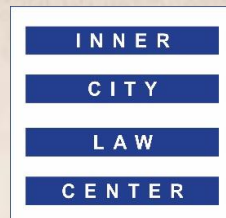
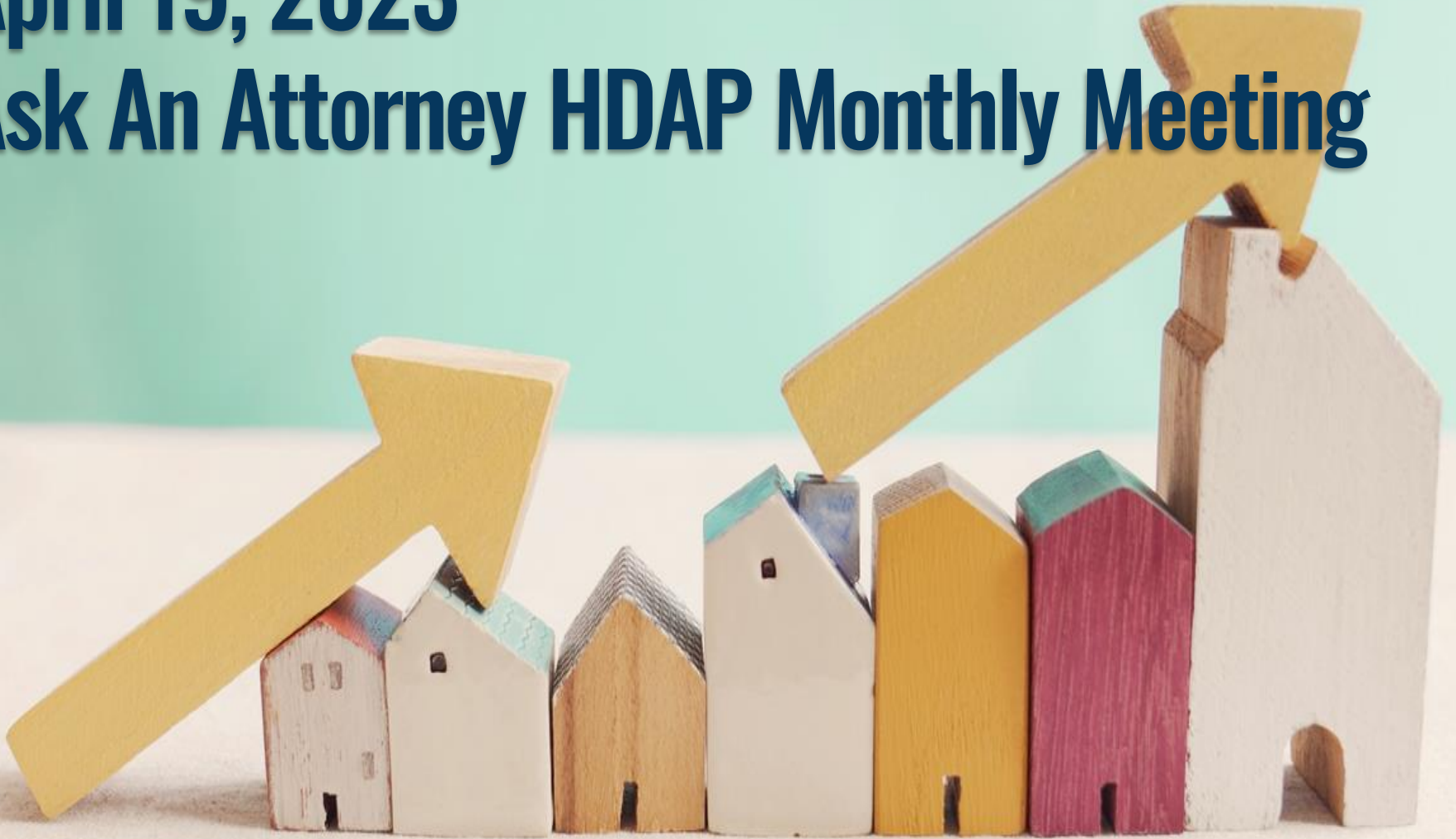


April 19, 2023

Ask An Attorney HDAP Monthly Meeting



CHANGEWELLPROJECT
PARTNERING TO STRENGTHEN COMMUNITY SYSTEMS

Agenda

A background image showing a person's hand holding a pen over an open spiral notebook. A laptop is visible in the background, slightly out of focus. The image is partially covered by a dark grey horizontal band.

Focus Topic of the Month: “Drug Addiction and Alcoholism” (DAA)

Questions and Answers

Reminder: Benefits Helpline

FOCUS TOPIC OF THE MONTH:

DRUG ADDICTION AND ALCOHOLISM (DAA)

1. What is DAA?
2. How does one still qualify for benefits with DAA?
3. Tips on approaching a case with DAA

Challenge the stigma around substance addiction

- **Substance use disorder is a disease**
(American Medical Association; American Society of Addictive Medicine)
- **Drug Abuse and Drug Dependence are mental disorders**
(Diagnostic and Statistical Manual of Mental Disorders, DSM-V)
- **“People commonly report using substances to try to cope with specific mental illnesses such as mood and anxiety disorders”** – American Addiction Center
(www.americanaddictioncenters.org)

Past and/or present substance use does not automatically disqualify someone for Social Security disability benefits

What is DAA?

DAA: Drug Addiction and Alcoholism

Brief History:

Before 1996: You could be considered disabled based on DAA alone

Current policy since 1996: To qualify for disability, you have to go through the 5-step evaluation process, but if there is DAA (past or present), there is an additional step.

*A claimant “shall not be considered to be disabled...if alcoholism or drug addiction would...be a contributing factor **material** to the Commissioner’s determination” (Section 223(d)(2)(C) and 1614(A)(3)(J) of the Social Security Act (emphasis added)*

What is DAA?

DAA Materiality Determination

IF SSA finds you are disabled after the sequential evaluation

AND you have DAA (past or present)

THEN: SSA will evaluate to see if **DAA** is “material” to the determination

Are drugs and/or alcohol the reason you are disabled?

Would you still be disabled in the absence of drugs and/or alcohol use?

Note: During this materiality determination, SSA will seek to compare periods of use and periods of sobriety

Evidence that could show DAA is material:

Psychiatric hospitalizations for being a danger to self (DTS) or to others (DTO) (e.g. 5150 hold) that coincide with positive drug and/or alcohol test results.

Evidence that helps show DAA *should not* be material:

Even when in a residential treatment facility, or incarcerated, and presumed to be sober, one has significant symptoms and limitations (e.g. daily voices, suicidal ideations, etc.)

How does one still qualify for benefits with DAA?

Example:

- Severe MDI: Schizophrenia
- Long history of methamphetamine use

- 5 step evaluation process

- SSA determines you are **disabled** at Step 5

Requires a DAA materiality evaluation:

Would you still be disabled without drug use?

How does one still qualify for benefits with DAA?

Scenario One:

DAA materiality determination:

Does the DAA cause or
affect the schizophrenia?

Not significantly. Even
when sober, there are
significant symptoms and
limitations that support
a Step 5 disability
determination

DAA is not material:

STILL DISABLED

How does one still qualify for benefits with DAA?

Scenario Two:

DAA materiality determination:

Does the DAA cause or
affect the schizophrenia?

Yes. When sober, you
rarely hear voices, and
you have significantly
less anxiety and
depression

DAA is material:

Schizophrenia symptoms
improve to the point of
non disability absent DAA

=

NOT DISABLED

TIPS ON APPROACHING A CASE WITH DAA

1. **Build a timeline:** Find out dates of use and sobriety and gather records (e.g. hospitalizations; substance abuse treatment records; prison records)
2. Look into **all impairments** that could be disabling*
3. May need to **amend** the onset date
4. May need a **closed period** request
5. Even if it looks like someone does not meet a listing when sober, the condition(s) may still be disabling at Step 5

TIPS ON APPROACHING A CASE WITH DAA

Expanding on: “Looking into all impairments that could be disabling”:

- Purely mental impairment cases can be challenging as DAA may look like symptoms from other mental health impairments
- Remember to consider all impairments, including physical impairments, which can be shown to be severely limiting regardless of DAA.

Example: If you have degenerative disc disease (DDD) of the lumbar spine, symptoms and physical limitations from this condition would not generally change because of DAA, and such conditions are generally not caused by DAA

TIPS ON APPROACHING A CASE WITH DAA

Important note regarding cause and effect:

- Even if an impairment is due to DAA (e.g. alcoholic cirrhosis of the liver), this **does not** preclude being able to qualify for benefits

Example: An individual with alcoholic cirrhosis of the liver meets listing 5.05 (Chronic Liver Disease). Due to alcohol use, SSA will evaluate if DAA is material:

- **Does DAA cause or affect the cirrhosis?** Yes, alcohol use caused it
- **Without DAA, would the cirrhosis improve to the point of “non disability”?** No. Although alcohol use is the cause, no longer drinking would not cure or improve this condition to where the individual no longer meets a listing

INNER

CITY

LAW

CENTER

QUESTIONS, COMMENTS, OR CONCERNS

Asking for Help

ICLC is here to help with your specific questions about SSI/SSDI and CAPI Benefits Advocacy.



Please visit:
<http://www.changewellproject.com/benefits-helpline>