disability and when you are eligible to receive benefits. You may start the application process during the five-month waiting period and if you are approved can begin to receive benefits during the sixth month of your disability.

If I am approved, how long will I receive benefits?

You will receive benefits only during the period for which you are disabled. The SSA will periodically review your case to determine whether you are still disabled. Whether or not you are expected to improve will determine how often your case is reviewed. The SSA will place your case into one of three categories:

- "Expected" - if the SSA finds that your condition is "expected" to improve, they will review your case within six to eighteen months.
- "Possible" - if the SSA determines it is "possible" your condition will improve your case will likely be reviewed after three years.

- "Not expected" - if the SSA does "not expect" you to recover from your disability your case will be reviewed after seven years.

Under what circumstances would the SSA discontinue my benefits?

Your benefits will be discontinued if you are able to do "substantial" work. In 2012, work is considered to be substantial if you make more than $1010 per month or $1690 per month if you are blind.

Benefits will be discontinued if your condition improves and you are no longer disabled.

Can my Social Security benefits be garnished by creditors?

No, Section 207 of the Social Security Act protects your benefits from being garnished by creditors. However, there are some exceptions.

Social Security benefits can be garnished to pay:

- Child or spousal support
- Unpaid Federal taxes
- Debts to other federal agencies such as an over-payment of food stamps or defaulted student loans

How much of my Social Security benefit can the government take?

If you owe Federal taxes the IRS can take up to 15% of your monthly payment until the debt is paid.

If you owe money to a government agency, the first $750 you receive each month is protected from any government agency to which you owe money. If you receive more than $750 each month, any amount that is over $750 may be taken.

Are my Social Security Benefits protected if I deposit them into a bank?

Social Security Benefits are only protected if they are direct deposited into an account that ONLY includes direct deposit payments from Social Security. If you deposit any other funds into the account with the benefits from Social Security, the payments will no longer be protected.

The funds will NOT be protected if you receive a check from SSA and then go to the bank and deposit it into an account. The best way to protect your Social Security Benefits from creditors is to keep a separate account, which only receives direct deposits from Social Security.

What if a creditor tries to take money from my bank account?

A creditor cannot seize your bank account without first going to court and getting a judgment against you. If you have mixed your Social Security benefits with other funds, they will be more

difficult to protect, so it is best to keep Social Security benefits in a separate account.

What happens after my creditor gets a judgment against me?

If a creditor gets a judgment against you, the creditor will send the bank a notice stating that they plan to take money from your account (called a writ of attachment) to the bank. The bank is then required to freeze any unprotected funds in the account on the day the writ is received, up to the amount of the judgment.

What will the bank do?

Before the bank freezes your funds, it must research the account. The research they conduct simply verifies that there is an account and determines the amount and before the funds are frozen. The bank will generally charge you a fee between $75 and $100 dollars for the research.

The bank will then freeze the funds in the account (up to the amount of the judgment) and send you a letter to notify you of the garnishment. If the bank freezes the funds, you will not be able to access the money in the account and any outstanding checks, debit or automatic deductions will bounce. You may incur more bank fees as a result of bounced checks. It may be possible to have some of these charges waived by talking to the bank's branch manager.

Unfortunately, notifying the bank that the account contains protected funds before the writ of attachment is served is unlikely to stop the bank from freezing the account or stop the garnishment.

What if my protected funds are attached?

In order to have funds released, you should contact the creditor's attorney. You may want to seek the assistance of an attorney before you take this step. You (or your attorney) should explain to the creditor's attorney that the funds are protected and be prepared to offer proof of that fact.

How do I prove the funds in the account are protected?

In order to prove that the funds are protected, you may provide deposit slips or bank account statements that show funds deposited into the account are from a protected source.

What happens if protected funds are attached? Is there any way to force the creditor to return the funds?

After you have contacted the creditor's attorney, the creditor's attorney should voluntarily release the funds. If the attorney refuses to voluntarily release the funds you will have to file a motion in court to have the protected funds released. Generally, the attorney for the creditor will agree to release the funds at that point.

If the attorney agrees to release the funds, immediately fax a copy of the form releasing the funds to the bank's legal department. You can generally get the phone number for the legal department by calling the 800 number for your bank. This should ensure the funds are released as quickly as possible.

Can I get a creditor to refund bank fees if they improperly attach my protected account?

If the attorney declines to release the funds, you will have to file a motion in court and may be able to argue that the creditor is liable for all bank charges and fees that resulted from the improper garnishment **if** the judgment creditor had notice before the garnishment that the funds were protected.

A judgment creditor would have notice if you sent a letter to the creditor stating your only source of income was protected funds prior to the judgment being issued.

Last Review and Update: Dec 06, 2016