Paying the Bills: Health Insurance, Disability Pay, and Attorneys
By Garry Prowe

If you haven’t already begun thinking about your household finances, now is the time. You need to minimize the amount of money going out for medical expenses and maximize the amount coming in through disability pay. To accomplish this, you may want to hire an attorney. This chapter helps you sort through these issues.

Health Insurance
When it comes to treating survivors of a brain injury, our health care system is unkind and shortsighted. The medical costs of recovery and rehabilitation can be astronomical. A patient with a severe brain injury and her health insurer easily can spend millions for her care. Acting early to understand the costs you are facing and the insurance benefits available to your survivor may help you avoid financial distress.

Health insurance—if you have it—generally covers much, if not most, of a survivor’s medical care during the acute stage of recovery. Then, it gets tricky. To recover well, every survivor of a serious brain injury must undergo extensive rehabilitation. This includes the standard physical, speech, occupational, and neuropsychological therapy, plus the newer cognitive rehabilitation.

In Confronting Traumatic Brain Injury: Devastation, Hope, and Healing—a forceful indictment of government, insurance, and medical policy regarding brain injury—William J. Winslade writes that most survivors do not receive adequate rehabilitation. This is shortsighted, he argues, since “a relatively few dollars spent on rehabilitation could make the difference between a life of dependency and one of relatively full function.”

With their eyes on the bottom line, health insurers limit what they pay for rehabilitation, both inpatient and outpatient. They typically pay for just two to six weeks of inpatient rehabilitation. Even worse, they sometimes insist that inpatient rehab be completed within a certain period of time, within ninety days of the injury, for example. This can be a big problem if your patient is slow to emerge from her coma.

With outpatient rehabilitation, health insurers usually cap the number of reimbursable physical, speech, and occupational therapy sessions at twenty-five to fifty per year or, even worse, per injury. With cognitive rehabilitation, they are even stingier. The impairments most disabling to most brain injury survivors are deficits in attention, concentration, memory, and decision-making. Cognitive rehabilitation is the best way to remediate these deficits. Insurance companies, however, often deny payment,
claiming that there is no evidence that cognitive rehabilitation is effective. Recent research has concluded otherwise and the Brain Injury Association of America is leading the fight to have cognitive rehabilitation recognized by the insurance industry as standard, reimbursable treatment for a brain injury.

Many health insurance policies also have lifetime benefit caps, such as $1,000,000, that are easily exceeded with a serious brain injury. Caregivers often find that just when their survivor is benefiting the most from rehabilitation, the insurance company says, “No more.”

Every rehab program has a case manager who negotiates with the health insurer over the amount of reimbursable services. Your survivor is best served if the case manager at the rehabilitation facility you select has many years of successful experience working with health insurers.

If you fear that your health insurance benefits may be lacking, consider these nine ways to maximize them:

1. If you have not already informed your survivor’s health insurer about her injury, do it now.
2. If you have not been assigned a case manager at the hospital or rehab facility, ask for one.
3. Cultivate a good working relationship with this person.
4. Review your policy carefully, or
5. Have an insurance expert, an independent case manager, or an attorney specializing in personal injury review your policy.
6. Ask about extra-contractual or going-out-of-contract exceptions that may be mutually beneficial to insurer and patient. For example, all parties involved may agree that it’s best to cut short inpatient rehab provided the insurer picks up the tab for seventy-five, rather than fifty, annual outpatient rehab sessions. Be sure to get any extra-contractual agreements in writing.
7. Be sure your doctors are documenting all progress in your family member’s condition, even the tiniest. Health insurers are quick to stop payment if the patient is not progressing.
8. If you feel your insurer is not treating you fairly, file an appeal.
9. If your appeal is denied, speak to an attorney.

When your health insurer says, “No more,” check out these potential sources of financial assistance for your medical bills:

• Medicaid, if your income and financial assets are small.
• Hospital patient assistance programs for people with low incomes: Talk to the hospital billing department. They may work with you to establish a payment plan you can afford.
• Medicare, if your survivor qualifies for Social Security Disability Income: Medicare benefits, however, don’t begin until two years after the injury.
• Auto insurance, if the injury was the result of a car accident
• Workers’ Compensation, if the injury occurred at work.
• Homeowners insurance, if the injury occurred at your house or someone else’s.
• If it’s possible someone other than your survivor was responsible for the injury, see an attorney.
• State programs, such as:
  o Brain injury trust funds
  o Occupational and vocational rehabilitation services
  o Crime victim’s compensation
  o Medical assistance
  o Developmental disabilities for children
  o A high risk insurance pool for uninsurable people

Note that every state is different. For information about programs in your state, contact your state brain injury association.

• Tell your doctors you’re having financial problems. They may give you a break on their fees.
• Apply for assistance from charitable and civic organizations.
• Follow the example of many brain injury families who have had raffles, yard sales, car washes, bake sales, road races, and concerts to raise funds for their survivor’s medical expenses.
• Finally, don’t forget that your medical expenses may be tax deductible.

Medicaid
Medicaid is a joint federal and state health insurance program that assists low-income people who do not have health insurance or who have exhausted their benefits. You are eligible for Medicaid if you meet certain financial requirements. Here’s what you need to know:

• Medicaid rules are complex and they change frequently.
• Each state, within broad national guidelines, establishes its own eligibility criteria: the type, duration, amount, and scope of the medical services reimbursed; and the individual’s co-payments.
• The eligibility requirements for Medicaid include the survivor’s age, the amount of her income and financial assets, and whether she is a citizen or a lawfully admitted immigrant.
• The applicant must have few financial assets. A married couple may have approximately $2,000 to $5,000 in savings. Their home and one vehicle are exempt.
• To apply for Medicaid, contact your local or state government Medicaid office. See the blue pages of your telephone directory.
• Apply as soon as possible; approval takes a long time.
• For help with your application, you may want to hire an attorney, a case manager, or other professional with Medicaid expertise.
• Some states have additional “state-only” programs that provide medical assistance for some low income people who don’t qualify for Medicaid.
• Since most states must balance their books, Medicaid services—the second largest item in the budget after schools—are regularly reduced or eliminated altogether.
• For years, people with too many financial assets to qualify for Medicaid transferred some or all of their assets to relatives before applying. There now is a five-year "look-back" period that guards against these fraudulent transfers.

Some states have waivers that authorize them to provide, through Medicaid, an array of services, such as personal care attendants, home health care, case management, and respite care. These waivers are designed to enable individuals to live at home or in a community-based setting, rather than in a more costly institution.

Certain states even include cognitive rehabilitation on the menu of services offered with a Medicaid waiver. Beware that the eligibility criteria for a Medicaid waiver sometime defy logic. For example, in some states the survivor must have been injured after the age of sixteen.

**Medicare**

Medicare is the nation's largest health insurance program. The majority of Medicare recipients are sixty-five years of age or older. Also eligible for Medicare are people who have received Social Security Disability Income for two years. While twenty-four months may seem to be a long way off, you should be familiar with this program for your long-term financial planning. Here’s what you need to know about Medicare:

• Medicare has three parts:
  
  **Part A** - Hospital Insurance covers inpatient care in hospitals and skilled nursing facilities and some home health care. Most recipients don’t pay for Part A because they or a spouse paid Medicare taxes while they were working.
  
  **Part B** - Medical Insurance covers doctors’ services, outpatient care, and other medical services not covered by Part A, such as physical, occupational, and speech therapy. Nearly all recipients pay a standard monthly premium
($96.40 in 2009) for Part B. This premium usually is deducted from your monthly Social Security Disability Income benefit.

**Part D** - The Medicare Prescription Drug Plan is optional. If you do not purchase Part D when you initially qualify for Medicare and decide to buy it later, you may pay a penalty. The cost varies depending on which provider you select. You may be able to choose a plan with no monthly premium.

- You choose how to have your medical services covered by Medicare. You can select either the original Medicare plan or you can choose among a number of Health Maintenance Organizations (HMOs) or Preferred Provider Organizations (PPOs) that participate in the Medicare Advantage program. Selecting among the Medicare Advantage plans is a time-consuming, complex exercise, but it can save you some money.
- Each year, you can review your health and prescription needs and switch to an alternative Medicare plan in the fall.
- If you have limited income and financial assets, your state may pay some or all of your Medicare premiums, deductibles, and coinsurance.
- You can learn more about Medicare by calling 800-633-4227 or visiting [www.medicare.gov](http://www.medicare.gov).

**Disability Pay**

With a serious brain injury, your survivor is certain to miss a long period of work, and possibly, never work again. Obviously, this can be a huge drain on the family budget. Now is the time to plan for this financial blow. Most of us, lacking the foresight and/or finances to purchase a private disability insurance policy, are dependent on our employer, the federal government, and our coworkers, to offset a medical disability. Let’s begin with your survivor’s employer.

**Disability Insurance at Work**

You may be wondering how many more paychecks your patient will receive now that she’s unable to work. The answer depends upon four circumstances:

1. How much sick and vacation time she has accumulated:
   Usually, this is a few days, weeks, or months.
2. Whether her employer provides short-term disability benefits:
   Short-term disability generally covers the first six months of absence.
3. Whether her employer provides long-term disability (LTD) benefits: LTD usually kicks in after six months of absence and continues until retirement age.
4. Whether her employer has a leave sharing program.

Jessica was fortunate to have LTD benefits at work. She collects monthly disability checks that pay two-thirds of her salary—the industry standard—at the time of her injury. These checks started 180 days after her injury.

Like most recipients, we pay taxes on these LTD benefits as earned income. Long-term disability insurers typically deduct from the monthly benefit any other disability pay collected by the insured, such as Social Security Disability Income (SSDI) or Workers’ Compensation.

If your survivor will receive LTD benefits, you may see no reason to apply for SSDI. You should for three reasons:

1. The LTD insurer probably will require it. If your survivor collects SSDI, the insurance company saves big bucks. They, likely, will even pay for an attorney to help your survivor obtain SSDI. If they don’t offer, ask.
2. LTD plans—unlike SSDI—typically do not have cost-of-living adjustments. Jessica will collect the same monthly LTD benefit until she reaches retirement age. Each year, inflation nibbles away at the purchasing power of her benefit. The LTD provider generally will not deduct the annual Social Security cost-of-living adjustment from the benefit they pay your survivor. So, with SSDI, your individual’s overall disability benefit will increase a bit most years.
3. Most importantly, individuals who receive SSDI are eligible for Medicare, which will help you pay future medical bills.

**Leave Sharing**

Jessica’s employer did not provide short-term disability insurance to cover the six-month gap between her injury and her LTD coverage. Fortunately, she had compassionate colleagues.

Many workplaces have leave sharing programs through which coworkers can contribute accrued leave—usually vacation, not sick pay—to colleagues who have medical emergencies, either themselves or within their families. Jessica’s employer started a leave sharing program as a result of her accident. Thanks to the generosity of her colleagues, Jessica collected a full paycheck for months after her accident.
If I had still been working at the time of Jessica’s injury, I would have qualified for my employer’s leave sharing program as the spouse of an injured person.

If your survivor’s employer does not have a leave sharing program, it can’t hurt to ask her colleagues to start one, especially if she’s well regarded.

**Social Security Disability Income**

A benefit available to everyone who has worked a certain number of years is Social Security Disability Income (SSDI). SSDI is not welfare. It is insurance you pay for your entire working life. Your loved one is entitled to these benefits.

Since the baby boomers are aging and the Social Security Administration (SSA) is woefully understaffed, filing for SSDI is a lengthy process. But, it’s time well spent. For me, filing for Jessica’s SSDI was a welcome respite from the helplessness and anxiety I was experiencing at the time. I was able to lose myself in the details of the application and feel productive.

If you’re too distracted to complete the application carefully—and it must be done carefully—ask someone to do it for you. Or, you can hire a case manager, an attorney, or other professional experienced in SSA procedures to apply for your survivor.

If you have not already done so, contact the Social Security Administration now (800-772-1213 & [www.ssa.gov/disability](http://www.ssa.gov/disability)) to begin the application process. If you prefer to speak to an SSA representative face to face, you can locate your local office in the blue pages of your phone book under United States Government.

Here’s what you need to know about Social Security Disability Income:

- SSDI does not cover short-term or partial disability.
- To qualify, your survivor must have a medical condition that, in the opinion of the SSA, prevents her from working for at least a year.
- With most private disability insurance, the insured is entitled to benefits if she can no longer work at her current profession, for example, as an attorney or as a carpenter. SSDI requires that the applicant be unable to work at any job, or, in their words, at any “substantial gainful activity” which, in 2009, paid $980 per month.
- The SSA considers the following factors when determining whether one is able to work at substantial gainful activity: her medical condition, age, education, training, and daily activities before and after her injury.
• SSDI usually commences with the sixth month of disability and continues until retirement age.
• At retirement age, SSDI automatically converts to the standard Social Security benefit every worker is entitled to in her golden years. The amount of the monthly benefit does not change with this conversion.
• Given that months or years will pass before your survivor receives her first SSDI check, it will be a big one. Benefits are paid retroactive to the date of eligibility if the application is submitted within one year of the injury. Otherwise, benefits are paid retroactive to the date of application.
• The monthly SSDI benefit is based on the applicant’s age and how much she has paid into the system. The average monthly benefit in 2009 was $1,153.
• About one-third of SSDI beneficiaries—those with higher incomes—pay income taxes on eighty-five percent of their benefit. People with lower incomes pay taxes on a smaller portion or pay no taxes at all.
• Each January, the SSDI benefit increases a small amount if the cost of living has risen.
• The amount of your financial assets has no impact on your eligibility. If Bill Gates acquired a serious brain injury, he would qualify for SSDI.
• The Social Security Administration determines if you are disabled, not your doctor. They require substantial medical proof of the disability and detailed descriptions of the claimant’s capabilities and impairments.
• When you apply for disability benefits, the SSA may send you to a physician, at their expense, for a medical exam.
• Some spouses and/or children of SSDI beneficiaries are eligible for payments. The rules are complicated. Be sure to discuss your family situation with an SSA representative.
• Young men, the largest group of brain injury survivors, usually have not paid enough into the Social Security system to qualify for SSDI. They may, however, qualify for another program administered by the Social Security Administration, Supplemental Security Income.
• If your brain injury is labeled “mild,” you must have extensive documentation of your impairments and much patience to qualify for Social Security Disability Income. In her humorous and insightful book, I’ll Carry the Fork! Recovering a Life after Brain Injury, Kara Swanson describes her struggles to demonstrate her eligibility for SSDI with a mild brain injury.
• The majority of applicants for SSDI initially are rejected. If this happens to you, don’t be discouraged; appeal the decision within sixty days.
Obtaining Social Security Disability Income is a long and frustrating, but ultimately fair, process. If your survivor is disabled by her brain injury, if she has the support of her health care providers, if you have completed the paperwork clearly and completely, and if you keep appealing, she should qualify for SSDI.

**Appealing Your Case for SSDI**

I applied for Jessica’s SSDI one week after her car crash, when she was still in a coma. Four months later, when her application reached the top of the pile, the Social Security Administration denied her claim. They determined that:

- Jessica’s condition was improving—True
- Jessica was alert and coherent—Mostly true
- Jessica was not expected to remain disabled for twelve consecutive months—Certainly not true

I filed for reconsideration on the grounds that Jessica’s disability would last more than one year. Remember, you must file for reconsideration within sixty days of receiving your initial denial.

The initial application for SSDI by survivors of a brain injury usually is rejected for a combination of four reasons:

1. Brain injuries are complicated. Cognitive impairments, unlike physical deficits, are tough to detect and evaluate.
2. The SSA goal is to provide benefits quickly to the largest number of qualified applicants. They scan each application, approving only those that clearly meet the eligibility requirements. They deny applications that involve more time to evaluate.
3. Traumatic brain injury is not yet on the list of automatic disabling impairments used by the evaluators.
4. Doctor’s offices and government bureaucracies often move slowly. All of the documentation required to prove the severity of a brain injury generally does not reach the evaluator prior to the initial ruling.

When a claimant requests reconsideration, the SSA spends more time reviewing the application and, often, has more documentation of the injury. Still, most survivors are denied benefits a second time. Despite the rash of debilitating brain injuries among our troops in Afghanistan and Iraq, the lifelong, disabling consequences of a brain injury still are underestimated by the Social Security Administration. As expected, Jessica’s request for reconsideration was denied.
Please, don’t be discouraged by this second denial. Don’t give up. Request a hearing—the next stage in the SSDI appeals process—within sixty days. Then, be prepared for a long wait. In 2007, the average waiting period for a hearing was 520 days. In certain areas, the wait was 900 days.

At the hearing stage, an administrative law judge examines your survivor’s application in detail. The hearing is an informal question and answer session held in a closed courtroom. The majority of brain injury SSDI cases are approved at this time.

In Jessica’s case, a hearing was scheduled. The judge, however, after reviewing her file prior to the hearing, ruled that there was sufficient documentation to approve her application. A hearing was not necessary.

At any point in this process, you have the right to hire an attorney or someone else to represent you with the Social Security Administration. At the hearing stage, about fifty percent of claimants hire a lawyer to argue their case.

Trying SSDI claims can be a lucrative legal profession. Certain lawyers choose to represent only the best-qualified applicants. In 2009, attorneys were permitted to bill their clients up to $5,300 for a positive outcome. The lawyer collects her fee from your first SSDI payment, which, as noted above, will be a big one.

One way to locate an attorney to represent your survivor is to contact the National Organization of Social Security Claimants’ Representatives (800-431-2804 & www.nosscr.org).

If you have patience, excellent communication skills, fine attention to detail, and time, you should be able to represent your patient and save some money. But, it’s a gamble I wasn’t willing to take when I applied for SSDI for myself eighteen months before Jessica’s accident.

If an administrative law judge denies your appeal, you may file a suit in District Court. This court, though, rarely overrules SSA decisions, and it’s difficult to find an attorney to represent you at this stage.

Finally, if your application for SSDI is dragging and you are in desperate financial straits, you can try contacting your congressional representatives in Washington, D.C. When I worked for the federal government, I sometimes found a bright red folder, known as a “congressional,” in my mail. I was required to respond to this request from a member of Congress for action or information within forty-eight hours. A “congressional” sent to the SSA on behalf of your survivor may speed things up.
Supplemental Security Income

Supplemental Security Income (SSI) is a federal and state government needs-based income program for the aged, blind, and disabled who have limited income and few financial assets.

Here’s what you need to know about Supplemental Security Income:

- If your survivor does not qualify for Social Security Disability Income (SSDI), she may be eligible for SSI.
- SSI is funded by federal and state tax revenues.
- The federal portion of SSI is administered by the SSA (800-772-1213 & www.ssa.gov/disability).
- Some states supplement the federal benefit.
- SSI has strict eligibility rules. If you think your survivor may qualify, contact the Social Security Administration.
- The monthly SSI benefit varies among states and is based on the recipient’s living arrangement and other income, including earnings from work, Social Security and other government benefits, child support, and gifts of food, clothing, or shelter.
- People who qualify for SSI usually are also eligible for food stamps and Medicaid.

Workers’ Compensation

Workers’ Compensation is a state-mandated medical, disability, and life insurance program for people injured on the job. If your survivor was hurt at work, this is what you need to know about Workers’ Compensation:

- Most employers must have Workers’ Comp insurance.
- Workers’ Comp laws are complex and vary from state to state.
- In some states, public funds are used when an injured worker is employed by an uninsured company.
- The claimant usually is sent to a doctor recruited and paid for by her employer.
- If the claimant is temporarily unable to work, she usually will collect two-thirds of her wages up to a fixed ceiling.
- If the claimant is permanently unable to perform her job or work at all, she may be eligible for long-term or lump-sum benefits. The payment amount depends on the nature and extent of her injury.
- In exchange for these guaranteed disability benefits, the claimant usually does not have the right to sue her employer. However, if your patient was hurt because of reckless or calculated action by her employer, she can bypass the Workers’ Compensation system and sue in court for a full range of damages.
• To know your rights, pick up a copy of the rules in your state from its Workers’ Compensation office (see the blue pages in your phone book).
• There may be a time limit for filing a Workers’ Comp claim.
• Employers sometimes vigorously contest employee claims. If this happens, consult a lawyer with experience handling Workers’ Compensation claims on behalf of injured workers.
• Laws in many states limit legal fees to a certain fraction of the award (ten to forty percent). You pay only if you win the case.
• In most cases, jurisdiction over Workers’ Compensation disputes is handled by an administrative law judge.
• Appeals may be taken to the court system, but such appeals are viewed skeptically by state appellate courts.
• The Workers' Comp system sometimes provides vocational rehabilitation benefits, such as on-the-job training, schooling, and/or job placement assistance.

Garry Prowe is well known in the brain injury community for his research and expertise in how survivors of a brain injury and their families overcome the considerable challenges they face every day. The author, who holds a master’s degree in public policy from the University of Michigan, formed a panel of more than 300 survivors, family members, and healthcare professionals. The author’s research also is informed by his role as caregiver to his wife, Jessica, who has a severe brain injury.